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January 30, 2017

Case Manager
Louisville Metro Planning & Design Services
444 S. Fifth Street
Louisville, Kentucky 40202

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PLANNING & DESIGN SERVICES

Re: Appeal of Citation case number 16PM32085 on property located on Taylorsville Lake Road

Dear Case Manager:

Our client Long Run Creek Properties, LLC was under zero legal obligation or requirement to seek permission to do what is both (1) statutorily (i.e., under the “agricultural supremacy clause” of KRS 100.203(4) and 100.111(2)) and (2) local regulatorily (i.e., under the permitted use categories of all the local zoning districts as set forth in and as defined below by the Metro Land Development Code – “LDC” – and under the “exempt activities” provisions of the LDC’s Floyds Fork Special District provisions) authorized as an activity exempt from LDC regulation and review, which is to harvest a timber crop, an agricultural use.

In addition, the assertion under the provisions of LDC §3.1.B.2 below that the mere filing of a pre-application plan constitutes “development activity” and thus removes a property from its agricultural use exemption simply is not so. Properties that are even rezoned often maintain their agricultural use and tax status until the use actually changes. An agricultural operation is unaffected by an application or even by an approval until something is done more than a mere filing (especially a pre-app filing) or more than obtaining an approval (such as a subdivision or rezoning), which are alone irrelevant to a property’s use status, until, as said, that use actually commences changing (for example, when clearing and grading or other construction activity begin).

Moreover, even if the timber that was harvested were somehow somehow legally determined to be an LDC regulated activity (which legally it cannot be because of the agricultural exemptions noted above), our reading of the Floyds Fork Special District provisions (notably subsections B.2.a. and A.2.b. below) is that the relatively minor harvesting of some timber on a large farm did not meet the threshold for review. However, there is no state statutory or local regulatory authority for DPDS, the Planning Commission or the Board of Zoning Adjustment to require such an analysis, much less our clients to have to undertake and prove same.

Following are the statutory and regulatory references:

KRS 100.203: *Cities and counties may enact zoning regulations which shall contain text provisions to the effect that land which is used for agricultural purposes shall have no regulations except that:*
(a) Setback lines may be required for the protection of existing and proposed streets and highways;
(b) All buildings or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated; *(c) Mobile homes and other dwellings may be permitted but shall have regulations imposed which are applicable, such as zoning,*

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building, and certificates of occupancy; and (d) The uses set out in KRS 100.111(2)(c) may be subject to regulation as a conditional use.

KRS 100.111(2)(a):"Agricultural use" means the use of: (a) A tract of at least five (5) contiguous 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 Chapter 3, Part 1, Section B. Development within the Overlay District

1. Exempt Activities:

Existing single family homes, existing and future residential accessory uses and structures, structures accessory to a use established before enactment of the DRO District and expansion of structures to a lesser extent than specified in B. 2. (j), below are not regulated by the provisions of this section. Agricultural use and related structures likewise are exempt from the provisions of this section.

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 below. Such activities include:

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

LDC Chapter 3, Part 1, Section A.2. Definitions

Terms in this section shall have the meanings hereinafter given unless the context shall clearly indicate otherwise.

b. "Clearing of forested area" is removal or destruction of trees and other live woody vegetation exceeding a caliper of six inches (trunk diameter measured six inches above ground) to the extent that fewer than 20 trees that meet or exceed this dimension remain standing in each 20,000 square foot area.

LDC Section 1.2.2 Agricultural Use Definition

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.

Please call or write if you have anything further to discuss in this regard. Many thanks for your consideration.

Sincerely,



William B. Bardenwerper

c: Long Run Creek Properties, LLC, c/o Brad Rives
David Mindel, Mindel Scott & Associates
Emily Liu, Joe Reverman and Brian Davis, c/o DPDS

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