

Sarasota trial over One Park, Quay waterfront plans gives insight into development process



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Litigation involving a condo project worth hundreds of millions of dollars has provided a rare glimpse into the development of a high-profile project that will shape Sarasota's downtown bayfront, depending on how a Sarasota County circuit judge rules in the coming months.

The five-day trial, interrupted by Hurricane Idalia, ended Sept. 13, with more than 400 exhibits entered into evidence and thousands of pages of documents that underscored just how much The Quay Sarasota has changed since conceptual presentations by the developers gained City Commission approval for the 14.7-acre project seven years ago.

Since then, there have been six minor modifications to a general development plan that didn't require a single vote from an elected city commissioner — even as nearly three-fourths of an acre of the project that had been pledged to remain partially open to the public was absorbed into the boundaries of private condominiums.

Developers originally proposed 189,050 square feet of retail space and 38,972 square feet of office space, in addition to 695 residential units and 175 hotel rooms.

Current buildout plans indicate there will be fewer residences than initially proposed, no hotel or new offices and less than a third of the retail space developed.

The project was initially cast as an extension of downtown Sarasota that would provide more public access to the waterfront.

"We want this place to be the center of gravity for the neighborhood in which it sits, but also for the downtown area," Tim Baker, a consultant for the developer, told city commissioners in October 2016.

Baker painted a picture of outdoor cafes with guitar-playing musicians enticing the would be customers to stop and enjoy the environment along "livable streets."

Now, one of the proposed developments, called One Park Sarasota, would build condos over that "livable street," creating a 77-foot wide, 22-foot tall breezeway opponents describe as a tunnel. City officials determined that change qualifies as a major change requiring City Commission approval, even though another project was allowed to build over the same road under a "minor" change that combined two abutting parcels.

One Park Sarasota has about two acres of The Quay under contract in two parcels that straddle Quay Commons. For One Park Sarasota to become a reality, the developer plans to join the the parcels, building the tower over the road. Their attorneys filed the legal action that resulted in the trial after objections from residents of the Ritz-Carlton Residences, developed in 2021.

Lucia Panica, the city's development services director, noted at the trial the earlier combination had always been contemplated under the original development agreement, while the most recent one had not.

Still, changes to development projects that are mostly processed without public meetings and approved by city staff have long been a point of contention for some Sarasota residents. They argue developers say one thing to get approval for their project, but wind up building something that doesn't match the images or description presented as evidence for its approval.

Developers argue the flexibility is required, as economic conditions can change, leading to perpetually stalled projects if the ability to adapt is limited – especially with large projects involving multiple developers like The Quay.

“Everybody knew those plans were conceptual and they were subject to change and they did change,” Scott McLaren, an attorney for Quay Ventures, the master developer of the project, said during the trial's closing arguments last week. “They changed substantially.”

Who owns the "air rights?"

At issue in the trial was who owns the "air rights" above Quay Commons, a private road through the development.

A covenant in a master declaration that binds all owners in the project requires "common areas" to be turned over to Quay block owners "as and when developed."

Owners of condo units in the Ritz-Carlton development, an early phase of The Quay, have been paying for maintenance of the "common areas" for years, their attorney Morgan Bentley argued in the trial, and the developer should have turned over the deed for the space above the common area when the road was developed.

The developers' attorneys have argued that the air rights were never intended to be "common area," pointing to a stretch of Quay Commons that passes under Bayso Sarasota, a block that's nearly complete, while also arguing the road is not "developed" because it still requires a final layer of asphalt and could still be damaged as the Quay is developed.

What does the word developed mean?

Circuit Judge Hunter W. Carroll often interrupted attorneys during the closing arguments seeking their opinion on what the word "developed" means, while appearing unimpressed with the Florida case law they cited to make their cases.

"You keep talking about this power of the developers like this is some sort of God-given right, but I'm construing a contract and in this particular case there were restrictions put on the developers' rights," Carroll told an attorney at trial speaking about the master declaration. "That's really what we need to be talking about, not some academic 'developers can do whatever they want.'"

Steve Hutton, an attorney representing the One Park Sarasota developers, defined developed as "done to the point that nothing will be changed."

McLaren, the attorney for the Quay's master developer, defined it as "done, complete."

"Why didn't they use the word complete?" Carroll asked.

"I wish I knew judge," McLaren said. "... I will say this, but we are developers, and we develop and that may be the reason the word was used. Complete is often used for permitting purposes. I can't explain exactly why the word was used."

Carroll also asked McLaren — who insisted that the contract between the parties requires common areas to be "designed and intended" — how he should interpret the 2016 presentation by the master developer that referred to the creation of 'livable streets,' if they wind up with buildings constructed above them.

"What you tell the city doesn't mean anything?" Carroll said. "I'm trying to figure out the intent, and your client tells the city, makes a big presentation about 'livable streets,' and now you're telling me to ignore all that ... "

McLaren called the commitments made at a meeting seven years ago "prior and contemporaneous evidence" and pointed to the Bayso breezeway as evidence of the developers' intent.

Kolter Urban, the developer of Bayso, had negotiated with Quay Ventures the contract at issue at trial, which identified the common areas, including the roads in the development. The nearly complete Bayso project created a breezeway over Quay Commons, which

McLaren pointed to while arguing his client should be able to do similarly.

"If the air rights were designed and intended (as common areas) how could Kolter build above the spine road and we can't?" he asked.

Bentley urged the judge to instead to look to the document, which he argued sides with his client.

Carroll then interrupted Bentley.

"Under that theme, let me tell you what is resonating with me, is the Bayso breezeway, and what appears to be an inconsistent position ... and their ability to build over that," he said.

Cotton candy arguments

Bentley described the argument as "like cotton candy," mostly air whipped up into an insubstantial sugary treat, saying he believed the breezeway's construction was not relevant to whether the road is developed or whether his client is owed a deed to the developed common areas.

He also argued that the city treated those two blocks differently than the two blocks One Park Sarasota has sought to purchase.

Bentley also attempted to point out that his clients could not have objected earlier, or sought to enforce the development contract in 2020, because the condo association didn't exist then.

The Ritz-Carlton condo association wasn't formed until 2021, while the change to the development agreement that allowed Bayso to build over Quay Commons occurred in 2020.

"It was only the two developers, Kolter and Quay Venture, and developers do what developers do," Bentley said. "They wanted to build so they did."

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