Filing #217315419 E-Filed 02/21/2025 01:18:31 PM

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HIGHLANDS COUNTY, FLORIDA
CIVIL DIVISION

SEBRING AIRPORT AUTHORITY,

Plaintiff,

v.

Section 10/Civil
Case No. 2024-CA-000081

SPRING LAKE IMPROVEMENT DISTRICT, et. al.,

Defendants.
_____/

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This cause came before the Court for hearing on November 22, 2024 upon Defendant, Spring Lake Improvement District's, Motion for Partial Summary Judgment (Dkt. 45), and Plaintiff, Sebring Airport Authority's, Motion for Final Summary Judgment, (Dkt. 76). This Court, having considered the motions, the parties' respective responses and arguments at hearing, and otherwise being duly advised herein, FINDS and ORDERS as follows:

UNDISPUTED MATERIAL FACTS

1. Plaintiff, the Sebring Airport Authority ("Plaintiff"), is a dependent special district of the State of Florida, and body politic and corporate, created by the Sebring Airport Authority Act, chapter 2005-300, Laws of Florida, as amended by chapter 2011-265, Laws of Florida ("Airport Authority Act"), and chapter 189, Florida Statutes.

2. The Airport Authority Act does not contain a tax exemption provision, or any provision that indicates that the Airport Authority is exempt from fees, rates, or other charges issued by other governmental entities. *See generally,* Ch. 2005-300, Laws of Fla.

3. The Airport Authority owns and has jurisdiction over certain real property located in Highlands County, Florida, known as the Sebring Regional Airport and Industrial Park, which is legally described in Section 3 of its enabling legislation. *See* Ch. 2005-300, §3, Laws of Fla.

4. Defendant, Spring Lake Improvement District ("Spring Lake District"), is an independent special district and political subdivision of the State of Florida, created and existing under Florida law, specifically, its enabling legislation, chapter 2005-342, Laws of Florida, as amended by chapter 2012-264, Laws of Florida ("Improvement District Act"); and chapters 189 and 298, Florida Statutes.

5. Defendant's geographical boundaries are set forth in Section 3 of Defendant's enabling act, chapter 2005-342, Laws of Fla. Chapter 2005-342 created a Board of Supervisors (Spring Lake Board) through which all powers on behalf of the Spring Lake Improvement District are exercised. Ch. 2012-264, §6(1), Laws of Fla.; Ch. 2005-342, §6(1), Laws of Fla.

6. Since its inception in the 1970s, the Spring Lake District has constructed, operated, and maintained a Water Control System consisting of pumps, levees, culverts, dams, and seawalls, and Stormwater Treatment Areas. These works are for the protection of Arbuckle Creek and landowners within Spring Lake District from flooding and pollution as a result of excess stormwater flowing into the territories of the district. *See* Ch. 2005-342, §10(2),(20), Laws of Fla.

7. The Airport Authority uses Spring Lake District's works to treat and manage its untreated stormwater runoff. (Dkt. 69) at 76:20-23, 96:2-5; (Dkt. 46) at 7-8.

8. As recently as 2018, stormwater runoff from the Airport Authority's property accounted for about 43% of the flows into the Spring Lake District's works. (Dkt. 83).

9. To date, the Airport Authority has not provided financial compensation to the Improvement District for treating and managing the Airport Authority's stormwater runoff. (Dkt. 69) at 89:13-25, 90:1-93:3.

10. On July 5, 2023, the Spring Lake Board announced during its regular meeting that it would be holding a public hearing on August 9, 2023, to establish "Out of District Utility Fees," and "Out of District Stormwater Maintenance Fees." (Dkt. 46) at 176; (Dkt. 45) at 2.

11. On July 22, 2023, and July 29, 2023, the Spring Lake Board published a notice in the Highlands News Sun, a newspaper published daily in Sebring, Highlands County, Florida, titled "Spring Lake Improvement District Notice of Meeting FY '24 Budget," which stated:

> The Board of Supervisors of the Spring Lake Improvement District will hold a Public Hearing on Wednesday, August 9, 2023, in the District Office, 115 Spring Lake Blvd, Sebring, Florida. The purpose of the meeting is to hear comments from the Board and Public on the proposed fiscal year '24 budget: assessments; utility rates and fees; establishment of out of district water rates and fees: and the establishment of out of district stormwater maintenance fees.

(Dkt. 46) at 237.

12. On August 9, 2023, the Spring Lake Board held its scheduled Public Hearing. A court reporter hired by the Airport Authority attended the Public Hearing. (Dkt. 69) at 21:12-25, 40:23-25, 79:17-18, 111:8-112:7. After a brief discussion and public comment, the Spring Lake Board directed Spring Lake District employees to put together the appropriate resolutions establishing Out of District Utility Rates and Fees, and Out of District Stormwater Operational and Maintenance fees, for the September 2023 Regular meeting of the Spring Lake Board. (Dkt. 46) at 139.

13. At its regularly scheduled public meeting held on September 13, 2023, the Spring Lake Board adopted Resolution 2023-16, titled "Out of District Stormwater Operation and Maintenance Fees." (Dkt. 1) at ¶ 11; (Dkt. 46) at 177; (Dkt. 69) at 142-146.

14. Resolution 2023-16 recites the following sources of legal authority in support of the Spring Lake Boards' adoption of Out of District Stormwater Operations and Maintenance Fees:

(a) Section 52 of the Improvement District Act, which "authorizes [the Spring Lake Board] to establish and collect fees within or without the limits of the District for services and facilities furnished by the District", *see* Ch. 2005-342, §52(1), Laws of Fla.;

(b) Section 298.22, Florida States, which "gives District Supervisors the power to assess and collect fees for the use of the works of the District"; section 298.22(9), Florida Statutes; and

(c) A 10th Judicial Circuit Court, Case # GC96-165, which involved a petition to amend Spring Lake Improvement District's Plan of Reclamation, and which authorized the Spring Lake Board to assess lands that are afforded maintenance.

(Dkt. 46) at p. 177.

15. Resolution No. 2023-16 adopted Out of District Stormwater Operations and Maintenance Fees, to be equal to the amount of fees for Fiscal Year 2024 which were to be imposed on in-district parcels for maintenance assessments. (Dkt. 46) at p. 177; (Dkt. 69) at 142-146.

16. The fees imposed on the Airport Authority were calculated in the same manner as the maintenance assessments levied against in-district parcels for Fiscal Year 2024.

17. The fees imposed on the Airport Authority were calculated in the amount of $72,938.25. (Dkt. 69) at 108:18-109:1, 79:24-91:12.

18. The Spring Lake Board authorized adding the Airport Authority fees to the Spring Lake District's Non-Ad Valorem Assessment Roll for collection, and adopted the roll by resolution at the same September 13, 2023 board meeting. (Dkt. 69) at 159-162. Spring Lake District

employees thereafter contacted the Highlands County Tax Collector's office to determine which identifying code should be used for the Airport Authority fees on the Assessment Roll. (Dkt. 69) at 41:23-43:4. They were advised that a separate code for out-of-district fees was not necessary, and that "Tax Code 030" was the proper code to use. (Dkt. 69) at 41:23-43:4.

19. The Assessment Roll was then certified and transmitted to the Highlands County Tax Collector's office via email, on or around September 14, 2023. (Dkt. 69) at 149.

20. That same day, the District Manager of the Spring Lake District hand-delivered a packet of materials to the Highlands County Tax Collector's office. (Dkt. 69) at 165-74; (Dkt. 69) at 64:11-14. The packet of materials contained a cover letter, a copy of Resolution 2023-16, and highlighted portions of the fee provisions enumerated in Section 52, subsection 1, of the Improvement District Act, and subsection 9, section 298.22, Florida Statutes. (Dkt. 69) at 165-74.

21. On November 2023, the Airport Authority received a "Notice of Ad Valorem Taxes and Non-Ad Valorem Assessments" ("2023 Tax Notice") from the Highlands County Tax Collector for the real property owned by Plaintiff located at 128 Authority Lane, Sebring, Florida 33870 ("Property"). The 2023 Tax Notice included a $72,938.25 charge under a section titled "Non-Ad Valorem Assessments" for "Spring Lk Imprvmnt Dist Maint." (Dkt. 46) at 240.

PROCEDURAL HISTORY

On February 29, 2024, the Airport Authority filed a two-count complaint, pursuant to Chapter 86, Florida Statutes, against defendants, Spring Lake Improvement District, and Eric T. Zwayer, in his official capacity as Highlands County Tax Collector ("Tax Collector"). (Dkt. 1) at ¶¶6-8. At the heart of the Airport Authority's dispute is the $72,938.25 charge included in the non-ad valorem assessment section of the 2023 Tax Notice. (Dkt. 1) at ¶¶11-19.

On March 13, 2024, the Airport Authority filed a motion for temporary injunction to enjoin further collection activities by the Highlands County Tax Collector during the pendency of this action. On agreement by the Airport Authority, the Spring Lake District, and the Highlands County Tax Collector, on March 24, 2024, this Court entered a Stipulated Temporary Injunction enjoining the tax collector from all collection activities relating to the 2023 tax notice pending further order.

On July 24, 2024, the Highlands County Tax Collector filed a motion to be excused from further active participation in the matter. At Case Management Conference held August 16, 2024, the Court heard argument of counsel for all parties and entered an order excusing the Highlands County Tax Collector from further active participation.

SUMMARY JUDGMENT

I

The complaint includes two counts. Count I, which is the only count brought against the Spring Lake District, contends that the $72,938.25 charge included on Plaintiff's 2023 Tax Notice is invalid and unenforceable because the Spring Lake District lacks legal authority to impose non-ad valorem taxes or "special assessments" on plaintiff's property, (Dkt. 1) at ¶¶ 51-66 and because the Spring Lake District failed to comply with section 197.3632(4), Florida Statutes, which sets forth the procedural and substantive requirements taxing authorities must adhere to when levying taxes or "special assessments" on non-ad valorem assessment rolls. (Dkt. 1) at ¶¶ 67-77. Count II, which seeks injunctive relief exclusively against the Tax Collector, generally rests on the validity of the arguments asserted in Count I. *See e.g.*, (Dkt. 1) at ¶ 93; (Dkt. 76) at 40 ("Because SAA is entitled to summary judgment on Count 1, it is also entitled to summary judgment in its favor on Count 2").

On August 15, 2024, Spring Lake District filed a Motion for Partial Summary Judgment, as to Count I of the Complaint. (Dkt. 45). On October 18, 2024, the Airport Authority filed its Motion for Final Summary Judgment on both Counts I and II. (Dkt. 76).

Each of these two parties filed opposition to the other's motions. Having been excused from active participation, briefing on the cross-motions for summary judgment was not submitted by the Highlands County Tax Collector. Finally, according to its motion, the Airport Authority's request for relief on Count II (permanent injunctive relief against collection of the 2023 tax notice by the Highlands County Tax Collector) is dependent on a decision in its favor on Count I.

II

Florida Rule of Civil Procedure 1.510(a) provides in pertinent part that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law...[and] the summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard." Fla. R. Civ. P. 1.510(a). In amending rule 1.510, the Florida Supreme Court stated "[t]hrough this amendment, we align Florida's summary judgment standard with that of the federal court and of the supermajority of states that have already adopted the federal judgment standard." *In re: Amendments to Fla. Rule of Civ. Pro., 1.510*, 309 So.3d 192, 192 (Fla. 2020).

In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), the United States Supreme Court explained that "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which it will bear the burden of proof at trial." *Id.* at 322. A party moving for summary judgment has no

obligation to refute defenses raised by the non-moving party. *In re: Amendments to Fla. Rule of Civ. Pro. 1.510*, 309 So.3d at 193, citing to *Celotex* at 323. Indeed, "the burden on the moving party may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the non-moving party's case." *Celotex*, 477 U.S. at 325.

The federal summary judgment standard has been described by the Supreme Court as whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Further, "[i]f the evidence [offered by a party opposing summary judgment] is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50. "A mere 'scintilla of evidence supporting the opposing party's position will not suffice" to defeat summary judgment. *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990), citing *Anderson v. Liberty Lobby*, 477 U.S. at 252. "A party opposing summary judgment 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" *In re: Amendments to Florida Rule of Civil Procedure 1.510*, 309 So.3d at 193, quoting *Matsushita Elec. Ind. Co. v Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

Under rule 1.510 as amended, "[s]ummary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part" of rules designed to establish "the just, speedy and inexpensive determination of every action." *Celotex*, 477 U.S. at 327. "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and we think it should be interpreted in a way that allows it to accomplish this purpose." *Id.* at 323-24. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*,

550 U.S. 372, 380 (2007). In other words, Plaintiff must show, based on the undisputed facts, they are legally entitled to the relief requested in the complaint.

III

This Court starts with Spring Lake District's motion for partial summary judgment. Spring Lake contends the disputed charge is a Stormwater Operation and Maintenance Fee, which was lawfully issued pursuant to the Spring Lake Board's authority under Section 52 of the Improvement District Act, and section 298.22, Florida Statutes. *See* (Dkt. 45) at ¶¶19-26 and Exhibits; (Dkt. 45) at 10-18. According to the Spring Lake District, summary judgment is warranted in its favor because the Airport Authority's challenge is predicated on a mischaracterization by the Airport Authority of the fee as a tax or "special assessment." This Court agrees.

Fees, taxes, and special assessments are legally distinct legal mechanisms. Taxes are "an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform." *State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994). A tax provides revenue for the general support of the government, while a "user fee" imposes a specific charge for access to or use of public facilities or services. *See e.g., Jacksonville Port Authority v. Alamo Rent-a-Car*, Inc., 600 So.2d 1159, 1662 (Fla. 1st DCA 1992).

Special assessments are distinct from "taxes," "because they confer a special benefit on the land burdened by the assessment." *See City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla.1992). A "special assessment" is a specific levy "designed to *recover the costs of improvements* that confer local and peculiar benefits upon property within a defined area." *City of Gainesville v. State*, 863 So. 2d 138, 145 (Fla. 2003) (emphasis added). Fees, on the other hand,

are distinguishable from both taxes and special assessments insofar that "a fee is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit." *Id.* at 144-45.

The Supreme Court of Florida elaborated on the differences between fees, taxes, and special assessments in *City of Gainesville v. State*, 863 So. 2d 138, 145 (Fla. 2003). In *City of Gainesville*, the question before the court was whether a "stormwater fee" charged by the City of Gainesville was a user fee, a tax, or special assessment. *Id.* at 144-45. The *City of Gainesville* court explained that a tell-tale sign of whether the fee was actually a tax or special assessment is "the *reason* for the charge":

> In determining whether a charge ... is a "fee" or an "assessment," the name given to the charge is not controlling; it is *the reason* for the charge which controls its nature, and if it is a charge made for *the improvement of* a certain piece of property, it is an assessment. Similarly, charges for connection to or the *use of* a sewer[,] generally are *not* deemed taxes.

Id. at 144-45 (Fla. 2003) (emphasis added) (citing 70C Am.Jur.2d, *Special or Local Assessments* § 2, at 631–32 (2000)).

Building upon this, the *City of Gainesville* court enumerated an eight-factor balancing test courts must apply when determining whether a charge is actually a fee, tax, or a special assessment: (1) the name given to the charge; (2) the relationship between the amount of the fee and the value of the service or benefit; (3) whether the fee is charged only to users of the service or is charged to all residents of a given area; (4) whether the fee is voluntary (i.e., whether a property owner may avoid the fee by refusing the service); (5) whether the fee is a monthly charge or a one-time charge; (6) whether the fee is charged to recover the costs of improvements to a defined area or infrastructure or for the routine provision of a service; (7) whether the fee is for a traditional utility service; and (8) whether the fee is statutorily authorized as a fee. *Id.* at 145 .

Applying the *Gainesville* fee test to this case, this Court concludes that the charge imposed on the Airport Authority constitutes a user fee, not a special assessment or tax. First, the 2023 Tax Notice at issue was authorized by the Spring Lake Board's adoption of Resolution 2023-16. (Dkt. 1) at ¶¶11-19. The resolution identified the charge as an "Out of District Stormwater Operation and Maintenance Fee." Nothing in Resolution 2023-16 provides any indication that a non-ad valorem tax or special assessment was the type of charge adopted; Resolution 2023-16 "exclusively characterizes the charges adopted as *fees*." (Dkt. 1) at ¶¶ 16-19 (emphasis added); (Dkt. 46) at 177. Moreover, the Spring Lake Board's recitals in Resolution 2023-16 cite Section 52(1) of the Improvement District Act and section 298.22(9), Florida Statutes, as the sources of legal authority for the fees adopted by the resolution, and both of these cited provisions apply only to fees. (Dkt. 1) at ¶ 14; (Dkt. 46) at 177. In fact, even when Plaintiff made a public records request to Defendant "in an effort to obtain information regarding the "*fees*" adopted in the resolution," none of the records Plaintiff received in response "indicate[d] that Defendant was intending to or did levy a non-ad valorem tax or special assessment on the property owned by [Plaintiff]." (emphasis added); (Dkt. 1) at ¶¶ 22-23. Finally, the Tax Notice identifies the charge as "Spring Lk Imprvmnt Dist Maint". *Compare* (Dkt. 46) at 240 *with* (Dkt. 46) at 177.

As to the other *City of Gainesville* factors, the fee is charged to recover Spring Lake District's routine provision of "out of district" stormwater services to the Airport Authority and not, for example, the costs of improvements. This is evident in the plain language of Resolution 2023-16, which memorialized the Spring Lake Board's action. (Dkt. 46) at 177; (Dkt. 69) at 108:7-21; (Dkt. 69) at 275-278.

The record evidence also establishes the amount of the fee is directly related to the value of the stormwater services rendered, and that the fee is charged only for out-of district users of

Spring Lake District's stormwater retention and clean-up services, and not "all residents of a given area" (Dkt. 69) at 108:7-111:1; (Dkt. 46) at 177; (Dkt. 69) at 275-280.

Because the evidence clearly establishes the fee was charged to recover Spring Lake District's routine provision of stormwater services to the airport, the charge is therefore for "a traditional utility service" as a matter of law. *See e.g., City of Gainesville,* 863 So. 2d at 145 ("water systems are equivalent to traditional utilities such as sewer systems.")

The fee is not mandatory, but is voluntary. The Airport Authority is free to avoid the fee by declining to use the services provided by Spring Lake by containing airport stormwater runoff on airport property and by not allowing airport runoff to flow into the Spring Lake District's works. Because it is avoidable, it is voluntary, and the Airport Authority's decision not to avoid the use of the services obliges it to pay the fee. Indeed, "just as [Plaintiff] could haul its own solid waste to the landfill itself, dig its own well, or generate its own electricity, it could construct swales, berms, retention ponds and the like to contain all stormwater runoff on its own property and thereby avoid [Defendant's] stormwater fees." [*City of Gainesville v. State, Dept. of Transp.*, 778 So. 2d 519, 524 (Fla. 1st DCA 2001), *aff'd by City of Gainesville*, 863 So.2d at 146 (rejecting argument stormwater fee was involuntary, and explaining "[b]ecause a landowner can refuse the City's stormwater utility service and prevent liability for stormwater utility fees by containing runoff, the fees are neither a tax nor a special assessment.") (citations omitted); *contra City of Port Orange*, 650 So.2d at 4 (finding "transportation utility fee" was a "mandatory" charge, because it was "imposed upon those whose *only choice* is owning developed property within the boundaries of the municipality.") (emphasis added).

The fee is also statutorily authorized by section 52(1) of the Improvement District Act, and section 298.22(9), Florida Statutes. *See* (Dkt. 46) at 177. The cardinal rule of statutory

construction is that "the authoritative statement is the ... text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568, (2005). No word should be construed as superfluous. *See State v. Bodden*, 877 So. 2d 680, 686 (Fla. 2004). On the contrary, each word, phrase, sentence, and part of the statute should be given their full effect, and in the absence of a statutory definition, the "ordinary, contemporary, common meaning" of the term controls. *See Perrin v. United States*, 444 U.S. 37, 42 (1979); *Fla. Dep't of Revenue v. Fla. Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001). That is because courts should "presume that [the] legislature says in a statute what it means and means in a statute what it says." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992).

Section 298.22(9), Florida Statutes, and Section 52 authorize defendant to impose "fees" on users of the Spring Lake District's stormwater facilities and services. Section 298.22, Florida Statutes, states "[t]he board of supervisors of the district has full power and authority to construct, complete, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan" and grants the Spring Lake District authority to "assess and collect reasonable fees for the connection to *and use of* the works of the district." §298.22(9), Fla. Stat. (emphasis added). Thus, §298.22(9) authorizes the Spring Lake District to impose fees for connection to the works of the district (i.e., "connection fees"), *and* fees for "*use of*" the works[1] of the district (i.e., "user fees").

[1] Works, although not expressly defined by Chapter 298, Florida Statutes, includes "activities and improvements to be conducted by a water control district", including, but not limited to, canals, ditches, dikes, basins, and levees. *See* §298.005, Fla. Stat. ("Water control plan" means the comprehensive operational document that describes the activities and improvements to be conducted by a water control district"); §298.22(1), Fla. Stat. ("*the works* and improvements described in the water control plan"); §298.329(1), Fla. Stat. ("If *the works* set out in the district water control plan are found insufficient"); §298.16(3), Fla. Stat. ("of such canals, ditches, dikes or levees, *or other works*") (emphasis added); §298.22(2), Fla. Stat. (same); §298.33, Fla. Stat. ("basins *or other works* of the district") (emphasis added).

Section 52, subsection (1), of the Improvement District Act, (hereinafter "Section 52") which provides for "[f]ees, rentals, and charges," states as follows:

> The district is authorized to prescribe, fix, establish, and collect rates, fees, rentals, or other charges (hereinafter sometimes referred to as 'revenues'), and to revise the same from time to time, *for the facilities and services furnished by the district, within or without the limits of the district*; including, *but not limited to*, drainage facilities, recreation facilities, and water and sewer systems, to recover the costs of making connection with any district facility or system; and to provide for reasonable penalties against any user or property for any such rates, fees, rentals, or other charges that are delinquent.

Id. (emphasis added).

This unambiguous language authorizes the Spring Lake District to "prescribe, fix, establish, and collect" fees, for the "facilities and services furnished by the district." *Id.* Giving each word, phrase, and sentence, of section 52(1) its full effect, the clause "making connection to its facilities or systems" can only reasonably be construed as illustrating a non-exhaustive list of the types of "facilities and services furnished by the district" for which Spring Lake District may "establish, and collect rates, fees, rentals, or other charges."

The plain language of section 298.22(9) and section 52 of the District Improvement Act also authorize Spring Lake District to impose fees against users of its facilities and services, regardless of whether they reside inside or outside the geographical boundaries of the district (i.e., "facilities and services furnished by the district within or without the limits of the district."). Florida courts give great weight and deference to legislature when they enact a statute. Thus, Florida courts look to the ordinary and common meaning of the words used in a statute.

The language "within or without the limits of the district" in section 52 gives unambiguous legislative authorization to Spring Lake District to "prescribe, fix, establish, and collect" fees "for the services and facilities furnished by the district," regardless of whether the users of their services or facilities reside outside "the limits of the district." *Id.* Moreover, unlike other Florida statutes

governing special districts, and other provisions within the Improvement District Act, §298.22(9) is devoid of any language that limits Spring Lake District's authority to impose fees on only users "within the district."[2]

So, the charge at issue qualifies as a "fee" under at least seven of the eight *City of Gainesville* factors. The only factor that militates against the disputed charge being a fee, is the fact the fee was not billed on a monthly basis. However, in its decision in *City of Gainesville,* the Florida Supreme Court explained that no single factor is dispositive. Accordingly, after weighing the *City of Gainesville* factors, and based on all of the reasons set forth above, this Court concludes that the charge at issue qualifies as a "fee" a matter of law.

Plaintiff's attempt at rebutting this presumption by pointing to "after the fact" events, (e.g., what *counsel* called the fee, and deposition testimony using the term "assessment" as a general term to refer to the fee), is insufficient to defeat summary judgment. None of the facts Plaintiff points to support a showing the charge is *not* a fee under the *City of Gainesville* factors.

Therefore, this Court finds Spring Lake District has met its burden in establishing entitlement to summary judgment on its authority to impose the charge at-issue in this matter.

IV

The Airport Authority raises an issue that the 2023 Tax Notice is invalid because the Spring Lake District failed to comply with the notice and procedural requirements applicable to taxes and special assessments. As the Court has concluded that the charge is a fee authorized by section 52

---

[2] *Compare e.g.*, Ch. 2005-342, § 37 ("The board shall have the power to levy and assess an ad valorem tax on all the taxable real and tangible personal property *in the district*") (emphasis added); *Id.* at §1 (noting authority to annually assess and levy taxes "against the taxable property *in the district.*") (emphasis added); with *Id.* at §49 (The district shall have the power to construct and operate its projects in, along, or under any dedications to the public ... *within or without the district.*")(emphasis added); *Id.* at §52(1) ("within or without the limits of the district")(emphasis added); *Compare e.g.*, §298.54, Fla. Stat. (expressly limiting Board's authority to levy "maintenance taxes" to lands "*within the district*") (emphasis added); *with* §298.22(9) (no limiting language).

of the District Improvement Act, the notice and procedure requirements of section 52 are applicable to the imposition of a fee under that section. Although the Airport Authority contends that certain procedural requirements were not met, the complaint does not challenge the validity of Spring Lake District's fee on the grounds that Spring Lake District failed to comply with the notice and procedure requirements of section 52 of the District Improvement Act.

In fact, the two allegations of the Complaint which tangentially refer to section 52 expressly contend it is "inapplicable" to this dispute. (Dkt. 1) at ¶14 (alleging section 52 is inapplicable); ¶60 (same). As such, this court cannot entertain these arguments on summary judgment. *See e.g., Killick v. Benedict*, 378 So. 3d 715, 716 (Fla. 1st DCA 2024) ("[T]he trial court need not entertain plaintiff's new claims, raised for the first time in response to a summary disposition" that were "not written in his statement of claim") (cleaned up); *Fernandez v. Florida Nat. Coll., Inc.*, 925 So. 2d 1096, 1101 (Fla. 3d DCA 2006) (declining to grant summary judgment on newly-asserted claim at summary judgment because, "[i]ssues that are not pled in a complaint cannot be considered by the trial court at a summary judgment hearing."); *Wilson v. Jacks*, 310 So. 3d 545, 548 (Fla. 1st DCA 2021) ("The only claim offered in Appellant's complaint as a basis for relief [was] that Appellee started the offending fire in her individual capacity; thus, this was the only claim that could be considered.")

To clarify: the Airport Authority's claims in Count I of the complaint rest on the contention that the Spring Lake District imposed a "tax" or "special assessment" on the Airport Authority. As this Court has already explained, the legal nature of the charge (i.e., whether it constitutes a tax, "special assessment," or something else) is not a fact matter, but is rather a question of law.

The significance of the legal nature of the charge the district imposed is heightened by the fact that the Spring Lake District has statutory authority to recoup the costs associated with

providing stormwater services by imposing charges *other than* taxes and special assessments (e.g., "fees").[3] So, whether Spring Lake District lacked statutory authority to impose the charge against Plaintiff's out-of-district property, ultimately depends on *what* type of charge Spring Lake District *actually* imposed. Likewise, the procedural requirements of imposing a charge also depend on the type of charge being imposed. *See e.g.,* Ch. 2005-342, §51(2)-(3), Laws of Fla. (providing procedural and substantive requirements applicable to "fees, rates, and other charges" established pursuant to that section).

It is not sufficient for the Airport Authority to claim or seek to prove that the Spring Lake District lacks statutory authority to impose either a tax or special assessment on out-of-district properties, or that Spring Lake District failed to comply with the procedural and substantive requirements applicable to taxes or special assessments. Instead, the Airport Authority's burden is to overcome the prima facie case established by the Spring Lake District that it imposed a *fee* on the Airport Authority, and not a tax or special assessment.

The record is clear that the disputed charge is not a tax, or a "special assessment," but a fee, issued pursuant to Spring Lake Districts' authority under Section 52 of the Improvement District Act, and section 298.22(9). The Airport Authority argues, in essence, that the *fee* is invalid because Spring Lake lacks statutory authority to impose *taxes* or "*special assessments*" against the Airport Authority. This argument is not sufficient to overcome the case established by the record that the fee at issue is simply that: a fee, and not a tax or special assessment.

---

[3] *See generally, e.g.,* §298.22(9), Fla. Stat. (authorizing Improvement District Board to "assess and collect reasonable fees for the connection to and use of the works of the district.") (emphasis added); Ch. 2005-342, §51(1), Laws of Fla. ("the District is authorized to prescribe, fix, establish, and collect rates, fees, rentals, or other charges ... for the facilities and services furnished by the district, within or without the limits of the district").

Turning to the procedural requirements for imposing the charge at issue: The Airport Authority contends that the fee is invalid because: (1) Spring Lake failed to comply with the procedural "notice requirements" of section 192.3632(4)(b), Florida Statutes, in adopting the tax roll that included the user fee at-issue; and (2) the fee is invalid because Resolution 2023-16 does not contain any of the substantive "standards or determinations" applicable to "special assessments." (Dkt. 76) at 28-39; (Dkt. 1) at ¶¶ 74-75.

First, as explained above, this Court concludes that the charge imposed by Spring Lake is neither a tax, or "special assessment," but a fee, as a matter of law. Having been issued under the authority of section 52 of the Improvement District Act and section 298.22(9), Florida Statutes, the applicable "standards or determinations" are those included in section 52 and section 298.22(9). The "standards or determinations" applicable to "special assessments" simply do not apply.

Section 52(2) of the Improvement District Act also contains its own "notice requirement" governing the adoption of "rates, fees, or other charges" for the services provided by Spring Lake to out-of-district users. *See* Pltf. Mot. Summ. J. at ¶ 39; Ch. 2005-342, §52(2), Laws of Fla. The Airport Authority claims that Spring Lake's failure to comply with the procedural requirements of §192.3632(4)(b) invalidates the fee. But there is simply no logic to this claim, when the record is clear that the act taken by the Spring Lake Board was to authorize the imposition of a fee under section 52. Whether the procedural requirements of section 52 were met, the complaint simply ultimately does not seek relief, nor state a claim, to that effect.

In any event, whether Defendant failed to comply with the procedural "notice requirements" of section 192.3632(4)(b), Florida Statutes, when it adopted their non-ad valorem assessment roll, that does relate to whether Defendant's *fee* is "invalid and unenforceable." (Dkt.

1) at ¶67 ("the non-ad valorem assessment on the Property is invalid and unenforceable"); *Id.* at ¶74 ("As a result of the Improvement District's failure to comply with the procedural requirements of section 197.3632 ... section 197.3632(4), the non-ad valorem assessment levied on the Airport Authority's Property is invalid and unenforceable."); *Id.* at ¶82(a)-(k) (Count I "Prayer for Relief").

Instead, whether Defendant "fail[ed] to comply with the procedural requirements of section 197.3632(4)" could only establish that Defendant is "preclude[d] from *collecting* the stormwater fee by utilizing the uniform method for the collection and enforcement of non-ad valorem assessments." *Atl. Gulf Communities Corp. v. City of Port St. Lucie*, 764 So. 2d 14, 21 (Fla. 4th DCA 1999) ("This opinion does not rule on whether the City may recover any portion of the utility fees at issue by another method of collection.") (emphasis added). In other words, whether Defendant failed to comply with 197.3632(4) when it *adopted its assessment roll*, does not support entry of final judgment that the *fee itself* is invalid and unenforceable.

Based on the case law, statutes, Section 52, and the evidence in the record, the Court finds the charged imposed on the Airport Authority can be classified as a user fee. The law cited herein authorized Spring Lake District to impose the fee on users of the Spring Lake District's stormwater facilities and services. The evidence in the record establishes the fee was charged to recover Spring Lake District's routine provision of stormwater services to the airport. Accordingly, the fee is classified as a traditional utility service. The law authorizes Spring Lake District to impose fees against users of its services regardless of whether they reside within or without the limits of the district. The law provides for the fee charged to be recovered by Spring Lake District pursuant to the routine provision of "out of district" stormwater services to the Airport Authority. The evidence also shows the amount of the fee is directly related to the value of the stormwater services

rendered. Most importantly, the fee is completely voluntary. The Airport Authority uses Spring Lake District to treat and manage its untreated stormwater runoff. The Airport Authority is free to avoid the fee by declining to use the services of Spring Lake District and contain the airport stormwater runoff itself. Instead, the Airport Authority willingly uses Spring Lake District's services while enjoying a pecuniary advantage. Spring Lake District has conferred a substantial financial benefit of which the Airport Authority has legally obligated itself to pay. Based on this Court's finding that Spring Lake District had the authority to impose the Stormwater Operation and Maintenance Fee and that it was lawfully issued, the Court finds Spring Lake District carried its burden in establishing entitlement to summary judgment.

For these reasons, the Airport Authority is not entitled to summary judgment on its claims that the fee at issue is invalid. Evidence that Spring Lake District failed to comply with the requirements for using the uniform method of collection (section 192.3632, et seq.) in adopting the tax roll simply falls short of establishing that the Airport Authority is entitled to judgment as a matter of law that the *fee itself* is invalid and unenforceable.

V

Accordingly, for all the foregoing reasons, it is hereby **ORDERED AND ADJUDGED**:

1. Defendant's motion for partial summary judgment (Dkt. 45) is **GRANTED;**
2. Plaintiff's motion for summary judgment (Dkt. 76), is **DENIED.**
3. All matters remaining at issue will be addressed upon further motion of the parties.
4. The Court retains jurisdiction to enter further orders.

DONE and **ORDERED** in chambers at Sebring, Highland County, Florida, this 21 day of Feb, 2025.

Circuit Judge, Peter F. Estrada