

Tomoka Oaks Times Newsletter

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

Dear Neighbors,

As we all know, the City Commission unanimously voted April 16th to deny the developer's R2 zoning application which would have allowed 300+ homes to be built on the golf course property.

Rather than file an outright legal Appeal of the denial which would mean taking the City to court, the developers have initiated a request for a Special Magistrate proceeding for mediation. As of May 22, 2024, the selection of the Special Magistrate and the date and location of the proceeding are still pending.

Statute 70.51 regards this proceeding and can be viewed at www.flsenate.gov/Laws/Statutes/2021/0070.51

So what happens at a Special Magistrate proceeding?

I am not an authority on this process, and this is my layman's interpretation:

- On April 25, 2024, the City received the developer's "request for relief" and a special magistrate proceeding for a mediation.
- As best I can tell, residents had 21 days from April 25 to request "participant" status at the special magistrate proceeding if:
 - their property borders the golf course
 - or they will be substantially affected and testified at the April 16 commission hearing
- I have made a motion to appear as a "participant" at the special magistrate proceeding, but I am not clear what that allows me to do. It appears the format of the the proceeding is somewhat loose and will be guided by the magistrate.

NOTE: If you believe you should have "participant" status at the proceeding, I suggest you contact City Attorney Randy Hayes to find out if that is still possible:

randy.hayes@ormondbeach.org

- The proceeding is public, and you do not need to have "participant" status to attend. But I do not believe you can testify unless you have "participant" status.
- This proceeding is not presided over by a judge. Instead the City and the developer have to mutually select a magistrate.
- The magistrate must be a resident of Florida and possess experience and expertise in mediation related to similar land use and governmental situations.

- After the magistrate is selected, a public hearing will be held within 45 days at a location in Volusia County.
- I understand the City will mail notice of the hearing to all Tomoka Oaks homeowners whose lots border the golf course. The City *might* also (I am not 100% certain) mail a notice to any resident who testified at the April 16 Commission hearing.
- The hearing is open to the public. I will email you the date, location and time once confirmed.

What happens if the City and developer reach a mutually acceptable agreement?

The agreement will bind the city and the developer to the solution. I believe the City Commission will then hear the agreement at a future Commission meeting.

What happens if the City and developer cannot reach an agreement?

The magistrate will weigh all information offered at the hearing (including the history of the golf course property) and within 14 days will file a written recommendation. The recommendation will either be:

1. The City's R2 denial was fair and remains, and the developer retains all other available remedies (i.e., appealing the R2 denial, suing the city, etc.)
2. The R2 denial was unfair to the developer and the magistrate may (with developer's consent) recommend alternatives such as the the number of homes allowed per acre, and the permissible land uses.

Within 45 days of the magistrate's recommendation in #2 above, the City must:

- Accept the recommendation
- Modify the recommendation
- Reject the recommendation

IF the City modifies the magistrate's recommendation, and the developer rejects the modification;

OR if the the City rejects the recommendation;

THEN the City must issue a written decision within 30 days that describes the uses available for the golf course property.

If the developer disagrees with the City' decision, the developer can proceed with civil action against the City.

Bottom Line: Will the City advocate to retain in perpetuity the green space of the 18-hole golf course as they did in 2006 when approving a PRD that limited development to 121 residential units at the front and central core of the golf course property? Will the magistrate recognize the implied covenants that Tomoka Oaks homeowners have relied on in good faith since 1962 that the golf course green space is to be perpetual? Nothing is certain at this point.

I did send an email to the City ([view here](#)) asking that the City protect our green space during any mediation proceedings. And I will promote that position in my "participant" role at the special magistrate proceeding.

Read the *Tomoka Oaks Times* newsletters at tomokaoakshistory.com/newsletter

Not giving in or up,

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