

36. On September 22-23, 2006, after the Dam was constructed, MSD and JCPS Respondent's mis-operation of the detention basin combined with diverted road runoff, released unreasonable runoff amounts, overflowed the drainage easement in Thornhill Creek, inundated Plaintiffs home, damaged property, interfered with his use and occupation and cost him in excess of \$ 20,000 for loss of use, repair and replacement.

37. On July 2015, MSD and JCPS Respondent's mis-use of the detention basin and diverted storm runoff, released unreasonable runoff amounts, overflowed the drainage easement in Thornhill Creek, inundated Plaintiffs home, damaged property, interfered with his use and occupation and cost him in excess of \$ 12,000 for loss of use, repair and replacement.

38. MSD does not enforce the Kentucky Dam Safety Act or comply with its provisions and regulations with respect to the Ballard Regional Basin dam. On September 22, 2006 according to MSD's stream modeling, peak basin WSE reached 579.3' which overtopped the dam, at 579.09'. Table 8 page 9, Heritage Engineering LLC, Hydrologic & Hydraulic Analysis, City of Thornhill Flooding Analysis, 2012.

39. At a peak WSE of 579, the basin has a storage capacity of 5.66 acre-feet. The dam height is at 579.09. The flood elevation at Petitioners home is 559.24' approximately 350 yards from the dam discharge outlet 54 inch diameter culvert. The elevation drops 20 feet in 350 yards.

40. Some 17 residences were constructed just 50 feet from the stream along Thornhill Creek since the 70s. The two nearest houses are just 70 feet and 90 feet from the 54 inch discharge outlet. Exhibit Six: **LOJIC clip housing directly below the basin outlet.**

41. 360 yards downstream of the 54 inch diameter discharge outlet, the contents of Thornhill Creek must pass through a choke point at Chadford Way crossing. The twin 48 inch diameter culverts at the crossing have a calculated peak flow capacity of 270 cfs. The 100 year

24 hour storm peak flow as calculated by Heritage Engineering is 300.1 cfs. The modeled flow of the 2006 storm that flooded Petitioner is 365 cfs. The impact of the reduced basin detention capacity is flows that exceed the known choke point. MSD has adopted the Chadford Way crossing as a defacto impoundment producing backwater effect that floods Petitioner. Exhibit Seven: **Petitioner's Graphic of storm culverts discharging above Chadford Way crossing.**

42. January 14, 2021, Petitioner filed an Open Records Request pursuant to KRS 61 to the Dam Safety Division of the Cabinet requesting records supporting the determination by Glen Alexander, PE, and Marilyn Thomas, PE that the scope of the Kentucky Dam Safety Act did not cover the Ballard Regional Basin Dam. Agency Interest: 167341, Activity: CIV20200001. Exhibit Eight: **Petitioner's Open Records Request.**

43. On August 24, 2018, at the request of the Director, Marilyn Thomas apparently made an on-site inspection of the dam and noted that its dimensions did not meet the KRS 151.100(12) "dam" definition, and was not 25 feet in height and did not have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more. She concluded,

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

44. Neither Marilyn Thomas, PE nor Glen Alexander PE referenced the 2012 Heritage Engineering Study of Flooding in City of Thornhill, or any other records of performance of the Ballard dam. The state response to Petitioner's Open Records Request stated there were no other records in the possession of the Commonwealth or its agents.

Mr. Hixson,

Regarding your January 14, 2021 open records request, the Cabinet provided all documents in possession of the Division of Water's Dam Safety Section regarding the Ballard Regional Basin on January 15, 2021, no documents were withheld or found to be exempt. Based on your renewed request for documents on January 15, 2021, the Cabinet

searched for documents beyond the Dam Safety Section. No further documents were found regarding your request. No documents have been withheld or found to be exempt.

Mike Taylor

Public Records Branch - Open Records Section

Office of Administrative Services

STATEMENT OF THE LAW

45. KRS 151.100 (12) provides:

The word "dam" shall mean any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:

(a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the cabinet; or

(b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more;

46. 401 KAR 4:030 Section 1 consistent with KRS Chapter 151, extends the scope of regulation of the Kentucky Dam Safety Act beyond the 151.100(12) "dam" definition:

Section 1. This administrative regulation applies to all dams as defined by KRS 151.100 and **to all other impounding obstructions which might create a hazard to life or property.**

Section 5. In all cases **the safety of the structure**, the water and/or other material impounded therein, **property and human life will be the principal governing factors.** Under no circumstances will the proposed use of the structure and its contents, or the cost of providing an unquestionably safe structure be allowed to **assume precedence over the possible hazard involved.**

Section 6. Structures which are to be **repaired or reconstructed** must be made to conform to the criteria established by this administrative regulation.

47. In Kentucky, administrative regulations do have the force and effect of law when they have been duly promulgated and are consistent with the enabling legislation.

Centre College v. Trzop, 127 S.W.3d 562, 566 (Ky. 2003).

48. KRS 151.291 applies to the Ballard dam or embankment which is built on state agency property from soil owned by the Jefferson County Board of Education:

KRS 151.291 Responsibility for safety of water barriers owned by Commonwealth --
Transfer of ownership of water barrier --Responsibility for safety after transfer --
Approval of transfer.

(1) 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.**

KRS 151.291 extends the Cabinet's duty to the Ballard High School Regional Basin which is "a water barrier owned by the Commonwealth." "A local board of education is not a "government," but an agency of state government." Yanero v. Davis, 65 S.W.3d 510, 527 (Ky. 2001).

KRS 160.290 General powers and duties of board, provides:

Each board shall have control and management of all school funds and all public school property of its district and may use its funds and property to promote public education.

49. Pursuant to 401 KAR 4:030 Section 1, The Ballard Regional Basin dam is an "impounding obstructions which might create a hazard to life or property." The words, "create a hazard to life or property," do not include words of restriction limiting the applicability of the regulation only to a hazard created by potential breach or collapse of the impoundment. The words of the regulation are not ambiguous and are not, an unwarranted extension or expansion of the enabling statutes. Centre College v. Trzop, 127 S.W.3d 562 (Ky. 2003).

50. KRS 151.110(1)(a) declares the purpose of KRS Chapter 151 in relevant part:

"to prevent harmful overflows and flooding; to regulate the construction, maintenance, and operation of all dams and other barriers of streams . . . "

51. KRS 151.320 in relevant part (1) provides:

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.

52. The Dam Safety Section of the Division of Water of the Energy and Environment

Cabinet is a state dam safety agency operating a state dam safety program as defined by 33 U.S.C. § 467 Definitions (12).

DEMAND FOR A HEARING

53. On or about August 24, 2018, without notice to Petitioner, Marilyn Thomas, PE determined that the Ballard Basin embankment did not store 50 acre feet or more of stormwater and was not 25 feet or more from the toe of the dam to the crest. She did not say in her findings if she measured the embankment on site or determined the dimensions from other sources. She cited to Petitioner's circuit court complaint but did not refer to any other reports or studies involving the history of flooding or operation and performance of the dam.

54. The August 24, 2018, Dam Safety Section determination that Ballard Regional Basin dam is outside the scope of the Kentucky Dam Safety Act is contrary to law, arbitrary and capricious, and not supported by substantial evidence.

55. Petitioner is entitled to the protections of his property which are provided by Cabinet enforcement under the Dam Safety Act authority as required by the laws cited. MSD and the Board of Education have ignored sound engineering practices and ignored the adopted MSD Design Rules applicable to the structure and operation of the Dam. The Dam has been overtopped and is at risk of failure in foreseeable storm events. If at peak water surface the failure could send the force of 6.5 acre feet of water against residences that are less than a hundred feet from the structure.

WHEREFORE, Petitioner demands a hearing on the determination that the Ballard Regional Basin has not injured property and is not subject to regulation by the Cabinet under the Kentucky Dam Safety Act, KRS § 151 et seq.

Respectfully submitted,

s/ Clarence H Hixson_____

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List of Exhibits

Exhibit 1: Circuit Court First Amended Complaint

Exhibit 2: MSD Record 13033 Detention Facility Plan.

Exhibit 3: Petitioner's Photo of Outlet structure

Exhibit 4: MSD Record 13033a. Road Drainage Plan

Exhibit 5: Heritage Engineering 2012 Analysis of Flooding in City of Thornhill.

Exhibit Six: LOJIC aerial- housing directly below the basin outlet.

Exhibit Seven: Graphic of storm culverts discharging above Chadford Way crossing.

Exhibit Eight: Open Records Request

Certificate of Service

The undersigned attorney for Petitioner certifies that a true copy of the foregoing Petition and Exhibits have 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 12th day of February, 2021.

ENERGY AND ENVIRONMENT CABINET
OFFICE OF ADMINISTRATIVE HEARINGS
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Counsel for Louisville Metro Sewer District, David Johnson and James Parrott

GLEN ALEXANDER, PE
Supervisor, Dam Safety Section

and

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

/S/ Clarence H. Hixson
Counsel for Dennis/Susan Dolan

Office of General Counsel
Energy and Environment Cabinet
300 Sower Blvd.
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Office of Administrative Hearings
211 Sower Boulevard,
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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 MEMORANDUM IN SUPPORT OF
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

* * * * *

The Petitioner, Dennis Dolan and his late wife, Susan Dolan were injured by flooding of his residence located adjacent to Thornhill Creek in the City of Thornhill in Jefferson County, Kentucky, as alleged in the Petition filed and served February 12, 2021.

Mr. Dolan filed a civil lawsuit in Jefferson Circuit Court, No. 17-CI-006803 alleging temporary nuisance, taking and fraud claims against the Respondents. The Complaint and First Amended Complaint alleged the injury was the result of negligent and intentional mis-construction and operation of the Ballard Regional Detention Basin located at the corner of Herr Lane and Brownsboro Road and discharging to Thornhill Creek upstream of Petitioner.

Petitioner researched the land title in the Jefferson County Clerk's Office and alleged the property where the dam was constructed belonged to the JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORP. ¶ 7. of the Amended Complaint alleged:

7. Defendant, Board of Education of Jefferson County Kentucky and alter ego, Jefferson County School District Finance Corporation (hereinafter collectively "JCPS") is a Kentucky Board of Education and School District formed under KRS 160.160 with the power to sue and be sued. Jefferson County School District Finance Corporation is a non-profit municipal corporation, registered with the Kentucky Secretary of State, Organization ID # 02475212, whose address is 3332 Newburg Road, VanHoose Education Center, Louisville, Kentucky 40218. The corporation is the owner in fee simple of the 49.053 acres where the Ballard High School is situated at the intersection of Herr Lane and Route 22, Brownsboro Road. Deed Book 5993 Page 266.

JCPS filed an Answer on February 14, 2019, and in ¶ 3 admitted ownership of the land:

3. With respect to paragraph 7 of the Complaint, Defendants deny the allegations set forth in the first sentence thereof. Defendants admit the allegations set forth in the second and third sentences thereof.

The Jefferson County Board of Education is an arm of the Commonwealth and owns the Ballard Basin and the land where it is constructed. "A local board of education is not a "government," but an agency of state government." Yanero v. Davis, 65 S.W.3d 510, 527 (Ky. 2001). **KRS 162.010 Title to school property**, provides:

The title to all property owned by a school district is vested in the Commonwealth for the benefit of the district board of education.

The title to Ballard High School property is held in trust for the Commonwealth by the non-profit financing corporation, Jefferson County School District Finance Corporation, which uses the property as security for bond issuing and collection enforcement purposes.

KRS 160.290 General powers and duties of board, provides in relevant part:

Each board shall have control and management of all school funds and all public school property of its district and may use its funds and property to promote public education.

The School District Finance Corporation is an instrumentality of the Jefferson County Board of Education and its Board of directors is identical to the Jefferson County Board of Education as registered with the Secretary of State. It holds title to Ballard and other school properties in trust for the Commonwealth and Jefferson County Board of Education for the purpose of financing school improvements as allowed by statute:

KRS 162.387 School district finance corporations may lease land for school construction --Issuance of bonds.

(1) Notwithstanding any other statute or administrative regulation to the contrary, any nonprofit finance corporation formed under KRS 162.385 may lease land from any government entity or agency for the purposes of constructing a school building on the site.

See attached as **Exhibit 1** Deed Book 06617 Page 0759 as recorded in the office of the Jefferson County Clerk, in relevant part, Eleventh Supplemental Lease, Recitals:

"A. Pursuant to Chapter 162 of the Kentucky Revised Statutes ("KRS") as amended, including particularly KRS 162.385 as enacted by the 1988 Kentucky General Assembly, any board of education may obtain buildings for school purposes in accordance with the provisions of KRS 162.120 to 162.290 by utilizing a nonprofit finance corporation established pursuant to KRS 273.161 to 273.390, inclusive, and KRS 58.180 as an issuing agency for bonds instead of a city or county."

"B. The Board which is a political subdivision of the Commonwealth of Kentucky (the "Commonwealth") has incorporated a nonprofit finance corporation that is known as the Jefferson County School District Finance Corporation, pursuant to the provisions of [1] KRS Chapter 162 . . . "

C. The Issuer, which is a municipal corporation of the Commonwealth and an agency and instrumentality of the Board . . . "

Deed Book 06617 Page 0801 contains a legal description of the property at issue in this Motion and Petition, BALLARD HIGH SCHOOL:

Beginning at a stake in the center of the Brownsboro Turnpike Road , corner to Z.L. Taylor and running thence with his line passing a stone on the margin of said road, South 35 degrees East 1292.23 feet, more or less, to a stake in the middle of the County Road, corner to Tilman Mason; thence with his line passing a stone on the margin of said road, North 48-1/2 degrees East 1723.26 feet, more or less, to a stone in H. Holzeheimers's line; thence with his line, North 34-1/2 degrees West 1185.36 feet, more or less, to the center of aforesaid Turnpike Road passing a stone on its margin; thence with the middle of said road, South 51-3/4 degrees West 1148.40 feet, more or less to a stake; thence again with said road South 53-1/2 degrees West 579.40 feet, more or less, to the beginning.

Being Tract 1 acquired by County of Jefferson, Kentucky, by Deed dated July 24, 1967, of record in Deed Book 4132, Page 555, in the office aforesaid.

Being a portion of the same property leased to Jefferson County School District Finance Corporation, by Assignment of Leases dated September 1, 1990, of record in Deed Book 5993, Page 190, in the office aforesaid.

On October 20, 1998, Jefferson County Board of Education Superintendent, Stephen Daeschner as Grantor executed a Certificate of Sanitary Sewer and Drainage Easement granting a perpetual easement to Louisville and Jefferson County Metropolitan Sewer District recorded in the office of the Jefferson County Clerk at Book 7145 Page 0499 -0501 which includes a survey that depicts the basin easement area on the same property. **Exhibit 2**

The Hearing Officer may find as a matter of uncontested fact and law that the land where the Ballard Regional Detention Basin is sited is an embankment and water barrier "owned by the Commonwealth." **KRS 151.100 Definitions for KRS 151.110 to 151.460 and 151.990** defines: "(19)"Owner" shall mean any person who owns an interest in, controls, or operates a dam;" As the servient estate under the easement and land owner, the Commonwealth is an "owner." The Cabinet has a statutory duty under the plain and unambiguous language of KRS 151.291.

KRS 151.291 Responsibility for safety of water barriers owned by Commonwealth --
Transfer of ownership of water barrier --Responsibility for safety after transfer --
Approval of transfer.

(1) 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.

The January 13, 2021 determination by Supervisor Glen Alexander, P.E. that the Cabinet had no statutory duty of enforcement regarding the Ballard Basin embankment dam does not conform to the law and the Petitioner, Dennis Dolan is entitled to Summary Disposition of the Petition and entry of the attached Order as a matter of law.

Respectfully submitted,

s/ Clarence H Hixson
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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.

NOTICE - MOTION - ORDER

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.

PETITIONER'S MOTION FOR SUMMARY DISPOSITION

Pursuant to 400 KAR 1:090, Section 17, the Petitioner moves the Court to grant summary disposition and find as a matter of undisputed fact, that the dam or embankment at issue in this Petition is constructed on land owned by the Commonwealth of Kentucky through the state Transportation Cabinet and the Jefferson County Board of Education and as a matter of law,

"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."

KRS 151.291(1).

The January 13, 2021 determination by Glen Alexander P.E. Supervisor of the Dam Safety Section, Kentucky Division of Water, is evidence that since its construction in 1999, the Cabinet has not enforced any laws and regulations, has not inspected or permitted the Ballard Regional Basin and failed to consider KRS 151.291(1):

"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."

This determination was error as a matter of law, and the Cabinet has a separate and mandatory statutory basis, KRS 151.291(1) to investigate and enforce compliance with all applicable laws and regulations with respect to the Ballard Regional Basin embankment that is constructed on land owned by the Commonwealth. The embankment does not comply with all applicable laws and regulations, resulting in significant property damage to Petitioner. Petitioner incorporates by reference herein, the attached Memorandum of Facts and Authorities.

WHEREFORE, Petitioner moves the honorable Hearing Officer to grant summary disposition in his favor and sign and enter the attached Order granting relief.

Respectfully submitted,

s/ *Clarence H Hixson*

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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 Motion for Summary Disposition with Exhibits, Supporting Memorandum and Order have 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 12th day of February, 2021.

ENERGY AND ENVIRONMENT CABINET
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Sewer District, David Johnson and
James Parrott*

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and

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Counsel for Dennis/Susan Dolan

CLARENCE H. HIXSON

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Admitted to Practice:

Kentucky State Courts
District and Circuit

United States District Court,
Western District of Kentucky

United States Court of Appeals
for the Sixth Circuit

March 4, 2021

COMMENTS TO 20-DDP-0045 Plan 022221
HAGAN PROPERTIES PROPOSAL TO DEVELOP
520 PROVIDENCE POINT APARTMENTS ON HERR LANE

To: Case Manager, Planning & Design
444 South Fifth Street 3rd floor
Louisville, KY 40202

Planning Director Emily Liu
Mayor Greg Fischer
Metro Council representatives

Glen Alexander P.E. Environmental
Engineer Supervisor Dam Safety &
Floodplain Compliance
KY Division of Water

Gresham-Smith, Louisville

This letter is written on behalf of Dennis Dolan residing at 2400 Chadford Way, and the other City of Thornhill residents, living along Thornhill creek and downstream of this Providence Point project. This letter explains why Planning and Design approval of the Providence Point storm water management plan, as depicted in the revised project 20-DDP-0045 plan 022221, would not conform to the Land Development Code, would not protect the public health, would violate laws, and will flood City of Thornhill residents.

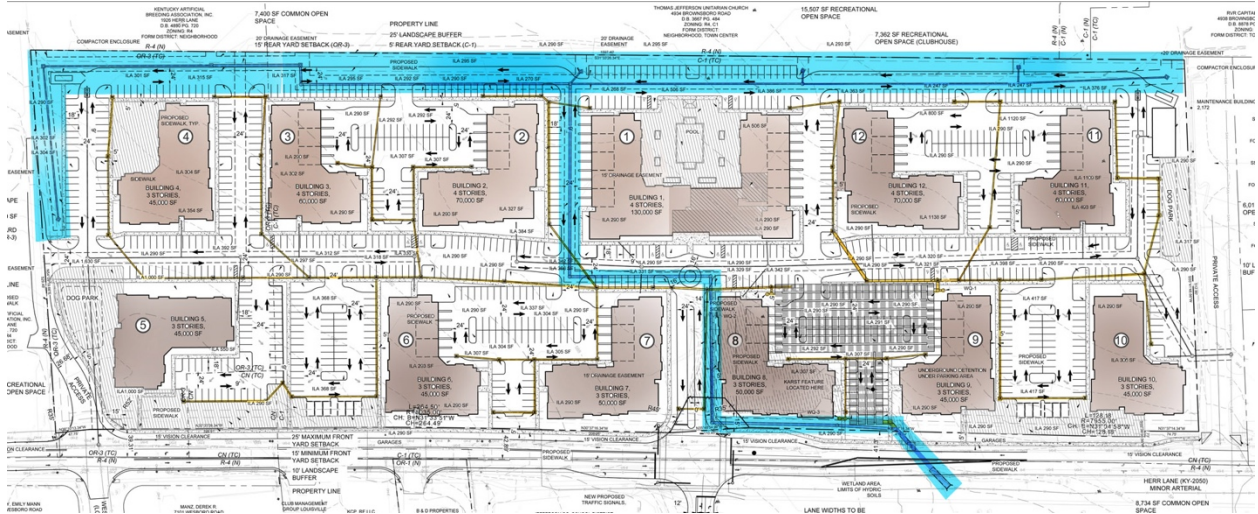
As a member of the affected neighbors, Mr. Dolan asks the application be denied unless more transparency and comprehensive storm water planning demonstrates no flooding will result. Prior to any plan approval, the Applicant should address the material objections discussed below. Despite multiple revisions, the details of the stormwater management plan of Providence Point is concealed from the affected public and poses a significant risk of injury to downstream residents. The applicant provides a design depicted in the 20-DDP-0045 plan 022221, but states:

14. THE PROPOSED DRAINAGE AND STORM SEWERS SHOWN ON PLAN ARE CONCEPTUAL. FINAL DESIGN SHALL BE DETERMINED DURING THE CONSTRUCTION PLAN DESIGN PROCESS AND SHALL CONFORM TO MSD REQUIREMENTS.

Providence Point and MSD have split the site drainage into two flows which are being regulated differently. One part of the runoff is being required to meet detention requirements--the other is not. The non-detained flows are referred to as 'pass through' drainage.

PASS THROUGH DRAINAGE

The selected stormwater management design employs a perimeter collection and pass through drainage system that creates a direct concrete pipe connection to Thornhill creek for 13 acres of Thomas Jefferson church property runoff. See the colorized plan showing the pass through network. Exhibit 1.



In 20-DDP-0045 plan 022221, Note 17, MSD requires that 'no public drainage be routed through the detention system.' Presently, Thomas Jefferson sheet flow runoff moves slowly across the Providence point land, infiltrating along the way. But, post-construction, a significant volume of storm water will not be infiltrated and instead will be collected in pipe, and accelerated to Ballard Basin.



Looking towards Ballard High School at shallow drainage in slough across Providence Point

The pipe collection system will change the Ballard Basin discharge hydrograph from its present form.



Runoff source from Thomas Jefferson church property. 2/28.2021

Pre-construction the pervious soils of the agricultural fields and wetland forest slowed and infiltrated the runoff. The previous stream modeling study, 2012 Heritage Engineering City of Thornhill Flooding Analysis, delineated Thomas Jefferson church land as Subbasin 0, about .01609 sq. miles = 10.3 acres. The pipe network proposed by Providence Point blocks the sheet flow runoff from the 10.3 acres across the full length (640 yards) of the west border, collects it and delivers it to the basin in minutes.

The pass through system (shown in blue) is not provided any detention. The natural drainage pattern and its benefits of infiltration that slow runoff, disappear. Since this is a public storm water flow--the unanswered question is whether MSD is funding and constructing the pass-through system ?

The Thomas Jefferson runoff that used to take 39 minutes to accumulate and flow across the slough will take maybe 2 minutes in the concrete pipe system. This adds new early peak flows to the runoff that floods Thornhill Creek. The selected system increases flood risk, but MSD and the applicant have not modeled or shared any changed data.

The accelerated drainage is dumped into the 8X11 foot square drainage culvert that feeds into the Ballard basin under Herr Lane. There is no detention for this runoff. Will the church be assessed ESUs for the accelerated drainage?

At the point where the pass through drainage joins the discharge from the underground detention, the drawing does not depict any overflow or backflow prevention method. In intense storms

where the pipe capacity and detention system are overwhelmed, flooding could occur across Herr Lane.

The bottom right hand corner of the 20-DDP-0045 plan 022221 shows new street drainage for Herr Lane. Widening Herr lane and increasing impervious area to serve the Providence Point will add flash flooding to Thornhill Creek, since there is no detention for the collected street flows that are directly piped to the creek. MSD is approving a system that will exacerbate early peak flow flooding that has caused injury to residents. City of Thornhill residents will be at greater risk of flash flooding after the system is constructed than before. The plan is unsafe and is opposed.



MSD and Jefferson County Public Schools as well as the Transportation Cabinet ignore controlling laws. **KRS 151.291 Responsibility for safety of water barriers owned by Commonwealth** in relevant part states:

- (1) 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.**

Though the Ballard regional basin dam is constructed on state owned property, none of MSD, KYTC or JCPS has applied for a permit under the Kentucky Dam Safety Act. The Energy and Environment Cabinet has ignored its responsibility to inspect, permit and enforce the dams compliance with applicable laws. Wherefore, Thornhill resident Dennis Dolan, has filed for an administrative hearing. KYDOW 21-1-0099. See attached Petition.

MSD has built and operated the Ballard Basin without any state inspection or permit in violation of the law. Planning and Design must require actual plans be disclosed --not conceptual plans--and must require a drainage plan that does not discharge into an illegal detention basin.

The proposed system is dangerous and could cause significant damage and threat to life for downstream residents. It is unreasonable and illegal in Kentucky.

POOR URBAN DESIGN

The proposed design covers over karst features, fells some six acres of trees, ignores the natural land contours and runoff patterns and paves over some 3 acres of wetlands.

General Notes

" 2. A TREE PRESERVATION PLAN WILL BE SUBMITTED TO THE PLANNING COMMISSION FOR APPROVAL PRIOR TO BEGINNING CONSTRUCTION

"31. KARST FEATURES WERE OBSERVED ON SITE PER THE GEOTECH REPORT PREPARED BY GEM ENGINEERING DATED OCTOBER 2006."

"34. ONSITE WETLANDS / HYDRIC SOILS ARE CURRENTLY UNDER DELINEATION AND REVIEW BY REDWING. ANY IMPACTS WILL BE PERMITTED THROUGH USACE."

LDC 4.8.3 1b.

For intermittent streams or rivers (or portions thereof), if the proposed development is covered by a Stormwater Construction General or individual Permit issued under the Kentucky Pollutant Discharge Elimination System (KPDES) program, a buffer area consistent with that required under such permit shall be maintained. For proposed developments not covered under such permit, appropriate storm water best management practices protective of the quality of the intermittent stream will be employed.

Proposed Building 8, 50,000 square feet is built over a protected wetland and karst feature.

LDC 4.9.5.B. seeks to protect such features and prohibits development of residential structure over sinkhole feature. The monolithic block design is unimaginative, bad architecture and resembles a soviet workers project. It will add to the existing traffic density and management problems by depending heavily on Herr Lane access during school operation hours.

The existing runoff slough, karst feature and wetlands could be preserved by a more environmental friendly building and access road placement. Connectivity to the proposed Robley Rex Medical Center should be proposed and could flank the slough with buildings aligned with the natural feature. The project needs to be redesigned to compliment the Brownsboro Road/ Herr Lane area, preserve natural assets, improve connectivity and protect the residents.

Please add these comments to the formal record and post them in the digital record of 20-DDR-0045.

Sincerely,

A handwritten signature in black ink, appearing to read 'Clh' followed by a long horizontal flourish.

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

cc:

WBB@bardlaw.net

<https://louisvilleky.gov/government/metro-council/email-council-member>

District #16: (Includes City of Thornhill): Scott Reed

District #7: (Includes Herr Lane/Providence Point) Paula Mccraney

City of Thornhill Mayor Julea Lawson

Gabbard, Lacey A

From: Angela Hook <amhook04@gmail.com>
Sent: Tuesday, September 15, 2020 5:33 PM
To: Gabbard, Lacey A
Subject: 2020 Herr Lane Planning & Design

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 afternoon,

In regards to the Providence Point Apartments proposal to construct a 520 unit apartment complex next to Ballard High School (case# 20-DDP-0045), I'm concerned with the nature of this proposal and lack of neighborhood engagement or consultation. As a neighbor and longtime resident of the area, this development is too dense and out of character with the surrounding neighborhoods. A development of this size will mean additional traffic on an already locally arterial road beaming with traffic, potentially making it dangerous for the multiple schools and their students. The additional traffic will jeopardize any surrounding neighborhood children walking to school requiring even more driving to ensure that our children arrive at school safely. This alone should concern any councilmember working to ensure equitable access to our future generations that they can arrive at school safely, can cross roads without fear of accident, and not contributing to additional unneeded greenhouse gases and further climate impacts.

There are better residential alternatives to build on that property that would better suit the area, like single family homes which are highly desirable in this area, or a less dense development that incorporates both single family and smaller multifamily housing options. Lastly, as a current neighbor whose property line touches the proposed area, I am highly concerned at the lack of transparency or ability to add my voice since neither I, nor my neighbors who also adjoin the property, have received any notification of public meetings regarding this proposal. However, we have learned that only those residents on Herr Lane have received a formal notice of this proposal case and I am questioning why I have not received any notice? How do we ensure that the larger community is engaged in a proposal that will clearly alter the area and impact our families directly.

Sincerely,

Angela Coan

Gabbard, Lacey A

From: PATRICIA ROLES <pbroles@me.com>
Sent: Monday, September 14, 2020 9:39 AM
To: Gabbard, Lacey A
Subject: 500 apartment complex at 2020 Herr Lane

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Dear Lacey,

Has a public hearing been scheduled for this proposed apartment complex? I live in Northfield, 2208 Wynnewood Circle. My friends and I have been battling over development for the past 30 years. This apartment complex is beyond horrible especially since it is across the street from Ballard High School and very close to two elementary schools: St. Albert the Great and Wilder. We do not need one more car on Herr Lane until it is widened! The other problem is the possibility of the VA Hospital on HWY 22 by the Dairy Queen! Thank you for your help.

Best regards,

Pat Roles
502-425-4317

Sent from my iPad

Gabbard, Lacey A

From: Jon Henney <jdhenney@gmail.com>
Sent: Monday, September 14, 2020 12:22 PM
To: Gabbard, Lacey A
Subject: 20-DDP-0045

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Hi Lacey - I left you a message on the general Planning/Zoning Team line, but thought I should follow up with an email as well.

First, if you're not aware, I've retired from Gresham Smith, so my email/contact information has changed. I'm actually reaching out to you now as a "private citizen" concerning the above referenced case, which is immediately adjacent to my church, Thomas Jefferson Unitarian. Since I'm currently shown on the APO list as an employee of Gresham Smith, is it possible to add me using my home address: 3807 Grandview Ave, Louisville, KY 40207?

The church's Board of Trustees has asked me to reach out to you regarding this matter. First, they want to know if you and the Planning Commission are aware of a Settlement Agreement that was reached between Hagan Properties, Thomas Jefferson and other parties in 2005, which was the basis for allowing the contested appeal of the rezoning case (9-8-00) to move forward. I've attached the link below to share a copy of the Settlement Agreement for your reference.

<https://1drv.ms/b/s!AiysZTGMzgPgiGP6DzeuzjNXSr2j>

My question for you is whether or not this Settlement Agreement will factor into the deliberations of the Planning Commission in considering this Revised Detailed District Development Plan? If this is a matter for the County Attorney's office, please provide me with the name and contact information of the attorney assigned to the Planning Commission so I may pursue my inquiry with him (is this still John Carroll or someone else)?

I had two additional questions based on the posted agency comments. First, I was confused about whether or not transition zone standards do or don't apply based on your comments. Can you simply tell me what the required rear yard (adjacent to the church on the west side of the property) requirement is please?

I was also confused when reading the traffic study that was submitted. Looking at the peak hour traffic analysis, it appears they've included a 3,200 sf restaurant (see below), though I'm not aware such a land use is included in the development proposal.

Table 1. Peak Hour Trips Generated by Site

Land Use	A.M. Peak Hour			P.M. Peak Hour		
	Trips	In	Out	Trips	In	Out
Multi-family (Mid-Rise) 540 units	179	47	132	224	137	87
High-Turnover Restaurant (3,200 sq ft)	32	18	14	31	19	12
TOTAL	211	65	146	255	156	99



Figure 4. Trip Distribution Percentages

I appreciate your time and look forward to your response.

Sincerely,

Jon Henney, PLA, AICP
(502) 558-2528
jdhenney@gmail.com

Ron Linhorst
7103 Wesboro Road
Louisville, Kentucky 40222

MS. Lacey Gabbard
Metro Development Center
444 South 5th Street, 3rd Floor
Louisville, Kentucky 40202

Subject: Case Number 20-DDP-045

Dear MS. Gabbard:

I am sending you this letter as I have concerns about the development plan for the 19 acres across from Ballard High School. I am concerned about the impact 520 apartment will create on traffic on Herr Land and Brownsboro Road.

I have seen a study/proposal for a widening and additional turn lane, but that study was done in 2017. I think an updated study is required before any apartment construction is even considered. I think the that the new study would need to include:

A definite date as to when the Herr Lane improvements would be started and be completed

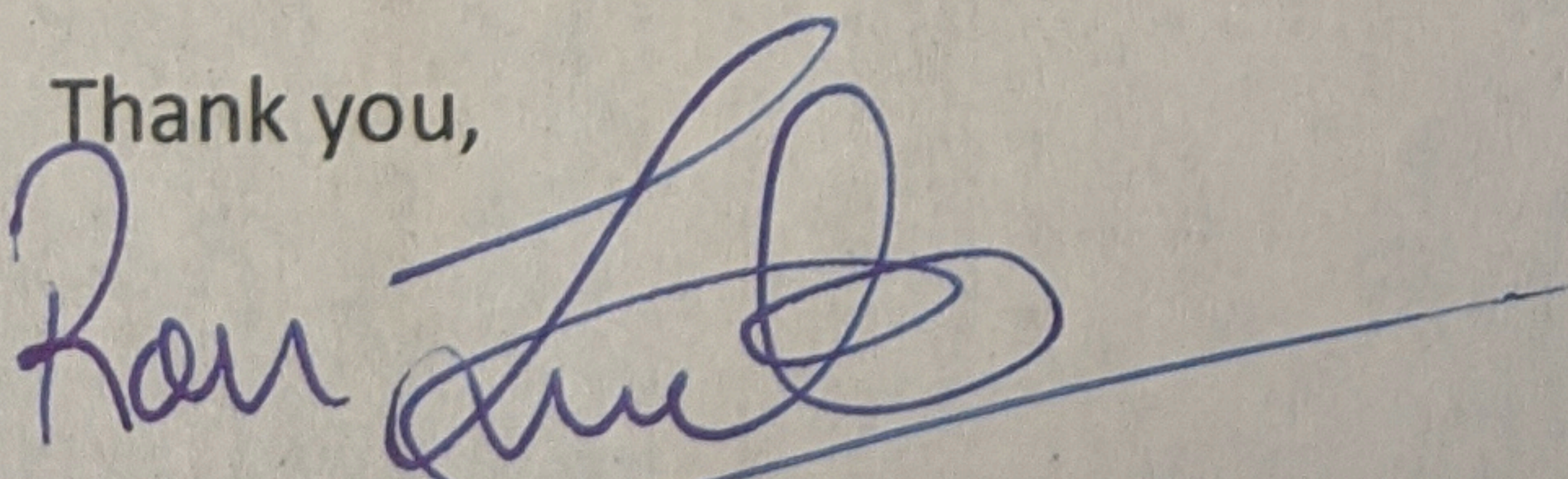
An updated cost of the lane improvement costs and how they will be paid for

A detail of how traffic will flow from the apartment complex onto Herr Land and Brownsboro Road

What traffic improvements are needed on Brownsboro Road to the I-264 ramps

Please keep me notified of any meetings/updates concerning this case.

Thank you,



Ron Linhorst

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20 DDP-00415

CLARENCE H. HIXSON

Attorney at Law
1336 Hepburn Avenue
Louisville, KY 40204

(502) 758-0936

budhix@iglou.com

Admitted to Practice:

Kentucky State Courts
District and Circuit

United States District Court,
Western District of Kentucky

United States Court of Appeals
for the Sixth Circuit

September 9, 2020

COMMENTS TO 20-DDP-0045
HAGAN PROPERTIES PROPOSAL TO DEVELOP
520 PROVIDENCE POINT APARTMENTS ON HERR LANE

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To: Lacey Gabbard
Case Manager, Planning & Design
444 South Fifth Street 3rd floor
Louisville, KY 40202

I am the attorney for Mr. Dennis Dolan who resides at 2400 Chadford Way in City of Thornhill. Mr. Dolan was not included on the affected property owner list and did not receive any prior notice of the filing of the application for this project by attorney Bill Bardenwerper. Please add his name to the APO list. As explained below, each resident of the City of Thornhill should be included on the APO list, because the project threatens to have significant consequences.

I am currently waging a civil lawsuit against MSD, JCPS, KYTC and City of Thornhill in Jefferson Circuit Court, Case No. 17-CI-006803, alleging that, Mr. Dolan was injured by MSD's unreasonable storm water management in 2006 and 2015. Providence Point's 19.1 acres of undeveloped land is in the Thornhill Creek watershed and upstream of Mr. Dolan and other City of Thornhill residents. Residents suffered serious flood damage from Thornhill Creek flooding in 1997, 2006 and 2015. MSD has never corrected the problems with the drainage system, and the full development of Providence Point will add to peak stormwater flows and if MSD fails to properly manage the runoff once again--more flooding will occur.

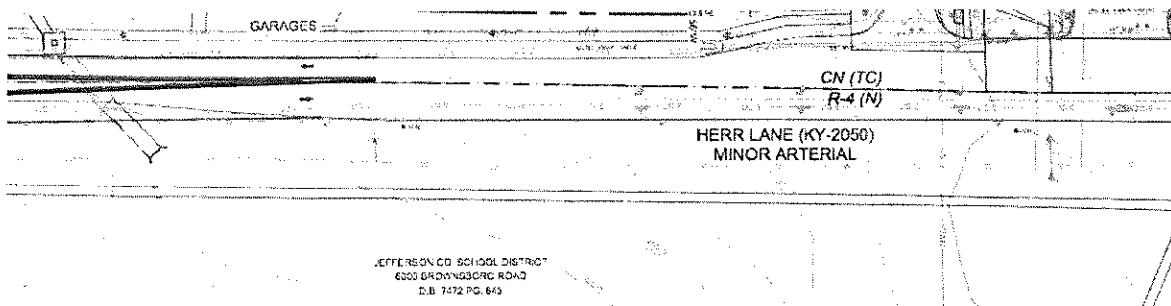
Mr. Dolan resides as do other Thornhill residents, in a house built in the 70s next to the creek. In 1997, the creek was beginning to carry more stormwater as development increased in the 212 acre watershed above Chadford Way crossing in Thornhill. From 1997 to today many new developments were approved by Louisville Planning and Design that caused increased peak flows. In 1997-98 JCPS was building the Theater Arts auditorium at the time of the first major flooding. MSD responded with a public project to build the Ballard Regional Detention Basin, that was to compensate for the auditorium, plus other developments such as the Tennis Center.

After the Ballard Regional Detention Basin was built, City of Thornhill residents believed that MSD had installed flood protection that would solve the situation. Actually, the project had failed and MSD and JCPS kept the failure secret.

Ogden Engineering had planned to construct a basin that would detain peak storm flows of 8.2 acre feet, and a contract was let by MSD to do that. But JCPS objected that this size basin would cause high water surface levels in front of the high school and refused to grant an easement or allow the higher water surface levels. Instead MSD was allowed by easement agreement with JCPS, to build a 2.7 acre-ft regional basin--or about 32% the storage originally planned.

The basin managed small storms, but in September 2006, a heavy rain event overwhelmed the system and flooded City of Thornhill residents. The lawsuit alleges MSD and JCPS misrepresented the cause of flooding as a defense to being sued and having to pay damage claims because the basin they built was not sound engineering. Residents and the Mayor and Commissioners of City of Thornhill sought Open Records information about the drainage and basin, but MSD held back responses until after the 5 year statute of limitations ran. In the meantime, though MSD knew perfectly well what was wrong with the drainage, they commissioned a study of the basin and drainage. In May 2012, MSD produced the City of Thornhill Flooding Study by contractor Heritage Engineering. The study was obtusely technical and concealed and avoided making a simple admission--the basin was not built as designed, and did not have the capacity necessary to protect downstream residents.

Since 2004, Hagan developers have proposed to develop the 19.1 acre lot but each proposal was met by a storm of objection. Neighbors comments resulted in the imposition of a 200 % detention requirement in the past--a recognition that the watershed is overdeveloped with not enough runoff detention. The new application 20-DDP-0045 to build 520 apartments, does not appear to impose the 200 % detention restriction. Instead the site plan disposes of the 200 % detention requirement and places it all in the Ballard Regional Detention Basin:



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SHALL BE
REQUIREMENTS

OR TO

SES FOR ANY | 33 MITIGATION MEASURES FOR DUST CONTROL SHALL BE IN PLACE DURING CONSTRUCTION TO PREVENT FUGITIVE PARTICULATE EMISSIONS FROM REACHING EXISTING ROADS AND NEIGHBORING PROPERTIES
34 AN MSD DRAINAGE BOND WILL BE REQUIRED
35 MSD EASEMENTS FOR THE THROUGH DRAINAGE SYSTEMS WILL BE REQUIRED PRIOR TO CONSTRUCTION APPROVAL
36 DETENTION WILL BE PROVIDED BY REGIONAL BASIN LOCATED ON BALLARD HIGH SCHOOL PROPERTY
37 OFF STREET LOADING AND REFUSE COLLECTION AREAS SHALL BE LOCATED AND SCREENED SO AS NOT TO BE VISIBLE FROM ADJACENT PUBLIC STREETS AND FROM RESIDENTIAL USES
38 THERE SHOULD BE NO LANDSCAPING IN THE RIGHT OF WAY WITHOUT AN ENCROACHMENT PERMIT. LANDSCAPING ON PLANS WILL NEED TO BE REVIEWED FOR SITE DISTANCE
39 SITE LIGHTING SHOULD NOT SHINE IN THE EYES OF DRIVERS IF IT DOES, IT SHOULD BE RE-AIMED, SHIELDED OR TURNED OFF
40 ALL NEW AND EXISTING SIDEWALKS SHALL BE EITHER BROUGHT UP TO OR BUILT TO ADA CURRENT STANDARDS.
41 A KARST SURVEY IS REQUIRED PER CHAPTER 4.9. A KARST SURVEY WAS PERFORMED BY XXXX ON XXXX/XXXX AND KARST TOPOGRAPHY (WAS) (WAS NOT) OBSERVED |
|--|--|

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20-DDP-0045

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MSD reviewer Tony Kelly has filed these comments:

3	Note 36 of the general notes needs to be revised as follows and the plan needs to show all proposed work to provide the offsite detention. Note: Offsite detention will be provided as shown on this plan. Postdeveloped peak flows will be limited to predeveloped peak flows for the 2, 10, 25 and 100-year storms or to the capacity of the downstream system, whichever is more restrictive.	
---	--	--

This shows MSD has disposed of the 200% detention requirement. The developer has apparently negotiated with JCPS for increased detention storage in the Ballard Regional Basin to compensate for the new 19.1 acre development. However the proposed basin expansion and its supporting hydrologic studies have not been filed for public inspection.

This is supposed to be an open and transparent unified development review process, but the off-site detention is not shown or explained. Mr. Dolan, after being flooded three times, is not finding MSD to be trustworthy--the size and performance of any proposed basin expansion must be added to the record immediately and be fully reviewed before approval of the preliminary development plan. Based on documents we have obtained, it appears MSD is planning to add to the flooding in City of Thornhill.

The sewer line that would serve Providence Point also follows Thornhill Creek, and there is no demonstration that the current sewer main will have the capacity to service 520 new apartments in peak periods. As a result, sanitary sewer overflows may be triggered by the development. This issue must be fully presented before approval of a preliminary plan. City of Thornhill residents who have not received any notice are entitled to know if sewer overflows will occur.

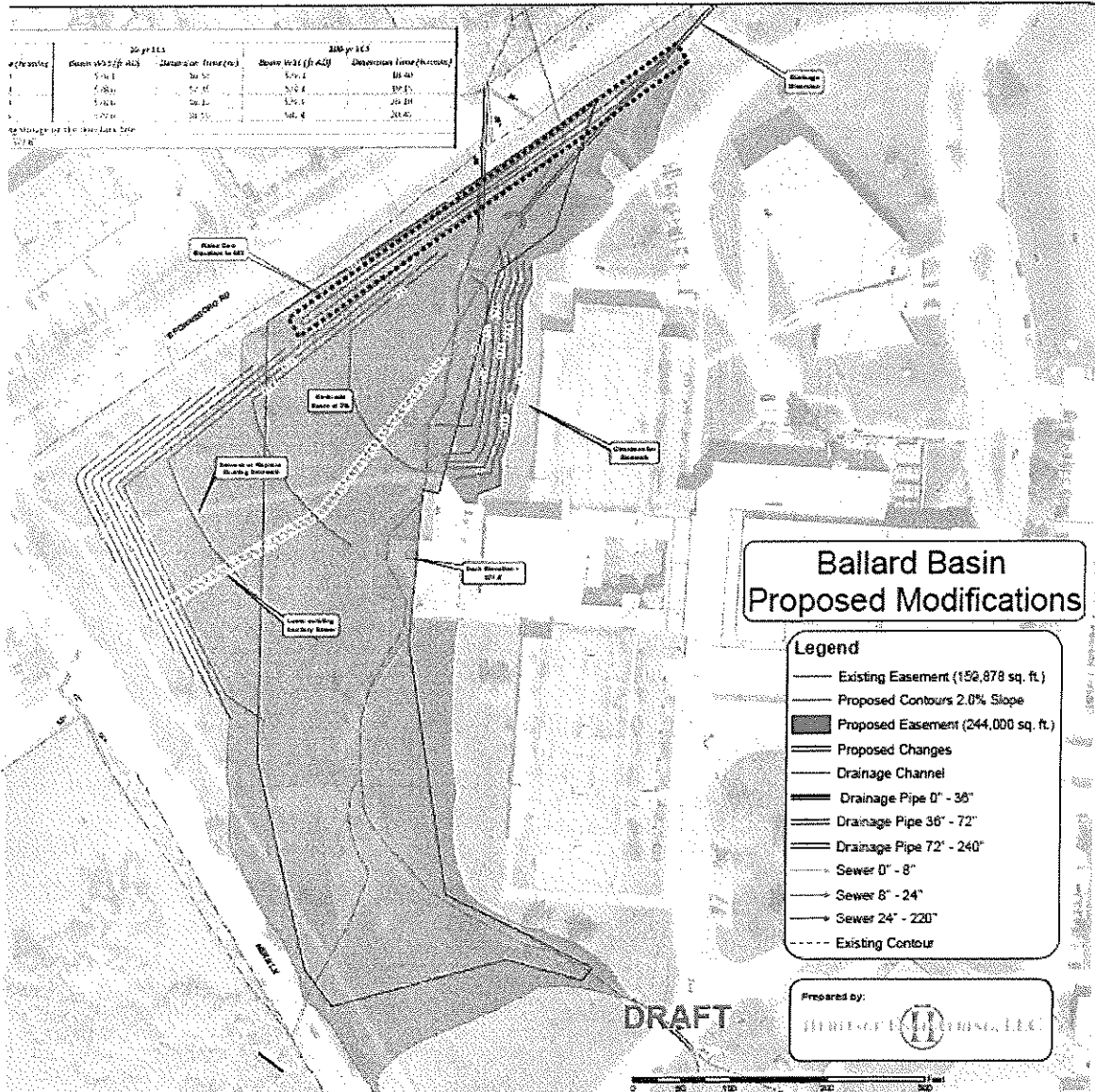
The development 19.1 acres is approximately equivalent to the 20.4 acres of the Bashford Manor WalMart lot. Downstream residents can expect that stormwater will carry various trash and floatables off the parking and residential use areas through the storm sewers, and into the basin and down Thornhill Creek. Oil, gasoline and auto fluids will be carried into the creek severely degrading the water quality both in the school basin and in Thornhill Creek. The developer has not made any demonstration that sufficient water quality management will be installed to prevent this.

City of Thornhill Residents should protect their property and personal health and safety interests by investigating what Providence Point is going to do with their **storm water and sewage--as both come down Thornhill Creek--the storm water first through the Ballard Basin outlet, and the sewage in an MSD pipe buried along the stream channel.**

A substantial increase in the water detained behind the Ballard Regional Detention Basin Dam presents a greater concern. Since its construction in 1999, MSD has classified the Dam as a 'low risk' structure. It did not apply for a construction permit in conformity with the Kentucky Dam Safety Act, See KRS 151.250. But after the flooding in 2006 and 2015, the diverted and impounded water has shown that peak flows channeled into Thornhill Creek are not sufficiently

detained. In the 2006 event, water crept to the top of the earthen dam--a clear risk condition for dam collapse. MSD must apply for a permit and submit its plans to the state for review.

The detention and new storage proposed may look like this 2018 plan:



This massive increase in detention storage presents an even greater risk of dam collapse and catastrophic flooding. The City of Thornhill neighbors immediately below the dam didn't even get included on the APO list.

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The applicants must re-notice the application, adding the City of Thornhill residents, and presenting full details:

- a) Present the new peak storage capacity of the proposed basin changes;
- b) present the peak water surface levels at Chadford Way crossing from the changes;
- c) present the proposed dam height increase ;
- d) present the proposed changes to the basin outlet structure with drawings and elevations;
- e) present the Kentucky Dam Safety application and permit;
- f) perform a proper dam collapse risk analysis;
- g) present the estimated pollution and water quality caused by the auto use areas;
- h) present proposed water quality management installations;
- i) present the current and proposed sewer line capacity--will a new sewer line be built?
- k) add the residents of City of Thornhill to the APO list.

Under the unified development review system, intended to protect the due process rights of neighbors, these significant and substantial environmental and social impacts are material facts that must be disclosed before approving any preliminary plan.

Sincerely,



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

<https://louisvilleky.gov/government/metro-council/email-council-member>

District #16: (Includes City of Thornhill): Scott Reed

District #7: (Includes Herr Lane/Providence Point) Paula Mccraney

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20-ODP-0045

Facility Planning Unit

C.B. Young Jr. Service Center
3001 Crittenden Drive
Louisville, KY 40209
(502) 485-3315
Fax: (502) 485-3677



Louisville Metro Planning and Design Services
444 South Fifth Street
3rd Floor
Louisville, KY 40202
Attn: Lacey Gabbard

RE:20-DDP-0045 Detailed District Development Plan, Providence Point

On August 31st, JCPS received notice of a Development Plan for apartments across Herr Lane from Ballard High School. Included in the notes for the plan:

36. Detention will be provided by regional basin located on Ballard High School Property.

JCPS has not received, reviewed or approved changes to Ballard High School property in association with this development.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan Biasioli", with a stylized flourish at the end.

Susan Biasioli, AIA
Director of Facility Planning

Cc Chris Perkins, JCPS
David Johnson, MSD

St. Germain, Dante

From: Lauago, Andrea T
Sent: Tuesday, October 27, 2020 11:48 AM
To: Williams, Julia
Subject: FW: Contact Planning and Design Services [#81]

Follow Up Flag: Follow up
Flag Status: Flagged

Julia are you the case manager for this now?

From: Wufoo <no-reply@wufoo.com>
Sent: Monday, October 26, 2020 7:33 PM
To: Lauago, Andrea T <Andrea.Lauago@louisvilleky.gov>
Subject: Contact Planning and Design Services [#81]

Name Chas Krish

Email * chaskrish@gmail.com

Subject Providence Point Development

Comment *

Hello,

I am a commissioner for the City of Crossgate, which neighbor's this potential development(Record 20-DDP-0045). We have large concerns with all the developments plants surrounding our neighborhood. With the VAMC to our West, the Artis property that is in our neighborhood (which is back up for sale), the KABA property for sale to our South, and now the Providence Point development to our East, we feel our city may soon be consumed by new developments and ruin our great area.

I'd love to be kept informed on the matters of this development plan and any planned public meetings. Lacey Gabbard was in charge of this case, but according to a returned email, she is no longer with Metro Louisville. I'd appreciate an update in this case and who the new case manager is.

Thanks,

Chas Krish

City of Crossgate Commissioner

▪



City of Thornhill

Mayor Louis R. Straub, II
2318 Thornhill Rd.
Louisville, KY 40202

louis.straub@chase.com

502-262-3856 (M)

November 23, 2009

Herbert J. "Bud" Schardein, Jr.
Executive Director
Metropolitan Sewer District (MSD)
700 West Liberty Street
Louisville, KY 40203

RE: Flooding and Safety Concerns in the City of Thornhill

Dear Mr. ~~Schardein~~, *Bud*,

On behalf of the citizens of the City of Thornhill, I would like to thank you and all the employees at Metropolitan Sewer District ("MSD") for your efforts this past year. We sympathize with the challenges the increased rain has caused MSD.

The increased rain has also caused challenges for the City of Thornhill. Attached are letters from Thornhill citizens that have been directly affected by flooding. I specifically would like to direct your attention to a letter written by Mr. and Mrs. Dennis Dolan and City Councilman, Jeff Burnett. These letters illustrate potential solutions to drainage and flooding issues.

A cost effective means to solve these issues may be to coordinate MSD and KY Department of Transportation roadway design for the Highway 22 expansion. I am sure you are aware that Highway 22 between Herr Lane and Seminary Ridge Drive will soon be expanded to three lanes. This expansion will cause the redesign of drainage along Highway 22. A drainage redesign plan that includes the Ballard Retention Basin may improve the drainage not only on Highway 22, but to the entire area.

After you (and/or your staff) have reviewed the enclosed material, please contact me at my office (JPMorgan Chase Bank, N.A.) at 566-2844 to discuss next steps.

All the best to you and your family over this Thanksgiving Holiday.

Warmest Regards,

November 10, 2009

Mr. H. J. Schardein, Jr.
Executive Director
Metropolitan Sewer District
700 West Liberty Street
Louisville, KY 40203

VIA US Mail

Subject: Flooding Abatement for Thornhill Subdivision

Dear Mr. Schardein, the purpose of this letter is to describe a serious and trending flooding problem – and to suggest possible ways to begin to reduce that risk.

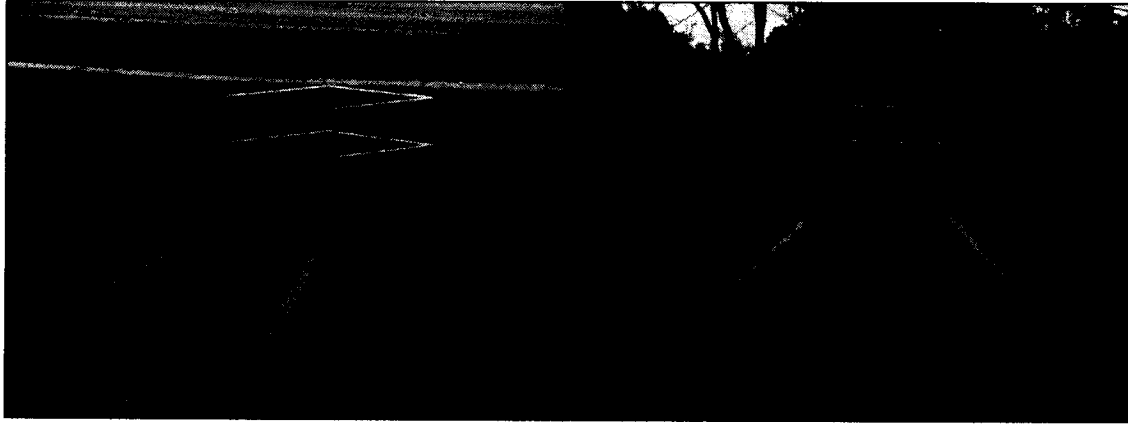
Background: We have lived at our current address in Thornhill for over 30 years and have witnessed many rainstorms, some heavier than others. However, during those 30 years, the runoff never overflowed its banks until twelve years ago (1997), flooding our's and neighboring properties. Then in September 2006, the "Thornhill creek" severely overflowed its banks flooding my home and the neighbor's, causing an estimated \$50,000. in property loss.

This year, the same creek came dangerously close to overflowing its banks twice again – on July 28th and on August 4th, 2009. It is obvious to many Thornhill residents – especially those whose homes border the drainage way -- that the volume and velocity of storm water run-off has increased significantly in the past 12 years – and with it the flooding risks.

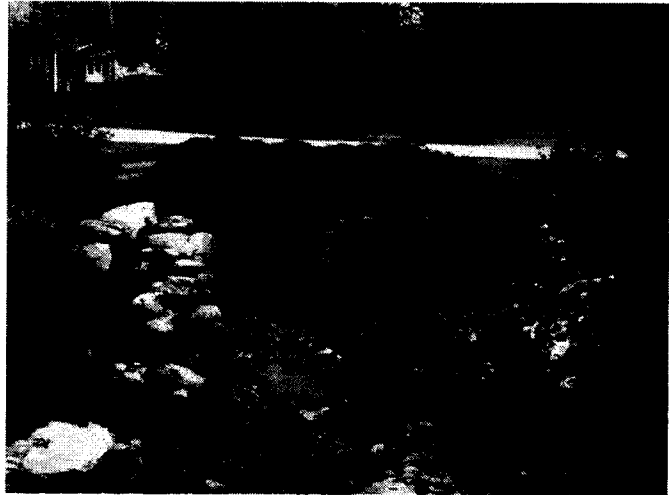
Examination of an MSD drainage map shows that – while passing through Thornhill -- the water released from the Ballard detention basin converges with drainage waters coming from as many as ten (10) other drainage flows. Consequently, it has become obvious that the Thornhill drainage way is now under-sized and inadequate to handle the radically increased volume and velocity of required drainage. This condition is not an outlier or "once in a 50- or 100-year" phenomena – but instead is a trend which has developed over a number of years – and now is resulting in recurrent risk and the flooding of homes.

We propose two possible ways to reduce the flooding risk going forward:

1. **Ballard Retention Basin Watergate** (see below views): A 35-year veteran hydrological engineer and friend of mine, inspected the Ballard retention basin, watergate, and surrounding terrain and concluded several things: The "notch" opening in the watergate appears to be too large and low for the basin to detain the volume of water intended for its capacity. Further the "notch" could be closed by at least 60% - or by as much as 90-100% -- with any storm water overflow draining into the top grated area – which itself is safely below the earthen berm to the north of the watergate. Thus, the closure of the "notch" could be easily and inexpensively done, safely reducing the velocity and volume of water released into Thornhill and with it, the concurrent flooding risk.



2. **Thornhill "Creek" Drainage Way:** This drainage pathway begins on the northern edge of KY State Road 22 with water flowing from the Ballard retention basin, combined with water entering from four separate ditches, and often, with water which overflows Rte 22 from two of the ditches on the south side of Rte. 22. These combined flows are joined downstream by six additional ditch flows – all before the stream reaches our home. Further, from the "mouth" of the drainage channel at the north edge Rte 22 to my home, the width and depth of the channel is routinely irregular in width and depth -- and is most often populated with brush, trees, and other obstructions. Once the flow – which is at points, five feet or more deep, passes our home, it reaches a two-pipe-under-the-road drainage passage. (See picture right.)



These drainage pipes, located between 2400 and 2402 Chadford Way, present another significant cause of flooding risk.

When the velocity and volume of drainage water exceeds the capacity of the pipes, the overwhelmed passage becomes a natural dam and drainage channel water rapidly backs up -- flooding property upstream as well as that adjacent to the pipes, including our home. This risk is dangerously increased when trees and other debris wash down stream and block one or both pipe openings. When that happens —there is no safe way to "un-block" the passage and prevent further flooding. We propose two solutions (in addition to that proposed in #1 above):

- a. Increase the width, depth and clearances of the drainage channel throughout Thornhill.
- b. Replace existing Chadford Way pipes with ones having increased capacity to handle larger water volume – and openness to reduce the risk of being blocked or clogged by debris.

We respectfully submit the foregoing and urge your timely consideration. If we can assist you in any way in resolving these issues, we are eager to do so. Please contact us.

Sincerely, Dennis and Susan Dolan, 2400 Chadford Way, Louisville, KY 40222; Ph: 426-0471
Copy: Mayor Louis Straub, City of Thornhill, KY 40222



Jeff Burnett
Commissioner, City of Thornhill
2312 Donleigh Court
40222

November 14, 2009

H.J. "Bud" Schardein, Jr.
Executive Director
MSD
700 West Liberty Street
Louisville, Kentucky 40203
Dear Mr. Schardein:

As both a property owner in the City of Thornhill and a Commissioner, whose duties include MSD/Drainage issues, I would ask that you strongly consider a review of the drainage and flooding issues in the City of Thornhill. Specifically, the creek area from the Ballard Detention Basin flowing across Old Brownsboro Road and through the City (including the Burnett property) which is most immediately impacted by rain and water run-off. It is my hope that we can begin to get some resolution to those problems and potential solutions which we have previously brought to the attention of MSD. These include three main areas, which were included in my July 2, 2007 report to you (see attached):

- On-going assessment from the Thornhill City Council, immediately following the completion of the Ballard Basin through the present, regarding the need to address and possibly re-engineer the "valve release opening" of the Basin. It is, and has been our conclusion, that allowing water to be released at a reduced rate will lessen the impact of water volume and folding potential to the City.
- Exploring the possibility of diverting water run-off along Old Brownsboro Road (more specifically, water on the South side of Old Brownsboro flowing from the intersection of Thornhill Road westward to the Lime Kiln Court intake drain) in to the Ballard Basin. This will allow the run-off to drain in a more efficient manner.
- Enlargement of the Chadford Lane drainage underpass to allow for greater capacity during heavy rains and to prevent significant flooding if damming occurs.

As always, your attention to these and other issues is always greatly appreciated. We look forward to working with MSD in order to ease our resident's fears and stress of, not only flooding, but water damage and continued erosion along the creek as well.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff R. Burnett', with a long horizontal flourish extending to the right.

Jeffrey R. Burnett
Commissioner, City of Thornhill

Attachments: July 2, 2007 letter to MSD

Nicholas and Jamie Gerch
2330 Thornhill Road
Louisville, KY 40222
November 9, 2009

Mr. H. J. "Bud" Schardein, Jr.
Executive Director
MSD
700 West Liberty Street
Louisville, KY 40203

Dear Mr. Schardein:

I am writing to inform you of an impending problem in the City of Thornhill, Kentucky. The drainage creek which serves as our city's main storm runoff has seen an increasing amount of water from the surrounding areas in the recent years. We have lived at our residence for 5 years and have noticed it in that short amount of time.

There are three underlying problems which I feel need to be addressed to remedy the danger our homes are in during any heavy rain.

- 1) The amount of water being released from the Ballard High School property needs to be further restricted to allow their retention basin to hold more of the storm runoff before letting it loose in our small drainage creek.
- 2) Increased drainage runoff from the Alia residential development as well as increased water volume from the redevelopment of commercial properties along Lime Kiln Lane need to be redirected or sent to a retention basin instead of dumping upstream into the creek in Thornhill.
- 3) The creek's storm sewer pipes which run under Chadford Way (in the middle of the City of Thornhill) are not sufficiently large enough to allow the necessary volume of water to pass. This issue then causes a backup at that section of the creek and in heavy enough rains, causes the creek to overflow and run over top of the road even though the downstream side of creek over Chadford still has room for additional water volume.

I understand that some of the rains we have experienced in the past year or two have had abnormally high accumulation totals, but the fact remains that a rainfall of several inches over the course of a day should not overflow this system. We have seen milder rains stretched out over longer spans cause as much damage and flooding as we have when large amounts of rain fall in a very short amount of time.

As I said earlier in my letter, we have lived at our residence in Thornhill for five years and we have noticed the volume increase during the same type of rains we have seen the creek handle the water flow in the past. If in a five year span there has been a noticeable increase in the volume of water to the drainage creek, then what can we expect in another five years when other areas upstream from us are developed further?

Sincerely concerned,



Nicholas Gerch

Robert S. Borus
Eleanor F. Borus
2402 Chadford Way
Louisville, KY 40222
(502)425-0042
efborus8@bellsouth.net

November 9, 2009

Mr. H. J. "Bud" Schardein, Jr.
Executive Director
MSD
700 West Liberty Street
Louisville, KY 40203

Dear Mr. Schardein:

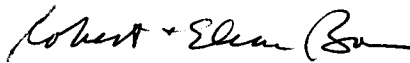
We would like for you to be aware of the flooding issues we have experienced in the last 12 years and to consider implementing solutions. Thornhill creek overflowed in 1997 and in 2006. The '97 flood deposited about 2 feet of water in our basement; the '06 flood deposited 5 feet of water with damages of \$30,000. On July 28 and August 4 of this year, the Chadford Way drainage underpass was very nearly filled to capacity, about 85% and 98%, respectively. We feel we barely avoided flooding on these two occasions.

It is our observation that the volume and the velocity of the water in our creek has increased in the 21 years we have lived in our home. **It is our layperson's opinion that a relatively easy solution would be for more water to be detained in the Ballard basin and/or released more slowly into our creek.** Also, the runoff from the Alia development should be directed to the Ballard basin rather than directly into our creek.

You face a challenging task in prioritizing projects and allocating resources, and we wish you the best. We hope that this letter succinctly communicates how we and other Thornhill homeowners have been impacted in the last 12 years and gives a hint of our emotions that range from uneasiness to anxiety and fear when severe weather occurs or is even predicted.

Please tell us how MSD will help us with this problem.

Sincerely,


Robert and Eleanor Borus

**Amy and Brendan Cahill
2316 Thornhill Road
Louisville, KY 40222
502-384-9438**

November 9, 2009

Mr. H. J. "Bud" Schardein, Jr.,
Executive Director, MSD
700 West Liberty Street
Louisville, KY 40203

RE: Flooding and Safety Concerns in the Thornhill Neighborhood

Dear Mr. Schardein:

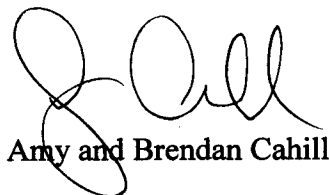
We can only imagine the number of letters you must receive about flooding problems around Louisville. Our house is one of many in our neighborhood that experienced flooding in August of this year, and in the Fall of 2006, despite a working sump pump and basement waterproofing system.

More importantly, the quantity and force of water that courses through our backyard following heavy rains is a true safety hazard for children. We have three boys, one, three and five years old. We constantly worry that one will "fall" into the creek when chasing a ball or the like when the water is in one of its "violent" stages. It simply does not seem to be an appropriate waterway to come through the heart of a residential neighborhood full of children.

I understand from neighbors who have lived in Thornhill for years that the water has risen in amount in velocity for many years, obviously in part due to development surrounding the subdivision. Ours is a wonderful Louisville neighborhood that should be preserved from irreparable damage and our citizens would be grateful for any assistance your office may be in a position to offer.

If you have any questions please do not hesitate to contact us.

Sincerely,



Amy and Brendan Cahill

Floyd & LaMar Buckner
2411 Chadford Way
Louisville, KY 40222
(502) 426-5728
November 10, 2009
Re: Drainage related problems – Thornhill Creek

Mr. H. J. "Bud" Schardein, Jr., Executive Director
MSD
700 West Liberty Street
Louisville, KY 40203

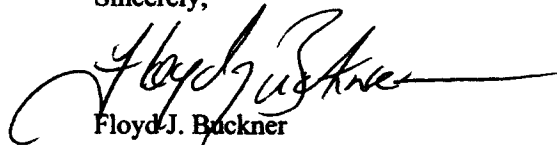
Attention: H.J. "Bud" Schardein, Jr.

Dear Mr. Schardein

I am writing to inform you of the problems we have been experiencing with the Thornhill Creek that runs directly through our backyard. We purchased this property in December of 2002 and since then have experienced high waters from the creek during heavy rain to the point of the water level reaching our basement door which is approximately 50 feet from the creek's boarder. We have also lost a considerable amount of land due to the creeks erosion along the walls. We have a bridge that stretches across the creek from one side of our property to the other. This structure has been severely damaged and needs to be replaced because of the excessive high water, water pressure (velocity of water during heavy rain) and poor drainage my MSD.

It is our hope that you will address this problem as soon as possible. This issue has caused grave damage to our property and placed us at an inconvenience. I am joining forces with the City of Thornhill Council in seeing that our concerns are addressed.

Sincerely,



Floyd J. Buckner
(former council member)

November 15, 2009

Mr. H. J. "Bud" Schardin Jr.,
Executive Director M&D
700 West Liberty St.
Louisville, Ky. 40203

Dear Mr. Schardin,

Our basement flooded four times prior to 2001. After the 2001 flood M&D installed a sump pump system in our basement.

Since we do not live in the flood plane I am still apprehensive that our basement could flood again, and if the electricity goes off we will have a serious problem in our basement.

Therefore it is imperative that creek flooding be eliminated.

We moved to Thornhill in 1972 and the creek problem did not start till after the development of the seminary property and other commercial development in the area.

Sincerely,

Robert S. Bauer
2409 Chadford Way
Louisville, Ky. 40222
502-426-3977

Lacey Gabbard
Case Manager
20-DOP-0045

In Re:

Providence Po:
19 Acre
Development

Dear Lacey
we live on Weyboro Road, Right
by 4 (yes four schools) our
area is a Bottleneck already
We can't even get out on
Herr Lane, all busses, cars
etc will be even more jam
up on a 2 Lane Street, the
Lane 2 Lanes in the busiest
area ever. This Development
Cannot happen, all of us
as taxpayers & residents will
fight this! Schools & children
Safety should come first, no
Big MONEY DEVELOPMENT!!

I will call every Council person
etc.

RECEIVED

AUG 28 2020

PLANNING &
DESIGN SERVICES

Thank you for Reading
Childrens Safety F

Ayela Marshall

Ayela Marshall 502-412-7

(I have
A copy of
this)

Dear MS. Gabbard,

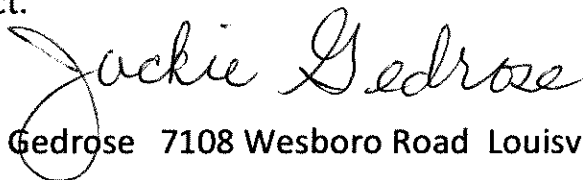
I am writing in regards to case #20-DDP-0045, the Providence Point proposal. My concerns are the zoning changes that I think would be necessary and the huge amount of increase in traffic along Herr Lane between Hwy 22 and Westport Rd.

Looking at a map of Louisville with zoning codes, the acreage at 2020 Herr Lane is listed as C1. On GIS Information it is listed as C1, CN , OR3. I may not understand the zoning codes but how can an OR3 allow 520 apartments which I would think to be multi-family residential?

My main concern is the volume of traffic that will be "flowing" onto and through Herr Lane on a daily basis if Providence Point happens as proposed. At this time, with only one of the four schools off Herr Ln. holding in-person classes, you can still wait through 3 traffic cycles to get through to Westport Rd. during morning and evening rush and other times of day. In the future traffic from the building of the VA hospital will also be added.

Several years ago, our Councilwoman had a study done on Herr Lane traffic. There was a lot of data collected with number of accidents, amount of traffic, etc. Recommendations were to add a designated right turn lane at Westport Road and a designated left turn off Herr into Ballard. Unfortunately there was not money to fund it. If this proposal was just for commercial, I could possibly see it working if there was a turn lane added and a light. However, with the addition of 520 or more cars entering and exiting at least twice a day I see horrific traffic backups. An additional concern is the safety of the children from these apartments that would have to cross the street to attend 3 of the 4 schools off Herr Lane!

I have lived on Wesboro Road over 20 years, am a retired Math teacher from Ballard High School and would like to be notified of the meetings concerning the Providence Point proposal. I am voicing my strong concerns for the efficacy of this project.



Jackie Gedrose 7108 Wesboro Road Louisville, KY 40222

jgedrose@bellsouth.net (502)551-1262

RECEIVED

AUG 28 2020

**PLANNING &
DESIGN SERVICES**

Patricia Hayes
7109 Wesboro Road
Louisville, KY 40222

August 26, 2020

Ms. Lacey Gabbard
Case Manager
Metro Development Center
444 S. 5th Street, 3rd Floor
Louisville, KY 40202

Re: Case #20-DDP-0045

Dear Ms. Gabbard:

I'm writing to share my concerns regarding the proposed development of 520 apartments and 20,000 square feet of commercial development property at Providence Point on Herr Lane.

This type of development is not in keeping with the surrounding neighborhoods and would greatly impact all existing residents on all sides of the property and the suburban neighborhood area from Highway 22 to Westport Road. The additional traffic, alone, would be overwhelming for Herr Lane and Highway 22 not to mention the neighborhood side streets which would be impacted by those cutting through. There are many walkers and bikers of all ages (including very small children) in this area which would face a dramatic increase in their personal risk if the proposed development is allowed.

Of additional concern is the transient nature of apartment dwellers, increased crime, increased noise pollution, and the increase of air pollution due to the higher volume of vehicles. All of which serves to increase health risks to existing residents, and reduce property values. And all of this within a very short distance of 4 schools – Ballard High School, Kammerer Middle School, Wilder Elementary School and St. Albert the Great School.

This proposed development is not a good idea! Surely this proposed development will not be allowed.

Please notify me of all meetings concerning this case. I can be reached at the above address or by email to prajhay@twc.com.

Thank you for your time,


Patricia Hayes

RECEIVED
AUG 31 2020
PLANNING & DESIGN
COMMITTEE

20-DDP-0045

Gabbard, Lacey A

From: Clarence Hixson <budhix@iglou.com>
Sent: Tuesday, September 1, 2020 12:13 PM
To: Gabbard, Lacey A
Cc: prajhay@twc.com; Patrick.henry@greshamsmith.com; Stuber, Elizabeth W.; Tony Kelly; Bill Bardenwerper; Dennis Dolan
Subject: Re: 20-DDP-0045 Providence Point Apartments

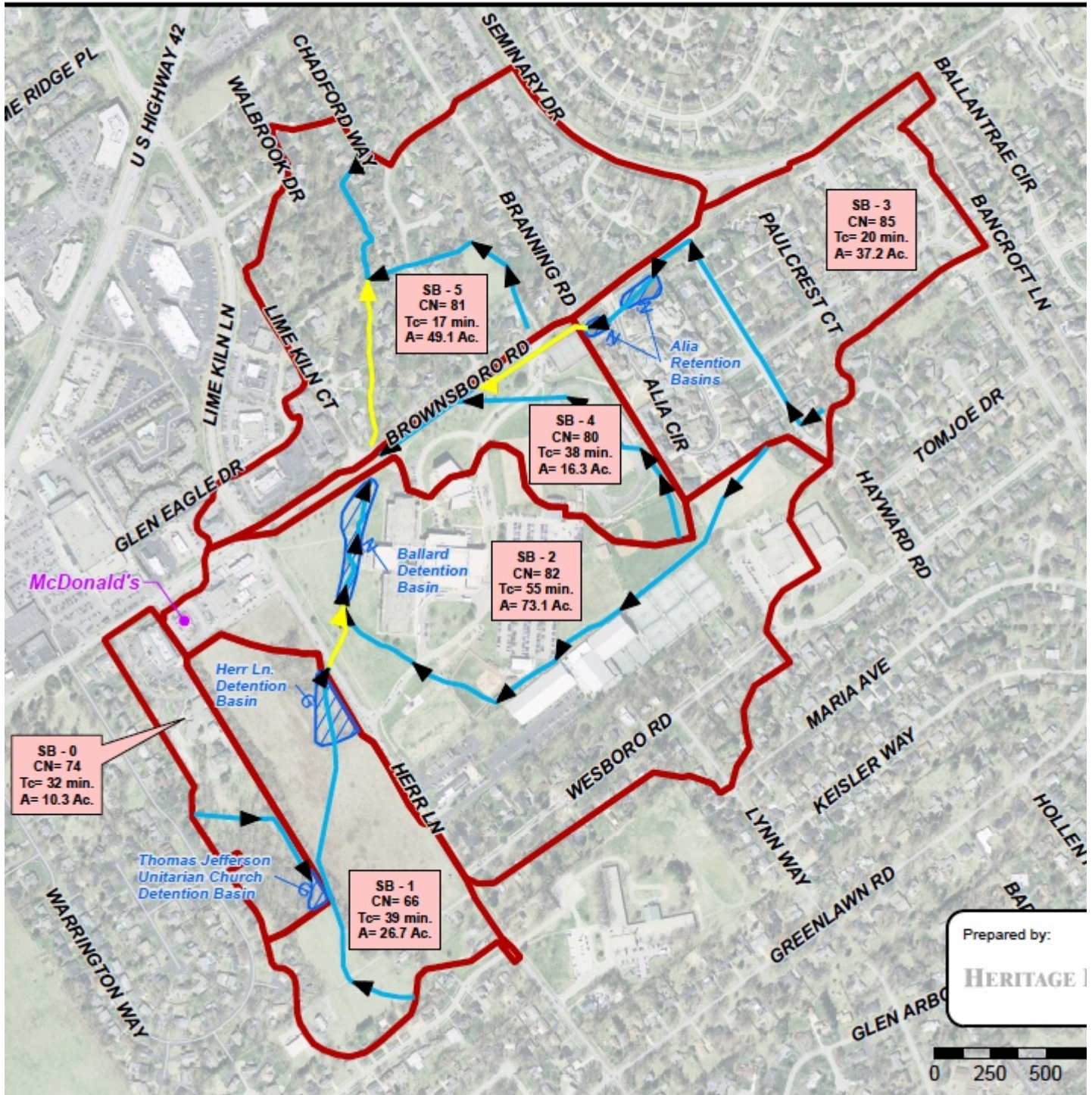
CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Lacey Gabbard
Dept Planning and Design
Metro Louisville Government

Re: Comments of Clarence Hixson, Attorney for Dennis Dolan to 20-DDP-0045

Thornhill Creek watershed

Figure 2 - Existing Conditions (Phase I)



Clarence Hixson
budhix@iglou.com

Clarence H. Hixson, Esq.
 1336 Hepburn Avenue
 Louisville, KY 40204

(502)758-0936

"If only it were all so simple! If only there were evil people somewhere insidiously committing evil deeds, and it were necessary only to

separate them from the rest of us and destroy them. But the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a piece of his own heart?

Aleksandr Solzhenitsyn, *The Gulag Archipelago*, 1918 - 56.

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