

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
RESPONDENTS AHG GROUP, LLC, AND
UNIVERSITY OF CENTRAL FLORIDA FOUNDATION,
INC.'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 Respondents AHG Group, LLC, and University of Central Florida Foundation, Inc. (collectively, "Developers"), 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 Developers were required to file their 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 their Response to the Petitioners’ Petition for Writ of Certiorari – the Developers served their Motion for Extension of Time, requesting an extension of time until Thursday, December 31, 2009, to serve their Response. In their Motion for Extension of Time, the Developers’ counsel claims that a paralegal incorrectly calendared the due date for their Response as December 21, 2009, instead of 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

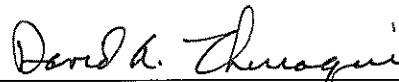
¹ The Court’s online docket sheet reflects the due date as December 13, 2009. However, because December 13 was a Sunday, the deadline for the Developers to file their Response was automatically extended until Monday, December 14. *See* Fla. R. App. P. 9.420(f).

² The Developers acknowledge in their Motion that they were *not* entitled to an additional five (5) days to file their 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). However, even assuming the Developers were entitled to an additional five (5) days for mailing, which they were not, the filing deadline for the Developers’ Response would have been December 18, not December 21.

to be extended.” Philip J. Padovano, *Florida Appellate Practice* § 13.2 (2009 ed.) (emphasis supplied).

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 given the extended illness of the Developers’ counsel, do not object to the Developers’ *after-the-fact* Motion for Extension of Time requesting an extension until Thursday, December 31, 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 Developers’ counsel did not reveal the full extent of her continuing illness when she contacted the Petitioners’ counsel before serving the Motion for Extension of Time. In addition, the Developers’ counsel indicated that she would be seeking a two and one-half week extension of time from December 21, 2009, not simply an extension until December 31, 2009.

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