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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Jennifer McCoy
Circuit Court Judge

Charleston County Court of Common Pleas
Case No. 2022-CP-10-02345

WILLIAM M. ROSS and KELLI S. ROSS.....Appellant

v.

THE PRESERVE II AT FENWICK HALL
PROPERTY OWNERS ASSOCIATION INC.....Respondents

APPELLANT's RECORD ON APPEAL
VOLUME 2

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INDEX

DOCUMENT	PAGE
ORDERS	
Order of the Honorable Jennifer McCoy, Circuit Court Judge filed August 9, 2022, denying the Plaintiff preliminary injunctive relief	005
Order of the Honorable Jennifer McCoy, Circuit Court Judge filed Sept. 26, 2022, granting the Defendant preliminary injunctive relief	008
Order of the Honorable Jennifer McCoy, Circuit Court Judge filed Jan. 12, 2023, denying Plaintiffs' motion to reconsider	012
PLEADINGS	
2022.05.23 Summons and Complaint (filed by Plaintiff)	015
2022.06.27 Answer and Counterclaim (filed by Defendant)	025
2022.07.25 Reply to Counterclaim (filed by Plaintiff)	038
2022.05.27 Motion for Preliminary Injunction (filed by Plaintiff)	041
2022.06.13 Reply Brief in Support of Plaintiffs' Motion for Preliminary Injunction (filed by Plaintiff)	218
2022.06.30 Motion for Preliminary Injunction (filed by Defendant)	223
2022.09.07 Memo in Opposition to Defendant's Motion for Preliminary Injunction (filed by Plaintiff)	226
2022.10.06 Motion to Reconsider Order Granting Temporary Injunction to Defendant (filed by Plaintiff)	231
Notice of Appeal	235
TRANSCRIPTS	
Transcript of Hearing, June 14, 2022	237
Transcript of Hearing, September 7, 2022	259
EXHIBITS	
2022.05.27 Affidavit of Damien A. Sobieraj with Exhibits to the Affidavit	283
2022.06.13 Affidavit of Damien A. Sobieraj with Exhibits to the Affidavit	459
Book T535 Page 694 RMC Office - ARB Guidelines for Preserve	462
ARB Guidelines for Preserve II	463
2022.06.14 Affidavit of William M. Ross	490
2022.06.10 Bailey Affidavit with Exhibits to the Affidavit	492
Minutes of Special Meeting of the Preserve at Fenwick Hall Property Owners Association Dec 12, 2019	497
	Also 572

Nov 26, 2019 Letter from Bailey	501 Also 570
March 29, 2022 The Preserve II ARB Determination	503 Also 546, also 564
April 5 2022 Bailey Email	523
May 20, 2022 The Preserve II ARB Determination	524 Also 549
April 29, 2022 Russell Arborist Report	539 Also 567
2022.06.30 Curtin Affidavit with Exhibits to the Affidavit	541
June 10, 2022 The Preserve – ARB Determination	569
2022.06.30 Batchelder Affidavit	576
2022.06.30 Bailey Affidavit	578
Book T535 Page 686 RMC Office - Declaration of Covenants and Restrictions for The Preserve at Fenwick Hall and Provisions for and By-Laws of The Preserve at Fenwick Hall Property Owners Association Inc	045 Also 286
Book V390 Page 247 RMC Office - Declaration of Covenants and Restrictions for Fenwick Hall Plantation and Provisions for and By-Laws of The Fenwick Hall Plantation Property Owners Association Inc	081 Also 322
Book 0846 Page 099 RMC Office – Declaration of Covenants and Restrictions for The Preserve II at Fenwick Hall and Provisions for and By-Laws of The Preserve II at Fenwick Hall Property Owners Association Inc	120 Also 361
Book 0418 Page 478 RMC Office – Fourth Amendment to Declaration of Covenants and Restrictions for the Preserve at Fenwick Hall and Provisions for and the Bylaws of The Preserve at Fenwick Hall Property Owners Association Inc	210 Also 451

CERTIFICATION

I certify that the Record On Appeal includes all matters designated by both parties and no other material.

Laquiere Legal Services LLC

_____/s/ Eric B. Laquiere _____

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Attorney for Appellate/Plaintiff

William Ross and Kelli Ross

Charleston, South Carolina
August 28, 2023

The Preserve at Fenwick Hall POA

November 26, 2019

Dear Fenwick Owners,

In accordance with the governing documents for The Preserve at Fenwick Hall Property Owners Association, Inc. ("Preserve I POA"), the Board of Directors has scheduled a **Special Membership Meeting to take place on December 12, 2019 at 5:30 p.m.** The meeting will be held at 3090 Bohicket Road, Suite 2A, Johns Island, South Carolina.

Please return the proxy in the enclosed envelope to ensure you are represented at the meeting if you cannot attend. You can also email (cheryl@charlestonpms.com) or fax (843-881-5459) your proxy and ballot.

The agenda for the meeting will be as follows:

1. Call to Order
2. Board President's Report on two actions being voted upon and question and answer period.
3. Voting
4. Adjournment

Enclosed for your review are the following:

1. Letter from Preserve I POA Board;
2. Notice of Special Meeting;
3. Ballot;
4. Proxy;
5. Memorandum dated November 26, 2019 from 1776, LLC to The Preserve POA members;
6. Letter dated November 26, 2019 from 1776, LLC regarding 2020 budget subsidy;
7. Plan of Merger;
8. Declaration of Covenants and Restrictions for Preserve II at Fenwick Hall Property Owners Association, Inc., which the Board is recommending that Preserve I POA merge with;
9. Proposed budget of the new POA;

-|-

10. Proposed Promissory Note from Preserve II POA to reimburse 1776, LLC for common area expenses over four years, without interest; and
11. Description of Common Areas being deceded from 1776, LLC to the new POA the Preserve I POA is being asked to merge into by the Board.

We look forward to seeing you at the Special Member Meeting and extend a warm welcome for you to contact us with any questions or concerns.

Cheryl Bailey
on behalf of the Board of Directors

The Preserve II- ARB Determination

To: Michael Ross, Lot 58, Zurlo Way

From: The Preserve II, Architectural Review Board

Re: Unauthorized Cutting of Trees- Cease and Desist

Date: March 29, 2022

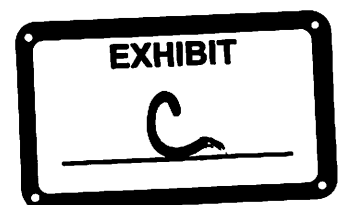
Cheryl Bailey of Property Management Services reported that on March 28, 2022 a crew began cutting trees on Lot 58 and that cutting continued today. Ms. Bailey documented today that numerous trees with a trunk diameter in excess of six (6) inches were cut and that she stopped the cutting of a mature gum tree with a trunk diameter of approximately 22 inches.

The cutting of trees on Lot 58 was done in clear violation of the Declaration and Covenants.

Section 9.02 of the Declaration provides:

No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four and one-half (4 ½) feet above ground level, or other significant vegetation as designated from time to time by the ARB, without obtaining the prior approval of the ARB, provided that dead or diseased trees shall be inspected and certified as dead or diseased by the ARB or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed as to limit any applicable law or ordinance including the Preserve PUD.
(emphasis added)

The Covenants provide, in part:



LANDSCAPE GUIDELINES

The natural features of The Preserve are priceless and to be protected. Additionally, the setting is as fragile as it is beautiful. One cannot expect that hundreds of years of growth will be quickly restored after it is scarred by construction. Knowing this, the Architectural Review Board will carefully take on the duty of protecting the land and vegetation and, thus, the property value and community vision and property values.

EXISTING VEGETATION

The ecosystem relies on a plant base that has developed over thousands of years to provide the correct wildlife habitats, proper air and water purification, adequate drainage, and control of erosion. Significant and/or special trees and shrubs are essential in this ecosystem and their value will be considered in the design process. In order to ensure their preservation, these following guidelines shall be followed:

- 1. The removal of any tree or any area of understory growth will require prior permission from the Architectural Review Board.**
- 2. Tree removal required to develop the property (i.e., the structure and paved areas) may require mitigation at the Architectural Review Board's discretion.**

(emphasis added)

Violation of the above guidelines will result in substantial fines and mitigation requirements.

SOFTSCAPE STANDARDS

TREES:

Large specimen oaks (24" or greater in caliper) and any other significant trees will be strictly protected.

PRELIMINARY REVIEW

After the Site Analysis has been held and a consensus has been agreed upon, the design team will begin documenting the layout in a precise manner. One (1) complete set, consisting of the following drawings, size 24" x 36", is required for the Preliminary Review:

2. TREE AND TOPOGRAPHICAL SURVEY

Crucial to preparing an understanding of the site is obtaining a Tree and Topographical Survey for the property from a South Carolina Registered Land Surveyor. The survey must be made within eight (8) months of its submittal. The survey must be at least 1/8"=1' or 1"=10'-0" scale and show legal description of the site, including:

- a. Recorded property lines, easements, and setbacks.

- b. The topographical contours of the lot.
- c. The location, genus, and species of all oak trees over 3" in diameter and other trees in excess of 5" in diameter at waist height.
- d. Any prominent natural features.
- e. Adjacent residences with roof heights from MSL, garages, and driveways.
- f. Utility locations.

3. EXISTING SITE CONDITIONS

This drawing overlays the Tree and Topographical Survey and shall include, but is not limited to, the following:

- a. Oak trees 24" in caliper or greater highlighted in red.
- b. Hardwood trees 12" in caliper or greater highlighted in blue.
- c. Unusual characteristics of natural vegetation or understory growth.
- d. Existing oak canopy delineated.
- e. Locations of diseased or damaged trees highlighted in yellow.
- f. Locations of tree restricted from removal with respective ground area delineated by shading or hatching.
- g. Existing drainage patterns.
- h. Sun movement analysis, prevailing winds, and breeze directions.

You have violated the Declaration and Covenants and all work and cutting of trees on Lot 58 must immediately cease and desist. In addition, large oak trees are to be appropriately fenced and protected before any ARB-approved work takes place on Lot 58.

The ARB will assess the extent and nature of the cutting and will inform you of any fines and/or mitigation requirements.



































Lisa Molony-Buonanno
Sent from my iPhone

From: Cheryl Bailey <cheryl@charlestonpms.com>
Sent: Tuesday, April 5, 2022 1:22 PM
To: Michael Ross <michael@rossconstructionchs.com>
Subject: Note From ARB

Dear Mr. Ross:

The ARB has received your April 1, 2022 letter and attachments and has retained a tree expert to access the trees cut on Lot 58 without ARB approval. Once the assessment has been completed and reviewed by the ARB, the ARB will notify you of any fines and/or mitigation requirements.

You have not received final approval with respect to any aspect of this project and the cease and desist will remain in effect until the violation has been resolved.

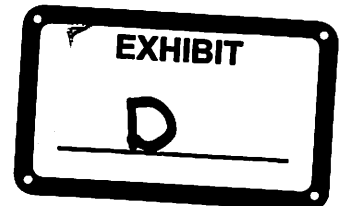
Also, there is a new POA which is enforcing the new Declaration and Covenants. These documents were of record when you purchased the Lot 58.

With respect to the second to last paragraph of your April 1st letter, I never agreed "to work on a mitigation plan together once these documents are submitted and final approval has been given." Furthermore, that will be done by the ARB, as I have no ability to make decisions on behalf of the ARB.

Sincerely
Cheryl Bailey

Cheryl Bailey
Property Management Services
3690 Bohicket Rd Suite 2A
Johns Island SC 29455 Office: 843-637-4056 Fax: 843-637-4070
Main Office: 843-881-5459
www.charlestonpms.com

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The Preserve II- ARB Determination

To: Michael Ross, Lot 58, 1612 Zurlo Way

From: The Preserve II, Architectural Review Board

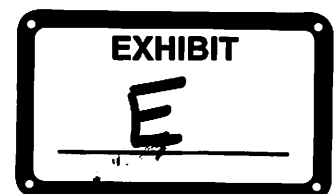
Re: Unauthorized Cutting of Trees- Cease and Desist- Denial of Application- Fines and Mitigation

Date: May 20, 2022

On March 29, 2022, the Architectural Review Board ("ARB") issued a Cease and Desist order to you for the unauthorized cutting of trees on your lot at 1612 Zurlo Way, also known as Lot 58 in The Preserve II PUD ("Lot 58"), which was done without authority from the ARB.

In making a decision regarding the status of the cease and desist and the ARB's requirements for you to proceed with your project, some of the pertinent background history needs to be reviewed as, despite the ARB and its architect continuing to review your incomplete and deficient application, plans, and specifications and assist you, you continue to place blame on the ARB for your failure to follow the Declaration and ARB Covenants, and you have stated that your cutting of trees and clearing of Lot 58 was somehow approved by the ARB, when it was not. You also deliberately and willfully violated the Cease and Desist determination of the ARB.

The ARB has not provided you with any approvals, only the cease and desist determination. Any "preliminary approvals" by Sam Furr Architect (the "ARB Architect") were recommendations from ARB Architect to the ARB to facilitate the ARB's review and the ultimate approval or denial of your project by the ARB. The ARB Architect reviews projects and, as a consultant to the ARB, provides advice to the ARB. It is the ARB that makes approvals and denials, not the ARB Architect. The ARB Architect has no decision-making authority, and as a consultant to the ARB, it only makes recommendations. Section 5.01 (Purpose) of the Declaration provides, in pertinent part, that all improvements located on lots "including landscaping, grading, excavation, or filling of any nature whatsoever... will be subject to the prior review and approval of



the ARB in accordance with... the 'ARB Covenants.'" Similarly, Section 5.03 (ARB Covenants) of the Declaration provides, in part, that:

The ARB will have sole discretion to determine whether plans and specifications submitted for approvals are acceptable to it, and the refusal or approval of any plans and specifications may be based by the ARB upon any ground which is consistent with the objects and purposes of this Declaration, as may be supplemented by the ARB Covenants, including purely aesthetic considerations.

Once the ARB makes a preliminary review of a project, the owner is required to make any necessary changes and submit specified documents to the ARB, and perform a final stakeout, for consideration and approval or denial by the ARB. See ARB Covenants pp. 14-18.

As a builder, you should be familiar with, and understand, this process.

A. BACKGROUND

The development of Lot 58 is complicated and challenged by the configuration of several oak trees on the lot. Several lots in The Preserve II at Fenwick Hall Property Owners Association, Inc. ("The Preserve II POA") were purchased by a regional developer who developed all the purchased lots, except Lot 58. Subsequently, a large local developer acquired an option to purchase Lot 58 but abandoned the project after it was unable to site a home and driveway on the lot that complied with the Declaration and ARB Covenants. Since then, several years have passed with no attempted development activity with respect to Lot 58. It is believed that Lot 58 was sold to you at a substantial discount to the market price of other lots in The Preserve II POA because the configuration of the several oak trees on the lot present significant challenges to placing a home and driveway on the lot that comply with the Declaration and ARB Covenants.

On or about January 18, 2022, you submitted plans to Cheryl Bailey ("Bailey"), who works for Property Management Services, the Preserve II POA's property manager, without the required ARB application forms, ARB fee, or deposit. In essence, a woefully incomplete and noncompliant application.

On January 25, 2022, the ARB Architect visited Lot 58 and concluded that your plans were materially deficient and noncompliant with the ARB Covenants. Thereafter, Bailey provided you with a partial list of deficiencies and the ARB Architect's conclusion that the list **only begins to touch on the many requirements not met.** (emphasis added)

On March 8, 2022, the ARB Architect met with you and discussed drainage, house placement, and some of its concerns about the drawings and details (or lack thereof). The ARB Architect provided you with a copy of the ARB Covenants.

On March 15, 2022, you submitted a revised site plan, revised home plans, and the ARB Preliminary Review form. However, you still failed to submit all the required ARB forms. On March 15, 2022, Bailey sent you the following email:

I have sent the forms/plans to the ARB but [t]hey did not approve. A few items are missing from the link below as the full package review. These are the form[s] that are needed before anymore reviews with the ARB. It was also noted by the ARB that the grand trees and canopies need to be shown on the plans.

Reminder each site visit is a cost of the architect deposit. Once you submit the following stated above and all the forms it may be submitted for review.

https://charlestonpms.com/downloads/New_Construction_Forms.pdf

https://charlestonpms.com/downloads/2020_Fenwick_ARB_Guidelines.pdf For Reference

Thank you for your cooperation in this matter

On March 15, 2022, you emailed Bailey and included the following documents: Preliminary Review, Final Color Form, Construction Deposit & Agreement, Landscape Certification (unsigned by the Landscape Architect), Final Review, Post Construction Final Inspection, and Tree and Topographic Survey. In your email you stated, in part:

This process must be designed by a former government employee because of the amount of redundancy and red tape is enough to choke someone.

(emphasis added)

The ARB notes that you purchased Lot 58 subject to the Declaration and ARB Covenants of record, and you, particularly as a builder, should have reviewed the Declaration and ARB Covenants and elected not to purchase Lot 58 if you did not like the terms and conditions, "red tape" in your words, of the Declaration and ARB Covenants, or if you did not want to comply with them.

On March 25, 2022, Bailey emailed you with numerous comments to your plans, including comments regarding the trees and landscape plan, and informed you that the comments needed to be addressed before a final review, and specifically stated the conditions had to be addressed "**before any actions are taken on the lot.**" (emphasis added)

On March 28, 2022, you started clearing trees from Lot 58 without approval from the ARB and in defiance and violation of Bailey's March 25, 2022 email to you to satisfy the ARB conditions and obtain Final Approval "**before any actions are taken on the lot.**"

Bailey reported that on more than one occasion that you have expressed your dissatisfaction with the ARB Covenants and indicated, in substance, that you have complied with the City of Charleston's regulations and ordinances (when you had not), and the ARB Covenants do not prevent you from building your house on Lot 58.

On March 28, 2022, residents in The Preserve II POA observed that you were cutting trees on Lot 58, and reported your actions to Bailey, who came to Lot 58, took photos, and informed you that you were in violation of the Declaration and ARB Covenants and to cease and desist cutting trees on Lot 58.

On March 29, 2022, Bailey sent you the following email informing you that The Preserve II POA ARB Covenants apply, in addition to any rules of the City of Charleston ("COC"), with respect to tree removal and landscaping:

Good morning.

In case you didn't know but the COC has their rules. but Fenwick precedes the COC rules where any thing over 6 in diameter needs approval. In addition, the Live Oaks must be protected by fencing where were not as of today. The Black gum or any other trees may not be cut down until approved.

Last ARB comment- Regarding the landscape plan, planting buffers are needed at property edges and to define grass areas. Screening should also be continuous around the HVAC enclosure. Tree count and required mitigating numbers should be indicated. Permeable pavers should be extended further up the concrete driveway to preserve the roots of the 15" and 17" live oaks. Great care should be taken as to not damage the roots beyond the foundation of the house. All shrub installations must be a minimum three gallons size.

On March 29, 2022, Bailey also separately emailed you Section 9.02 (Trees) of the Declaration, which was part of her email, and provided:

Section 9.02. Trees.

No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four and one-half (4 ½) feet above ground level, or other significant vegetation as designated from time to time by the ARB, without obtaining the prior approval of the ARB, provided that dead or diseased trees which are inspected and certified as dead or diseased by the ARB or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed so as to limit any applicable law or ordinance, including The Preserve PUD.

On or about March 29, 2022, Ms. Bailey provided you with an ARB Determination directing you to cease and desist cutting trees on Lot 58, and cited Section 9.02 (Trees) of the Declaration and applicable provisions of the ARB Covenants. The March 29, 2022 ARB Determination is enclosed.

As a consequence of your violation of the Declaration and ARB Covenants, the ARB felt compelled to retain counsel to provide assistance and guidance, of which you were informed.

On or about April 4, 2022, you submitted revised documents to Bailey/ARB.

On April 5, 2022, Bailey sent to the following email with respect to assessing the trees you cut without authority and the rules of the new created POA:

The ARB has received your April 1, 2022 letter and attachments and has retained a tree expert to assess the trees cut on Lot 58 without ARB approval. Once the assessment has been completed and reviewed by the ARB, the ARB will notify you of any fines and/or mitigation requirements.

You have not received final approval with respect to any aspect of this project and the cease and desist will remain in effect until the violation has been resolved.

Also, there is a new POA which is enforcing the new Declaration and Covenants. These documents were of record when you purchased the Lot 58.

With respect to the second to last paragraph of your April 1st letter, I never agreed "to work on a mitigation plan together once these documents are submitted and final approval has been given." Furthermore, that will be done by the ARB, as I have no ability to make decisions on behalf of the ARB.

On April 12, 2022, in direct violation of the ARB's March 29, 2022 Cease and Desist directive, and Bailey's April 15, 2022 email to you, you had a crew back working on Lot 58. Nancy Batchelder, a Board member of The Preserve II POA, knew of the ARB's cease and desist determination and told your workers that they had to stop working. One of your workers called you in the presence of Ms. Batchelder, and you directed your workers to continue working in blatant violation of the ARB's cease and desist determination, and the directive of Board member Batchelder.

Amazingly, on April 12, 2022 at 3:21 p.m., you emailed Bailey the following:

Please inquire where the ARB is with this process.

On April 13, 2022, you emailed Bailey and falsely accused her of telling the ARB Architects to "put this on hold indefinitely."

The ARB clearly stated in its cease and desist notice that it would "assess the extent and nature of the cutting and inform you of any fines and/or mitigation requirements." Because you violated the ARB Covenants, the ARB retained Natural Directions, LLC on March 20, 2022, the day after learning of your violation, and was able to have the tree assessment completed much earlier than the date first estimated by Natural Directions, I.I.C. A copy of the report is enclosed.

On April 29, 2022, the ARB received a report from Natural Directions, LLC indicating the number, size, and species of trees you cut or removed from Lot 58 without approval from the ARB. The report indicates that a total of 29 trees 8 inches DBH or greater were cut, with a total number of 382 diameter inches. Not all of the trees could be measured or inspected because you either removed them from the site, or piled them on the site. In addition to the trees you cut without ARB authority, Natural Directions, LLC also identified a large oak tree that you failed to place on your tree survey.

On May 4, 2022, you received a building permit from the City of Charleston with conditions, described as:

"SF New

Zoning has approved with conditions

Tree barricade required 30" LO, 16/17" LO, 18/22" LO & 31" LO

Construction entrance to be opposite side of driveway"

The ARB also understands that the City required you to shift the location of your proposed home.

In an email to Bailey on May 10, 2022, you told Bailey:

In the event that I still have no response, I will be forced to continue with the construction of my home and to file a lawsuit for obvious and intentional non-resolution or response to my repeated request resolution.

(emphasis added). This was a clear statement of your intent to continue to violate the Declaration and ARB Covenants and the determinations and directives of the ARB. The ARB submits that your own failure to follow the Declaration and ARB Covenants and unauthorized cutting of trees on Lat 58 is the reason for any perceived delays, and any approval will require compliance with the Declarations and ARB Covenants.

By an email dated May 11, 2022, Bailey informed you that, "I have been advised from the Fenwick legal counsel Derek Dean to have your attorney contact him directly regarding your lot." You responded by making the following threat:

"I will do as well as advise all the homeowners that Dennis [and ARB Board member] has chosen more Attorney Fees over a reasonable resolution."

(emphasis added)

In a letter dated May 12, 2022 from your attorney to ARB attorney Derek Dean, your attorney made many accusations that the ARB takes exception to, including, but not limited to:

"It has come to my attention that someone from the HOA has instructed Sam Furr to table the Ross's application for final approval indefinitely in retaliation for Ross's clearing trees on their property after obtaining preliminary approval but prior to final approval.

"The malicious refusal to [process Ross's application is] in retaliation for Ross's cutting of trees prior to final approval makes the HOA liable to the Ross's for their damages."

Ms. Bailey has reported to the ARB that you have been unprofessional, discourteous, and bullying towards her throughout the process, and she recently felt it

necessary to block you from her cell phone. Ms. Bailey also reported that you repeatedly would submit a document and then demand an immediate response from the ARB.

To date, you have not submitted to the ARB an application with plans and specifications that comply with the Declaration and ARB Covenants. In addition, you have not submitted plans to the ARB reflecting the requirements and conditions imposed by the City in its Building Permit issued to you on May 4, 2022, which require material changes to your plans and specifications.

Despite having submitted an incomplete ARB application and plans and specifications, which require material changes due to the conditions imposed by the City in its Building Permit:

1. you continue to blame the ARB for your failure to comply with the Declaration and ARB Covenants;
2. you misrepresent the facts;
3. you threaten to build your home without ARB approval; and
4. you threaten to sue the ARB with respect to your self-imposed deficient application.

B. DETERMINATION

1. Denial of Application

You purchased Lot 58 subject to the Declaration and ARB Covenants of record, which regulate the development of all homes in the 65-lot subdivision created by The Preserve PUD. You have represented that, as a builder, you have previously built homes in neighborhoods where the development was controlled and regulated by a Declaration and ARB Covenants administered by an architectural review board.

You initiated your proposed home project by filing plans on or about January 18, 2022 without the required ARB application forms, ARB fee, or deposit.

On January 25, 2022, the ARB Architect visited Lot 58 and concluded that your plans were materially deficient and noncompliant with the ARB Covenants. Thereafter, Bailey provided you with a partial list of deficiencies and the ARB Architect's conclusion that the list **only begins to touch on the many requirements not met.** (emphasis added)

On March 8, 2022, the ARB Architect met with you and discussed drainage, house placement, and some of its concerns about the drawings and details (or lack thereof). The ARB provided you with a copy of the ARB Covenants.

Subsequently, on May 15, 2022, you became aggravated when Ms. Bailey informed you that you had not provided several of the required ARB documents. You emailed Ms. Bailey and said:

This process must be designed by a former government employee because of the amount of redundancy and red tape is enough to choke someone.

On March 25, 2022, Bailey emailed you with numerous comments to your plans, including comments regarding the trees and landscape plan, and informed you that the comments needed to be addressed before a final review, and specifically stated the conditions had to be addressed "**before any actions are taken on the lot.**" (emphasis added)

Instead of addressing the conditions provided to you on March 25, 2022, you started clearing Lot 58 and cutting trees in patent violation of the Declaration of ARB Covenants, including Section 9.02 (Trees) of the Declaration.

Based upon your patent violation of the Declaration and ARB Covenants on March 29, 2022, you were provided with a Cease and Desist determination by the ARB, and the ARB promptly retained an independent expert to determine the number, species, location, and size of the trees you cut down without ARB authority.

On April 12, 2022, in direct violation of the Cease and Desist determination and Bailey's emails to you, you commence work on Lot 58. When a Board member of The Preserve II POA visited Lot 58 and told your crew to stop working, you ordered your crew, in the Board member's presence, to continue working in flagrant violation of the Cease and Desist determination, and the directive given to you be a Board member.

Thereafter, on May 10, 2022, you emailed Bailey, stating that in absence of a response from the ARB – which was promptly investigating your violation of the Declaration and ARB Covenants – "**I will be forced to continue with the construction**

of my home and to file a lawsuit for obvious and intentional non-resolution of response to repeated requests for resolution." (emphasis added)

On May 11, 2022, you emailed Bailey with a threat to advise all the homeowners that the ARB "has chosen more Attorney Fees over a reasonable resolution."

On May 12, 2022, your attorney wrote a letter to the ARB's attorney falsely alleging "that someone from the HOA has instructed Sam Furr to table the Ross's application for final approval indefinitely in retaliation for the Ross's clearing of trees on their property..." and also falsely alleging that the HOA had maliciously refused to process your application without delay.

It is also noted that during the application process, in addition to making threats, you have been unprofessional, discourteous, abusive, and bullying towards Ms. Bailey, which the ARB finds reprehensive and will not be tolerated.

Based upon the foregoing, and all the submissions, and emails and verbal statements, the ARB finds that:

1. You, as a self-proclaimed builder, have not followed the Declaration and ARB Covenants.
2. Your application and accompanying plans and specifications are both noncompliant with the Declaration and ARB Covenants and incomplete.
3. You failed to reflect in submissions to the ARB the material changes that the City imposed in its Building Permit dated May 4, 2022, such as the change in your square footage, the location of your driveway, the proposed location of your construction entrance on the opposite side of your driveway, the change in location of your stairs, the shift in the location of your home, and any other changes made to your proposed project from what has been submitted to the ARB.
4. You have willfully attempted to subvert the process set forth in the Declaration and ARB Covenants.
5. You have engaged in unprofessional, discourteous, abusive, and/or bullying behavior toward Cheryl Bailey, the ARB, and a Preserve II POA Board member.
6. You have threatened to continue with the construction of your home despite the fact that there is an outstanding Cease and Desist determination, your proposed

project is noncompliant with the Declaration and ARB Covenants, and the conditions of the City Building Permit, and has not been approved by the ARB.

Based on the fact that your prior application has unsatisfied conditions, and that the ARB understands the City of Charleston has required, in its Building Permit issued on May 4, 2022 that you make material changes to your proposed project, including, but not limited to, changing the square footage of the home, shifting the footprint of the home, changing the location of the stairs, relocating the driveway, and placing the construction entrance to be opposite the driveway, the ABR has denied your application.

Section 5.03 (ARB Covenants) of the Declaration provides:

(d) Guidance: Final Authority of the ARB

The ARB Covenants are intended to provide guidance, and will not be the exclusive basis for decisions of the ARB, and compliance with the ARB Covenants may not guarantee approval of any application. The ARB will have the sole discretion to determine whether plans and specifications submitted for approvals are acceptable to it, and the refusal of approval of any plans and specifications may be based by the ARB upon any ground which is consistent with the objects and purposes of this Declaration, as may be supplemented by the ARB Covenants, including purely aesthetic considerations. Any Owner that is not satisfied with the determination of the ARB shall have the right to appeal the ARB's determination to the Board of Directors, provided a notice of such appeal is given by the Owner to the ARB and the Board of Directors within twenty (20) days following the ARB determination. The appeal procedure shall be in accordance with such as shall be provided by the Board of Directors or as shall be stipulated in the ARB Covenants.

2. New Application

If you decide to file a new application, the ARB offers you the following guidance and suggestions, which should expedite: (1) the ARB determination of whether your application is complete; and (2) the review process once the application is deemed complete.

1. File a new ARB Application with all required forms, plans, and specifications, together with an application fee of \$3,500.
2. With the new ARB application, to expedite the review, the ARB suggests that you address the following:
 - a. Provide a new tree survey showing all remaining trees, and include the oak tree that was omitted from the tree survey you submitted to the ARB. The tree survey should include the tree canopies and a horizontal view showing whether the home as newly sited encroaches on any of the canopies.
 - b. Provide a site plan showing the new location of the house, stairs, driveway, construction access, canopies of the four oak trees, and trees you propose to remove from the site. With respect to the driveway, show the new location, including a compliant width, a compliant turnaround, and indicate that it does not interfere with the oak trees. It is also recommended that you consider moving the driveway to the location of the construction access required by the City, if that would avoid intruding on the oak trees.
 - c. Indicate the new square footage and show it consistently throughout all drawings, as this was not done in the drawings submitted to date.
 - d. Show the new location of the footprint of the proposed home.
 - e. Show the location of the relocated stairs.
 - f. The application, plans, and specifications should comply with the City Building Permit dated May 4, 2022 and requirements of applicable City regulations and ordinances.
3. Provide a copy of the City Building Permit and any attachments and conditions. Provide any tree protection documents submitted to the City.
4. The Application and accompanying documents and fee should be delivered to Property Management Services. It would be helpful if, in addition to paper copies of the documents you submit, you provide electronic versions.
5. Communicate with Ms. Bailey, the ARB's coordinator, by letter or email. Ms. Bailey will forward all submittals to the ARB and the ARB Architects. Do not call

or email the ARB Architects unless they contact you, as they are the consultants of the ARB and not your consultants. These directives are being made in an effort to avoid continued unprofessional conduct by you towards Ms. Bailey, the ARB Architects, and the ARB.

6. Review of your application, accompanying forms, plans, and specifications will not commence until it is complete. ARB Covenants (Review Process Description), page 13.
7. The ARB suggests that you consider retaining an architect or licensed engineer to assist you in preparing a complaint application, accompanying forms, plans, and specifications, and to assist you with the ARB process.

The Preserve II- ARB Determination (Unauthorized Cutting of Trees- Cease and Desist) dated March 29, 2022 shall remain in effect until the ARB approves a compliant application and issues a determination that allows the clearing of Lot 58 and designated trees to commence.

3. Fines and Mitigation

Under the section of the ARB Covenants entitled "Landscape Guidelines (Existing Vegetation) (page 8), violation of the guidelines, including, but not limited to, the removal of any tree, or any area of understory growth, and pruning, without permission from the ARB, **"will result in substantial fines and mitigation requirements."**

The ARB has determined that you cut at least 29 trees from Lot 58, including two large Black Gums (23" DBH and 15" DBH), a Red Oak (14" DBH), and a Laurel Oak (13" DBH). See Natural Directions, I.L.C Report. The ARB has determined that, in addition to violating the ARB Covenants by cutting at least 29 trees and clearing Lot 58 without permission from the ARB, you deliberately violated its Cease and Desist determination dated March 29, 2022 when you re-entered Lot 58 and recommenced clearing activities on April 12, 2022. On April 12, 2022, a Board member of The Preserve II POA visited Lot 58 and directed your work crew to stop working. Your work crew called you in the Board member's presence, and you defiantly directed your crew to continue with work on Lot 58 in patent violation of the ARB's Cease and Desist determination and the directive of The Preserve II POA Board member.

Based upon your continued violations of the Declaration and ARB Covenants,

the Cease and Desist of the ARB, and your egregious defiance of an ARB Cease and Desist determination and the directive of a Board member attempting to enforce the ARB Cease and Desist determination, the ARB has determined that you pay The Preserve II POA a fine of \$4,000.00.

As partial mitigation, you are directed to remove all cut trees and any equipment from Lot 58, grade the lot if warranted, within fourteen (14) days of the date of this Determination.

If you file a new application, the ARB will determine any further mitigation requirements as part of any project approval made by the ARB.

cc: Cheryl Bailey Sam Furr Architects
Derek Dean, Esq.
(with enclosures)

Enclosures: The Preserve II- ARB Determination (March 29, 2022)
Natural Directions, LLC Report (April 29, 2022)



April 29, 2022

1776 Management
Dennis Curtin
32 Prioleau Street
Unit E
Charleston, SC 29401

Dear Mr. Curtin:

As requested, I inspected the building lot of concern in The Preserve at 1612 Zurlo Way. I also reviewed the tree survey and proposed construction site plan submitted to the ARB by Mr. Michael Ross. The purpose of this report is to determine the number, size, and species of trees cut or removed from the lot. I have attached a tree list as part of this report.

After walking the site to inspect the residual trees and comparing my observations to the tree survey, I found that a total of 29 trees were cut with a total number of 382 diameter inches. See the tree list for a per tree breakdown.

I was not able to measure or inspect all of the trees cut because they were either removed from the site or piled onsite. However, I believe the tree survey provided by Mr. Ross to be fairly accurate. Only trees 8 inches DBH (diameter at breast height) and larger were considered. No grand trees, per the City of Charleston's tree protection ordinance, were removed or damaged during the clearing work.

If you have any questions, please feel free to contact me.

Sincerely,

Michael W. Russell

Michael W. Russell
ISA Certified Arborist
SC Registered Forester

Enclosure

Tree Species	Diameter (DBH)
Pine	19
Pine	14
Sweet Gum	10
Pine	10
Pine	10
Water Oak	10
Red Oak	14
Sweet Gum	10
Pine	10
Black Gum	23
Pine	12
Black Gum	8
Pine	16
Pine	18
Water Oak	9
Black Gum	15
Laurel Oak	14
Water Oak	9
Water Oak	13
Pine	8
Laurel Oak	13
Sweet Gum	7
Pine	14
Pine	25
Pine	8
Pine	19
Pine	8
Pine	23
Laurel Oak	<u>13</u>
Total Inches DBH	382

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
)	
William M. Ross and Kelli S. Ross,)	CASE NO. 2022-CP-10-02345
)	
Plaintiffs,)	
)	
v.)	AFFIDAVIT OF DENNIS CURTIN
)	
The Preserve II at Fenwick Hall Property)	
Owners Association, Inc.,)	
)	
Defendants.)	
)	

Personally appeared before me, Dennis D. Curtin, who after being duly sworn and under oath, does state as follows:

1. I am over 18 years of age and mentally competent to testify as to the matters herein, which are of my own personal knowledge, except where any such matters are stated to be upon information and belief, in which case I believe such facts to be true based upon my own personal knowledge.

2. I make this affidavit with the understanding that it will be used in connection with the above-captioned case.

3. I am a board member and the President of The Preserve II at Fenwick Hall Property Owners Association, Inc. (“Preserve II POA”).

4. Property Management Services, Inc. (“PMS”) was the property manager for The Preserve I POA and is the property manager for The Preserve II POA. Cheryl Bailey (“Bailey”) of PMS has always been assigned by PMS to manage The Preserve I POA and The Preserve II POA.

5. Bailey has always served as the administrator for the ARB of The Preserve I and The Preserve II.

6. As the ARB administrator, Bailey is responsible, among other things, for receiving ARB submissions, determining their completeness, forwarding complete applications to the architect, interacting with the applicant and the ARB architect until such time as the application and project are compliant with the Declaration and Covenants, and then forwarding the compliant project to the ARB for approval.

7. I recall learning from Bailey in about January of 2022 that Michael Ross had filed an application with The Preserve II ARB.

8. On January 18, 2022, I emailed Bailey and asked whether Ross had paid the application fee, and asked Bailey to share the Crescent homebuilder's plan for Lot 58 with Sam Furr, the ARB's consulting architect ("ARB Consulting Architect") because I recalled that Crescent had been unable to obtain ARB approval for a house on Lot 58 because of the numerous oak trees located on Lot 58. Crescent eventually abandoned the home project on Lot 58 because it was unable to place a home on Lot 58 that complied with the setbacks of the Declaration and Covenants because of the number and location of the oak trees on Lot 58.

9. Subsequently, I learned that Ross had submitted a proposed house plan that was woefully out of compliance with The Preserve II Covenants.

10. In March of 2022, I became concerned about the inordinate amount of time that Bailey and the ARB Consulting Architect were spending with Ross because his plans continued to be deficient and noncompliant with the Covenants. After approximately two months, Ross had still not submitted the required ARB forms. I also learned from Bailey that Mr. Ross was demanding immediate responses from Bailey when he amended his plans. As this behavior continued, I became very concerned. Bailey also informed me that Ross was complaining about the Covenants and indicating, in substance, that he did not agree with the Covenants and was not going to comply with the Covenants.

11. After submitting several noncompliant plans with Bailey, on or about March 28, 2022, Ross started cutting trees and clearing Lot 58 without having received approval from the ARB, and in violation of the Declaration and Covenants. Bailey informed Ross that he had violated the Declaration and Covenants and was cutting trees and clearing Lot 58 without authority from the ARB.

12. The ARB was shocked that Ross was cutting trees and clearing Lot 58 without authority from the ARB and in willful disregard of Bailey's emails and calls to Mr. Ross to cease and desist cutting trees and clearing Lot 58. Based on the foregoing, I prepared a Cease and Desist Determination on behalf of the ARB, and I understand that Bailey provided the March 29, 2022 Determination to Mr. Ross on or about March 29, 2022. The Cease and Desist Determination dated March 29, 2022 ("March Cease and Desist ARB Determination") is attached hereto as **Exhibit A**.

13. After receiving the March Cease and Desist ARB Determination, I was shocked to learn that Mr. Ross continued to cut trees and clear Lot 58. I drafted a second Cease and Desist Determination with a comprehensive summary of noncompliant submissions by Mr. Ross and his willful violation of Declaration and Covenants ("May Cease and Desist ARB Determination"). On or about May 20, 2022, the May Cease and Desist ARB Determination was sent to Mr. Ross' attorney by the ARB's counsel, Derek Dean. The May Cease and Desist ARB Determination is attached hereto as **Exhibit B**.

14. Despite the two cease and desist ARB determinations, Mr. Ross continued to cut trees and develop Lot 58.

15. Having been unsuccessful in obtaining approval from the ARB of The Preserve II POA, with which Mr. Ross submitted and pursued an application to build a house, Mr. Ross alleged that he was subject to the jurisdiction of The Preserve I POA, but that he was not subject to the jurisdiction of the ARB of Preserve II.

16. On or about June 10, 2022, Mr. Ross' counsel was provided with a cease and desist determination ("June Cease and Desist ARB Determination") from the ARB of The Preserve I, which is attached hereto as **Exhibit C**. In the June Cease and Desist ARB Determination, it was stated that Ross had cut down a large spreading oak tree on Lot 58.

17. To date, Mr. Ross has not filed an application to develop Lot 58 with the ARB for The Preserve I POA, and his continued clearing and development of Lot 58 is in violation of the Declaration and Covenants of both The Preserve I Declaration and Covenants and The Preserve II Declaration and Covenants.

18. On December 12, 2019, the members/owners of The Preserve I POA voted to merge The Preserve I POA into The Preserve II POA ("Special Meeting"). A copy of the Notice of Special Meeting and the minutes of the special member meeting approving the merger are attached hereto as **Exhibits D and E**, respectively.

19. I recall the Plan of Merger was signed before a notary public after the Special Meeting. However, it recently was brought to my attention that the Plan of Merger was inadvertently not filed with the State of South Carolina in 2019, but it was recently filed on or about June 13, 2022. Accordingly, it is my understanding that, while Mr. Ross has been in violation of both Declaration and Covenants for The Preserve I POA and The Preserve II POA, he is subject to the Declaration and Covenants of The Preserve II POA and must both: (1) cease

and desist development activity on Lot 58; and (2) comply with the Declaration and Covenants of The Preserve II POA.


Dennis D. Curtin

SWORN to before me this 28
day of June, 2022.

Brenda L. Decosse
Notary Public for New York
My Commission Expires: 11/9/2027

Brenda L Decosse
Notary Public, State of New York
Qualified in Clinton County
Registration No. 01DE6213518
Commission Expires November 9, 2027

The Preserve II- ARB Determination

To: Michael Ross, Lot 58, Zurlo Way

From: The Preserve II, Architectural Review Board

Re: Unauthorized Cutting of Trees- Cease and Desist

Date: March 29, 2022

Cheryl Bailey of Property Management Services reported that on March 28, 2022 a crew began cutting trees on Lot 58 and that cutting continued today. Ms. Bailey documented today that numerous trees with a trunk diameter in excess of six (6) inches were cut and that she stopped the cutting of a mature gum tree with a trunk diameter of approximately 22 inches.

The cutting of trees on Lot 58 was done in clear violation of the Declaration and Covenants.

Section 9.02 of the Declaration provides:

No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four and one-half (4 ½) feet above ground level, or other significant vegetation as designated from time to time by the ARB, without obtaining the prior approval of the ARB, provided that dead or diseased trees shall be inspected and certified as dead or diseased by the ARB or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed as to limit any applicable law or ordinance including the Preserve PUD.
(emphasis added)

The Covenants provide, in part:



LANDSCAPE GUIDELINES

The natural features of The Preserve are priceless and to be protected. Additionally, the setting is as fragile as it is beautiful. One cannot expect that hundreds of years of growth will be quickly restored after it is scarred by construction. Knowing this, the Architectural Review Board will carefully take on the duty of protecting the land and vegetation and, thus, the property value and community vision and property values.

EXISTING VEGETATION

The ecosystem relies on a plant base that has developed over thousands of years to provide the correct wildlife habitats, proper air and water purification, adequate drainage, and control of erosion. Significant and/or special trees and shrubs are essential in this ecosystem and their value will be considered in the design process. In order to ensure their preservation, these following guidelines shall be followed:

- 1. The removal of any tree or any area of understory growth will require prior permission from the Architectural Review Board.**
- 2. Tree removal required to develop the property (i.e., the structure and paved areas) may require mitigation at the Architectural Review Board's discretion.**

(emphasis added)

Violation of the above guidelines will result in substantial fines and mitigation requirements.

SOFTSCAPE STANDARDS

TREES:

Large specimen oaks (24" or greater in caliper) and any other significant trees will be strictly protected.

PRELIMINARY REVIEW

After the Site Analysis has been held and a consensus has been agreed upon, the design team will begin documenting the layout in a precise manner. One (1) complete set, consisting of the following drawings, size 24" x 36", is required for the Preliminary Review:

2. TREE AND TOPOGRAPHICAL SURVEY

Crucial to preparing an understanding of the site is obtaining a Tree and Topographical Survey for the property from a South Carolina Registered Land Surveyor. The survey must be made within eight (8) months of its submittal. The survey must be at least 1/8"=1' or 1"=10'-0" scale and show legal description of the site, including:

- a. Recorded property lines, easements, and setbacks.

- b. The topographical contours of the lot.
- c. The location, genus, and species of all oak trees over 3" in diameter and other trees in excess of 5" in diameter at waist height.
- d. Any prominent natural features.
- e. Adjacent residences with roof heights from MSL, garages, and driveways.
- f. Utility locations.

3. EXISTING SITE CONDITIONS

This drawing overlays the Tree and Topographical Survey and shall include, but is not limited to, the following:

- a. Oak trees 24" in caliper or greater highlighted in red.
- b. Hardwood trees 12" in caliper or greater highlighted in blue.
- c. Unusual characteristics of natural vegetation or understory growth.
- d. Existing oak canopy delineated.
- e. Locations of diseased or damaged trees highlighted in yellow.
- f. Locations of tree restricted from removal with respective ground area delineated by shading or hatching.
- g. Existing drainage patterns.
- h. Sun movement analysis, prevailing winds, and breeze directions.

You have violated the Declaration and Covenants and all work and cutting of trees on Lot 58 must immediately cease and desist. In addition, large oak trees are to be appropriately fenced and protected before any ARB-approved work takes place on Lot 58.

The ARB will assess the extent and nature of the cutting and will inform you of any fines and/or mitigation requirements.

The Preserve II- ARB Determination

To: Michael Ross, Lot 58, 1612 Zurlo Way

From: The Preserve II. Architectural Review Board

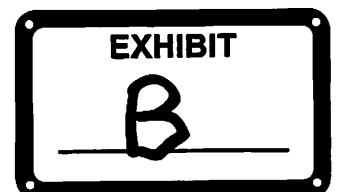
Re: Unauthorized Cutting of Trees- Cease and Desist- Denial of Application- Fines and Mitigation

Date: May 20, 2022

On March 29, 2022, the Architectural Review Board ("ARB") issued a Cease and Desist order to you for the unauthorized cutting of trees on your lot at 1612 Zurlo Way, also known as Lot 58 in The Preserve II PUD ("Lot 58"), which was done without authority from the ARB.

In making a decision regarding the status of the cease and desist and the ARB's requirements for you to proceed with your project, some of the pertinent background history needs to be reviewed as, despite the ARB and its architect continuing to review your incomplete and deficient application, plans, and specifications and assist you, you continue to place blame on the ARB for your failure to follow the Declaration and ARB Covenants, and you have stated that your cutting of trees and clearing of Lot 58 was somehow approved by the ARB, when it was not. You also deliberately and willfully violated the Cease and Desist determination of the ARB.

The ARB has not provided you with any approvals, only the cease and desist determination. Any "preliminary approvals" by Sam Furr Architect (the "ARB Architect") were recommendations from ARB Architect to the ARB to facilitate the ARB's review and the ultimate approval or denial of your project by the ARB. The ARB Architect reviews projects and, as a consultant to the ARB, provides advice to the ARB. It is the ARB that makes approvals and denials, not the ARB Architect. The ARB Architect has no decision-making authority, and as a consultant to the ARB, it only makes recommendations. Section 5.01 (Purpose) of the Declaration provides, in pertinent part, that all improvements located on lots "including landscaping, grading, excavation, or filling of any nature whatsoever... will be subject to the prior review and approval of



the ARB in accordance with... the 'ARB Covenants.'" Similarly, Section 5.03 (ARB Covenants) of the Declaration provides, in part, that:

The ARB will have sole discretion to determine whether plans and specifications submitted for approvals are acceptable to it, and the refusal or approval of any plans and specifications may be based by the ARB upon any ground which is consistent with the objects and purposes of this Declaration, as may be supplemented by the ARB Covenants, including purely aesthetic considerations.

Once the ARB makes a preliminary review of a project, the owner is required to make any necessary changes and submit specified documents to the ARB, and perform a final stakeout, for consideration and approval or denial by the ARB. See ARB Covenants pp. 14-18.

As a builder, you should be familiar with, and understand, this process.

A. BACKGROUND

The development of Lot 58 is complicated and challenged by the configuration of several oak trees on the lot. Several lots in The Preserve II at Fenwick Hall Property Owners Association, Inc. ("The Preserve II POA") were purchased by a regional developer who developed all the purchased lots, except Lot 58. Subsequently, a large local developer acquired an option to purchase Lot 58 but abandoned the project after it was unable to site a home and driveway on the lot that complied with the Declaration and ARB Covenants. Since then, several years have passed with no attempted development activity with respect to Lot 58. It is believed that Lot 58 was sold to you at a substantial discount to the market price of other lots in The Preserve II POA because the configuration of the several oak trees on the lot present significant challenges to placing a home and driveway on the lot that comply with the Declaration and ARB Covenants.

On or about January 18, 2022, you submitted plans to Cheryl Bailey ("Bailey"), who works for Property Management Services, the Preserve II POA's property manager, without the required ARB application forms, ARB fee, or deposit. In essence, a woefully incomplete and noncompliant application.

On January 25, 2022, the ARB Architect visited Lot 58 and concluded that your plans were materially deficient and noncompliant with the ARB Covenants. Thereafter, Bailey provided you with a partial list of deficiencies and the ARB Architect's conclusion that the list **only begins to touch on the many requirements not met.** (emphasis added)

On March 8, 2022, the ARB Architect met with you and discussed drainage, house placement, and some of its concerns about the drawings and details (or lack thereof). The ARB Architect provided you with a copy of the ARB Covenants.

On March 15, 2022, you submitted a revised site plan, revised home plans, and the ARB Preliminary Review form. However, you still failed to submit all the required ARB forms. On March 15, 2022, Bailey sent you the following email:

I have sent the forms/plans to the ARB but [t]hey did not approve. A few items are missing from the link below as the full package review. These are the form[s] that are needed before anymore reviews with the ARB. It was also noted by the ARB that the grand trees and canopies need to be shown on the plans.

Reminder each site visit is a cost of the architect deposit. Once you submit the following stated above and all the forms it may be submitted for review.

https://charlestonpms.com/downloads/New_Construction_Forms.pdf

https://charlestonpms.com/downloads/2020_Fenwick_ARB_Guidelines.pdf For Reference

Thank you for your cooperation in this matter

On March 15, 2022, you emailed Bailey and included the following documents: Preliminary Review, Final Color Form, Construction Deposit & Agreement, Landscape Certification (unsigned by the Landscape Architect), Final Review, Post Construction Final Inspection, and Tree and Topographic Survey. In your email you stated, in part:

This process must be designed by a former government employee because of the amount of redundancy and red tape is enough to choke someone.

(emphasis added)

The ARB notes that you purchased Lot 58 subject to the Declaration and ARB Covenants of record, and you, particularly as a builder, should have reviewed the Declaration and ARB Covenants and elected not to purchase Lot 58 if you did not like the terms and conditions, "red tape" in your words, of the Declaration and ARB Covenants, or if you did not want to comply with them.

On March 25, 2022, Bailey emailed you with numerous comments to your plans, including comments regarding the trees and landscape plan, and informed you that the comments needed to be addressed before a final review, and specifically stated the conditions had to be addressed "before any actions are taken on the lot." (emphasis added)

On March 28, 2022, you started clearing trees from Lot 58 without approval from the ARB and in defiance and violation of Bailey's March 25, 2022 email to you to satisfy the ARB conditions and obtain Final Approval "before any actions are taken on the lot."

Bailey reported that on more than one occasion that you have expressed your dissatisfaction with the ARB Covenants and indicated, in substance, that you have complied with the City of Charleston's regulations and ordinances (when you had not), and the ARB Covenants do not prevent you from building your house on Lot 58.

On March 28, 2022, residents in The Preserve II POA observed that you were cutting trees on Lot 58, and reported your actions to Bailey, who came to Lot 58, took photos, and informed you that you were in violation of the Declaration and ARB Covenants and to cease and desist cutting trees on Lot 58.

On March 29, 2022, Bailey sent you the following email informing you that The Preserve II POA ARB Covenants apply, in addition to any rules of the City of Charleston ("COC"), with respect to tree removal and landscaping:

Good morning.

In case you didn't know but the COC has their rules, but Fenwick precedes the COC rules where any thing over 6 in diameter needs approval. In addition, the Live Oaks must be protected by fencing where were not as of today. The Black gum or any other trees may not be cut down until approved.

Last ARB comment- Regarding the landscape plan, planting buffers are needed at property edges and to define grass areas. Screening should also be continuous around the HVAC enclosure. Tree count and required mitigating numbers should be indicated. Permeable pavers should be extended further up the concrete driveway to preserve the roots of the 15" and 17" live oaks. Great care should be taken as to not damage the roots beyond the foundation of the house. All shrub installations must be a minimum three gallons size.

On March 29, 2022, Bailey also separately emailed you Section 9.02 (Trees) of the Declaration, which was part of her email, and provided:

Section 9.02. Trees.

No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four and one-half (4 ½) feet above ground level, or other significant vegetation as designated from time to time by the ARB, without obtaining the prior approval of the ARB, provided that dead or diseased trees which are inspected and certified as dead or diseased by the ARB or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed so as to limit any applicable law or ordinance, including The Preserve PUD.

On or about March 29, 2022, Ms. Bailey provided you with an ARB Determination directing you to cease and desist cutting trees on Lot 58, and cited Section 9.02 (Trees) of the Declaration and applicable provisions of the ARB Covenants. The March 29, 2022 ARB Determination is enclosed.

As a consequence of your violation of the Declaration and ARB Covenants, the ARB felt compelled to retain counsel to provide assistance and guidance, of which you were informed.

On or about April 4, 2022, you submitted revised documents to Bailey/ARB.

On April 5, 2022, Bailey sent to the following email with respect to assessing the trees you cut without authority and the rules of the new created POA:

The ARB has received your April 1, 2022 letter and attachments and has retained a tree expert to assess the trees cut on Lot 58 without ARB approval. Once the assessment has been completed and reviewed by the ARB, the ARB will notify you of any fines and/or mitigation requirements.

You have not received final approval with respect to any aspect of this project and the cease and desist will remain in effect until the violation has been resolved.

Also, there is a new POA which is enforcing the new Declaration and Covenants. These documents were of record when you purchased the Lot 58.

With respect to the second to last paragraph of your April 1st letter, I never agreed "to work on a mitigation plan together once these documents are submitted and final approval has been given." Furthermore, that will be done by the ARB, as I have no ability to make decisions on behalf of the ARB.

On April 12, 2022, in direct violation of the ARB's March 29, 2022 Cease and Desist directive, and Bailey's April 15, 2022 email to you, you had a crew back working on Lot 58. Nancy Batchelder, a Board member of The Preserve II POA, knew of the ARB's cease and desist determination and told your workers that they had to stop working. One of your workers called you in the presence of Ms. Batchelder, and you directed your workers to continue working in blatant violation of the ARB's cease and desist determination, and the directive of Board member Batchelder.

Amazingly, on April 12, 2022 at 3:21 p.m., you emailed Bailey the following:

Please inquire where the ARB is with this process.

On April 13, 2022, you emailed Bailey and falsely accused her of telling the ARB Architects to "put this on hold indefinitely."

The ARB clearly stated in its cease and desist notice that it would "assess the extent and nature of the cutting and inform you of any fines and/or mitigation requirements." Because you violated the ARB Covenants, the ARB retained Natural Directions, LLC on March 20, 2022, the day after learning of your violation, and was able to have the tree assessment completed much earlier than the date first estimated by Natural Directions, I.I.C. A copy of the report is enclosed.

On April 29, 2022, the ARB received a report from Natural Directions, I.I.C indicating the number, size, and species of trees you cut or removed from Lot 58 without approval from the ARB. The report indicates that a total of 29 trees 8 inches DBH or greater were cut, with a total number of 382 diameter inches. Not all of the trees could be measured or inspected because you either removed them from the site, or piled them on the site. In addition to the trees you cut without ARB authority, Natural Directions, LLC also identified a large oak tree that you failed to place on your tree survey.

On May 4, 2022, you received a building permit from the City of Charleston with conditions, described as:

"SF New

Zoning has approved with conditions

Tree barricade required 30" L.O. 16/17" L.O. 18/22" LO & 31" LO

Construction entrance to be opposite side of driveway"

The ARB also understands that the City required you to shift the location of your proposed home.

In an email to Bailey on May 10, 2022, you told Bailey:

In the event that I still have no response, I will be forced to continue with the construction of my home and to file a lawsuit for obvious and intentional non-resolution or response to my repeated request resolution.

(emphasis added). This was a clear statement of your intent to continue to violate the Declaration and ARB Covenants and the determinations and directives of the ARB. The ARB submits that your own failure to follow the Declaration and ARB Covenants and unauthorized cutting of trees on Lat 58 is the reason for any perceived delays, and any approval will require compliance with the Declarations and ARB Covenants.

By an email dated May 11, 2022, Bailey informed you that, "I have been advised from the Fenwick legal counsel Derek Dean to have your attorney contact him directly regarding your lot." You responded by making the following threat:

"I will do as well as advise all the homeowners that Dennis [and ARB Board member] has chosen more Attorney Fees over a reasonable resolution."

(emphasis added)

In a letter dated May 12, 2022 from your attorney to ARB attorney Derek Dean, your attorney made many accusations that the ARB takes exception to, including, but not limited to:

"It has come to my attention that someone from the HOA has instructed Sam Furr to table the Ross's application for final approval indefinitely in retaliation for Ross's clearing trees on their property after obtaining preliminary approval but prior to final approval.

"The malicious refusal to [process Ross's application is] in retaliation for Ross's cutting of trees prior to final approval makes the HOA liable to the Ross's for their damages."

Ms. Bailey has reported to the ARB that you have been unprofessional, discourteous, and bullying towards her throughout the process, and she recently felt it

necessary to block you from her cell phone. Ms. Bailey also reported that you repeatedly would submit a document and then demand an immediate response from the ARB.

To date, you have not submitted to the ARB an application with plans and specifications that comply with the Declaration and ARB Covenants. In addition, you have not submitted plans to the ARB reflecting the requirements and conditions imposed by the City in its Building Permit issued to you on May 4, 2022, which require material changes to your plans and specifications.

Despite having submitted an incomplete ARB application and plans and specifications, which require material changes due to the conditions imposed by the City in its Building Permit:

1. you continue to blame the ARB for your failure to comply with the Declaration and ARB Covenants;
2. you misrepresent the facts;
3. you threaten to build your home without ARB approval; and
4. you threaten to sue the ARB with respect to your self-imposed deficient application.

B. DETERMINATION

1. Denial of Application

You purchased Lot 58 subject to the Declaration and ARB Covenants of record, which regulate the development of all homes in the 65-lot subdivision created by The Preserve PUD. You have represented that, as a builder, you have previously built homes in neighborhoods where the development was controlled and regulated by a Declaration and ARB Covenants administered by an architectural review board.

You initiated your proposed home project by filing plans on or about January 18, 2022 without the required ARB application forms, ARB fee, or deposit.

On January 25, 2022, the ARB Architect visited Lot 58 and concluded that your plans were materially deficient and noncompliant with the ARB Covenants. Thereafter, Bailey provided you with a partial list of deficiencies and the ARB Architect's conclusion that the list **only begins to touch on the many requirements not met.** (emphasis added)

On March 8, 2022, the ARB Architect met with you and discussed drainage, house placement, and some of its concerns about the drawings and details (or lack thereof). The ARB provided you with a copy of the ARB Covenants.

Subsequently, on May 15, 2022, you became aggravated when Ms. Bailey informed you that you had not provided several of the required ARB documents. You emailed Ms. Bailey and said:

This process must be designed by a former government employee because of the amount of redundancy and red tape is enough to choke someone.

On March 25, 2022, Bailey emailed you with numerous comments to your plans, including comments regarding the trees and landscape plan, and informed you that the comments needed to be addressed before a final review, and specifically stated the conditions had to be addressed **"before any actions are taken on the lot."** (emphasis added)

Instead of addressing the conditions provided to you on March 25, 2022, you started clearing Lot 58 and cutting trees in patent violation of the Declaration of ARB Covenants, including Section 9.02 (Trees) of the Declaration.

Based upon your patent violation of the Declaration and ARB Covenants on March 29, 2022, you were provided with a Cease and Desist determination by the ARB, and the ARB promptly retained an independent expert to determine the number, species, location, and size of the trees you cut down without ARB authority.

On April 12, 2022, in direct violation of the Cease and Desist determination and Bailey's emails to you, you commence work on Lot 58. When a Board member of The Preserve II POA visited Lot 58 and told your crew to stop working, you ordered your crew, in the Board member's presence, to continue working in flagrant violation of the Cease and Desist determination, and the directive given to you be a Board member.

Thereafter, on May 10, 2022, you emailed Bailey, stating that in absence of a response from the ARB – which was promptly investigating your violation of the Declaration and ARB Covenants – **"I will be forced to continue with the construction**

of my home and to file a lawsuit for obvious and intentional non-resolution of response to repeated requests for resolution." (emphasis added)

On May 11, 2022, you emailed Bailey with a threat to advise all the homeowners that the ARB "has chosen more Attorney Fees over a reasonable resolution."

On May 12, 2022, your attorney wrote a letter to the ARB's attorney falsely alleging "that someone from the HOA has instructed Sam Furr to table the Ross's application for final approval indefinitely in retaliation for the Ross's clearing of trees on their property..." and also falsely alleging that the HOA had maliciously refused to process your application without delay.

It is also noted that during the application process, in addition to making threats, you have been unprofessional, discourteous, abusive, and bullying towards Ms. Bailey, which the ARB finds reprehensive and will not be tolerated.

Based upon the foregoing, and all the submissions, and emails and verbal statements, the ARB finds that:

1. You, as a self-proclaimed builder, have not followed the Declaration and ARB Covenants.
2. Your application and accompanying plans and specifications are both noncompliant with the Declaration and ARB Covenants and incomplete.
3. You failed to reflect in submissions to the ARB the material changes that the City imposed in its Building Permit dated May 4, 2022, such as the change in your square footage, the location of your driveway, the proposed location of your construction entrance on the opposite side of your driveway, the change in location of your stairs, the shift in the location of your home, and any other changes made to your proposed project from what has been submitted to the ARB.
4. You have willfully attempted to subvert the process set forth in the Declaration and ARB Covenants.
5. You have engaged in unprofessional, discourteous, abusive, and/or bullying behavior toward Cheryl Bailey, the ARB, and a Preserve II POA Board member.
6. You have threatened to continue with the construction of your home despite the fact that there is an outstanding Cease and Desist determination, your proposed

project is noncompliant with the Declaration and ARB Covenants, and the conditions of the City Building Permit, and has not been approved by the ARB.

Based on the fact that your prior application has unsatisfied conditions, and that the ARB understands the City of Charleston has required, in its Building Permit issued on May 4, 2022 that you make material changes to your proposed project, including, but not limited to, changing the square footage of the home, shifting the footprint of the home, changing the location of the stairs, relocating the driveway, and placing the construction entrance to be opposite the driveway, the ABR has denied your application.

Section 5.03 (ARB Covenants) of the Declaration provides:

(d) Guidance: Final Authority of the ARB

The ARB Covenants are intended to provide guidance, and will not be the exclusive basis for decisions of the ARB, and compliance with the ARB Covenants may not guarantee approval of any application. The ARB will have the sole discretion to determine whether plans and specifications submitted for approvals are acceptable to it, and the refusal of approval of any plans and specifications may be based by the ARB upon any ground which is consistent with the objects and purposes of this Declaration, as may be supplemented by the ARB Covenants, including purely aesthetic considerations. Any Owner that is not satisfied with the determination of the ARB shall have the right to appeal the ARB's determination to the Board of Directors, provided a notice of such appeal is given by the Owner to the ARB and the Board of Directors within twenty (20) days following the ARB determination. The appeal procedure shall be in accordance with such as shall be provided by the Board of Directors or as shall be stipulated in the ARB Covenants.

2. New Application

If you decide to file a new application, the ARB offers you the following guidance and suggestions, which should expedite: (1) the ARB determination of whether your application is complete; and (2) the review process once the application is deemed complete.

1. **File a new ARB Application with all required forms, plans, and specifications, together with an application fee of \$3,500.**
2. **With the new ARB application, to expedite the review, the ARB suggests that you address the following:**
 - a. **Provide a new tree survey showing all remaining trees, and include the oak tree that was omitted from the tree survey you submitted to the ARB. The tree survey should include the tree canopies and a horizontal view showing whether the home as newly sited encroaches on any of the canopies.**
 - b. **Provide a site plan showing the new location of the house, stairs, driveway, construction access, canopies of the four oak trees, and trees you propose to remove from the site. With respect to the driveway, show the new location, including a compliant width, a compliant turnaround, and indicate that it does not interfere with the oak trees. It is also recommended that you consider moving the driveway to the location of the construction access required by the City, if that would avoid intruding on the oak trees.**
 - c. **Indicate the new square footage and show it consistently throughout all drawings, as this was not done in the drawings submitted to date.**
 - d. **Show the new location of the footprint of the proposed home.**
 - e. **Show the location of the relocated stairs.**
 - f. **The application, plans, and specifications should comply with the City Building Permit dated May 4, 2022 and requirements of applicable City regulations and ordinances.**
3. **Provide a copy of the City Building Permit and any attachments and conditions. Provide any tree protection documents submitted to the City.**
4. **The Application and accompanying documents and fee should be delivered to Property Management Services. It would be helpful if, in addition to paper copies of the documents you submit, you provide electronic versions.**
5. **Communicate with Ms. Bailey, the ARB's coordinator, by letter or email. Ms. Bailey will forward all submittals to the ARB and the ARB Architects. Do not call**

or email the ARB Architects unless they contact you, as they are the consultants of the ARB and not your consultants. These directives are being made in an effort to avoid continued unprofessional conduct by you towards Ms. Bailey, the ARB Architects, and the ARB.

6. Review of your application, accompanying forms, plans, and specifications will not commence until it is complete. ARB Covenants (Review Process Description), page 13.
7. The ARB suggests that you consider retaining an architect or licensed engineer to assist you in preparing a complaint application, accompanying forms, plans, and specifications, and to assist you with the ARB process.

The Preserve II- ARB Determination (Unauthorized Cutting of Trees- Cease and Desist) dated March 29, 2022 shall remain in effect until the ARB approves a compliant application and issues a determination that allows the clearing of Lot 58 and designated trees to commence.

3. Fines and Mitigation

Under the section of the ARB Covenants entitled "Landscape Guidelines (Existing Vegetation) (page 8), violation of the guidelines, including, but not limited to, the removal of any tree, or any area of understory growth, and pruning, without permission from the ARB, **"will result in substantial fines and mitigation requirements."**

The ARB has determined that you cut at least 29 trees from Lot 58, including two large Black Gums (23" DBH and 15" DBH), a Red Oak (14" DBH), and a Laurel Oak (13" DBH). See Natural Directions, I.L.C Report. The ARB has determined that, in addition to violating the ARB Covenants by cutting at least 29 trees and clearing Lot 58 without permission from the ARB, you deliberately violated its Cease and Desist determination dated March 29, 2022 when you re-entered Lot 58 and recommenced clearing activities on April 12, 2022. On April 12, 2022, a Board member of The Preserve II POA visited Lot 58 and directed your work crew to stop working. Your work crew called you in the Board member's presence, and you defiantly directed your crew to continue with work on Lot 58 in patent violation of the ARB's Cease and Desist determination and the directive of The Preserve II POA Board member.

Based upon your continued violations of the Declaration and ARB Covenants,

the Cease and Desist of the ARB, and your egregious defiance of an ARB Cease and Desist determination and the directive of a Board member attempting to enforce the ARB Cease and Desist determination, the ARB has determined that you pay The Preserve II POA a fine of \$4,000.00.

As partial mitigation, you are directed to remove all cut trees and any equipment from Lot 58, grade the lot if warranted, within fourteen (14) days of the date of this Determination.

If you file a new application, the ARB will determine any further mitigation requirements as part of any project approval made by the ARB.

**cc: Cheryl Bailey Sam Furr Architects
Derek Dean, Esq.
(with enclosures)**

**Enclosures: The Preserve II- ARB Determination (March 29, 2022)
Natural Directions, LLC Report (April 29, 2022)**

The Preserve II- ARB Determination

To: Michael Ross, Lot 58, Zurlo Way

From: The Preserve II. Architectural Review Board

Re: Unauthorized Cutting of Trees- Cease and Desist

Date: March 29, 2022

Cheryl Bailey of Property Management Services reported that on March 28, 2022 a crew began cutting trees on Lot 58 and that cutting continued today. Ms. Bailey documented today that numerous trees with a trunk diameter in excess of six (6) inches were cut and that she stopped the cutting of a mature gum tree with a trunk diameter of approximately 22 inches.

The cutting of trees on Lot 58 was done in clear violation of the Declaration and Covenants.

Section 9.02 of the Declaration provides:

No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four and one-half (4 ½) feet above ground level, or other significant vegetation as designated from time to time by the ARB, without obtaining the prior approval of the ARB, provided that dead or diseased trees shall be inspected and certified as dead or diseased by the ARB or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed as to limit any applicable law or ordinance including the Preserve PUD.
(emphasis added)

The Covenants provide, in part:

LANDSCAPE GUIDELINES

The natural features of The Preserve are priceless and to be protected. Additionally, the setting is as fragile as it is beautiful. One cannot expect that hundreds of years of growth will be quickly restored after it is scarred by construction. Knowing this, the Architectural Review Board will carefully take on the duty of protecting the land and vegetation and, thus, the property value and community vision and property values.

EXISTING VEGETATION

The ecosystem relies on a plant base that has developed over thousands of years to provide the correct wildlife habitats, proper air and water purification, adequate drainage, and control of erosion. Significant and/or special trees and shrubs are essential in this ecosystem and their value will be considered in the design process. In order to ensure their preservation, these following guidelines shall be followed:

- 1. The removal of any tree or any area of understory growth will require prior permission from the Architectural Review Board.**
- 2. Tree removal required to develop the property (i.e., the structure and paved areas) may require mitigation at the Architectural Review Board's discretion.**

(emphasis added)

Violation of the above guidelines will result in substantial fines and mitigation requirements.

SOFTSCAPE STANDARDS

TREES:

Large specimen oaks (24" or greater in caliper) and any other significant trees will be strictly protected.

PRELIMINARY REVIEW

After the Site Analysis has been held and a consensus has been agreed upon, the design team will begin documenting the layout in a precise manner. One (1) complete set, consisting of the following drawings, size 24" x 36", is required for the Preliminary Review:

2. TREE AND TOPOGRAPHICAL SURVEY

Crucial to preparing an understanding of the site is obtaining a Tree and Topographical Survey for the property from a South Carolina Registered Land Surveyor. The survey must be made within eight (8) months of its submittal. The survey must be at least 1/8"=1' or 1"=10'-0" scale and show legal description of the site, including:

- a. Recorded property lines, easements, and setbacks.

- b. The topographical contours of the lot.
- c. The location, genus, and species of all oak trees over 3" in diameter and other trees in excess of 5" in diameter at waist height.
- d. Any prominent natural features.
- e. Adjacent residences with roof heights from MSL, garages, and driveways.
- f. Utility locations.

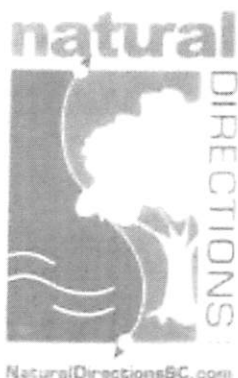
3. EXISTING SITE CONDITIONS

This drawing overlays the Tree and Topographical Survey and shall include, but is not limited to, the following:

- a. Oak trees 24" in caliper or greater highlighted in red.
- b. Hardwood trees 12" in caliper or greater highlighted in blue.
- c. Unusual characteristics of natural vegetation or understory growth.
- d. Existing oak canopy delineated.
- e. Locations of diseased or damaged trees highlighted in yellow.
- f. Locations of tree restricted from removal with respective ground area delineated by shading or hatching.
- g. Existing drainage patterns.
- h. Sun movement analysis, prevailing winds, and breeze directions.

You have violated the Declaration and Covenants and all work and cutting of trees on Lot 58 must immediately cease and desist. In addition, large oak trees are to be appropriately fenced and protected before any ARB-approved work takes place on Lot 58.

The ARB will assess the extent and nature of the cutting and will inform you of any fines and/or mitigation requirements.



PATHWAYS FOR ENVIRONMENTALLY RESPONSIBLE URBAN DEVELOPMENT

April 29, 2022

1776 Management
Dennis Curtin
32 Prioleau Street
Unit E
Charleston, SC 29401

Dear Mr. Curtin:

As requested, I inspected the building lot of concern in The Preserve at 1612 Zurlo Way. I also reviewed the tree survey and proposed construction site plan submitted to the ARB by Mr. Michael Ross. The purpose of this report is to determine the number, size, and species of trees cut or removed from the lot. I have attached a tree list as part of this report.

After walking the site to inspect the residual trees and comparing my observations to the tree survey, I found that a total of 29 trees were cut with a total number of 382 diameter inches. See the tree list for a per tree breakdown.

I was not able to measure or inspect all of the trees cut because they were either removed from the site or piled onsite. However, I believe the tree survey provided by Mr. Ross to be fairly accurate. Only trees 8 inches DBH (diameter at breast height) and larger were considered. No grand trees, per the City of Charleston's tree protection ordinance, were removed or damaged during the clearing work.

If you have any questions, please feel free to contact me.

Sincerely,

Michael W. Russell

Michael W. Russell
ISA Certified Arborist
SC Registered Forester

Enclosure

Tree Species	Diameter (DBH)
Pine	19
Pine	14
Sweet Gum	10
Pine	10
Pine	10
Water Oak	10
Red Oak	14
Sweet Gum	10
Pine	10
Black Gum	23
Pine	12
Black Gum	8
Pine	16
Pine	18
Water Oak	9
Black Gum	15
Laurel Oak	14
Water Oak	9
Water Oak	13
Pine	8
Laurel Oak	13
Sweet Gum	7
Pine	14
Pine	25
Pine	8
Pine	19
Pine	8
Pine	23
Laurel Oak	13
Total Inches DBH	382

The Preserve - ARB Determination

To: Michael Ross, Lot 58, 1612 Zurlo Way

From: The Preserve Architectural Review Board

Re: Unauthorized Clearing of Lot and Cutting of Trees- Cease and Desist

Date: June 10, 2022

It has been brought to our attention that after unsuccessfully pursuing an application to construct a house on Lot 58 with the ARB for The Preserve II at Fenwick Hall Property Owners Association (“Preserve II POA”); and also clearing your Lot 58 and cutting trees, including a large specimen oak tree, without ARB approval; that you have now taken the position that Lot 58 is not subject to Preserve II POA, but subject to The Preserve at Fenwick Hall Property Owners Association, Inc. (“Preserve I POA”).

While we believe Lot 58 is subject to the ARB of The Preserve II, if it is determined that Lot 58 is subject to Preserve I POA as you allege, you failed to file an application and application fee with the ARB of Preserve I POA, and had no authority to commence clearing Lot 58 and cutting down trees, including the large specimen oak, and you are ordered to cease all development activity on Lot 58 until such time as you receive approval from the ARB. If it determined that Lot 58 is under the jurisdiction of the ARB for Preserve I POA, any fines and mitigation requirements will be determined at that time.



The Preserve at Fenwick Hall POA

November 26, 2019

Dear Fenwick Owners,

In accordance with the governing documents for The Preserve at Fenwick Hall Property Owners Association, Inc. ("Preserve I POA"), the Board of Directors has scheduled a **Special Membership Meeting to take place on December 12, 2019 at 5:30 p.m.** The meeting will be held at 3090 Bohicket Road, Suite 2A, Johns Island, South Carolina.

Please return the proxy in the enclosed envelope to ensure you are represented at the meeting if you cannot attend. You can also email (cheryl@charlestonpms.com) or fax (843-881-5459) your proxy and ballot.

The agenda for the meeting will be as follows:

1. Call to Order
2. Board President's Report on two actions being voted upon and question and answer period.
3. Voting
4. Adjournment

Enclosed for your review are the following:

1. Letter from Preserve I POA Board;
2. Notice of Special Meeting;
3. Ballot;
4. Proxy;
5. Memorandum dated November 26, 2019 from 1776, LLC to The Preserve POA members;
6. Letter dated November 26, 2019 from 1776, LLC regarding 2020 budget subsidy;
7. Plan of Merger;
8. Declaration of Covenants and Restrictions for Preserve II at Fenwick Hall Property Owners Association, Inc., which the Board is recommending that Preserve I POA merge with;
9. Proposed budget of the new POA;

-|-



10. Proposed Promissory Note from Preserve II POA to reimburse 1776. LLC for common area expenses over four years, without interest; and
11. Description of Common Areas being deeded from 1776, LLC to the new POA the Preserve I POA is being asked to merge into by the Board.

We look forward to seeing you at the Special Member Meeting and extend a warm welcome for you to contact us with any questions or concerns.

Cheryl Bailey
on behalf of the Board of Directors

**MINUTES OF SPECIAL MEETING
OF THE PRESERVE AT FENWICK HALL
PROPERTY OWNERS' ASSOCIATION
December 12, 2019**

The special meeting of the of the Association occurred at Suite 2A, 3690 Bohicket Road, Johns Island, South Carolina on December 12, 2019 at 5:30 p.m.

Directors Present: Jay Sifly (L19)
Nick Chalfa (L21)

Others present: Cheryl Bailey, representing Property Management Services
Derek Dean
Brian Hellman.

Owners present in person (14):
Eugene Zurlo (I.54)
Dee Beard Dean (L21)
Lee Batchelder (L31)
Bernard Buonanno (L59)
John Bacak (L52)
David and Julie Harrison (I.55)
Tran Kock (L13)
Avery and Ben Smith (L25)
Jody Ponte and Jose Ponte (L37)
Tony Chiappetta (L14)
John Smith (L16)
Ann and John Faris (L30)
Ivy Kalik (L15)
Scott Deavenport (L33)

Owners represented by proxy (8):
Travis Pecha & Phayvanh Sjogren (L53)
True Homes, LLC (I.58)
Benita Shaw (L36)
Edwin Hughes (L34)
Daniel Herrick (I.32)
The Wisdom of Mayfair, LLC (Lots 23, 23, 24)

Jay Sifly discussed the two reason why this meeting is being held- and Amendment and the Merger. The owners will vote on two items tonight. Jay Sifly explained both items to the owners present.



Vote to:

(a) acknowledge and agree that property purchased by 1776, LLC in a foreclosure sale from Wells Fargo Bank in 2017 is not subject to the Declaration of Covenants and Restrictions of The Preserve I ("Preserve I Declaration") and that the Board of The Preserve POA I is authorized to take such actions and record such documents necessary and appropriate to give record notice of such acknowledgment and agreement; and

(b) that 1776, LLC has subjected to the Declaration of Covenants and Restrictions of The Preserve II at Fenwick Hall Property Owners Association, Inc. ("The Preserve II POA") portions of 1776, LLC's property, being the 34 lots and common areas, which were contemplated to be subject to and be part of the Shores at Fenwick Plantation a/k/a The Preserve at Fenwick Planned Unit Development Guidelines City Ordinance #2004-47).

The Merger will be as follows:

Approve merger of The Preserve I POA into The Preserve II POA.

Vote to approve the merger of The Preserve at Fenwick Hall Property Owners' Association, Inc. into The Preserve II at Fenwick Hall Property Owners Association, Inc., and all actions required to effectuate such merger.

Derek Dean explained that, in order for this to pass, 67% of the Fenwick I owners will need to approve. The master deed for Fenwick I did not have the correct amendment ability to allow 1776, LLC's 34 lots to be annexed into the community.

Jay Sifly explained if the merger doesn't happen, then 1776, LLC will not be allowed to annex the docks, common areas, or their lots, which will be needed in order for Fenwick to survive.

The owners present asked questions on the new ARB guidelines, 1776, LLC subsidizing the budget to keep the POA dues down, capital contribution, and the new dock special answered. All were discussed and answered.

Cheryl Bailey reported that 15 lot owners were represented in person and 8 by proxy. A legal quorum was met and it was a legal meeting.

AMENDMENT:

Jay Sifly took a roll call vote for the amendment to remove 1776. LLC property from The Preserve I POA from the Declaration of Covenants.

All owners present approved by stating their name with approved verbal. "Yes."
A total of 15 approved:

Eugene Zurlo (L54)	Jody Ponte and Jose Ponte (L37)
Dee Beard Dean (L21)	Tony Chiappetta (L14)
Lee Batchelder (L31)	John Smith (L16)
Bernard Buonanno (L59)	Ann and John Faris (L30)
John Bacak (L52)	Ivy Kalik (L15)
David & Julie Harrison (L55)	Scott Deavenport (L33)
Tran Kock (L13)	
Avery and Ben Smith (L25)	

Proxies:

Assigned to Jay Sifly: Total 7 approved

Travis Pecha & Pahyvanh Sjogren (L53)
True Homes. LLC (L58)
Edwin Hughes (L34)
Daniel Herrick (L32)
The Wisdom of Mayfair. LLC (Lots 23, 23, 24)
Benita Shaw (L36) authorized Tran Kock by Proxy: 1 approved

There was a total of 23 affirmative yes votes for the Amendment. The vote passes.

MERGER:

Jay Sifly took a roll call vote for the merger of Fenwick I to join Fenwick II. All owners present approved by stating their name with a verbal approved. "Yes."

A total of 15 approved:

Eugene Zurlo (L54)	Jody Ponte and Jose Ponte (L37)
Dee Beard Dean (L21)	Tony Chiappetta (L14)
Lee Batchelder (L31)	John Smith (L16)
Bernard Buonanno (L59)	Ann and John Faris (L30)
John Bacak (L52)	Ivy Kalik (L15)
David & Julie Harrison (L55)	Scott Deavenport (L33)
Tran Kock (L13)	
Avery and Ben Smith (L25)	

Proxies:

Assigned to Jay Sifly: Total 7 approved

Travis Pecha & Pahyvanh Sjogren (L53

True Homes, LLC (L58)

Edwin Hughes (L34)

Daniel Herrick (L32)

The Wisdom of Mayfair, LLC (Lots 23, 23, 24)

Benita Shaw (L36) authorized Tran Kock by Proxy: 1 approved

Total of 23 affirmative votes for the merger. The vote passes.

There being no further business, the meeting was adjourned at 6:46 p.m.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
)	
William M. Ross and Kelli S. Ross,)	CASE NO. 2022-CP-10-02345
)	
Plaintiffs,)	
)	
v.)	AFFIDAVIT OF NANCY BATCHELDER
)	
The Preserve II at Fenwick Hall Property)	
Owners Association, Inc.,)	
)	
Defendants.)	
)	

Personally appeared before me, Nancy Batchelder, who after being duly sworn and under oath, does state as follows:

1. I am over 18 years of age and mentally competent to testify as to the matters herein, which are of my own personal knowledge, except where any such matters are stated to be upon information and belief, in which case I believe such facts to be true based upon my own personal knowledge.

2. I make this affidavit with the understanding that it will be used in connection with the above-captioned case.

3. I am a board member for the Preserve II at Fenwick Hall Property Owners Association, Inc. (“Preserve II POA”).

4. On or about March 28, 2022, I personally observed active construction at Plaintiffs’ lot to include clearing and cutting of trees at Plaintiffs’ lot.

5. On another site visit in early April 2022, I personally told workers that I believed they needed to stop work because I was aware the ARB had not approved the proposed house and had issued a cease and desist determination after Plaintiffs violated the covenants by starting to clear their lot and cut trees without ARB approval. The workers called Mr. Ross in my presence to inquire as to whether they needed to stop working. I also said to contact my

husband, Lee Batchelder, who is the Zoning Administrator/Division Director of the City of Charleston, as I knew Plaintiffs did not have a building permit. Mr. Ross directed the workers to continue with construction while I was present.

6. Since I told Plaintiffs' contractors to stop working on Lot 58 on or about April 12, 2022, I have personally observed continued clearing of the lot; cutting of trees, including what I believe was a nice large oak tree; and placing a gravel driveway on Lot 58, which I understand is in violation of directives of the ARB's of The Preserve I POA and The Preserve II POA.

FURTHER AFFIANT SAYETH NOT.

Nancy Batchelder
Nancy Batchelder

SWORN to before me this 24th day
Of June, 2022

Wendy McCraw
Notary Public for South Carolina
My Commission Expires: April 23, 2025

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
William M. Ross and Kelli S. Ross,)
)
Plaintiffs,)
)
v.)
)
The Preserve II at Fenwick Hall Property)
Owners Association, Inc.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2022-CP-10-02345

AFFIDAVIT OF CHERYL BAILEY

Personally appeared before me, Cheryl Bailey, who after being duly sworn and under oath, does state as follows:

1. I am over 18 years of age and mentally competent to testify as to the matters herein, which are of my own personal knowledge, except where any such matters are stated to be upon information and belief, in which case I believe such facts to be true based upon my own personal knowledge.

2. I make this affidavit with the understanding that it will be used in connection with the above-captioned case.

3. Through Property Management Services, LLC, I first became a property manager for The Preserve at Fenwick Hall Property Owners, Inc. ("Preserve I POA"); and more recently, a property manager for The Preserve II at Fenwick Hall Property Owners Association, Inc. ("Preserve II POA"). In that capacity, I serve as the administrator of document submission and communication with owners and builders on behalf of the Architectural Review Board (ARB),

4. Since approximately 2021, I have worked with Plaintiffs on behalf of the ARB with respect to submittal and compliance by Plaintiffs with the Declarations and ARB covenants of The Preserve II POA. During this timeframe, I received voluminous emails, texts and phone calls from Mr. Ross where he was defiant of Preserve II POA's Declarations/Covenants, demanding of immediate responses, and otherwise unprofessional towards me.

5. When he was unable to comply with the Preserve II ARB covenants, Mr. Ross alleged for the first time that he is only subject to the Preserve I ARB covenants, despite having filed and pursued an ARB application with the ARB of the Preserve II POA.

6. As of today's date, Plaintiffs have not submitted a proper application with plans and specifications that comply with the Preserve II POA's Declarations and ARB covenants.

7. As of today's date, Plaintiffs have not submitted any application to the ARB for The Preserve I, whose ARB members are not the same as the ARB members for the Preserve II, despite Plaintiffs' recent claims that they are subject to the Preserve I POA, and not the Preserve II POA.

8. Despite noncompliance with both Preserve I POA's and Preserve II POA's ARB covenants, and two ARB cease and desist determinations, Plaintiffs continue to clear their lot, cut trees, and move forward with active construction on their lot all of which is in clear violation of both the Preserve I POA's and Preserve II POA's Declaration and Covenants.

9. On March 29, 2022, the ARB of the Preserve II POA issued an ARB determination directing the Plaintiffs to cease and desist tree cutting on Lot 58 and cited Section 9.02 (Trees) of the Declaration and applicable provisions of the ARB covenants. Plaintiffs did not comply with this cease and desist determination, and they continued tree cutting and clearing the lot in willful defiance of the cease and desist determination.

10. On May 20, 2022, the ARB of the Preserve II POA issued a second ARB determination which, in part, made a second cease and desist determination, directed Plaintiffs to file a new ARB application, as the City had required material changes to the original site plan submitted to the ARB and assessed a fine to Plaintiffs for their continued violations of the Declaration and ARB Covenants. Plaintiffs did not comply with this cease and desist determination and have willfully continued to cut trees and clear Lot 58 and build a gravel driveway.

11. On or about June 10, 2022, the ARB issued an ARB determination that no application has been submitted to the Preserve I POA or Preserve POA II and made another cease and desist determination. Again, Plaintiffs did not comply with this cease and desist determination.

12. Despite cease and desist determinations from both Preserve I POA and Preserve II POA, Plaintiffs continue to clear the subject lot, cut trees, including an approximately 22" specimen oak tree, have installed a gravel driveway, and move forward with construction of a house of Lot 58.

13. I have worked as a property manager for numerous residential communities in Charleston and the surrounding area for approximately 25 years and I have never experienced

such willful defiance of the Declarations and Covenants of Property Owners' Association, or of ARB determinations, including ARB cease and desist determinations as I have witnessed with Plaintiff William Ross. Plaintiff Ross continues to clear Lot 58 and construct his home despite two cease and desist determinations being issued by the ARB of the Preserve II POA, and Plaintiff Ross has yet to even file an application with the ARB of Preserve I POA for approval to construct a house on Lot 58, which POA now claims to be subject to after refusing to comply with the ARB of the Preserve II POA.

FURTHER AFFIANT SAYETH NOT.

Cheryl Bailey

SWORN to before me this 30th day
Of June, 2022

Wendy McCraw
Notary Public for South Carolina
My Commission Expires: April 23, 2025