FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4245

GREGORY S. BROWN, Santa Rosa
County Property Appraiser,

Appellant,

v.

CITY OF GULF BREEZE, a
municipal corporation; et al.,

Appellees.

On appeal from the Circuit Court for Santa Rosa County.
J. Scott Duncan, Judge.

March 2, 2022

B.L. THOMAS, J.

The Santa Rosa County Property Appraiser appeals the trial court's final order determining that the Property Appraiser's denial of Gulf Breeze's applications for an ad valorem tax exemption were unlawful under article VII, section 3, subsection (a) of the Florida Constitution. The subject of this appeal is a golf course owned by the City. The Property Appraiser twice denied an ad valorem tax exemption to the City after it contracted with IGC-Tiger Point Golf Club, LLC, a privately owned golf course management company, to operate the golf course and

related facilities.[1] The City challenged the first denial before the Santa Rosa County Value Adjustment Board, which agreed with the City and certified the property as exempt. The Property Appraiser then sought appellate review (via suit) in the trial court pursuant to section 194.036, Florida Statutes. The City sued directly in circuit court to challenge the second denial. The two cases were consolidated, and the trial court ultimately granted summary judgment against the Property Appraiser.

In 2012, the City acquired the property to treat and dispose of sewage and wastewater and to provide storm water retention for surrounding subdivisions. The City also used the property for recreational purposes. The City owns the golf course, driving range, and clubhouse facilities, which include a bar, restaurant, and pro shop. The City operated the golf course and clubhouse until September 2015. The Property Appraiser approved the City's applications for ad valorem tax exemptions from 2012 to 2015.

After losing large sums of money operating the golf course and related facilities, the City entered an agreement with Tiger Point in October of 2015. The City retained ownership of the property and continued to use it for wastewater treatment, but Tiger Point was to manage the day-to-day operations of the golf course and facilities. Under the agreement, Tiger Point was required to operate the property as a "18-hole championship golf course" and had to maintain and operate the property in a "first-class manner." Tiger Point's duties under the agreement included paying all costs and expenses for operations and maintenance of the property; maintaining and repairing all City-owned fixtures, equipment, and furnishings on the property; replacing and paying for any damaged City-owned fixtures, equipment, or furnishings within forty-eight hours; providing and maintaining all necessary signage; entering and performing all third-party contracts; resolving guest complaints; selecting, hiring, training, paying, and supervising all personnel; assuming all of the City's operating

[1] IGC-Tiger Point Golf Club, LLC, is a wholly owned subsidiary of Integrity Golf Company, LLC. This opinion refers to IGC-Tiger Point Golf Club, LLC, the "Contractor" under the agreement, as "Tiger Point."

agreements with respect to the property at no cost or expense to the City; paying for the initial capital improvements to the property; performing all food and beverage operations, including obtaining a liquor license; securing and maintaining all specified insurance; paying and maintaining all utilities; and paying and discharging all taxes, *including ad valorem taxes*. Tiger Point also had to assume the City's defense and indemnify the City for *any* claims related to future taxes and assessments, including *ad valorem tax assessments and claims*. The City retained the right to sell the property. But Tiger Point had the right of first refusal of any third-party bona fide offer to purchase the property. As compensation, Tiger Point was entitled to retain any profits generated from the golf course and related facilities after paying the City an annual fee.[2]

In 2016, the City applied for an ad valorem tax exemption, which the Property Appraiser partially denied because it found that the City's agreement with Tiger Point was a lease. The City challenged the denial by petitioning the Value Adjustment Board. The Board granted the City's petition and appointed a special

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[2] The annual fee was the greater of a flat dollar amount or a specified percentage of the gross revenue the golf course generated during the fiscal year. If the golf course generated less than $2,500,000 during the fiscal year, then Tiger Point would pay the City the greater of $100,000 or 5% of the gross revenue realized that fiscal year. This payment structure would only last for the first three years of the agreement. After that, if the golf course generated less than $2,500,000 during a fiscal year, then Tiger point would pay the City the greater of $100,000 or 7% of the gross revenue realized that fiscal year. If the golf course generated $2,500,000 or more during a fiscal year, then Tiger Point paid the City the greater of $100,000 or 7% of the gross revenue realized that fiscal year. Again, this payment structure would only last for the first three years. After that, if the golf course generated $2,500,000 or more during a fiscal year, then Tiger point would pay the City the greater of $100,000 or 9% of the gross revenue realized that fiscal year. The initial term of the agreement was seven years. The agreement could be extended for two additional five-year terms.

magistrate who conducted a hearing on the matter. The special magistrate determined that the agreement was not a lease and issued a decision in the City's favor.

In early 2017, the Property Appraiser filed a complaint in the trial court "appealing" the special magistrate's decision.[3] The Property Appraiser alleged that the City and Tiger Point's agreement was a lease and asked the trial court to set aside the Board's decision. While the action was pending, the Property Appraiser denied the City's 2017 application for an ad valorem tax exemption asserting that the City leased the property to Tiger Point and that the property was not used exclusively for a municipal or public purpose.[4] The City then moved for partial summary judgment asking the trial court to uphold the Board's decision and find that the City and Tiger Point's agreement was not a lease. The trial court granted the City's motion for partial summary judgment finding that the agreement was not a lease, leaving one count from the Property Appraiser's initial complaint at issue.

The City later filed an action in circuit court challenging the Property Appraiser's denial of the City's 2017 application for an ad valorem tax exemption. The two cases were consolidated.

The City moved for final summary judgment. In its final judgment, the trial court granted the City's motion and incorporated its prior order granting the City's motion for partial summary judgment. The trial court found that the Property Appraiser's proffered reasons for denying the City's 2017 application were legally insufficient, and it voided the City's 2016

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[3] While section 194.036, Florida Statutes, refers to the process of challenging a Value Adjustment Board's decision in circuit court as an "appeal," the supreme court has stated that this process is an original action, not an appeal. *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 801 n.6 (Fla. 2008)

[4] The Property Appraiser cited other bases for denying the City's application, but they are not relevant to this appeal.

and 2017 tax bills. The Property Appraiser now appeals the final order.

We review questions of constitutional law de novo. *Treasure Coast Marina, LC v. City of Fort Pierce*, 219 So. 3d 793, 795 (Fla. 2017). Likewise, we review a trial court's ruling on a motion for summary judgment de novo. *City of Gainesville v. Crapo*, 953 So. 2d 557, 561 (Fla. 1st DCA 2007).

Under the Florida Constitution, "[a]ll property owned by a municipality and *used exclusively by it for municipal or public purposes* shall be exempt from taxation." Art. VII, § 3(a), Fla. Const. (emphasis added). "[T]his constitutional provision is self-executing, [and it] does not require legislative authorization to activate the exemption . . . ." *Crapo*, 953 So. 2d at 561. It is a broad exemption, but it applies only when the "municipal property is used by the municipality that owns it" for a municipal or public purpose. *Page v. City of Fernandina Beach*, 714 So. 2d 1070, 1073 (Fla. 1st DCA 1998).

Municipal or public purposes include "activities . . . essential to the health, morals, safety, and general welfare of the people within the municipality." *Fla. Dep't of Rev. v. City of Gainesville*, 918 So. 2d 250, 264 (Fla. 2005).[5] This definition distinguishes traditional municipal functions, which are presumptively tax exempt, from functions historically provided by the private sector, which are not. *Treasure Coast Marina, LC*, 219 So. 3d at 797–99.

Neither party contests that providing recreational activities constitutes a public purpose. The Property Appraiser recognized this when it previously approved the City's ad valorem tax exemption application. Both this Court and the supreme court have noted that providing parks and recreation constitutes a traditional municipal function. *See id.* at 798, 798 n.4 (citing with

[5] Because article VII, section 3, subsection (a) is self-executing, the statutory definition of a governmental, municipal, or public purpose or function found in section 196.012(6), Florida Statutes, does not control our analysis of whether the property is exempt under the Florida Constitution. *City of Gainesville*, 918 So. 2d at 256–57.

approval *Zingale v. Crossings at Fleming Island Cmty. Dev. Dist.*, 960 So. 2d 20, 25 (Fla. 1st DCA 2007)). And "Florida courts have repeatedly recognized that . . . recreational activities, such as golf . . . are sufficiently essential recreational activities that support application of the constitutional exemption." *Id.* at 801. In stating this, the supreme court specifically noted this Court's decision in *Zingale*, which held that municipal-owned golf courses that are "open to the public and [that are] *not operated for profit*" serve a municipal or public purpose and are exempt from ad valorem taxation "notwithstanding that [the property] is operated by a management company." 960 So. 2d at 26 (emphasis added) (citing *Sun 'N Lake of Sebring Improvement Dist. v. McIntyre*, 800 So. 2d 715, 723 (Fla. 2d DCA 2001)).

In *Zingale*, a Community Development District[6] purchased property, which included a golf course, bar, restaurant, and pro shop, that had previously been run as a private venture. *Id.* at 23. The District charged the public a monthly fee to use the facilities. *Id.* The District's Board set the user fee, and the proceeds generated by the fee supported the operation and maintenance of the facilities and to pay off the District's debt. *Id.* The District hired a management company to run the day-to-day operations of the golf facilities. *Id.* The management company hired all staff that worked at the golf course, reported to the District's Board, and implemented the Board's policies. *Id.* The golf course remained a not-for-profit venture despite being run by a for-profit company. *Id.* This Court held the District's golf course was exempt from ad valorem taxation because it effectively functioned as a park. *See id.* at 26.

Here, the situation is markedly different. Tiger Point is entitled to the profits generated by its operation of the property. And, importantly here, Tiger Point bore the risk of any financial losses; losses which had been significant when the City managed the golf course and related facilities. A municipal-owned golf course, even if open to the public, is not used *exclusively* for a municipal or public purpose when it is operated by a private

[6] This Court treated the District as a municipality for ad valorem tax purposes. *Zingale*, 960 So. 2d at 24.

company that retains the profits generated from its use of the property. *Cf. Zingale*, 960 So. 2d at 26; *see also Sun 'N Lake of Sebring Improvement Dist.*, 800 So. 2d at 723 ("It is possible that a golf course . . . owned by a municipality and held open to the public, *and not operated in conjunction with a for-profit business*, may serve an exclusively public purpose." (emphasis added)). Tiger Point was entitled to retain *any* profits generated from its management of the golf course and related facilities, after paying the City an annual fee. Given Tiger Point's ability to retain the profits generated by the golf course and related facilities, the property was not used exclusively for a municipal or public purpose. Art. VII, § 3(a), Fla. Const.

Because we hold that the property was not used exclusively for a municipal or public purpose, we need not decide whether the agreement between the City and Tiger Point was, in substance, a lease. *See Greater Orlando Aviation Auth. v. Crotty*, 775 So. 2d 978, 981 n.2 (Fla. 5th DCA 2000). Thus, we need not determine whether to apply the governmental-governmental test, which Florida courts have historically applied to government property leased to private parties, to determine the tax-exempt status of the property. *E.g.*, *Crapo*, 953 So. 2d at 564.

But those cases are instructive as they establish that Florida courts are hesitant to allow municipal-owned property to gain tax-exempt status when a private actor operates the property and retains the profits from its use of the property. *Walden v. Jones*, 326 So. 2d 425, 433 (Fla. 1975) ("[A]ll privately used property bears a tax burden in some manner and this is what the Constitution mandates."); *Volusia Cnty. v. Daytona Beaching Racing and Recreational Facilities Dist.*, 341 So. 2d 498, 502 (Fla. 1976) ("The Corporation exists in order to make profits for its stockholders and uses the leasehold to further that purpose. This use is determinative: 'It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution.'" (quoting *Straughn v. Camp*, 293 So. 2d 689, 695 (Fla. 1974))); *Sebring Airport Auth. v. McIntyre*, 642 So. 2d 1072, 1073–74 (Fla. 1994) (rejecting the claim that a private lessee of government property using the property to further a public purpose was exempt from ad valorem taxation because it was operating for profit); *Crapo*, 953 So. 2d at 564 (holding that a

municipality's leasing of space on telecommunications towers to a private company that then sold telecommunications services to customers for a profit did not serve a municipal or public purpose); *Turner v. Concorde Props.*, 823 So. 2d 165, 166–67 (Fla. 2d DCA 2002) (holding that a government-owned golf course that remained open to the public did not qualify for ad valorem tax exemption because it was operated by a for-profit business).[7]

Contrary to the dissent's erroneous assertions, nothing about this Court's holding suggests that municipal-owned properties *always* risk losing their ad valorem tax-exempt status whenever municipalities contract with private, for-profit property management companies. Under this decision, a municipality may enter an agreement with a private company whereby the municipality pays the company a fee to manage the municipality's property—and the private management company can generate profits under that agreement by collecting a management fee—without running afoul of article VII, section 3, subsection (a) of the Florida Constitution.

But here, the City did more than enter a contract for Tiger Point to manage the golf course and related facilities. The City converted the property to a *private* commercial enterprise. *Cf. Islamorada, Vill. of Islands v. Higgs*, 882 So. 2d 1009, 1011 (Fla. 3d DCA 2003) (holding that a municipal-owned marina was tax exempt where the *municipality* earned a profit from *the municipality's* operation of the marina). Under the agreement, Tiger Point bore *all* the commercial risks and stood to gain *all* the profits generated by the property after paying the City, what amounted to, an annual user-fee. Tiger Point's use of the golf course and related facilities for its own commercial, profit-making

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[7] Even if this Court were compelled to apply the governmental-governmental test in this case, the property would still be subject to ad valorem taxation because Tiger Point utilized the property with for-profit aims. *Concorde Props.*, 823 So. 2d at 167 ("[T]he operation of a golf course by a for-profit business falls within the definition of the governmental-proprietary operation, which is, by definition, not a 'public purpose' and is not entitled to an ad valorem tax exemption . . . .").

ventures are not "essential to the health, morals, safety, and general welfare of the people within the municipality." *City of Gainesville*, 918 So. 2d at 264. And thus the property was not exclusively used for a municipal or public purpose.[8]

Because the City allowed Tiger Point to retain profits generated by the City's golf course and related facilities, the City did not use those properties exclusively for a municipal or public purpose. Thus, the City was not entitled to ad valorem tax exemptions for the golf course and related facilities.

We REVERSE the trial court's order and REMAND the case to the trial court to issue a final judgment in the Property Appraiser's favor.

TANENBAUM, J., concurs; MAKAR, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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[8] While not necessarily the subject of this appeal, this conclusion is especially true of the club house and pro shop. *See Sun 'N Lake of Sebring Improvement Dist.*, 800 So. 2d at 723 ("Although the operation of a pro shop and restaurant would not seem to serve an exclusively public purpose, we do not foreclose such a finding upon remand. Our record does not reflect . . . whether they are operated in conjunction *with a for-profit business*." (emphasis added)); *see also Greater Orlando Aviation Auth.*, 775 So. 2d at 981 ("The question here is whether the [municipally owned, privately operated] hotel property provides for the comfort, convenience safety, and happiness of the citizens of [the city]. . . . [I]t does not. . . . [T]he hotel's purpose was to make a profit . . . . The city might just as well have opened a pizzeria." (footnotes omitted)).

MAKAR, J., dissenting.

This property tax case presents an important question: Does a city's golf course and its 19th hole serve a public purpose? At issue is Santa Rosa County's attempt to tax the real property owned by the City of Gulf Breeze, Florida, that is used as an 18-hole golf course with a clubhouse sporting the usual amenities: a bar, a restaurant, and a pro shop.[1]

In 2012, the City purchased the golf course, dubbed the "East Course," which consists of about a dozen puzzle-like pieces of conjoined City-owned real properties that snake through primarily residential neighborhoods near the Gulf Coast. The East Course adjoined a sibling golf course, the "West Course," also owned by the City, but the latter was shuttered in late 2013 due to severe hurricane damage and used thereafter as area for wastewater management and storm water drainage; the East Course is also used for these purposes due to its proximity to the city's wastewater treatment facility.

Up until this litigation, the City had taken advantage of the exemption from ad valorem taxation for municipal property used for a public purpose set out in our state constitution. *See* Art. VII, § 3(a), Fla. Const. ("All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation."). In tax years prior to 2015, both the East and West

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[1] Golf course amenities such as these are oftentimes referred to as the 19th hole. *See Nineteenth Hole*, Wikipedia (Jan. 5, 2022, 4:21 PM), https://en.wikipedia.org/wiki/Nineteenth_hole ("In golf, the nineteenth hole is a slang term for a pub, bar, or restaurant on or near the golf course, very often the clubhouse itself. A standard round of golf has only eighteen holes of play. An alternate term for a bar is a 'watering hole;' thus, by extension, continuing the day after 18 holes of golf at a watering hole makes the bar a 'nineteenth hole.'"); *see also* Parker B. Potter, Jr., *A Good Piece of Paper Spoiled: An Eighteen-Hole Round-Up of American Hole-in-One Jurisprudence*, 2 DePaul J. Sports L. & Contemp. Probs. 135, 192 n.266 (2004) ("Many golf courses have an eating (or drinking) facility located just off the eighteenth green, and a fair number of those establishment bear the name 'nineteenth hole.'").

Courses were deemed exempt from taxation due to their recreational uses as golf courses. The West Course's conversion to entirely wastewater and storm water drainage use rendered it non-taxable on that basis and is not at issue in this litigation.

The City itself initially managed the operation of the East Course and its facilities, but lost money for two years in a row, prompting it to enter a management agreement in 2015 with a professional golf management company, Integrity Golf,[2] to oversee day-to-day operations of the course, known formally as the Tiger Point Golf and Country Club. The property appraiser for Santa Rosa County had deemed the East Course exempt while it was owned and operated by the City; he changed course, however, after the City entered the management agreement, claiming it was in reality a lease of the property with a for-profit company. At that point, the property appraiser attempted to tax the East Course property but was unsuccessful before the value adjustment board and the circuit court in two consecutive tax years. The circuit court entered a detailed order as to both years, concluding that the management agreement was not a lease of the real property, that the City continued to own and control all operations on the property, and that the golf course, along with its bar, restaurant, and pro shop, served a public purpose.

Everyone agrees that providing recreational facilities on city-owned property, such as a golf course, is a valid public purpose to which the exemption from ad valorem taxation applies. My colleagues, however, conclude that the East Course properties are not used exclusively for such a public purpose simply because Integrity Golf is entitled to potentially earn a profit from its management of the golf course and its related facilities under the terms of the management agreement; they conclude that the City thereby loses its entire tax exemption solely on this basis without addressing whether the management agreement is a lease.

I disagree for a few reasons. First off, the City maintained title and control over the East Course and its operations during the tax

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[2] Integrity Golf also manages two Orlando golf courses (Eagle Creek Golf Club and Metro West Golf Club) and one in Tallahassee (Capital City Country Club).

years in question; that's the nature of the specific overarching management agreement at issue. Based on precedent, a city-owned, privately-managed golf course is entitled to the exemption. *Zingale v. Crossings at Fleming Island Cmty. Dev. Dist.*, 960 So. 2d 20, 24–25 (Fla. 1st DCA 2007) (upholding exemption for golf course, swimming pools, tennis courts, and playgrounds operated under management agreement).[3] The golf course itself in *Zingale* was not a for-profit venture, but the day-to-day management was handled by a private management company that did its own hiring of managers and employees, reported directly to the district, and was charged with implementing district policy. *Id.* at 23.

Unlike a *lease* of the real property to an independent for-profit company, the *management agreement* here shifted no ownership or proprietary rights to Integrity Golf, and it did not transform or alter the ownership or control of the City-owned property; instead, the City retained ultimate control of its real property as well as the golf course operations themselves. As such, no constitutional, statutory, or caselaw precedent supports taxation; and the "governmental-governmental" and "governmental-proprietary" distinction does not apply because a lease is not involved. *See generally Treasure Coast Marina, LC v. City of Fort Pierce*, 219 So. 3d 793, 799 n.6 (Fla. 2017) ("Tax exemptions for private *leasehold* interests in municipally owned property are subject to a stricter test known as the 'governmental-governmental' standard." (emphasis added)); *Sebring Airport Auth. v. McIntyre*, 642 So. 2d 1072, 1074 (Fla. 1994) ("A governmental-proprietary function occurs when a nongovernmental *lessee* utilizes governmental property for-proprietary and for-profit aims." (emphasis added)).

The 63-page "Agreement for Operation and Management of the Tiger Point Golf and Country Club" is a detailed franchise-like agreement limited solely to the management of golf course operations without any possessory and related rights (such as the right to exclude) that leaseholds entail; it specifically says Integrity leases nothing and has no tenancy or proprietary

[3] The decision was quashed but only "on the issue of property appraiser standing." *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 803 (Fla. 2008).

interests in the City's property. It is remarkably detailed and transparent as to all financial and operational responsibilities (which would not be the case with a lease or the private financial records of a lessee) including Integrity's mandatory compliance with public records law, a requirement governing state, county, and municipal records—not private records. It is a straightforward and prototypical management agreement; it is not a wolf (i.e., lease) dressed in sheep's clothing.

The outcome, of course, is different if a city *leases* and turns over possession and control of its property to a private company that *independently* operates a golf course and its related facilities, thereby resulting in the loss of the property's exemption from ad valorem taxation; the same would be true with the *sale* of municipal property to a private owner.[4] But no precedent exists for the proposition that a plenary management agreement like the one at issue is legally sufficient to annul the tax exemption for municipally owned and controlled real property used for a valid public purpose, such as a golf course.

Notwithstanding the legal and operational distinctions between management agreements and leases, the property appraiser claims that a city may *never* outsource the management of *any* city-owned facilities such as a swimming pool, a golf course, or a marina to a for-profit company, even if it saves taxpayer dollars, because it amounts to a per se violation of article VII, section 3(a) of the state constitution. But that is a position no Florida court has adopted until now; if it was the law, a wide array of management agreements, by which private companies provide services to municipalities, would be endangered. Moreover, the property appraiser concedes that "the *City's* operation of the golf course facilities in 2013-2015 was a valid municipal purpose." The

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[4] Indeed, the East Course was sold to Capstone Golf II, LLC, on February 26, 2021, excluding the property where the restaurant, bar, and pro shop are located, which was sold on that date to Tiger Point Real Estate, LLC. Presumably, the real properties at issue will now be subject to ad valorem taxation because they are no longer City-owned nor subject to the City's control.

golf course, driving range, maintenance facilities, and clubhouse (with a bar, restaurant, and pro shop) were (and continue to be) serving the same unified public purpose. That a private entity manages the day-to-day business operations doesn't change that the City owns and controls the real property and the ongoing business operations under the terms of the management agreement.

Second, the potential for Integrity Golf to make money (i.e., profit from its management services) pursuant to the management agreement is immaterial where title, use, and control of municipal property, facilities, and operations remain in the City's hands. Private companies exist to generate revenues in excess of costs to make a return on their investments, i.e., profits; if they fail to do so, they cease to exist. Every management agreement—whether with a city or otherwise—has as one of its key features the ability of the management company to make ends meet and to, hopefully, make a profit; they typically are not in business for eleemosynary or philanthropic reasons.

The ability to make money (call it profit) does not, in and of itself, invalidate a tax exemption involving a management agreement; it is not a per se illegal litmus test. Instead, it is only when a *lease* of municipal property is entered with a private, for-profit entity, that the caselaw raises a red flag. *See, e.g.*, *Page v. City of Fernandina Beach*, 714 So. 2d 1070, 1076–77 (Fla. 1st DCA 1998) ("When a city operates a marina it owns, marina property it has *not leased* to a nongovernmental entity is exempt from ad valorem taxation . . . But operating a marina partakes of no aspect of sovereignty and does not warrant an exemption for a marina *leased* to a nongovernmental operator *seeking profits*." (emphases added)); *Treasure Coast Marina*, 219 So. 3d at 799 ("Due to the *lease* to a private operator, the First District [in *Fernandina Beach*] held that the marina was not entitled to a tax exemption." (emphasis added)); *Volusia Cnty. v. Daytona Beach Racing & Recreational Facilities Dist.*, 341 So. 2d 498, 502 (Fla. 1976) (holding that property leased from a municipality and used to generate a profit was not exempt from ad valorem taxation); *Turner v. Concorde Props.*, 823 So. 2d 165, 166 (Fla. 2d DCA 2002) (finding that a golf course operated by a for-profit company on property which it leased from the City was subject to ad valorem

taxation). Profiting from the control, possession, and use of leased city property is quite different from making money, even profits, from the management of a city-owned and controlled recreational amenity.

The trial court concluded that the management agreement is not a lease; for all practical purposes, that should end the inquiry. The property appraiser, however, points to the Second District's decision in *Sun 'N Lake of Sebring Imp. Dist. v. McIntyre*, 800 So. 2d 715 (Fla. 2d DCA 2001), as support for the notion that whenever a city-owned recreational facility is operated in "conjunction" with a for-profit company that invalidates the city's tax exemption. But the court in *Sun 'N Lake of Sebring* didn't decide anything; instead, it held that it lacked sufficient detail in the appellate record to assess whether the golf course, tennis courts, pro shop, and restaurant at issue in that case served an exclusively public purpose and remanded for further factual development. *Id.* at 723. In dicta, it ruminated that "[i]t is possible that a golf course or tennis courts, owned by a municipality and held open to the public, and not operated *in conjunction with* a for-profit business, may serve an exclusively public purpose." *Id.* (emphasis added). It didn't explain what the italicized phrase meant, but it did cite a Florida case, *City of Fernandina Beach*, one involving a *lease* with a private for-profit business, thereby strongly suggesting it was referring to situations involving leases. *Id.* For these reasons, *Sun 'N Lake of Sebring* does not advance the property appraiser's position.

Third, the only components of East Course operations that raise a legal question are the bar, restaurant, and pro shop, all located in the clubhouse.[5] In a footnote in his initial brief, the property appraiser says that "the portions of the clubhouse used

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[5] It bears noting that the property appraiser was required to specifically identify the parcels of property to which he was denying an exemption. The notice of disapproval of tax exemption, however, does not include the parcel on which the clubhouse, with its bar, restaurant, and pro shop, are located (Parcel 32-2S-28-0000-00**450**-0000). For this reason, it is unclear how this litigation extends to that parcel.

as a bar, restaurant, and pro shop" cannot be deemed proper municipal or public purposes, yet no tax was sought on such portions in 2013-2015, prior to the City's hiring of Integrity Golf to manage its business operations.

No court has directly addressed whether these types of facilities can serve a public purpose as affiliated golf course amenities. *Zingale* did not involve the bar, restaurant, or pro shop, only the golf course itself. 960 So. 2d at 22.[6] And the Second District in *Sun 'N Lake of Sebring* left the question open. 800 So. 2d at 723.[7]

Here, the trial court addressed this point, noting that although a stand-alone restaurant or golf equipment store would not typically serve a public purpose, the context is different when they are subsumed within and merely incidental to the overall public purpose of the golf course experience. As the trial court succinctly and persuasively concluded:

> The Court acknowledges that a question arises as to whether the property on which the restaurant and golf shop sit could be subject to taxation. Using the [*Treasure Coast Marina, LC v. City of Fort Pierce*, 219 So. 3d 793, 794 (Fla. 2017)] analysis the Court finds that the restaurant and golf shop are owned and operated by the City and they are open to the public. The dispute, though, is whether the restaurant and golf shop serve a traditional municipal function. Standing in isolation neither a restaurant nor a golf shop would ordinarily

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[6] It appears that the trial court's ruling against the district as to the bar, restaurant, and pro shop was not cross-appealed, but it is also unclear whether those amenities were subject to *leases* with for-profit companies or not; no mention is made that a management agreement was in place for their operations.

[7] The court said that "[a]lthough the operation of a pro shop and restaurant would not seem to serve an exclusively public purpose, we do not foreclose such a finding upon remand." *Sun 'N Lake of Sebring*, 800 So. 2d at 723 (noting that the record does not indicate how closely these facilities are tied to the golf course).

> serve a traditional municipal function. However, in this case, these facilities do not stand alone and are operated as accessories to the golf course. Traditionally, golf courses have included places where customers can buy food and drinks, as well as purchase golf supplies. When located at a golf course, a restaurant operates in conjunction with the golf course and offers patrons services that enhance their golfing experience. Indeed, the primary purpose of why people visit a golf course is recreational, not to eat, drink or shop. Because the restaurant and the golf shop at the golf course cannot be viewed in isolation and are part of the recreational experience the public receives from the particular golf course, the Court finds that the property upon which the restaurant and golf shop sit serves a traditional municipal function.

In *Treasure Coast Marina,* the case the trial court cited, the supreme court rejected an overly narrow application of its precedents that resulted in a marina on city-owned property losing its tax exemptions. 219 So. 3d at 798. In recognizing that a city-owned marina served a public purpose, the court noted that this Court had upheld the operation of a golf course as a proper public purpose. *Id.* (citing *Zingale*, 960 So. 2d at 24–25).

As to incidental use, courts have recognized that municipal property used for a proper municipal or public purpose does not automatically lose its tax-exempt status simply because a portion of the property is dedicated to—or even leased for—incidental or accessory uses. *See City of Tampa v. Walden*, 323 So. 2d 58, 60 (Fla. 2d DCA 1975) (holding that "lands are leased to private entities and operated on a profit basis does not impair the City's right to an ad valorem tax exemption as long as such leaseholds are accessory to the overall public purpose of the park complex and serve a function which could otherwise be accomplished by municipal funds[]"); *cf. City of Gainesville v. Crapo*, 953 So. 2d 557, 564–65 (Fla. 1st DCA 2007) (holding that the private, for-profit use of cellular towers located on city property "was more than incidental to the City's use of the towers for governmental communications" thereby subjecting the leases to ad valorem taxation); *see also Sunny Isles Fishing Pier v. Dade Cnty.*, 79 So.

2d 667, 669 (Fla. 1955) (upholding exemption for privately-run fishing pier that was "certainly a use incidental to the main operation of this large public park[]").

At some point, it is conceivable that the private, for-profit operation of a restaurant in a clubhouse at a municipal golf course becomes potentially subject to property tax, for example when a golf course is shuttered but its restaurant continues to operate without any city oversight or control; in this hypothetical, the restaurant is not operated in conjunction with the golf course and becomes the primary, if not sole, reason why people visit the property, but that is not alleged here.

In conclusion, because the East Course was operated on municipally controlled property under a management agreement, and not a lease, in which the City retained ultimate control over its own property and golf course operations including 19th Hole amenities, the exemption for municipal use for the tax years at issue should stand.

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