

From: [Jack Kuntzman](#)
To: [Jack Kuntzman](#)
Subject: RE: Tree Preservation Links
Date: Wednesday, July 31, 2024 10:23:15 AM

From: Brian M. Zets <bzets@isaacwiles.com>
Sent: Monday, June 17, 2024 3:07 PM
To: Scott Fulton <sfulton@ci.pataskala.oh.us>
Subject: RE: Tree Preservation Links

Scott –

1. I believe the case was not appealed to the United States Supreme Court
2. Require a tree survey – no. Ask for one at the discretion of the developer – yes.
3. Maybe, but do you want to be test case? I remember the decision talking in hyperbole and hypothetically about what would be required to get around it being a taking and thought – no one will be able to do that.



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From: Scott Fulton <sfulton@ci.pataskala.oh.us>
Sent: Monday, June 10, 2024 3:25 PM
To: Brian M. Zets <bzets@isaacwiles.com>
Subject: FW: Tree Preservation Links

Brian,

At our last Planning and Zoning Commission meeting, members had some questions about our tree replacement ordinance which was determined to be unconstitutional. These questions are:

1. Have there been any appeals to the court's decision that tree replacement ordinances are unconstitutional?
2. Can the City still require a tree survey of the trees to be removed with the knowledge that those trees will not be required to be replaced?
3. Can the City amend the existing tree replacement ordinance to something that would be considered constitutional?

Ms. Rodgers did some online research on the subject, which is below.

Thanks,

SCOTT FULTON

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From: ANNE RODGERS <anne4rodgers@gmail.com>

Sent: Thursday, June 6, 2024 12:12 PM

To: R. Boggs <boggsr@embarqmail.com>

Cc: Frank Broering <fbroerin@hotmail.com>; alex.smiley@gmail.com; Jerry Truex <gatruex@yahoo.com>; d.mancino@earthlink.net; Lisa Paxton <lpaxton@ci.pataskala.oh.us>; Jack Kuntzman <jkuntzman@ci.pataskala.oh.us>; Scott Fulton <sfulton@ci.pataskala.oh.us>; Felix Dellibovi <fdellibovi@ci.pataskala.oh.us>; TimothyBush1978@gmail.com

Subject: Tree Preservation Links

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Hello Everyone,

I trust you are enjoying today's sunshine! As discussed in last night's hearing, I am sending you some links concerning the tree preservation code.

This is the latest I could find in a quick search, but I didn't read the entire article. I just thought it would be helpful to share. It was decided on April 13, 2023
<https://caselaw.findlaw.com/court/mi-court-of-appeals/2196544.html>

This article concluded, "The *F.P. Development, LLC v Charter Township of Canton* opinion does not automatically invalidate all tree preservation ordinances. It does make clear, however, that mitigation requirements must be reasonable,

proportional, and are subject to review by the courts."

<https://www.mikameyers.com/township-tree-ordinance-found-unconstitutional/>

This article discusses Ohio directly, stating: "To further canopy protection and other stormwater mitigation, authorities should be making and recording a specific, individualized determination each time they condition permit approval on installation or improvement of stormwater management infrastructure and controls. There needs to be an essential nexus and rough proportionality between each permit condition and the impacts mitigated. A formulaic, one-size-fits-all approach just might not survive legal scrutiny. This would suggest that an engineer or stormwater professional calculate the stormwater retention benefits, in all aspects including drainage, in applying any such tree removal requirements.

If the circumstances of this case arose in Ohio, there would be state law questions relating to what may constitute a "county drainage ditch" and the related maintenance requirements."

<https://www.mdllp.net/firm/news/6th-circ-tree-ordinance/> .

I hope this helps with aiding our clarification of our zoning code, and making sure we are protecting our "neck of the woods"!

Best regards,

Anne Rodgers

614.332.2207