



JUSTUS REID*
BERNARD LEBEDEKER
JEFFREY C. PEPIN
ROBERT MACHATE
RICHARD SLAWSON*, **

J. MICHAEL BURMAN*
DEAN XENICK
MEGAN WEGERIF
DAVID MUNIZ

*Board Certified, Civil Trial Law

**Of Counsel

December 1, 2021

Via Email:

Rick.Roth@myfloridahouse.gov and Rick@rothfarms.com

Rick Roth

100 Village Square Crossing, Suite 104

Palm Beach Gardens, FL 33410-4531

Re: Minto PBLH, LLC, a Florida Limited Liability company; Seminole Improvement District, a Special Improvement District of the State of Florida vs. Indian Trail Improvement District, a Special Improvement District of the State of Florida

Dear Mr. Roth;

As you may know, my law firm represents Indian Trail Improvement District (hereinafter "Indian Trail") in the above referenced litigation. It has been brought to my attention that a great deal of misinformation has been directed to the general public and the Florida Legislative Delegation regarding the above litigation by Minto and Seminole, their agents and representatives. I have been requested to correct this rampant misinformation campaign.

At the outset it should be clear that Minto and SID initiated this lawsuit. They filed it on June 11, 2020. They are the Plaintiffs and Counter-Defendants. Indian Trail responded and countersued. The City of Westlake is not a party to this litigation.

Although this lawsuit came to a head as a result of Minto and SID's attempt to connect to 140th Ave. (essentially an Indian Trail district road) it's scope and breath goes well beyond that. In essence Minto and Seminole claim that all of Indian Trail's district roads are "public" roads and not under the control of Indian Trail. They further claim that they have unfettered access over all of Indian Trail's roads by reason of a Right of Way Agreement and other easements granted to their predecessors in the '60's and '70's.

ONE CLEARLAKE CENTRE, 250 S. AUSTRALIAN AVE., #602, WEST PALM BEACH, FLORIDA 33401

PHONE: 561-659-7700 || FAX: 561.659.6377

WWW.REIDBURMANLAW.COM

Minto and Seminole seek to dump a massive amount of traffic on Indian Trail district roads without paying for same or assuming any maintenance or repair responsibilities. As you know, Indian Trail is essentially a rural, equine community and has been so since its inception. Its roads were not designed for the traffic Minto and Seminole seek to introduce nor are they designed or built to meet County standards.

Indian Trail does not seek to deny access to residents of Seminole or Westlake, for that matter, to their roads but merely asserts that all who wish to connect to its roads go through a permitting process. It should be noted that Palm Beach County, itself, recognizes Indian Trail's rights to require those wishing to connect to its roads and access them go through a permitting process.

Specifically, the ITID Special Legislative Act, Chap. 2002-330, Laws of Florida, Section 5, provides in relevant part that, in conjunction with Chapter 298, Florida Statutes, the district has the power to "construct, improve, pave, and maintain roadways and roads" when necessary and convenient to provide access to develop areas suitable for cultivation and settlement as a result of the "drainage and reclamation operations of the district." The act expressly states that Chapter 298 is applicable to ITID and its power to maintain and upkeep its roadways.

Section 298.28, Florida Statutes, states that "no connection with the works or improvements of said plan of drainage of said district, or with any canal, ditch, drain or artificial drainage, wholly within said district, shall be made, caused or affected by any landowners, company or corporation, municipal or private by means of, or with, any ditch, drain, cut, fill, roadbed, levee, embankment or artificial drainage, wholly without the limits of said district, unless such connection is consented to by the board of supervisors, or in the manner provided for in this chapter."

The Right of Way Agreement was executed in 1966. The Easement(s) that Minto and Seminole rely on were executed in 1976. These documents were executed when all of the acreage was nothing more than agriculture or citrus groves. They were executed for the convenience of the owners of the property in that area at that time for the movement of agricultural equipment, etc. The only real estate development in the general area was Royal Palm Beach Colony which was laid out in one and a quarter acre lot increments. It is horn book law in the State of Florida that an easement holder cannot expand the easement beyond what was contemplated at the time it was granted. In other words, one looks to the intent of the parties at the time these documents were executed and clearly a massive traffic generator such as the City of Westlake was not in anyone's contemplation at that time.

Indian Trail Improvement District's roads ("District Roads") are not "public" roads within the strict, self-serving interpretation the Plaintiff wishes to impose on the word "public". "Public Roads" are defined in FS §335.01(1) as "[a]ll roads which are open and available for use by the public **and dedicated to the public use, according to law or by prescription...**" (emphasis added). "Openness" or "accessibility" to public use is an insufficient criterion to categorize District Roads as "public roads". While District Roads may be "open and accessible" as a functional matter, with one minor exception they have deliberately never been "dedicated" to the public, either expressly (e.g., by grant in the original recorded easements; by recorded plats; or acquired by eminent domain) or by implication (e.g., by prescription through use by non-District landowners). District Roads are not included in the "integrated, balanced statewide transportation system" created by the Florida Transportation Code, FS §334.01. District Roads are an autonomous roadway network functionally connected to, but operated and maintained by an independent special district, outside the State's hierarchical system of "public roads".

District roads are meant and were originally granted for the express and limited purpose of providing Indian Trail's landowners ingress and egress to and from their individual properties. They continue to be operated and maintained according to that principle. District Roads are, by design, an "open grid". This design reflects the original developer's assumption that the sparse, low density development pattern of the area in the 1950's and early 1960s would continue indefinitely. The "open grid" pattern maximized the development potential of the original developer's property. The District Road grid was designed to provide dirt roads with low traffic impact in a rural setting. The fact that non-landowners might access the grid was incidental to the primary goal of maximizing the value of the land within the District for residential development. At the time, no significant development was planned on adjacent property that would generate significant "pass-through" traffic. The District Road grid was not an invitation to the universe of drivers to cut through the "Acreage" on their way to other destinations. This pattern does not reflect the developer's intention to "dedicate" to or confer a blanket of "rights" to use District Roads on the general public, or on adjacent landowners like Minto. Indian Trail Improvement District was formed by the developers to operate and maintain District Roads in perpetuity for the benefit of their purchasers and their successors, not for the benefit of the general public. If that had been their intent, the developers would either have expressly conveyed their roads to "the Public" (in which case, they would have been accepted as such by the District or by Palm Beach County), or created a municipality to operate the roads, as they did with the Village of Royal Palm Beach.

Furthermore, because the District is not a municipality, its landowners have no means to relieve themselves of the burden of accommodating pass-through traffic on District Roads. Because they are not included in the integrated statewide road system, the District is ineligible to receive external funding, county or state tax dollars, gas tax dollars, or funding from other sources. Maintenance of District Roads depends exclusively upon the assessments paid by the landowners

within the unit of development. Nor can the burden of road construction and maintenance be adjusted through the use of ad valorem taxation, as could potentially a municipality with “Home Rule” authority. Construction and maintenance of District improvements is paid solely by the landowners within each unit of development directly served. For example, homeowners in Units of Development Units 1 and 3 living along Persimmon Boulevard (access to which is the express purpose of Plaintiffs’ complaint) would be required to pay assessments for any improvements, or maintenance of, that road. No other District Units pay for that roadway. The fundamental inequity to District landowners raised by Plaintiff’s complaint is another reason why District Roads cannot be considered “public roads” as Plaintiff uses the phrase.

Specifically, Plaintiffs seek to gain unlimited access to ITID’s roadway system, and other works, without contributing any funds for the maintenance, repair, upgrading, or upkeep of those roads. ITID’s roads are designed and maintained for low volume traffic serving the needs of local residential neighborhoods and are unpaved in many sections. They are not designed to safely and efficiently handle the high-speed, high-volume traffic from outside areas that SID and Minto are seeking to allow, especially when that traffic includes heavy-duty dump trucks used in the development of Minto’s property. If ITID was forced to accommodate the high-speed, high-volume urban traffic from SID and Minto, the impact of increased outside traffic volume would at some point require ITID to upgrade the affected roads in its boundaries to a higher design standard in order to satisfy minimum accepted safety standards and to protect the public health, safety, and welfare of both ITID’s residents and the outside users themselves. This would require significant capital investment by ITID, and ultimately, its landowners, as ITID is ineligible for relief from ad valorem taxation, or intergovernmental revenue transfers for road construction, such as the Gas Tax. To allow SID and Minto access to ITID’s roadway system requiring a system upgrade without contributing any funds for its maintenance, upgrade, or repair, would be inequitable. This is especially true as Plaintiffs’ proposed connection to 140th Avenue North is not a necessity and both SID and Minto have numerous options to avoid the use of ITID’s roads altogether.

With regard to the future of this lawsuit, it is our opinion that Indian Trail has a very strong defense in this case as well as a strong claim to maintain its sovereignty over its roads through the permitting process granted to it by the Florida Legislature. Obviously, no one can guarantee a result. If a new municipality were created within Indian Trail’s boundaries, it would be a policy decision for that party to decide whether or not to join this lawsuit. It would not be required. For the same reason the City of Westlake has chosen not to join this lawsuit, the Indian Trail municipality can make the same decision. I cannot speak to whether or not the Plaintiffs in this case would seek to join this new municipality as a Defendant. As trial counsel in this case, I am not and was not involved in Indian Trail incorporation issues. I have no knowledge of what District assets may or may not be included in the control of the new municipality. I can advise you that individual Indian Trail landowners bordering its roads own the fee simple interest in the real

property to the center line of the road. The roads themselves are currently owned, repaired, and maintained by the District as Works of the District pursuant to the Statutes which I have outlined above.

In conclusion, I would be happy to meet with you and/or others to discuss what I have written here or provide any additional information you may seek regarding the lawsuit itself.

Very truly yours,

/S/ J. Michael Burman

J. Michael Burman, Esq.

JMB/amn

CC: Mike Caruso, Chairman

(mikecaruso7@gmail.com and Mike.Caruso@myfloridahouse.gov)