

St. Germain, Dante

From: Stephanie Stidham <slsma1@bellsouth.net>
Sent: Tuesday, April 6, 2021 6:47 PM
To: St. Germain, Dante
Subject: Providence Point

Follow Up Flag: Follow up
Flag Status: Flagged

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I live in Crossgate near the proposed Providence Point development and am adamantly opposed to the size of this development. Traffic and water runoff, despite what the developers are telling the public, are huge issues. Local and state government have indicated there is and will not be any funds to help with traffic for the VA nor would I expect help for this development. The size MUST be scaled back substantially (hundreds of apartments less). With the schools and neighborhoods nearby it is imperative that we think of car and pedestrian traffic. I see when schools are in person children jaywalking and illegally crossing both Herr Lane and 22 regularly. This won't stop and having so much more traffic and children and cars trying to beat the traffic will result in tragedies. There are also water issues now in the surrounding neighborhoods and with the VA it will only get worse. We can't control the federal VA project but the planning commission can control the local developments. Please. The small area where all these projects are planned can only handle so much. Please carefully and conservatively make decisions. Take control and manage what you can knowing and taking into account a huge development that is planned for which we have no control. Please side with the residents and the neighbors and severely restrict this development. Decisions made in the past that keep getting referenced regarding prior plan approvals were before the inevitability of the VA nearby. Please help those who live here now. Listen to the small city Mayors and representatives.

Stephanie Stidham.

St. Germain, Dante

From: Kelly buszkiewicz <kelbusz12@gmail.com>
Sent: Sunday, April 11, 2021 3:11 PM
To: St. Germain, Dante
Subject: Possible Apartments on Herr In.

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Hi Dante. St. Germain,

I am writing this email with a huge concern about apartments being built on Herr In. I live at [7916 Barbour Manor Dr.](#) and my children have attended Wilder Elementary, Kammerer Middle School and now Ballard High School. I have witnessed and driven on Herr In when the traffic from before and after school is crazy! It is unbelievable that there is even a suggestion of building apartments in that area and increasing traffic on the two lane rd. Children will not be safe with the added chaos of more traffic. Please hold another meeting (there was one on April 1st) to discuss this matter. I like many family's were on Spring Break and not able to attend. Please reconsider building apartments in that area. The safety of our children should be considered and be of the utmost importance. Also the snarl of traffic on that road will increase and nobody will be happy.

Thank you for your time,
Kelly Buszkiewicz

Sent from my iPhone

St. Germain, Dante

From: Jennifer C. Whitfield (via Google Docs) <jennifer whitfield@gmail.com>
Sent: Sunday, April 11, 2021 3:52 PM
To: St. Germain, Dante
Cc: Davis, Brian; McCraney, Paula D.
Subject: Complaint & Objection to 4.1.20 Mtg

Follow Up Flag: Follow up
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jennifer whitfield@gmail.com has attached the following document:



Draft Complaint & Objection to 4.1.20 Mtg

Snapshot of the item below:

Dear Brian,

My name is Jennifer Whitfield, I live at 2010 Lynn Way , in the city of unincorporated Wilder Estates. I am writing today to formally enter a complaint and to demand a continuation of the hearing or an evening meeting so that all citizens concerned can participate as related to the Providence Point Development (20-DDP-0045).

Sufficient notice to the citizens in communities around the development was not given. As a result of the lack of notice given, citizens could not exercise their right to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice. Notice of the meeting was not extended to the citizens of surrounding communities, who will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking. The traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community.

Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. Viewing the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize or otherwise provide adequate insight into the 29 opposing emails and other opposing documents she had received rather she provided a number of citizens in opposition... The concerns, objections and points of views submitted were not given adequate representation. We are concerned that our voices be heard by each and every member. We lack confidence that the full record will be examined by members, when several were not present for the totality of the meeting.

Sincerely,

Jennifer C. Whitfield

Google Docs: Create and edit documents online.

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA

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St. Germain, Dante

From: Bryan Berman <bryankberman@gmail.com>
Sent: Sunday, April 11, 2021 4:39 PM
To: Davis, Brian
Cc: St. Germain, Dante; McCraney, Paula D.
Subject: 2020 Herr Lane-Providence pointe development

Follow Up Flag: Follow up
Flag Status: Flagged

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Dear Brian,

My name is Bryan Berman live at 7501 Greenlawn Rd in the city of Bancroft. I am writing today to formally enter a complaint and to demand a continuation of the hearing or an evening meeting so that all citizens concerned can participate as related to the Providence Point Development (20-DDP-0045).

Sufficient notice to the citizens in communities around the development was not given. As a result of the lack of notice given, citizens could not exercise their right to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice. Notice of the meeting was not extended to the citizens of surrounding communities, who will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking. The traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community.

Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. Viewing the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize or otherwise provide adequate insight into the 29 opposing emails and other opposing documents she had received rather she provided a number of citizens in opposition... The concerns, objections and points of views submitted were not given adequate representation. We are concerned that our voices be heard by each and every member. We lack confidence that the full record will be examined by members, when several were not present for the totality of the meeting.

Sincerely,

Bryan Berman

St. Germain, Dante

From: Kathleen Hoye <Kathleen.Hoye@mcmcpa.com>
Sent: Sunday, April 11, 2021 5:14 PM
To: Davis, Brian
Cc: St. Germain, Dante
Subject: Opposition statement

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Dear Brian,

My name is Kathleen Hoye, I live at 7306 Maria Ave, Louisville KY 40222. I am writing today to formally enter a complaint and to demand a continuation of the hearing or an evening meeting so that all citizens concerned can participate as related to the Providence Point Development (20-DDP-0045).

Sufficient notice to the citizens in communities around the development was not given. As a result of the lack of notice given, citizens could not exercise their right to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice. Notice of the meeting was not extended to the citizens of surrounding communities, who will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking. The traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community.

Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. Viewing the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize or otherwise provide adequate insight into the 29 opposing emails and other opposing documents she had received rather she provided a number of citizens in opposition... The concerns, objections and points of views submitted were not given adequate representation. We are concerned that our voices be heard by each and every member. We lack confidence that the full record will be examined by members, when several were not present for the totality of the meeting.

Sincerely,
Kathleen Hoye

Sent from my iPhone

Kathleen Hoye, CExP, ACFBA, CFWA

Consulting Principal, Family Business Advisory Services Team Leader

Phone: 502.882.4411

Fax: 502.749.1930



P 502.749.1900
F 502.749.1930
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The banner features the MCM logo on the left, surrounded by a circular graphic with segments for 'CORPORATE', 'TAX', 'ACCOUNTING SERVICES', 'TECHNOLOGY', and 'FINANCIAL STATEMENTS & REPORTING'. To the right of the logo, the text reads 'MCM COVID-19 Resource Center' in large, bold letters. Below this, a yellow button contains the text '>>> LATEST UPDATES HERE <<<'.

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St. Germain, Dante

From: Gloria Van Nostrand <gvannos1@me.com>
Sent: Sunday, April 11, 2021 8:40 PM
To: Davis, Brian
Cc: St. Germain, Dante; paula.mcraney@louisvilleky.gov; Piagentini, Anthony B.
Subject: Additional 520 Apartments on Herr Lane

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Sent from my iPhone

G. Van Nostrand 

>

> Am writing in opposition to the construction of 520 additional apartments on Herr Lane.

> Herr Lane is a two lane road that intersects with Old Brownsboro Road, another two lane road. Both of these roads are already congested. The additional vehicular traffic will make it extremely hard and dangerous for all the neighbors, businesses, and the four schools in the area; particularly Ballard High School. There are also churches that will be negatively impacted by all this traffic. Too much traffic is not a good thing. The stress will be overwhelmed.

> The construction vehicles will impede traffic for a very long time, then it will be all the traffic associated with 520 apartments, some of which will undoubtedly have two vehicles each.

> Add to that the further congestion of all the necessary construction vehicles for the new VA hospital and then all of the additional traffic upon completion and we are looking at a terrible traffic situation. We'll be stuck for many cycles of the lights and I'm sure the accident rate will go up exponentially, not just a fender Bender here and there. Students crossing from Ballard and Kammerer to the other side for city buses and to get a snack before practice and games will have a very hard time safely navigating that intersection. Do we really want to risk the lives of students, faculty, staff, and neighbors for 520 additional apartments?


> This is extremely important decision to very many of us Jefferson County citizens. Please oppose this plan in the very strongest way.

The meeting on April 1, 2021, ended

without a vote. This awful project must be brought up again and voted down.

Thank you for understanding the deleterious effects of this huge project in an already crowded area.

> Sent from my iPhone

> Gloria J. Van Nostrand 

St. Germain, Dante

From: Whitney Van Vactor <wevanvactor@gmail.com>
Sent: Sunday, April 11, 2021 9:11 PM
To: Davis, Brian; St. Germain, Dante; McCraney, Paula D.
Subject: Providence Point meeting

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Dear Brian,

My name is Whitney Van Vactor. I live at 2014 Lynn Way, in the city of Louisville, KY, 40222. I am writing today to formally enter a complaint and to request an evening meeting regarding the Providence Point Development (20-DDP-0045) so that all citizens concerned can participate as they were not afforded this opportunity at the hearing held on April 1, 2020.

Sufficient notice to the citizens in communities around the development was neglected. As a result of the lack of notice given, citizens could not exercise their right to begin to petition to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice, those within a number of feet of the property. Notice of the meeting was not extended to the majority of citizens who will be affected. Each and every surrounding community: Northfield, Crossgate, Indian Hills, Glenview Manor, Thornhill, Bancroft and Graymoor-Devondale will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. When, in reality the cars coming and going from the proposed development will create additional traffic for each of these communities as the cars access the Watterson and/or I-71 via Westport or Brownsboro road. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking.

Closely related, the traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished nationwide as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The correct course of action after the first four hours of the meeting would have been to continue to the meeting to another date so that all counsel members and citizens could attend. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community. Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. For the absent members to view the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these

commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize in any detail the opposing emails and other opposing documents she had received, rather she provided a number of citizens writing in opposition... twenty-nine. The concerns, objections and points of views submitted ahead of the hearing were not given representation either.

We live in this community and are concerned that our voices be heard by each and every member. We are not confident that the full record will be examined by members, when several were not present for the totality of the meeting. For the reasons listed above, we are both launching our complaints and demanding an opportunity with adequate notice for all to be heard at another hearing before a decision is made by the counsel on the waivers requested.

Sincerely,

Whitney Van Vactor

St. Germain, Dante

From: Davis, Brian
Sent: Sunday, April 11, 2021 10:55 PM
To: St. Germain, Dante
Subject: FW: question
Attachments: Providence Point Letter.docx

Brian Davis, AICP
Planning Manager
Planning & Design Services
(502) 574-5160
brian.davis@louisvilleky.gov

From: Cody Cobb <cococobb@gmail.com>
Sent: Sunday, April 11, 2021 12:03 PM
To: Davis, Brian <Brian.Davis@louisvilleky.gov>
Cc: Jennifer C. Whitfield <jennifercwhitfield@gmail.com>
Subject: Re: question

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Dear Brian,

I am writing today to formally enter a complaint, request for correction to the record and demand another hearing regarding the counsel meeting for the Providence Point development that took place the Thursday before last.

First and foremost, the attorney for the proposed development, Mr. Bill Bardenwerper asserted the support of All Peoples (formerly Thomas Jefferson Unitarian Church) of the development. That is false. The church did NOT offer their support of the development. The church reached a private agreement with the Developer on "general design considerations" related to the common property line ONLY. Nothing more. The BOT intentionally stopped short of offering support for this development and advised the Developer that individual members of the congregation may still oppose the development. The letter outlining this agreement was included in the record and is attached here as well.

Sufficient notice to the citizens in communities around the development was not given. As a result of the lack of notice given, citizens could not exercise their right to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was

similar to hiding under the cover of darkness, only a small subset of citizens (those along Herr Lane) were given any notice. The notice they did receive was 8/12 x 11 sheets of paper tacked to street signs along the road. Notice of the meeting was not extended to the citizens of surrounding communities, who will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking.

The traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

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Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. Viewing the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize or otherwise provide adequate insight into the 29 opposing emails and other opposing documents she had received rather she provided a number of citizens in opposition... The concerns, objections and points of views submitted were not given adequate representation. We are concerned that our voices be heard by each and every member. We lack confidence that the full record will be examined by members, when several were not present for the totality of the meeting.

Sincerely

Cody "Coco" Cobb

On Tue, Apr 6, 2021 at 7:53 AM St. Germain, Dante <Dante.St.Germain@louisvilleky.gov> wrote:

Mr. Cobb,

You can direct complaints to Brian Davis, whom I have copied on this email.

Dante St. Germain, AICP

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From: Cody Cobb <cococobb@gmail.com>
Sent: Tuesday, April 6, 2021 7:20 AM
To: St. Germain, Dante <Dante.St.Germain@louisvilleky.gov>
Subject: question

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Hi Dante,

Good morning. I'm a concerned citizen re the Hagan Property development. I find the Louisville Metro website to be a labyrinth. Could you point in the right direction for formal complaints about the planning commission process?

Thank you,

--

Cody Cobb (she/her)

270.302.6379

cococobb@gmail.com

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--

Cody Cobb (she/her)
270.302.6379
cococobb@gmail.com

St. Germain, Dante

From: Davis, Brian
Sent: Sunday, April 11, 2021 10:55 PM
To: St. Germain, Dante
Subject: FW: 520 apartments on Herr In

Follow Up Flag: Follow up
Flag Status: Flagged

Brian Davis, AICP
Planning Manager
Planning & Design Services
(502) 574-5160
brian.davis@louisvilleky.gov

-----Original Message-----

From: Kelly buszkiewicz <kelbusz12@gmail.com>
Sent: Sunday, April 11, 2021 3:02 PM
To: Davis, Brian <Brian.Davis@louisvilleky.gov>
Subject: 520 apartments on Herr In

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Hi Mr. Davis,

I am writing this email with a huge concern about apartments being built on Herr In. I live at 7916 Barbour Manor Dr. and my children have attended Wilder Elementary, Kammerer Middle School and now Ballard High School. I have witnessed and driven on Herr In when the traffic from before and after school is crazy! It is unbelievable that there is even a suggestion of building apartments in that area and increasing traffic on the two lane rd. Children will not be safe with the added chaos of more traffic. Please hold another meeting (there was one on April 1st) to discuss this matter. I like many family's were on Spring Break and not able to attend.

Please reconsider building apartments in that area. The safety of our children should be considered and be of the utmost importance. Also the snarl of traffic on that road will increase and nobody will be happy.

Thank you for your time,
Kelly Buszkiewicz

Sent from my iPhone

St. Germain, Dante

From: Davis, Brian
Sent: Sunday, April 11, 2021 10:55 PM
To: St. Germain, Dante
Subject: FW: Providence Point Dev. (20-DDP-0045) on Herr Lane

Brian Davis, AICP
Planning Manager
Planning & Design Services
(502) 574-5160
brian.davis@louisvilleky.gov

From: Em Jay <emjayvee01@gmail.com>
Sent: Sunday, April 11, 2021 8:59 PM
To: Davis, Brian <Brian.Davis@louisvilleky.gov>
Subject: Providence Point Dev. (20-DDP-0045) on Herr Lane

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Dear Mr. Davis,

I live at 7304 Keisler Way, behind Wilder Elementary school. I oppose the construction of 520 apartments on the Herr Lane property.

I can hardly get out of the neighborhood in the morning from 7am to 9am because of the busses and cars from going to and from the three schools in the area. Then again in the afternoon at 2:30 pm through rush hour, Herr Lane to Hwy 22 is hard to get down.

Adding 520 apartments, with probably 2 cars each, will further congest the stretch.

I prefer houses or businesses to more apartments in the area. There is not enough room to add turning lanes without affecting people's property.

I believe the apartments will hurt my property value. I don't want to live on top of more people.

Since this area is not part of the original City of Louisville we don't get city garbage. Each homeowner subscribes for their own service. Do you know how many garbage trucks turn on and off Herr Lane every day?

I urge you to vote no to the apartments and vote for something that actually fits the area. And I thank you for your consideration.

Mary Jane
Mary Jane Valentine

St. Germain, Dante

From: Jackie T. Gedrose <jgedrose@bellsouth.net>
Sent: Sunday, April 11, 2021 11:40 PM
To: Brian.Davis@louisvilleky.us
Cc: St. Germain, Dante; McCraney, Paula D.
Subject: Complaint concerning 4/1/21 Planning commission meeting and request for evening meeting on Case #20-DDP-0045

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Dear Brian,

My name is Jackie Gedrose, I live at 7108 Wesboro Road, in the unincorporated area called Wilder Estates. I am writing today to formally enter a complaint and to request an evening meeting regarding the Providence Point Development so that all citizens can participate as they were not afforded this opportunity at the hearing held on April 1, 2021.

Sufficient notice to the citizens in communities around the development was neglected. As a result of the lack of notice given, citizens could not exercise their right to begin to petition to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice, those within a number of feet of the property. Notice of the meeting was not extended to the majority of citizens who will be affected. Each and every surrounding community: Northfield, Crossgate, Indian Hills, Glenview Manor, Thornhill, Bancroft, and the unincorporated sections of Wesboro, Greenlawn, Maria, Keisler and Lynn Way will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. When, in reality, the cars coming and going from the development will create additional traffic for each of these communities as the cars access the Watterson and/or I-71 via Westport or Brownsboro Roads. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking.

Closely related, the traffic study was cherry-picked and full of representations. First, the study glossed over (and in several instances excluded) the arrival and dismissal times of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of the 1.15 mile Herr Lane. The traffic coming and going from this development does not stop being an issue once the cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the previously approved plan of fourteen years ago. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished nationwide as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait for four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The correct course of action after the first four hours of the meeting would have been to continue the meeting to another date so that all commission members and citizens could attend. The Providence Point proposal was by far the largest item of consideration; in terms of the size of the development, the number of concerned citizens waiting to be heard and who

had entered objections into the record, and the impact upon the surrounding community. Many of the commissioners were not present for the whole meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left while the meeting was in process. For the absent members to view the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent of interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager did not summarize in any detail the opposing emails and other opposing documents she had received, rather she provided that twenty-nine citizens had written in opposition.

We live in this community and are concerned that our voices be heard by each and every commissioner. We are not confident that the full record will be examined by members, when several were not present for the totality of the meeting. For the reasons listed above, we are both launching our complaints and demanding an opportunity with adequate notice for all to be heard at another hearing before a decision is made by the counsel on the revised development plan and the waivers and variances requested.

Sincerely,

Jackie Gedrose

Sent from [Mail](#) for Windows 10

St. Germain, Dante

From: Deborah Young <dyoung1818@outlook.com>
Sent: Monday, April 12, 2021 7:32 AM
To: Davis, Brian; St. Germain, Dante; McCraney, Paula D.
Subject: Opposed to Providence Point

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Dear Mr. Davis

My name is Jean Young, I live at 2012 Lynn Way, in the unincorporated area called Wilder Estates. My house is one block off of Herr Lane. I am writing today to formally enter a complaint and to request an evening meeting regarding the Providence Point Development (20-DDP-0045) so that all citizens concerned can participate as they were not afforded this opportunity at the hearing held on April 1, 2020.

Sufficient notice to the citizens in communities around the development was neglected. As a result of the lack of notice given, citizens could not exercise their right to begin to petition to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice, those within a number of feet of the property. Notice of the meeting was not extended to the majority of citizens who will be affected. Each and every surrounding community: WiNorthfield, Crossgate, Indian Hills, Glenview Manor, Thornhill, Bancroft and Graymoor-Devondale will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. When, in reality the cars coming and going from the proposed development will create additional traffic for each of these communities as the cars access the Watterson and/or I-71 via Westport or Brownsboro road. Traffic on Herr Lane, which has no room for additional lanes, is already extreme, especially with two schools located on the street. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking.

Closely related, the traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished nationwide as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The correct course of action after the first four hours of the meeting would have been to continue to the meeting to another date so that all counsel members and citizens could attend. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community. Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. For the absent members to view the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize in any detail the opposing emails and other opposing documents she had received, rather she provided a number of citizens writing in opposition... twenty-nine. The concerns, objections and points of views submitted ahead of the hearing were not given representation either.

We live in this community and are concerned that our voices be heard by each and every member. We are not confident that the full record will be examined by members, when several were not present for the totality of the meeting. For the reasons listed above, we are both launching our complaints and demanding an opportunity with adequate notice for all to be heard at another hearing before a decision is made by the counsel on the waivers requested.

Sincerely,

Jean Young

Owner of 2012 Lynn Way, Louisville, Ky, 40222

St. Germain, Dante

From: Cody Cobb <cococobb@gmail.com>
Sent: Monday, April 12, 2021 10:54 AM
To: Davis, Brian
Cc: Jackie Gedrose; Jennifer C. Whitfield; Jaqueline Hersh; McCraney, Paula D.; St. Germain, Dante; mayor@graymoor-devondale.com
Subject: Re: complaint on Thursdays meeting for 2020 Herr Lane

Follow Up Flag: Follow up
Flag Status: Flagged

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Hi Brian,

Please include this message as a complaint regarding the process. We were not given adequate notice. Furthermore, the limited notice provided precluded our ability to request an evening meeting because the time period requirement of 15 days had already passed before the notice of meeting was given.

Why is the developer not held to a standard notice protocol that allows citizen's time to respond. This feels like a rigged system?

Thank you,
Cody Cobb

On Mon, Apr 12, 2021 at 9:22 AM Jennifer C. Whitfield <jennifercwhitfield@gmail.com> wrote:

Brian,

In reading these bylaws and the provisions you stated, it requires x amount of signatures with a 15 day notice. We didn't find out about the April 1st meeting til March 18th, that's only a 12 day window prior to the hearing thus there is no humanly way possible to obtain signatures and meet the requirement of a 15 day notice to request an evening meeting.

Jennifer Whitfield

On Mon, Apr 12, 2021 at 8:24 AM Jennifer C. Whitfield <jennifercwhitfield@gmail.com> wrote:

What about folks who have to work during the day ... ? Not to mention y'all book many cases so one never knows when a case will truly be heard.

On Mon, Apr 12, 2021 at 8:22 AM Davis, Brian <Brian.Davis@louisvilleky.gov> wrote:

All our meetings start at 1:00. There is one state statute and one Louisville Metro ordinance that provide alternatives for having an evening hearing, and we have special state of emergency alternatives for those rules, but none of them were initiated for this case.

Brian Davis, AICP

Planning Manager

Planning & Design Services

(502) 574-5160

brian.davis@louisvilleky.gov

From: Jennifer C. Whitfield <jennifercwhitfield@gmail.com>
Sent: Monday, April 12, 2021 8:16 AM
To: Davis, Brian <Brian.Davis@louisvilleky.gov>
Subject: Re: complaint on Thursdays meeting for [2020 Herr Lane](#)

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It's in your by laws

Jennifer Whitfield

Sent from my iPad

On Apr 12, 2021, at 7:40 AM, Davis, Brian <Brian.Davis@louisvilleky.gov> wrote:

Good Morning Jennifer,

Hope you had a good weekend.

Where did you see the requirement for an evening hearing?

Thanks,

Brian

Brian Davis, AICP

Planning Manager

Planning & Design Services

(502) 574-5160

brian.davis@louisvilleky.gov

From: Jennifer C. Whitfield <jennifercwhitfield@gmail.com>

Sent: Friday, April 9, 2021 3:21 PM

To: Davis, Brian <Brian.Davis@louisvilleky.gov>

Subject: Re: complaint on Thursdays meeting for [2020 Herr Lane](#)

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I'm better, I may just have migraines now, it beats dying from Covid. Thank you so much for asking.

The planning commission, upon reviewing the procedure, is required to have an evening meeting, that hadn't happened.

The church was only in agreement to the property boundaries not the project as a whole.

Whoever was responsible for watching the time limits did not do their job and therefore caused all this demise, it's not our fault and feel like we were penalized for the committees errors, poor judgement in time keeping and not scheduling an evening meeting.

Dante told me she would voice my concerns, not file them. I can only conclude since my (meaning my neighbors too) opposing views weren't going to be heard, they were just silenced in a file, that's very misleading.

I'll catch you up on Sundays meeting.

Best,

Jennifer Whitfield

Sent from my iPad

On Apr 9, 2021, at 8:46 AM, Davis, Brian <Brian.Davis@louisvilleky.gov> wrote:

Hi Jennifer,

First of all, I hope you are doing well.!

I was waiting for someone else to respond, but I've not got that response, so I'm just going to do some quick bullet points since I'm actually off today.

- The cell tower case took much longer than we anticipated (and longer than it should have). We also didn't expect them to discuss the business session item at all, which they did.
- Written comments are not read into the record, but they are included in the case file and distributed to the commissioners to review with the other case materials.
- The commissioners took testimony from anyone who wanted to speak in opposition. Typically only 20 minutes is designated for this, but at this meeting the opposition spoke for 70 minutes. At no point did the chair ask people to "hurry through." The first couple of speakers actually took about ten minutes each.
- The item was continued until April 15 to allow the commissioners to digest all the testimony and also allow the commissioners who missed it to review the video (the video link was sent to them the following day).

Let me know if you have any other questions that come up from your meeting that you are having this weekend.

Thanks,

Brian

Brian Davis, AICP

Planning Manager

Planning & Design Services

(502) 574-5160

brian.davis@louisvilleky.gov

From: Jennifer C. Whitfield <jennifercwhitfield@gmail.com>

Sent: Monday, April 5, 2021 6:06 PM

To: Davis, Brian <Brian.Davis@louisvilleky.gov>; St. Germain, Dante <Dante.St.Germain@louisvilleky.gov>; McCraney, Paula D. <Paula.McCraney@louisvilleky.gov>; Jackie Gedrose <geerosey@icloud.com>; Jaqueline Hersh <jmhers01@gmail.com>

Subject: complaint on Thursdays meeting for [2020 Herr Lane](#)

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Dear Brian,

I am writing today to voice concerns and a complaint about the meeting for [2020 Herr Lane](#) last Thursday. There was way too many cases for that day and ours was the biggest and to be tacked on to the end of the day was absurd. It didnt start til 5:30 PM. Many of the commissioners left and I dont feel like the opposing views were heard by enough of the commissioners to make a legitimate and informed vote. There were 2 commissioners who looked like they were playing games on their cell phones, perhaps they were not, but it didnt seem like we had their undivided attention.

I thought Dante would read or atleast summate the 29 opposing emails and other opposing documents she had rather than just give a number... those views were important to their authors which is why I messaged you to speak since my concerns weren't voiced.

There was one BOT member from the Thomas Jefferson Unit. Church on the meeting, who wasnt so sure that the letter was still valid that Bill P presented, stating TJUC was in full support, because it was from the old plan, not this new monstrosity. Thus I am concerned of the validity of anything he might have said or presented.

Many of us went through our concerns at mach speed so others could talk, only to find many had left because it was dinner time, children, work and life responsibilities. (Side bar, I left after I spoke, I had a medical emergency during my talk and left right after by ambulance, I am ok, a side affect from the vax).

Bill P got to make his full stance without worrying about time constraints and we did not.

I'd like the planning board to reconsider re-holding this hearing by itself. My council woman was not able to be there, I'd like for her to be. There's alot at stake here for all the surrounding neighborhoods.

Today, I heard again this widening of HERR Lane, from another neighbor. It was Jeff Brown on a meeting with this same committee who told me he knew the traffic out here was bad, infact he said horrid, but it was what it was and there was no money to fix it. We were in the county and the county just doesnt have the funds and there's not way to widen it if it there was funding.

I've spoken to realtors who tell me there's no demand for luxury apartments. Another neighbor who has kids at Ballard, said that mysteriously Ballard got its funding for a new stadium and that there'd been a petition going around at the school in support of the apartments ... I mean... this is just concerning. We need answers. We need the truth.

Sincerely

Jennifer Whitfield

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

--

Jennifer C. Whitfield

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Jennifer C. Whitfield

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Cody Cobb (she/her)

270.302.6379

cococobb@gmail.com

St. Germain, Dante

From: Cody Cobb <cococobb@gmail.com>
Sent: Monday, April 12, 2021 11:04 AM
To: Deborah Potts
Cc: St. Germain, Dante; Davis, Brian; mayor@graymoor-devondale.com; McCraney, Paula D.; Kathy Hurt; Alan Godsave
Subject: 20-DDP-0045 Correction to the Record regarding support by All Peoples

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Hi Deborah,

Good morning. Copied are the interested parties regarding the Providence Point Development and Mr. Bill Bardenwarper's misrepresentation of the Church's stance of support of the development on behalf of Hagan Properties. The church's support, which was specifically excluded as a part of our agreement, was proffered to the Counsel as an indication of broad community buy-in to the project. This misrepresentation should not stand.

His statements were egregious considering he was involved with the negotiations with us (the Board of Trustees at All Peoples, formerly Thomas Jefferson Unitarian Church) regarding boundaries and knows full well we specifically declined to offer our support. Brian Davis, with Planning & Design Services should be able to point you to the video of the meeting, if you would like to watch before drafting your letter of clarification.

Thank you for your prompt attention to this matter.

Coco

--

Cody Cobb (she/her)
270.302.6379
cococobb@gmail.com

St. Germain, Dante

From: Deborah Potts <deborahpotts@me.com>
Sent: Monday, April 12, 2021 12:19 PM
To: St. Germain, Dante
Cc: Alan Godsave; Jon Henney
Subject: 20-DDP-0045 Correction to the Record regarding support by All Peoples
Attachments: Doc - Mar 25 2021 - 3-01 PM.pdf

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Dear Ms. Germaine,

I am writing on behalf of All Peoples — the church sharing a property line with the proposed Hagan development. I want to clarify that All Peoples has come to a private agreement with the developer regarding our common property line and thus **does not oppose the development**. However, the Hagan Properties lawyer appears to have misrepresented our viewpoint — stating that we support the development. This is not the case. Additionally, we do have individual members who are speaking against the Providence Point plan for this property. We want to set this record straight.

I have attached the letter that I sent you earlier, stating the position of All Peoples with regard to the development of the Hagan property.

Best regards,

Deborah Potts Novgorodoff
President, All Peoples Board of Trustees

St. Germain, Dante

From: Sharron Hilbrecht <sharron.hilbrecht@gmail.com>
Sent: Tuesday, April 13, 2021 9:39 AM
To: Davis, Brian; St. Germain, Dante; McCraney, Paula D.
Subject: Development at 2020 Herr Lane/Providence Point

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Dear All,

My name is Sharron Hilbrecht, and I live at 1900 Crossgate Lane. I tried to sign into the meeting regarding Providence Point on April 1 around 2 p.m. but got a message that it had already ended. I found out later that it was still going on until late in the evening, so I'm not sure why I couldn't sign in.

I also learned that the case regarding the apartments planned for 2020 Herr Ln wasn't even heard until over 4 hours into the session, and by then, most of the commissioners had left and weren't around to hear concerns.

I would ask that the next hearing be scheduled in the evening so that area residents have the opportunity to join the conversation and share our concerns. I have several.

I worked for the past 10 years in opposition to the new VAMC project. It is too big for the area and will cause MAJOR congestion on our roadways, especially Highway 22 and the Brownsboro Road interchange. Unfortunately, it has been given the greenlight by a federal judge. The traffic study done by the VA estimates an additional 12,000 daily trips into and out of the hospital and onto our already congested roads, which get Fs on the traffic study. This number includes workers, patients, ambulances, and delivery trucks. To add another 1,000 or more cars to this mix at Hwy. 22 and Herr Lane is going to make a terrible traffic situation even more untenable. I can hardly get out of my neighborhood at certain times of the day and often there is no way I can even think of turning left onto Hwy. 22.

During the discussions about the VA traffic, the Kentucky Department of Transportation has suggested eliminating left-hand turns onto Highways 22 and 42. This would mean that ALL of those cars exiting the VA would have to turn right onto Hwy. 22, go down to the light at Herr Ln. and either turn left onto Lime Kiln and then left onto Hwy. 42 to get back to I-264 or turn right onto Herr Ln. and go down to Westport Road to get to I-264. How is this going to be doable even without the additional 1,000 vehicles coming and going from Providence Point? And even if this plan doesn't end up becoming reality, it doesn't take away from the fact that the VAMC will add 12,000 daily trips into an area that is already highly congested.

The small length of road that the Providence Point developers plan to widen will do nothing to mitigate the traffic that their development will add to Herr Lane and at the intersection of Herr and Hwy. 22. When Ballard High School, Kammerer Middle School, Wilder Elementary, and St. Albert the Great are all coming to or leaving school, traffic is awful. When people are leaving for work or coming home, traffic is awful. I challenge everyone on the commission to drive these roads during one of these times and imagine it when the VAMC is completed, and it's shift change.

In addition, the development is too tall for this area. The apartments at Prospect Point are only 3 stories. They blend in with the community fairly well and are low enough that they don't create an eyesore. They don't just pop up out of the ground like the Providence Point apartments appear to do.

Please consider the effect this large scale, mass density build will have on the surrounding communities. I'm not opposed to apartments going into the spot at 2020 Herr Lane. I AM opposed to the scale and density of those planned apartments. 520 apartments at 4 stories high is just too many for this area.

Thank you for your time and consideration.

Sincerely,

Sharron Hilbrecht

St. Germain, Dante

From: Sandro Fajardo <sandrocan@gmail.com>
Sent: Tuesday, April 13, 2021 12:21 PM
To: Davis, Brian
Cc: St. Germain, Dante; McCraney, Paula D.
Subject: Complaint & Request for Evening Meeting on Providence Point Development (20-DDP-0045) hearing held on 4/1/21

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I, Sandro Fajardo, live on 7111 Wesboro Rd and I concur with Jackie's communication below.

Dear Brian,

My name is Jackie Gedrose, I live at 7108 Wesboro Road, in the unincorporated area called Wilder Estates. I am writing today to formally enter a complaint and to request an evening meeting regarding the Providence Point Development (20-DDP-0045) so that all citizens concerned can participate as they were not afforded this opportunity at the hearing held on April 1, 2020.

Sufficient notice to the citizens in communities around the development was neglected. As a result of the lack of notice given, citizens could not exercise their right to begin to petition to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice, those within a number of feet of the property. Notice of the meeting was not extended to the majority of citizens who will be affected. Each and every surrounding community: Northfield, Crossgate, Indian Hills, Glenview Manor, Thornhill, Bancroft and Graymoor-Devondale will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. When, in reality the cars coming and going from the proposed development will create additional traffic for each of these communities as the cars access the Watterson and/or I-71 via Westport or Brownsboro road. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking.

Closely related, the traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished nationwide as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The correct course of action after the first four hours of the meeting would have been to continue to the meeting to another date so that all counsel members and citizens could attend. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number

of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community. Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. For the absent members to view the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize in any detail the opposing emails and other opposing documents she had received, rather she provided a number of citizens writing in opposition... twenty-nine. The concerns, objections and points of views submitted ahead of the hearing were not given representation either.

We live in this community and are concerned that our voices be heard by each and every member. We are not confident that the full record will be examined by members, when several were not present for the totality of the meeting. For the reasons listed above, we are both launching our complaints and demanding an opportunity with adequate notice for all to be heard at another hearing before a decision is made by the counsel on the waivers requested.

Sincerely,

Jackie Gedrose

St. Germain, Dante

From: karen helm <helmk@bellsouth.net>
Sent: Friday, April 9, 2021 12:38 PM
To: Davis, Brian; St. Germain, Dante
Subject: Providence Pointe - Hogan developer on Herr Ln

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Dear Mr. Davis,

I don't know when the last time Mr. Hogan or Mr. Bardenwarper were on Hwy 22 driving from Hwy 22 on Herr Ln to Westport Rd between 4-6:30 pm, but to add 400- 500 additional cars to these 2 lane roads from the planned apartments is totally absurd. Then add on top of that traffic from the upcoming VA hospital and there will be one massive parking lot. There is no way these roads can withstand this volume of traffic to move normally. The residents will be completely stalled.

Additionally, the current sewer system that these apartments would feed into in Thornhill subdivision off Hwy 22 is already inadequate - I believe there is currently a lawsuit between Thornhill and MSD confirming that. There have many been many issues with that system. How on earth can it stand any additional volume little on 500 - 750 residents?

Lastly, because our case was up last on the docket to be discussed - a ploy by Mr. Bardenwarper no doubt - we didn't receive the full attention of the Planning & Zoning Commission - not sure there was even a quorum. We were not given adequate time to present our side. Was that because we didn't have an attorney representing us? This is tremendously unfair for one side to have double the time of the opposing side. Mr. Hogan has very deep pockets and the citizens of the Hwy 22 & Herr Ln corridor do not, hence we do not have legal representation. We were not given a true voice.

Thank you for your time.
Karen Helm & Robert Fuchs
7201 Wesboro Rd
Louisville, KY 40222
502-641-2502

St. Germain, Dante

From: karen helm <helmk@bellsouth.net>
Sent: Tuesday, April 13, 2021 1:52 PM
To: St. Germain, Dante
Subject: Re: Providence Pointe - Hogan developer on Herr Ln

Follow Up Flag: Follow up
Flag Status: Flagged

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Thank you so much for the clarification- I sincerely appreciate knowing the facts.

Mr Bardenwarper is a skilled, successful advocate for zoning changes, which is a huge advantage for Mr Hogan. It just doesn't appear that the truth came out about the traffic density & the inability to widen Herr Ln. or HWY 22. When Ballard High, Kammerer Middle schools & Wilder Elementary existing school traffic is added on top of what is proposed- all 3 of these schools are in less than a mile radius of Providence Point plus the long standing & increased sewage issue, I sure hope the Planning & Zoning Commission realizes what's at stake for the residents of this area.

It's widely thought that Mr Hogan asked for an exorbitant number in hopes of getting 1/2 to 3/4 of that number of apartments approved - sounds like negotiating for a car sale, however our quality of life depends on this type of tactic.

Thank you for your time.

Karen Helm
7201 Wesboro Rd
40222

Sent from my iPhone

On Apr 13, 2021, at 1:23 PM, St. Germain, Dante <Dante.St.Germain@louisvilleky.gov> wrote:

Ms. Helm,

Thank you for your comments on this case. I will add them to the record for the Board of Zoning Adjustment hearing.

With respect to the timing of the case on the docket, that occurred because earlier cases ran longer than anticipated. The cell tower case in particular went longer than expected. Bill Bardenwerper has no control over the docket.

There was a quorum at the time the Providence Point case was heard.

The opposition was given as much time as they needed to state their case. Normally the opposition is allotted a total of 20 minutes to speak, but the opposition actually spoke for approximately 70 minutes. The chair did not interrupt any speaker. The applicant and the applicant's representative had approximately the same amount of time to speak, not double. I apologize for any impression you were given that the opposition's voice was not heard.

Dante St. Germain, AICP

Planner II
Planning & Design Services
Department of Develop Louisville
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From: karen helm <helmk@bellsouth.net>
Sent: Friday, April 9, 2021 12:38 PM
To: Davis, Brian <Brian.Davis@louisvilleky.gov>; St. Germain, Dante <Dante.St.Germain@louisvilleky.gov>
Subject: Providence Pointe - Hogan developer on Herr Ln

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Dear Mr. Davis,

I don't know when the last time Mr. Hogan or Mr. Bardenwarper were on Hwy 22 driving from Hwy 22 on Herr Ln to Westport Rd between 4-6:30 pm, but to add 400- 500 additional cars to these 2 lane roads from the planned apartments is totally absurd. Then add on top of that traffic from the upcoming VA hospital and there will be one massive parking lot. There is no way these roads can withstand this volume of traffic to move normally. The residents will be completely stalled.

Additionally, the current sewer system that these apartments would feed into in Thornhill subdivision off Hwy 22 is already inadequate - I believe there is currently a lawsuit between Thornhill and MSD confirming that. There have many been many issues with that system. How on earth can it stand any additional volume little on 500 - 750 residents?

Lastly, because our case was up last on the docket to be discussed - a ploy by Mr. Bardenwarper no doubt - we didn't receive the full attention of the Planning & Zoning Commission - not sure there was even a quorum. We were not given adequate time to present our side. Was that because we didn't have an attorney representing us? This is tremendously unfair for one side to have double the time of the opposing side. Mr. Hogan has very deep pockets and the citizens of the Hwy 22 & Herr Ln corridor do not, hence we do not have legal representation. We were not given a true voice.

Thank you for your time.
Karen Helm & Robert Fuchs
7201 Wesboro Rd
Louisville, KY 40222
502-641-2502

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St. Germain, Dante

From: Davis, Brian
Sent: Tuesday, April 13, 2021 1:55 PM
To: St. Germain, Dante
Subject: FW: Opposition statement

Follow Up Flag: Follow up
Flag Status: Flagged

Brian Davis, AICP
Planning Manager
Planning & Design Services
(502) 574-5160
brian.davis@louisvilleky.gov

From: Robert Hoye <rehoye@att.net>
Sent: Tuesday, April 13, 2021 1:54 PM
To: Davis, Brian <Brian.Davis@louisvilleky.gov>
Cc: Family Business Advisory Services Kathleen Hoye <kathleen.hoye@mcmcpa.com>
Subject: Fw: Opposition statement

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Mr. Davis,

As a resident of the area affected by the Providence Point Development (2238 Wynhnewood Circle, Northfield, 40222). I wish to register my opposition and endorse concerne previously shared by my daughter, Kathleen, Hoye, MUP, who resides at 7406 Maria Avenue, Louisville. 40222 and dated April 11. 2021. She has stated her opposition, not only as area resident and home owner, but as a trained graduate urban planner (Master of Urban Planning, University of Illinois, Chicago Circle)_ Her experience includes urban planning for City of Chicago, City of Louisville as recipient of am Atlantic Fellowship for planning in Belfast, Northern Ireland, I hope that you have the opportunity to repond to our concerns.

Respectfully.

Robert E. Hoye, Professor Emeritus, University of Louisville
Institute for Community Development (ICD)
College of Urban & Public Affairs

Begin forwarded message:

From: "Davis, Brian" <Brian.Davis@louisvilleky.gov>
Date: April 12, 2021 at 7:28:04 AM EDT
To: Kathleen Hoye <kathleen.hoye@mcmcpa.com>
Cc: "St. Germain, Dante" <Dante.St.Germain@louisvilleky.gov>
Subject: RE: Opposition statement

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Good Morning,

Thank you for your comments. Your email has been added to the public record.

Regards,
Brian Davis

Brian Davis, AICP

Planning Manager

Planning & Design Services

(502) 574-5160

brian.davis@louisvilleky.gov

Kathleen Hoye, CExP, ACFBA, CFWA

Consulting Principal, Family Business Advisory Services Team Leader

Phone: 502.882.4411

Fax: 502.749.1930

From: Kathleen Hoye <Kathleen.Hoye@mcmcpa.com>
Sent: Sunday, April 11, 2021 5:14 PM
To: Davis, Brian <Brian.Davis@louisvilleky.gov>
Cc: St. Germain, Dante <Dante.St.Germain@louisvilleky.gov>
Subject: Opposition statement

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Dear Brian,

My name is Kathleen Hoye, I live at 7306 Maria Ave, Louisville KY 40222. I am writing today to formally enter a complaint and to demand a continuation of the hearing or an evening meeting so that all citizens concerned can participate as related to the Providence Point Development (20-DDP-0045).

Sufficient notice to the citizens in communities around the development was not given. As a result of the lack of notice given, citizens could not exercise their right to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice. Notice of the meeting was not extended to the citizens of surrounding communities, who will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking. The traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community.

Many of the commissioners were not present for the meeting. The looming issue of maintaining enough counsel members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. Viewing the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize or otherwise provide adequate insight into the 29 opposing emails and other opposing documents she had received rather she provided a number of citizens in opposition... The concerns, objections and points of views submitted were not given adequate representation. We are concerned that our voices be heard by each and every member. We lack confidence that the full record will be examined by members, when several were not present for the totality of the meeting.

Sincerely,

Kathleen Hoye

Kathleen Hoyer, CExP, ACFBA, CFWA
Consulting Principal, Family Business Advisory Services Team Leader
Phone: 502.882.4411
Fax: 502.749.1930



P 502.749.1900
F 502.749.1930
2600 Meidinger Tower
462 South Fourth Street
Louisville, KY 40202
www.mcmcpa.com | 888.587.1719

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St. Germain, Dante

From: Chas Krish <chaskrish@gmail.com>
Sent: Thursday, April 15, 2021 9:53 AM
To: Davis, Brian; St. Germain, Dante; McCraney, Paula D.; Kirk Hilbrecht
Subject: Complaint & Request for Evening Meeting on Providence Point Development (20-DDP-0045) hearing held on 4/1/21

Follow Up Flag: Follow up
Flag Status: Flagged

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Dear Brian, Dante and all those it may concern,

My name is Chas Krish, I live at 1909 Crossgate Lane, in the City of Crossgate. I am writing today to formally enter a complaint and to request an evening meeting regarding the Providence Point Development (20-DDP-0045) so that all citizens concerned can participate as they were not afforded this opportunity at the hearing held on April 1, 2020.

Sufficient notice to the citizens in communities around the development was neglected. As a result of the lack of notice given, citizens could not exercise their right to begin to petition to have an evening meeting on any development proposing over 100 apartment units. The methodology of providing notice here was similar to hiding under the cover of darkness, only a small subset of citizens were given any notice, those within a number of feet of the property. Notice of the meeting was not extended to the majority of citizens who will be affected. Each and every surrounding community: Northfield, Wilder Estates, Indian Hills, Glenview Manor, Thornhill, Bancroft and Graymoor-Devondale will very much be affected on a daily basis by the proposed development. To suggest otherwise is to pretend that the cars coming and going from the development would disappear once they immediately turn left or right outside the development. When, in reality, the cars coming and going from the proposed development will create additional traffic for each of these communities as the cars access the Watterson and/or I-71 via Westport or Brownsboro road. Exclusion of the surrounding neighborhoods from this process on the grounds that they will not be affected is magical thinking.

Closely related, the traffic study was cherry-picked and full of misrepresentations. First, the study glossed over (and in several instances excluded) the arrival and dismissal time of the four area schools. The traffic created by these schools is a real concern for citizens of all surrounding areas. Second, the traffic study covers only a

minute portion of Herr Lane. The traffic coming and going from the development does not stop being an issue once cars exit the development, yet that is all that the study shows. After going through various numbers and projections and working out the math, the traffic study notes an additional 15-minute delay in traffic at the Herr Lane/Lime Kiln/22 intersection at peak hours. Our area cannot sustain that. Finally, there is a gross misrepresentation in saying that the proposed development creates less traffic than the prior approved plan. That assertion conveniently ignores the fact that retail traffic over the last decade has diminished nationwide as shoppers go online for their needs rather than visiting stores in person. It is disingenuous and misleading to attribute this change to an improvement in the plan.

In addition to the lack of notice given, the docket was overscheduled. Concerned citizens opposing the Providence Point development were made to wait through four and a half hours of other business to get to the point in the meeting when this development was to be discussed. The length of the meeting, in practice, served to thin out the opposition to the development who had other commitments and could not remain on a video for seven plus hours. The correct course of action after the first four hours of the meeting would have been to continue to the meeting to another date so that all council members and citizens could attend. The Providence Point proposal was by far the largest item of consideration: in terms of the size of the development, the number of concerned citizens waiting to be heard and who had entered objections into the record, and the impact upon the surrounding community. Many of the commissioners were not present for the meeting. The looming issue of maintaining enough council members as required for quorum was raised several times as commissioners were absent from the start and/or left the meeting while in process. For the absent members to view the video of the meeting without the opportunity for interaction with the concerned citizens is unacceptable and a disservice to the community they are appointed to serve. Absent interaction with attendees of the meeting, these commissioners cannot reach an informed vote, but rather are left to sort through only the elements of the records that were afforded a place in the recording.

Speaking of points voiced by concerned citizens and not present on the video, the case manager, Dante St. Germaine did not summarize in any detail the opposing emails and other opposing documents she had received, rather she provided a number of citizens writing in opposition... twenty-nine. The concerns, objections and points of views submitted ahead of the hearing were not given representation either.

Now we are also dealing with the variances requested that will be heard on the 19th with the BOZA. There's no need for an additional story to be added to this development. Our small city of Crossgate will soon be dwarfed and consumed by not only Providence Point 4 story apartments to our East, but by the 7 story VA Medical center on West, and potentially by whatever is developed on the Artis property at 4922 Brownsboro Road to

our North and then the KABA property to our Southeast at 1926 Herr Lane that is also listed for sale. Don't let this wonderful community be ruined by corporate development and the lust for more money.

We live in this community and are concerned that our voices be heard by each and every member. We are not confident that the full record will be examined by members when several were not present for the totality of the meeting. For the reasons listed above, we are both launching our complaints and demanding an opportunity with adequate notice for all to be heard at another hearing before a decision is made by the counsel on the waivers requested.

Sincerely,

Chas Krish
City of Crossgate Commissioner

St. Germain, Dante

From: mary blackman <mjblackman25@gmail.com>
Sent: Wednesday, April 14, 2021 8:11 PM
To: St. Germain, Dante

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To Whom It May Concern,

I am a resident of Graymoor Devondale. I have lived on Greenlawn Road since 1993. I strongly oppose the building of the apartments on Herr Lane. Traffic around that area is already a problem and with the VA hospital coming it will be worse. I also oppose the zoning variances. Please help us stop this proposed project!!

Joyce Blackman

Hon. Daniella Havens-Lastarria, Mayor
2405 Chadford Way
City of Thornhill, Kentucky 40222

August 18, 2018

Hon. Greg Fischer
527 W. Jefferson Street
4th Floor
Louisville, KY 40202

Cyndi Caudill, Board Chair
Louisville MSD
700 W Liberty St.
Louisville, KY 40203

NOTICE OF VIOLATION of KRS 151.250 TO CITY OF THORNHILL

The undersigned herewith provides notice to the City of Thornhill, Mayor and Commissioners of its duty to enforce and report violations of the Kentucky Dam Safety Act under KRS 151.320.

1. Pursuant to 401 KAR 4:050, Section 1, the Ballard Regional Detention Basin located at Brownsboro Road and Herr Lane is a water impounding structure that has cause severe damage to residential property and endangers life in peak storms. MSD has never obtained an exemption from the permitting and inspection requirements of KRS 151.250.

401 KAR 4:050. Construction exemptions.
RELATES TO: KRS 151.110, 151.250, 151.310
STATUTORY AUTHORITY: KRS 151.230, 151.250
NECESSITY, FUNCTION, AND CONFORMITY:

In the course of regulating construction in or along streams pursuant to KRS 151.250, the Environmental and Public Protection Cabinet frequently encounters actions or proposed actions which are of such nature or location as to have little potential for damage or such that any damage which would occur is limited in extent to the immediate vicinity of the action. This administrative regulation exempts construction of this type from the provisions of KRS 151.250.

Section 1. A construction permit pursuant to KRS 151.250 shall not be required for construction in or along a stream whose watershed is less than one (1) square mile, except for the construction of dams as defined by KRS 151.100 or other water impounding structures **or for any construction that does or may endanger life or cause severe damage to residential or commercial property.**

2. As such the impoundment is not exempt from the requirements of KRS 151.250(2).

(2) No person, city, county or other political subdivision of the state shall commence the filling of any area with earth, debris, or any other material, or raise the level of any area in any manner, or place a building, barrier or obstruction of any sort on any area located adjacent to a river or stream or in the floodway of the stream so that such filling, raising or obstruction will in any way affect the flow of water in the channel or in the floodway of the stream unless plans and specifications for such work have been submitted to and approved by the cabinet and a permit issued as required in subsection (1) above.

3. No plans for the Ballard Basin have ever been submitted by MSD or JCPS to the cabinet and no permit has ever issued and the Ballard Basin is not inspected by the cabinet and does not have an approved permit.

4. The excess release of stormwater from Ballard basin has resulted in severe property damage in tens of thousands of dollars to residents of City of Thornhill in September 2006 and July 2015. This damage is well documented and known to the Mayor and Commissioners.

5. No agency or entity has moved to enforce the permit and inspection requirements of the Kentucky Dam Safety Act that Ballard Basin has no exemption for. Therefore the City of Thornhill has a statutory duty to enforce the act under KRS 151.320.

KRS 151.320 Officers required to enforce law.

(1) The mayor or chief executive officer of each city and the county judge/executive of each county, shall have the concurrent duty of enforcing with the cabinet, within their respective cities and counties, the provisions of KRS 151.250, 151.280 and 151.310 and rules and regulations issued thereunder.

(2) When a violation of KRS 151.250, 151.280 or 151.310 within his jurisdiction is brought to the attention of a mayor or chief executive officer of a city or a county judge/executive, he shall immediately notify the cabinet of the location and details of such violation.

6. Pursuant to KRS 151.320(2) this is notice and demand that the Mayor and Commissioners immediately notify the cabinet of the said violations and enforce the provisions of the Dam Safety Act against the Ballard Regional Basin, its owners and operators.

7. The Ballard Regional Detention Basin has injured City of Thornhill residents and will do so again because it is defectively designed without compliance with generally accepted practices and standards adopted by MSD and other agencies for construction of detention basins. In particular the basin stores 2.7 acre feet in the 100 year 24 hour storm event, where the standard is generally to store 8 acre feet or more. MSD originally sought to store 8 acre feet but was prevented by JCPS easement restrictions. The basin has approximately half the storage called for by engineering standards. This is a demand for Cabinet inspection, formal risk analysis for downstream flooding and sharing with the affected public of the information obtained.

8. Pursuant to KRS 151.297(1),

"whenever the cabinet determines that life or property are or may be endangered by the failure or incapacity of any dam, reservoir, levee, embankment, or other water barrier, or by any other cause related to a dam or reservoir, levee, embankment, or other water barrier irrespective of any condition or the lack thereof in the certificate of inspection for said dam or reservoir, or in those instances where no certificate is required on the levee, embankment or other water barrier, the cabinet shall order the owner thereof to take such action as is necessary to render the dam, reservoir, levee, embankment, or other water barrier safe."

the undersigned hereby demand that the City of Thornhill report the unsafe condition to the cabinet and seek an order by the cabinet that the owner take such action as necessary to make the Ballard Regional Detention Basin safe.

Attached are the 2007 and 2015 letters of the City of Thornhill Mayors reporting residential damage.

Respectfully submitted,

Dennis Dolan
2400 Chadford Way
City of Thornhill

Prepared by:

Clarence H. Hixson
Attorney at Law
1336 Hepburn Avenue
Louisville, KY 40204
(502) 758-0936
budhix@iglou.com

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
OFFICE OF ADMINISTRATIVE HEARINGS
DIVISION OF WATER
FILE NO. DOW-21-1-0099
Agency Interest: 167341

ENVIRONMENTAL ADMIN. HEARING OFFICER
VIRGINIA BAKER GORLEY

DENNIS J. DOLAN and
ESTATE of SUSAN DOLAN

PETITIONERS

v.

**PETITIONER'S RESPONSE MEMORANDUM
TO MSD'S MOTION FOR SUMMARY DISPOSITION**

ENERGY AND ENVIRONMENT CABINET
GLEN ALEXANDER, PE
MARILYN THOMAS, P.E.
JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORP.
LOUISVILLE/JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT
and
BOARD OF EDUCATION OF JEFFERSON COUNTY

RESPONDENTS

* * * * *

NOTICE TO: Respondents by counsel: Liz Natter, counsel for the Energy and Environment Cabinet, Glen Alexander and ; Hon. Kyle W. Ray, counsel for KYTC; Hon. Lester I. Adams, Jr. counsel for MSD; Christie A. Moore and Amanda L. Dohn, counsels for City of Thornhill; Hon. William A. Hoback, counsel for JCPS.

Comes now the Petitioner and pursuant to 400 KAR 1:090, Section 12(3) serves this Response Memorandum, Exhibit and Order, opposing the MSD Motion for Summary Dismissal served on April 2, 2021.

I. Running of the time to file Petition was not triggered on August 27, 2018.

MSD's Motion for Dismissal is solely based on the claim Petitioners missed the thirty day (30) limit for filing a Petition as provided by KRS 151.182(2):

(2) Except as provided in KRS 151.297 regarding emergency situations, any person not previously heard in connection with the *issuance of any order or the making of any final determination* by which he considers himself aggrieved may file with the cabinet a petition alleging that the order or final determination is contrary to law or fact and is injurious to

him, alleging the grounds and reasons therefor, and demand a hearing. *An order or final determination includes*, but is not limited to, the issuance, denial, modification, or revocation of a permit, but *does not include* the issuance of a notice of violation, the issuance of a letter identifying deficiencies in an application for a permit, a registration or a certification, or other *nonfinal determinations*. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet not less than thirty (30) days after the date of such notice, or unless the person complained against waives in writing the thirty (30) day period. The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the order or final determination complained of, or could reasonably have had such notice. [italics added].

Petitioners attached **Exhibit 12** to the Petition, being a field report authored by field inspector Marilyn Thomas, PE, issued to Glen Alexander, PE, Supervisor, Dam Safety & Floodplain Compliance Section. MSD does not dispute Petitioner's claim he was never served and never received any actual notice of this report or its site findings contents.

An examination of the document and its history shows it was an internal report made to the Dam Safety Supervisor and was never 'issued', served or distributed to the public formally or informally. The language of the August 27, 2018 report doesn't include any 'final determination' language, nor does Marilyn Thomas PE identify any capacity or office she holds to make a final determination that triggered a right to file a petition. Thomas' findings are limited to:

Lidar shows the roadway embankment is approximately 8 feet high from the downstream toe. The volume of the basin is stated to be 2.7 acre-feet in the complaint. The combined crest width of the detention basin embankment and the highway embankment is approximately 90 feet. The drainage area is approximately 0.3 square mile.

Again, Ballard Regional Detention Basin does not endanger human life or property from failure of the embankment.

On January 13, 2021, Counsel received a signed letter from Dam Safety Section Supervisor Glen Alexander, that announced a final determination *by the Division*, that the Commonwealth would not enforce the Dam Safety Act in regard to the Ballard Basin:

The Energy and Environment Cabinet, Division of Water (Division) has received your complaint dated December 20, 2020 regarding the above referenced facility. The Division conducted an onsite inspection of the facility on August 24, 2018 and has reviewed available information regarding the

facility. The Division has determined the structure does not exceed the thresholds specified in KRS 151.100 to be regulated as a dam under Kentucky law. Therefore, the structure falls under the jurisdiction of the Louisville-Jefferson County Metropolitan Sewer District for regulation as a storm water detention facility.

"The Division" identified that after the inspection by Thomas, 'available information was reviewed' and the Division then made its determination--not Marilyn Thomas, PE. When Glen Alexander notified Petitioner of the final determination of the Division, a petition was timely filed within 30 days. The inter-office memo of August 27, 2018 that was never noticed to Petitioner was only a preliminary field inspection and not a final determination by the Division, and did not trigger the running of time under KRS 151.182(2). MSD 's error is conflating a preliminary report of site findings by a field inspector with a formal, final determination by an officer of the Division of Water.

II. The Division of Water is required by law to issue a notice of violation to MSD

Mr. Dolan sought a copy of the type of formal notice required by KRS 151.182(1):

(1) Whenever the cabinet has reason to believe that a violation of any of the provisions of this chapter or any regulation promulgated pursuant thereto has occurred, it may ***issue and serve upon the person complained against*** a written notice of the provision of this chapter or the regulation alleged to have been violated and the facts alleged to constitute the violation thereof. Further, this notice shall require the person so complained against to answer the charges set out in the notice at a hearing before the cabinet at a time not less than thirty (30) days after the date of notice unless the person complained against waives in writing the thirty (30) day period.

Petitioner has shown that KRS 151.291(1) requires Energy and Environment Cabinet enforcement of The Kentucky Dam Safety Act against MSD and JCPS/Commonwealth because the Ballard Regional Detention Basin is sited on land owned by the Commonwealth.

"The cabinet shall enforce compliance with all applicable laws and regulations of all dams, reservoirs, levees, embankments, or other water barriers owned by the Commonwealth."

A formal notice of violation under KRS 151.182(1) is long overdue in response to Petitioner's various letters demanding enforcement. The penalties under KRS 151.991 apply and

an injunction should issue to MSD to bring the basin into compliance with applicable law.

III. KRS 151.320 establishes a procedure that was not followed.

On or about August 18, 2018, Dennis Dolan by Counsel served:

NOTICE OF VIOLATION of KRS 151.250 TO CITY OF THORNHILL

letter to the Mayor of Thornhill and copied to the Louisville Metro Mayor and the Board Chair of MSD. In part it demanded compliance with the Dam Safety Act:

Pursuant to KRS 151.297(1),

"whenever the cabinet determines that life or property are or may be endangered by the failure or incapacity of any dam, reservoir, levee, embankment, or other water barrier, or **by any other cause** related to a dam or reservoir, levee, embankment, or other water barrier irrespective of any condition or the lack thereof in the certificate of inspection for said dam or reservoir, or in those instances where no certificate is required on the levee, embankment or other water barrier, the cabinet shall order the owner thereof to take such action as is necessary to render the dam, reservoir, levee, embankment, or other water barrier safe."

the undersigned hereby demand that the City of Thornhill report the unsafe condition to the cabinet and seek an order by the cabinet that the owner take such action as necessary to make the Ballard Regional Detention Basin safe.

...

Pursuant to KRS 151.320(2) this is notice and demand that the Mayor and Commissioners immediately notify the cabinet of the said violations and enforce the provisions of the Dam Safety Act against the Ballard Regional Basin, its owners and operators.

Notice of Violation attached as Exhibit A.

Regardless of the findings of Marilyn Thomas, PE, KRS 151.291 requires the Commonwealth Division of Water to, "order the owner thereof to take such action as is necessary to render the dam, reservoir, levee, embankment, or other water barrier safe."

No Mayor with enforcement duties ever gave any notice to Dennis Dolan that they had contacted the Cabinet pursuant to KRS 151.320(2). Evidently, contact with the Cabinet did occur

and the Division responded with a site inspection. Petitioner filed an Open Records Act request for such documents but received none prior to filing the Petition.

IV. The Petitioner would be denied procedural due process

If the Cabinet grants the Motion for Dismissal on the grounds alleged by MSD it would deny Petitioner's procedural due process. The Commonwealth gave no written notice or actual notice of a final determination and did not issue any findings or enforcement letter.

The Kentucky Dam Safety Act as codified, the MSD Storm water Design Manual, Chapter 10 as adopted, and the Kentucky Administrative regulations, including 401 KAR 4:030 are designed to protect Kentucky resident's property and lives from bad engineering including, the poorly engineered and under capacity Ballard Regional Detention Basin.

The Division of Water regulations authorize the Commonwealth to enforce against the MSD engineers, to prevent arbitrary and retaliatory acts against Dennis Dolan. These include promoting even more discharge into the basin from the pending Providence Point project without requiring hydraulic studies and operating the under-capacity basin without a permit.

Dennis Dolan's protected property injuries are directly caused by MSD's failure to conform to the law, failure to manage a reasonable storm water system in the Thornhill Creek watershed, by granting developers exemptions from meeting design requirements, and by accumulating and accelerating drainage into the head of Thornhill creek. Petitioner alleges in the Jefferson Circuit Court lawsuit MSD manipulated the engineering study performed by Heritage Engineering LLC in 2012 to conceal its liability for flooding injuries.

Mr. Dolans August 2018 Notice of Violation was an attempt to follow the law and protect his constitutionally protected property interests from further flooding injury. Mr. Dolan's home has been inundated three times since he located there in 1979, but only after MSD approved

multiple developments. Kentucky law provides a procedure to invoke enforcement of the Kentucky Dam Safety Act, which he followed. The Commonwealth has continued to ignore its duty to enforce the Act relevant to the Commonwealth-owned Ballard Regional Basin.

No alternative procedure is provided and MSD's engineers have arbitrarily sought to use engineered projects such as the floodwall erected in the creek next to Mr. Dolan's property to increase the likely damage to Mr. Dolan's property. MSD's adopted storm water design regulations are being ignored and planning and protection under MSD is inadequate to prevent further injury.

Practically no fiscal or administrative burdens are imposed on the Commonwealth to follow its own laws and order MSD to make appropriate studies and construct reasonable facilities to protect downstream property owners. Petitioner was entitled to actual notice in response to his letters and is entitled to a hearing, and MSD's Motion should be denied.

[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See, e.g., Goldberg v. Kelly, supra* at 263-271.

Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). *See Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

Regarding procedural due process, it has oft been said, "[o]rdinarily, notice and an opportunity to be heard are the basic requirements of due process." *Storm v. Mullins*, 199 S.W.3d 156, 162 (Ky. 2006).

...
Fundamentally, the hallmarks of procedural due process are notice and an opportunity to be heard. *See Hilltop Basic Resources, Inc. v. County of Boone*, 180 S.W.3d 464, 469 (Ky. 2005) (" The fundamental requirement of procedural due process is simply that all affected

parties be given 'the opportunity to be heard at a meaningful time and in a meaningful manner.'") (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Hampson v. Boone County Planning Comm'n, 460 S.W.3d 912, 917 (2014).

MSD cites to no case law supporting its argument that KRS 151.182(2) is a legislative intent to eliminate the states duty to notify residents of final decisions affecting their safety and property rights. The language, "could reasonably have had such notice" would apply to published notice in a newspaper or perhaps on-site posting of such a final determination.

The Division of Water must issue a written notice to MSD and JCPS that it is operating the Ballard Basin without a permit and its basin design and performance violates multiple applicable laws and rules. Dennis Dolan and other property owners have been flooded due to the Commonwealth's dereliction of its duties. MSD's Motion for Summary Dismissal is wrong on the law and the facts and should be denied.

Respectfully submitted,

s/ Clarence H Hixson
1336 Hepburn Avenue, Apt. 4
Louisville, KY 40204
phone: (502) 758-0936
email: budhix@iglou.com

Certificate of Service

The undersigned attorney for Petitioner certifies that a true copy of the foregoing Response Memorandum to MSD Motion for Summary Dismissal has been served by email and Notice of Filing in CourtNet efile Jefferson Circuit Court Case No. 17-CI-006803 on the parties listed below this 5th day of April, 2021.

ENERGY AND ENVIRONMENT CABINET OFFICE OF ADMINISTRATIVE HEARINGS
EECOAHFILINGS@KY.GOV

Elizabeth U. Natter
Executive Director/General Counsel
Energy and Environmental Cabinet
300 Sower Blvd, 3rd Floor
Frankfort, KY 40601

Hon. Kyle W. Ray
800 Newtown Court
Lexington, KY 40511
*Counsel for Ky Transportation
Cabinet*

Hon. Kenneth L. Finley
Reminger Co., L.P.A.
333 West Vine Street, Suite 1670
Lexington, KY 40507
Counsel for William Sanders, PE

Anne Trout
Jacquelyn Quarles
*Counsel for Louisville/Jefferson
County Metropolitan Sewer District
Counsel for Louisville Metro
Sewer District*
700 West Liberty Street
Louisville KY 40203-1911

Christie A. Moore
Amanda L. Dohn
DENTONS GREENEBAUM DOLL LLP
3500 PNC Tower
101 South Fifth Street
Louisville, Kentucky 40202
Counsel for City of Thornhill

GLEN ALEXANDER, PE
Supervisor, Dam Safety Section
300 Sower Blvd.
Frankfort, KY 40601
and

Hon. William A. Hoback
Hon. Mark S. Fenzel
MIDDLETON REUTLINGER
401 S. Fourth Street, Suite 2600
Louisville, Kentucky 40202
Counsel Jefferson County Public Schools
Marty Pollio, Ed.D., Board Chair
Chris Brady

MARILYN THOMAS, P.E.
Dam Safety & Floodplain
Compliance Section
300 Sower Blvd.
Frankfort, KY 40601

/S/ Clarence H. Hixson