IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

Minto PBLH, **LLC**, a Florida limited liability company, and **Seminole Improvement District**, a special improvement district of the State of Florida,

Plaintiffs,

v.

Indian Trail Improvement District, a special improvement district of the State of Florida

Defendant/Counter-Plaintiff.
_____/

Civil Division: AK
Case No.: 50-2020-CA-006322-XXXX-MB

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE comes before the Court on Defendant's Motion for Partial Summary Judgment, filed January 17, 2023, as well as on Plaintiffs' Corrected Joint Motion for Final Summary Judgment and Incorporated Memorandum of Law, filed February 9, 2023. Both parties supplemented their respective motions by the filing of Statements of Material Facts, in addition to other responsive motions. The parties argued *ore tenus* on July 10, 2023. Having reviewed Defendant's Motion and Response, Plaintiffs' Motion and Response, all of the parties' submissions, the court files, and the applicable law, and having carefully considered the arguments presented at the aforesaid hearing, the Court finds and rules as follows:

Undisputed Facts

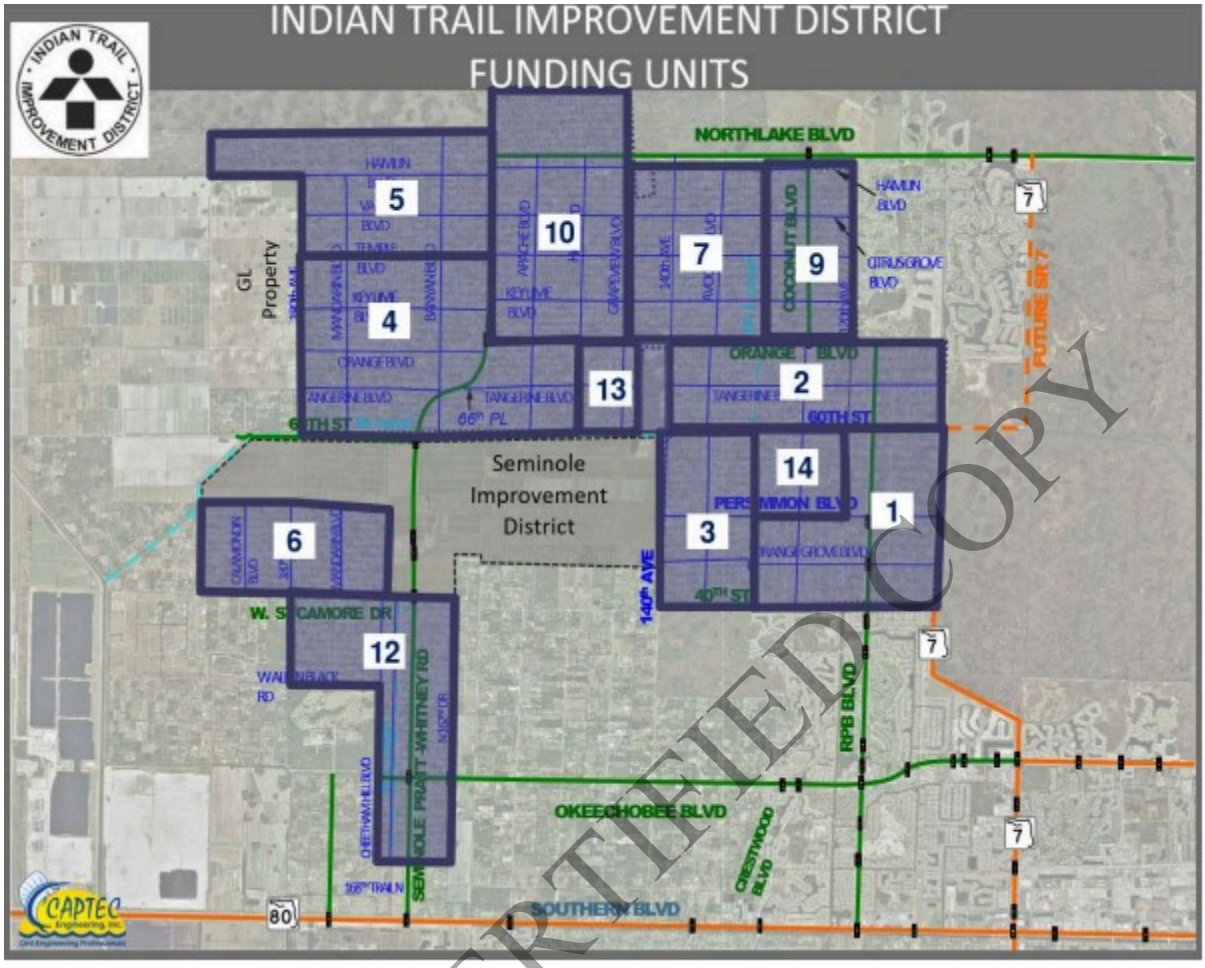
The parties' detailed argumentation notwithstanding, this case concerns a simple right-of-way between adjacent properties. Plaintiff Seminole Improvement District ("SID") and Defendant Indian Trail Improvement District ("ITID") are neighboring special improvement districts located in Palm Beach County. SID shares a jurisdictional border with ITID. Plaintiff Minto PBLH, LLC

("Minto"), is the owner and developer of property located within SID's jurisdictional limits. Fundamentally, this litigation represents years of disputes regarding the use of a right-of-way connection between Plaintiffs' land eastward onto a roadway on ITID's western border known as 140th Avenue North. The history between these two properties is lengthy, but bears significance to the arguments raised in the instant motions.

Overview[1]

In 1956, Samuel Nathan Friedland purchased one hundred square miles of land located in central Palm Beach County, Florida. Shortly after this acquisition, the Indian Trail Water Control District—a predecessor to ITID—was established for the maintenance thereon. The geography of Friedman's property was varied. To the east, Friedman's property consisted of swamplands; to the west, however, the cultivation of citrus farms was pursued. Eventually the eastern swampland portion—as well as the lands to the north and south—would be developed into residential lots approximately one acre in size. This land is informally referred to as the Acreage and largely falls within the jurisdiction of ITID. The land falling within SID's jurisdiction—and within which Minto's property is located—comprises the former citrus farm. The below graphic depicts the jurisdictions of ITID and SID as they currently exist:[2]

[1] The Court emphasizes that, in summarizing any evidence or arguments by the parties in this case, it has not included every detail, nor attempted to state non-essential facts; because the Court has not done so, however, does not mean it has failed to consider all the evidence or arguments presented by the parties.
[2] *See* Ex. A at D.E. 408.



The Mutual Right-Of-Way Agreement

Throughout the 1960s, a series of conveyances were executed on Friedland's land. These conveyances are admittedly circuitous, but merit discussion. On July 14, 1964, Friedland conveyed by quitclaim deed a tract of land to City National Bank of Miami Beach Florida ("City National"). The legal description of this conveyance described the land as Sections 4, 5 and 9, along with the northern half of Section 8. Thereafter, on March 31, 1966, Sections 5 and 6, as well as the northern halves of Sections 7 and 8, were severed and sold to Royal Palm Beach Colony, Inc. ("RPBC"). The following day, on April 1, 1966, RPBC conveyed the property to City National, a portion of which became the aforementioned citrus farm operated by Callery-Judge Groves ("Callery-Judge"). A trust was established thereon held by City National.

The effect of these many conveyances resulted in City National owning—as of April 1, 1966—Section 5 and the northern half of Section 8 constituting Callery-Judge's citrus grove, as well as the adjacent property to the east, described as Sections 4 and 9. Notably, the above special warrant deed executed between RPBC and City National provided for this land as:

> SUBJECT TO, and together with the non-exclusive benefit of, any and all rights of way and easements affecting said property . . .

These aforesaid rights-of-way coincided with the contemporaneous execution of a Mutual Right-Of-Way Agreement (the "ROW Agreement") entered April 1, 1966, between Friedland, City National and RPBC, among others. The ROW Agreement[3] set forth the following:

> 1. The parties hereto mutually establish a mutual non-exclusive right-of-way for ingress, egress and maintenance, extending over the lands of the respective parties hereto, for the benefit of the parties hereto, their heirs, legal representatives, successors, assigns, licensees and transferees . . .
>
> 2. Neither party hereto shall have any obligation to provide any access-ways over other properties leading to or from the hereinabove described rights-of-way.
>
> 3. This agreement shall not be construed or in any way deemed to be a dedication of said rights-of-way.

Pertinently, the ROW Agreement concerned a right-of-way abutting the boundary line between Callery-Judge's citrus grove to the west and the lands to the east. The rights and obligations of the ROW Agreement form the basis for the present litigation. Defendant and Plaintiffs concede they lack sufficient knowledge as to the intent of the original parties to the ROW Agreement with respect to said right-of-way.

On October 7, 1968, City National conveyed by quitclaim deed Sections 4 and 9 back to RPBC, providing:[4]

[3] *See generally* Composite Ex. "G" at D.E. 408.
[4] *See* Ex. "T" at D.E. 601.

> ALL of Sections 4 and 9 in Township 43 South, Range 41 East.
>
> TOGETHER with and subject to any and all rights, rights-of-way and easements affecting said property.

This quitclaim deed further provided:

> That the said first party . . . does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following…

This conveyance resulted in City National's retention of the citrus farm operated by Callery-Judge west of the boundary line, whereas RPBC owned the eastern property at Sections 4 and 9. At this time, ITID's predecessor maintained its jurisdiction across all of these aforementioned lands.

Creation of SID

In the 1970s, a decision was made to remove the citrus farm property operated by Callery-Judge from ITID's jurisdiction and to create SID as a separate special improvement district to govern that area. On October 29, 1976, City National executed a quitclaim deed to SID for its interests in the fifty feet on Callery-Judge's side of the boundary line between the latter and ITID. This was accompanied by an assignment from City National to SID, executed on the same day. This assignment pertinently provided:

> CITY [NATIONAL] is the Grantee of certain rights in a non-exclusive right-of-way for ingress, egress and maintenance extending over lands in Palm Beach County, Florida, as provided for in an instrument dated the first day of April, 1966. . .

Following the assignment of its rights to SID, City National was placed in voluntary liquidation to take effect on January 3, 1977.

Declaration of Easements

On or around 1968, RPBC and City National declared a series of easements to ITID's predecessor (collectively the "1968 Declarations of Easements"). While seemingly repetitive,

these declarations conveyed easements of various sections of land, with each providing:[5]

> [T]he following easements in favor of INDIAN TRAIL WATER CONTROL DISTRICT, its successors and assigns, for rights-of-way, road purposes, drainage incidental thereto, and public utilities in favor of the general public, for the construction, improvement, maintenance and operation of levees, canals, water control structures, and any and all other works necessary for flood and water control purposes in connection with the establishment and operation of the program of works of the INDIAN TRAIL WATER CONTROL DISTRICT . . .

The 1968 Declarations of Easements were subsequently modified in 1978 and again in 1987.

Reclamation Plans

In October of 1968, a Plan of Reclamation (the "1968 Reclamation Plan") was executed for ITID's predecessor. The reported intention of the 1968 Reclamation Plan was to provide a system of water control on the lands maintained by Indian Trails Water Control District, in addition to other purposes.[6] Included within the 1968 Reclamation Plan were plans for the construction of a system of culverts and roads.

Similarly, SID's predecessor, Seminole Water Control District, executed its Plan of Reclamation on September 1, 1970 (the "1970 Reclamation Plan"), which set forth the intention to provide a system of water control for the lands within its jurisdiction utilized for agricultural purposes.[7] The 1970 Reclamation Plan references the ROW Agreement and indicates the rights-of-way within SID's jurisdiction "are subject to all easements of record."

Minto's Property

Minto obtained title to Callery-Judge's citrus grove in September of 2013. Currently, Minto seeks to redevelop its land into single family residences, as well as other commercial and

[5] *See e.g.,* Ex. "T" at D.E. 417.
[6] *See generally* Ex. "1" at D.E. 561.
[7] *See generally* Ex. "E" at D.E. 559.

recreational uses. Minto obtained approval to begin development on November 3, 2014, when the Palm Beach County Board of Commissioners passed Resolution R-2014-1646 approving Minto's application for a zoning map amendment to a traditional development district subject to various conditions thereto. Its Westlake development is underway.

Approval for the development of Westlake is conditioned on Minto's provision of access to various roadways in its vicinity. In particular, Minto must construct certain east/west connections to roadways commensurate with the number of dwelling units it plans to build. Minto's failure to do so will incur millions of dollars in payments to Palm Beach County. This condition—and others—are incorporated into a Proportionate Share Agreement. The present dispute arises out of Minto's desire to use the right-of-way onto 140th Avenue North for access to other roads, such as Persimmon Boulevard, to satisfy the Proportionate Share Agreement. Pending development, Minto leases its land to agricultural tenants.

The record is replete with illustrations of the evolution of Minto and ITID's properties. Aerial photographs depict a canal running the length of Minto's eastern border, with a single east/west culvert over which a path runs to 140th Avenue North, within the area maintained by ITID. This path, which constitutes the right-of-way under the ROW Agreement, is initially depicted as a dirt path and currently appears to be gated with a sign forbidding trespassers.

Procedural History

On March 20, 2020, ITID issued a letter to Plaintiffs contesting Minto's use of an "unpermitted connection." Specifically, ITID contested the use of Minto's dump trucks entering the right-of-way connection onto 140th Avenue North. SID responded the following day, indicating its right to access this connection under the ROW Agreement.

On April 6, 2020, ITID's general counsel, Mary Viator, issued a second letter to Plaintiffs

stating ITID possessed a right to assess the conditions under which a connection could be made to 140th Avenue North pursuant to §298.28, Fla. Stat., including a right to demand Minto and SID acquire a permit and pay fees for the use of ITID's roads. SID responded that §298.28, Fla. Stat., pertained only to drainage systems and that Minto's use of the connection did not fall within the statute's contemplation. Sometime thereafter, ITID placed a physical barrier at the connection.

Plaintiffs filed their complaint on June 11, 2020, which they later amended on April 4, 2022, seeking five (5) counts of declaratory and injunctive relief as follows:

- Count I – Claim for Declaratory Judgment and Injunctive Relief (ITID's Interest in the Mutual ROW area is Insufficient to Restrict Plaintiffs' Superior Right to Access and Use the ROW)
- Count II – Claim for Declaratory Judgment and Injunctive Relief (Plaintiffs' Road Connection is Vested and ITID's Permit Process Cannot Be Retroactively Applied)
- Count III – Claim for Declaratory Judgment and Injunctive Relief (ITID Has No Regulatory Authority to Demand a Permit for Plaintiffs' Pre-Existing Connection to the Mutual ROW)
- Count IV – Claim for Declaratory Judgment (ITID has no Authority to Condition a Road Connection Permit to an ITID Road Upon Contributions for Generalized "Traffic Impacts" to ITID's Roadway System)
- Count V – Claim for Declaratory Judgment and Injunctive Relief (ITID Roads are Public Roads and ITID Has No Authority to Limit Petitioners' Access to ITID's Roadway System)

Collectively, Plaintiffs seek a declaration of their rights under the ROW Agreement to use the right-of-way to access 140th Avenue North. Plaintiffs claim their noncompliance with accomplishing this routing will incur an $18,000,000 payment from Minto to Palm Beach County.

On May 4, 2022, ITID filed its Answer, which raises sixteen affirmative defenses and two counterclaims for declaratory judgment and injunctive relief, both of which are directly juxtaposed to Plaintiff's aforementioned claims. The instant motions followed. Plaintiffs' Motion seeks final

summary judgment on all counts and counterclaims raised by the parties; Defendant's Motion seeks partial summary judgment on Counts I—IV of Plaintiffs' Amended Complaint.

Summary of Arguments

The instant motions task the Court with determining the rights and obligations of the parties with respect to the right-of-way connection. Plaintiffs argue ITID's obstruction of 140th Avenue North at the right-of-way connection is a pretext to elicit fees to fund its roadway system. Plaintiffs aver they have a superior interest to the right-of-way and, alternatively, that ITID's roadways are public and, therefore, neither Minto nor SID's travel thereon may be impeded. Conversely, ITID claims it has statutory authority to impose fees upon Plaintiffs' unpermitted use of the right-of-way connection onto its roads. ITID further argues SID lacks any interest in the right-of-way and that Minto's use of the right-of-way will overburden the easement. Finally, ITID claims its roadway systems are not public roads as a matter of law because they lack a public dedication.

Standard of Review

Summary judgment is appropriate when there is no genuine dispute as to a material fact and the movant is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(a). The existence of a material factual dispute is determined by "whether 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131, 1134 (Fla. 4th DCA 2022) (quoting *In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 75 (Fla. 2021)). Under this standard, a court must consider all evidence in favor of the nonmoving party, "but only to the extent that it would be reasonable for a jury to resolve the factual issues that way." *Perez v. Citizens Prop. Ins. Corp.*, 345 So. 3d 893, 895 (Fla. 4th DCA 2022) (quoting *Jones v. UPS Ground Freight*, 683 F. 3d 1283, 1296 fn. 38 (11th Cir. 2012)).

Analysis

Plaintiffs' five counts for declaratory judgment and injunctive relief, as well as Defendant's two counterclaims, may essentially be distilled in the following manner. First, the parties seek a determination as to SID and Minto's interests in the right-of-way connection under the ROW Agreement. By extension, the Court is tasked with determining whether Minto's planned use of the right-of-way creates a burden beyond the scope intended by the parties to the ROW Agreement. Second, the parties seek to determine whether ITID's roads are public roads on which Sid and Minto may freely access via the right-of-way connection. Finally, the parties dispute ITID's authority to impose permits and fees on Plaintiffs' use of roadways located within ITID's jurisdiction. The Court addresses each of these issues *ad seriatim*.

Standing

As a preliminary matter, however, the Court first turns to a prefatory contention raised by Defendant that Plaintiffs lack standing. As argued by ITID, neither SID nor Minto were parties to the ROW Agreement and, thus, have no controversy at stake in the present case and will suffer no injury by its outcome.

The legal concept of standing "requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 505 (Fla. 2006). "In its broadest sense, standing is no more than having, or representing one who has, 'a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.'" *Kumar Corp. v. Nopal Lines, Ltd*., 462 So. 2d 1178, 1182 (Fla. 3d DCA 1985) (quoting *Sierra Club v. Morton*, 405 U.S. 727, 731 (1972)).

Plaintiffs instituted this cause of action seeking declaratory judgment as to their rights in relation to the right-of-way connection into ITID's jurisdiction. Pursuant to §86.011, Fla. Stat., a

party is afforded broad rights in seeking declaratory relief. To obtain such relief, a party must establish:

> (1) there is a bona fide dispute between the parties; (2) the plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; and (4) there is a bona fide, actual, present need for the declaration.

MacNeil v. Crestview Hosp. Corp., 292 So. 3d 840, 843 (Fla. 1st DCA 2020) (quoting *Ribaya v. Bd. of Trs. Of the City Pension Fund for Firefighters & Police Officers in the City of Tampa*, 162 So. 3d 348, 352 (Fla. 2d DCA 2015)).

In their pleadings, Plaintiffs indicate the strip of land constituting the right-of-way abuts along the boundary line of Minto's property, within which lies SID's jurisdictional district. Plaintiffs' aver their ability to access the connection onto ITID's district is impeded by physical barriers, as well as ITID's imposition of a permit and associated fees. Moreover, Plaintiffs allege Minto will incur millions of dollars in fees, pursuant to a Proportionate Share Agreement, should it fail to effectuate said connection as a condition of Minto's Westlake development. Florida law provides for a liberal administration of declaratory judgment. *Wells v. Wells*, 24 So. 3d 579, 583 (Fla. 4th DCA 2009). The Court finds Plaintiffs have sufficiently demonstrated standing in this case. Accordingly, Defendant's allegation that Plaintiffs' lack standing is denied.

Plaintiffs' Interests in the Right-Of-Way

The Court now turns to Plaintiffs' interests in the right-of-way, beginning with SID's purported rights therein. As argued by ITID, the conveyance and assignment of City National's interests in the right-of-way to SID in 1976 were nugatory because the quitclaim deed executed by City National to RPBC eight years earlier extinguished any rights City National once possessed over the right-of-way. Plaintiffs' counter that the language in said quitclaim did not operate as a

release of City National's interests.

"A 'quitclaim deed' conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid." *Ledea-Genaro v. Genero*, 963 So. 2d 749, 752 (Fla. 4th DCA 2007). Such a deed operates "by way of release intended to pass any title, interest or claim which the grantor may have in the premises but not professing that such title is valid nor containing any warranty or covenants for title." *Pierson v. Bill*, 182 So. 631, 634 (1938).

The record demonstrates that, on October 7, 1968, City National conveyed via quitclaim deed Sections 4 and 9 of its property to RPBC. Prior to said conveyance, City National was the owner of sections to the west of the right-of-way and was a dominant estate on the east side of the boundary line. Notably, the quitclaim deed expressly provided City National "does hereby remise, release and quitclaim unto RPBC" its interests in the land. The effect of this conveyance released any interests City National possessed in the right-of-way. Thus, when City National executed an assignment to SID of the latter's interests in the right-of-way, it no longer had any interest to assign because it expressly released said interest by its quitclaim deed on October 7, 1968.

ITID argues City National's intent to release its interest in the right-of-way is further evinced by the record evidence. *See Procacci v. Zacco*, 324 So. 2d 180, 182 (Fla. 4th DCA 1975) ("To understand the intentions of the parties . . . recourse must be had to surrounding agreements and circumstances"). Of particular salience, the ROW Agreement executed on April 1, 1966, and to which City National was a party, provided in Clause 2:

> Neither party hereto shall have the obligation to provide any access-ways over other properties leading to or from the hereinabove described rights-of-way.

ITID argues the parties to the ROW Agreement never sought to provide access over other properties, such that City National's subsequent conveyance to another party would naturally seek to extinguish an interest in such access. ITID further argues its 1968 Reclamation Plan sought to

build new roads to accommodate the construction of single family residences in the Acreage, including on the very land conveyed by City National that same year. Collectively, ITID argues this evidence establishes City National's intent to release its interest in right-of-way from the citrus farms into the swamplands that became single family residences.

Plaintiffs counter that City National's quitclaim deed contained language that its conveyance was "together with and subject to" all then-existing rights-of-way and easements. According to Plaintiffs, this language preserved the subject right-of-way, such that City National's 1976 assignment of the interest therein to SID was still effective. *See Fla. East Coast Ry. v. Patterson*, 593 So. 2d 575, 577 (Fla. 3d DCA 1992) ("The execution of a quitclaim deed 'does not necessarily import that the grantor possess any interest at all'"). Plaintiffs argue the quitclaim deed in question references the existence of multiple encumbrances on the land, indicating City National placed RPBC on notice that said encumbrances would not be conveyed by the execution of the quitclaim deed. As support, both parties cite to and attempt to distinguish the Fourth District Court of Appeal's decision in *Procacci v. Zacco*, 324 So. 2d 180 (Fla. 4th DCA 1975).

In *Procacci*, plaintiffs filed a petition for injunctive relief against the owners of an adjacent property, seeking to enjoin the defendant's construction of buildings that purportedly encroached on an easement. *Id*. at 181. The deed conveying the defendant's adjacent lot contained a clause that the land was "[s]ubject to an easement for road right-of-way" and set forth a description thereof. *Id*. However, the trial court held for defendant, recognizing "the clause cited above did not reserve an easement for the plaintiffs' property, because the language, 'subject to,' was insufficient to reserve an easement of any kind." *Id*. The Fourth District Court of Appeal affirmed, observing "the words, 'subject to,' are terms of qualification, not words of contract." *Id*.

The Court finds *Procacci* dispositive. Here, the record demonstrates City National

expressly released its interests in the right-of-way when it executed a quitclaim deed to RPBC, at a time when City National was entering voluntary liquidation and when ITID sought to construct infrastructure for the single family residences soon-to-be constructed thereon. There simply exists an absence of any evidence in the record suggesting City National sought to retain its interest in the right-of-way by the execution of its quitclaim deed to RPBC. *See Robertia v. Pine Tree Water Control Dist*., 516 So. 2d 1012, 1013 (Fla. 4th DCA 1987) ("there is no evidence of any agreement by the parties at the time the deed was executed to reserve an easement for the benefit of the grantor, Pine Tree or anyone else"). In light of the record evidence, City National's employing the words "subject to" are insufficient to retain its interests in the right-of-way. *See Proccaci*, 324 So. 2d at 182 ("At best the use of the words 'subject to' in an attempt to create an easement leads to unclear and ambiguous results"). Accordingly, the Court finds SID has no interest in the subject right-of-way.

The Court now turns to Minto, which acquired its property in 2013. ITID argues Minto's use of the right-of-way overburdens the servient estate beyond its intended scope. Plaintiffs counter the right-of-way constitutes a historic connection between the lands established for, *inter alia*, agricultural purposes. To that end, Plaintiffs argue Minto presently leases out its land for agricultural purposes and that, as such, no triable issue of fact presently exists on this basis.

The parties' right-of-way constitutes an appurtenant easement. "An appurtenant easement includes both a dominant tenement and a servient tenement." *Seven Kings Holdings, Inc. v. Marina Grande Riviera Condo. Ass'n, Inc*., 364 So. 3d 1108, 1113 (Fla. 4th DCA 2023). "The easement holder possesses the dominant tenement, while the owner of the land against which the easement exists possesses the servient tenement." *Id*. (quoting *Dianne v. Wingate*, 84 So. 3d 427, 429 (Fla. 1st DCA 2012). It is axiomatic in Florida jurisprudence that "the burden created by an easement

may not be increased beyond that reasonably contemplated by the parties at the time of its creation." *Easton v. Appler*, 548 So. 2d 691, 695 (Fla. 3d DCA 1989) (citing *Groff v. Moses*, 344 So. 2d 951 (Fla. 2d DCA 1977)). Here, Minto is the servient tenement, upon whose land the right-of-way easement is subject. In accordance with the 1968 Declarations of Easements, ITID holds said easement as the dominant tenement.

The ROW Agreement was executed April 1, 1966. According to the record evidence in this case, Minto's property operated for agricultural purposes as a citrus grove for decades, whereas ITID's property has long been residential in nature, rural and equestrian. The record demonstrates the purpose of the right-of-way connection was to afford the citrus farm access to the adjacent land in conducting its agricultural operations. Since Minto's acquisition in 2013, however, it seeks to redevelop the former citrus farm into a large-scale development, which will include thousands of single family residences, various recreational activities, large commercial spaces, academic institutions, a tax collector's office and fire station, as well as a multi-acre park, among many other uses. It is self-evident said uses would exceed the scope of that provided at the time of the ROW Agreement's execution. In particular, Minto's use will open up the right-of-way connection to the public, which is contrary to the ROW Agreement, which provides: "This agreement shall not be construed or in any way deemed to be a dedication of said rights-of-way." Instead, the ROW Agreement describes the category of persons intended to benefit from the right-of-way as "the parties hereto, their heirs, legal representatives, successors, assigns, licensees and transferees." Absent therefrom are unknown members of the public at-large as intended beneficiaries to the ROW Agreement.

Minto's desired use contravenes the ROW Agreement by enlarging the use of the easement. *See, e.g., Kendry v. State Road Dep't*, 213 So. 2d 23, 26 (Fla. 4th DCA 1968) (raising the land

"four to five feet" constituted a burden on the servient estate); *see also Walters v. McCall*, 450 So. 2d 1139, 1143 (Fla. 1st DCA 1984) (an easement for beach access to the owners could not be expanded to patrons of nearby campground); *Condron v. Arey*, 165 So. 3d 51, 57-58 (Fla. 5th DCA 2015) (an easement providing mule-drawn wagons access to lake for irrigation purposes could not be expanded to accommodate a large-scale irrigation system with pipes and pumps). Under Minto's proposed connection, any member of the public may use the connection for any purpose by accessing Minto's property and then travelling into ITID's jurisdiction and onward to additional roadways. Not only would such travel involve persons not intended to benefit from the right-of-way, but it would require ITID to provide access to and from the right-of-way to other properties, which is expressly prohibited by the terms of the ROW Agreement. Mindful of the record evidence and having carefully considered the relevant jurisprudence, the Court finds Minto's use will overburden the easement.

ITID's Roadway System

The parties further seek declaratory judgment as to whether ITID's roadway system is open to the public, such that Minto and SID may freely access it via the right-of-way connection without issuance of a permit or incurring a fee. Essentially, Plaintiffs' claim ITID cannot impede Plaintiffs' access to 140th Avenue North—or any of ITID's roads within its jurisdiction—because said roadway system is comprised of public roads. In response, ITID argues no formal public dedication has been made to its road system.

The designation of public roads in Florida is set forth under §335.01(1), Fla. Stat., which sets forth:

> All roads which are open and available for use by the public and dedicated to the public use, according to law or by prescription, are hereby declared to be, and are established as, public roads.

Plainly construed, the statute provides two conditions upon which a road is made public: (1) the

road is "open and available for use by the public" and (2) the road is "dedicated to the public use, according to law or by prescription." *See Dealers Acceptance Corp. v. United Pacific Ins. Co.*, 763 So. 2d 528, 530 (Fla. 4th DCA 2000) (recognizing statutes "be given their plain meaning"). A party alleging the existence of a dedication carries the burden of proof. *Star Island Assocs. v. City of St. Petersburg Beach*, 433 So. 2d 998, 1003 (Fla. 2d DCA 1983). "Proof of the intention to dedicate and of the acceptance must be clear and unequivocal." *Id*.

ITID argues no public dedication to its roadways exists in the record. However, Plaintiffs direct the Court to the 1968 Declarations of Easements issued by RPBC to ITID's predecessor, the Indian Trail Water Control District, which provided:

> [D]eclare the following easements in favor of the INDIAN TRAIL WATER CONTROL DISTRICT, its successors and assigns, for the rights-of-way, road purposes, drainage incidental thereto, and public utilities in favor of the general public, for the construction, improvement, maintenance and operation of levees, canals, water control structures, and any and all other works necessary for flood and water control purposes in connection with the establishment and operation of the program of works of the INDIAN TRAIL WATER CONTROL DISTRICT, and do grant in connection therewith the full right and authority to use said easements for all proper purposes above-referred to . . .

As argued by Plaintiffs, the aforesaid phrase "in favor of the general public" modifies each noun that precedes it, including "rights-of-way" and "road purposes." Under this construction, Plaintiffs claim a public dedication has been made to ITID's roads.

In Florida, courts apply the doctrine of the last antecedent, which provides that "relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote." *Kasischke v. State*, 991 So. 2d 803, 811 (Fla. 2008) (quoting *City of St. Petersburg v. Nasworthy*, 751 So. 2d 772, 774 (Fla. 1st DCA 2000)). "The last antecedent is 'the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence." *Id*. (quoting 2A

Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction §47.33 (7th ed. 2007)). As observed by the Florida Supreme Court,

> [C]ommas are used to set off expressions that provide additional but *nonessential* information about a noun or pronoun immediately preceding. Such expressions serve to further identify or explain the word they refer to. These expressions are parenthetical, meaning that the sentence can stand alone without them. When an expression is essential to the sentence, however, it is not separated with commas.

Kasischke, 991 So. 2d at 812 (internal citations omitted).

Turning to the 1968 Declarations of Easements, there is no comma between the phrase "in favor of the general public" and the phrase "public utilities." Therefore, under the doctrine of the last antecedent, the phrase "public utilities in favor of the general public" simply provides for public utility companies to access the easement to deliver such services to the general public. The expansive construction taken by Plaintiffs would run contrary to the doctrine and produce unlikely results, such as allowing the general public to discharge water into drainage structures within ITID's jurisdiction. Indeed, subsequent modifications to the Declarations of Easements in 1978 and 1987 failed to broaden the scope of those intended to benefit therefrom.

ITID additionally argues that, given its statutory funding scheme, it is unable to construct roads sufficient to accommodate travel by the general public. ITID's jurisdiction is comprised of units of homeowners that each fund their local unit. The cost of improvements within ITID's jurisdiction, including its infrastructure, are assessed by its residents. *See generally* §298.301, Fla. Stat. (providing for a district's assessments). This statutorily prescribed method prevents ITID from assessing unit owners to construct roads for the general public. Moreover, the record evinces ITID's jurisdiction is not designed for the type of traffic Minto's community will generate. ITID is primarily a rural community, with mailboxes set feet from the roadway and equestrian signs cautioning motorists. *See* §334.03(14), Fla. Stat. (defining a local road as one having "relatively

low average traffic volume . . . and high land access for abutting property"). Plaintiffs' contention that ITID's roadways are publicly dedicated roads is belied by the record evidence and pertinent jurisprudence. Plaintiffs have failed to meet their burden in demonstrating ITID's roads are public roads, as set forth by §335.01, Fla. Stat. Accordingly, Plaintiffs' claim is denied.

ITID's Statutory Authority to Issue Permits and Assess Reasonable Fees

Finally, the parties seek declaratory judgment as to whether ITID possesses the authority to condition Plaintiffs' connection to ITID's roadway system on the issuance of a permit and collection of a user fee. Minto seeks to utilize the right-of-way connection onto 140th Avenue North to provide access for its Westlake residents and invitees, in compliance with its Proportionate Share Agreement. In particular, Plaintiffs contest the implementation of a fee for said use. According to Plaintiffs, its right-of-way connection pre-exists ITID's construction of 140th Avenue North. As a consequence, Plaintiffs argue ITID's statute, which reads prospectively, may not retroactively impose a fee upon the earlier-established right-of-way connection. As an extension of this argument, Plaintiffs assert ITID's collection of a fee is an impermissible tax, rather than a user fee.

ITID is a water control district organized and existing under and by virtue of its charter, which is codified at Chapter 2002-330, *Laws of Florida*. Notably, ITID's charter, Section 1, Chapter 2002-330, *Laws of Florida*, provides for the ability to finance its works as follows:

> (11) The district may be financed by any method established in this act, chapters 189 and 298, Florida Statutes, or any applicable general laws, as they may be amended from time to time.
>
> * * * * *
>
> (13) The method for collecting non-ad valorem assessments, fees, or service charges shall be as set forth in chapters 197 and 298, Florida Statutes, as they may be amended from time to time.

Furthermore, ITID's charter, Section 5, Chapter 2002-330, Laws of Florida, provides for its power

to construct and maintain roads within its district:

> (1) The district shall have the power . . . to construct, improve, pave, and maintain roadways and roads necessary and convenient for the exercise of the powers or duties or any of the powers or duties of the district or the supervisors; and, in furtherance of the purpose and intent of this act and chapter 298, Florida Statutes, to construct, improve, pave, and maintain roadways and roads necessary and convenient to provide access to and efficient development of areas made suitable and available for cultivation, settlement, and other beneficial use and development as a result of the drainage and reclamation operations of the district . . .

ITID's charter expressly references Chapter 298, Fla. Stat., as a statutory derivation of its powers. Pursuant to §298.22(9), Fla. Stat., a district "[m]ay assess and collect reasonable fees for the connection to and use of the works of the district." When taken together, ITID's charter, as well as the applicable provisions of Chapter 298, Fla. Stat., empower ITID to maintain roadways within its district and obtain financing therefor, including the assessment of reasonable fees.

Plaintiffs raise a number of arguments in response. First, Plaintiffs contend ITID lacks authority to condition Minto's use of the right-of-way connection upon issuance of a permit. As support, Plaintiffs rely on the decision in *Roach v. Loxahatchee Groves Water Control Dist*., 417 So. 2d 814 (Fla. 4th DCA 1982). In *Roach*, a landowner sought a permit to construct a bridge over a canal adjacent to his property. *Id*. at 815. The water control district prohibited the building of bridges that obstructed water flowing through its canals. *Id*. The district denied the landowner a permit on the basis that "a bridge permit would not be in the best interests of the District, its landowners and taxpayers." *Id*. at 816. The Fourth District Court of Appeal held the water control district erred by refusing a bridge permit on the broad grounds that it was not in the parties' best interest. *Id*. at 817. In reversing, the Appellate Court directed the water control district to condition a permit on whether the proposed bridge would obstruct the flow of water in its canals. *Id*.

Plaintiff's contentions are unconvincing. As an initial matter, the decision in *Roach*

concerned the manner of a water control district's rejection of a permit, not whether a water control district lacked authority to issue a permit. Similarly unconvincing is Plaintiffs' averment that ITID's road pre-dates the right-of-way connection and, therefore, ITID's statutory authority cannot operate retroactively. Plaintiffs concede—and the record demonstrates—the subject right-of-way has long been utilized for agricultural purposes, but that Minto presently seeks to redevelop this connection into a road accommodating the thousands of residents and business invitees accessing its expansive Westlake development. This connection will no longer provide the same history of use and will, quite frankly, transform the right-of-way in character and quality. The Court finds ITID possesses the statutory authority to issue a permit for a connection into its district.

Plaintiffs additionally argue ITID's imposition of a fee is, in reality, a form of taxation, for which it lacks the authority to impose. As support, Plaintiff rely upon the Florida Supreme Court's decision in *State v. City of Port Orange*, 650 So. 2d 1 (Fla. 1994). In *Port Orange*, the City enacted a transportation utility ordinance that imposed a "transportation utility fee" relating to the use of its roadways. *Id*. at 2. Said fees were levied upon the residents of developed properties within the City. *Id*. The circuit court held the City's assessment of fees were valid user fees, but the Florida Supreme Court reversed, holding the fee was an unauthorized tax. *Id*. at 3. In so doing, the High Court held "a tax is an enforced burden" for which the residents had no choice to pay, whereas user fees "are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge." *Id*.

Here, ITID seeks to assess a user fee upon Minto's access and use of the former's roadway system, pursuant to §298.28, Fla. Stat., and its charter. Minto's payment of such fees is clearly not required, as it need not utilize the connection to satisfy construction of its Westlake development. Indeed, Plaintiffs admit that the failure to utilize the right-of-way connection onto 140th Avenue

North will result in a payment to Palm Beach County in accordance with those parties' Proportionate Share Agreement. By its very nature, this presents Minto with a choice. As such, the Court finds ITID's assessment of Minto's use of its roads to be a permissible user fee and not an unauthorized tax.

Finally, Plaintiffs assert ITID's statutory authority must be read *in pari materia* with the entirety of Chapter 298, Fla. Stat., including §295.305, Fla. Stat., which provides that a water control district "shall levy a non-ad valorem assessment . . . on each assessable tract of land in the district." *See* §298.54, Fla. Stat. (authorizing a "maintenance tax . . . upon each tract or parcel of land within the district"). Plaintiffs argue that, when taken together, Chapter 298, Fla. Stat., permits ITID to implement an assessment only to those located within its district, of which Plaintiffs are not included. The Court finds Plaintiffs' interpretation unavailing. Section 298.305(1), Fla. Stat., on which Plaintiffs rely, addresses the approval of an engineer's report for construction of works within a special improvement district. However, §298.305(2), Fla. Stat., provides that funding the cost of said construction is permissive. More significantly, §298.22(9), Fla. Stat., unambiguously permits ITID to impose an assessment "for the connection to and use of the works of its district." Here, Minto seeks to connect its Westlake development, which will consist of large commercial spaces and thousands of residences, to ITID's roads. Accordingly, ITID has statutory authority to impose a reasonable assessment for said connection.

In summary, the Court finds SID has no interest in the right-of-way under the ROW Agreement and that Minto's use of the right-of-way will overburden the intended scope of the easement. The Court further finds ITID's roadways lack a public dedication under §335.01, Fla. Stat., and are, consequently, not public roads within the contemplation of that statute. Finally, the Court finds ITID possesses the statutory authority to condition Plaintiffs' use of the right-of-way

connection onto ITID's roads by issuance of a permit and assessment of a reasonable fee, as provided under its charter and §728.22, Fla. Stat.

It is, therefore,

ORDERDED AND ADJUDGED that Defendant's Motion for Partial Summary Judgment, filed January 17, 2023, is GRANTED. Accordingly, Counts I, II, III, and IV of Plaintiffs' Amended Complaint, filed April 4, 2022, are hereby DISMISSED.

It is further,

ORDERED AND ADJUDGED that Plaintiffs' Corrected Joint Motion for Final Summary Judgment and Incorporated Memorandum of Law, filed February 9, 2023, is DENIED.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida.

502020CA006322XXXXMB 10/13/2023
Richard L. Oftedal Senior Judge

502020CA006322XXXXMB 10/13/2023
Richard L. Oftedal
Senior Judge

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