

I attended the December 18, 2024 court hearing. What a surprising experience!

I felt like a fly on the courtroom wall on December 18th when I attended Judge Dennis Craig's first hearing on the developer's Petition for Writ of Certiorari ([see 11/17/24 email blast for details](#)). On the surface, it appeared the Judge was simply going to address the Tomoka Oaks HOA's request to file an Amicus Curia Brief. This brief would explain why the HOA's attorney, Dennis Bayer, should be allowed to enter written and oral arguments during the Petition proceedings.

I knew Judge Craig had already filed an Order on 12/12/24 allowing the HOA to file their Amicus brief, so I was not sure why a Hearing was being held on this topic. I decided to attend the Hearing out of curiosity, and I am glad I did! Turns out the Judge's primary reason for getting the parties (Developer and City) together was to discuss his concern that his court might not have jurisdiction over the developer's Petition. (Jurisdiction is the power, right or authority to interpret and apply the law.)

Why was Judge Craig questioning his jurisdiction?

- Keep in mind there is a 30 day clock that starts running when someone wants to appeal a decision made by the City Commission. This legal timeframe is referred to as "tolling." When the City denied the R-2 rezoning on April 16, 2024, that Appeals clock started running.
- The appeals clock stopped running on April 25th, when the developer's attorney, Karl Sanders, filed a Request for Relief (mediation) under Florida [Statute 70.51](#). Therefore the appeals clock had run for approximately 8 of the 30 days before stopping.
- Mediation under Statute 70.51 does not involve the courts, and it may not continue longer than 165 days unless the parties agree to an extension.
- October 7th marked the approximate 165th day ([see 10/27/24 email blast](#)). At this time, the developer and the city had not come to an agreement on the terms of when and how the mediation would take place, therefore Karl Sanders believed that the appeals clock (with approximately 22 days remaining on it) started running again.
- Karl Sanders filed a Petition for Writ of Certiorari on October 25, 2024 which would appear to be within the 30 day legal timeframe allowed for the appeal.
- **EXCEPT** Judge Craig informed Karl Sanders that Sanders did not sufficiently provide the facts on what steps occurred to determine the tolling (running of the appeal's clock), thus leaving Judge Craig questioning his jurisdiction to hear the Petition.

So how was the hearing concluded?

As you can see on the December 18, 2024 [Hearing Sheet](#), the Court is directing the parties (Developer and City) to submit within 45 days their "Memorandums of Law on Jurisdiction."

- The parties are to confer on the timeline of all processes that occurred related to the 70.51 Request For Relief (mediation) initiated by Karl Sanders on April 25, 2024.
- If the parties reach an agreement on the timeline and tolling (the starting and stopping of the 30 day appeal's clock), those facts become part of the record.
- If the parties cannot agree on the timeline and tolling, an evidentiary hearing will need to be scheduled.

What does this all mean?

No one can forecast where this legal roller coaster will turn next, but I will continue to keep you updated. I will also continue to review this situation with land use attorney Brent Spain.

City's Response to Petition for Writ of Certiorari

All the discussion around jurisdiction concerns regarding the Petition for Writ of Certiorari overshadowed the City's submission of their required Response to the Petition. Local attorneys Abe McKinnon and Noah McKinnon are serving as outside counsel to the City. Their Response was filed on December 13, 2024 ([read here](#)), and it is a professional breath of fresh air.

I was an English major, and I appreciate good writing. And this Response was very well written. It meticulously countered the arguments presented by the developer's attorney Karl Sanders. I reviewed all 600 pages of exhibits attached to the City's response, and it was gratifying to see that many of the exhibits I provided for Commission and Planning Board packets were incorporated into the City's Response. Exhibits also included resident testimony, so if you spoke at a public hearing you will likely see your comments.

BTW: Exhibits and all court docs are located at <https://ccms.clerk.org/Default.aspx>

- Click the ACCEPT button
- Enter Case Number: 2024 13483 CICI and click Submit
- Click the Case Number
- Navigate to the Docket Tab for all documents including the exhibits
- Locate item #12 titled *Response By/For Hearing* and click the far right green icon

If this Petition for Writ of Certiorari does move forward in the court system, I will be asking the City to review two areas of their Response:

1. The correct spelling of Sam Snead's last name is Snead. The Response erroneously spelled it as Sneed. I have seen this misspelling in prior documents submitted by the City, and I respectfully ask the City to use the correct spelling in future court documents.
2. Page 12 of the Response, first full paragraph (shown below), contains a misperception that the developer's PRD application excluded any development of the golf course property. In my opinion, this is a major inaccuracy that misleads any court reviewing the Response.

Petitioner's application for development under existing PRD Zoning:

On April 12, 2022, Petitioner applied to develop the Property under its existing PRD zoning. Petitioner's PRD development application sought a proposed development order consisting of 276 residential units and excluded any development of the golf course with green space. (Supp. Ex.

18) **It is my opinion this is not an accurate representation of the proposed development.**

I referenced *Supp. Ex. 18* which is only the cover sheet of the PRD application and therefore does not pinpoint the area of the application which may misleadingly state that development of the golf course green space is excluded.

The images below visually demonstrate that a large majority of the golf course green space was planned for development in the petitioner's PRD. Not all homeowners who border the golf course property were afforded full retention of the golf course property behind their homes. It is important that this misperception not be perpetuated in documents submitted to the court.



*Golf course
property before
development*



*Golf course
property after
development of
276 homes*

Accepting Contributions for Brent Spain's legal trust fund

I will always be deeply grateful for the small group of Tomoka Oaks and Ormond Beach residents who stepped forward and helped me pay for land use attorney Brent Spain's [letter of opinion](#) regarding whether express and implied restrictions on the golf course property prevent residential development.

You may recall from previous newsletters that in June 2022, I provided the City a comprehensive, fully cited historical analysis of these express and implied perpetuity covenants. The City's position was that any restrictions were released and nothing prevented development. I continued to challenge that position and retained Brent Spain to review this same research.

Mr. Spain, who is experienced in golf course land use litigation, concluded that the City's position was misguided. And Mr. Spain cited numerous court cases that upheld implied restrictions which prevented residential developments of golf courses. Mr. Spain's letter of opinion was provided to the City and Planning Board before the start of any public hearings on the developer's PRD application. The City stated at the first public hearing that, "If there are legal issues raised by a legal analysis, then it is incumbent on the party represented by that attorney to initiate their own civil action." I have not been deterred by the City's dismissal.

Mr. Spain's opinion letter was included in packets for Tomoka Reserve public hearings therefore making his opinion part of the public record. I also continued to reference legal documents related to implied restrictions during every public hearing I testified at. And Mr. Spain's letter and various legal documents were most recently provided to our newly elected Mayor, Jason Lesley, who graciously met with me his first day in office so I could provide him an overview of our development prevention efforts.

I continue to retain Brent Spain, and I confidently rely on his legal counsel. If, and when, a civil action becomes necessary, I know that Mr. Spain will raise that possibility at the appropriate time. But that time is not now.

What is needed now is for additional residents to step forward and contribute to Mr. Spain's legal trust fund. If you are able to contribute even \$20, \$30, or \$50, your combined efforts will ensure Mr. Spain continues to advise me on our community's best course of action as this unpredictable process continues to unfold. Note that only checks payable to *Therisque & Spain* will be accepted. (I will not accept any checks made out to me personally). If you can contribute,

please email me, and I will provide you the specific details. Thank you.

CarolynDavis3@gmail.com

As mentioned above, a small group of residents rolled the dice with me and paid for Mr. Spain's initial legal review. Our community's efforts have gotten much further than "the powers that be" ever expected. Just look where we're at today - - a PRD application that was withdrawn, an R-2 rezoning application that was denied, and a Judge who is questioning the legality of the developer's appeal.

PSA: Like many other Ormond Beach residents, I recently received a letter from the City regarding their ongoing Pipe Inventory Program which identifies whether the water line connecting your property to the water main contains lead. One of our local residents, Laura, informed me of a company that performs pipe restoration and lining, and she thought so highly of their recent work on her mother's home that she sent me their details. I love that she trusted me enough to spread the good word about this company, but I hesitate to use this newsletter to endorse any company. If you want more details, let me know, and I will get your contact info to Laura. Thanks, Laura!



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