

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

CARILLON COMMUNITY
RESIDENTIAL ASSOCIATION,
INC., and KEN HOFER,

Petitioners,

vs.

CASE NO. 5D09-3789
L.T. Case No. 09-19AP

SEMINOLE COUNTY, FLORIDA,
AHG GROUP, LLC, and
UNIVERSITY OF CENTRAL
FLORIDA FOUNDATION, INC.,

Respondents.

**PETITIONERS' RESPONSE TO RESPONDENT SEMINOLE
COUNTY'S AFTER-THE-FACT MOTION FOR EXTENSION OF TIME**

Petitioners CARILLON COMMUNITY RESIDENTIAL ASSOCIATION, INC., and KEN HOFER (collectively "Petitioners), by and through their undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.300(a), hereby file this Response to the "Motion for Extension of Time" served by Respondent Seminole County, Florida ("County"), on December 18, 2009, and state as follows:

1. On October 26, 2009, the Petitioners filed their Petition for Writ of Certiorari in this Court to challenge a Circuit Court's Order upholding the County's approval of a 600-bed student housing complex within the Petitioners' single-family residential neighborhood.

2. On November 23, 2009, this Court entered an Order to Show Cause stating that the Respondents "shall *file* with this Court and show cause, *on or before twenty days from the date hereof*, why the Petition for Writ of Certiorari, filed on

October 26, 2009, should not be granted.” Accordingly, pursuant to this Court’s November 23 Order, the County was required to file its Response to the Petitioners’ Petition for Writ of Certiorari on or before Monday, December 14, 2009.¹

3. On Friday, December 18, 2009 – four (4) days *after* the filing deadline for its Response to the Petitioners’ Petition for Writ of Certiorari – the County served its Motion for Extension of Time, requesting an extension of time until Wednesday, December 23, 2009, to serve its Response. In its Motion for Extension of Time, the County incorrectly states that the filing deadline for its Response is December 21, 2009. As noted above, the actual filing deadline for the County’s Response was December 14, 2009.²

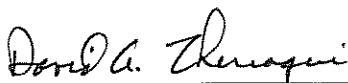
4. Although a motion for extension of time is not directly controlled by a specific time limitation set out in the Florida Rules of Appellate Procedure, it is axiomatic that “such a motion must be filed before the expiration of the time sought to be extended.” Philip J. Padovano, *Florida Appellate Practice* § 13.2 (2009 ed.) (emphasis supplied).

¹ The Court’s online docket sheet reflects the due date as December 13, 2009. However, because December 13 was a Sunday, the deadline for the County to file its Response was automatically extended until Monday, December 14. See Fla. R. App. P. 9.420(f).

² Contrary to the County’s suggestion, the County was *not* entitled to an additional five (5) days to file its Response pursuant to Florida Rule of Appellate Procedure 9.420(e). See *Gillespie v. City of Destin*, 946 So. 2d 1195, 1198 (Fla. 1st DCA 2006) (holding that an additional five (5) days for mailing is not provided when an order requires a document to be filed within so many days of the date of an order). Moreover, even assuming the County was entitled to an additional five (5) days for mailing, which it was not, the filing deadline for the County’s Response would have been December 18, not December 21 as claimed.

5. Notwithstanding the foregoing, the Petitioners, in recognition of the Court's policy to have cases decided on their merits, and as a matter of professional courtesy, do not object to the County's *after-the-fact* Motion for Extension of Time requesting an extension until Wednesday, December 23, 2009, to serve a Response to the Petitioners' Petition for Writ of Certiorari.³

RESPECTFULLY SUBMITTED on this 21st day of December 2009.



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³ The Petitioners note that the County did not make a good faith effort to determine whether the Petitioners opposed the County's Motion for Extension of Time. On December 18, 2009, at 7:30 a.m., the County sent an e-mail to the undersigned counsel, stating "Attached is a copy of my proposed motion. Please advise whether you have an objection to the motion." Rather than waiting for a response from the undersigned counsel, the County filed its Motion at 9:53 a.m. – less than two and one-half hours after the County sent its e-mail to the undersigned counsel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Telefacsimile and United States Mail to **Robert A. McMillan, Esquire**, Seminole County Attorney's Office, 1101 East First Street, Sanford, Florida 32771, and **Janet M. Courtney, Esquire**, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., P.O. Box 2809, Orlando, Florida 32802-2809, this 21st day of December 2009.



DAVID A. THERIAQUE, ESQUIRE