

Christian Miller

From: Ferguson, Laura M. <Laura.Ferguson@louisvilleky.gov>
Sent: Friday, July 29, 2022 11:23 AM
To: Nick Pregliasco
Cc: Christian Miller
Subject: RE: Jagoe Homes / Greenridge Estates / Tree Removal and the Preliminary Plan Approval process

Nick,

I am following up with you on this issue. In speaking with Emily and staff, apparently this was previously discussed with your client back around the time the trees were removed.

The clearing and tree preservation plan, while it does not have an expiration date, does not authorize widespread removal of trees. Rather, as per note 7 of the clearing and tree preservation plan, only limited clearing for site investigations is allowed, which is consistent with LDC 7.2.25. Before a more widespread removal of trees could occur, which happened in this case, a site disturbance permit and site disturbance plan are required. LMCO 159.02, LDC 7.2.25. That ordinance also provides that if the underlying land use approval expires, any related site disturbance plan and permit also expire. My understanding from staff is that your client did not have a site disturbance permit for the trees that were removed.

Laura

From: Nick Pregliasco <n timer@bardlaw.net>
Sent: Monday, July 25, 2022 10:26 AM
To: Ferguson, Laura M. <Laura.Ferguson@louisvilleky.gov>
Cc: Christian Miller <christian@bardlaw.net>
Subject: Re: Jagoe Homes / Greenridge Estates / Tree Removal and the Preliminary Plan Approval process

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Ok. Thanks. Will do.

On Jul 25, 2022, at 10:25, Ferguson, Laura M. <Laura.Ferguson@louisvilleky.gov> wrote:

I would suggest holding off. Laura

From: Nick Pregliasco <n timer@bardlaw.net>
Sent: Monday, July 25, 2022 10:24 AM
To: Ferguson, Laura M. <Laura.Ferguson@louisvilleky.gov>
Cc: Christian Miller <christian@bardlaw.net>
Subject: Re: Jagoe Homes / Greenridge Estates / Tree Removal and the Preliminary Plan Approval process

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Should we hold off on filing the BOZA appeal? Today is the filing deadline and hate to lose another week. Nick

On Jul 25, 2022, at 09:53, Ferguson, Laura M. <Laura.Ferguson@louisvilleky.gov> wrote:

Emily is supposed to get back with me early this week. I will let you know as soon as I hear back from her.

Laura

From: Nick Pregliasco <nrp@bardlaw.net>
Sent: Monday, July 25, 2022 9:52 AM
To: Ferguson, Laura M. <Laura.Ferguson@louisvilleky.gov>
Cc: Christian Miller <christian@bardlaw.net>
Subject: Re: Jagoe Homes / Greenridge Estates / Tree Removal and the Preliminary Plan Approval process

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Laura: Any update on the below? Need to file the BOZA appeal if we are gonna have to do so eventually. Our client needs to move this forward.

I am out of town but I have copied Christian from our office who can help answer questions etc. in the meantime.

Thanks in advance for any help. Nick

On Jul 18, 2022, at 13:09, Nick Pregliasco <nrp@bardlaw.net> wrote:

Laura:

As I have looked into this issue more, I believe the LDC should allow us to get our foot in the door with a formal filing on Greenridge Estates, and I'm asking that you

allow the desk clerk to merely accept the application at this point. Here's why:

LDC 7.2.20.A.3 allows for formal application and submittal inasmuch as:

A site shall be ineligible for filing an application for a major subdivision if 20% or more of a site has been clear-cut at any time within twenty-four (24) months prior to application submittal ***without consultation and approval of the Planning Director or designee. . . .***

Regarding Greenridge Estates, our client does have prior consultation and approval from the Planning Director or designee. Attached is the Clearing & Tree Preservation Plan for this property that appears to have the signature of Beth Allen approving the Plan in 2006. There is no expiration on the Clearing & Tree Preservation Plan. The Plan and approval directly relate to the subdivision for which an application is sought. It is approval that occurred prior to any clearing on this site (and it is noteworthy that it was called a "Clearing" plan). It is still valid approval. In other words – it checks off every box in LDC 7.2.20.A.3, and it should permit our client to file an application as any clearing occurred with consultation and approval of the Planning Director or designee.

Accordingly, we have an application ready to file and are only asking to be eligible to file – in other words, that the desk clerk be instructed to accept the application for filing.

Please let me know if you would like to discuss this further. At this point I am looking at filing next Monday, so I would have time this week to discuss.

Nick

From: Nick Pregliasco

Sent: Thursday, June 30, 2022 12:40 PM

To: Ferguson, Laura M. <laura.ferguson@louisvilleky.gov>

Cc: Christian Miller <christian@bardlaw.net>

Subject: FW: Jagoe Homes / Greenridge Estates / Tree Removal and the Preliminary Plan Approval process

Laura: Per my voicemail, below is the email summary we discussed very briefly at our meeting on the vested rights. Can you give me a call to discuss? Wanted to have a conversation prior to filing what will presumably be an appeal to BOZA. Nick



Land Law

BARDENWERPER TALBOTT & ROBERTS, PLLC

Attorneys at Law

www.bardlaw.net

(Firm Celebration of 35 Years in 2022)

502-426-6688 (W)

502-777-8831 (M)

From: Nick Pregliasco

Sent: Friday, February 25, 2022 11:38 AM

To: Marchal, David <David.Marchal@louisvilleky.gov>

Cc: Bill Bardenwerper <wbb@bardlaw.net>

Subject: FW: Jagoe Homes / Greenridge Estates / Tree Removal and the Preliminary Plan Approval process

Dave: Attached is the subdivision example we discussed briefly as well. As mentioned, the subdivision regulations in Chapter 7 of the LDC have a provision in LDC 7.2.20.D.5 (pasted below) that provide that the preliminary subdivision plan does not expire in the first 5 years of the original approval (ie., an automatic extension for years 3, 4, and 5, so long as construction is in progress.) Although, I believe this is being interpreted as going beyond the first 5 years as long as construction is in progress.

5. In the case of subdivisions being developed by sections, for the period within five years of original approval of the preliminary plan, extensions of approval shall be automatic for all sections so long as construction is in progress in any section. Beyond this five year period, an extension in accordance with Section 7.7.15 shall be required.

While this case is easier to understand the interpretation, the facts of this case make it seem even more unjust. Jagoe Homes is looking to build the section of the subdivision shown on the attachment outlined in red, which I understand is the last section of the subdivision approved 20 years or more ago. In 2005, prior to the real estate downturn, the developer obtained the approval of the attached tree preservation plan. They then had the trees on this last section of the site cleared in accordance with the attached plan. However, prior to completing the development of this section, it was put on hold due to the real estate recession. Over the last 16 plus years, new wild trees have now grown back over the majority of the site. The developer again started to work on the development of this site until it found out that the preliminary subdivision plan expired.

Now, because wild trees have grown back, the developer would also have a new preservation requirement under the new tree canopy

regulation (the site will actually have well more than the 40% tree canopy total, so meeting the percentage isn't a problem, but the existing preservation). The situation gets even worse because the expiration of the preliminary subdivision plan wasn't determined until after the developer started work, so now the developer is precluded from even filing an application for 2 years due to the tree clearing provision in the new tree canopy regulations (the trees taken down were mistakenly under the belief the prior approvals were still valid).

So, we would have to file an appeal of the denial to allow our filing of a new preliminary subdivision plan to determine if the 2 year rule can be waived.

May need to get your thoughts on the process to allow us to even file the application and then on how to deal with the vested rights on the new preservation requirement that I understand may make this property no longer work as well (not total tree canopy but preservation).

Nick



Land Law

BARDENWERPER TALBOTT & ROBERTS, PLLC
Attorneys at Law

www.bardlaw.net

(Firm Celebration of 34 Years in 2021)

502-426-6688 (W)

502-777-8831 (M)

From: Kent Gootee [<mailto:kgootee@mindelscott.com>]

Sent: Tuesday, January 18, 2022 9:32 PM

To: Nick Pregliasco <nrp@bardlaw.net>

Subject: FW: Tree Removal and the Preliminary Plan Approval process

Below is the email chain with Joe on the Greenridge Preliminary Plan.

Thanks,
Kent

J. Kent Gootee, ASLA

Principal, Director of Landscape Architecture & Planning

KGootee@MindelScott.com

5151 Jefferson Boulevard

Louisville, KY 40219

O - 502-485-1508

C - 502-468-0156



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From: Reverman, Joe <Joe.Reverman@louisvilleky.gov>
Sent: Wednesday, January 12, 2022 9:07 AM
To: Kent Gootee <kgootee@mindelscott.com>
Cc: Kathy Linares <klinares@mindelscott.com>; Ben Craven <bcraven@mindelscott.com>; Luckett, Jay P <Jay.Luckett@louisvilleky.gov>
Subject: RE: Tree Removal and the Preliminary Plan Approval process

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As far as we can tell, the only remedy would be to appeal our decision to BOZA. Either our decision that the plan is expired. Or our interpretation that there is no relief mechanism for the preservation rule.

Joe Reverman
Planning & Design Services

From: Kent Gootee <kgootee@mindelscott.com>
Sent: Wednesday, January 12, 2022 8:58 AM
To: Reverman, Joe <Joe.Reverman@louisvilleky.gov>
Cc: Kathy Linares <klinares@mindelscott.com>; Ben Craven <bcraven@mindelscott.com>; Luckett, Jay P <Jay.Luckett@louisvilleky.gov>
Subject: RE: Tree Removal and the Preliminary Plan Approval process

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Joe,
What is the appeal process for this since there was no malicious intent and the developer followed the previously approved tree preservation plan and saved more trees than 30% tree canopy?

Thanks,
Kent

J. Kent Gootee, ASLA

Principal, Director of Landscape Architecture & Planning

KGootee@MindelScott.com

5151 Jefferson Boulevard

Louisville, KY 40219

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From: Reverman, Joe <Joe.Reverman@louisvilleky.gov>

Sent: Wednesday, January 12, 2022 6:28 AM

To: Kent Gootee <kgootee@mindelscott.com>; Ben Craven

<bcraven@mindelscott.com>; Luckett, Jay P

<Jay.Luckett@louisvilleky.gov>

Cc: Kathy Linares <klinares@mindelscott.com>

Subject: RE: Tree Removal and the Preliminary Plan Approval process

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Kent, the expiration of the preliminary subdivision plan is tied to infrastructure construction and recordation of plats. Building permits for houses on existing lots would not extend the preliminary plan expiration.

Joe Reverman
Planning & Design Services

From: Kent Gootee <kgootee@mindelscott.com>

Sent: Wednesday, January 5, 2022 7:18 PM

To: Reverman, Joe <Joe.Reverman@louisvilleky.gov>; Ben Craven

<bcraven@mindelscott.com>; Luckett, Jay P

<Jay.Luckett@louisvilleky.gov>

Cc: Kathy Linares <klinares@mindelscott.com>

Subject: RE: Tree Removal and the Preliminary Plan Approval process

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Joe,

I also wanted to ask if Greenridge preliminary plan is expired if a building permit has been pulled within the last 5 years?

Thanks,
Kent

J. Kent Gootee, ASLA

Principal, Director of Landscape Architecture & Planning

KGootee@MindelScott.com

5151 Jefferson Boulevard

Louisville, KY 40219

O - 502-485-1508

C - 502-468-0156



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From: Reverman, Joe <Joe.Reverman@louisvilleky.gov>

Sent: Wednesday, January 5, 2022 10:17 AM

To: Ben Craven <bcraven@mindelscott.com>; Lockett, Jay P <Jay.Lockett@louisvilleky.gov>

Cc: Kathy Linares <klinares@mindelscott.com>; Kent Gootee <kgootee@mindelscott.com>

Subject: RE: Tree Removal and the Preliminary Plan Approval process

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Ben, we discussed this with our Director, Emily Liu yesterday. There is no relief mechanism built into the Code for this issue. The requirement is built into the procedural sections of the Code, which typically cannot be waived. And our recollection from the discussions when this was adopted is that the intention was to require the 24 months to be a waiting period. So unfortunately, we don't see an option other than to wait 24 months from when the trees were cut.

Joe Reverman
Planning & Design Services

From: Ben Craven <bcraven@mindelscott.com>

Sent: Wednesday, January 5, 2022 10:13 AM

To: Lockett, Jay P <Jay.Lockett@louisvilleky.gov>; Reverman, Joe <Joe.Reverman@louisvilleky.gov>

Cc: Kathy Linares <klinares@mindelscott.com>; Kent Gootee <kgootee@mindelscott.com>

Subject: RE: Tree Removal and the Preliminary Plan Approval process

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Jay,

Can you provide an update on what was decided internally regarding the trees out at Greenridge and how it relates to the code?

Thanks,

Ben Craven, PLA, ASLA
Project Manager
BCraven@MindelScott.com
5151 Jefferson Boulevard
Louisville, KY 40219
502-485-1508 | Ext. 156



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From: Lockett, Jay P <Jay.Lockett@louisvilleky.gov>
Sent: Tuesday, December 28, 2021 1:41 PM
To: Kathy Linares <klinares@mindelscott.com>
Cc: Ben Craven <bcraven@mindelscott.com>
Subject: RE: Tree Removal and the Preliminary Plan Approval process

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Actually here:

Approved 4-23-20:

<https://louisville.legistar.com/LegislationDetail.aspx?ID=4396762&GUID=393008D7-C010-4673-8495-700EF42F24DD&Options=ID|Text|&Search=Number+50>

From: Kathy Linares <klinares@mindelscott.com>
Sent: Tuesday, December 21, 2021 3:19 PM
To: Lockett, Jay P <Jay.Lockett@louisvilleky.gov>
Cc: Ben Craven <bcraven@mindelscott.com>
Subject: Tree Removal and the Preliminary Plan Approval process

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Jay,

As a follow up to our meeting today would you be able to provide a copy of the ordinance that resulted in this change to the Code? Maybe I am reaching but Joe did not seem to know an exact date and I am not seeing this update in the previous versions of the LDC. The current November 2021a copy of the code is the 1st time it is in there that I am aware of. Thanks

Wishing you a Merry Christmas!

Kathy Linares, ASLA, LA, AICP

Senior Planner / Landscape Architect

KLinares@MindelScott.com

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