

# 17APPEAL000



## Louisville Metro Board of Zoning Adjustment Public Hearing

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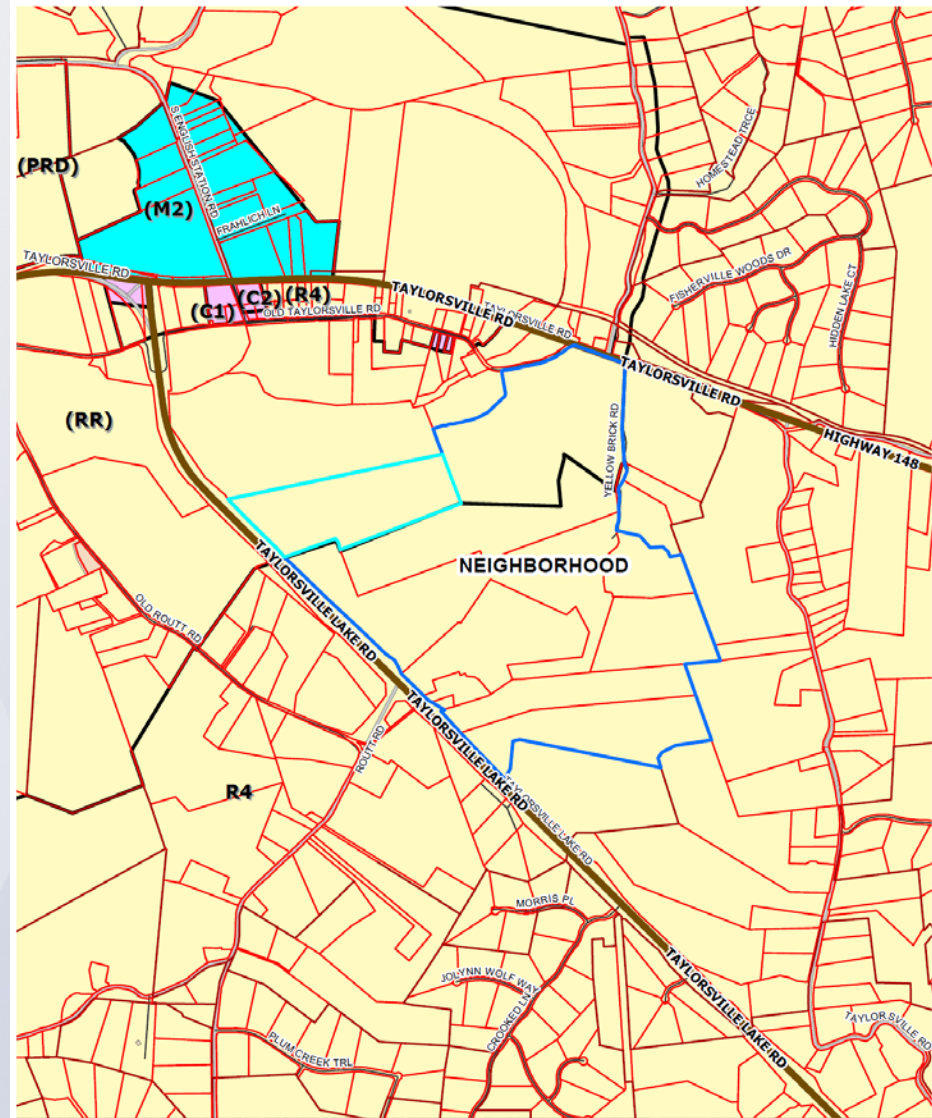
March 6, 2017

# Request

- Appeal of a Zoning Violation Notice issued by Planning and Design Services concerning clearing of forested area greater than 5,000 square feet for development purposes in violation of Section 3.1.B.2 of the Land Development Code.

# Zoning/Form Districts

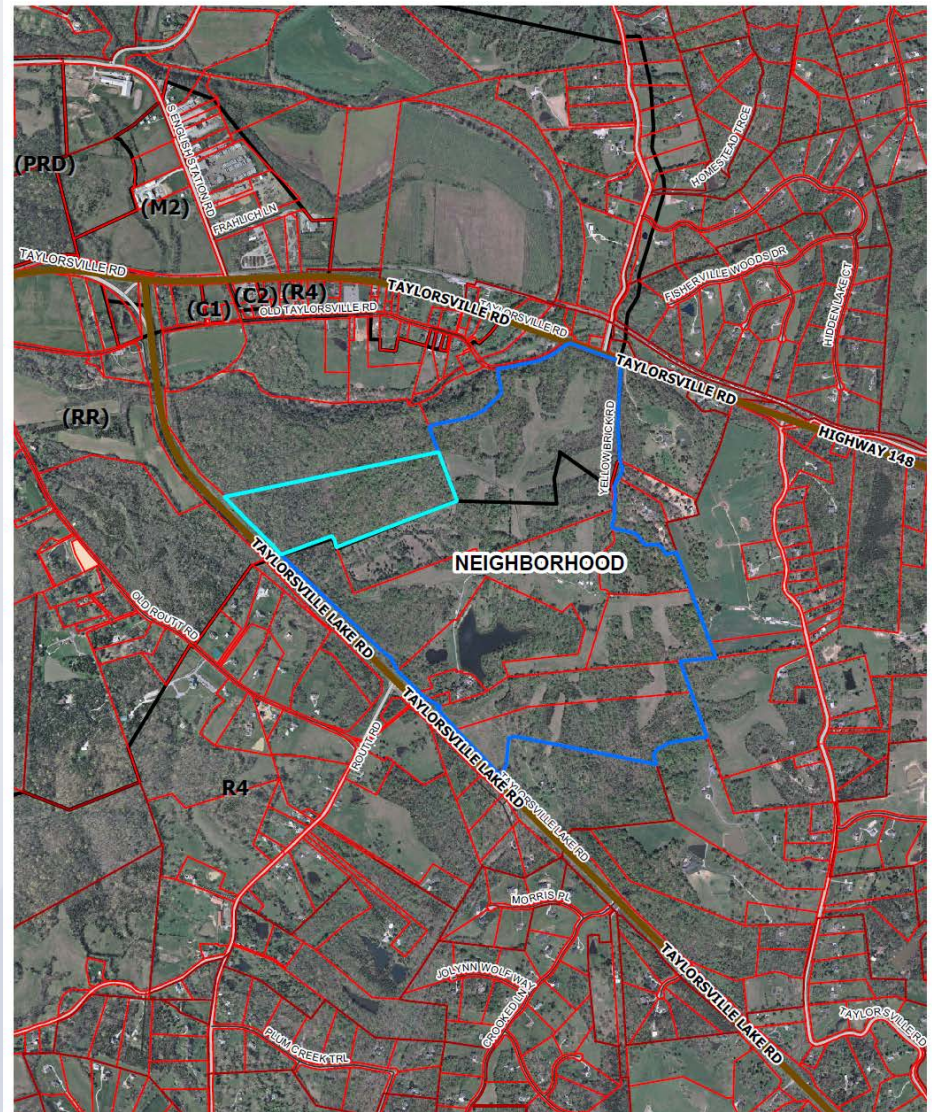
- Subject: R-R (FF), N
- North: R-R (FF), N
- South: R-4, N
- East: R-R (FF), N
- West: R-R (FF), N





# Aerial Photo/Land Use

- Subject: Wooded
- North: Wooded
- South: Wooded
- East: Wooded
- West: Wooded



# Background

- Pursuant to KRS, BOZA hears appeals of an administrative action of a Code Enforcement Officer.
- A Code Enforcement Officer issued a Zoning Violation Notice (ZVN) for the property, located in the Floyds Fork DRO, based on complaints that logs were being trucked off the property onto Taylorsville Lake Road.
- The appeal letter generally asserts that the ZVN is invalid because the property owner was not clearing over 5,000 square feet of trees for development purposes. Instead, the appellant claims the tree clearing was agricultural.



# LDC Provisions

Chapter 1, Part 2 of the LDC defines “Agricultural Use” in part, as follows:

Agricultural Use (KRS 100.111):

- A. A tract of at least five (5) continuous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants, including provision for dwellings for persons and their families who are engaged in the agricultural use on the tract, but not including residential building development for sale or lease to the public;

# LDC Provisions

Chapter 1, Part 2 of the LDC defines “Development” as follows:

Except where the context otherwise requires, "development" shall mean the performance of any man-made change to improved or unimproved real estate including, but not limited to, building or mining, dredging, filling, grading, paving, excavating, or drilling operations; the permanent storage of materials and equipment; the making of any material change in the use or appearance of any structure or land; the division of land into two or more parcels; and any construction of improvements or clearing or the alteration of land from a natural state to facilitate a residential, commercial, business, industrial, or public use.

# LDC Provisions

Section 3.1.B.2 of the LDC contains a list of regulated activities in the Floyd's Fork DRO. That Section reads, in part:

Activities that may be detrimental to the natural, scenic and environmental characteristics as described herein are regulated by the provisions of this ordinance and subject to the review process set out in paragraph 3 below. Such activities include:

- a. Clearing of forested area greater than 5,000 square feet for development purposes.

The referenced paragraph 3 in the quoted provisions above says that any of the listed regulated activities must have approval from the Planning Commission, after a public hearing, before they may take place.



# Previous Cases On Site

- 8682 On 1/5/07, the owner submitted a pre-application for a rezoning from R-R and R-4 to PRD along with a preliminary plan for Covington by the Park, a 1,154-lot single-family subdivision on 317 acres. The request did not go past the pre-application review stage.
- 16ZONE1002 On 1/11/16, the property owner submitted a pre-application for a rezoning from R-R and R-4 to R-4 and C-1 along with a preliminary plan for Covington by the Park, a 1,390-lot single-family conservation subdivision with commercial and retail on a total of 448 acres. The request was withdrawn on 12/30/16.
- 16PM32085 Based on a complaint received in February 2016, on 12/30/16, Planning and Design Services Code Enforcement issued a Notice of Zoning Violation for the subject property concerning clearing of forested area greater than 5,000 square feet for development purposes in violation of Section 3.1.B.2 of the Land Development Code.

# Previous Cases On Site





# Previous Cases On Site





# Staff Analysis

- Submittal of the pre-application on 1/11/16 signifies intent to develop the subject property.
- Pre-Application is the first step in a chain of reviews and approvals that has to take place before a development is finalized and ready to be occupied.
- Section 3.1.B.2 takes into consideration intent to develop.
  - The clearing of more than 5,000 square feet of forested area “for development purposes” is prohibited in Section 3.1.B.2 without first having Planning Commission approval.
  - Merriam-Webster Learner’s Dictionary defines “purpose” as “the reason why something is done or used : the aim or intention of something.”
  - Staff believes that the language in the LDC contemplates intent to develop by using the term “purposes”.
  - Staff also believes that from the time that the property owner submitted the pre-application plan on January 11, 2016, until the owner withdrew the pre-application on December 30, 2106, that there was intent to develop the property.

# Staff Conclusions

- Harvesting timber can be a legitimate agricultural activity.
- However, intent to develop in the Floyds Fork DRO has been established by submittal of a pre-application plan.
- Clearing of trees over 5,000 SF in area for development purposes is a Regulated Activity that requires approval beforehand from the Planning Commission.
- Based on Staff observation, more than the threshold amount of clearing took place on the property after the Pre-Application was filed.

# Staff Conclusions

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that this is an Appeal of a Zoning Violation Notice issued by Planning and Design Services concerning clearing of forested area greater than 5,000 square feet for development purposes in violation of Section 3.1.B.2 of the Land Development Code; and

WHEREAS, the submittal of the pre-application plans for a rezoning on January 11, 2016, signifies intent to develop the subject property and a pre-application submittal is the first step in a chain of approvals that has to take place before a development is finalized and ready to be occupied; and

WHEREAS, the clearing of more than 5,000 square feet of forested area for development purposes is prohibited in Land Development Code (LDC) Section 3.1.B.2 without first having Planning Commission approval; and

WHEREAS, the language in the LDC contemplates intent to develop by using the term “purposes;” therefore, from the time that the property owner submitted the pre-application plan on January 11, 2016, until the owner withdrew the pre-application on December 30, 2016, that there was intent to develop the property; and

WHEREAS, the Board finds that the Zoning Violation Notice was properly issued on December 30, 2016, as case 16PM32085 because logging activity was reported as taking place on the subject property in February 2016 and Planning and Design Services Staff observed significant tree removal while conducting a site visit to the property on February 23, 2016.

NOW, THEREFORE, BE IT RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby AFFIRM that the Zoning Violation Notice was properly issued on December 30, 2016, as case 16PM32085 and that the subject property was in violation of LDC Section 3.1.B.2.

BE IT FURTHER RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby DENY the Appeal.



# Required Actions

Based upon the file of this case, the staff report, and the evidence and testimony submitted at the public hearing, BOZA must

- Determine if the Zoning Notice Violation was issued properly or in error and
- Affirm or reverse the determination that the property owners cleared a forested area greater than 5,000 square feet for development purposes.