

Board of Zoning Adjustment
Staff Report
March 6, 2017



Case No:	17APPEAL1000
Project Name:	4201 Taylorsville Lake Road Appeal
Location:	4201 Taylorsville Lake Road
Owners:	Long Run Creek Properties
Appellant:	Bardenwerper Talbott & Roberts on behalf of Logan Run Creek Properties
Jurisdiction:	Louisville Metro
Council District:	20—Stuart Benson
Case Manager:	Brian Mabry, AICP, Planning & Design Supervisor

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.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Pursuant to KRS 100.257 and 100.261 the Board of Zoning Adjustment shall hear appeals of an official action, order, requirement, interpretation, grant, refusal or decision of an administrative official, zoning enforcement officer or code enforcement officer. Appeals must be taken within 30 days of the official action. Action in this case is deemed to be December 30, 2016, when the Zoning Enforcement Officer issued the Zoning Violation Notice. The appellant submitted the appeal on January 30, 2017.

The subject property is approximately 51 acres in area, is predominately forested and has approximately 1,000 feet of frontage along Taylorsville Lake Road. The property is within the Floyd's Fork Development Review Overlay (DRO), which prohibits the clearing of forested area greater than 5,000 square feet for development purposes without first having approval by the Planning Commission.

A Zoning Enforcement Officer, James Mullarkey, issued the Zoning Violation Notice (Attachment 3) on December 30, 2016, based on complaints that logs were being trucked off the property onto Taylorsville Lake Road. See "Previous Cases on Site" for more information.

The appeal letter generally asserts that the Zoning Violation Notice is invalid because the property owner was not, as asserted on the violation, clearing over 5,000 square feet of trees for development purposes. Instead, the appellant claims, the tree clearing was for agricultural purposes, an activity exempt by state statute and by the Land Development Code (LDC) from zoning regulations.

RELEVANT LAND DEVELOPMENT CODE (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;*

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.

Chapter 3, Part 1 of the LDC contains regulations for the Floyd’s Fork DRO District. The purpose of this particular DRO is to “protect the quality of the natural environment. The district achieves these purposes by promoting compatible development of land and structures.” The purpose statement of the DRO goes on to say “The Development Review District is to protect the public and property owners in the district....vi. From the destruction of mature and/or valuable trees and other vegetation and wildlife habitat.”

Section 3.1.B.2 of the LDC contains a list of regulated activities in the 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 January 5, 2007, 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 January 11, 2016, 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 December 30, 2016.

16PM32085 Based on complaints received in February 2016, on December 30, 2016, Planning and Design Services Zoning 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. Zoning Enforcement and other Planning and Design Staff members initially

inspected the property with the owner on February 23, 2016. See Attachment 5 for pictures at the time of that site visit. No violations were issued because (1) the owner agreed to stop logging operations and submit a proposal for possible tree mitigation associated with the Covington by the Park plan; and (2) from April to October 2016, Metro Staff was working on drafting new provisions for the conservation subdivision standards.

INTERESTED PARTY COMMENTS

See Attachment 5.

NOTIFICATION

Date	Purpose of Notice	Recipients
2/16/17	Hearing before the Board of Zoning Adjustment	1 st Tier property owners, interested parties and Subscribers of Council District 20 Notification of Development Proposals
2/17/17	Hearing before the Board of Zoning Adjustment	Posting of sign on property
2/24/17	Hearing before the Board of Zoning Adjustment	Legal advertisement in the Courier Journal

STAFF ANALYSIS

The appellant claims that the Zoning Violation Notice is invalid because the clearing of trees was an allowable activity on the property. The appellant makes this assertion because he claims: (1) the cutting of trees is exempt from zoning regulations as an agricultural activity; (2) submittal of a pre-application plan does not constitute "development activity"; and (3) even if the cutting of trees were a regulated activity the relatively minor harvesting claimed to take place should not meet the threshold for review.

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

In addition, the language in Section 3.1.B.2 takes into consideration intent to develop. The clearing of more than 5,000 square feet (about the size of a typical residential lot) of forested area for development **purposes** is prohibited in Section 3.1.B.2 without first having Planning Commission approval. The Merriam-Webster Learner's Dictionary defines "purpose" as "the reason why something is done or used : the aim or **intention** of something." (<http://learnersdictionary.com/definition/purpose> accessed on February 22, 2017). 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, 2016, that there was intent to develop the property.

STAFF CONCLUSIONS

Staff agrees that the harvesting of timber, while not ideal in light of the public good in certain areas of Louisville Metro, can be a legitimate agricultural activity. However, after the intent to develop in the Floyds Fork DRO has been established by submittal of a pre-application plan, the clearing of trees over 5,000 square feet in area goes from being a permitted activity by the LDC to being a Regulated Activity that requires approval beforehand from the Planning Commission. Staff concludes that more than the threshold amount of clearing took place on the property after the Pre-Application was filed and that the Zoning Violation Notice is valid.

Staff proposes the following findings for BOZA to adopt:

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

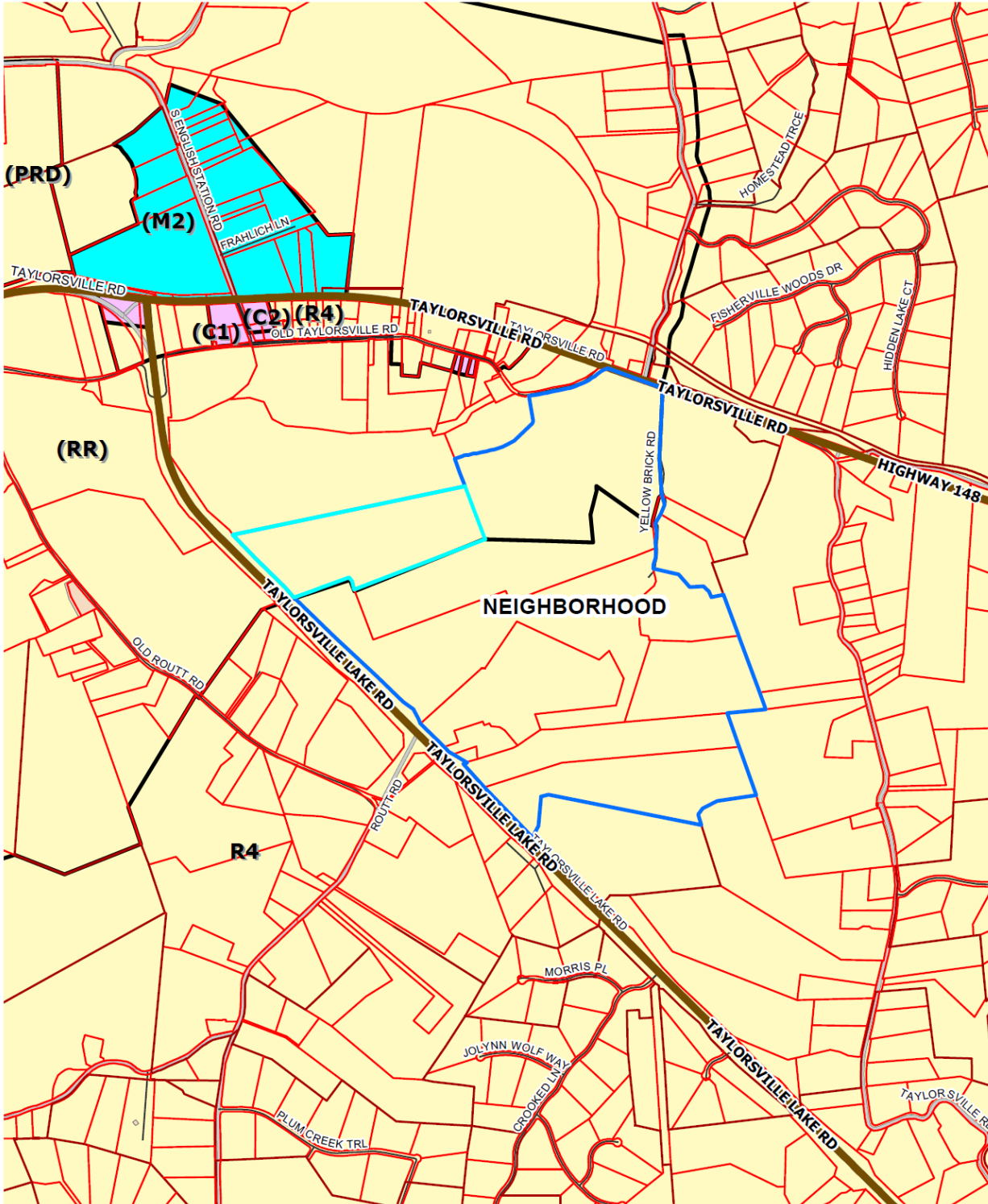
Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, BOZA must (1) determine if the Zoning Notice Violation was issued properly or in error and (2) affirm or reverse, the determination that the property owners cleared a forested area greater than 5,000 square feet for development purposes.

ATTACHMENTS

- 1. Zoning Map**
- 2. Aerial Photo**
- 3. Zoning Notice Violation**
- 4. 16ZONE1002 Pre-Application Subdivision Plan**
- 5. Interested Party Comments**

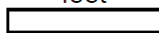
ATTACHMENTS

1. Zoning Map



17APPEAL1000

feet



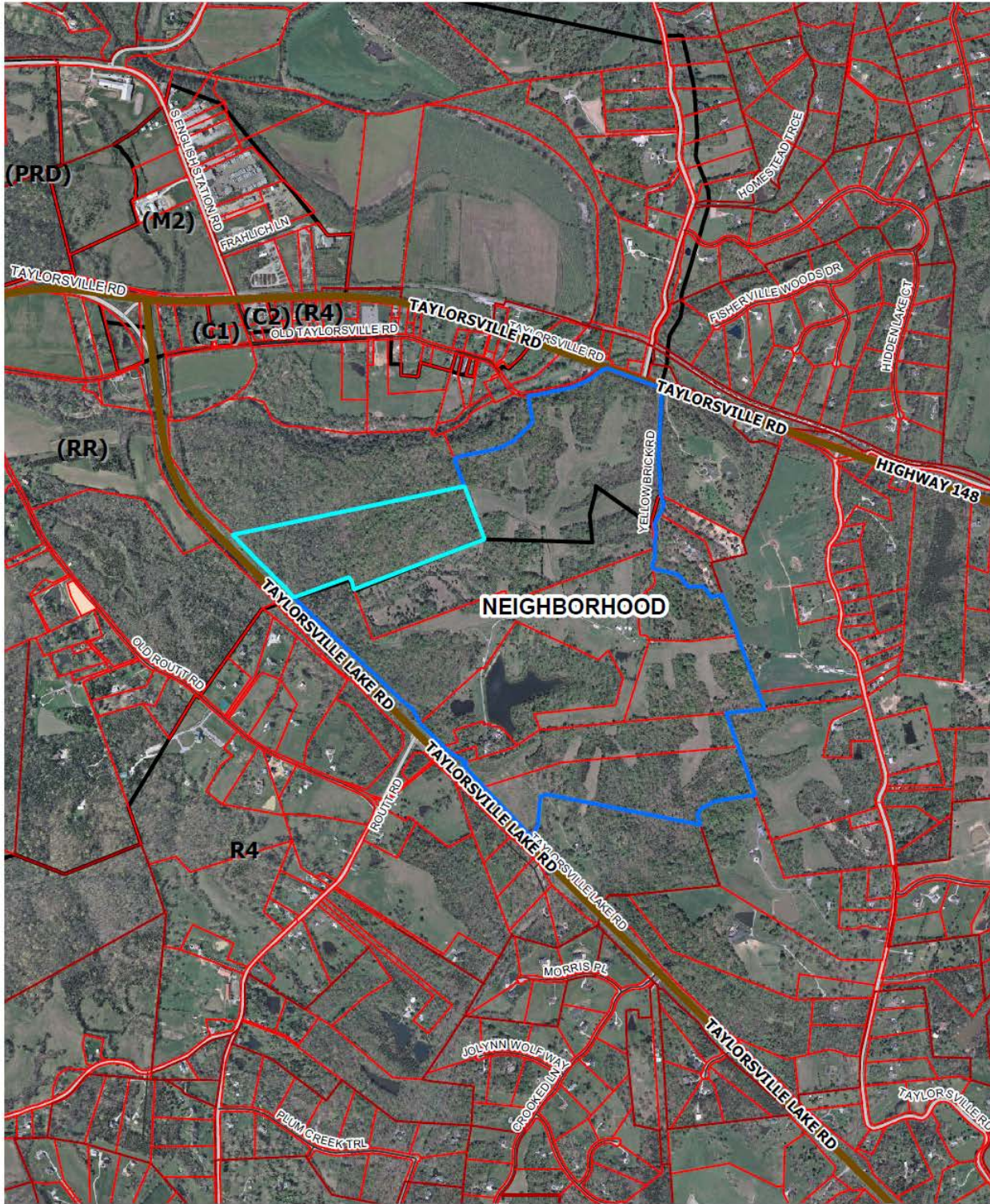
1,500

Map Created: 3/11/2017



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2. Aerial Photograph



17APPEAL 1000
 feet
 1,500
 Map Created: 3/1/2017



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3. Zoning Violation Notice



Louisville-Jefferson County Metro Government
Office of Planning & Design Services

Develop Louisville

444 S. 5th Street, Suite 200 - Louisville, KY 40202

Phone: (502)773-2069 Email: james.mullarkey@louisvilleky.gov Web Site: louisvilleky.gov/government/planning-design

Case Number: 16PM32085-1029795

12/30/2016

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Owner:

LONG, RUN CREEK PROPERTIES L
S. Bradford Rives
3911 WILDERNESS TRL
LOUISVILLE, KY 40299-4966

ZONING VIOLATION NOTICE

Location: 4201 TAYLORSVILLE LAKE RD

The aforementioned property was inspected on December 30, 2016 and the inspector observed one or more violations of the Louisville Metro Land Development Code.

You must immediately cease using this property in violation of the Land Development Code.

Failure to comply with this Notice will result in fines against you of not less than \$10 but not more than \$500 for each violation with each day of violation. Each day that a violation continues after this Notice shall be deemed a separate offense.

If you disagree that the subject property is in violation of the Land Development Code as described in this Notice, an appeal may be filed with the Board of Zoning Adjustment (BOZA). Appeals must be filed within thirty (30) days of the date this Notice. The appellant shall use the official BOZA appeal form and attach any required supplemental documentation. A copy of any BOZA appeal must be provided to the zoning enforcement inspector of record at the time the appeal is filed. BOZA appeal forms are available at the Office of Planning & Design Services, located at 444 S. 5th Street, or online at <https://louisvilleky.gov/government/planning-design/planning-and-design-applications>.

An inspector will be returning to your property in the near future to ensure that you have complied with this Order. Should you have any questions, please call me at the number below.

If you are not the owner of this property, you have been sent a copy of this Notice as an interested or affected party.

JAMES MULLARKEY

Inspector
(502)773-2069
james.mullarkey@louisvilleky.gov



Louisville-Jefferson County Metro Government
Office of Planning & Design Services

Develop Louisville

444 S. 5th Street, Suite 200 - Louisville, KY 40202

Phone: (502)773-2069 Email: james.mullarkey@louisvilleky.gov Web Site: louisvilleky.gov/government/planning-design

Case Number: 16PM32085-1029795

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Z263 OVERLAY DIST. DEVELOP. REVIEW

Inspector Comments: **Overlay District Development 3.1.B.2**

Regulated Activities:

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. Such activities include:

A. Clearing of forested area greater than 5,000 Square Feet for development purposes.

Chapter 3 Part 1.B.2: Development Review Overlay District Regulated Activities: 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...

Responsible: OWNER

Subject violation needs to be in compliance on or before January 30, 2017 to avoid additional fines and court action.

4. Pre-Application Subdivision Plan



5. Interested Party Comments

Schwager, Zachary D.

From: Mabry, Brian K.
Sent: Wednesday, March 1, 2017 9:42 AM
To: Schwager, Zachary D.
Subject: FW: Citation for developers of former Logan property on Hwy 155

Zach - can you PDF this email and save it to 2017 Legistar Documents / 03.06.17 BOZA? thank you. Also please save to CASE FILES/Hansen/2017/BOZA etc

From: Suzy Peers [ppeers3759@aol.com]
Sent: Wednesday, March 01, 2017 9:21 AM
To: Mabry, Brian K.; PPeers3759@aol.com
Subject: Citation for developers of former Logan property on Hwy 155

I plan to attend the meeting Monday, March 6, regarding the citation for the developers of the property on Taylorsville Lake Road opposite Routt Road. However, at age 68 it's I never sure what each new day will bring. So, I wanted you to know I support the citation.

I've lived on Routt Road for 30 years. This area is one of the last areas not decimated by over development. It's the last corridor in Jefferson County where we have a chance to preserve it's original rural character. The proposed plans include the phrase 'conservation subdivision'. This is the opposite of what is in the plan. Especially concerning is any retail development. I would appreciate a revision of the plans to exclude any retail area and a reduction in the number of homes, should the development be approved eventually. If approved, I presume a traffic light will be added at the intersection of Routt Road and Taylorsville Lake Road. It's already very risky to turn left from Routt onto Hwy 155.

Suzy Peers
5039 Routt Road

"Today a reader, tomorrow a leader." -- Margaret Fuller

Portland Elementary School:
Celebrating Success -- Every Class, Every Student, Every Day!
Empowering each student to
become a responsible,
contributing citizen in our
ever-changing
global community.

From: Carol Nation
To: [Mabry, Brian K.](#)
Subject: Case # 17 APPEAL 1000 Property @ 4201 Taylorsville Lake Rd.
Date: Wednesday, March 01, 2017 11:11:49 AM

My husband, sons and I own land across Floyds Fork in Fisherville, Ky. We are directly across the creek from the above mentioned address. This farm has been in our family for all of my life. We grow crops in the bottom land. We get flooded more since new construction has taken place up and down the creek in the last few years.

We are asking that the proposed construction of subdivision near the Creek be moved more to the South of us because of the run off from the black top and also the houses and septic tanks. We ask that you also consider the trees that will be cut and the erosion that will take place.

There needs to be more green space between the creek and the proposed development. I know there is an overlay, but they have already cut trees in the Fisherville Overlay.

We would appreciate, if you would consider the fact that we grow vegetable crops for sale to help with our finances. My husband is a disabled Vietman Veteran.

We appreciate you giving us consideration and a chance to comment.

Thank You

Carol Nation
15006 Old Taylorsville Rd
Fisherville, KY 40023