



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-17-00042-CV

TARRANT APPRAISAL DISTRICT

APPELLANT

V.

TARRANT REGIONAL WATER
DISTRICT, A WATER CONTROL
AND IMPROVEMENT DISTRICT

APPELLEE

FROM THE 342ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 342-285113-16

OPINION

I. INTRODUCTION

Appellee Tarrant Regional Water District (TRWD) owns property along the Trinity River and leases part of it to a business entity that operates a restaurant. After failing to convince the Tarrant Appraisal Review Board that the property was exempt from ad valorem taxes, TRWD initiated the underlying tax appeal in

the district court and obtained a summary judgment that the property was tax exempt.

Appellant Tarrant Appraisal District (TAD) challenges the trial court's rulings denying its special exceptions and evidentiary objections, but the principal issue in this appeal is whether, and under what constitutional or statutory authority, TRWD's property is tax exempt. Although we agree with TAD that the property's eligibility for a tax exemption is limited to tax code section 11.11(a), which exempts public property "used for public purposes," Tex. Tax Code Ann. § 11.11(a) (West 2015), we disagree with TAD that a genuine issue of material fact exists concerning whether the property is used for public purposes. We conclude and hold that TRWD's property is tax exempt under tax code section 11.11(a) because the property is used for public purposes as a matter of law. We will affirm.

II. BACKGROUND

A. TRWD and its Organic Statute

Article XVI, section 59, originally adopted in 1917 as an amendment to the Texas constitution, declares that "[t]he conservation and development of all of the natural resources of this State, and development of parks and recreational facilities, including the control, storing, preservation and distribution of . . . the waters of its rivers and streams . . . are each and all hereby declared public rights and duties." Tex. Const. art. XVI, § 59(a). The amendment consequently authorizes the legislature to create "such number of conservation and

reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment.” *Id.* § 59(b). TRWD is one such water control and improvement district. *Tarrant Reg’l Water Dist. v. Bennett*, 453 S.W.3d 51, 53 (Tex. App.—Fort Worth 2014, pet. denied).

In addition to nonconflicting provisions contained in water code chapters 49 and 51, TRWD is governed by its Organic Statute, enacted in 1957. See Tex. Water Code Ann. §§ 49.002, 51.011 (West 2008); Tex. Water Aux. Laws, Table III, art. 8280-207 (West, Westlaw through 2017 1st C.S.) [Act of May 9, 1957, 55th Leg., R.S., ch. 268, § 1, 1957 Tex. Gen. Laws 569, *amended by* Act of May 15, 2001, 77th Leg., R.S., ch. 433, § 1, sec. 1, 2001 Tex. Gen. Laws 830]. Several provisions contained in TRWD’s Organic Statute are particularly relevant to this appeal.

Added in 2001 and amended in 2005, section 17(a) permits TRWD to make and to enforce reasonable rules that are necessary to accomplish TRWD’s “authorized purposes,” which include (i) regulating “all recreational and business privileges on any . . . body of land . . . owned . . . by the district,” (ii) promoting “state or local economic development,” and (iii) stimulating “business and commercial activity in the district.” Tex. Water Aux. Laws, Table III, art. 8280-207 (West, Westlaw through 2017 1st C.S.) [Act of May 15, 2001, 77th Leg., R.S., ch. 433, § 1, sec. 17(a), 2001 Tex. Gen. Laws 831, *amended by* Act of May 28, 2005, 79th Leg., R.S., ch. 1363, § 1, sec. 17(a)(4), (6), 2005 Tex. Gen. Laws 4302] (italics removed).

Section 18 permits TRWD to “provide for or participate in the acquisition, construction, development, operation, or maintenance of recreational facilities intended to promote economic development to the full extent authorized by Section 59, Article XVI, Texas Constitution, the Water Code, or other applicable law.” *Id.* [Act of May 28, 2005, 79th Leg., R.S., ch. 1363, § 3, sec. 18, 2005 Tex. Gen. Laws 4302].

Section 18A(a) permits TRWD to “provide for or participate in the acquisition, construction, development, operation, or maintenance of facilities intended to promote economic development to the full extent authorized by Section 52–a, Article III, Texas Constitution.” *Id.* [Act of May 28, 2005, 79th Leg., R.S., ch. 1363, § 4, sec. 18A(a), 2005 Tex. Gen. Laws 4302] (italics removed).

And section 11, included in the Organic Statute’s original enactment, exempts TRWD’s property from ad valorem taxes:

The accomplishment of the purposes stated in this Act is for the benefit of the people of this State and for the improvement of their properties and industries, and the District, in carrying out the purposes of this Act will be performing an essential public function under the Constitution. The District shall not be required to pay any tax or assessment on its properties or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including the profits made on the sale thereof, shall at all times be free from taxation within this State.

Id. [Act of May 9, 1957, 55th Leg., R.S., ch. 268, § 11, 1957 Tex. Gen. Laws 574].

B. TRWD owns, and leases part of, the Property

Depicted in the image below, the triangular-shaped Property the subject of this tax appeal is located on the Trinity River, at 3201 Riverfront Drive in Fort Worth (the Property). According to Alan Thomas, TRWD's Deputy General Manager, TRWD acquired the Property in connection with a federal control project known as "Program D." Undertaken in concert with the United States Army Corps of Engineers, the program's purpose was to control flooding on the Clear Fork Trinity River. TRWD must maintain ownership of the Property.



Bisecting the Property and the Trinity River is a stretch of the Trinity Trails, a system of public trails and amenities that TRWD constructed, owns, and maintains. In an effort to counteract a lack of use outside of certain areas along the trails and “to encourage development of river-facing businesses on TRWD’s property and adjoining properties,” TRWD determined to improve and to lease the Property.

In March 2011, TRWD leased 10,295 of the Property’s then-existing 50,688 square feet to chef Tim Love’s River Shack, LLC. Under the lease, TRWD agreed to construct a building (or pavilion) on the Property, and River Shack agreed to operate a restaurant—the Woodshed Smokehouse. The lease limits River Shack’s permitted uses of the leased Property to the following: “restaurant (eat-in and take-out) with alcohol sales, recreational activities and entertainment, including live music to the extent permitted by applicable municipal ordinances.” River Shack pays TRWD rent based on a percentage of its annual sales—between 4% and 6%—and Thomas confirmed that “[a]ll income received by TRWD from the [lease] is deposited into the general fund of TRWD and used exclusively for [] TRWD’s public purposes.” The lease terminates if the United States Army Corps of Engineers determines that the leased premises must be removed or materially altered.

The portion of the Property that River Shack does not lease consists primarily of common areas—“that part of the [Property] intended for the common use of [River Shack], its employees, customers and other invitees, and the

general public, especially members of the general public utilizing the Trinity River and Trinity Trails”—and a parking lot, which is reserved for River Shack’s exclusive use during business hours. Tim Love stated in his affidavit that the Woodshed Smokehouse “routinely provides free concerts of local singers and bands on the pavilion area shared with the public,” “sponsors runs and walks on the Trinity Trail System,” “passes out free water and Gatorade to the trail users,” and provides “games and recreational equipment (such as ping pong and corn hole) for the public’s use on the common areas located on the Property.” The lease obligates River Shack to make its restrooms available to “all persons” on the Property.

C. Tax-exemption denial and district-court appeal

At some point, TRWD received notice that TAD had proposed to deny TRWD an exemption from paying ad valorem taxes on the Property. TRWD protested the decision before the Tarrant Appraisal Review Board, and it issued orders in February 2016 denying TRWD an exemption on 35,067 square feet of the Property but granting TRWD an exemption on 11,472 square feet of the Property for the tax years 2012, 2013, 2014, and 2015. According to TAD, the portion of the nonexempt Property includes “the restaurant building itself, the off-street parking lot provided for Woodshed Smokehouse’s exclusive use during its hours of operation and at other specified times, the landscaped areas on and around that building and parking lot, and associated sidewalks and entryways providing ingress and egress for them.” The exempt property includes “a grassy

playground, bike racks, water fountain, park bench, public toilet, trailside shelter, and associated sidewalks and on-street parking.”

TRWD appealed the review board’s decisions by filing a petition in the district court. TRWD later filed a motion for summary judgment, arguing that the Property was tax exempt as a matter of law. TAD responded and filed special exceptions and objections. The trial court granted TRWD’s motion and ordered that TRWD “is not required to pay for years 2012 through 2015 any ad valorem tax or assessment on the” Property and that TAD “shall correct the appraisal roll, tax bill, and such other records so that they conform to the” trial court’s judgment. TAD appeals.

III. SUMMARY JUDGMENT STANDARD OF REVIEW

In a summary-judgment case, the issue on appeal is whether the movant met the summary judgment burden by establishing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). In our de novo review, we consider the evidence presented in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could and disregarding evidence contrary to the nonmovant unless reasonable jurors could not. *Mann Frankfort*, 289 S.W.3d at 848. When, as in this case, the order granting summary judgment does not specify the grounds upon which the trial court relied, we must affirm the summary judgment if any independent summary-judgment

ground is meritorious. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000).

IV. THE PROPERTY'S TAX-EXEMPT STATUS

In its first issue, TAD argues that the trial court erred by granting summary judgment for TRWD because under the relevant constitutional, statutory, and caselaw authorities, TRWD did not prove, as a matter of law, that the Property is tax exempt. Specifically, TAD argues that the Property is not tax exempt under section 11 of TRWD's Organic Statute because that provision is a void special law in violation of article VIII, section 2(a) and article III, section 56(a)(22) of the Texas constitution; because the tax code controls over the Organic Statute, as evidenced by tax code section 1.02 and the tax code's enabling language repealing any conflicting laws; and because the conflicts provision contained in section 22 of the Organic Statute, added in 2001, does not render the Organic Statute otherwise applicable. TAD argues that the Property's tax-exempt status should instead be determined pursuant to tax code section 11.11(a), which TAD contends applies only when public property is used exclusively for the use and benefit of the public. Because, according to TAD, "a for-profit company is leasing the property and operating a restaurant and bar on the property for its own financial gain," the Property is not tax exempt under tax code section 11.11(a).

TRWD responds that the Property is tax exempt under article VIII, section 2(a) of the Texas constitution and its enabling statute, tax code section 11.11(a), because water control and improvement districts created under article XVI,

section 59, like TRWD, serve a public purpose as a matter of law; because TRWD's Organic Statute declares a public use of the property; and because TRWD uses the Property for public purposes even though it leases part of it to River Shack, as neither article VIII, section 2(a) nor tax code section 11.11(a) require exclusive public use. TRWD further argues that the Property is alternatively tax exempt under article XI, section 9 of the Texas constitution because it is devoted exclusively to public use, that the Organic Statute's section 11 either is not a void local or special law or is a constitutionally-authorized local or special law, and that the Organic Statute does not conflict with the tax code, but even if it did, the Organic Statute would control.

We have thoroughly studied the parties' arguments and authorities. Tax code section 11.11(a) controls and exempts the Property from ad valorem taxation.¹

¹Each side argues that the other side failed to preserve certain arguments for appellate review. TAD argues that TRWD did not preserve its arguments that the Property is tax exempt under article VIII, section 2(a) and article XI, section 9 of the Texas constitution, and TRWD argues that TAD failed to preserve its argument that the Organic Statute's tax exemption is a void special law in violation of article VIII, section 2(a) and article III, section 56(a)(22) of the Texas constitution. Both sides' arguments could have benefited from greater specificity, but the record shows that TRWD argued in the alternative that its property was used for public purposes, and TAD argued that the Organic Statute's tax exemption was null and void. Judging by the briefing, each side certainly had fair notice of the arguments that the other side now claims were not preserved. See *City of Roanoke v. Town of Westlake*, 111 S.W.3d 617, 633 (Tex. App.—Fort Worth 2003, pet. denied) ("Grounds are sufficiently specific if they give 'fair notice' to the nonmovant."). Everything has been preserved for our review.

A. Standard of review in tax-exemption cases and construction rules

In a tax exemption case, the claimant bears the burden of “clearly showing” that an exemption applies. *Tex. Student Housing Auth. v. Brazos Cty. Appraisal Dist.*, 460 S.W.3d 137, 140–41 (Tex. 2015) (quoting *N. Alamo Water Supply Corp. v. Willacy Cty. Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991)). Exemptions cannot be raised by implication but must affirmatively appear in the authority relied upon. *Bullock v. Nat’l Bancshares Corp.*, 584 S.W.2d 268, 272 (Tex. 1979). Although we normally resolve all doubts in favor of the taxing authority, when the claimant is a water control and improvement district, like TRWD, we resolve any doubts in its favor. *Lower Colo. River Auth. v. Chem. Bank & Trust Co.*, 144 Tex. 326, 331, 190 S.W.2d 48, 50 (1945) (discussing—apparently with approval—*Bexar-Medina-Atascosa Ctys. Water Improvement Dist. No. 1 v. State*, 21 S.W.2d 747, 749 (Tex. Civ. App.—San Antonio 1929, writ ref’d)).

This tax appeal requires us to construe several constitutional and statutory provisions. When construing the Texas constitution, “the fundamental guiding rule is to give effect to the intent of the makers and adopters of the provision in question.” *Harris Cty. Hosp. Dist. v. Tomball Reg’l Hosp.*, 283 S.W.3d 838, 842 (Tex. 2009). We presume that the language was carefully selected, and we rely heavily on the literal text to give effect to its plain language. *Id.*; see *Doody v. Ameriquest Mortg. Co.*, 49 S.W.3d 342, 344 (Tex. 2001).

Similarly, when construing a statute, our primary objective is to ascertain and give effect to the legislature's intent. *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). We seek that intent first and foremost in the statutory text. *Lexington Ins. Co. v. Strayhorn*, 209 S.W.3d 83, 85 (Tex. 2006). We rely on the plain meaning of the text, unless a different meaning is supplied by legislative definition or is apparent from context, or unless such a construction leads to absurd results. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex. 2008); see Tex. Gov't Code Ann. § 311.011(a) (West 2013). We consult extratextual aids only when statutory text is ambiguous. *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009).

B. The Property is not tax exempt under article XI, section 9 of the Texas constitution.

Article XI, section 9 of the Texas constitution provides in relevant part that the “property of counties, cities and towns, owned and held only for public purposes, . . . , and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation” Tex. Const. art. XI, § 9. Article XI, section 9 is “self-operative and absolutely exempts from taxation the public property therein referred to.” *A&M Consol. ISD v. City of Bryan*, 143 Tex. 348, 350, 184 S.W.2d 914, 915 (1945).

At first glance, it would appear that article XI, section 9 has no application here because TRWD is a governmental agency created under the authority of article XVI, section 59 and not a county, city, or town, but the supreme court has

construed article XI, section 9 to exempt “all public property used for public purposes even though not owned by a county, city or town.” *Leander ISD v. Cedar Park Water Supply Corp.*, 479 S.W.2d 908, 911 (Tex. 1972) (discussing holding in *Chem. Bank & Trust Co.*, 144 Tex. at 333–34, 190 S.W.2d at 51–52, that appellant, a governmental agency, was exempt from taxation under article XI, section 9); see *Satterlee v. Gulf Coast Waste Disposal Auth.*, 576 S.W.2d 773, 779 (Tex. 1978) (op. on reh’g) (making similar observation but declining to reconsider holding in *Chemical Bank & Trust* because public-purpose and exclusive-use requirements not met). Bound by that construction, we are forced to turn our attention to a different portion of the provision—the requirement that property be devoted “exclusively to the use and benefit of the public.” The supreme court has previously construed the term “exclusively,” albeit under a different constitutional provision.

Long ago, in *Morris v. Lone Star Chapter No. 6, Royal Arch Masons*, the supreme court considered whether appellee, a corporation organized as a public charity, was exempt from paying property taxes on its temple under the portion of article VIII, section 2(a) that exempts from such taxation “all buildings used exclusively . . . by . . . institutions of purely public charity.” 68 Tex. 698, 700–01, 5 S.W. 519, 519–20 (1887). Hinging its decision on the exclusive-use requirement, the supreme court held that the temple was not tax exempt because appellee had leased part of it for profit and, therefore, did not use it exclusively for the purposes of a public charity:

[T]he building in question is not “used exclusively” by appellee in the sense given to these words in the constitution; *the exclusive use meant being the actual and direct use for the purposes of the association, and not a use by others for revenue*, although that revenue may be exclusively appropriated for the objects of the charity. . . .

. . . .

. . . The property in controversy having been leased for purposes of profit, we think the court below erred in holding it exempt from taxation. . . .

Id. at 703, 5 S.W. at 521 (emphasis added).

We see no reason why this plain-meaning construction of the term “exclusively” should not inform our construction of the same term used in article XI, section 9, especially considering that both provisions address a similar topic—tax exemption.² See *L & M-Surco Mfg., Inc. v. Winn Tile Co.*, 580 S.W.2d 920, 926 (Tex. Civ. App. 1979, writ dismissed) (“In construing a statutory word or phrase, the court may take into consideration the meaning of the same or similar language used elsewhere in the act or in another act of similar nature.”); see also *Acreman v. Sharp*, 282 S.W.3d 251, 255 (Tex. App.—Beaumont 2009, no pet.) (“Generally, the same rules of construction used to interpret statutes are used when construing the constitution.”).

To be exempt under article XI, section 9, the Property must be “devoted exclusively to the use and benefit of the public.” Tex. Const. art. XI, § 9. River Shack is a limited liability company organized under the laws of the State of

²Nor have we located any binding authority providing otherwise.

Texas. It is not “the public.” Because River Shack is *using* the Property to operate its business and *benefitting* from that use by earning revenue, the Property is not devoted “exclusively” to the use and benefit of the public. To hold otherwise would require us to turn a blind eye to River Shack’s use of the Property and the benefits that it derives therefrom.

In *Chemical Bank & Trust Co.*, the supreme court held in part that because the Lower Colorado River Authority is a governmental agency serving a public purpose under article XVI, section 59, “its property is public property devoted exclusively to public use and is exempt from taxation under article XVI, section 9.” 190 S.W.2d at 331. TRWD argues that the Property is devoted exclusively to public use as a matter of law because like the Lower Colorado River Authority, it too was organized under article XVI, section 59 and is tasked with the same public purposes. *Chemical Bank & Trust Co.* is no help to TRWD because no part of the analysis involved the specific issue that we address here—whether public property is devoted exclusively to the use and benefit of the public when a third-party business entity uses the Property to operate a restaurant and benefits from that use by earning revenue.³ See *id.* at 331.

³We do not improperly hold that the Property is not tax exempt under article XI, section 9 merely because it generates revenue. See *Galveston Wharf Co. v. City of Galveston*, 63 Tex. 14, 23 (1884) (reasoning that wharf property that was owned by City of Galveston and open to the public was tax exempt under article XI, section 9 even though compensation was charged for its use).

TRWD also directs us to *Lower Colorado River Authority v. Burnet Cent. Appraisal District*, a relatively recent decision in which the Third Court of Appeals held that an RV park that was owned by the Lower Colorado River Authority, but leased to a private, for-profit limited partnership, was nevertheless used exclusively for public purposes. 497 S.W.3d 117 (Tex. App.—Austin 2016, pet. denied). The court centered its decision on the fact that the lease specifically limited the RV park’s use to a public purpose that was authorized by statute. *Id.* at 120. Because the lease did not change the property’s statutory public purpose—“serving the public by offering recreational opportunities”—it was of no consequence that the lessee made a profit from managing the property. *Id.*

We have no qualms about the Third Court’s analysis. In fact, insofar as it can be construed to implicitly hold that the mere existence of a lease does not automatically negate public use, we completely agree. We simply decline to utilize a similar exclusive-use analysis because the case’s material facts are distinguishable from those here.

The Lower Colorado River Authority leased the RV park to the lessee for the purpose of *managing* the property. *Id.* at 118. This matters because if there was only a change in the property’s management, and no change in the property’s prior exclusive public use, then the property would, necessarily, continue to be used exclusively for public purposes. The Third Court confirmed as much, observing that “the purpose of the Park remained the same regardless of the entity managing the property.” *Id.* at 120. Because the lease agreement

merely affected a change in the entity responsible for managing the RV park, when the lessee entered into the lease agreement, it essentially stepped into the shoes of the Lower Colorado River Authority. Under this scenario, of course the RV park continued to be used exclusively for public purposes.

In this case, TRWD leased the Property to River Shack not so that River Shack could merely step into its shoes and manage the Property—perhaps by mowing the weeds along the adjacent Trinity Trails—but instead, so that River Shack could operate a barbecue-selling, revenue-generating restaurant. In other words, while the pre- and post-lease uses of the RV park in *Burnet Central Appraisal District* were identical, the pre- and post-lease uses of the Property in this case are entirely different. Although we ultimately conclude that the Property is “used for public purposes,” this critical factual distinction precludes us from relying solely upon *Burnet Central Appraisal District*’s exclusive-use analysis to resolve this unique issue.

C. The Property is not tax exempt pursuant to the Organic Statute’s section 11.

1. Organic Statute section 11 is not worded like the statute in *Texas Student Housing Authority v. Brazos County Appraisal District*.

In its motion for summary judgment, TRWD argued that section 11 of the Organic Statute unconditionally exempts TRWD from paying ad valorem taxes just like the statute in *Texas Student Housing Authority v. Brazos County Appraisal District* unconditionally exempted the Texas Student Housing Authority

from taxation “of every character.” 460 S.W.3d at 142. Insofar as TRWD asserts the same argument, or a substantially similar argument but in a different context, we reject it.

The question in *Brazos County Appraisal District* was whether the Texas Student Housing Authority had established its tax-exempt status as a matter of law, in particular, under education code section 53.46, which states:

Because the property owned by authority will be held for educational purposes only and will be devoted exclusively to the use and benefit of the students, faculty, and staff members of an accredited institution of higher education, it is exempt from taxation of every character.

Id. at 140, 142. The Brazos County Appraisal District argued that to establish an exemption under the statute, the Texas Student Housing Authority had to conclusively prove that its property was, among other things, “devoted exclusively to the use and benefit of the students, faculty, and staff members of an accredited institution of higher education.” *Id.* at 142. Because the Texas Student Housing Authority had used the subject property during the summer to host persons who were *not* students, faculty, or staff members of an accredited institution of higher education, the Brazos County Appraisal District argued that it was not tax exempt under education code section 53.46. *Id.*

The supreme court rejected the Brazos County Appraisal District’s “conditional” reading of the statute, explaining that because the statute “state[d] a presumption (about how the property is held and used) then an unconditional proclamation (the property is tax-exempt),” the statute “state[d] in absolute terms

that the property is, in all events, exempt.” *Id.* This form of statutory language, the supreme court observed, contrasted with other statutes that contain a conditional exemption. *Id.* at 143. As an example, the supreme court cited tax code section 11.131(c), which provides that the “surviving spouse of a disabled veteran . . . is entitled to an exemption from taxation . . . *if* . . . the surviving spouse has not remarried since the death of the disabled veteran” Tex. Tax Code Ann. § 11.131(c) (West Supp. 2017) (emphasis added).

Section 11 of the Organic Statute is worded neither conditionally nor unconditionally. It does not state a presumption about how property is held and used but a conclusion about property that is held and used a certain way. Also, one sentence says that when TRWD undertakes a purpose of the Organic Statute, (i) the people will benefit and (ii) TRWD performs a public function. The other exempts TRWD from having to pay ad valorem taxes but *also* addresses taxes relating to the bonds that TRWD may issue, which are not real property that is generally subject to ad valorem taxes. If the legislature had intended section 11’s first sentence to unconditionally declare that the Property had a public use for purposes of exempting it from ad valorem taxes, then why would it follow that purported declaration with a matter wholly unrelated to exemptions from ad valorem taxes?

We also notice that unlike section 11, some legislation creating water and wastewater special districts contains language strikingly similar to that used in section 11’s first sentence but *do not* immediately follow with a statement

exempting property from taxation. See, e.g., Tex. Spec. Dist. Local Laws Code Ann. §§ 6913.003(b), 9053.003(a), (e), 11006.003(a), (d) (West Pamph. 2017). Moreover, the Organic Statute uses the term “public function”—a term that has developed a particular legal meaning—not “public purposes.” See *Weaver v. AIDS Servs. of Austin, Inc.*, 835 S.W.2d 798, 800 (Tex. App.—Austin 1992, writ denied) (“Under the ‘public function’ doctrine, when the state entrusts a private individual or group with the performance of functions that are traditionally governmental in nature, the acts of the individual or group become clothed with state action.”).

The first sentence of the Organic Statute’s section 11 certainly has meaning, but we cannot agree with TRWD that like education code section 53.46, section 11 operates as an unconditional presumption of use for purposes of exempting the Property from ad valorem taxes.

2. The first part of the second sentence contained in the Organic Statute’s section 11 is a void special law.

Even if the Organic Statute’s section 11 did unconditionally exempt TRWD from paying ad valorem taxes, TRWD has another hurdle to overcome—the Texas constitution. Article VIII, section 2(a) provides that “the legislature may, *by general laws*, exempt from taxation public property used for public purposes.” Tex. Const. art. VIII, § 2(a) (emphasis added). At the end of the same lengthy section, it provides that “all laws exempting property from taxation other than the property mentioned in this Section shall be null and void.” *Id.* And article III,

section 56(a)(22) provides that “[t]he Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing” “exempting property from taxation.” Tex. Const. art. III, § 56(a)(22). TAD argues that section 11’s property-tax exemption is a void special law under both constitutional authorities. In its motion for summary judgment, TRWD took the position that the Organic Statute is a special law, but now it argues that the Organic Statute is a general law. TAD is right.

Generally, a special law is “limited to a particular class of persons distinguished by some characteristic other than geography.” *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 465 (Tex. 1997). A statute is not a special law, however, “if persons or things throughout the State are affected thereby or if it operates upon a subject in which the people at large are interested.” *Cty. of Cameron v. Wilson*, 160 Tex. 25, 29, 326 S.W.2d 162, 165 (1959). Ultimately, “[t]he primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the class.” *Rodriguez v. Gonzales*, 148 Tex. 537, 540, 227 S.W.2d 791, 793 (1950).

We first note that the supreme court has observed that laws creating districts like TRWD are special in nature. *See Maple Run at Austin Mun. Util. Dist. v. Monaghan*, 931 S.W.2d 941, 948 (Tex. 1996). As support, the supreme court cited the very authority in which TRWD’s Organic Statute is listed—the “Water Auxiliary Laws, Table III . . . pamphlet.” *Id.*

The legislature has effectively done the same, commenting at the outset of the water code that “[l]aws of a local or special nature, such as statutes creating various kinds of conservation and reclamation districts, are not included in, or affected by, this code. The legislature believes that persons interested in these local and special laws may rely on the session laws and on compilations of these laws.” Tex. Water Code Ann. § 1.001(d) (West 2008). The Organic Statute is one such law; it was not codified in the water code, and as demonstrated by our long citations above, we must rely on the session laws for the text of the statute.

Further, we previously observed that article 8280-293, the enabling legislation for the Lake Cities Municipal Utility Authority, was “unquestionably a ‘local or special’ act.” *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 167 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). Just like TRWD, the Lake Cities Municipal Utility Authority was created under the authority of article XVI, section 59 and is listed in Table III of the Water Auxiliary Laws pamphlet. See Tex. Water Aux. Laws, Table III, art. 8280-293 (West, Westlaw through 2017 1st C.S.) [Act of May 9, 1963, 58th Leg., R.S., ch. 312, § 1, 1963 Tex. Gen. Laws 816].

While these reliable authorities are themselves convincing, their conclusions are corroborated when we apply the standards set out in *Rodriguez* and *County of Cameron*.

At the outset, we need to clarify precisely what law we scrutinize. TRWD compellingly argues that “[t]he Organic Statute was not a local or special law”

because it “‘affected a substantial class of persons over a broad region of the state,’ ‘deal[t] with a matter of general rather than purely local interest,’ and had a ‘reasonable basis.’” But we are not analyzing whether the *Organic Statute* meets *Rodriguez*’s reasonable-basis inquiry. Rather, we consider whether the first part of the second sentence contained in the Organic Statute’s section 11 violates article III, section 56(a)(22)’s prohibition against special laws that exempt property from taxation. Indeed, TAD clarified in its reply that it “does not argue that TRWD’s entire [Organic Statute] was repealed or is void. TAD challenges and is concerned with only those parts of the [Organic Statute] . . . that bear on the operation and invalidity of the property tax exemption that TRWD claims,” i.e., the part of section 11’s second sentence that purports to exempt TRWD’s property from ad valorem taxes.

Properly focused, the issue is straightforward. The Property’s tax-exempt status is neither a matter of statewide interest, nor a law that affects a large group of citizens across the State. See *Cty. of Cameron*, 160 Tex. at 29, 326 S.W.2d at 165. Moreover, legislation exempting the property of water control and improvement districts from ad valorem taxes is not common to all such districts,⁴ and TRWD offers no legitimate reason why the legislature would

⁴See, e.g., Tex. Water Aux. Laws, Table III, art. 8280-189 (West, Westlaw through 2017 1st C.S.) [Act of April 21, 1955, 54th Leg., R.S., ch. 523, §§ 1–7, 1955 Tex. Gen. Laws 1618] (Bell County Water Control and Improvement District No. 1).

exempt TRWD's property from ad valorem taxes but not the property of all other water control and improvement districts. See *Maple Run*, 931 S.W.2d at 946.

TRWD alternatively argues that insofar as the Organic Statute is a special law, article XVI, section 59 nevertheless "otherwise provided" that the legislature could pass it. Tex. Const. art. III, § 56(a). Once again, the focus of our inquiry is not the Organic Statute as a whole but the first part of the second sentence contained in its section 11.⁵ While it is settled that the legislature "can exempt from taxation s[t]ate bonds and bonds of state agencies issued in their governmental capacities"—just like the legislature did in the second half of the second sentence in section 11 of the Organic Statute—we find nothing in article XVI, section 59, or any other constitutional authority, that permitted the legislature to specifically exempt TRWD's property from ad valorem taxes. *Lower Colo. River Auth. v. McGraw*, 125 Tex. 268, 280, 83 S.W.2d 629, 636 (1935).

The first part of the second sentence contained in the Organic Statute's section 11 violates article III, section 56(a)(22) of the Texas constitution.⁶

⁵There is no question that the legislature could pass a law like the Organic Statute. See *Maple Run*, 931 S.W.2d at 948 ("It is well settled that Section 59(b) authorizes the Legislature to pass local legislation *creating* specific conservation and reclamation districts without violating Article III, Section 56.") (emphasis added).

⁶We need not address TAD's arguments that the tax code controls over the Organic Statute or that the conflicts provision contained in section 22 of the Organic Statute does not render the Organic Statute applicable. See Tex. R. App. P. 47.1.

D. The Property is tax exempt under tax code section 11.11(a).

TAD argues that the “only legal basis for any tax exemption on the Woodshed Smokehouse Property is through section 11.11(a)” of the tax code.

As we have stated, article VIII, section 2(a) provides in relevant part that “the legislature may, by general laws, exempt from taxation public property used for public purposes.” Tex. Const. art. VIII, § 2(a). The constitutional provision “vests in the Legislature the power to determine whether or not the public property therein referred to shall be exempted from taxation.” *A&M Consol. ISD*, 143 Tex. at 350, 184 S.W.2d at 915. The legislature “has exercised the authority so vested in it” by providing in tax code section 11.11(a) that “property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.”⁷ Tex. Tax Code Ann. § 11.11(a); *A&M Consol. ISD*, 143 Tex. at 350, 184 S.W.2d at 915.

In arguing that the Property is not tax exempt under section 11.11(a), TAD principally relies upon the following two premises:

- “Over many decades and many cases, [Texas courts] . . . have strengthened the public use prong by blending the language of [article VIII, section 2 and article XI, section 9 of the Texas constitution] into a single expression of the public use requirement: To qualify for exemption under the Constitution and the Tax Code, public property must be held *only* for public purposes and *devoted exclusively to the use and benefit of the public*”; and

⁷There is no dispute the Property is public property.

- “Texas courts have consistently held that when public property is leased to a private party for private commercial purposes, such property is not “used for a public purpose,” and therefore, is not entitled to a tax exemption.”

Combining the two, TAD argues that the Property is not tax exempt under tax code section 11.11(a) because it “is being used for business operations and not for the exclusive use and benefit of the public.” We disagree with TAD that section 11.11(a) contains an exclusive public use requirement and that the Property is not being “used for public purposes.”

1. Neither article VIII, section 2(a) nor tax code section 11.11(a) contain an exclusive public use requirement.

Article VIII, section 2(a) of the Texas constitution contains an exclusive-use requirement for religious and school-related property to be tax exempt, but it does not require that public property be devoted exclusively for the use and benefit of the public to be tax exempt. Tex. Const. art. VIII, § 2(a). If the makers and adopters of article VIII, section 2(a) had intended for public property to be tax exempt only when devoted exclusively for use and benefit of the public, then they could have required so, but they did not. We presume that the decision was intentional. *See Harris Cty. Hosp. Dist.*, 283 S.W.3d at 842.

Similarly, while at least one part of tax code section 11.11 contains an exclusive-use requirement, section 11.11(a) plainly does not. *Compare* Tax Code Ann. § 11.11(a) *with id.* § 11.11(f)(2). Not only should we “presume the Legislature included words it wanted to include and excluded words it wanted to exclude,” *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*,

518 S.W.3d 318, 361 (Tex. 2017), but we are also mindful that a statutory provision cannot replace constitutional requirements. *N. Alamo Water Supply Corp.*, 804 S.W.2d at 899. Thus, in enacting tax code section 11.11(a), the legislature was obligated to remain faithful to article VIII, section 2(a)'s specific language. *See id.*

TAD's argument has no basis in the text of either article VIII, section 2(a) or tax code section 11.11(a). *See Shumake*, 199 S.W.3d at 284; *Harris Cty. Hosp. Dist.*, 283 S.W.3d at 842. TAD's argument is instead based on several intermediate appellate court opinions, none of which we find persuasive.

Two cases considered whether a medical office building that was owned by the Grand Prairie Hospital Authority but leased in part to physicians who utilized it for private practice was exempt from taxation. *Grand Prairie Hosp. Auth. v. Tarrant Appraisal Dist.*, 707 S.W.2d 281, 282 (Tex. App.—Fort Worth 1986, writ ref'd n.r.e.); *Grand Prairie Hosp. Auth. v. Dallas Cty. Appraisal Dist.*, 730 S.W.2d 849, 850 (Tex. App.—Dallas 1987, writ ref'd n.r.e.). Citing the supreme court's opinion on rehearing in *Satterlee*, both courts construed tax code section 11.11(a) to require that the property in question be devoted exclusively to the use and benefit of the public. *Tarrant Appraisal Dist.*, 707 S.W.2d at 284; *Dallas Cty. Appraisal Dist.*, 730 S.W.2d at 850–51. Because the physicians were leasing part of the building for their own commercial enterprises, the courts of appeal held that the property was not tax exempt, as it was not devoted exclusively to the use and benefit of the public. *Tarrant*

Appraisal Dist., 707 S.W.2d at 284; *Dallas Cty. Appraisal Dist.*, 730 S.W.2d at 851.

The problem with the courts' analyses is that the opinion on rehearing in *Satterlee* had nothing to do with tax code section 11.11(a); it dealt with only article XI, section 9 of the Texas constitution, which as we explained above, *does* contain an exclusive-use requirement. *Satterlee*, 576 S.W.2d 779. Because the analyses are inconsistent with section 11.11(a)'s plain language and misread *Satterlee*, we decline to follow *Dallas County Appraisal District*, and we overrule *Tarrant Appraisal District* insofar as it requires that property be devoted exclusively to the use and benefit of the public to be tax exempt under tax code section 11.11(a).

TAD also relies on *City of San Antonio ex rel. City Public Services Board of San Antonio v. Bastrop Central Appraisal District.*, No. 03-06-00081-CV, 2006 WL 2986248 (Tex. App.—Austin Oct. 19, 2006, pet. denied) (mem. op.). In that case, the court of appeals held that City Public Services, a municipally-owned utility company that provided electricity to retail customers in the San Antonio area, was not entitled to a tax exemption under article VIII, section 2 or tax code section 11.11(a) after it leased its lignite reserves on land that it owned to Alcoa, Inc. for private commercial purposes only. *Id.* at *1, *4. The court did not reach the argument “that article VIII, section 2—unlike article XI, section 9—does not expressly require exclusive use for a public purpose in order to receive a tax exemption” because City Public Services had *completely* “ceased using the

land in question for any public purpose when it signed the lease with Alcoa.” *Id.* at *4. As we explain below, unlike in *City of San Antonio*, the facts in this case do not involve a complete absence of public use, which would clearly disqualify property from being tax exempt under tax code section 11.11(a). *City of San Antonio* is inapposite.⁸

TAD also relies on *Gables Realty, Ltd. v. Travis Central Appraisal District*, a case that required the court of appeals “to determine whether Gables Realty’s state-leased property [was] exempt under section 11.11 so that [tax code] section 25.07 bec[ame] operative.” 81 S.W.3d 869, 874 (Tex. App.—Austin 2002, pet. denied). In resolving that issue, the court stated that “[s]ection 11.11(d) specifically addresses the situation here” *Id.* at 873. Because the opinion did not address whether tax code section 11.11(a) requires exclusive public use, and because TAD asserts no argument under section 11.11(d), *Gables Realty* is inapposite.⁹

And finally, TAD directs us to *Burnet Central Appraisal District*, but the court of appeals expressly declined to resolve whether tax code section 11.11(a)

⁸Insofar as *City of San Antonio* cited the *Grand Prairie Hospital Authority* cases with approval after declining to address whether tax code section 11.11(a) requires exclusive public use, we disagree with that part of the memorandum opinion. See *City of San Antonio*, 2006 WL 2986248, at *4.

⁹The opinion cited tax code section 11.11(a) after stating that “property owned by the State ‘that is not used for public purposes is taxable,’” but the quoted language is contained in tax code section 11.11(d), not section 11.11(a). *Gables Realty, Ltd.*, 81 S.W.3d at 873.

contained an exclusive public use requirement because it concluded that the RV park was used exclusively for public purposes. 497 S.W.3d at 119 n.2.

Tax code section 11.11(a)'s language is clear and unambiguous. We hold that to avail itself of the exemption contained in tax code section 11.11(a), TRWD had no obligation to prove that the Property was devoted exclusively to the use and benefit of the public. So long as the Property is "used for public purposes," TRWD is entitled to an exemption under tax code section 11.11(a).¹⁰

2. The Property is "used for public purposes."

Initially, we note that TAD's argument is worded loosely enough to be construed several different ways. On one hand, TAD argues that like the property in *City of San Antonio*, which had no public purpose after City Public Services leased its lignite reserves to Alcoa, "the nature and use of the [P]roperty [here] was fundamentally changed *from public to private* when TRWD leased the property" to River Shack to operate a restaurant and bar on the Property for its own financial gain. [Emphasis added.] To be clear, whether section 11.11(a) contains an exclusive public use requirement has no bearing whatsoever on this

¹⁰This construction does not render article XI, section 9 meaningless. As Justice Stayton observed in *Galveston Wharf*, the words "held only" and "devoted exclusively," as used in article XI, section 9, "would seem to convey the idea that a municipal corporation may own property which will *not* be exempt from taxation." 63 Tex. at 23–24 (emphasis added). If the "devoted exclusively" language contained in article XI, section 9 is so construed, and because tax code section 11.11(a) covers only "public property," then the provisions have distinct meanings and applications. This is yet another reason why we cannot superimpose article XI, section 9's "devoted exclusively" language upon tax code section 11.11(a)—they appear to serve different purposes.

specific argument because if the Property had *no public purpose* after TRWD leased it to River Shack, then undoubtedly, it could not be “used for public purposes” and tax exempt under section 11.11(a). Like the court in *City of San Antonio* addressed the issue in that case, we can resolve this specific argument by simply examining whether the Property continued to have a public purpose after it was leased to River Shack. See *City of San Antonio*, 2006 WL 2986248, at *4 (declining to consider whether section 11.11(a) requires exclusive public use because City Public Services “ceased using the land in question for any public purpose when it signed the lease with Alcoa”).

On the other hand, by relying on the *Grand Prairie Housing Authority* cases, which held that the medical building was not tax exempt because it was not being used exclusively for the use and benefit of the public, TAD appears to argue that the Property is not tax exempt because River Shack is operating a restaurant for financial gain and, therefore, not using the Property exclusively for the use and benefit of the public. We determined above that section 11.11(a) does not contain an exclusive public-use requirement, but that does not end the inquiry. We must still examine the record to determine whether TRWD established, as a matter of law, that the Property is being “used for public purposes.” See Tex. Tax. Code. Ann. § 11.11(a). Of course, if the Property is so used, then logically, it cannot have no public purpose. Our resolution of this argument will therefore necessarily resolve TAD’s “no public purpose” argument immediately above.

One thing is certain: Whether property is used for public purposes is a highly fact-specific question that, we believe, must be answered on a case-by-case basis. “Public purpose is not easily defined. It is a fluid concept which changes with time, place, population, economy, and countless other circumstances.” *S.C. Pub. Serv. Auth. v. Summers*, 318 S.E.2d 113, 114 (S.C. 1984). This case is a prime example.

TAD concedes that the Property was used for public purposes before TRWD signed the lease with River Shack. The question, however, is whether the Property continues to be so used after the lease was executed and River Shack began operating a restaurant for profit. We reasoned that the Property was not tax exempt under article XI, section 9 because River Shack uses the Property to operate a restaurant and financially benefits from that use, but an absence of exclusive public use does not negate all public use. Contrary to TAD’s overly-narrow characterization, the Property is not some run-of-the-mill strip mall that TRWD developed merely for retail purposes. River Shack no doubt operates a business for profit, but that is only one facet of a larger project that, at its core, unquestionably has a public purpose.

The legislature amended TRWD’s Organic Statute in 2001 and 2005 to authorize TRWD to, respectively, provide for “the acquisition, construction, development, operation, or maintenance of recreational facilities” and of “facilities intended to promote economic development to the full extent authorized by Section 52–a, Article III, Texas Constitution.” Tex. Water Aux. Laws, Table III,

art. 8280-207 (West, Westlaw through 2017 1st C.S.) [Act of May 28, 2005, 79th Leg., R.S., ch. 1363, § 3, sec. 18, § 4, sec. 18A(a), 2005 Tex. Gen. Laws 4302] (italics removed). Consistent with those purposes, Alan Thomas opined in his affidavit that TRWD entered into the lease with River Shack “to encourage development of river-facing businesses on TRWD’s property and adjoining properties.” He also confirmed that the Property “was intended and designed as a trail amenity to provide the public with recreational enhancements ancillary to the public’s use of the Trinity Trails system.” Thus, as TRWD’s summary-judgment evidence conclusively demonstrates, TRWD leased the Property to River Shack in connection with its optimistic plan to develop the Property for economic and recreational purposes. With its pavilion, common areas, and location adjacent to the Trinity Trails, and developed and leased for economic and recreational purposes, the Property is used for public purposes.

Both the Organic Statute and the lease confirm the Property’s public use. TRWD’s Organic Statute provides that “[t]he accomplishment of the *purposes* stated in [the Organic Statute are] for the benefit of the people of this State.” Tex. Water Aux. Laws, Table III, art. 8280-207 (West, Westlaw through 2017 1st C.S.) [Act of May 9, 1957, 55th Leg., R.S., ch. 268, § 11, 1957 Tex. Gen. Laws 574] (emphasis added). While this provision is a strong indication that the Property is used for public purposes, even better evidence is found in the lease. See *Burnet Cent. Appraisal Dist.*, 497 S.W.3d at 120 (examining lease to determine whether property had public purpose); *City of San Antonio*, 2006 WL

2986248, at *4 (same). It states that the Property “is intended for the use and enjoyment of the general public, especially including those engaged in activities on the Trinity River which flows adjacent to the southern boundary of the [Property] and those using [the] Trinity Trails.” And one of the permitted uses of the leased property is “recreational activities and entertainment, including live music.” Thus, unlike the lease in *City of San Antonio*, which expressly *disavowed* any public purpose for the property there, the lease here expressly *confirms* that the Property is used for public purposes. Any incidental private benefit that River Shack earns from its operation of the restaurant cannot somehow eliminate the public purposes for which the Property is clearly used.

We hold that, as a matter of law, the Property is “used for public purposes.” Tex. Tax Code. Ann. § 11.11(a). The trial court did not err by granting summary judgment for TRWD. We overrule TAD’s first issue.

V. SUMMARY-JUDGMENT STANDARDS

In its second issue, TAD argues that the trial court failed to apply proper summary judgment standards, including that in ruling on TRWD’s motion for summary judgment, the trial court should have deferred, or at least afforded some measure of deference, to the Tarrant Appraisal Review Board’s determination that the Property is not tax exempt.

TRWD pursued an appeal of the review board’s decision pursuant to tax code chapter 42. Not only is the scope of review in such a proceeding “trial de novo,” but the trial court is expressly prohibited from “admit[ting] in evidence the

fact of prior action by the appraisal review board . . . , except to the extent necessary to establish jurisdiction.” Tex. Tax Code Ann. § 42.23(a), (b) (West Supp. 2017). This unambiguous scope of review statutorily foreclosed the trial court from affording any deference to the review board’s determination. See *Bd. of Appraisal Review for Travis Cty. Appraisal Dist. v. Protestant Episcopal Church Council of Diocese of Tex.*, 676 S.W.2d 616, 623 (Tex. App.—Austin 1984, writ dism’d) (reasoning similarly). Nevertheless, insofar as the construction rule expressed in *Tarrant Appraisal District v. Moore* has any potential application here, we do not afford TAD’s construction of section 11.11(a) serious consideration because it contradicts tax code section 11.11(a)’s plain language, as we held above. See 845 S.W.2d 820, 823 (Tex. 1993) (“Construction of a statute by the administrative agency charged with its enforcement is entitled to serious consideration, so long as the construction is reasonable and does not contradict the plain language of the statute.”).

TAD argues that TRWD failed to establish that the Property was tax exempt as a matter of law, but our analysis over the foregoing pages shows, and holds, otherwise. We overrule TAD’s second issue.

VI. SPECIAL EXCEPTIONS AND EVIDENTIARY-OBJECTIONS

In its third issue, TAD argues that the trial court abused its discretion by overruling its special exceptions to TRWD’s summary-judgment motion. The gist of its argument is that TRWD’s motion did not sufficiently identify the grounds on which it was based. But as we touched on above, TRWD’s motion was sufficient

to give TAD fair notice of its grounds. Moreover, even if the trial court did abuse its discretion, we fail to see how TAD was in any way harmed; all arguments were preserved for appellate review, and both sides have provided this court with a substantial amount of briefing and argument, demonstrating a thorough knowledge of the overlapping issues in this complicated appeal. See *Gause v. Gause*, 496 S.W.3d 913, 919 (Tex. App.—Austin 2016, no pet.) (“In the absence of a showing of injury resulting from the denial of a special exception, the trial court’s ruling will not be disturbed.”); see also Tex. R. App. P. 44.1. We overrule TAD’s third issue.

TAD argues in its fourth issue that the trial court abused its discretion by denying its objections to part of TRWD’s summary-judgment evidence—an engineering report, Alan Thomas’s affidavit, and Tim Love’s affidavit. No part of our analysis relied on the engineering report, and to the extent that we recited any of the facts contained in Thomas’s and Love’s affidavits, we did so largely for contextual purposes. As with the special exceptions, even if the trial court did abuse its discretion, we fail to see—nor does TAD otherwise sufficiently explain—how TAD was harmed by the trial court’s rulings. See *Miller v. Great Lakes Mgmt. Serv., Inc.*, No. 02-16-00087-CV, 2017 WL 1018592, at *3 (Tex. App.—Fort Worth Mar. 16, 2017, no pet.) (mem. op.) (“Even if a trial court errs by excluding summary-judgment evidence, to obtain a reversal based on the exclusion, the appellant must demonstrate that the exclusion probably resulted in

an improper judgment.”); see *also* Tex. R. App. P. 44.1. We overrule TAD’s fourth issue.

VII. CONCLUSION

Having overruled TAD’s four issues, we affirm the trial court’s judgment.

/s/ Bill Meier

BILL MEIER
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DELIVERED: January 25, 2018