

## St. Germain, Dante

---

**From:** John Hicks <johnhicks@outlook.com>  
**Sent:** Wednesday, March 31, 2021 3:49 PM  
**To:** St. Germain, Dante  
**Subject:** Case Number 20-DDP-0045

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe**

---

March 31, 2021

Subject Property      2020 Her Lane  
Case Number:        20-DDP-0045  
Case Manager:       Dante St. Germain

Project Description: Providence Point Apartments – 520 rental apartment units on 19.45 acres

I am writing to express my concerns about the proposed Providence Point Apartments project on Herr Lane. I live at 4924 Grantham Place in the City of Crossgate on Brownsboro Road. My main concerns about this proposed project are: (1) increased traffic without adequate changes to roadways which will result in increase safety risks and gridlock; the density of the project; and (2) the height of some of the buildings. I think this proposed project is too dense and will result in increased traffic that cannot be alleviated by the proposed road improvements.

The roads in this area can't handle the current volume of traffic. How will the roads handle the anticipated traffic for this development? There are several businesses and residential properties with ingress and egress ONLY to Brownsboro Road near the intersection of Herr Lane. It is already hard to get onto Brownsboro Road from any of these properties and the traffic plan does not address this problem. I think it would be much worse if the development of Providence Point with 520 apartment units is approved, very likely adding at least an additional 2000 daily trips onto Herr Lane and probably half of that number using Brownsboro Road. This is in addition to the traffic that will result from the VA Hospital on the Midlands property.

While it is my understanding that the proposal includes adding a lane to Herr Lane, it is also my understanding that this would only be a small portion of Herr Lane. Plus it does not address handling the traffic on Brownsboro Road. Brownsboro Road from Herr Lane to US 42 is three-lane but we call that middle lane the "suicide lane" because people fly into it to turn without realizing or caring that a car may be coming from the other direction to turn. Or they get in the middle lane way ahead of the turn. That lane is also used as a merge lane for people trying to get on the road. It can be a dangerous situation that will only be made worse from traffic from the proposed Providence Point development. Again, there is no provision in the development plan to address these possibly dangerous conditions.

I am also concerned about the proposal of some three-story and four-story buildings. These will not be in keeping with the surrounding areas of single-family homes that are only one-story or two-stories tall. If the proposal were reduced to one-story and two-story buildings, it would reduce the visual impact to the surrounding areas. It would also reduce the density and thereby reduce the impact on traffic.

For these reasons, I think that the proposed use at the Providence Point property is too dense and will result in traffic problems and increased risk of accidents for all using the surrounding roads. I request that this be considered carefully before the final decision is made. Obviously, something will be developed on this property. A development with about half of the density of this project, about 250 condos or apartments, would be much more reasonable and meet with much less resistance.

Thank you,

John Hicks  
4924 Grantham Place  
Louisville, KY 40222-6414

John Hicks

## St. Germain, Dante

---

**From:** sarah2837@aol.com  
**Sent:** Wednesday, March 31, 2021 3:55 PM  
**To:** St. Germain, Dante  
**Subject:** 2020 Herr Lane development--opposition to case #20-DDP-0054

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe**

---

Hello Mr. St. Germain,

I live on Wesboro Rd., right off of Herr Lane, and I and my neighbors are opposed to the proposed development of the field at 2020 Herr Lane (case #20-DDP-0054). We are concerned about how such a large development would affect traffic. I want to be able to drive on Herr Lane without increased risk; at heavy traffic times, it is already quite busy as it is. Further development will make the area much less safe.

A much smaller concern, but still a concern, is that the such a development would be an eyesore. My family recently moved to this neighborhood in part because of the lack of development in the area, and the field there is part of what makes the area so appealing. Allowing the project to go forward would be detrimental to the surrounding community.

Thank you for hearing my concern.

Sincerely,

Sarah Brestel

Subject: Memo Against the Providence Point Development (case:20-DDP-0045)

Name: Jacqueline Gedrose

To Whom It May Concern:

I am a long time resident of Wesboro Road and am very concerned about the effect this development will have on traffic and all the residents of the various neighborhoods along the 1.15 mile Herr Lane corridor between Brownsboro Road (KY 22) and Westport Road (KY 1447).

The proposed development of Providence Point will be on this 1.15 mile long corridor of Herr Lane. This stretch of Herr Lane contains 53 driveways, nine (9) local roads, five (5) commercial access points, and an access point to Ballard High School. (referenced p.4 of Herr Lane Corridor Transportation Plan Final Report of August 2017). There are also two (2) access points to Wilder Elementary. This development will have a large impact on Crossmoor and the city of Graymoor-Devondale west of Herr Lane to I-264 and residences east of Herr Lane to Devondale Drive and to the city of Bancroft.

In 2006, a RDDDP(Revised Detailed District Development Plan) was approved for the property for mixed use of office, retail and residential. At that time traffic was heavier on Herr Lane because the Westport Rd interchange with I-264 had not been constructed. It is true that the volume of traffic on Herr Lane may now be down with the opening of the Westport interchange in 2010. However, citing page 5 of the Herr Lane Corridor Study,

“Historically, traffic volumes on Herr Lane have been higher than those listed. Between 1997 and 2009 – a year before the opening of the Westport Road/I-264 interchange – the average daily volume was 15,600. Prior to the availability of the interchange, I-264-bound traffic is assumed to have used Herr Lane to access I-264 at Brownsboro Road. While this decrease in total traffic on Herr Lane is welcomed by the residents and users of this corridor, a consequence has been a significant increase in traffic on Westport Road that backs up traffic on Herr Lane. Traffic volumes on Westport Road between



Herr Lane and I-264, went from 19,600 vpd (vehicles per day) in 2008 to 36,000 in 2011-a 16,400 or 84% increase.”

The level of service(LOS) is already at an “F” during AM Peak Hour(8:00-9:00 AM) heading west out of Ballard H.S. , west out of Greenlawn Road and south towards Westport Road(Table 1: 2017 AM Peak Turning Movement Volumes, page 6 of Herr Lane Corridor Study). During the PM Peak Hour(4:45-5:45 PM) the LOS approaching Westport Road southward is also an “F”. (Table 3, page 7 of the Herr Lane Corridor Study).

The Traffic Impact Study for Providence Point dated July 31, 2020 was thorough for the small section of Herr Lane from Brownsboro Road to Wesboro Road including the Herr Lane/Brownsboro Road intersection. The widening of Herr Lane along the length of the Providence Point property and installing a traffic light at the main entrance to Providence Point, which is directly across from the entrance to Ballard, are binding elements for any development to the property at 2020 Herr Lane. It will help to mitigate the additional traffic in this section of Herr Lane by providing a left turn into Ballard and into Wesboro Road. However, this study did not mention the impact that the addition traffic from 520 proposed units will have on the longer portion of Herr Lane south of Wesboro Rd and the intersection of Herr Lane and Westport Road that already has a LOS of “F”.

From the Herr Lane Corridor Study, the public’s most often suggestion for the improvement of the Herr Lane/Westport Road intersection was re-timing the traffic signal. Citing from page 19 of the Herr Lane Corridor Study:

“Unfortunately for the drivers on southbound Herr Lane, no changes to the signal timing can be made due to the significant traffic volume on Westport Road and the length of time required for pedestrians to cross Westport Road. Prior to this study, the signal has been studied by Louisville Metro and the Kentucky Engineering Center at the University of Kentucky, both of which concluded the signal is operating as efficiently as possible for the high volume of vehicles through the intersection. For this Corridor Study, the 2017 traffic data was provided to Louisville Metro Public Work’s Traffic Division for use in revisiting the issues. It was again concluded that changes to the signal timing could not be made.”

Table 4 on page 14 of the Corridor Study shows Existing plus Future Traffic on Herr Lane South of Wesboro Road during peak hours.

	AM	AM	PM	PM		
	NB	SB	NB	SB		
<b>Existing Peak Hour Volumes</b>	569	309	460	621		
(from Tables 1 and 3)						
<b>Future from Providence Point *</b>	126	92	101	117		
<b>Future from Midlands/VA hospital</b>	26	16	9	63		
<b>Total New Future Scenario</b>	152	108	110	180		
<b>Future Peak Hour Volumes</b>	721	417	570	801		
<b>% Increase</b>	30%	AM	27%	PM		

“These forecasts represent an average 28% growth in traffic during the peak hours, and are assumed to be through traffic to Westport Road. These volumes would exacerbate the existing peak-hour congestion for traffic turning onto Herr Lane from the side streets, and the traffic approaching the Westport Road signalized intersection.”

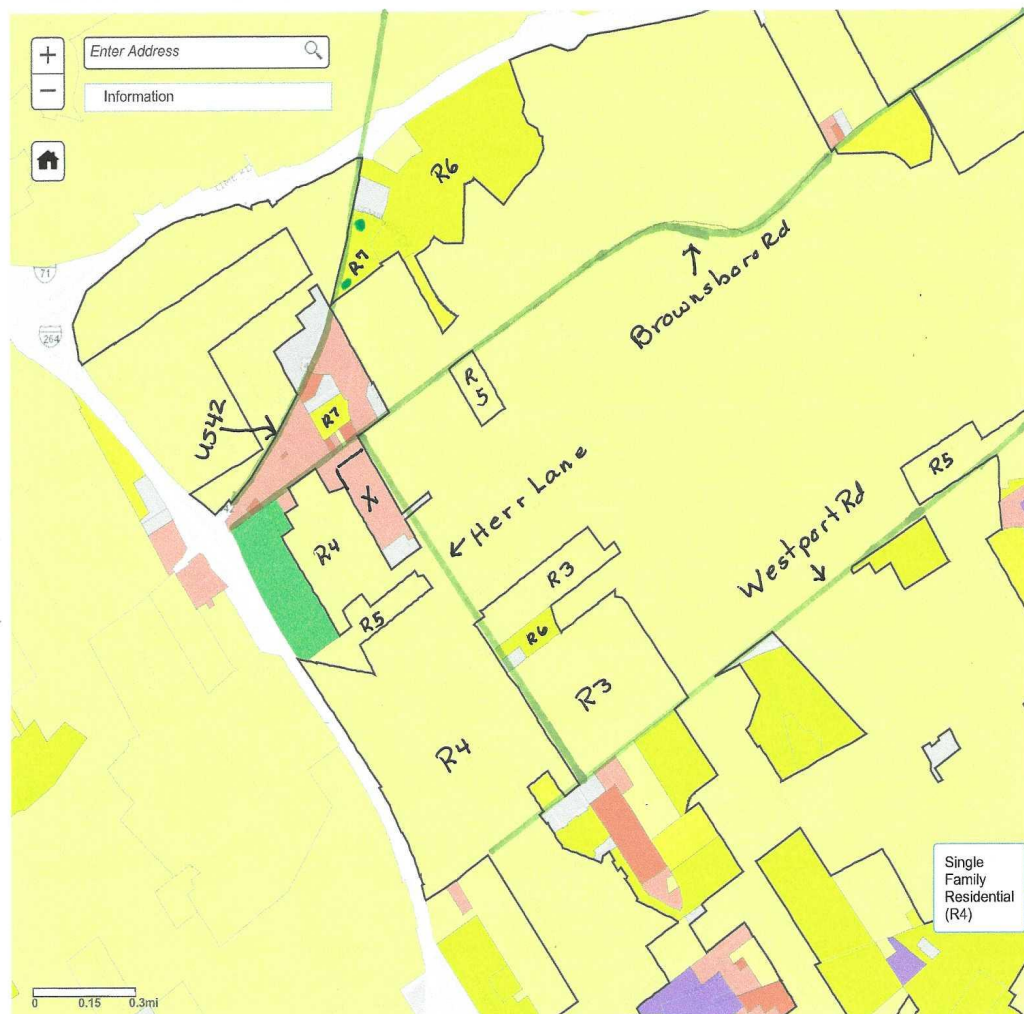
The proposed development is for a high density apartment community of 520 units in three and four story buildings on 19.04 acres yielding a density of 27.3 units per acre. The property was bought in 1948 by the Stallings family and was deeded R4 and that designation could only be rescinded by Mr. Stallings. It was rescinded in 2000 and sold to Providence Point Commercial LLC in 2006 by a Special Warranty Deed.

In the Statement of Compliance, from Bardenwerper, Talbott & Roberts, PLLC, there is no mention of the neighboring residential properties that line both sides of the rest of Herr Lane south of Wesboro Road to Westport Road. In reality, the Herr Lane Corridor from Brownsboro Road to Westport Road, with one exception, is classified by Louisville Metro as a “Neighborhood” Form District. The exception is the currently vacant land west of Ballard H.S. (Providence Point), which is within a “Town Center” Form District.

To illustrate the relationship of Providence Point to the rest of the Town Center Form District and the surrounding residential areas, I submit the following.

3/30/2021

Louisville Zoning Districts



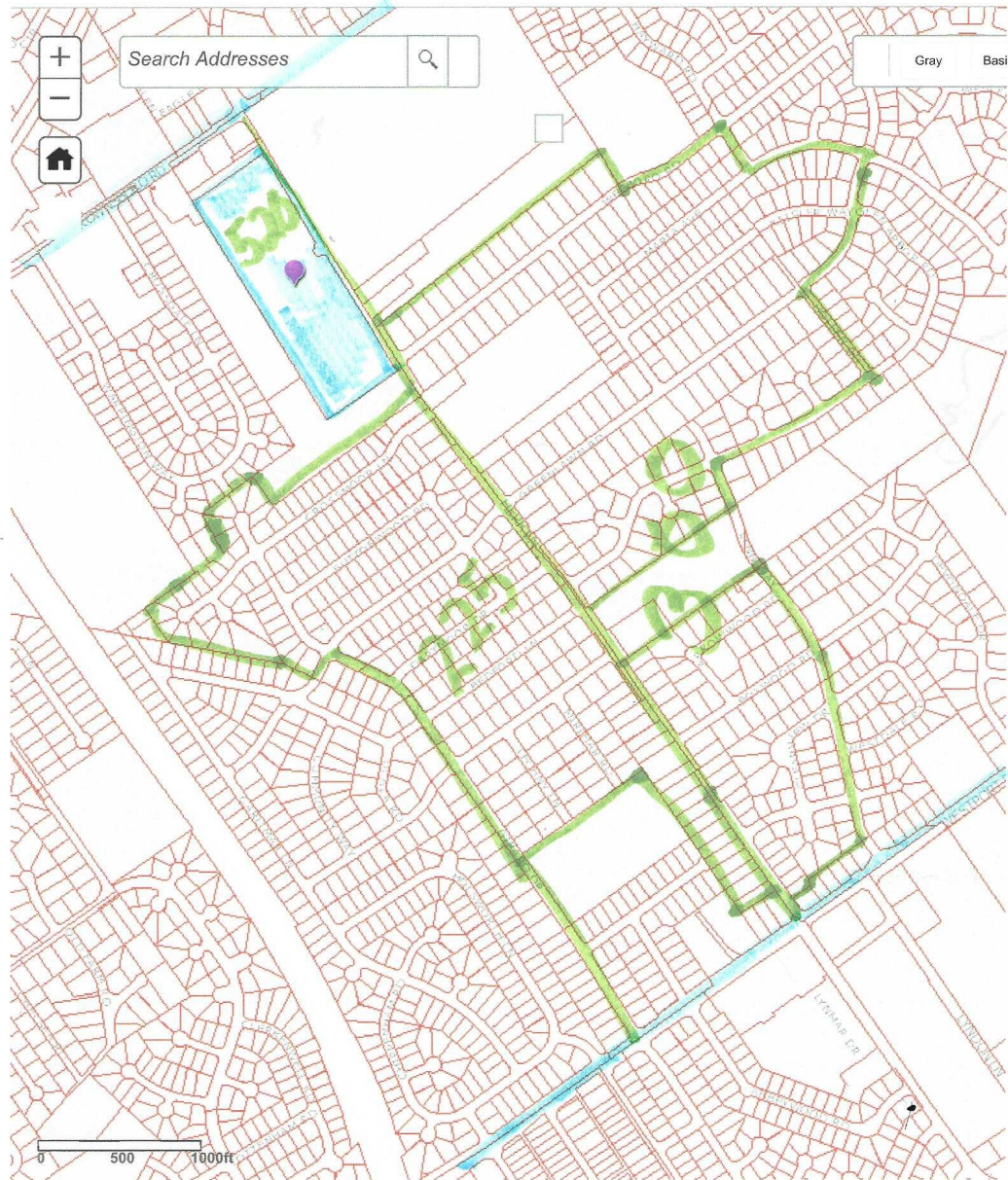
X = Providence Point

● = 12 story condo units on US42  
Glenview access onto US42  
The George, access onto Seminary Dr.

To show the contrast between 520 Providence Point units and 525 units along the Herr Lane corridor, I am presenting the following LOJIC map:

3/29/2021

LOJIC Online



As visible from the drawing, there are many more living units affected by the density, and therefore the additional traffic from Providence Point.

The Introduction in the Statement of Compliance refers to previous projects being high quality apartments with quality design in major east end corridors. That is not disputed. Using information compiled from the Hagan Properties website, I present the following chart.

Type of Asset	Name	# units	# acres	units/acre
Past	9910 Sawyer	356	25	14.24
Past	Paddock at Eastpoint	500	33	15.15
Current	Victory Knoll	470	35	13.43
Proposed	Providence Point	520	19.05	27.3

It is acknowledged that Providence Point is in a Town Center Form District and as such is allowed to be high density. Quoting from the Herr Lane Corridor Study, again “With one exception, Louisville Metro classifies the area as a “Neighborhood” Form District. The exception is the currently vacant land west of Ballard H.S.(Providence Point). It would be nice if Hagan Properties would take into consideration the whole neighborhood they are a part of. If you applied the average of the three assets listed above, 14.28 units/acre to 19.05 acres, you would have 272 units which would be much more palatable to the neighborhood and traffic in the area. Just because you can put 520 units on this small parcel of land, does not mean you should!

Reference:

<https://louisvilleky.gov/document/herrlanecorridorstudyreport09062017pdf>





**All Peoples**  
4936 Brownsboro Rd  
Louisville, KY 40222

March 23, 2021

TO: Ms. Dante St. Germain, Case Manager  
Louisville Metro Planning and Design Services

FR: Ms. Deborah Potts Novgorodoff, President  
All Peoples Board of Trustees

RE: **20-DDP-0045**

Dear Ms. St. Germain –

All Peoples, formerly known as Thomas Jefferson Unitarian Church, is located at 4936 Brownsboro Road. Our property adjoins the subject property, Providence Point, sharing much of its northern boundary. Representatives of All Peoples have reviewed the proposed Revised Detailed District Development (RDDDP) and met with the developer, Hagan Properties to discuss the proposal.

All Peoples has entered into a private agreement with Hagan Properties which outlines general design considerations including screening/buffering elements associated with our common property line, many of which are now reflected on the RDDDP. Based on the considerations agreed to by the developer, All Peoples Board of Trustees has voted, on behalf of the church, to not oppose the Revised Detailed District Development Plan as submitted.

Respectfully submitted,

Deborah Potts Novgorodoff, President  
All Peoples Board of Trustees

Subject: Memo Against the Providence Point Development (2020 Herr Lane)  
Name: Jacqueline Hersh, Esq.  
Date Submitted: March 28, 2021

To Whom It May Concern:

The field at 2020 Herr Lane (hereinafter referred to as “the Property”) has been there since before I can remember. I have always admired Louisville’s efforts to preserve its green spaces, and the field is no exception. In my childhood, I can remember driving past the Property each day. I have always appreciated being able to see a large tract of natural land in the middle of an area that has seen substantial growth and construction in the past three decades.

I was alarmed and disappointed upon hearing that the Property was being threatened by development by Hagan Properties. My first concern was the ecosystem of the Property and the surrounding area. Upon further research, I found that there are several endangered species of wildlife in the area and a designated wetland across from the Property at Ballard High School. My concern is that even if Hagan Properties were to follow the appropriate regulations and obtain the proper permits, there is no practicable way to prevent severe and lasting damage to the Property and surrounding area’s ecosystem.

The wetlands across from the Property (hereinafter referred to as “the Riverine”), into which runoff water and soil from the Property drain, runs all the way through Thornhill Subdivision and behind the condominium building The George, situated on U.S. Hwy. 42. It is classified as a Riverine (Classification Code: R4SBC - U.S. Fish and Wildlife Department). A Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water. The classification of Stream Bed (SB) includes all wetlands contained within the Intermittent Subsystem of the Riverine System and all channels of the Estuarine System or of the Tidal Subsystem of the Riverine System that are completely dewatered at low tide.

The Clean Water Act (CWA) (33 U.S.C. §1251 et seq) provides the structure for regulation of United States waters. It prohibits the discharge of any dredged or

fill material in “waters of the United States,” including wetlands, without a permit. (*Id.*) Wetlands are regulated under CWA §404, which is administered by the U.S. Army Corps of Engineers with oversight by the U.S. Environmental Protection Agency (EPA). Section 404 essentially stipulates that no discharge shall be permitted if:

1. A practicable alternative exists that is less damaging to the aquatic environment, or
2. The discharge would cause the nation’s waters to be significantly degraded.

The United States Courts have also defined these requirements in a test established by the CWA. In 2007, Mike and Chantell Sackett filled a portion of their previously undeveloped Property without a §404 CWA permit. The EPA determined that the fill violated the CWA because the parcel contained a jurisdictional wetland and issued an administrative compliance order requiring the Sacketts to remove the fill and restore the parcel to its original condition. The Supreme Court determined whether pre-enforcement review is available for EPA administrative orders other than Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) orders. “Pre-enforcement review” refers to the ability of a defendant to obtain judicial review of an administrative compliance order without having to wait to be sued by the EPA in an enforcement action. CERCLA has an express provision prohibiting pre-enforcement review. The CWA, the Clean Air Act, and RCRA do not. The EPA has long made the argument that these statutes contain an “implied bar” to such challenges and most courts have agreed. (132 S.Ct. 1367 (2012)).

In *Sackett v. EPA*, the Court was clear that in order for a construction or development project to be permitted, it must be demonstrated that, to the extent practicable: steps have been taken to avoid impacts to wetlands and other aquatic resources, potential impacts have been minimized, and compensation will be provided for any remaining unavoidable impacts. This process is commonly referred to as the “mitigation sequencing requirement” of the CWA §404 regulatory program. The four standards are:

1. The prohibition against discharging dredged or fill material without a permit, if there is a practicable alternative;
2. The prohibition against discharging dredged or fill material if it will violate state water quality standards, toxic effluent standards, or jeopardize a species listed under the Endangered Species Act;



3. The antidegradation rule; and
4. The requirement to minimize impacts

In a 9-0 decision, Justice Antonin Scalia wrote the majority opinion holding that the EPA's compliance order is a final agency action, and there was no other remedy for the Sacketts other than judicial review.

The state of Kentucky also regulates activities or modifications that would interfere with wetland areas. KRS 150.015 states that the declared purpose of Acts 1952, ch. 200, and the policy of the Commonwealth of Kentucky, is to protect and conserve the wildlife of this Commonwealth. The Department for Environmental Protection's (DEP) Division of Water (DOW) regulates wetlands under the state's water quality statutes and regulations. The DOW has statutory authority over wetlands pursuant to Title 18, Chapter 224 of the Kentucky Revised Statutes and the agency's regulations are found at Title 401 in the state's administrative regulations. The majority of DOW's wetland regulations concern water quality.

The DOW applies similar mitigation measures as the test found in the CWA. The DOW and the Kentucky Department of Fish and Wildlife have prepared wetland mitigation guidelines with representatives from the Louisville District Corps of Engineers that consist of the following:

1. Compensation is required when unavoidable adverse impacts still exist after all practicable efforts to minimize their effect are exhausted;
2. Individual permit applications may include wetland compensation measures to offset unavoidable wetland impacts;
3. Nationwide permit applications may include a compensatory mitigation and monitoring plan for any permit requiring notification procedures;
4. Mitigation banking happens before development actions when compensation is not beneficial or cannot occur at the development site.

The DEP's water quality regulations prohibit persons from constructing, modifying, or operating a facility in state waters without first obtaining a permit from the Cabinet. Persons also cannot directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run, or otherwise discharged into such waters any pollutant, or substance that would cause or contribute to the pollution of waters.

Locally, the Louisville and Jefferson County Environmental Trust protects land for future generations through voluntary cooperative programs. Created in 1997, the Trust helps to implement the goals of Louisville Metro's Comprehensive

Plan, Plan 2040, that relate to parks and natural areas, greenways, historic sites and farmland. The Trust's nine-member Oversight Board consists of five citizens and four members who represent government agencies responsible for public land.

Additionally, the Land Development Code for Louisville-Jefferson County Kentucky, in Chapter 4, Part 8, requires that "strong consideration should be given to preserving areas with environmental constraints or limitations such as steep slopes, dense vegetation, natural streams and drainage courses, sinkholes, floodplains, wetlands, or other significant natural features as natural open spaces." Prohibited activities include engaging in any activity that shall disturb, remove, fill, drain, dredge, clear, destroy, or alter any area, including vegetation, within a wetlands that falls in the jurisdiction of the federal government and its agencies, except as may be expressly allowed under applicable federal laws or regulations.

Hagan Properties plans to build a 520-unit apartment complex directly across from the Riverine at Ballard High School. How they will manage to mitigate measures to prevent the occupants of their complex to indirectly, throw, drain, run or otherwise discharge into the Riverine, or cause, permit, or suffer to be thrown, drained, run, or otherwise discharged into it is beyond my comprehension. The construction process alone is undoubtedly a threat to these protected waters. Furthermore, how will Hagan Properties ensure the prohibition against discharging dredged or fill material running into the Riverine, or present a practicable alternative to the introduction of pollutants into the water? The results of the developing Providence Point will be a certain increase in runoff and drainage that would empty pollutants directly into the Riverine and other areas.

Another concern is the wildlife and plant species that are undoubtedly supported by the thus far unaltered Property and Riverine. Certain wildlife and plant species are provided protections under the Endangered Species Act of 1973 because of declining populations, loss of habitat, and inadequate conservation. Much of the information I can rely on derives from the Final Environmental Impact Statement of the Replacement Robley Rex VA Hospital (hereinafter referred to as "the Report"). The VA Hospital has been approved to be constructed close to the Property. The two sites share similar characteristics in that they both are remnant cultivated fields now covered predominantly by various grasses, clover, and alfalfa, with brush and deciduous trees. They are both in close proximity to each other and therefore share the same environmental features.

A species that is being considered for protection as either endangered or threatened is described as “proposed” if a proposed regulation has been published in the Federal Register, or “candidate” if a proposed regulation has not been published. The Endangered Species Act (ESA) is administered by the Department of the Interior’s Fish and Wildlife Service (FWS). Section 4 of the ESA addresses the listing and recovery of species and designation of critical habitat, which is a defined geographic that contains features essential to conserving a threatened or endangered species. Section 7 requires all federal agencies to ensure that any action they authorize, fund, or implement is not likely to jeopardize the continued existence of a federally protected species or result in destruction or adverse modification of its designated critical habitat. Section 9 prohibits the unauthorized “take” of federally protected species, which includes harassment, harm, pursuit, hunting, shooting, wounding, killing, trapping, capture, or collection of a protected species, or the attempt to engage in any such conduct.

In 2011, according to the aforementioned Report, Kentucky Fish and Wildlife Services stated that wildlife and plant species that are currently federally listed as threatened or endangered have the potential to occur in the area: Indiana bat, running buffalo clover, and Kentucky glade cress. We can assume the Property at issue would also have these species. Not endangered, but integral to our ecosystem, are other plant species, deer, coyote, fox, raccoon, skunk, rodents, birds, reptiles and amphibians. The Riverine which would be affected by construction on the Property undoubtedly has many amphibious species within its waters, including invertebrates.

As previously discussed, riverine wetlands are systems that are contained within a channel (e.g. river, creek or waterway) and their associated streamside vegetation. They can be natural or artificial and may connect to lacustrine, palustrine, estuarine and marine wetlands. According to the Wiley Online Library (<https://onlinelibrary.wiley.com/doi/abs/10.1046/j.1365-2427.2002.00921.x>), riverine landscapes are heterogeneous in space (complex mosaic of habitat types) and time (expansion and contraction cycles, landscape legacies). They are inhabited by a diverse and abundant fauna of aquatic, terrestrial and amphibious species. The migration of many species, aquatic and terrestrial, is tightly coupled with the temporal and spatial dynamics of the shifting landscape mosaic. Alternation of landscape use by terrestrial and aquatic fauna corresponds to the rise and fall of the flood. Complex ecological processes inherent to intact riverine landscapes are reflected in their biodiversity, with important implications for the restoration and management of river corridors. (*Id.*)

With the aforementioned regulatory laws in mind, it would stand to reason that Hagan Properties would follow all such applicable criteria before beginning construction on Providence Point. In the alternative, and assuming all proper permits are obtained, Hagan Properties could consider not constructing Providence Point at all, or minimizing the number of dwellings on the Property in order to ensure less damage to the surrounding ecosystem. There is literally no way that the development of Providence Point would not alter the ecosystem and surrounding landscape, in most likely a detrimental manner that results in damage to our natural waters and wildlife.

Finally, although not all choose to appreciate the aesthetic appeal of nature, there is the simple argument that humans benefit from natural surroundings. The smells, sights, and sounds of nature are oftentimes subconsciously enjoyed by many, until they do not have access to it. The construction of Providence Point would certainly create harmful and lasting effects on not only the wildlife and wetlands, but the people who inhabit this area. In the words of Walt Whitman, "This is what you shall do; Love the earth and sun and the animals, [and] despise riches ..."

In closing, thank you in advance for your time and attention to this matter.

SECOND  
DRAFT

3/30/21

MIKE, et. NEIGHBORS

There are many valid objections to proposed 500 plus Apartment Development on Herr Ln. across from Ballard H.S.

The area is heavily loaded with noise, traffic congestion & pollution from 5 schools (in & out)

Kroger-Shopping Center, small stores, restaurants.

Also, the ingress & egress to property, the end off to Watterson Xway - US. 42 - Brownsboro Rd is already difficult many times a day.

The sewer system is marginal now - couldn't hold more.

We residents are strained to the limit now!

These proposed apartments with 1-2 cars per apartment would aggravate the matter. There already are issues - apartments Bardstown Rd, Westport Rd

Brownsboro Rd. (Vacancy rates - tenant issues - maintenance)

And this proposal saddles current property owners with more taxes, quality of tenants, more police calls & related issues, nothing positive here.

Please review a different land use here

NOT ONLY IS ALL OF THIS TRUE/VALID,  
BUT IT DOESN'T MENTION THE  
VA. HOSPITAL GOING IN... !!

---

Comments? Ron Kemper  
314.9684

MICHAEL WINN  
262-8105

NAME

ADDRESS

Michael W.

MICHAEL J. WINN

2504 HAYWARD RD.

Sherry Russell

SHERRY & MICHAEL RUSSELL

2506 HAYWARD RD, 40242

Janie Morgan (backst)

2503 Hayward Rd.

Joseph Paim

2505 Hayward Rd.

Brenda Julein

2502 Hayward Rd.

For: Hearing - review

2020 Herr Ln.

April 1, 2021 11:00 p.m.

3-31-21

There are many valid objections to proposed 500 plus Apartment Development on Herr Ln. across from Ballard H.S.

The area is heavily loaded with noise, traffic congestion & pollution from 5 schools (in & out)

Kroger-Shopping Center, small stores, restaurants.

Also, the ingress & egress to property, the head off to Watterson Xway - US. 42 - Brownsboro Rd is already difficult many times a day.

The sewer system is marginal now - couldn't hold more.

We residents are strained to the limit now!

These proposed apartments with 1-2 cars per <sup>apartment</sup> ~~apartment~~ would aggravate the matter. There are already are

issues - apartments Bardstown Rd, Westport Rd

Brownsboro Rd. (Vacancy rates - tenant issues - maintenance etc)

And this proposal saddles current property owners with more taxes, quality of tenants, more police calls & related issues, nothing positive here.

Please review a different land use here, Herr Ln, at a later date.

Sincerely,

Ron Kemper  
Ron Kemper

2505 Paulcrest CT.

Louisville, KY 40242

## St. Germain, Dante

---

**From:** Jackie T. Gedrose <jgedrose@bellsouth.net>  
**Sent:** Tuesday, March 23, 2021 3:22 PM  
**To:** St. Germain, Dante  
**Subject:** case # 20-DDP-0045  
**Attachments:** LOJIC\_Herr\_Ln\_zoning\_map.pdf; 2017\_Herr\_Lane\_Corridor\_data\_for\_Providence\_Point.pdf

**CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe**

---

Ms. St. Germain,

I have registered to speak at the April 1<sup>st</sup>, 2021 Planning Commission meeting concerning Providence Point. I will be speaking about traffic concerns with the Herr Lane/Westport Road intersection that were not addressed in the Traffic Impact Study prepared for the Planning Commission and KYTC.

Traffic along the whole length of the 1.15 mile corridor of Herr Lane between KY22 and Westport as well as all the residential communities on both sides of this corridor will be greatly affected by the proposed high-density development of Providence Point.

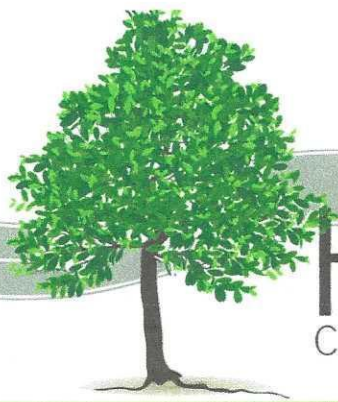
I am attaching pdfs that I would like distributed to the Planning Commission. The first pdf is selected pages from the August 2017 Final Report of the Herr Lane Corridor Transportation Plan, <https://louisvilleky.gov/document/herrlanecorridorstudyreport09062017pdf>. The second, a LOJIC zoning map, shows all the residential areas that surround the Town Center Form district.

The previous plan for the property was approved in 2006. In 2010 the Westport Road interchange with I264 opened increasing the Westport Road traffic by 84%. The sheer volume of traffic on Westport Road has created long backups on Herr Lane which will only get worse with the development of the Midlands and Providence Point.

Jackie Gedrose

Sent from [Mail](#) for Windows 10





# Herr Lane

CORRIDOR TRANSPORTATION PLAN

Final Report  
August 2017

KY 2050 (Herr Lane)  
between KY 1447 (Westport Road) and US 42 (Brownsboro Road)





## Acknowledgements

### Louisville Metro Government

Councilwoman Angela Leet – District 7  
Erin Hinson – District 7 Legislative Assistant  
Dirk Gowin, PE – Metro Public Works  
Pat Johnson, PE – Metro Public Works  
Steve Kurowsky, PE – Metro Public Works



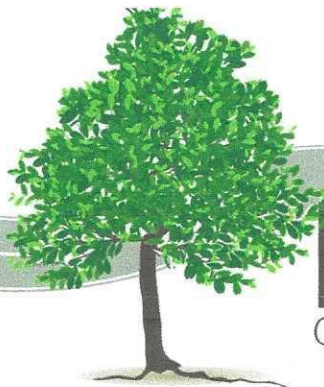
### Kentucky Transportation Cabinet

Matt Bullock, PE – KYTC District-5  
Tom Hall, PE – KYTC District-5  
Travis Thompson, PE – KYTC, District-5



### Qk4, Inc.

Tom Springer, AICP  
Andy Gilley, PE  
Jeremy Lukat, PE  
Albert Zimmerman, PE  
Hank Pritchard, GISP



# Herr Lane

CORRIDOR TRANSPORTATION PLAN

## EXECUTIVE SUMMARY

Councilwoman Angela Leet, Louisville Metro District-7, initiated the planning process directed toward improving the section of KY 2050 (Herr Lane) between KY 1447 (Westport Road) and KY 22 (Brownsboro Road). This *Herr Lane Corridor Study* (Corridor Study) presents the results of the planning process.

Along the 1.15-mile project corridor (**Figure 1**), Herr Lane is a two-lane road with average daily traffic volumes ranging from 11,300 to 13,800 vehicles per day. Throughout a typical day, sections of the project corridor experience significant congestion. The southern end of the corridor has a higher than average crash rate. While the land along and around the project corridor is almost entirely developed, notable changes proposed for two large, undeveloped tracts could likely exacerbate congestion in the area. Those foreseeable changes are accounted for in this study.



**Figure ES1: Study Area**

Herr Lane is owned and maintained by the Kentucky Transportation Cabinet (KYTC). The KYTC and the Kentuckiana Regional Planning and Development Agency (KIPDA) have examined transportation issues along the corridor and programmed solutions in their capital improvements programs—KYTC's Fiscal Year (FY) 2016–FY 2022 Highway Plan<sup>1</sup> and KIPDA's Transportation Improvement Program<sup>2</sup>—both of which have been taken into account in this study.

Other steps taken during this study involved coordinating with the local schools; holding two public informational meetings; collecting existing conditions information; forecasting future land use and traffic conditions; analyzing alternative improvement concepts; and developing cost estimates and implementation strategies for each concept. The prioritized recommendations from this study are listed below.

<sup>1</sup> The FY 2016–FY 2022 Highway Plan is the result of the process through which major highway projects are scheduled for the six-year planning period. The plan was enacted by the Kentucky General Assembly May 18, 2016.

<sup>2</sup> KIPDA is the regional planning organization comprised of an association of local governments in a nine-county region of southern Indiana and north central Kentucky that includes Jefferson County. KIPDA is Louisville's Metropolitan Planning Organization (MPO).





ES Figure 2: Summary of Projects

## 4.0 EXISTING ROADWAY CONDITIONS

The following information about Herr Lane between Westport Road and KY 22 pertains to identifying mobility problems and solutions.

### 4.1 Herr Lane Roadway Characteristics

- KYTC-owned and -maintained, and classified as an Urban Minor Arterial.<sup>6</sup>
- Two 11-foot-wide travel lanes, and three lanes at the two signalized intersections:
  - Southbound approach to Westport Road includes a 100-foot-long designated left-turn lane (LTL) and an urban curb and gutter section for drainage.
  - Northbound approach to Brownsboro Road includes a 375-foot-long designated LTL.
- Shoulder widths vary from one to three feet.
- Posted speed limit is 35 miles per hour (mph).
- Regarding access: 53 driveways, 9 local roads, 5 commercial access points, and an access to Ballard High School:
  - Between Westport Road and Graymoor Road—
    - West side—19 driveways and 1 local road: Graymoor Road
    - East side—17 driveways and 2 local roads: Moredale Road and Boxwood Road
  - Between Graymoor Road and Wesboro Road—
    - West side—10 driveways and 4 local roads: Bedford Lane, Dartmoor Drive, Greenlawn Road, and Crossmoor Lane
    - East side—7 driveways and 3 local roads: Glen Arbor Road, Greenlawn Road, and Wesboro Road
  - Between Wesboro Road and Brownsboro Road—
    - West side—0 driveways, 1 commercial access to Paul's Fruit Market, and 2 entrances to former Thornton's gas station (now closed).
    - East side—0 driveways, 2 access drives to commercial areas, and 1 access to Ballard High School
- Stop-controls along the corridor only at signalized intersections with Westport Road and Brownsboro Road.
- As the only north-south connector between Westport Road and Brownsboro Road east of I-264 in the study area, Herr Lane is used as a cut-through route.

---

<sup>6</sup> Minor Arterials (Arterial Streets in urban areas) provide service for trips of moderate length, serve geographic areas that are smaller than their higher Principle Arterial counterparts (including Westport Road and KY 22) and offer connectivity to the higher arterial system.



## 4.2 Traffic Data

### 4.2.1 Average Daily Traffic (ADT)

Average daily traffic (ADT) volumes in recent years have ranged from:

- 12,400 (2014) vehicles per day (vpd) near north end of corridor (KY 22)
- 11,300 (2013) vpd in the middle of the corridor, and
- 13,800 (2016) near south end of corridor (Westport Road)<sup>7</sup>.

Historically, traffic volumes on Herr Lane have been higher than those listed. Between 1997 and 2009—a year before the 2010 opening of the Westport Road/I-264 interchange—the average daily volume was 15,600<sup>8</sup>. Prior to the availability of the interchange, I-264-bound traffic is assumed to have used Herr Lane to access I-264 at Brownsboro Road. While this decrease in total traffic on Herr Lane is welcomed by the residents and users of the corridor, a consequence has been a significant increase in traffic on Westport Road that backs up traffic on Herr Lane. Traffic volumes on Westport Road between Herr Lane and I-264 went from 19,600 vpd in 2008 to 36,000 in 2011—a 16,400 vpd or 84% increase. (See Appendix B.)

### 4.2.2 2016 Turning Movement Counts

Twelve-hour turning movement counts were collected at seven intersections in January and February 2017 using video processing equipment. Collecting data for 12 hours provided sufficient time to identify the AM and PM peak-hour volumes and school peak-hour volumes, which differ from the “commuter/rush hour” times. During “school peak hours,” traffic on mainline Herr Lane may be less than the typical AM and PM peak hours, but traffic turning to and from cross streets near the schools increases. The presence of the four schools has a notable effect on traffic in the area, and the 12-hour counts yielded valuable data for identifying and analyzing school-related traffic issues. **Table 2** presents the peak-hour volumes entering and exiting Herr Lane via the cross streets collected through this study.

---

<sup>7</sup> <http://www.kipda.org/Transportation/TrafficCounts/>

<sup>8</sup> [http://datamart.business.transportation.ky.gov/EDSB\\_SOLUTIONS/CTS/StationDetail.aspx?STATION=056195&TF\\_NE\\_ID=27739512](http://datamart.business.transportation.ky.gov/EDSB_SOLUTIONS/CTS/StationDetail.aspx?STATION=056195&TF_NE_ID=27739512)

Table 1: 2017 AM Peak Hour Turning Movement Volumes

	AM Peak Hour (8:00 AM – 9:00 AM) Volume / Level of Service				
	Southbound Approach	Westbound Approach	Northbound Approach	Eastbound Approach	Total
Westport Road	465 / <b>F</b>	1,498	349	1,267	3,579
Graymoor Road	451	n/a	458 / A	154 / D	1,063
Greenlawn Road	402 / A	124 / <b>F</b>	534 / A	16 / D	1,076
Crossmoor Lane	401 / A	0 / A (Wilder E.S.)	513 / A	14 / C	928
Wesboro Road	309 / B	206 / E	569	n/a	1,165
Ballard H.S.	445 / A	229 / <b>F</b>	551	n/a	1,225
KY 22	200	547	415 / C	554	1,716

Table 2: 2017 School Peak Hour Turning Movement Volumes

		School Peak Hour (Various Times) Volume / Level of Service				Total
		Southbound Approach	Westbound Approach	Northbound Approach	Eastbound Approach	
Graymoor Road	AM*	451	n/a	458 / A	154 / D	1,063
	PM	<u>517</u>	n/a	<u>391 / A</u>	<u>134 / D</u>	<u>1,042</u>
Crossmoor Lane	AM	<u>373 / A</u>	<u>118 / C</u>	<u>386 / A</u>	<u>6 / C</u>	<u>1,760</u>
	PM	<u>513 / A</u>	<u>86 / C</u>	<u>427 / A</u>	<u>12 / C</u>	<u>1,038</u>
Wesboro Road	AM*	309	206	569	n/a	1,165
	PM	<u>526 / A</u>	<u>120 / C</u>	<u>410</u>	n/a	<u>1,056</u>
Ballard H.S.	AM*	445	229	551	n/a	1,225
	PM	<u>516 / A</u>	<u>194 / D</u>	<u>448</u>	n/a	<u>1,158</u>

\* = same as peak hour. Underlines = unique school peak hour volumes.



Table 3: 2017 AM Peak Hour Turning Movement Volumes

	PM Peak Hour (4:45 PM – 5:45 PM) Volume / Level of Service				
	Southbound Approach	Westbound Approach	Northbound Approach	Eastbound Approach	Total
Westport Road	460 / F	1,235	578	1,846	4,119
Graymoor Road	566	n/a	519 / A	69 / D	1,148
Greenlawn Road	604 / A	41 / D	587 / A	24 / D	1,256
Crossmoor Lane	584 / A	2 / B (Wilder E.S.)	505 / A	17 / D	1,106
Wesboro Road	621 / A	61 / C	460	n/a	1,142
Ballard H.S.	670 / A	44 / D	581	n/a	1,295
KY 22	417	338	505 / C	919	2,179

Section 5.0 includes peak hour traffic forecasts.

#### 4.2.3 Traffic Operations

Traffic operations were analyzed for 2017. The measures of effectiveness/metrics used to describe traffic conditions include traffic volumes on Herr Lane and its cross streets, the volume to capacity (v/c) ratio, and the level of service (LOS).

A v/c ratio reflects the percentage of a roadway's carrying capacity currently used. In an urban area, a v/c ratio over 1.0 indicates the roadway is carrying more traffic than it is designed to carry.

The LOS represents a typical driver's perspective of traffic conditions, based on the level of perceived congestion. LOS "A" represents a free-flowing condition in which driver decisions are unaffected by other vehicles. By contrast, LOS "F" represents severe congestion in which a driver's movements are substantially constrained by surrounding traffic. **Figure 2** graphically depicts the typical traffic conditions associated with each LOS designation

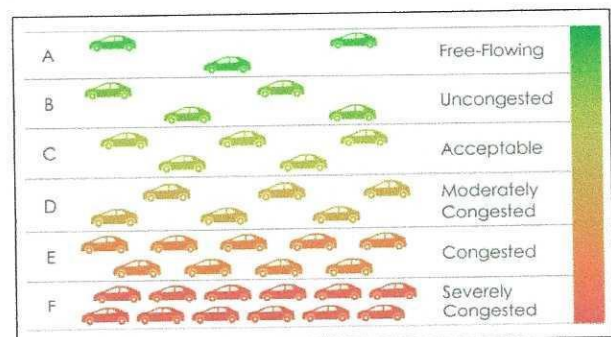


Figure 2: LOS Definition

The v/c along Herr Lane is acceptable and does not approach the 0.85 threshold for signaling the onset of potential capacity-related issues; however,



the LOS of E, is indicative of peak hour congestion and difficulty turning left onto or from Herr Lane:

- Westport Road to Graymoor Road – LOS “E”
  - AM – 0.31 – LOS “E”
  - PM – 0.42 – LOS “E”
- Graymoor Road to Crossmoor Lane
  - AM – 0.33 – LOS “E”
  - PM – 0.40 – LOS “E”
- Crossmoor Lane to KY 22
  - AM – 0.36 – LOS “E”
  - PM – 0.44 – LOS “E”

#### 4.2.4 Field Observations

Field inspections involved spot counts, a measure of vehicles in queues at traffic signals, travel times, travel speeds, and pedestrian movement that included interviews with pedestrians and school crossing guards. This information helped traffic engineers and planners understand the actual traffic operations in the study corridor and identify realistic improvement alternatives.

### 4.3 Land Use

Schools: There are four schools in the study corridor: St. Albert the Great (parochial elementary school) along Graymoor Road, Wilder Elementary School (E.S.) along Herr Lane, Kammerer Middle School (M.S.) along Wesboro Road, and Ballard High School (H.S.) along Herr Lane. School traffic is a major consideration within this corridor. Therefore, school peak-hour traffic data was collected (**Table 2**) for use in identifying traffic-related improvement options near the schools.

Shopping: Two major shopping areas are at each end of the corridor—Holiday Manor at KY 22, and Westport Village at Westport Road.

Planning and Zoning: With one exception, Louisville Metro classifies the area as a “Neighborhood” Form District. The exception is the currently vacant land west of Ballard H.S. (Providence Point), which is within a “Town Center” Form District. Providence Point and the Louisville Tennis Club property are zoned “commercial/office,” and the rest of the corridor is zoned “residential.”

### 4.4 Drainage

Drainage is collected through ditches along the corridor, minus the short section of curb and gutter near Westport Road. An unnamed stream crosses under Herr Lane and forms a wetland on Ballard H.S. property. No notable drainage issues were identified during this planning study.



## 5.0 FUTURE LAND USE AND TRAFFIC

With no future development, future traffic volumes on Herr Lane are anticipated to remain the same as the current volumes. “Background growth” is not anticipated because this area of Louisville is mostly built-out and no major roadway projects, such as a new interchange with I-264 or new major roadway connections, are anticipated.

However, there are two major proposed developments in the study area that would impact traffic on Herr Lane—(1) Providence Point adjacent to Herr Lane across from Ballard H.S., and (2) the Midlands Development, the proposed Veterans Administration (VA) Hospital site adjacent to the I-264/KY 22 interchange. The sponsors of each of those developments published a Traffic Impact Study (TIS) (see Appendix G). For this study, the future traffic scenario assumes each of these projects are built, and the traffic from them is as published in each TIS, as follows:

- Providence Point: In 2007 a development for the 19-acre property across from Ballard H.S. was submitted to Metro Planning and Development Services for a proposed mixed-use development of commercial, apartments, and office space. The development plan was not realized and has since expired. However, this Corridor Study assumed a development similar to Providence Point would be approved in the future; therefore, the information from the 2007 TIS was used to forecast future Herr Lane volumes. To mitigate traffic impacts, the development plan included plans for widening Herr Lane, and installing a traffic signal at the future site entrance, which is proposed to be across from the entrance to Ballard H.S. These are binding elements that must be realized as part of the rezoning approval. As such they are included as Project 6 in Section 7.0, *Alternatives Development*, and would be the responsibility of the future developer.
- Midlands: In 2016 the VA Hospital Environmental Impact Statement (EIS) included a TIS that forecasted future traffic from either a VA Hospital or a future mixed-use development on the same 35-acre site. The traffic volume assigned to Herr Lane for both options were nearly identical; therefore, the information from the 2016 TIS was used to forecast the future Herr Lane volumes.

As common practice, TISs forecast AM and PM peak-hour volumes rather than an average daily volume. Therefore, the future traffic volumes from both TISs were combined and then added to existing AM and PM peak-hour volumes to create the future peak-hour traffic scenario for Herr Lane.

The binding elements for Providence Point would mitigate traffic north of Wesboro Road. The traffic forecasts summarized below are for south of Wesboro Road (see Tables 1 and 3).



**Table 4: Existing Plus Future Traffic on Herr Lane South of Wesboro Road**

	AM		PM	
	NB	SB	NB	SB
<b>Existing Peak-Hour Volumes</b> (from Tables 1 and 3)	569	309	460	621
<b>Future from Providence Point*</b>	126	92	101	117
<b>Future from Midlands/VA Hospital</b>	26	16	9	63
<b>Total New in Future Scenario</b>	152	108	110	180
<b>Future Peak-Hour Volumes</b>	721	417	570	801
<b>% increase</b>	30%		27%	

\* These volumes have been adjusted to remove "pass-by" trips, as estimated in the 2007 TIS.

These forecasts represent an average 28% growth in traffic during the peak hours, and are assumed to be through-traffic to Westport Road. These volumes would exacerbate the existing peak-hour congestion for traffic turning onto Herr Lane from the side streets, and the traffic approaching the Westport Road signalized intersection.

Westport Road Growth: One of the biggest problems for traffic on Herr Lane is negotiating the Westport Road intersection. Per the KIPDA traffic database, volumes on Westport Road are 40,900 vpd west of Herr Lane and 35,200 vpd east of Herr Lane. Some tracts of land along Westport Road have not yet been developed. The more growth that occurs along Westport Road, the more delays can be expected on Herr Lane since Westport Road is the major street and will continue to require more "green time" at the traffic signal. It is not possible to forecast exact volumes, but traffic congestion should be taken into account when development plans along Westport Road are proposed.

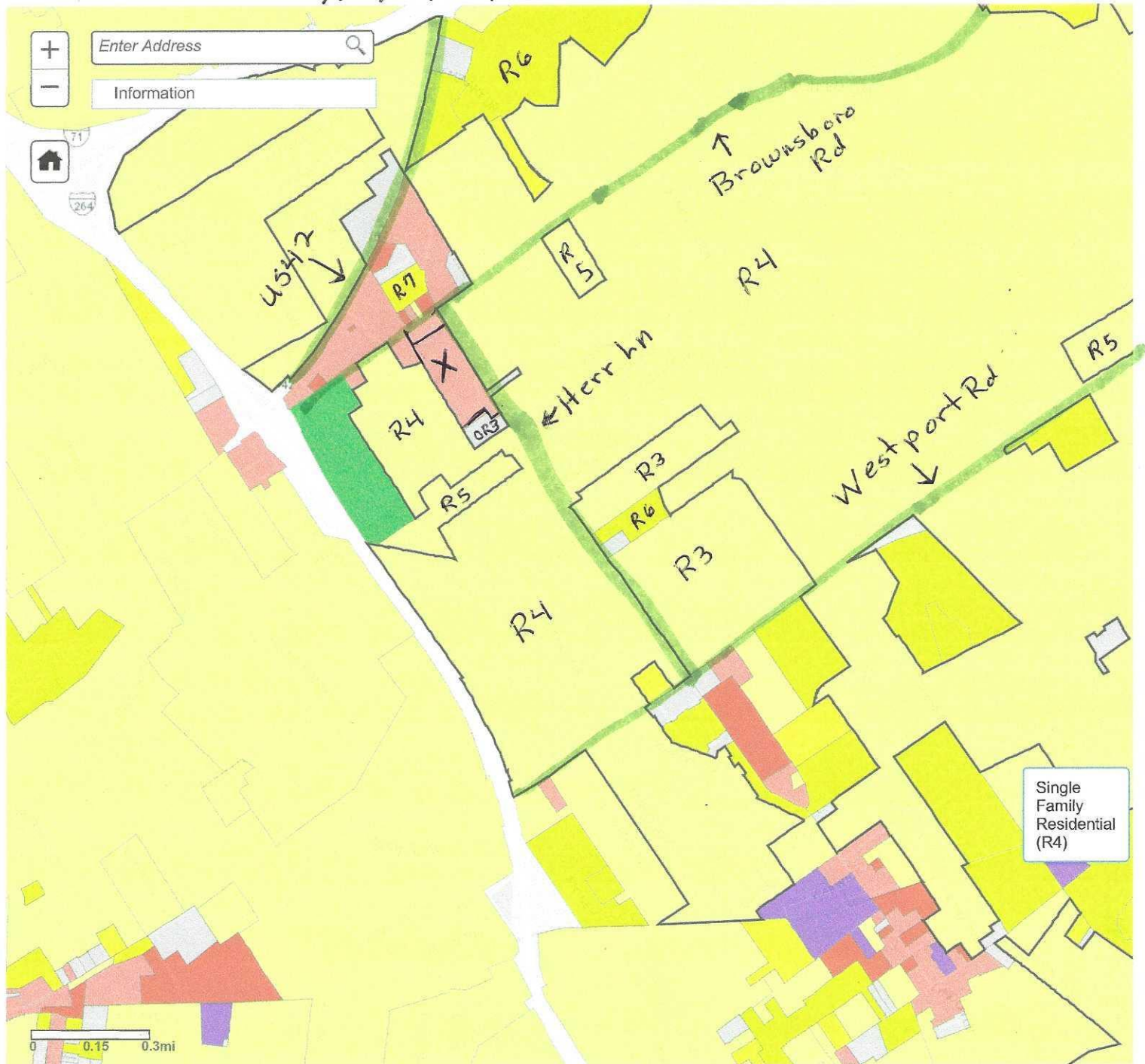
## 7.2 Alternatives Considered but Not Advanced

Several alternatives identified throughout the planning process, including some from public comments, are not recommended for advancement. It is worthwhile to summarize those herein to be responsive to public comments and disclose the breadth of the decision making process undertaken.

- Re-time Traffic Signal at Westport Road and Herr Lane
  - Citing the difficulty of turning left or right onto Westport Road, this was the public's most often suggested improvement. Unfortunately for the drivers on southbound Herr Lane, no changes to the signal timing can be made due to the significant traffic volume on Westport Road and the length of time required for pedestrians to cross Westport Road. Prior to this study, the signal had been studied by Louisville Metro and the Kentucky Engineering Center at the University of Kentucky, both of which concluded the signal is operating as efficiently as possible for the high volume of vehicles through the intersection. For this Corridor Study, the 2017 traffic data collected was provided to Louisville Metro Public Work's Traffic Division for use in revisiting the issues. It was again concluded that changes to the signal timing could not be made.
- Bike Lanes
  - Bike lanes added to the outside of the travel lane are not recommended on Herr Lane for a variety of reasons. They would require a wider roadway, as there is not enough width in the current roadway to stripe a bike lane. There are numerous driveway access points, which can be hazardous to bicyclists; and there is no bicycle network, existing or planned, to connect with. (Projects 4 and 5, below, *do* address bicycle mobility in the study area, but *do not* address dedicated bike lanes.)
- Multi-Use Path
  - A multi-use path (MUP) is an 8- to 10-foot-wide concrete path intended for shared use by bicyclists and pedestrians, as is the Louisville Loop. MUPs are often built along only one side of a roadway. An MUP is not proposed along either side of Herr Lane because there is not a bicycle or trail network or a public park it could connect with; furthermore, in settings such as Herr Lane, an MUP can often have right-of-way impacts and require the removal of trees and landscaping that can increase costs and impacts to the landowners. In addition, pedestrian needs can be addressed with the existing sidewalks and by constructing new sidewalks where there are gaps.
- Mid Block Traffic Signal
  - Several public comments requested a traffic signal at Greenlawn Road or other crossroads. Based on the current traffic counts, a mid-block signal is not warranted.
- Widening Herr Lane to Four Through-Lanes
  - While several public comments requested a four-lane road, it is not warranted. The impacts of a four-lane roadway can be significant, producing a facility that is not fitting for a neighborhood setting: right-of-way requirements often remove



X = 2020 Herr Lane



Metro Development Center

444 S. 5<sup>th</sup> Street, 3<sup>rd</sup> Floor

Louisville, KY 40202

Attn: Lacey Gabbard

Hello Ms. Gabbard,

I am writing to you concerning the planned development at Providence Point on Herr Lane (#20-DDP-0045). I am extremely concerned about this development due to the extra traffic it will bring to an already congested area. Considering this is a two lane road that is only two miles long with FOUR major schools in our pathway (Ballard, Wilder, Kammerer and St. Albert) it is already beyond capacity in the mornings and afternoons during school times and during certain after school activities.

This development would be a detriment to our community and a safety hazard to our residents, especially children and pets, as people try to weave in and out of the streets of our neighborhood to avoid Herr Lane traffic.

Please notify me of any meetings concerning this case.

Thank you,

Laura Perkins

7204 Wesboro Road

Louisville, KY 40222

859-489-4191

**RECEIVED**  
DEC 31 2020  
**PLANNING &  
DESIGN SERVICES**

## St. Germain, Dante

---

**From:** Frank Lynch <fjlynch@outlook.com>  
**Sent:** Sunday, March 21, 2021 11:39 AM  
**To:** St. Germain, Dante  
**Subject:** 2020 Herr Lane

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

I am against added a 520 unit development at 2020 Herr Lane. This area is already over crowded with traffic and the proposed VA Hospital less than a mile away makes this development totally out of control.

Frank Lynch  
601 Blankenbaker Lane  
40207

## St. Germain, Dante

---

**From:** Geri Fridy <geri.f@twc.com>  
**Sent:** Friday, March 19, 2021 1:24 PM  
**To:** St. Germain, Dante  
**Subject:** Property at 2020 Herr Lane

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Mr. St. Germaine:

I understand there is an on-line meeting scheduled for April 1st to discuss the building of a 520 unit apartment complex at 2020 Herr Lane, 40222, a property of 19 acres. If a complex of this size is built on that property, traffic in the area would become untenable. Traffic congestion is already a frustrating problem in this area, especially at certain times of the day, most especially when schools are letting out and during rush hour.

There are three (3) schools within a mile of this property, four (4) within two (2) miles—two of which are elementary schools. This would create not only a traffic nuisance, it would also create a dangerous situation for children, pedestrians (most of whom will be high-school and middle-school students), and drivers.

Likewise traffic during the hours when most people leave for work and/or come home (rush hour) is already inordinately backed-up due to three on- and off-ramps connecting the neighborhood with I-264. Herr Lane connects Westport Road to Hwy 22 and Brownsboro Road, the three (3) roads that the ramps empty onto and off of. There is already a glut of traffic on Westport Road during rush hour that backs cars up from Hubbards Lane to Herr Lane; likewise, on Brownsboro Road from Rudy Lane to Herr Lane/Lime Kiln Lane. Should the Veterans' Hospital that has been proposed at the junction of HWY 22 and I-264—that currently is tied-up in the courts and was the purpose for the additional ramp onto Hwy 22—be built, already congested roads will become bottlenecks of imprudent proportions. Seeking a solution after-the-fact will prove virtually impossible. Widening Herr Lane would be an injustice to those who already have homes there.

There really is no solution to creating a monstrous traffic fiasco other than to prevent it. Building a complex of 520 units on a small plot would be an injustice to those of us who are already here. Most of us moved a bit farther from the city because we wanted larger yards and less traffic—my husband and I moved here from St. Matthews for just that reason. The owners of the 2020 Herr Lane property surely were aware of the existing traffic problem when the property was purchased. If they weren't, the onus should be on them, not those of us who moved to a less densely populated area years before the property was sold.

Kindly take our arguments into consideration regarding this project. To build a large apartment complex at 2020 Herr Lane will worsen an already potentially dangerous problem and it would be an injustice to those of us who have been here for several years/decades.

I appreciate your time.

Geri Fridy  
7106 Wesboro Road  
40222  
502-851-7024

Sent from my iPad





## St. Germain, Dante

---

**From:** David McCubbins <dpmccu01@yahoo.com>  
**Sent:** Saturday, March 20, 2021 3:56 PM  
**To:** St. Germain, Dante; mccraney4district7@gmail.com  
**Subject:** Comments for case # 20DDP-0045 Herr lane 520 units

**CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe**

---

In regards to Herr In adding 520 multi family homes

case # 20DDP-0045

I am submitting thd following comments for meeting on April 1st Thursday about 2020 Herr lane.

I am against adding 520 more housing units to this area unless something is done about the traffic in the morning between 7:00am and 8:15am on weekdays. When school is in at Ballard High School traffic backs up Herr Lane, 22, Brownsboro rd and seminary. And people start cutting through neighborhoods to try and avoid it. Kids walk to the 3 schools (Ballard High, wilder elementary, Kemmerer middle) in this neighborhood. Adding 520 housing units will add 520 or more cars in the heart of this problem. Encouraging people to cut through the neighborhood and endangering kids walking to school. I have spoken to many of my neighbors and they think the same. Development is always good as long as the traffic that comes with it is handled correctly. Traffic currently backs on the way down 22 in the morning because of this problem and I do not see adding 520 housing units in the heart of the traffic problem helping the current traffic problem, its only going to make it worse.

David McCubbins  
2413 Hayward rd  
Louisville KY 40242

[Sent from Yahoo Mail on Android](#)

## St. Germain, Dante

---

**From:** angie weismiller <aweismiller@gmail.com>  
**Sent:** Monday, March 22, 2021 10:37 AM  
**To:** St. Germain, Dante  
**Subject:** Herr Lane Aparments

**CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe**

---

I was emailing regarding the proposal to build apartments across from Ballard High School. This really concerns me. The amount of traffic would greatly increase especially with the addition of the VA hospital coming soon. This is an already busy area. I have a child getting ready to attend Ballard and I do not like the idea of this area getting busier as we take her and pick her up from school and also the traffic in this area when she starts to drive herself to school. It will lead to more accidents. Perhaps, patio homes or less apartments, would be a better idea.

Thank you,  
Angie Weismiller

## St. Germain, Dante

---

**From:** Mary Barrett <mbarrett@uaw862.org>  
**Sent:** Monday, March 22, 2021 11:57 AM  
**To:** St. Germain, Dante  
**Subject:** 2020 Herr Lane, Case # 20-DDP0045

**CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe**

---

Good morning Dante St. Germain,

I live in Northfield subdivision. I am very concerned about additional traffic, air and noise pollution, and stormwater drainage on the Brownsboro Road corridors. Herr Lane is already impassable during morning and afternoon rush hour during school days. It is gridlock. Some mornings I have to set through the light twice on Northfield Drive just to turn right at the Brownsboro intersection just to leave my subdivision. Traffic is blocking intersections after their lights have changed, thereby not allowing traffic to proceed when it is their turn at Highways 22 and 42. I've not met anyone in our neighborhood that is interested in high density apartments in our neighborhood on Herr Lane. Traffic, auto exhaust and population numbers are already eroding our community. Presently, Highway 22 and Herr Lane both need to be widen.

When we moved into Northfield Subdivision, it was a mature, quiet and clean neighborhood. We have witnessed new large developments approved by Louisville planning commission, that have increased traffic congestion, and traffic noise pollution. I understand communities grow and we are now outgrowing. But, enough is enough. Our area has enough dense multi-family condominiums, apartments and single family residents. High density apartment developments use area resources without individual renter investment in the communities. Nor is the developer's tax payment large enough to make a difference in the daily wear, tear and use of resources by his/her tenants. Water drainage is another concern for our area. All that pavement and dense building construction will not be mitigated enough for their actual storm water impact.

We are at the point of diminishing our real estate property values. I use to not be able to hear traffic in my back yard. Now it's a constant rumble of cars, large trucks, firetrucks, ambulances, service and construction vehicles plus thousands of more family members on the roads. There is also a substantial increases of air pollution. Each spring and fall I have to wash the outside of my home to remove pollution off my painted brick. I use to clean it every other year and had less dirt then verses what is accumulating now on the exterior of my home. I can't keep the exterior windows clean because of the debris in the air. We can't sit outside and listen to the birds. We hear firetrucks and ambulances most every day now. We do not need more apartments.

Yes, I know there will be a traffic study done for the site. Of course it will be tilted toward the developers benefit, not the tax paying property owners in the area. The traffic is not counted all day, just at certain times of day selected by the traffic engineer. The report is then written to support their findings for the developer. I've not seen a report yet that did not support the developer. Isn't that report paid for by the developer's attorney?

This is a very high density development plan for non-tax paying homeowners that will use community resources without contributing to anything other than congestion and motor vehicle noise and emissions pollution.

Thank you for your consideration.

Best regards,

*Mary*

Mary Barrett  
Administrative Assistant  
UAW Local 862

Gettelfinger Hall . 3000 Fern Valley Road . Louisville, Kentucky 40213 . (502) 969-9136

NCFOLocal32BJ

## St. Germain, Dante

---

**From:** Linda Winkler <lcwinkler@icloud.com>  
**Sent:** Monday, March 22, 2021 12:06 PM  
**To:** St. Germain, Dante  
**Subject:** Proposed apartments across from Ballard

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

The proposed density of these apartments in that location is absurd. The area is already heavily congested and expecting to be worse with the VA hospital going in nearby.

That many cars will be a nightmare. If the proposal were a nice patio home development-which this area could actually use- then the added congestion, although unwanted, would be less disastrous. We will have added pollution, litter, traffic noise & congestion, crime and once again the needs of wildlife totally dismissed.

I am much opposed to this development as described & proposed.

Sent from my iPhone

## St. Germain, Dante

---

**From:** Carroll, Debbie  
**Sent:** Monday, March 22, 2021 12:21 PM  
**To:** St. Germain, Dante  
**Subject:** FW: Housing complex on Herr lane

Hi Dante,

Would you please add the below message to the official record for the proposed development at 2020 Herr Lane? Much appreciated.

Debbie Carroll  
Dist 16 LA

**From:** P S <[ptshanahan@gmail.com](mailto:ptshanahan@gmail.com)>  
**Sent:** Monday, March 22, 2021 11:28 AM  
**To:** Reed, Scott <[Scott.Reed@louisvilleky.gov](mailto:Scott.Reed@louisvilleky.gov)>  
**Subject:** Housing complex on Herr lane

**CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe**

---

Councilman Reed,

The proposed 520 high rise residence project on Herr lane portends a disaster for the neighborhood and a traffic risk for the highschool students attending Ballard high school.

I know this area across from Ballard high school may be out of your area however, the traffic nightmare that will result will spill over. I hope you can raise concerns regarding the addition of 520 residences in the area across Herr lane from Ballard high school. The implications for traffic on the two lane road going both to US 22 and Westport road are severe. Add to this the traffic from the high school and the new VA proposal at US 22 and the Watterson and this neighborhood will become a parking lot.

I and my neighbors are very concerned that the infrastructure will not accommodate such a project.

Will you raise my concern regarding the traffic and safety issue with the proper regulatory agency?

Patrick Shanahan

--

CONFIDENTIALITY NOTICE: This message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information that is protected by law. Any unauthorized review, use, copying, disclosure or distribution is strictly prohibited.

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
OFFICE OF ADMINISTRATIVE HEARINGS  
DIVISION OF WATER

FILE NO. DOW-21-1-0099  
Agency Interest: 167341  
Jefferson County

DENNIS J. DOLAN and  
ESTATE of SUSAN DOLAN  
2400 Chadford Way  
Louisville, KY 40222

PETITIONERS

v.

**PETITION FOR A HEARING**

ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER - DAM SAFETY SECTION  
300 Sower Boulevard  
Frankfort, KY 40601,

RESPONDENTS

and

GLEN ALEXANDER, PE  
Supervisor, Dam Safety Section

and

MARILYN THOMAS, P.E.  
Dam Safety & Floodplain Compliance Section

and

LOUISVILLE/JEFFERSON COUNTY  
METROPOLITAN SEWER DISTRICT  
700 West Liberty Street  
Louisville, KY 40203

and

BOARD OF EDUCATION OF JEFFERSON COUNTY

Serve: Chris Brady, Board Chair  
3332 Newburg Road  
VanHoose Education Center  
Louisville, Kentucky 40218



and

JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORP.

Serve: J. Cordelia Hardin, registered agent  
3332 Newburg Road  
VanHoose Education Center  
Louisville, Kentucky 40218

.....

Comes now the Petitioners, Dennis J. Dolan for himself and as Executor for his wife's estate by counsel, and files this Petition for a Hearing on the final determination by Glen Alexander PE, Supervisor of the Dam Safety Section, Energy and Environment Cabinet, Division of Water (the "Cabinet") that the earthen embankment, Ballard High School Regional Basin ("the Dam") in Jefferson County is not within the scope of the Kentucky Dam Safety Act, KRS 151.100 *et seq.*, and that no Cabinet inspection or regulation of the 'dam' is required.

### **I. JURISDICTIONAL STATEMENT**

1. This Petition for Hearing is authorized by KRS 151.182(2) and KRS 224.10-240.
2. The Petitioners, at all times related to the claims and facts herein, resided at 2400 Chadford Way, Louisville, Jefferson County, Kentucky, 360 yards downstream of the said Dam.
3. Pursuant to KRS 151.182(2) the Petitioner has not been previously heard in connection with the Division of Water determination that Ballard Regional Basin Dam and operation does not fall within the scope of the Kentucky Dam Safety Act, and its related administrative regulations.
4. This determination was apparently made August 27, 2018 by Marilyn Thomas, P.E., Dam Safety & Floodplain Compliance Section, without notice to the Petitioners.

5. Petitioners were first noticed of the determination on January 13, 2021, in a letter from Glen Alexander, P.E., Supervisor, Dam Safety Section. This petition is timely filed within 30 days of receiving first notice.

6. The said determination is contrary to law and fact as alleged below and is injurious to Petitioners wherefore they demand a hearing.

## **II. STANDING**

7. Petitioners residence is bordered by the Thornhill Creek some 360 yards downstream of the Dam and basin discharge outlet. All the drainage from the Dam flows into Thornhill Creek and then along the border of their property.

8. The Dam was constructed on Ballard High School property by MSD contractors in 1999, pursuant to a grant of easement approved by the Jefferson County Board of Education.

9. Faulty construction and mis-operation of the Dam by MSD and the Board of Education passes peak runoff flows that have flooded and injured the Petitioners.

10. Petitioners have filed a Complaint in Jefferson Circuit Court, 17-CI-006803, alleging temporary nuisance, 'taking' without compensation and fraud against JCPS and MSD due to flooding injuries sustained. The **First Amended Complaint** is attached as Exhibit 1 and incorporated herein by reference.

11. The Division of Water, Dam Safety Section determination that the Dam is outside the scope of Cabinet regulation under the statutes and regulations of the Dam Safety Act is too narrow construction and application of KRS 151.100(12) "Dam" definition, 401 KAR 4:030 Section 1 and others, and was not made on the basis of substantial evidence, and ignores the duties of the Cabinet and the Constitutional rights of Petitioners to protect their property.

12. Cabinet investigation and regulation of the Dam and its mis-operation will lead to regulatory enforcement under the Kentucky Dam Safety Act authority and a project of corrective action and will result in enhanced safety and sufficient mitigation of foreseeable flooding to protect Petitioners lives and property.

### **PARTIES**

11. The Dam Safety Section is a "state dam safety agency" funded in part by federal tax payer funds pursuant to the federal Dam Safety Act, 33 U.S.C. § § 467 *et seq.* The state agency has "regulatory authority over the safety of non-federal dams."

12. Glen Alexander, PE, is the Supervisor of the Dam Safety Section of the Division of Water, of the Energy and Environment Cabinet.

13. Marilyn Thomas, PE, is an inspector for the Dam Safety & Floodplain Compliance Section.

14. Louisville and Jefferson County Metro Sewer District is the stormwater authority for Metro Government and designed, constructed, operates and maintains the Ballard High School Regional Basin and dam pursuant to contract with the Jefferson County Board of Education.

15. The Board of Education of Jefferson County has control and management of the school property where the Dam and basin are built and operated. KRS 160.290. The Jefferson County Board of Education is an agency of state government.

16. The Jefferson County School District Finance Corporation is a subsidiary corporation of the Board that holds title to the Ballard High School property where the Dam is located.

## **STATEMENT OF FACTS**

17. On or about spring of 1997 the Board of Education expended school funds to design and construct a Performing Arts Center building on the Ballard campus at Brownsboro Road and Herr Lane.

18. As a municipal sewer district and stormwater authority in Jefferson County MSD required the performing arts center to manage storm runoff in conformity with the MSD Design Manual Rules, Chapter 10, limiting post-construction runoff flow to pre-construction rates in the 2, 10, and 100 year NRCS storms.

19. MSD and JCPS agreed that MSD would construct a 'regional basin' with rate payer funds on the corner of Ballard High School property. The runoff from the performing arts center would be discharged to the basin, and excess detention capacity would be 'leased' by MSD to the Tennis Center and other area businesses that have large impervious areas, but no on-site detention. These businesses pay Equivalent Service Units (ESUs) rates based on area.

20. In December 1997, MSD contractor Ogden Environmental and Engineering Inc. ran hydraulic models based on watershed acres and designed the basin with a target of 8.2 acre-feet of peak detention and a peak basin water surface elevation (WSE) of 580' NAVD.

21. JCPS facilities managers pointed out that the Ballard High School patio facility built over Thornhill Creek had an elevation of approximately 579 feet and a peak WSE of 580 would flood the patio and possibly undermine and damage it with repeated flooding. JCPS refused to allow construction that would result in a 580 WSE in the proposed basin.

22. MSD did not cancel the project, but instead went ahead designing the regional basin with the intention to excavate soil in front of Ballard High School to obtain the target detention capacity while limiting the WSE to one foot below 579' NAVD.

23. In August of 1998 when E-Z Construction Co. Inc., contractor for MSD, appeared on the scene and began to excavate, the school principal and facilities managers stopped work to review the project. JCPS remained concerned about the patio and demanded MSD pay for an expensive 'flood-proofing' of the patio. JCPS refused to permit a basin WSE above 579'. Exhibit 2: **MSD Record 13033 Detention Facility Plan.**

24. JCPS hired an outside engineering firm that prepared a study on the impact of the peak water surface levels at 580' and also recommended that MSD apply for a dam construction permit under the Kentucky Dam Safety Act.

25. MSD abandoned the target peak detention capacity for the basin and did not excavate additional capacity, and constructed the dam and outlet structure such that the crest elevation of the dam was 579.09'. The three stage outlet structure was redesigned so that weirs passed the 100 year, 24 hour storm with peak basin WSE below the 579' dam height.

26. The resulting detention capacity in the 100 years storm for 110 acres went from 8.2 acre-feet to 2.7 acre feet. A 24 inch diameter weir and a thirty three inch by 36 inch square weir in the outlet structure allow excess runoff to pass that contributes to peak flow flooding. Exhibit 3: **Petitioner's Photo of Outlet structure.**

27. MSD established ESU fees for the regional basin and began to collect them.

28. The drastic reduction in target storage caused MSD to divert runoff that would have been directed into the basin, outside the basin and into the road runoff ditch flanking the south side of Brownsboro Road. As a result, the collected runoff from 53 acres flows outside the basin through the ditch and into Thornhill Creek upstream of Petitioners.

29. The diverted ditch runoff caused flooding of Brownsboro Road so in April 2002, the Kentucky Transportation Cabinet requested MSD install a second 36 inch culvert under the

road to fully discharge the 100 year 24 hour storm to Thornhill Creek upstream of Petitioners.

30. MSD contracted with PDR Engineers to design the 'Ballard High School Drainage Improvement Project'. MSD disregarded downstream flooding impacts of increasing the road runoff flow capacity and installed the second 36 inch culvert under Brownsboro Road and larger storm inlets to clear the road in the design storm. Exhibit 4 **MSD Record 13033a**.

31. As built, the 12 acres of impervious area of the Performing Arts Center and Ballard High School drains effectively, efficiently and directly through a 24 inch diameter pipe just a few yards from the first stage 24 inch diameter weir on the basin outlet structure.

32. MSD constructed the dam and outlet structure so that Thornhill Creek became a very 'flashy' stream with little mitigation of rapid peak flows that cause flooding. Exhibit 5:

**Heritage Engineering 2012 Analysis of Flooding in City of Thornhill.**

33. Petitioners owned and resided at 2400 Chadford Way since 1979 without being flooded for 18 years until 1997, when the Performing Arts Center impervious was constructed. MSD announced the Ballard Regional Basin as a project to address flooding problems. The impact of the reduced basin capacity was to increase Thornhill Creek peak water surface elevations. In the 100 year 24 hour storm the Chadford Way crossing is flooded.

34. MSD's failed construction of the undersized basin did not limit post-construction flows to pre-construction levels. MSD did not obtain state inspection or approval before constructing a dam that did not meet the target detention, and knew the basin would pass excess runoff which they knew would flood and injure downstream residents.

35. State agency JCPS, knew and intended that excess runoff from their property and its directly connected impervious areas would be passed through the outlet structure without sufficient detention causing flash, peak flow flooding to downstream residents.