

Tomoka Oaks Times

An Independent Newsletter Focused on Preventing Residential Development of the Tomoka Oaks Golf Course

Current status of Developer's application as of January 19, 2023

NOTE: The name of the Development Application with the City of Ormond Beach is called "**Tomoka Reserve**" and details are maintained at <https://www.ormondbeach.org/1013/Tomoka-Reserve>

On January 19, 2023, Steven Spraker, Ormond Beach Planning Board Director, informed me the Planning Board received the [developer's comments](#) on the City's review of the first site plan. The revised site plan is shown below and is available [here](#).

Some highlights from the response suggest:

#1 This development will not adversely impact our neighborhood or our property values. My reply: The City's Comprehensive Plan and land development code language specifies that a PRD's "proposed use will not substantially or permanently depreciate the value of surrounding property." Tomoka Oaks completely encircles the proposed 299 unit PRD. How can that NOT adversely affect us?

#2 Developer documents claim the project is "infill" to re-purpose "a failed golf course" on "under-utilized property." My reply: These claims are refuted by the professional written opinions of Daryl Max Forgey, AICP, (available [here](#)) who describes the golf course as a vital component of the original development, and is still vital today. Forgey clearly states the property is not an "infill" project as the developer claims, but is instead a coexisting element of Tomoka Oaks character; as equally important to our neighborhood as the homes that comprise our neighborhood. We can anticipate the developer representative will continue to make vague, general, and false assertions.

#3 A portion of the property at 100 N. St. Andrews is being proposed for emergency access into the new development. Two secondary emergency access thresholds are identified at 30 Pine Valley Circle and 31 Oakmont Circle. My reply: Did all property owners agree to this, and what assurances will Tomoka Oaks receive from the City that these will not become permanent, open accesses in the future?

Since our [December newsletter](#), the developer provided two documents to the City that affect many, if not all, of us:

1. Review of the Traffic Impact Analysis viewable [here](#). Some key points are:

- Portions of the traffic study were performed in May/June 2021 and more current studies are needed.
- The traffic impact analysis and new signal warrant analysis should be submitted to the Florida Dept of Transportation for review.
- The analysis does not address increased traffic on Tomoka Oaks Blvd. projected at **2,774 additional daily trips**.

2. Hazardous Tree Report including list of tree locations and pictures, is available [online](#). This report is only for hazardous trees which border existing homes and represent an immediate concern.



The **Tomoka Oaks Times** is an independent newsletter whose goal is to prevent residential development of the Tomoka Oaks Golf Course. This newsletter is not intended to replace communications from our Tomoka Oaks HOA or their Golf Course Committee. It is our belief that both efforts are necessary to accurately and fairly represent all Tomoka Oaks residents.



Carolyn's Message

Dear Neighbors,

I have been touched by the number of you who emailed me personally, or stopped by my home to drop off your postcard, or asked to meet with me one-on-one. I sincerely appreciate the opportunity to get to know you.

So what are the questions you have been asking me?

- Do we really have a chance?
- Do you believe our city government will protect our adjacent property rights?
- Do we need a lawyer?

My reply? I honestly don't know. But what I do know for certain is I am discovering this wonderful community of people in my neighborhood who have a collective desire to prevent this development. And our spirit is real. And growing daily.

Do I think we have a chance? You be the judge. The January issue lays out facts enabling you to form your opinion. You already know mine.

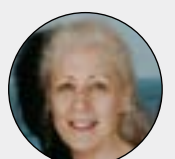
Will the City protect our property rights? The developer does have a right to develop, but that does not mean the City is obligated to approve their application. City codes and processes provide us opportunities to voice opposition to this development.

As for a lawyer? Let's see if the development gets approved. In the meantime, if you know a lawyer sympathetic to our cause and willing to work *pro bono*, for free, have them contact CarolynDavis3@gmail.com.

Am I raising 'false' hopes? No; only *real* hopes. Hope that our City recognizes long standing "implied covenants" counted on by homeowners for years to protect our neighborhood and property values. Hope the City realizes protective covenants were released in questionable actions by prior golf course owners who had conflicts of interest that jeopardized homeowner interests. Hope the City realizes this development significantly compromises the character of Tomoka Oaks. And hope the City acknowledges the historically significant gem in our own backyard - a championship [Sam Snead](#) golf course - made even more relevant with time as so many other courses close operations and get swallowed up by development.

The golf course should be preserved, as future newsletters will show.

Not giving in or up,
Carolyn Davis
46 Oakmont Circle



Tomoka Oaks - The Early Days to Present Day

Second in an ongoing series of articles regarding the history of Tomoka Oaks, information that might prevent today's development, and suggestions on how current residents can unite to voice our opposition and protect our property values.

In our [December 2022 newsletter](#), I used a fictitious 1960's era family to illustrate how potential Tomoka Oaks buyers bought homes confident their investment would always be protected by the "perpetuity covenant" in the 12/12/1963 [golf course Deed](#) (Book 585 / Page 157). In this January 2023 newsletter, I will show how that covenant was questionably released, but is still an "implied covenant" relevant to today's homeowners. For those of you who are "fact junkies," you can view **A Snapshot of the History of Tomoka Oaks; Key Dates and Their Significance to Today's Development Application** at TomokaOaksHistory.com/snapshot.

History of Tomoka Oaks:

In 1960, Tomoka Oaks, Inc. (TOI) purchased 545 acres in unincorporated Volusia County which was eventually developed into **The Sam Snead Golf and Country Club** and the **Tomoka Oaks Country Club Estates**.

Volusia County approved the coexisting golf course and residential subdivision layout in **September 1960**. The property was then annexed into the city of Ormond Beach, and the City approved the plat and [Master Planned community](#) in

August 1961. In **November 1962**, the Board of Adjustment approved that golf course homes could be set back 15 feet from the rear lot line



because TOI stated to the Board that the "course will be there for 99 years . . . there will be no subdivision."

TOI reorganized in **1963** and made Ralph R. Frederick the trustee of the golf course and the president of TOI in [Warranty Deed 585/157](#), recorded 12/12/1963. This deed encumbered upon the golf course a covenant declaring, "**Property shall be used perpetually for purposes of a golf and country club, golf course, and related uses.**"

Restrictions and rights regarding future sales of the golf course were also incorporated into Deed 585/157 which allowed TOI to voluntarily let the Tomoka Oaks HOA match any sales offer. And "reverter rights" were included that "reverted" the property to TOI if future owners did not use the property as a golf course. Those "reverter rights" were automatically and exclusive given to the HOA once 4/5's of the lots had been sold. (Note that Unit 1 Restrictions made every lot owner an automatic member of the HOA and only homeowners could change this.)

The restrictions and rights in Deed 585/157 were designed to protect homeowners and implied the coexistence of the golf course and residential subdivision. Deed 585/157 specifically stated these rights could not be modified or released for 10 years; until 12/13/1973.

Under Ralph Frederick's trusteeship, TOI placed ads promoting the coexisting golf course



and homesites.

In my opinion, a questionable series of events beginning in 1966 resulted in the questionable release of the protections and rights in Deed 585/157 and Unit 1 Restrictions.

In **January 1966**, Ralph Frederick, the trustee of the golf course and the President of TOI, took out a mortgage on the golf course as TOCC, Inc. Ralph was the president of TOCC and this mortgage made him the primary stock holder in the golf course. He included an Agreement in the loan that allowed TOI to remedy any TOCC default because "TOI owned the land surrounding the golf course, and the operation of a golf course was a valuable asset to TOI." Coexistence of the two was key to the success of both.

In **February 1969**, TOI Board of Directors (Ralph still president) vote to release all rights in Deed 585/157. But the release of rights could not happen for almost 4 years in 12/13/1973. Hmm . . . They also vote not to match the purchase offer currently being negotiated with Ormond Ocean Homes, Inc (OOHI) for the golf course and residential lots. BTW: Ralph is also the co-founder, President, GM and a shareholder in OOHI. Hmm . . .

In **August 1969**, TOI records Unit 3 Restrictions which are identical to Unit 1 but questionably omit automatic HOA membership for Unit 3 lot owners. Hmm . . .

The sale of the golf course and home lots by TOCC and TOI to OOHI subsequently occurred in early **March 1970**. Three weeks after the sale, all stock of OOHI is purchased by Sovereign Industries. Ralph was a shareholder in OOHI. Hmm . . . (Sovereign continues doing business under the name Ormond Ocean Homes.)

After the March 1970 sale, officers of TOI systematically and questionably filed recordings with Volusia County which released or negated the protective covenants and restrictions from 1963.

- **7/6/70 Conveyance** (1212/70) stated HOA never existed as a corp or association. Conveyed all HOA rights in Unit 1 Restrictions to OOHI.
- **10/19/70 Resolution** (1238/248) recorded the questionable TOI Board of Directors meeting held almost 2 years earlier releasing 585/157 rights
- **6/16/71 Release** (1307/89) released the 12/12/63 reverter clause in 585/157

It is my opinion that Frederick did not want OOHI to be encumbered by the TOI and HOA reverter rights should OOHI not

use the property as a golf course. All OOHI stock was transferred to Sovereign Industries 3 weeks after the March 1970 sale to OOHI, which was also to Frederick's financial advantage.

In **June 1971**, OOHI sold the golf course and estate lots to PLR LTD, Milton Pepper GM. One year later on **5/8/72**, OOHI questionably filed Assignment 1420/159 assigning all Unit 1 Restriction rights to PLR and questionably claiming the Tomoka Oaks HOA never existed. Hmm . . . (Per Carolyn - there are news articles dated 6/25/68 and 4/18/71 detailing HOA Club and Association activities).



Photo from 6/25/68 Daytona Beach News-Journal article covering the Tomoka Oaks Homeowners Club "Yuletide Party in June" attended by 100 homeowners. Photo by Larry Bolch, NJ photographer.

During PLR's ownership, TOI dissolves by Proclamation on **7/22/72**. This is highly questionable because the TOI and HOA Reverter clause in Deed 585/157 was still in effect until 12/13/73. What implication did this have on Tomoka Oaks homeowners should PLR have used the property for anything other than a golf course before the Reverter release date of 12/13/73? Hmm . . .

Also during PLR's ownership, Pepper forms Tomoka Oakwood Development Corp (TODC) to build and sell Tomoka Oaks North Condominiums. Every buyer receives a paid membership in the Tomoka Oaks Country Club. Hmm . . . (Pepper's son-in-law, Ben Horn, is also an officer in TODC.)

In **February 1975**, PLR sells the golf course to AKRON Enterprises, Milton Pepper, President. By the way, Pepper's son-in-law, Ben Horn, who was also a real estate agent, published ads in **1977** promoting "choice lots overlooking the fairway" in Tomoka Oaks. Hmm . . .

And in **February 1977**, PLR sells the remaining estate lots to BML and PRN

(continues on page 3)

Tomoka Oaks - The Early Days to Present Day (continued from page 2)

Investments whose subsidiaries sell all remaining lots by the early 1980's. Multiple real estate ads placed by the developer advertise golf course facing lots and homes. And a loan modification agreement indicates golf lots are valued at \$7,500 but non-course lots are valued at \$4,000/lot. Interesting . . .

Regarding the golf course, in **February 1978**, AKRON sells the golf course to Milton Pepper as an individual. Pepper then sells the golf course to RTH Inc. in **February 1979** with the condition that if RTH does not use the property as a golf course during the term of RTH's mortgage note with Pepper, then the course reverts back to Pepper. RTH pays off the loan.

In **2006**, RTH submits a development application, via attorney Rob Merrell, for PRD-06-32 to rezone the golf course from R-2 (single family low density) to PRD (Planned Residential Development) enabling development of the Tomoka Golf Village which would keep the 18-hole golf course while clustering new development of 35 town homes, 84 condos, and 3 single family homes.

in **Sept 2006** the Planning Dept Staff Report indicates there are no prior restrictions limiting land use to a golf course, but states verbatim: 1) any new residential development could not be located directly adjoining to existing residential lots within the Tomoka Oaks subdivision, and 2) remaining portion of golf course will be restricted that it cannot be used for residential development so that adjoining neighbors are confident the use of the property for a golf course and recreational area is protected.

October 2006 City Commission unanimously pass Ordinance 2006-17 rezoning golf course to PRD and approving development of Tomoka Golf Village. Meeting minutes state the Commission, Planning Board, City Attorney, Applicant's Attorney (Rob Merrell), RTH, and City Staff unanimously agree to restrict the golf course so that future residential redevelopment of the course was not possible; it would be a dedicated 18-hole golf course thus validating the implied perpetuity covenant residents of Tomoka Oaks had relied on for years.

Due to economic downturn, the development does not proceed and

the application expires in **2014** with a current zoning of "expired PRD." (zoning text corrected 1/23/23 to "expired PRD.")

In **July 2010**, RTH sells the course to Putnam State Bank who sells the course to EJTS Holding, LLC in **Nov 2011**. EJTS operates as a golf course, and as the **February 9, 2021** photo below shows, the "implied perpetuity covenant" is still a reasonable expectation for residents. In reality, the golf course owner was intentionally misleading residents and golfers into believing the course was still functional and only temporarily closed. We know now that the posted sign was outright misrepresentation while the owner was negotiating to sell the course to a residential developer.



"The Tomoka Golf Course is temporarily closed for public play so that maintenance can work to improve our quality of play."

Home buyers continue to purchase homes, many advertised as being on the golf course. As the sign above shows, the owner intentionally mislead residents and golfers into believing the course was still operating in **February 2021**.

In **April 2021**, EJTS Holdings sells the golf course to Triumph Oaks of Ormond Beach.

Also in **2021**, the Volusia County Property Appraiser revised the "Neighborhood Description" for our Neighborhood Code 2678 from "Tomoka Oaks (Golf Course)" to "Tomoka Oaks (Former Golf Course)" with implications for lowered property values.

Carolyn's summary:

It is my belief that since the creation of Tomoka Oaks, every homeowner has had a reasonable expectation that they were protected by covenants and restrictions that ensured the "perpetuity" of the golf course. Yes, questionable releases of our protections occurred, but the "perpetuity covenant" has remained an "implied covenant" which Tomoka Oaks residents have relied on when buying and living in Tomoka Oaks since 1963.

This "implied covenant" was reinforced by every developer. Every developer advertised:

- Homes overlooking the Fairway
- Golf course lots and home sites
- Enjoy a home overlooking a championship golf course

The original developer of the co-existing golf course and residential lots, Tomoka Oaks, Inc., made numerous public promises in the *Daytona Beach News-Journal* that the golf course was "permanent" and would be "subject to restrictions for use only as a golf club and other recreational use."

There is a recorded perpetuity covenant in

the 1963 Warranty Deed, which was released (in my opinion as a result of documented conflicts of interest in cross-ownership) but which remains as implied up to the present day.

In 2006, our City Commission voted to remedy the implied covenant with their approval of the 2006 RTH PRD which guaranteed no future residential development of the 18-hole golf course. Even though the PRD expired in 2014, is the "implied covenant," which the City has the authority to enforce, any less relevant today or any less worthy of permanent application by the City than it was in 2006?

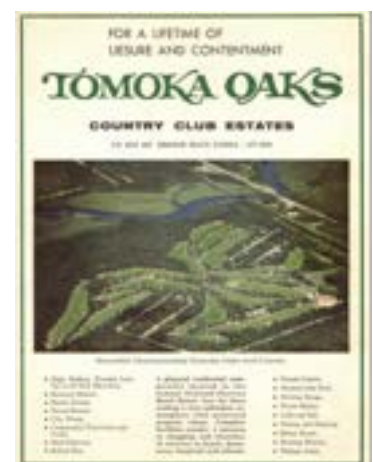
The golf course is not an infill project as the developer claims, but rather components of an approved 1960's development which still fulfills its intended purpose as a recreational or open space amenity for Tomoka Oaks homeowners. With the golf course now purchased as private property, doesn't the city have an obligation to protect long-standing adjacent property rights?

What is the collective total cost of lost property values since the developer submitted their development application? How can our City and the developer guarantee our values won't continue to decline? The County Assessor already removed "golf course" from our legal neighborhood description and now says we are "former golf course" properties. Is our property tax bill going to decrease to reflect that? Will the property taxes on the new homes ever compensate for the lost property taxes on the existing homes?

Tomoka Oaks is our home, and the heart of our neighborhood has always been the golf course. We all have a responsibility to let city officials know we do not want this development. Future newsletters will continue to inform residents how we can advocate for our established rights.

As this original Tomoka Oaks [brochure](#) states:

We are "a planned residential community . . . with protected property values . . . located on the Beautiful Championship Tomoka Oaks Golf Course."



Citations for all Daytona Beach News-Journal articles, Ormond Beach City Meetings, Plat references, Deeds, Covenants, Restrictions, Agreements, and Resolutions are fully cited at:

- TomokaOaksHistory.com/masterplan
- TomokaOaksHistory.com/restrictions
- TomokaOaksHistory.com/conflicts
- TomokaOaksHistory.com/1963deed
- TomokaOaksHistory.com/forgey

Opportunities to Let Your Voices Be Heard

So what can residents do to show their opposition to this development?

#1 - Attend these meetings:

- Tomoka Oaks Annual HOA meeting January 26, 6:00 pm, Ormond Beach Senior Center, 351 Andrews St (directly behind the Performing Arts Center).
- Neighborhood Meeting held by the Developer - Wed, 2/8/23 (see details at right)
- Planning Board Meeting TBD
- 1st Commission Hearing TBD
- 2nd Commission Hearing TBD

The more residents who attend and "peacefully" voice their opposition to this development, the better. If we don't attend, City leaders may assume we have no objections.

Bring a sign reading: **"I Oppose Development"** It can be an 8.5 x 11 piece of paper but make the writing BIG. Hold it up during every meeting so the developer and the City can see at a glance how many people are opposed. Residents have the right to speak at every city meeting. Express your views.

#2 Email Steven Spraker to get on the City's distribution list for email notifications when the Neighborhood and City meetings get scheduled.

steven.spraker@ormondbeach.org

#3 Carolyn will email all newsletter subscribers as soon as the dates are announced. Check your email's Spam or Promotions folder if you don't see any communications from me. Be sure to add these email addresses to your safe list:

- Carolyn@TomokaOaksHistory.com
- CarolynDavis3@gmail.com

#4 If you haven't yet subscribed to the **Tomoka Oaks Times**, go to TomokaOaksHistory.com/newsletter to sign up or use this QR code:



#5 If you haven't submitted the **Opposition** form or postcard, go to TomokaOaksHistory.com/opposition or use this QR code:



#6 Sign a petition started by 3 local groups (independent of the **Tomoka Oaks Times**) at Change.org/SaveTomokaOaksGolfCourse

City's Process to Reject or Approve 299 Homes on the Tomoka Oaks Golf Course

Below is a summary of what still has to occur before the City Commission votes. Track the status of each step at <https://www.ormondbeach.org/1013/Tomoka-Reserve>

- Applicant submits 2nd Site Plan to answer Site Plan Review Comm comments. **Status:** Answers provided to City on 1/19/23.
- Site Plan Review Committee reviews applicant answers and either a) completes their review or b) submits additional requests to applicant. This continues until Site Plan Review Committee is satisfied all their comments and questions have been resolved. A mandatory Neighborhood meeting held by the developer can occur before this is completed.
- **Developer's Neighborhood Meeting: Wed, 2/8/23**
Two Time Options: 5:00 pm or 7:00 pm
Location: Temple Beth-El
579 North Nova Road
Ormond Beach, FL 32174

- **Planning Board** holds a Public Hearing. Status: TBD

City's Responsibility:

At least 10 days prior to the meeting, City publishes a legal notice in local newspaper. And at least 14 days prior to the meeting, City mails abutter letters to property owners within 300 feet of the proposed site.

Residents can speak at the Planning Board hearing and are limited to 3 minutes.*

Applicant's Responsibility

At least 14 days prior to the meeting, the applicant (developer) puts up a sign to inform residents of the Planning Board meeting date, time, and location.

- **City Commission** holds a Public Hearing for 1st Reading. Status: TBD
At least 10 days prior to the meeting, City publishes a legal notice in local newspaper. At least 14 days prior to the meeting, City mails abutter letters to property owners within 300 feet of the proposed site.

Residents can speak at the 1st hearing and are limited to 3 minutes.*

At this first hearing (reading) the Commission can vote to:

- Approve the item as presented
- Approve with conditions
- Deny (no more hearings/readings on this application)

- a) If the application is denied, the developer can appeal to the Circuit Court
- b) If the application is not denied, a 2nd Public Hearing will be scheduled

- **City Commission** holds a 2nd Public Hearing for 2nd Reading only if the application was not denied at the first reading. Status: TBD
At least 10 days prior to the meeting, City publishes a legal notice in a local newspaper.

Residents can speak at the 2nd hearing and are limited to 3 minutes.*

At this 2nd hearing (or reading) the Commission can vote to:

- Approve the development application
- Approve with conditions
- Deny the development application

If the application is denied, the developer can appeal to the Circuit Court

* Residents can speak at the podium, but first must fill out a "Speaker Card" provided by city staff located in the City Hall vestibule. Residents then give the completed card to the city clerk at the dais.

The four City Commissioners and the Mayor determine if this development gets approved or rejected. We need 3 votes to deny the application and to prevent this development.

What can you do to protect your property values?

Contact Susan Persis who is the Commissioner for Zone 3 (our zone). Let Susan know why you oppose development and ask her to vote NO: susan.persis@ormondbeach.org
386-299-0404

Reach out to the other Commissioners and the Mayor and ask them to vote NO:

- Mayor Bill Partington: bill.partington@ormondbeach.org
- Commissioner Lori Tolland: lori.tolland@ormondbeach.org
- Commissioner Harold Briley: harold.briley@ormondbeach.org
- Commissioner Travis Sargent: travis.sargent@ormondbeach.org

Your presence and participation are critical to the future of Tomoka Oaks!! I know we can do this!!