

BARDENWERPER, TALBOTT & ROBERTS PLLC

ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BUILDING, 2ND FLOOR, 1000 NO. HURSTBOURNE PKWY • LOUISVILLE, KENTUCKY 40222
• (502) 426-6688 • FAX (502) 425-0561 • WWW.BARDLAW.NET

William B. Bardenwerper
Direct dial: 426-0388, ext. 135
Email: WBB@BARDLAW.NET

March 19, 2014

Louisville Metro Planning Commission Members
527 West Jefferson Street
Louisville, Kentucky 40202

Julia Williams, AICP / Matthew R. Doyle
444 S. Fifth Street
Louisville, Kentucky 40202

Jonathan Baker / John G. Carroll
Assistant Jefferson County Attorney
531 Court Place, Suite 900
Louisville, Kentucky 40202
John.Carroll@louisvilleky.gov

RE: **Par Golf, LLC / Glenmary Golf Course**
Case Nos. 19173, 19174, 19219 & 13SUBDIV1000
Minor Subdivision Plat to Create 3 Lots

Dear Commissioners, Planners, and Legal Counsel,

This letter is written in response to March 14, 2014 letter from Donald L. Cox challenging the authority of the Louisville Metro Planning Commission (the "Planning Commission") to subdivide the property owned by Par Golf, LLC ("Par Golf") into three new lots, from the Glenmary Golf Course Property (the "Property"), and asserting the subdivision of the Property is not a "ministerial" act, but instead a "discretionary" act.

In this letter, we will show that: (i) the law in Kentucky is very clear that this application for a Minor Subdivision Plat for the Property into 3 lots involves a purely ministerial review for the Planning Commission, not a discretionary review; and (ii) the issues raised are questions of law proper for the Jefferson Circuit Court to decide, not the Planning Commission.

First, Subdivision applications are reviewed by Louisville Metro Department of Planning and Design Services ("DPDDS") staff and pursuant to Section 7.2.20 (D) of the LDC may be approved by the "Director of the Division or any authorized staff member of the Division." The power of the Planning Commission to grant this "ministerial function" of approving subdivisions to a staff member is confirmed by KRS § 100.281 which provides in pertinent part that "The

commission may delegate to its secretary or any other officer or employee the power to approve plats in accordance with the commission's adopted requirements..." KRS § 100.281. The Kentucky Court of Appeals has further confirmed that approval of subdivision plans is a "ministerial act", and has stated a "planning commission may delegate to its secretary or any other officer or employee the power to approve plats". Snyder v. Owensboro, 528 S.W.2d 663, 664 (Ky. 1975); See also, Wolf Pen Preservation Ass'n, Inc. v. Louisville & Jefferson County Planning Com'n, Canfield-Knopf Properties, Inc., 942 S.W.2d 310, 312 (Ky. App. 1997) at 312. There must be rules and regulations constituting specific standards to be applied rather than mere broad generalizations, and as such the review and approval is a "ministerial" function. Snyder, 528 S.W.2d at 664¹. As the Court of Appeals stated, "If a division of land falls within the statutory definition of subdivision, then under KRS 100.277 the division must be approved by the local planning commission." Sladon v. Shawk, 815 S.W.2d 404 (Ky.App. 1991).

While Mr. Cox's unique legal theory that the well established case law in Kentucky on ministerial review of subdivision applications does not apply if the property has previously been subdivided is simply not supported in any manner by Kentucky law. Mr. Cox cites no support for his unique legal theory. In fact, the only case cited in the letter, Henry Fischer Builder, Inc. v. Magee, 957 S.W.2d 303 (Ky. App. 1997) even specifically provides "subdivision plats, on the other hand, are approved by the planning commission as a ministerial function to insure compliance with the subdivision regulations." Henry Fischer Builder, Inc., 957 S.W.2d at 303 (citing Kelly v. Cook, 899 S.W. 2d 517). Nowhere in this case, does the Court indicate a standard other than ministerial review applies to a preliminary plan, nor does it provide a different review applies to amendments of a prior plat. In fact, the undersigned recently litigated the very issue of applicability of a ministerial review, along with the Jefferson County Attorney, in City of Indian Hills v. Louisville Metro Planning Commission (2013 WL 5521634, No. 2011-CA-001738-MR), wherein the Kentucky Court of Appeals affirmed the Planning Commission approval of the Poplar Hill Place Subdivision preliminary plan as "a ministerial act and, therefore, the Planning Commission or its delegate does not exercise any discretion".

Further, the current request is for a Minor Subdivision Plat, so even if the Henry Fischer case stood for the proposition stated, which it does not, it is still in applicable to the decision today. It is also very important to note that in the Henry Fischer case, the determination of rights of the neighbors under a preliminary plat did not involve an appeal of the planning commission decision, did not list the planning commission as a party, and was decided in Circuit Court where determinations such as this are properly made, not in front of the planning commission.

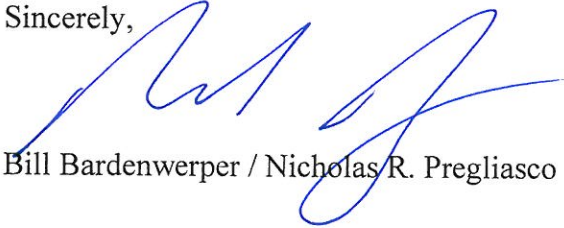
Second, the construction and interpretation of the subdivision restrictions and record plat are questions of law for a Court to decide. See Cinelli v. Ward, 997 S.W.2d 474, 476 (Ky.App.1998). The reason Mr. Cox does not cite any authority for the proposition that the Planning Commission should hear or determine the rights of the neighbors per the Declaration of Covenants, Conditions and Restrictions and the Record Plat is this there is no case law to support his assertions. These arguments and claims are to be brought in the Jefferson Circuit Court

¹ The Kentucky Court of Appeals decision in Snyder v. Owensboro, 528 S.W.2d 663 that subdivision of property is a ministerial act has been affirmed in the following cases: Wolf Pen Preservation Ass'n, Inc. v. Louisville & Jefferson County Planning Com'n, Canfield-Knopf Properties, Inc., 942 S.W.2d 310, 312 (Ky. App. 1997); Sebastian-Voor Properties, LLC v. Lexington-Fayette Urban County Government, 265 S.W.3d 190, 193 (Ky.2008); Louisville and Jefferson County Planning Commission v. Schmidt, 83 S.W.3d 449 (Ky. 2001).

lawsuit already pending, Glenmary Homeowners Association, Inc. v. Louisville Metro Planning Commission (Case No. 14-CI-000844).

As such, we request the Planning Commission apply the appropriate ministerial review to the current application and defer the legal question as to the rights of the neighboring owners under the Declaration of Covenants, Conditions and Restrictions and the Record Plat to the Jefferson Circuit Court to decide in Case No. 14-CI-000844.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Bill Bardenwerper / Nicholas R. Pregliasco', written over the typed name.

Bill Bardenwerper / Nicholas R. Pregliasco