

## Yamaguchi, Amanda

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**From:** Jerry Ferguson <jerry.ferg@yahoo.com>  
**Sent:** Friday, September 14, 2018 4:09 PM  
**To:** Murphy, Brent; Skates, Michael  
**Cc:** Curtis, Larry  
**Subject:** Re: RE: RE: Summary for the Sept. 27th Planning Commission  
**Attachments:** Capital Homes NEW Plan\_Forest Creek Patio Homes Trail LP-1.pdf; 2008 Landscape Site Plan - approved\_FOREST CREEK PATIO HOMES.pdf

Hello Gentlemen,

Attached is a copy of the 2008 Landscape Site Plan, and a copy of the proposed revised (highly revised) Landscape Site Plan for your comparison. The back of the original gives sprinkler and sod details as well. I would be glad to provide an itemized list of the differences.

My biggest question or frustration at the moment is one I've had for a long time.

Capital Homes held an HOA meeting in October of 2017 to elect HOA officers and board, pulled out of the development, sold the last home in February, removed any and all Capital Homes signs, and immediately thereafter attempted to turn the HOA over to the elected board. We did not let them move forward with that because we were concerned that the then unresolved stormwater sinkhole problem would become a liability of the HOA instead of the developer. We were also concerned that any other "held harmless" clause would make us liable for any plat retaining walls or landscape site plan that was not done that the city engineering plans required.

Here is my question, when and how long does a developer have the right to downward revise a plat...ie, a landscape site plan or a retaining wall plan?

My understanding of the city code is that the developer shouldn't be able to revise the city approved plans unless, essentially, 1) the plans are a hardship on the developer, or 2) conditions have changed which makes those plans no longer possible or feasible as they are. The Tulsa zoning official, Mike Rider, told me that if this came up in Tulsa, they would reject it because the revised landscape site plan is a large reduction from the original plan and results in a reduced value and amenity to the residents of the neighborhood.

Mr Skates, you told me that when I brought up the problem with retaining walls having not been installed, that the plans were submitted and should have been installed "no exception taken and should have been built". The same should apply for the approved original landscape site plan. Mr. Murphy, you told me that the information in the PUD, including the back of the plat, stays in effect unless it was amended, no amendment means it must be adhered to. Again, I come back to how long after a developer has vacated the development do they have the right to amend after the fact?

As I see it, not only should it have been installed, it should have been installed, per code in Chapter 5 of the Development Standard, within 120 days after issuance of occupancy permit or first building permit. My understanding is that failure by the developer to have done this would be a potential \$100 penalty for each day of violation. Furthermore, there should have been a certification of installation stating the installation of all landscaping, except trees, in accordance with the approved landscaping plan...which would have been the 2008 approved revised landscape site plan.

How long can a developer hold leverage over a development once they have sold their final home and pulled out of the development? They have no votes in the HOA, they have no home or lot, they considered themselves done and gone. Yet, they have the control and power to decimate the landscape site plan as long as it meets minimum city requirements?

Brent Murphy told me last Friday that he thought the revised plan was compatible to the original, but that he had not looked at the original. I assure you all that the revised landscape site plan is a far cry from the original revision which the city approved in 2008.

The average age in this community is maybe 70-72 years of age. Many of them walk pets, and walk themselves for exercise. At this time, they have to walk on the streets. The original proposed landscape site plan provided a large connected walking trail, and tied it into the main street of Fort Worth. The revised plan does very little of that as well as removing all landscaping aesthetics and areas for older people to stop and rest. The revised plan doesn't include any leveling of rough terrain, no sprinkler system, no flowerbeds, and allows about 100 less trees than the original plan intended to include. The new plan eliminates the detention pond filtration fountain, and power of course, eliminates the 7 water features, reduces the walking trail from about 1.25 miles down to about 1/2 mile, and reduces the construction of that trail from one of 6" of compacted class A gravel, followed by compacted 3" lift crushed limestone, followed by another 3" of compacted lift crushed limestone, with metal edging on each side of the trail through the entire length of the trail, to one that has no metal edging and only 4" of gravel screening.

I would be very glad to give you a separate material list that shows the difference between the 2008 landscape site plan and the revised one presented to me by Capital Homes last Friday. That new plan does not even close meet our approval or acceptance, and I fail to see that we don't have the right, given the fact that Capital Homes was done with construction already, to require them to either do the landscape plan as approved by the city, or to require them to come to an agreement with us as to what we would accept as modifications to it...which puts us in control of the decisions as long as it meets the city's approval for a final revision.

Back when Tully Dunlap started this development, it was intended to be an upscale development with a little better amenities than he put at Honey Creek. While we may or may not desire or need everything that was in the original landscape plan, we would be willing to work with Capital Homes to come up with something a little more agreeable to their pocketbook.

Best Regards,

Jerry Ferguson  
320 S Aster Avenue  
Broken Arrow, OK 74012  
918-893-9069  
jerry.ferg@yahoo.com

On Friday, September 14, 2018, 10:00:25 AM CDT, Murphy, Brent <BMurphy@BrokenArrowOK.Gov> wrote:

No, as I have told you in the past, and in my September 12, 2018, email, it will be on the September 27, 2018, Planning Commission agenda. If you have comments or information that you want to present ahead of time to the Planning Commission, we would include that with the package going to the Planning Commission. As I have noted previously, landscape plans are placed on the consent agenda with the Planning Commission. Items not removed from the consent agenda are approved as per the Staff report. If you want to have this item pulled from the consent agenda, you will acknowledge such to the Planning Commission chairman. Staff will then present the item to the Planning Commission. The applicant will then have the opportunity to make a presentation to the Planning Commission. After the applicant is done, the Chairman will open the Public Hearing. At that time you and anyone in the audience can present information to the Planning Commission. The Planning Commission requires you to come to the podium, give them your name and address for the record, and then you can provide any information to them. After all relevant information has been presented, the Chairman will close the Public Hearing and give the applicant an opportunity to answer any questions or provide additional information. The Planning Commission will then discuss the item and then make a motion and vote to either approve, approve with modifications, or deny the request.

I hope this helps. Let me know if you have any questions.

**Brent Murphy, AICP**

Senior Planner

City of Broken Arrow

Phone: 918-259-2400 EXT. 5388

Fax: 918-258-4998

Email: [bmurphy@brokenarrowok.gov](mailto:bmurphy@brokenarrowok.gov)



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**From:** Jerry Ferguson <jerry.ferg@yahoo.com>  
**Sent:** Friday, September 14, 2018 9:40 AM  
**To:** Murphy, Brent <BMurphy@BrokenArrowOK.Gov>  
**Cc:** Skates, Michael <MSkates@brokenarrowok.gov>  
**Subject:** Re: RE: Summary for the Sept. 27th Planning Commission

Hello Mr. Murphy,

Thank you for the update.

Are you also saying that if I had presented strong, or valid, enough comments that it possibly would not have been on the agenda? If so, that would have been good to know.

Best Regards,

Jerry

On Friday, September 14, 2018, 8:32:33 AM CDT, Murphy, Brent <[BMurphy@BrokenArrowOK.Gov](mailto:BMurphy@BrokenArrowOK.Gov)> wrote:

Mr. Ferguson: The revised landscape plan for Forest Creek Patio Homes will be on the September 27, 2018, Planning Commission agenda. The meeting will start at 5:00 pm in the City Council Chambers of City Hall. If you or Mr. Gray have any questions, please let me know.

**Brent Murphy, AICP**

Senior Planner

City of Broken Arrow

Phone: 918-259-2400 EXT. 5388

Fax: 918-258-4998

Email: [bmurphy@brokenarrowok.gov](mailto:bmurphy@brokenarrowok.gov)



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**From:** Jerry Ferguson <[jerry.ferg@yahoo.com](mailto:jerry.ferg@yahoo.com)>  
**Sent:** Thursday, September 13, 2018 4:57 PM  
**To:** Murphy, Brent <[BMurphy@BrokenArrowOK.Gov](mailto:BMurphy@BrokenArrowOK.Gov)>  
**Cc:** Skates, Michael <[MSkates@brokenarrowok.gov](mailto:MSkates@brokenarrowok.gov)>  
**Subject:** Summary for the Sept. 27th Planning Commission

Hello Mr. Murphy,

We are talking to an attorney, Mr. Stephen Gray, who wants to look at our material or documents for evaluation before we make any additional comments or discussions available regarding the landscape site plan, both the originally approved one and any proposed revisions.

Best Regards,

Jerry Ferguson

320 S. Aster Avenue

Broken Arrow, OK 74012

918-605-1496

918-893-9039

[jerry.ferg@yahoo.com](mailto:jerry.ferg@yahoo.com)