

Tomoka Oaks Times

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

Carolyn's Message

Dear Neighbors,

Please plan to attend the Tomoka Reserve hearing on Tuesday, April 16 at City Hall starting at 6:00 pm.

This issue of the *Tomoka Oaks Times* includes some of the documents which

I delivered to each Commissioner and our Mayor detailing why R-2 is not an appropriate zoning for the Sam Snead Golf and Country Club property.

See you on the 16th!

Not giving in or up,

Carolyn Davis
46 Oakmont Circle

CarolynDavis3@gmail.com



Commission Hearing First Reading

April 16, 2024 - 6:00 PM

Ormond Beach City Hall
22 South Beach Street
Ormond Beach, FL 32174

Residents will be allowed 3 minutes to speak.

COMMISSION CORNER

Reprint of letter Carolyn Davis provided to the City for inclusion in the Commission Packet for the Tomoka Reserve R-2 Zoning Map public hearing

February 23, 2024

Dear City of Ormond Beach Commission,

Before purchasing the Sam Snead Golf & Country Club property in April 2021, did the Tomoka Reserve applicant verify all possible zoning options with the City? It would appear they did not.

Did the applicant provide competent substantial evidence at the Planning Board January 11, 2024 meeting that supports their R-2 Zoning Map Amendment ZMA 2023-054? It would appear they did not.

Is the applicant truly in "limbo" to exercise any development rights as their legal representative claimed at the January 11, 2024 Planning Board meeting? They appear to think so. History appears to refute that claim.

The 147 acre Sam Snead Golf & Country Club plat was amended in 2006 from R-2 to PRD zoning during the City's approval of the Tomoka Oaks Golf Village PRD. Throughout the 2006 PRD hearing process, the City **implicitly** recognized numerous times the perpetuity use of the golf course land to remain a golf course or open space recreational area as has been relied upon in good faith by Tomoka Oaks homeowners since the 1963 inception and 18-year build-out of the Tomoka Oaks **master planned community.**¹

Implicitly: to recognize in an indirect way

The current owners of the Sam Snead Golf & Country Club plat, Triumph Oaks of Ormond Beach, I, LLC, submitted their PRD-2022-043 Tomoka Reserve application in April 2022, as was their right under the conditions of the expired 2006 Tomoka Oaks Golf Village Development Order.² And when their 2022 Tomoka Reserve PRD application failed to get

their desired 272 density outcome, they withdrew their PRD and submitted a Tomoka Reserve zoning map amendment to revert back to the original R-2 zoning in order to justify even higher density for Tomoka Reserve.

As Planning Board Chairman Doug Thomas stated at the end of the January 11, 2024 Planning Board meeting for Tomoka Reserve's zoning map amendment, this was the first time in his 30+ years on the board that he had ever seen an applicant request to "go backwards" which goes against logical development practices. The other board members agreed with Chairman Thomas and with the Staff Report's denial recommendation.

The Board unanimously recommended denial of the R-2 zoning map amendment. Now you, our commissioners, have to determine if the property remains zoned PRD or goes backwards to R-2.

Let's review what "going backwards" from PRD to R-2 should take into consideration:

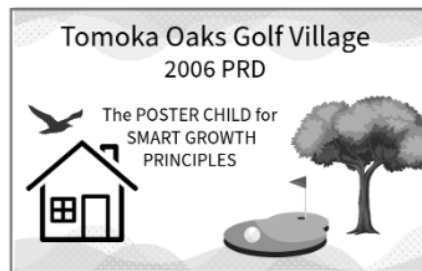
To begin with, the 2006 Tomoka Oaks Golf Village PRD application to rezone the Sam Snead Golf & Country Club plat from R-2 to PRD retained the 18-hole golf course in perpetuity while concentrating 119 multifamily units at the core of the golf course.

This 2006 PRD application was applauded and unanimously approved by the 2006 Planning Board, the 2006 Commission, the City Attorney, the City Staff, and the applicant's attorney, Rob Merrell who stated the PRD was

representative of a "Poster Child for Smart Growth principles."³

Let's look at some highlights from the August 10, 2006 Planning Board minutes³ to get some context for our Poster Child:

- The city recognized Tomoka Oaks homeowners had relied upon the golf course and bought their properties in good faith believing that the golf course would always be there.
- Mr Merrell's poster child touted a density of only 119 clustered units and 3 estate homes which satisfied traffic issues and would restrict in perpetuity the remaining 18-hole golf course recreational area to "forever remain recreation/open space."
- Staff recommended that the development order blanket the remaining golf course property with a conservation easement so the land area could not be used for anything other than the golf course or open space purposes.
- In response to concerns that the project might go bankrupt or be a victim of a poor economy and not be built, City Attorney Randy Hayes said the development order would run with the land. To protect Tomoka Oaks homeowners, the current golf course property owner and future owners were subject to the requirements of the development order.



Now let's take a look at some highlights of the City Commission first reading on October 3, 2006⁴ to provide even more justification for the unanimous R-2 to PRD rezoning:

- Mr. Merrell said the 2006 proposal included a commitment to cluster 119 multifamily units, and 3 estate homes,

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Commission Corner - continued

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in areas designed to be the least intrusive to Tomoka Oaks homeowners. And covenants would be recorded to restrict the golf course property to remain a golf course and protected green space.

- Commissioner Gillooly received an “ironclad commitment” from Mr. Merrell that this would be the last residential plan for the Tomoka Oaks community.
- Commissioner Kelley said the PRD provided assurance this zoning would never come back to an R-2, R-3, or R-4 and would be dedicated.

Sample MLS “remarks” during active 8 year 2006 Dev Order

- On the 18th green
- On 13th green
- Backs up to the 7th fairway
- View of golf course
- On the golf course
- Exceptional golf course living
- Golf course right across the street
- Tomoka Oaks, a well established neighborhood and a golf course community

MLS = Multiple Listing Service

- Mayor Costello said that “in this development order the only thing permissible was the golf course open space.”
- The City **implicitly** recognized the use of the Sam Snead Golf & Country Club parcel to retain a golf course or recreational green space in perpetuity.
- The Commission unanimously approved the PRD at their subsequent October 17, 2006 second reading.⁵

Highlights of the Tomoka Oaks Golf Village Development Order for PRD-06-32 (recorded 10/31/2006, Book 5944, Page 2183) which validate the City’s implicit recognition of the land use to retain the 18-hole golf course property in perpetuity include:

- The owner shall provide for covenants and restrictions that restrict the golf course to open space and golf course use. The City of Ormond Beach shall be involved in a manner that requires the approval of the City if the owners ever wish to remove the restriction on use.
- The Development Order shall be recorded in the public records of Volusia County Florida, . . . and shall be binding upon RTH, Inc. . . . and its successors and assigns, and shall run with the real property (Sam Snead Golf & Country Club parcel ID No. 3242-07-00-0010).
- In the event the use of the land is abandoned for a period of two (2) years, or there has been no construction activity during that period, the permit shall be void . . . and a new PRD Development Order shall be considered by the City Commission.
- The Development Order approved for RTH, Inc. was active for 8 years from 10/17/2006 through 10/17/2014.

During the 8 years the development order was active:

Approximately 156 home buyers purchased homes in Tomoka Oaks, with 108 homes identified by the MLS as either being “on the golf course” or in a “golf course community.”⁶ Buyers

bought in good faith that the golf course land was protected in perpetuity per recorded Development Order 5944/2183. Prior to any development, RTH, Inc. conveyed the property, as well as the Development Order running with the land, to Putnam State Bank on 7/21/2010 (Warranty Deed, Book 6496 / Page 4634, Volusia County FL).

Putnam State Bank sold the property to EJTS Holding, LLC on 12/12/2011 (Special Warranty Deed, Book 6659 / Page 1525, Volusia County FL). Deed states: Sale of Sam Snead Golf & Country Club subject to encumbrances, easements and restriction of records. Together with all the tenements, hereditaments and appurtenances thereto belonging in any wise appertaining.

The Development Order expired on 10/17/2014. Although the permit was now void, per the conditions of the Development Order, the City Commission could still accept a new PRD application for the property.

EJTS Holding, LLC sold the Sam Snead Golf & Country Club property to Triumph Oaks of Ormond Beach I, LLC on 4/21/2021 (Book 8036, Page 3448, Volusia County Florida).

- Warranty Deed states: *Sale of Sam Snead Golf & Country Club subject to reservations, covenants, conditions, restrictions and easements of record and to all applicable zoning ordinances and/or restrictions imposed by governmental authorities, if any.*
- Cobb Cole’s own title insurance analysis indicates that insurance coverage does not exist for the 2006 Development Order thus expressly acknowledging the 2006 Development Order.⁷

So is the applicant’s claim valid that their property rights are in limbo and the city is unlawfully denying their development rights? Or is the applicant legally allowed to submit as many PRD applications as necessary to negotiate a development acceptable to the City Commission as was incorporated into conditions of the

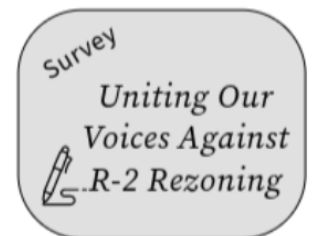
2006 PRD Development Order should it expire?

The applicant has explicitly threatened to sue the City if the Commission denies their R-2 zoning map amendment. Should the Commission deny the R-2 zoning map amendment:

- > And should the applicant file an Appeal
- > And should a judge rule on the facts presented at this hearing
- > Or should mediation be recommended to come to an agreement on appropriate zoning and the number of homes that can be built:

I request that the City insist the 2006 PRD set the precedent for any residential development: no more than 119 units located in the core of the Sam Snead Golf & Country Club plat with perpetual retention of the 18-hole golf course property as protected green space or outdoor recreational use.

Any court decision or mediation regarding an Appeal should also take into account resident responses to my **R-2 Opposition Survey**⁸ completed by 221 residents primarily living in Tomoka Oaks and the surrounding neighborhoods of Escondido Condos, The Trails, Talaquah, and Tomoka Oakwood North Condos. These residents, as well as other Ormond Beach citizens, are legitimately concerned about negative traffic impacts, decreased property values, the adverse impact on the character of Tomoka Oaks which will totally surround Tomoka Reserve, strain on existing infrastructure which was never designed for additional homes on the Sam Snead Golf & Country Club property, and catastrophic gridlock during natural or man-made disasters. (This survey is included in the Commission packet as part of the public record which the City could possibly provide for any court review.)



The **R-2 Opposition Survey** is also a key indicator of how our community best views a successful outcome for the land use of the Sam Snead Golf & Country Club property, with the majority of residents preferring retention of the green space in some form, i.e., golf course, park, wildlife habitat. Those who do believe some development is an ideal or unavoidable outcome limit their views to a clustered development that retains the golf course land, or solely to a luxury

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Commission Corner - continued

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development that greatly reduces density to achieve an upscale character.

Additionally, I request the City provide court representatives with the 48 resident letters on record⁹ opposing the PRD application as these letters are relevant to the "appropriateness" of the R-2 zoning map amendment which would allow even more density than the applicant's initial PRD application.

Lastly, I would like to remind the City of the **1963 express covenant** and the multitude of **implied covenants and restrictions** that have been in place since 1963 that support that the golf course property is to remain a golf course or recreational green space in **perpetuity**. This fully cited, historical evidence was provided to the City on June 12, 2022.¹⁰ Tomoka Oaks homeowners have relied in good faith on these recorded express and implied covenants as was most recently validated by the City in the 2006 Tomoka Oaks Golf Village PRD approval. Although the 2006 development order has expired, the City Commission's green space perpetuity

intent set a precedent that has not expired.

The "Sam Snead Golf & Country Club" and the "Tomoka Oaks Country Club Estates" were developed to co-exist as a **Master Planned Community**. Development and marketing of the estates occurred over an 18 year period (1963 - 1981). Every Tomoka Oaks home developer advertised golf course lots and golf course homes (see below) with homeowners paying a premium for golf course facing properties.

561 households¹¹ desire no residential development of the Sam Snead Golf & Country Club property. We are counting on the wisdom and leadership of our City and Commission to protect Tomoka Oaks from any zoning or development that is not in alignment with our Land Use Codes, Comprehensive Plan, and the implied perpetuity green space protection of the Sam Snead Golf & Country Club property as detailed by land use attorney Brent Spain.¹²

I request that during the 1st reading of the Tomoka Reserve R-2 zoning map amendment that the Commission

unanimously deny the application and honor the words of William R. McElroy, founding President and Chairman of the Board of Tomoka Oaks, Inc., whose **February 23, 1963 Invitation** (pg 4) published exactly 61 years ago today, promised, **"To keep this Area in all its natural beauty, certain protective covenants have been provided for the benefit and protection of all property owners."**

Respectfully submitted,

Carolyn Davis

Carolyn Davis
Tomoka Oaks
46 Oakmont Circle
Ormond Beach, FL 32174

Representing:

- 248 Tomoka Oaks Households
- 165 Trails Households
- 23 Escondido Condos
- 17 Tomoka Oakwood North Condos
- 13 Talaquah Households
- 95 Other Ormond Beach Households

Tomoka Oaks Country Club Estates

The Halifax Area's Exclusive and most beautiful rolling, wooded Golf Course Homesites!

ALL SITES WITH FULL CITY CONVENIENCES

AGENT ON PREMIER BROKER'S COOPERATION INVITED

Located 2 miles north of Granada Ave., Ormond Beach, 1/2 mi. west of the junction of US 1 and Nova (Canals) Road.

TOMOKA OAKS, INC.
Tel. OR 7-5931

Daytona Beach News-Journal
January 1, 1963

Tomoka Oaks Marketing Ads 1963 - 1979

TOMOKA OAKS COUNTRY CLUB ESTATES

OFF COURSE LOTS \$12,750 & up.
FAIRWAY LOTS \$21,850 & up.

SYMON RYALS & Assoc., Inc.-Realtor
2 Tomoka Oaks Blvd., Ormond.
672-4732 Eves. 1-428-2458.

Daytona Beach News-Journal
August 17, 1975

TOMOKA OAKS COUNTRY CLUB ESTATES

IT'S NOW OR NEVER!! NEW HOMES READY!

If you ever want to live in **TOMOKA OAKS**, now or in the future, now is your last chance. **TOMOKA OAKS LAND COMPANY** has completed their final phase of development. Some lots are still available on the Golf Course.

LOTS FROM \$19,000
NEW HOMES FROM \$72,300

TOMOKA OAKS LAND COMPANY
PH: 672-3155

DIRECTIONS: 1 Mile North of Granada (RT 40) on Nova Road. West at Tomoka Oaks Country Club entrance to Sales Office. Open 10AM-5PM Daily. 2 Tomoka Oaks Blvd. Ormond Beach.

Daytona Beach News-Journal
January 15, 1979

R-2 Zoning Opposition Survey Responses

Thank you to everyone who submitted the R-2 Zoning opposition survey. Answers clearly identify why R-2 would be detrimental to Tomoka Oaks. Results were provided to each Commissioner and can be viewed at: tomokaokshistory.com/R2survey

An Invitation from Tomoka Oaks founding President



Tomoka Oaks was quite the up-and-coming neighborhood back in the 1960's. Since then we have matured into the desirable neighborhood for "gracious, contented living" envisioned by Tomoka Oaks, Inc. founding President William R. McElroy - check out page 4 for his public 1963 invitation.

The *Tomoka Oaks Times* is an independent newsletter whose goal is to prevent residential development of the Tomoka Oaks Golf Course property. This newsletter is separate from the voluntary Tomoka Oaks HOA Golf Course Committee whose efforts are directed at mitigating development. It is our belief our development opposition is necessary to accurately and fairly represent Tomoka Oaks residents who desire no residential development.
Carolyn Davis • 46 Oakmont Circle • 32174
CarolynDavis3@gmail.com

Commission Corner - continued (continued from page 3)



February 23, 1963
Daytona Beach Sunday News-Journal, pg 39

AN INVITATION TO YOU:

Because we are so proud of our accomplishments to date, we extend to you a cordial invitation to visit Tomoka Oaks Country Club Estates.

It was months ago that Tomoka Oaks Country Club Estates was but an idea—and an excellent one—in the minds of some ambitious local citizens who desired to present the ultimate in gracious and contented living to the many people who wanted to live in Florida.

From its very inception, no effort has been spared in planning and developing—to make Tomoka Oaks Country Club Estates one of the finest exclusive residential areas in the State of Florida.

Cut from 545 beautiful wooded acres, this magnificent setting lends itself completely to natural beauty and—to preserve the contour of the rolling land and beautiful old trees—the newly constructed streets wind through the property to enhance its natural beauty.

Right in the center of this magnificent natural beauty spot has been built Tomoka Oaks Golf and Country Club—an eighteen hole championship Golf Course—6,788 yards long covering 135 acres. The Club House is now open and plans are already being developed to enlarge and improve it.

Large lots with a minimum of 100 feet at the front building line and 12,000 square feet insure your privacy. Wide streets have been built, with concrete gutters and storm sewers for good drainage. Sanitary sewers and Ormond City water have been installed.

Five model homes are now under construction. Still under construction—to be sure—but far enough along so that you can see the type of home that will be built at Tomoka Oaks Country Club Estates.

To keep this Area in all its natural beauty, certain protective covenants have been provided for the benefit and protection of all property owners.

Ideally located on Nova Road just off U.S. Route #1, within the City Limits of Ormond Beach, Tomoka Oaks Country Club Estates is but minutes to shopping, churches, schools and the World's Most Famous Beach.

We're sure you'll enjoy seeing the progress that has been made at Tomoka Oaks Country Club Estates and will be convinced that it will truly be as we have planned—one of Florida's most exclusive residential areas for healthful contented living.

We cordially invited you to drive out to Tomoka Oaks Country Club Estates today and see for yourself.

Sincerely,
TOMOKA OAKS COUNTY CLUB ESTATES.

by *William R. McElroy*
 President

SAVE TOMOKA OAKS

Get your red T-Shirt to wear to the hearing to let our Commission know we want them to **honor the promise** of the original Tomoka Oaks, Inc. Chairman of the Board, William R. McElroy, who ensured **protective covenants would be provided to every property owner** in Tomoka Oaks to ensure the natural beauty of our neighborhood.

T-shirts are just \$5 each. Text or call Darla Widnall, 386-235-5549 to place an order and discuss delivery options.

Doug and Darla Widnall of The Trails continue to provide outstanding support of our efforts to save our neighborhoods from excess development of our treasured areas.



CITATIONS:

Information sources are being provided for the public record related to the Ormond Beach Commission hearing for ZMA 2023-054. Information contained in these links should be considered in any Appeal of the outcome of the Tomoka Reserve R-2 Zoning Map Amendment ZMA 2023-054.

1. Tomoka Oaks Master Planned Community <https://www.ormondbeach.org/ArchiveCenter/View/Item/10425> Pages 552-568

2. 2006 Tomoka Oaks Golf Village PRD Development Order <https://ormondbeachfl.portal.civicclerk.com/event/2455/files/attachment/7874> Pages 47-91

3. August 10, 2006 Planning Board Minutes <https://www.ormondbeach.org/DocumentCenter/View/25274/9-01112024-Tomoka-Reserve-Zoning-Map-Amendment-PB-Staff-Report> Pages 110-130

4. October 3, 2006 City Commission Hearing Minutes <https://ormondbeachfl.portal.civicclerk.com/event/2455/files/attachment/7874> Pages 329-332

5. October 17, 2006 City Commission Hearing Minutes <https://ormondbeachfl.portal.civicclerk.com/event/2455/files/attachment/7874> Pages 334-335

6. Tomoka Oaks Homes Sales during Active 2006 PRD <https://ormondbeachfl.portal.civicclerk.com/event/2455/files/attachment/7874> Page 92 - 182

7. Cobb Cole's Analysis of Title Insurance for 20 Tomoka Oaks Boulevard, Ormond Beach, FL 32174 <https://www.ormondbeach.org/ArchiveCenter/View/Item/10425> Pages 675-686

8. **R-2 Opposition Survey:** attachment A Questions, attachment B Responses tomokaokshistory.com/R2survey

9. Resident PRD Opposition Letters which are also relevant to R-2 Zoning Opposition <https://www.ormondbeach.org/ArchiveCenter/View/Item/10425> Pages 128-210

10. Historical evidence of express and implied covenants and restrictions supporting perpetuity of

land use to remain green space or open space recreational. Supplied to the City of Ormond Beach on June 12, 2022. <https://www.ormondbeach.org/ArchiveCenter/View/Item/10425> Pages 543-572 Pages 595-662

Attachment D: Protective Covenants and Restrictions - Modified 3/10/24 replaces the original 6/12/22 document on pages 572-595. Revisions were necessary to reflect the collection of additional information relevant to Protective Covenants and Restrictions of Tomoka Oaks. TomokaOaksHistory.com/cr

11. Tomoka Reserve Development Opposition Households <https://ormondbeachfl.portal.civicclerk.com/event/2455/files/attachment/7874> Pages 313-323

12. **Attachment C:** Legal opinion of land use attorney Brent Spain of Theriaque & Spain supporting perpetuity of land use to remain green space or open space recreational. TomokaOaksHistory.com/spain