

**CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA**

Case No. 2026-CA-000018

Filed Pursuant to Florida Rule of Appellate Procedure 9.100(f)

CHELSEA HERBERT,

Petitioner,

v.

CITY OF BUNNELL, FLORIDA, NELL
J. BROWN, JAMES M. BROWN, SR.,
ALBERT B. JOHNSTON, JR.,
SUZANNE B. JOHNSTON, JOLY
ALLEN LANDS, LLC, ARTHUR H.
DURSHIMER, III, GEORGIA L.
DURSHIMER THIBODAUX,
STEVEN L. DURSHIMER, and
VIOLET T. DURSHIMER AS
TRUSTEE OF THE TRUST OF
VIOLET T. DURSHIMER,

Respondents.

**RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S
MOTION FOR LEAVE TO SERVE AN AMENDED PETITION FOR
WRIT OF CERTIORARI AND AN AMENDED APPENDIX**

Respondents, City of Bunnell, Florida (the "City"), Nell J. Brown,
James M. Brown Sr., Albert B. Johnston, Jr., Suzanne B. Johnston,
Joly Allen Lands, LLC, Arthur H. Durshimer, III, Georgia L.
Durshimer Thibodaux, Steven L. Durshimer, and Violet T. Durshimer

as Trustee of the Trust of Violet T. Durshimer¹, by and through their respective undersigned attorneys, and pursuant to Florida Rule of Appellate Procedure 9.300, hereby respond in opposition to Petitioner, Chelsea Herbert's, *Motion for Leave to Serve an Amended Petition for Writ of Certiorari and an Amended Appendix* (the "Motion for Leave") as follows:

I. SUMMARY OF ARGUMENT

This case arises from the City's approval of the "US 1 Park Rezoning" (as that term is defined by Petitioner's *Petition for Writ of Certiorari* (the "Petition for Writ of Certiorari")) of certain real property that is located in the City of Bunnell, Florida, and Petitioner's months-long effort to oppose the same.

¹ Respondents note that Respondents, Nell J. Brown, Albert B. Johnston, Jr., Suzanne B. Johnston, Arthur H. Durshimer, III, Steven L. Durshimer (in his individual capacity), and Violet T. Durshimer as Trustee of the Trust of Violet T. Durshimer, are not owners of the subject property and were not applicants of record as of the final hearing and approval of the US 1 Park Rezoning. Additionally, Petitioner failed to name as Respondents in this action other owners of the subject property who were applicants of record as of the final hearing and approval of the US 1 Park Rezoning. The applicants of record as of the final hearing and approval of the US 1 Park Rezoning were Chat-a-Who-Che, LLC, JOLY Allen Lands, LLC, Steven L Durshimer as Trustee of the Steven L. Durshimer Revocable Trust u/a/d August 26, 2024, ABAZ East, LLC, James M. Brown, and Georgia L. Durshimer Thibodaux.

In Petitioner's latest attempt to oppose the US 1 Park Rezoning, Petitioner filed the woefully deficient Petition for Writ of Certiorari challenging the City's approval of the US 1 Park Rezoning. The Petition for Writ of Certiorari failed to comply with the content requirements of Florida Rule of Appellate Procedure 9.100(g). Such failure is tacitly (if not, expressly) conceded by Petitioner as she filed the Motion for Leave contemporaneously with her filing of the Petition for Writ of Certiorari. That is, Petitioner instantaneously sought leave to amend the Petition for Writ of Certiorari because, in Petitioner's own words, it was "barebones".

Rule 9.100(c) provided Petitioner with thirty (30) days from the City's approval of the US 1 Park Rezoning to file the Petition for Writ of Certiorari. Despite said jurisdictional deadline being established by the Florida Supreme Court, Petitioner is now requesting this Court for a forty (40) day extension of the jurisdictional deadline because thirty (30) days was simply not enough time for Petitioner's Attorney to file a compliant Petition for Writ of Certiorari, even though Petitioner's Attorney had been raising objections to the US 1 Park Rezoning on behalf of Petitioner for months prior to the filing deadline. Also, Petitioner's Attorney represented in the Motion for

Leave that he was unable to obtain hearing transcripts of hearings that took place on September 22, 2025, and December 8, 2025, in time for the January 8, 2026, filing deadline. Such a representation is unequivocally false and evidences the bad faith nature of the Motion for Leave as court reporters routinely provide transcripts within days of hearings.

As detailed *infra*, justice does not require nor has Petitioner shown good cause for this Court to grant Petitioner forty (40) more days than the jurisdictional deadline established by the Florida Supreme Court for filing petitions for writs of certiorari. Accordingly, this Court should deny the Motion for Leave and deny the noncompliant, “barebones” requested Writ of Certiorari.

II. PERTINENT BACKGROUND

One hundred forty-nine (149) days prior to Petitioner’s deadline to file the Petition for Writ of Certiorari, on August 12, 2025, Petitioner’s attorney-of-record in this proceeding, S. Brent Spain, Esq. (“Petitioner’s Attorney”), contacted the attorney-of-record for the applicants of the US 1 Park Rezoning, Tara L. Tedrow, Esq., to raise Petitioner’s objections to the US 1 Park Rezoning for the first time.

One hundred eight (108) days prior to Petitioner's deadline to file the Petition for Writ of Certiorari, on September 22, 2025, the City conducted a public first reading of the US 1 Park Rezoning. At the first reading, Petitioner's Attorney appeared and objected to the US 1 Park Rezoning on Petitioner's behalf, citing numerous challenges to the US 1 Park Rezoning. Petitioner's Attorney had a court reporter at the first reading. Over Petitioner's Attorney's objections, the City approved the US 1 Park Rezoning for transmittal for state agency review in compliance with Section 163.3184, Florida Statutes, which was thereafter sent for a thirty (30) day state agency review and set for a final adoption public hearing.

Thirty-one (31) days prior to Petitioner's deadline to file the Petition for Writ of Certiorari, on December 8, 2025, the City held a final public hearing on the US 1 Park Rezoning. Significantly, there were no changes to the underlying zoning being requested to the US 1 Park Rezoning between the first reading on September 22, 2025, and the final public hearing on December 8, 2025. Thus, Petitioner and Petitioner's Attorney were fully apprised of the applicants' position on the US 1 Park Rezoning and had months to develop any objections to the same.

During the final public hearing, Petitioner's Attorney again appeared on behalf of Petitioner and objected to the US 1 Park Rezoning. Petitioner's Attorney presented a lengthy PowerPoint and reports for the City Commission's consideration and had a court reporter present for the hearing. Once again, over Petitioner's Attorney's objections, at the conclusion of that final public hearing, the City's Commission voted to adopt the US 1 Park Rezoning.

Thirty day (30) days prior to Petitioner's deadline to file the Petition for Writ of Certiorari and one hundred nineteen days (119) after Petitioner had raised objections to the US 1 Park Rezoning for the first time, on December 9, 2025, the City recorded in the public records Ordinance No. 2025-06, which memorialized the City's approval of the US 1 Park Rezoning. Ordinance No. 2025-06 is Exhibit "A" (i.e., the only exhibit) to Petitioner's *Appendix to Petition for Writ of Certiorari*.

One hundred forty-eight (148) days after Petitioner had raised objections to the US 1 Park Rezoning for the first time, on January 7, 2026, Petitioner invoked this Court's jurisdiction for the issuance of a writ of certiorari under Florida Rule of Appellate Procedure 9.100(c)(2) by filing the Petition for Writ of Certiorari.

Thereby, Petitioner petitions this Court for certiorari review of the City's approval of the US 1 Park Rezoning, and requests this Court to, *inter alia*, quash the City's approval of the US 1 Park Rezoning. (See Petition for Writ of Certiorari, pp. 6-7).

However, the Petition for Writ of Certiorari provides no basis whatsoever for Petitioner's requested relief; rather, Petitioner, in conclusory and "barebones" fashion, baldly asserts without factual support or legal authority that the City's approval of the US 1 Park Rezoning "[d]eparted from the essential requirements of law" and "is not supported by competent substantial evidence." (See Petition for Writ of Certiorari, p. 5). Petitioner's "argument" in support of her requested relief is literally one paragraph long. (*See id.*).

Indeed, although Petitioner's "Argument" Section of the Petition for Writ of Certiorari is three paragraphs long, the first two paragraphs thereof are a boilerplate summary of the standard of review, followed by the third paragraph, which is three-sentences long and Petitioner's only "argument" on the merits in the entire Petition for Writ of Certiorari. (See Petition for Writ of Certiorari, pp. 4-5).

Given the inadequacy of the Petition for Writ of Certiorari, Petitioner contemporaneously filed therewith Petitioner's Motion for Leave. Thereby, Petitioner instantaneously requested this Court to grant Petitioner leave to serve an amended petition for writ of certiorari and amended appendix within forty (40) days of an order granting Petitioner's Motion for Leave. (*See* Motion for Leave, p. 4).

However, as explained in Section III *infra*, justice does not require nor has Petitioner shown good cause for this Court to grant her requested relief in the Motion for Leave.

III. ARGUMENT

Petitioner filed the Petition for Writ of Certiorari pursuant to Florida Rule of Appellate Procedure 9.100(c). (*See* Petition for Writ of Certiorari, p. 4 (“The Petitioner seeks review of the City’s December 8 decision and has timely filed this Petition for Writ of Certiorari pursuant to Florida Rule of Appellate Procedure 9.100(c).”). Rule 9.100(c) imposes a mandatory jurisdictional deadline on petitioners to file petitions for writ of certiorari “within 30 days of the order to be reviewed.”

Florida Rule of Appellate Procedure 9.100(g) requires petitions for writ of certiorari, such as Petitioner's, to include the following contents:

(2) the facts on which the petitioner relies...

and

(4) argument in support of the petition and appropriate citations of authority.

The foregoing is Florida Rule of Appellate Procedure 9.100's procedure for filing petitions for writ of certiorari under Rule 9.100(c).

Conversely, Rule 9.100 does not provide any exceptions to the foregoing requirements. Rule 9.100 does not provide petitioners with seventy (70) days to file their petitions for writ of certiorari. Rule 9.100 does not allow petitioners to file "barebones" petitions just to amend them later. Rule 9.100 does not provide any procedure for amending petitions for writs of certiorari. And, most importantly, Rule 9.100 does not obligate, instruct, or even permit a court to grant a petitioner leave to amend a petition for writ of certiorari that fails to comply with Rule 9.100(g).

However, the foregoing, which is not permitted by Rule 9.100, is exactly what Petitioner is requesting this Court for leave to do via the Motion for Leave; that is, re-write Rule 9.100 for Petitioner to allow her more than forty (40) additional days to file an amended petition for writ of certiorari, after filing a one-paragraph argument in support of Petitioner's requested relief that failed to comply with the content requirements of Rule 9.100(g) because Petitioner's Attorney was purportedly "[un]able to complete the Petition for Writ of Certiorari and the Appendix within the thirty (30) day time frame." (See Motion for Leave, para. 4). However, this Court need not re-write the Rules for Petitioner who has shown no good cause for such relief and who appeared at multiple public hearings before the City Commission with numerous unsuccessful arguments prepared in advance as to why the City Commission should deny the US 1 Park Rezoning.

Factually, Petitioner's position is inaccurate and disingenuous. Petitioner argues that Petitioner's Attorney lacked sufficient time to prepare the Petition for Writ of Certiorari because the thirty (30) day timeframe provided under Rule 9.100 is shorter than the seventy (70) day timeframe provided under Rule 9.110, which somehow rendered

Petitioner with insufficient time to “prepare and compile the record for review” and “to obtain the transcripts of the public hearings held in this matter.” (See Motion for Leave, paras. 3-4).

The fact that Rule 9.110, which governs appeals following final orders of lower tribunals, grants seventy (70) days is a red herring. This is not an appeal following a final order of a lower tribunal, nor is Petitioner invoking this Court’s jurisdiction under Rule 9.110. Rather, Petitioner invoked this Court’s jurisdiction for certiorari review under Rule 9.100, which provides a thirty (30) day jurisdictional deadline established by the Florida Supreme Court. Thus, Rule 9.110’s briefing deadline is irrelevant to the issue at hand.

Additionally, Petitioner’s Attorney has been objecting to the US 1 Park Rezoning on behalf of Petitioner since August 12, 2025 – one hundred forty-nine (149) days before Petitioner’s jurisdictional deadline to file the Petition for Writ of Certiorari. Petitioner’s Attorney raised Petitioner’s objections to the Petition for Writ of Certiorari multiple times over the course of months prior to Petitioner’s deadline to file the Petition for Writ of Certiorari. Accordingly, the notion that Petitioner’s Attorney had insufficient time to formally file Petitioner’s objections to the US 1 Park Rezoning, which she had been raising for

nearly five months prior to the filing deadline, is as preposterous as Petitioner's Attorney feigning that thirty (30) days was insufficient time to have two hearing transcripts ordered (*see* Motion for Leave, para. 4) as Court reporters are routinely able to expedite delivery of hearing transcripts in less than five business days (and, in most cases, even sooner).

Legally, in the Motion, Petitioner cites the case of *Penate v. State*, 967 So. 2d 364 (Fla. Dist. Ct. App. 2007) in support of the Motion for Leave, despite that case's facts being totally distinguishable. (*See* Motion for Leave, para. 5). In the *Penate* case, the petitioner sought second-tier certiorari review of a circuit court's decision dismissing the petitioner's appeal for failure to timely file a petition. *See Penate*, 967 So. 2d 364. The circuit court concluded that because the petitioner **was given only 6 days' notice of a final order**, the petitioner should have at least filed a "bare bones" petition along with a request for an extension of time citing unique circumstances of petitioner's late notice of a final order. *See id.*

Unlike the petitioner in the *Penate* case, Petitioner was fully aware of the City Commission's approval of the Ordinances thirty (30) days before Petitioner's deadline to file the Petition for Writ of

Certiorari under Rule 9.100. Moreover, as detailed *supra*, Petitioner had months to develop and prepare her objections prior to the thirty (30) day jurisdictional deadline under Rule 9.100 beginning to run.

Petitioner has shown no cause for why she was unable to timely file a petition for writ of certiorari in compliance with Rule 9.100(g) by the thirty (30) day jurisdictional deadline established by Rule 9.100(c). Petitioner has not claimed that she was unaware of the City's approval of the US 1 Park Rezoning or Ordinance No. 2025-06. Petitioner has not asserted any exigent circumstances that would somehow forestall her or her attorney from meeting the thirty (30) day jurisdictional deadline. And, most egregiously, Petitioner has not shown this Court any efforts made by Petitioner to even attempt to comply with the thirty (30) day jurisdictional deadline established by Rule 9.100(c), other than filing a "barebones", boilerplate Petition for Writ of Certiorari with literally one (1) paragraph of argument on the merits.

If Petitioner's Motion for Leave was filed in good faith "and not for purposes of delay or any other improper purpose" as Petitioner's Attorney purports in the Motion for Leave (at para. 6 thereof), then one would expect that Petitioner would be able to specify the efforts

undertaken by Petitioner to comply with the thirty (30) day jurisdictional deadline. Instead of showing any such effort in the Motion for Leave, Petitioner's Attorney simply purports that thirty (30) days was just not enough time for him to prepare anything but a "barebones" Petition for Writ of Certiorari. (See Motion for Leave, para. 4).

The Motion for Leave does not demonstrate good cause to grant Petitioner leave to amend. Rather, it demonstrates a transparent delay tactic, whereby Petitioner and Petitioner's Attorney, who is Board Certified in City, County, and Local Government Law, made the bare minimum effort to comply with Rule 9.100(c)'s jurisdictional deadline by filing a "barebones", non-compliant Petition for Writ of Certiorari with the expectation that this Court would effectively change the Rules of Appellate Procedure for Petitioner by granting her leave to file a compliant petition more than forty (40) days after the jurisdictional deadline established by the Florida Supreme Court. Again, that is not good cause to grant leave to amend, and it is not in the interest of justice to do so.

Consequently, this Court should deny the Motion for Leave, and in doing so, this Court should refrain from entering an order directing

Respondents to file a response to the Petition for Writ of Certiorari and summarily deny the same as (1) the Petition for Writ of Certiorari fails to comply with Rule 9.100(g) in that Petitioner failed to set forth or raise facts, arguments, or citations of authority in support of the Petition for Writ of Certiorari, and (2) Petitioner has failed to demonstrate a preliminary basis for relief or a departure from the essential requirements of law that will cause material injury. *See Fla. R. App. P. 9.100(h).*

IV. CONCLUSION

Accordingly, this Court should (1) deny the Motion for Leave, (2) refrain from entering an order directing Respondent to file a response to the Petition for Writ of Certiorari, and (3) summarily deny the Petition for Writ of Certiorari.

Filed this 21st day of January 2026.

/s/ Garrett M. Olsen

PAUL WATERS, ESQ.

Florida Bar No. 817651

GARRETT M. OLSEN, ESQ.

Florida Bar No. 1025600

Vose Law Firm, LLP

324 W. Morse Blvd.

Winter Park, FL 32789

Telephone (407) 645-3735

Facsimile (407) 628-5670

paul@voselaw.com

golsen@voselaw.com

cdarcy@voselaw.com

mguidone@voselaw.com

*Attorneys for Respondent, City of
Bunnell, Florida*

/s/ Michael D. Piccolo

Rebecca E. Rhoden

Florida Bar No. 0019148

Tara L. Tedrow

Florida Bar No. 100411

Michael D. Piccolo

Florida Bar No. 1003505

**Lowndes, Drosdick, Doster, Kantor
& Reed, P.A.**

215 North Eola Drive

Orlando, Florida 32801

Telephone: (407) 843-4600

rebecca.rhoden@lowndes-law.com

tara.tedrow@lowndes-law.com

michael.piccolo@lowndes-law.com

litcontrol@lowndes-law.com

deedee.faurismar@lowndes-law.com

Attorneys for Respondents, Nell J. Brown, James M. Brown Sr., Albert B. Johnston, Jr., Suzanne B. Johnston, Joly Allen Lands, LLC, Arthur H. Durshimer, III, Georgia L. Durshimer Thibodaux, Steven L. Durshimer, and Violet T. Durshimer as Trustee of the Trust of Violet T. Durshimer.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January 2026, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal system, which will send notice of electronic filing and complete service of the foregoing as required by Florida Rules of Judicial Administration 2.516 to David A. Theriaque, Esq. and S. Brent Spain, Esq., Counsel for Petitioner, dat@theriaquelaw.com, sbs@theriaquelaw.com.

/s/ Garrett M. Olsen

GARRETT M. OLSEN, ESQ.

Florida Bar No. 1025600

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Florida Rule of Appellate Procedure 9.045, that this document complies with the applicable font requirement and word count limit.

/s/ Garrett M. Olsen

GARRETT M. OLSEN, ESQ.

Florida Bar No. 1025600