

St. Germain, Dante

From: Jackie T. Gedrose <jgedrose@bellsouth.net>
Sent: Wednesday, May 19, 2021 3:45 PM
To: St. Germain, Dante
Subject: Case #20-DDP-0045
Attachments: Open_Record_Providence_Point.pdf

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Dante,

- I feel Mr. Mims should recuse himself from voting on the Providence Point project because of his relationship with Scott Hagan that was made public in the April 1, 2021 meeting
- Hagan seems to give a 'rosy' story to Planning & Development and then another, (albeit a dire one about the horrible shape of infrastructure surrounding his property), to those he helps will support his bid for an Industrial Revenue Bond. * see attached pdf received by the Open Records Act.* The bad shape of the infrastructure is the true story and major work on sewers and drainage issues must be rectified legally and to codes and regulations and pass inspection.
- There have been drainage and flooding issues, especially in Thornhill while the 19.04 acres have been basically farm land. These issues have never been properly addressed with MSD. This development will only leave 12% to greenspace and 88% to buildings and asphalt and obviously exacerbate the situation. The project should not proceed until the flooding, drainage and sewer issues have been properly addressed.
- Hagan portrays Providence Point as being in a totally commercial area while it is located at the south-eastern corner of the Town Center Form District. Everything south of his property to Westport Road along Herr Lane contains 3 schools, a nursing/rehab center, an office and over 1,300 single family homes. His commercial property is the anomaly in the area.
- Just because some waivers were approved 14 years ago does not mean they should be rubber stamped this time. They should be looked at with today's eyes!
- Why are there regulations if developers continuously ask for waivers. Either you apply the provisions of a regulation or you don't! If you don't like the regulation, try to get it changed. It seems incredulous that anyone would claim "strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant." They know the regulations, follow them!
- I am against the new Variance from Section 5.7.1.B.2 and Table 5.3.1 The front setback should NOT be allowed to be reduced to 15 feet from 30 feet. Maintaining the 30 feet setback would give continuity to the rest of the Herr Lane Corridor which is a Suburban Neighborhood Form District.

- The 520 apartments are totally different from 312 condos and 175,00 square feet of retail and office that were formerly approved and never developed. Hagan is obviously trying to cram as many units as he can on the property . That is NOT reasonable use of the land to anyone residing in the Herr Lane corridor, only to the developer and the tax man. 520 apartments is a great strain on the infrastructure in the area, which he has admitted is already in poor shape.

Jackie Gedrose

Sent from [Mail](#) for Windows 10

From: Scott Hagan <Scott@haganmail.com>
Sent: Tuesday, August 11, 2015 4:49 PM
To: Jonesjr, David
Subject: FW: Providence Point

Mr. Jones,

Thank you for agreeing to review our information relating to JCPS/Ballard High School and Hagan Properties/Providence Point. If you would print out and review the attachments as a group, I believe they will be very informative.

Providence Point is our to-be-built 519 unit apartment community directly across Herr Lane from the Herr Lane entrance to Ballard High School. This property, under then owner Sam Stallings, first applied for rezoning in 1966. After failure and the failure of 5 subsequent developers to rezone the property, we were able to rezone the property for 312 condos and 175,000 square feet of retail and office. Since condos became un-financeable in 2008, and still are to a great extent, we are filing for a revised district development plan to develop 519 apartments. This will be an easy approval since the underlying zoning on the property is commercial and the use is less intense than what is currently approved.

As we move forward, we will be getting approvals from Public Works, MSD, applicable utilities et al. The attachments show what improvements we can make to address the issues currently existing in the area irrespective of our development: gridlock, no traffic signalization for Ballard, 1960s era road improvements, poorly located utilities, drainage deficiencies etc.

In order to be able to afford to make these improvements, we need to issue Industrial Revenue Bonds. To do that we need JCPS's cooperation (but not financial assistance in any way). If JCPS gives us its standard answer of "no" (in relation to supporting our request for issuance of IRBs to cover the massive improvements necessary to largely "fix" this area), I am doubtful that our development can proceed as planned and certainly no improvements that Ballard desperately needs will be constructed. And with Public Works perpetually broke (with no plans to improve the roadways in this area), MSD under an Agreed Order from the EPA regarding remediating infiltration issues throughout the community and therefore having no plans to build the detention basin on Ballard that was a priority prior to the EPA Agreed Order, and the utility companies seldom willing to help developers, it is a virtual certainty that the status quo will prevail in the area.

JCPS has been reluctant to support industrial revenue bonds because it believes that it loses tax revenue that it otherwise would get and that the benefit of the improvements don't directly benefit it. Our case is completely different in that the improvements are highly and directly advantageous to Ballard and JCPS won't be getting additional tax revenue unless our project is built. And with JCPS's support maybe there are other improvements we can make that would directly benefit Ballard.

I look forward to answering your questions, providing you with additional information or, best case, meeting with you.

Thank you very much.

Scott Hagan
Hagan Properties
12949 Shelbyville Road
Louisville, KY 40243
502-523-5000 (cell)

From: Receptionist
Sent: Tuesday, August 11, 2015 4:12 PM
To: Scott Hagan <Scott@haganmail.com>
Subject: Providence Point

Open-Results

From: Scott Hagan <Scott@haganmail.com>
Sent: Tuesday, April 19, 2016 10:52 AM
To: Jonesjr, David
Subject: RE: Providence Point

Mr. Jones,

I understand that Edwards' Communities has an IRB request up for consideration by JCPS.

As per the below, Hagan Properties also has an IRB moving through the process for Providence Point, across from Ballard High School.

The IRB we are requesting will allow us to build millions of dollars of infrastructure that **DIRECTLY BENEFITS** Ballard.

Therefore, I am requesting that in the event JCPS elects not to provide assistance to other proposed developments, that it will proceed with an IRB with us because:

- 1) The improvements we will construct will directly benefit Ballard/JCPS (solving huge traffic, safety and drainage issues); and
- 2) Because of #1, working with us on an IRB would not set a precedent that would obligate JCPS to work with other developments/developers which don't directly benefit JCPS

Scott Hagan
Hagan Properties
12949 Shelbyville Road
Louisville, KY 40243
502-523-5000 (cell)

From: Jonesjr, David [mailto:david.jonesjr@jefferson.kyschools.us]
Sent: Tuesday, August 11, 2015 5:33 PM
To: Scott Hagan <Scott@haganmail.com>
Subject: Re: Providence Point

Scott, thanks for reaching out and providing this background. Since I'm not active or educated in real estate development, it seems to me that my best use in this context would be to share your information with the proper folks at JCPS, for appropriate follow-up. Would that be appropriate at this stage?

Best,
David

David A. Jones, Jr.
Chair, Jefferson County Board of Education

Blog: DavidJonesJCPS.com
Facebook: www.facebook.com/DavidJonesJCPS
Twitter: @DavidJonesJCPS

Hardin, Cordelia

From: Scott Hagan <Scott@haganmail.com>
Sent: Tuesday, May 17, 2016 10:11 AM
To: Angela.Leet@louisvilleky.gov; Raisor, Michael; Hardin, Cordelia; steph@hornetitle.com
Cc: 'Jon Goldberg (jon@goldbergsimpson.com)'
Subject: PROVIDENCE POINT

Thank you for your participation in my informal presentation regarding our project across Herr Lane from Ballard that we call Providence Point.

We feel that the development of this project will be a win/win/win for JCPS, the City and Hagan Properties. The issuance of an Industrial Revenue Bond to pay for the off-site public improvements will allow for decades old and currently failing roads, traffic signalization, drainage and utilities to be modernized and improved to a level to meet current and future needs. Issuance of the IRB will allow for the City and JCPS to reap millions of dollars of tax revenue that they won't otherwise receive (remember that the property currently has an agriculture tax exemption and only pays \$87 per year in taxes) and allows Hagan Properties to develop a project that otherwise isn't financially feasible if it has to bear the costs of upgrading the public infrastructure.

As I said in our meeting, this property was first filed for zoning in 1966 and 6 developers failed to achieve the necessary approvals for development before we took it over. However, even with these approvals, the costs of modernizing the antiquated infrastructure makes the project undevelopable without help from the public sector (to pay for what government normally provides in exchange for the tax dollars real estate development produces).

I look forward to your comments, welcome your questions and hope to start a process wherein we can candidly discuss all of our needs and work together to meet them.

Scott Hagan
Hagan Properties
12949 Shelbyville Road
Louisville, KY 40243
502-523-5000 (cell)

Open-Results

From: Jonesjr, David
Sent: Tuesday, April 19, 2016 6:03 PM
To: Scott Hagan
Cc: Fields, Sherry C
Subject: Re: Providence Point

Thanks.

David A. Jones, Jr.
Chair, Jefferson County Board of Education

Blog: DavidJonesJCPS.com
Facebook: www.facebook.com/DavidJonesJCPS
Twitter: @DavidJonesJCPS

From: Scott Hagan <Scott@haganmail.com>
Sent: Tuesday, April 19, 2016 10:51 AM
To: Jonesjr, David
Subject: RE: Providence Point

Mr. Jones,

I understand that Edwards' Communities has an IRB request up for consideration by JCPS.

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- 1) The improvements we will construct will directly benefit Ballard/JCPS (solving huge traffic, safety and drainage issues); and
- 2) Because of #1, working with us on an IRB would not set a precedent that would obligate JCPS to work with other developments/developers which don't directly benefit JCPS

Scott Hagan
Hagan Properties
12949 Shelbyville Road
Louisville, KY 40243
502-523-5000 (cell)

From: Jonesjr, David [<mailto:david.jonesjr@jefferson.kyschools.us>]
Sent: Tuesday, August 11, 2015 5:33 PM
To: Scott Hagan <Scott@haganmail.com>
Subject: Re: Providence Point

**PROVIDENCE POINT DEVELOPMENT
HERR LANE
LOUISVILLE, KENTUCKY**

The proposed 20 acre Providence Point development is located on Herr Lane, Louisville, Kentucky across from the Herr Lane entrance to Ballard High School ("BHS").

Providence Point is expected to include approximately;

- 519 residential apartment units; and
- 7,800 square foot clubhouse, pool house and leasing facility

The public infrastructure in this area is significantly over capacity and antiquated. Roads, traffic signalization, detention for stormwater runoff and other utilities not only do not meet the current needs of BHS and the remainder of the immediate area (including the needs of BHS for a better road system and traffic signalization) but also do not allow for growth in and redevelopment of the area. Significantly upgrading the public infrastructure is critically important to more efficient traffic flow for BHS and Providence Point and the redevelopment of the area.

Providence Point, in conjunction with its construction, would like to plan to make significant improvements to the public infrastructure in and around its development and BHS if it can be done in a financially feasible manner.

Many of these public improvements *would directly benefit BHS*, including:

- a) **BHS's entrance on Herr Lane:** widening the entrance to BHS to add a third lane allowing for a dedicated "left turn out" from BHS onto Herr Lane (southbound) and otherwise re-building the BHS "driveway" approximately 300 feet into the BHS campus (see #1 on the attached)
- b) **Traffic signalization:** installing a traffic signal at the BHS entrance on Herr Lane allowing for a dedicated "left turn out" of BHS onto Herr Lane (southbound) and a dedicated "left turn in" into BHS from Herr Lane (southbound) (see #2 on the attached)
- c) **Herr Lane improvements:**
 - i. Adding a third lane to Herr Lane along the entirety of the BHS road frontage on Herr Lane (see #3 on the attached)
 - ii. Adding a fourth lane and significantly re-building the intersection of Herr Lane and KY 22 including constructing a dedicated left turn onto KY 22 (westbound) from Herr Lane (northbound) and a dedicated right turn onto KY 22 (eastbound) from Herr Lane (northbound) (see #4 on the attached)
 - iii. Adding a dedicated "right turn in" from Herr Lane (northbound) into BHS (see #5 on the attached)
- d) Other improvements in the area include constructing the detention basin MSD has designed for the northwest corner of BHS (see #6 on the attached), various offsite sewer improvements and landscaping



The estimated \$10,600,000 of costs include:

- Roadway and Traffic Signalization (\$1,400,000)
- Stormwater Detention Systems (\$2,900,000)
- Utility Relocation (\$1,500,000)
- Offsite Sewers (\$3,500,000)
- Capacity Fees (\$1,100,000)
- Landscaping (\$200,000)

The estimated cost of modernizing and upgrading the public infrastructure described above is prohibitive and makes the development of Providence Point financially infeasible without assistance from the public. Therefore, it is unlikely that Providence Point will be developed or the improvements described above made without public assistance due to these preventatively high public infrastructure costs.

As a result, Providence Point is seeking the use of Industrial Revenue Bonds ("IRBs") as a method of bridging the financing gap and helping to cover these costs.

An IRB differs from traditional government revenue bonds because the bonds are issued on behalf of a private sector business, not a governmental entity. IRBs are typically used to support a specific project for which there is insufficient public money to make the improvements that typically would be made by government.

The bond issue is created and organized by a sponsoring government, with the proceeds used by the private sector business, in this case a developer. The developer is responsible for bond repayment. The sponsoring government entity holds title to the underlying collateral until the bonds are paid in full. The sponsoring government entity is not responsible for bond repayment and the bonds do not affect the government entity's credit rating. IRBs are desirable because, in addition to funding some or all of the costs of the public improvements, the developer usually receives a lower interest rate, a property tax exemption and a long-term, fixed rate financing package.

Bond proceeds typically are used for a variety of purposes, including land acquisition, roadway improvements, utility relocations, building construction, sitework and the cost of bond issuance.

Metro Planning and Design

Case No. 20-DDP-0045

Providence Point Apartments

Attn: dante.st.germaine@louisvilleky.gov

Date: May 18, 2021

Dear Planning Commission:

I am an Affected Property Owner residing at 2316 Thornhill Rd, Louisville, KY 40222 and next to Thornhill Creek.

I did not receive any prior notice of the hearings in this case and would like to make the following comments:

Please reschedule a hearing on the Providence Point Apartments proposal and provide me Notice so I can attend by Zoom or otherwise and comment.

Signed

A handwritten signature in black ink, appearing to be 'MD' or 'Mark Doyle'.

Mark Doyle

COMMONWEALTH OF KENTUCKY
LOUISVILLE METRO PLANNING COMMISSION
RE: 20-DDP-0045 PROVIDENCE POINT

AFFIDAVIT OF DENNIS J. DOLAN IN OPPOSITION TO
20-DDP-0045 PROVIDENCE POINT APARTMENTS

* * * * *

Comes now the Affiant, Dennis J. Dolan, and on this 14th day of May, 2021, being first sworn, avers, attests and states the facts in the following numbered items are true and accurate and based on his personal knowledge:

1. I am the Affiant, Dennis J. Dolan and I presently reside at 2400 Chadford Way in the City of Thornhill in Jefferson County Kentucky.
2. I have resided at that same home address with my wife, who passed in 2019, since 1979. Not until 1997, precisely 18 years after I first moved there, did Thornhill Creek, for the first time, come out of its banks and flood my home with estimated (*unreimbursed*) damages as follows:

3/01/1997 – flooding pre-Ballard basin construction* – damages \$ 2,885.
9/22&23/2006 – flood after basin constructed – damages \$ 20,899.
7/12/2015 – flood, after 2012 hydrologic study – damages \$ 29,821.
Total: \$ 53,605.
*[1997-98 Construction of Ballard H. S. Fine Arts Center; 22,500 sq. ft. facility]
3. My home is located adjacent to Thornhill Creek; the upper elevation watershed drainage from my home, as admitted by MSD, contains approximately 212 acres.
4. In May 2012, MSD released to me a copy of the 2012 City of Thornhill Analysis of Flooding performed by Heritage Engineering LLC under contract with MSD.
5. The hydraulic and hydrologic study of the 212-acre watershed upstream of Chadford Way divided the watershed into five sub-watersheds of varying acreage. Heritage Engineers assigned times of concentration to each sub-watershed and with other data modeled the runoff rates and water surface levels in the 100-year 24-hour design storm and the September 2006 storm that flooded my property.
6. The 2012 Study modeled more than 11 eleven basin alteration scenarios to assess their impact on reducing flooding at 2400 Chadford Way.
7. As a result of Open Records Requests filed with and on behalf of the City of Thornhill I received documents from MSD, showing the design engineers for the 1999 Ballard Basin

first planned to construct a basin with 8.2 acre feet of detention capacity. The design engineering firm under contract with MSD in 1997-1998 was Ogden Environmental and Engineering, Inc.

8. In the Heritage Engineering Study 2012, engineers found and stated that the basin as-built, can detain only 2.7-acre feet of detention storage in the design storm. I concluded that the difference in detention capacity between what was designed first and what was actually constructed severely reduced the capacity of the Ballard Basin to provide storm water management and flood protection for the 212-acre watershed upstream of my home.
9. MSD after September 2006, told me in letters and at meetings that the Ballard Basin “was operating as designed and constructed.” No one at MSD admitted or explained why Ogden called for an original design capacity of 8.2 acre-ft basin in 1998, but only a 2.7 acre-ft basin was actually constructed.
10. I have observed the creek and local drainage in all storm event intensities and see that flooding of my home is caused by:
 - a. Stormwater runoff from Alia subdivision and neighborhoods southeast running into the ditch down Brownsboro road then entering Thornhill Creek through two 36-inch culverts under the road KY Rte. 22.
 - b. Stormwater runoff from the Ballard Basin entering Thornhill Creek from a 50-inch diameter RCP through the basin outlet structure and entering Thornhill Creek at Rt.22;
 - c. Stormwater runoff drained from Herr Lane, Brownsboro Road and Glen View commercial area entering Thornhill Creek through a 24-inch RCP at Rt.22.
 - d. Stormwater runoff from City of Thornhill entering Thornhill Creek through a 36-inch RCP draining acreage at upper elevation from Branning Way and beyond;
 - e. Stormwater runoff entering Thornhill Creek from a 24-inch RCP also draining acres of City of Thornhill; and
 - f. Stormwater runoff in an open drainage ditch from the Walbrook subdivision area entering the creek at the rear of 2400 Chadford Way, at the Chadford Way culvert/ crossing; and
 - g. Numerous smaller pipes, sources of diffuse surface water and small natural channels in the 212 acres.
11. All the Scenarios modeled by Heritage Engineers in the 2012 Study were to identify cost effective modifications to the Ballard Basin to increase detention capacity or alter the timing of flow peaks to reduce or eliminate flooding at 2400 Chadford Way in the 100 year/24-hour design storm and the 2006 storm.
12. Scenarios 9 and 10 were found by MSD to be effective because they increased the peak surface water elevation in the Ballard Basin and the detention capacity of the Basin. None of the scenarios was ever built or funded by MSD and the Study was put on the shelf, and

MSD told me that the project was of a much lower priority than virtually scores of others facing MSD.

13. In fall of 2011, the MSD Chief Engineer Mark Johnson was removed because of conflicts of interest discovered by Commonwealth Auditor Crit Luellen's Audit Team as reported in the Audit of MSD. In December of 2011, Mayor Fischer dismissed Herbert Schardein as Executive Director of MSD. On information and belief from documents obtained the Secretary of State's Office records I learned that Mark Johnson held a financial interest directly in Heritage Engineering LLC at the time it was awarded the contract to perform the 2012 Heritage Analysis of Flooding in City of Thornhill. Current, Chief Engineer David Johnson testified in deposition that he contracted with Heritage Engineering for the Study and was unaware of the conflict of interest of Mark Johnson, his senior colleague at the time.
14. MSD's Study focused on altering the detention capacity of the Ballard basin to manage flooding and did not model the impact of building a storm water pipe along Branning Way in City of Thornhill to intercept and convey the drainage that presently runs fully un-detained into the ditch along Brownsboro Road and directly into the Thornhill Creek. Other reasonable and affordable flood reduction projects are possible, but have been ignored by MSD.
15. In 20-DDP-0045, MSD and the applicant have presented two separate alternatives to manage storm water from the proposed Providence Point development. The Affiant is not sure which stormwater management method is actually proposed or to be built:
 - a. Install a wall and inlet drainage system along the west border of the Providence Point property. The inlets would intercept and drain diffuse surface water flowing from the All Peoples Church (fka "Thomas Jefferson Unitarian Church") property across the property line to Providence Point. The collected water would be conveyed by RCP under Providence Point and Herr Lane to discharge in the Ballard Basin. This portion of stormwater would be exempted by MSD from Design Manual Basin capacity and pre/post construction runoff rules. A second amount of runoff would be collected by a separate group of inlets as shown on the DDP drawing. This runoff would be piped into the underground detention system. This reduced portion of runoff would be subject to MSDs pre/post construction runoff limits.
 - b. The second possible alternative offered in the MSD/EPSC Notes is that no underground detention would be constructed, and the applicant would contract with and gain permission from JCPS, an arm of the Commonwealth, to enlarge the Ballard Detention Basin in some joint funding plan, and Providence Point engineers would design the proposed basin enlargement and the Applicant would fund the construction.
16. As the Affiant, I am confused as to what the final storm water management plan will be, and do not know how to frame comments or objections to an unspecified storm water plan with drastically different elements and impacts? The proposals lack specificity and

detail necessary to discern the specific flooding impact at my home. I am far past trusting MSD to enforce Design Manual and other applicable rules for this project.

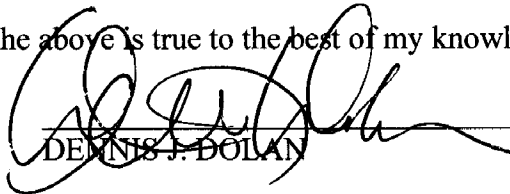
17. Neither the Applicant nor MSD have stated that either 'basin enlargement' proposal would meet or exceed the protections in the Scenarios 9,10 and 11 from the detailed 2012 hydraulic and hydrologic study that would eliminate flooding at 2400 Chadford Way.
18. In his sworn testimony before the Planning Commission, MSD's Chief Engineer David Johnson admitted that the Wall (along the property line between Providence Point and All People's Church properties) and inlet plan would "accelerate" the All Peoples Church pass-through drainage, but "the All Peoples drainage will be into and out of the Basin before the Basin peaks," as testified under oath by David Johnson on April 1st.
19. As shown by the 2012 Heritage Study, the modeling location of interest is the downstream residential property along Thornhill Creek including 2400 Chadford Way.
20. The 2012 Study showed that peak flow flooding at Chadford Way occurs early, about 17 minutes, after the onset of intense rainfall in the 2006 event as modeled. David Johnson's assertion to the Planning & Design Commission that the All Peoples Church drainage would be into and out of the basin before the basin later peaks is *disastrous for me, the Affiant*. The new accelerated drainage from the DDP would compound the problem of peak flow flooding and its hydrograph would overlap the hydrograph at 2400 Chadford Way approximately. The Basin peaks at 55 minutes after onset of the intense downpour. The threat of increased flooding is sufficiently established by MSD David Johnson's admissions that the Affiant urges the Planning Commission to deny approval until and unless MSD and the Applicant produce all necessary modeling to show the impact of the proposals in a 2006-style event. The computer HEC-HMS models are already programmed to accept the new data and it would be a simple matter to produce.
21. MSD used a quarter of a million dollars to protect a single property -- adjacent to my home -- from flooding when it constructed a massive floodwall in the stream across from 2400 Chadford Way in 2018. The 10-foot high, 130-foot-long reinforced concrete floodwall would dam and channel 2006 storm event flows away from the neighbor's single property and raise water levels against Affiant's home causing severe threat of loss or injury to life and property in the 2006 water surface levels.
22. MSD has never moved to condemn my (Affiant's) property under eminent domain and never offered compensation for my property even as it approved reduced stormwater management rule enforcement or exemptions from rules in its Design Manual to **upper elevation properties**. The Applicant and MSD should be required to show that the Design Manual rules have been properly applied and enforced to existing developments in the 212 acres, including:
 - a. Alia Subdivision, sub-basin 3, 37.2 acres;
 - b. Tennis Center and other businesses off Herr Lane, sub-basin 2, 73.1 acres;
 - c. The Herr Lane and Rt. 22 road system and Glenview Point development;

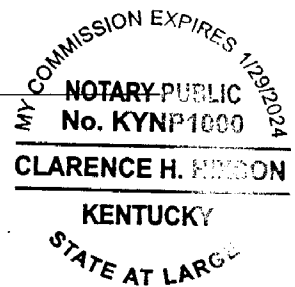
d. The City of Thornhill, sub-basin 5, 49.1 acres.

23. I received the APO notice list for this project and found that only two of eleven previously flooded City of Thornhill property owners have received notice of this action. I along with these other property owners have submitted numerous signed letters to MSD since 2006 identifying our flooding injuries and pleading for reasonable storm water management in the said 212 acres upstream.

FURTHER AFFIANT SAYETH NAUGHT,

By signing I aver that the above is true to the best of my knowledge:


DENNIS J. DOLAN



THE STATE OF KENTUCKY

COUNTY OF JEFFERSON

The foregoing Affidavit of Dennis J. Dolan was subscribed, sworn to and acknowledged before me by him, this 14th day of May, 2021.


Notary Public

My license expires on 1/29/24 KYNP1000

Distribution

Dante.St.Germain@louisvilleky.gov - Case Manager, Metro Planning & Design
<https://louisvilleky.gov/government/metro-council/email-council-member>

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

"Scott Reed" < Scott.Reed@louisvilleky.gov >

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

"Paula Mccraney" < Paula.Mccraney@louisvilleky.gov >

"William Bardenwerper" < wbb@bardlaw.net >

"Amanda D. Reed" < amanda.reed@dentons.com >

"William A. Hoback" < bhoback@middletonlaw.com >

"Anne E. Trout" < Anne.Trout@louisvillemsd.org >

"Jacquelyn Quarles" Jacquelyn.Quarles@louisvillemsd.org

City of Thornhill Mayor Julea Lawson – mayor@cityofthornhill.org

City of Graymoor-Devondale Mayor John Vaughn – mayor@graymoor-devondale.com

City of Crossgate Mayor Kirk Hilbrecht – khilbrecht@crossgateky.org

City of Bancroft Mayor Jeff Magers – mayor@cityofbancroft.org

COMMONWEALTH OF KENTUCKY
LOUISVILLE METRO PLANNING COMMISSION
RE: 20-DDP-0045 PROVIDENCE POINT

AFFECTED PROPERTY OWNER DENNIS J. DOLAN
BASIS FOR CROSS EXAMINATION OF
MSD CHIEF ENGINEER DAVID JOHNSON

Comes now, APO Dennis Dolan by counsel Clarence H. Hixson and moves the Planning Commission to accept to the record and weigh in consideration, the attached AFFIDAVIT OF DENNIS DOLAN setting forth his basis in personal knowledge supporting his substantial objection to the storm water management plan(s) briefly described in 20-DDP-0045 and as testified to by MSD Chief Engineer David Johnson.

Mr. Dolan has a reasonable belief that approval of the proposed systems would cause a fourth flooding episode to his home with substantial injury, and this can be avoided if the Planning Commission requires MSD and the Applicant to adopt a wholistic approach to the watershed stormwater management system that is reasonable and affordable. The history of piecemeal approval of various developments in the Thornhill Creek 212 acre upper watershed, some of them with insufficient detention, has caused flooding injury to his property that is unnecessary and avoidable.

His objections to the storm water management proposals of 20-DDP-0045 are of three kinds:

- a. Procedural,
- b. Engineering and factual, and
- c. The proposals violate or continue violation of applicable statutes and rule.

Procedural Objections:

1. The known group of eleven Affected Property Owners in City of Thornhill were never given written notice or included in the 20-DDP-0045 Applicant's APO notice list.
2. The Applicant has offered a few generic details of two distinct storm water management proposals for 20-DDP-0045 but has not identified which will be constructed or provides substantial evidence of the performance of either alternative or that it will reduce the risk of flooding in the downstream residential community.

Engineering and Factual Objections:

1. Applicant first, proposes a "pass through" drainage collection system for diffused surface water (KRS 151.100(4)) from All Peoples Church acreage that would likely have a peak hydrograph appearing at the same time and overlapping with flooding that occurs at the Chadford Way crossing. It is irrelevant that the Ballard Basin peak occurs 55 minutes after the onset of intense rainfall and after flooding has occurred. The 'pass through system' increases threat of flooding because a new volume of water will arrive at Chadford Way due to accelerated drainage.

2. Second, The Applicant describes a 'second' alternate stormwater management proposal involving expansion of the Ballard Regional Detention Basin to accept off-site detention. MSD would require the Applicant to contract with the Commonwealth of Kentucky, MSD and JCPS to provide the legal framework. No substantial evidence in the form of hydrographs or plans of preliminary nature have been produced as substantial evidence to support an opinion on the flood risk reduction of this alternative. KRS 151.291(1) requires the Energy and Environment Cabinet to enforce compliance of the Ballard Basin with all applicable rules and statutes but this has not happened since 1999. No substantial evidence of the performance of the 'second' proposed system is provided despite availability of existing HEC-HMS modeling produced by Heritage Engineering LLC in 2012, and previously used to develop flood prevention scenarios in 2012.
3. The Applicant and MSD leave un-addressed the consequences of either proposal on downstream residential flooding for foreseeable storm intensity that exceeds the 100 year 24 hour storm model. Above the design storm intensity, all water from the filled-to-capacity- underground storage facility would be passed without further detention to Thornhill Creek, with severe impact to early peak flow flooding at Chadford Way crossing. Neither the applicant nor MSD admit or acknowledge the legal duty to increase storm water restrictions to protect downstream residential property if another 2006-style storm occurs.

Violations of Law and Rule

1. APO Dolan urges the Planning Commission to require that MSD demonstrate that the Applicant's selected facility will comply with all applicable rules and laws. The EEC Cabinet has the duty to do this under KRS 151.291(1).
2. The water flowing from All Peoples Church property is 'diffuse surface water' as defined KRS 151.100(4). Under the controlling case of Klutey v. Commonwealth, Department of Highways, Ky., 428 S.W.2d 766 (1968), the Applicant must accept the flow of diffuse surface water from his upper elevation neighbor, he has no legal authority to bypass it to the next lower elevation property. The diffuse surface water from All Peoples property is a longstanding drainage pattern that does not damage Providence Point and the Applicant must accept this water volume and add it to his detention burden. MSD may not exempt this flow from detention requirements as is proposed. Otherwise any property could build a large pipe and pass the stormwater from its neighbors under ground and downstream to the next property. In this case the 'pass through' volume will damage downstream property. MSD is cutting Providence Point an illegal and dangerous volume exemption from its Design Manual runoff rules. If MSD insists that the 'pass through' volume is channeling an existing stream, as defined at KRS 151.100(3), then a stream construction permit pursuant to KRS 151.250, is required under 401 KAR 4:050, Section 1, for "any construction that does or may endanger life or cause severe damage to residential or commercial property." This legal requirement demands that the Applicant produce substantial evidence of the downstream impact of its alternatives.

3. Neither MSD nor the Applicant has given notice to affected property owners of any permit application or hearing.
4. Even if the 'pass through' plan is deemed to concern a stream rather than diffuse surface runoff, the common law, Klutey v. Commonwealth, Department of Highways, Ky., 428 S.W.2d 766 (1968) holds the Applicant will be liable in tort for damages caused by a storm water management plan that increases peak flow flooding when it is avoidable by reasonable and affordable alternate systems. Such systems include the suggested Branning Way storm water diversion project that would divert storm flow away from the Chadford Way crossing. It could save Applicant money in the longterm.
5. The proposal to use 'off-site' detention in the Ballard Regional Detention Basin fails the test of substantial evidence because as a legal matter, under KRS 151.291, the Cabinet should have enforced compliance with all applicable laws and rules regarding the Ballard Basin since 1999. Instead, the Cabinet has taken no oversight or enforcement action though JCPS is an arm of the Commonwealth and instead has denied and evaded compliance with KRS 151.291.

JCPS and MSD have suppressed the facts leading to the construction of a 2.7 acre-ft basin rather than the 8.2 acre-ft basin first proposed. All of Heritage Engineering's 2012 Scenarios showed that increasing basin detention moved in the direction of preventing flooding in 2006-style storm intensity. JCPS, MSD and the Cabinet have failed to regulate the basin and covered up the flooding risk shifted to downstream neighbors. The Planning Commission has the authority to deny approval to 20-DDP-0045 'second' management proposal discharging to an illegally regulated and operated basin.

Unfortunately, Mr. Dolan has learned the hard way that relying on MSD's claims of experience, competence and reputation is a fatal mistake, and the Commission will best protect the community by requiring the full set of documents establishing by substantial evidence, the performance and legality of the runoff management proposals in this case. This is not adding unnecessary compliance burden to delay the project, but simply the minimum standard of evidence required where multiple incidents of downstream flooding have occurred and material facts have been denied or covered up.

Distribution

Dante.St.Germain@louisvilleky.gov - Case Manager, Metro Planning & Design
<https://louisvilleky.gov/government/metro-council/email-council-member>
District #16: (Includes City of Thornhill): Scott Reed
"Scott Reed" <Scott.Reed@louisvilleky.gov>
District #7: (Includes Herr Lane/Providence Point)
"Paula McCraney" <Paula.Mccraney@louisvilleky.gov>
"William Bardenwerper" <wbb@bardlaw.net>
"Amanda D. Reed" <amanda.reed@dentons.com>
"William A. Hoback" <bhoback@middletonlaw.com>
"Anne E. Trout" <Anne.Trout@louisvillemsd.org>
"Jacquelyn Quarles" Jacquelyn.Quarles@louisvillemsd.org
City of Thornhill Mayor Julea Lawson – mayor@cityofthornhill.org
City of Graymoor-Devondale Mayor John Vaughn – mayor@graymoor-devondale.com
City of Crossgate Mayor Kirk Hilbrecht – khilbrecht@crossgateky.org
City of Bancroft Mayor Jeff Magers – mayor@cityofbancroft.org

Respectfully submitted,



/s/ Clarence H. Hixson
Attorney for Dennis Dolan
1336 Hepburn Avenue
Louisville, KY 40204
(502) 758 -0936

St. Germain, Dante

From: Cody Cobb <cococobb@gmail.com>
Sent: Monday, April 19, 2021 12:02 PM
To: St. Germain, Dante
Cc: McCraney, Paula D.
Subject: Providence Point (0-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104
Attachments: Variance Objections.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

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Hi Dante,

Attached please find my letter advocating for denial of some of the variances requested by the developer.

Could you confirm that all variances for this development have been postponed to a later date? Could you also tell me the meeting will be held?

Many thanks,

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

Board of Zoning Adjustments

Louisville Metro Council District: 7 - Paula McCraney paula.mccraney@louisvilleky.gov

Case Manager: Dante St. Germain dante.st.germain@louisvilleky.gov

RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those holding the fate of our Neighborhood in your hands,

My name is Cody Cobb, my address is 7102 Glen Arbor Road, Louisville, Kentucky 40222. I am a resident of the city of Graymoor-Devondale. I'm writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the [justification](#) for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

The thousands of residents in each of these neighborhoods will be adversely affected if the essential character of the general vicinity is permitted to change, again, at the will of the developer. The citizens of these neighborhoods have made considerable investment in their homes, with a key selling point of the look and feel of the neighborhood (including building heights), serving in their decision to purchase. Simply put, the residents do not want imposing apartment buildings in their backyards. The residents should not be collectively disenfranchised at the whim of a developer seeking to place dense apartment buildings in their midst.

The proposed height increase is yet another circumvention of the requirement of the zoning regulations in this area. Permitting this change would be a further deviation from the Town Center form District and is detrimental to the neighborhood. This property has evolved to the current zoning after a series of zoning changes, which have been granted in the past. To continue to layer zoning changes and deviations on top of one another at the developers request is to abandon the residents of the areas.

Denying this request will not deprive the applicant of the reasonable use of the land, rather it would hold the applicant responsible for the reasonable use of this land, which is conforming to the current standards in height so that this development fits into the surrounding areas. The developer can still maintain "contemporary design preferences of greater ceiling heights" by making edits to their plans. The assertion that denying this variance would "deprive the applicant of the reasonable use of the land or would create unnecessary hardship" is to put the legacy of the Hagan family before the interests of the thousands of residents surrounding this property in the cities of Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor.

Sincerely,

Cody Cobb

St. Germain, Dante

From: robert fuller <pupjr@icloud.com>
Sent: Tuesday, April 13, 2021 3:43 PM
To: St. Germain, Dante
Subject: Providence Point BZA hearing

Follow Up Flag: Follow up
Flag Status: Flagged

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I am writing to express my objection to the granting of building height and setback variances to the developer of the subject proposal on Herr Lane.

As a resident of the neighborhood and with a degree in Urban Planning and forty years of practice in the field, I know that sometimes variances are warranted for site accommodation or fair use of the site.

However, in this case, this simply appears to be a request by the developer that would adversely affect both the road, site aesthetics, and neighboring properties simply to maximize the developers density (profit) without regard to negative impacts. The development is already inappropriate given the traffic issues in this area and even more so with the double whammy of the VA hospital (which I support). Tell the developer to scale his proposal to conform to the regulations as written. If that means fewer units, so be it. He is not owed the opportunity to maximize profits at the expense of others.

Robert Fuller
2602 Hill Briar Ct
40241.

Sent from my iPhone

St. Germain, Dante

From: Charles Harper <charlieharper1@mac.com>
Sent: Tuesday, April 13, 2021 10:41 PM
To: St. Germain, Dante
Subject: VARIANCE MEETING MONDAY

Follow Up Flag: Follow up
Flag Status: Flagged

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Dear Project Manager,

Please tell me why any sane person would want to add even more congestion to the route 42 and watterson bottleneck by adding the veterans hospital, much less allowing an increase above code to the height and length of a new apartment complex just two blocks away so that 520 more apartments can bring gridlock so bad that even ambulances can't get thru. Seems like someone is actually planning to attempt to put 10 pounds of poop in a five pound bag. The result will be inevitable and years down the road people will ask: "Who allowed this to happen ?".

Charles Harper,
7425 Woodhill Valley Road

St. Germain, Dante

From: Jennifer C. Whitfield <jennifercwhitfield@gmail.com>
Sent: Wednesday, April 14, 2021 1:07 PM
To: St. Germain, Dante
Cc: Cody Cobb; Jackie Gedrose; Jaqueline Hersh

Follow Up Flag: Follow up
Flag Status: Flagged

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Dear Dante

I'm writing to oppose the variance request attached bellow- 20-variance-0140 & 0167

It's my understanding this is to obtain permission for 3 & 4 storied
Buildings, which does not fit our neighborhood and will stand out in a gross and unappealing manner.

Sincerely
Jennifer Whitfield

This email was sent to
jennifercwhitfield@gmail.com
Louisville Metro Government
GovDelivery · 707 17th St
Denver, CO 80202 · [1-800-781-7373](tel:1-800-781-7373)



NOTICE OF HEARING

You are invited to attend a review of
setback from Herr Lane, and to allow

Subject Property: 2020 Herr Lane
Case Number: 20-VARIANCE
Case Manager: Dante St. Germain
Application Date: August 4, 2020

Meeting Type: Board of Zoning Appeals
Meeting Date: MONDAY, April 13, 2020
Time: Meeting will begin at 7:00 AM

Location: Online Meeting
<https://louisville.gov/join>

Don't have internet access? Please call
meeting by telephone.

Please complete a speaker record form
meeting if you wish to speak. The speaker

--

Jennifer C. Whitfield

St. Germain, Dante

From: John Hicks <johnhicks@outlook.com>
Sent: Friday, April 16, 2021 1:06 PM
To: Davis, Brian
Cc: St. Germain, Dante; paula.mccraney@ouisvilleky.gov; Hilbrecht Mayor Kirk; Marsha Hicks
Subject: Complaint & Request for Evening Meeting on Providence Point Development (20-DDP-0045) hearing held on 4/1/21

Follow Up Flag: Follow up
Flag Status: Flagged

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My name is John Hicks, 4924 Grantham Place, Crossgate, KY.

I am writing to express my support and agreement with the letter below from Paul Whitfield.

Regards,
John Hicks

Subject: Complaint & Request for Evening Meeting on Providence Point Development (20-DDP-0045) hearing held on 4/1/21

Dear Brian, Dante and all those it may concern,

My name is Paul Whitfield , I live at 2010 Lynn Way, in the unincorporated area called Wilder Estates. I am writing today to formally enter a complaint and to request an evening meeting regarding the Providence Point Development (20-DDP-0045) so that all citizens concerned can participate as they were not afforded this opportunity at the hearing held on April 1, 2020.

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

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

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

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

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

Sincerely,

PAUL WHITFIELD

John Hicks

St. Germain, Dante

From: mthicks@twc.com
Sent: Friday, April 16, 2021 1:16 PM
To: Davis, Brian
Cc: St. Germain, Dante; McCraney, Paula D.; Mayor Kirk Hilbrecht
Subject: Complaint & Request for Evening Meeting on Providence Point Development (20-DDP-0045) hearing held on 4/1/21

Follow Up Flag: Follow up
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My name is Marsha Hicks. I live at 4924 Grantham Place in the City of Crossgate, KY.

I am writing to express my support and agreement with the letter below from Paul Whitfield.

Regards,

Marsha Hicks

mthicks@twc.com

502-494-7836

Subject: Complaint & Request for Evening Meeting on Providence Point Development (20-DDP-0045) hearing held on 4/1/21

Dear Brian, Dante and all those it may concern,

My name is Paul Whitfield , I live at 2010 Lynn Way, in the unincorporated area called Wilder Estates. I am writing today to formally enter a complaint and to request an evening meeting regarding the Providence Point Development (20-DDP-0045) so that all citizens concerned can participate as they were not afforded this opportunity at the hearing held on April 1, 2020.

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

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

Sincerely,

PAUL WHITFIELD

St. Germain, Dante

From: John Hicks <johnhicks@outlook.com>
Sent: Friday, April 16, 2021 1:53 PM
To: St. Germain, Dante
Cc: Davis, Brian; McCraney, Paula D.; Hilbrecht Mayor Kirk; Marsha Hicks
Subject: Providence Point Development hearing on variances for setback and building height case 20-VARIANCE-0104&20-VARIANCE-0167 2020 Herr Lane

Follow Up Flag: Follow up
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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 near Brownsboro Road and Herr Lane.

My main concerns about this proposed project are: increased traffic without adequate changes to roadways which will result in increase safety risks and gridlock, and the height of some of the buildings in relation to others in the area. I think this proposed project is too dense and will result in increased traffic that cannot be alleviated by the proposed road improvements, especially now that the Kentucky Highway Department has stated that they cannot justify any traffic light for ingress and egress from the property.

Reducing the heights of the buildings, especially the 4 story buildings, would reduce the density and mitigate at least some of the added problems. A reduction of height of the buildings would also help the project to fit in better with the surrounding areas which consist of one or two story homes and one story businesses.

The developer and Mr. Bardenwarper stated in the April 1st meeting that the project adheres to current zoning and plan guidelines, which is true, although previous zoning changes don't really apply to this type of project and were made prior to recent circumstances such as the addition of the VA hospital and the slip ramp from I-264. Now, the developer wants to ignore the parts of the zoning that are not compatible with his plans by asking for variances for building height and setbacks, further stretching the density beyond existing legal limits. Already, this development plant is nearly twice the density of comparable projects in the metro area.

For these reasons, I object to the variances for building height and setbacks. Obviously, something will be developed on this property. A development with about half of the density of this project, about 250 or even 300 condos or apartments, would be much more reasonable, would fit within existing zoning, and meet with much less resistance.

Thank you,

John Hicks
[4924 Grantham Place](#)
[Louisville, KY 40222-6414](#)

St. Germain, Dante

From: mthicks@twc.com
Sent: Friday, April 16, 2021 4:38 PM
To: St. Germain, Dante
Cc: Davis, Brian; McCraney, Paula D.; Mayor Kirk Hilbrecht
Subject: Providence Point Development hearing on variances for setback and building height Case20-VARIANCE-0104 & 20-VARIANCE-0167 2020 Herr Lane

Follow Up Flag: Follow up
Flag Status: Flagged

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Subject Property 2020 Herr Lane
Case Number: 20-VARIANCE-0104 & 20-VARIANCE-0167
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 request for variances for the proposed Providence Point Apartments project on Herr Lane. I live at 4924 Grantham Place in the City of Crossgate near Brownsboro Road and Herr Lane.

I request that the variances be rejected. My main concerns about this proposed project are: (1) increased traffic, and (2) density and building heights.

I think this project will result in increased traffic that will not be alleviated by the developer's proposed changes to Herr Lane, especially now that the state has said they cannot justify a traffic light at the entrance to the property across from Ballard High School. This will increase the risk of accidents and gridlock in this area.

The developer has asked for variances to allow the project to go beyond the normal setbacks and to have taller buildings than allowed by the zoning. Both result in increasing the density of the project. The developer has proposed 3 and 4 story buildings that are not in keeping with the surrounding area that has a lot of residential houses that are 1 and 2 story.

While I realize that something will be built on this property, a reduction to the proposed plan to reduce the height of the buildings and build within the existing setbacks would reduce the density and help it fit in better with the surrounding area which would be more reasonable. This would also reduce the impact on traffic some.

For these reasons, I request that the variances be denied.

Sincerely yours,

Marsha Theiss Hicks
4924 Grantham Place
Louisville, KY 40222-6414

mthicks@twc.com
502-494-7836

St. Germain, Dante

From: Jackie T. Gedrose <jgedrose@bellsouth.net>
Sent: Sunday, April 18, 2021 1:37 PM
To: St. Germain, Dante; McCraney, Paula D.
Subject: 20-DDP-0045 Zoning Variance request 20-Variance-0104

Follow Up Flag: Follow up
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My name is Jackie Gedrose and I reside at 7108 Wesboro Road, Louisville, KY 40222. My street intersects with Herr Lane, directly across from the south east corner of the proposed development. I am writing to implore you to deny the request in building height increase as requested in this variance.

Overall, Hagan Properties' justifications for this variance are bogus and condescending in nature to the residents of areas surrounding the Herr Lane Corridor from KY 22 to Westport Road. His first justification alleges that the only properties affected are commercial and completely ignores the residents of the immediate surrounding area. In all of their justifications for waivers and variances and traffic studies, there is no mention of the thousands of residences in the Herr Lane Corridor. Driving down Herr Lane you will see a mixture of ranch, cape cod, farmhouse and two story homes. There are no buildings in this corridor over two stories. The immediate surrounding areas affected include Thornhill, Crossgate, Graymoor-Devondale, Northfield, Bancroft, Old Brownsboro Place and unincorporated portions of Wesboro Road, Lynn Way, Maria Avenue, Keisler Way and Greenlawn Road and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

Thousands of residents in each of these neighborhoods will be adversely affected if the essential character of the general vicinity is permitted to change, again, at the whim of the developer. These citizens of these neighborhoods have made considerable investment in their homes, with a key selling point of the look and feel of the neighborhood (including building heights), serving in their decision to purchase. The residents do not want imposing 50 foot tall buildings with the density of 27.43 units per acre in their backyard.

Their second justification, which also disavows any affect on the residential neighbors, is basically because the property is now part of a Town Center Form District, the property was zoned R-4 until 1991 when Stallings sold it, and the 5 feet "represents a design alteration that arguably naturally improves aesthetics". If we are talking 'aesthetics', the additional 5 feet, to a height of 50 feet is not aesthetically pleasing as you drive on Herr Lane.

Denying this request will not deprive the applicant reasonable use of the land, rather it would hold the applicant responsible for the reasonable use of this land, which is conforming to the current standards in height so this development fits in the surrounding areas. The developer can still maintain "contemporary design preferences of greater ceiling heights" by making edits to their plans.

This developer is experienced and knew the regulations before any plans were on the drawing board.. His plans should have followed these regulations from the start instead of asking for more and more waivers and variances. He knew the property included 3 different zones. His last approved development on this property included eleven three story buildings.

The assertion that denying this variance “would create unnecessary hardship” merely means that he was counting on getting his way and not following the regulations. The effect of approving this variance, and the others applied for, is to put the legacy of the Hagan family before the interests of thousands of residents surrounding this property in the cities of Thornhill, Bancroft, Graymoor-Devondale, Old Brownsboro Place, and the unincorporated areas of Brownsboro Meadows, Wesboro Road, Lynn Way, Maria Avenue, Keisler Way and Greenlawn Road.

Jackie Gedrose

St. Germain, Dante

From: Mary Stone <mary@grantdoor.com>
Sent: Sunday, April 18, 2021 2:39 PM
To: McCraney, Paula D.
Cc: St. Germain, Dante
Subject: Zoning variance objection for Providence Point development
Attachments: Providence Point Zoning Variance Objection 4.21.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

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Hello Paula. I hope all is well with you. I was excited to read in your newsletter today that you've gotten your second vaccine! My second shot is Tuesday.
Attached please find my formal objection to the zoning variance for Providence Point. I appreciate all you do for our city!!

Regards,
Mary

Mary Stone 502-259-8872



April 18, 2021

Board of Zoning Adjustments

Louisville Metro Council District: 7 - Paula McCraney paula.mccraney@louisvilleky.gov

Case Manager: Dante St. Germain dante.st.germain@louisvilleky.gov

RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those holding the fate of our Neighborhood in your hands,

My name is Mary Stone and I live at 2407 Chatsworth Lane. I am a resident of the city of Old Brownsboro Place. I'm writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the [justification](#) for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature but ignores the residents of the immediate surrounding areas: Thornhill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

The thousands of residents in each of these neighborhoods will be adversely affected if the essential character of the general vicinity is permitted to change, again, at the will of the developer. The citizens of these neighborhoods have made considerable investment in their homes, with a key selling point of the look and feel of the neighborhood (including building heights), serving in their decision to purchase. Simply put, the residents do not want imposing apartment buildings in their backyards. The residents should not be collectively disenfranchised at the whim of a developer seeking to place dense apartment buildings in their midst.

The proposed height increase is yet another circumvention of the requirement of the zoning regulations in this area. Permitting this change would be a further deviation from the Town Center form District and is detrimental to the neighborhood. This property has evolved to the current zoning after a series of zoning changes, which have been granted in the past. To continue to layer zoning changes and deviations on top of one another at the developer's request is to abandon the residents of the areas.

Denying this request will not deprive the applicant of the reasonable use of the land, rather it would hold the applicant responsible for the reasonable use of this land, which is conforming to the current standards in height so that this development fits into the surrounding areas. The developer can still maintain "contemporary design preferences of greater ceiling heights" by making edits to their plans. The assertion that denying this variance would "deprive the applicant of the reasonable use of the land or would create unnecessary hardship" is to put the legacy of the Hagan family before the interests of the thousands of residents surrounding this property in the cities of Thornhill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor.

Sincerely,

Mary Stone

St. Germain, Dante

From: phil ardery <pardery@bellsouth.net>
Sent: Sunday, April 18, 2021 3:33 PM
To: Cathy Kuhn
Cc: Harris, Marilyn S.; St. Germain, Dante
Subject: Re: Please Ensure Affordable Housing in Herr Lane Development

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Thank you, Dr. Kuhn:

As is permitted under law, these 19+ acres with a current PVA-assessed value of almost \$6 million are currently classified as "agricultural" for tax purposes. For a decade, the owners have been paying the City only a few tax dollars each year. Louisville Metro is eager to receive more, and surely this development proposal will be approved.

If I understood correctly what I was told by Dante St. Germain, project manager for the proposal at Metro Planning and Design, it's within the power of the Planning Commission TO REQUIRE affordable housing as part of an approved plan.

I am hoping you and Ms. Harris and others with influence can pull the levers to help get this done.

Thank you,

Phil Ardery
7404 Greenlawn Rd

On Sunday, April 18, 2021, 01:56:45 PM EDT, Cathy Kuhn <ckuhn@metropolitanhousing.org> wrote:

Thanks very much for reaching out Phil. We are certainly interested in advocating that some of these units be affordable, as it is a lovely area to live and we would like to expand access to housing for all citizens in all areas of the city. Happy to talk more with you and Marilyn about this and/or about the meeting this week if that might help.

Many thanks,

Cathy

On Fri, Apr 16, 2021 at 10:13 PM phil ardery <pardery@bellsouth.net> wrote:

Dear Dr. Kuhn:

I am a neighbor of the proposed 520-apartment Herr Lane development that will likely be awarded variances in a meeting next week, clearing the way for groundbreaking.

Marilyn Harris, director of the Office of Housing, was kind enough last November to let me know you are joining with her to do what's possible to make affordable housing part of the final approved plan. The property is across the street from Ballard High School and within walking distance to Kammerer Middle School and Wilder Elementary School. Here's an opportunity to work toward school diversity goals without busing!

Thank you for making this a priority effort for your team. A good backgrounder for those not familiar with the project is a WDRB story telecast last year:

https://www.wdrb.com/news/wdrb-video/520-high-end-apartments-planned-for-vacant-herr-lane-site/video_19ee9fc5-6f16-52a3-bf38-b4902c8b32b3.html

Regards,

Phil Ardery
7404 Greenlawn Rd
40222

--



Cathy Kuhn, PhD
Executive Director
502.584.6858 (office)
603.325.1686 (cell)
ckuhn@metropolitanhousing.org

St. Germain, Dante

From: Annie McCammon <anniemccammon@gmail.com>
Sent: Sunday, April 18, 2021 6:23 PM
To: McCraney, Paula D.; St. Germain, Dante
Subject: RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

Follow Up Flag: Follow up
Flag Status: Flagged

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To those holding the fate of our Neighborhood in your hands,

My name is Annie McCammon, my address is 7310 Glen Arbor Road, Louisville, Kentucky 40222. I am a resident of the city of Graymoor-Devondale. I'm writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the justification for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

The thousands of residents in each of these neighborhoods will be adversely affected if the essential character of the general vicinity is permitted to change, again, at the will of the developer. The citizens of these neighborhoods have made considerable investment in their homes, with a key selling point of the look and feel of the neighborhood (including building heights), serving in their decision to purchase. Simply put, the residents do not want imposing apartment buildings in their backyards. The residents should not be collectively disenfranchised at the whim of a developer seeking to place dense apartment buildings in their midst.

The proposed height increase is yet another circumvention of the requirement of the zoning regulations in this area. Permitting this change would be a further deviation from the Town Center form District and is detrimental to the neighborhood. This property has evolved to the current zoning after a series of zoning changes, which have been granted in the past. To continue to layer zoning changes and deviations on top of one another at the developers request is to abandon the residents of the areas.

Denying this request will not deprive the applicant of the reasonable use of the land, rather it would hold the applicant responsible for the reasonable use of this land, which is conforming to the current standards in height so that this development fits into the surrounding areas. The developer can still maintain "contemporary design preferences of greater ceiling heights" by making edits to their plans. The assertion that denying this variance would "deprive the applicant of the reasonable use of the land or would create unnecessary hardship" is to put the legacy of the Hagan

family before the interests of the thousands of residents surrounding this property in the cities of Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor.

Sincerely,

Annie McCammon

St. Germain, Dante

From: Sarah Metzmeier <sarahmetz@gmail.com>
Sent: Sunday, April 18, 2021 11:39 PM
To: St. Germain, Dante
Subject: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

Follow Up Flag: Follow up
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RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those considering the zoning variance request,

My name is Sarah Metzmeier; my address is 7110 Wesboro Road. I am a resident of the Wilder Estates neighborhood. I'm writing to strongly encourage you to DENY THE REQUEST for variance in building height increase as requested in this case.

Overall, the [justification](#) for this variance is without merit. It justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor. The thousands of residents in each of these neighborhoods will be adversely affected if the essential character of the general vicinity is permitted to change, again, at the will of the developer.

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Denying this request will not deprive the applicant of the reasonable use of the land, rather it would hold the applicant responsible for the reasonable use of this land, which is conforming to the current standards in height so that this development fits into the surrounding areas.

Thank you for your time and your consideration.

Sincerely,

Sarah Metzmeier
7110 Wesboro Road
Louisville, KY 40222

Sent from my iPhone

St. Germain, Dante

From: Jess Metzmeier <jtmetz@gmail.com>
Sent: Sunday, April 18, 2021 11:48 PM
To: McCraney, Paula D.; St. Germain, Dante
Subject: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

Follow Up Flag: Follow up
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Councilwoman McCraney and Case Manager St. Germain,

My name is Jess Metzmeier. My address is 7110 Wesboro Road, Louisville, Kentucky 40222.

I am writing to express my objection to the requested zoning variance for the Providence Point Development and to sincerely ask you for your assistance in rejecting the developer's zoning request.

The developer justifies the variance by stating that only neighboring corporate structures will be affected. However, my home, and indeed that of many of my neighbors, is equally proximal to the proposed development. Moreover, the requested variance will adversely affect the quality of life in the residential communities adjacent to the development.

The size and stature of the proposed development would represent significant and unnecessary harm to residential. As a neighbor, I am not opposed to development on the site, but I am opposed to development of the proposed magnitude. Therefore, I sincerely request your support in rejecting the request for zoning variance.

Thank you,
Jess Metzmeier

St. Germain, Dante

From: Rebecca LaMar <drrebeccalar@gmail.com>
Sent: Monday, April 19, 2021 10:10 AM
To: St. Germain, Dante; paula.mccraney@louisville.gov
Subject: Providence point

Follow Up Flag: Follow up
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Board of Zoning Adjustments
Louisville Metro Council District: 7 - Paula McCraney paula.mccraney@louisvilleky.gov
Case Manager: Dante St. Germain dante.st.germain@louisvilleky.gov
RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those holding the fate of our Neighborhood in your hands,

My name is **Rebecca LaMar and i live at 7109 Greenlawn Road, Louisville KY 40222**. I am a resident of the city of Graymoor-Devondale. I'm writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the [justification](#) for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

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The proposed height increase is yet another circumvention of the requirement of the zoning regulations in this area. Permitting this change would be a further deviation from the Town Center form District and is detrimental to the neighborhood. This property has evolved to the current zoning after a series of zoning changes, which have been granted in the past. To continue to layer zoning changes and deviations on top of one another at the developers request is to abandon the residents of the areas.

Denying this request will not deprive the applicant of the reasonable use of the land, rather it would hold the applicant responsible for the reasonable use of this land, which is conforming to the current standards in height so that this development fits into the surrounding areas. The developer can still maintain "contemporary design preferences of greater ceiling heights" by making edits to their plans. The assertion that denying this variance would "deprive the applicant of the reasonable use of the land or would create unnecessary hardship" is to put the legacy of the Hagan family before the interests of the thousands of residents surrounding this property in the cities of Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor.

Sincerely,

St. Germain, Dante

From: Davis, Brian
Sent: Monday, April 19, 2021 7:22 AM
To: St. Germain, Dante
Cc: Haberman, Joseph E
Subject: FW: Public Hearing Item Comment Form [#72]

Follow Up Flag: Follow up
Flag Status: Flagged

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

From: Louisville Metro <no-reply@wufoo.com>
Sent: Sunday, April 18, 2021 10:34 PM
To: Haberman, Joseph E <Joseph.Haberman@louisvilleky.gov>
Cc: Davis, Brian <Brian.Davis@louisvilleky.gov>
Subject: Public Hearing Item Comment Form [#72]

Name * Patricia Roles

Address * 
2208 Wynnewood Circle Apt, suite, floor, etc.
Louisville, KY 40222
United States

Email pbroles@me.com

Phone (502) 930-1963
Number

What is the #20-DDP-0045
case number
of the
development
application?

*

Comments *

Hagan Properties is seeking approval to build an apartment complex of 520 apartments on 19 acres on Herr Lane directly across from Ballard High School. My family and I have lived in Northfield on Brownsboro Rd for 45 years. Each year the traffic become busier and more congested. My husband, Alan, served in the US Marine Corps JAG. We want our Veterans to get the best health care possible. The federal VA bought 34 acres of "green land" in 2012 next to 264 and the race to develop this area started. The VA is planning to a hospital a building that will consist of the East Bar at 112' tall and the West Bar at 172" tall plus a parking garage for 2,600 cars and other vehicles! These buildings will dwarf the 100 homes in the City of Crossgate. The VA will add 11,000 cars and vehicles to our already congested traffic of 11,000 cars, trucks and school buses every day! HWY 42 from the 264 to Lime Kiln Lane will be gridlocked due to this volume of traffic. In 2017, Representative Angel Leet from Metro Louisville Council District 7 that includes the VA hospital, Ballard High School (1,900 cars every day) plus three other schools that use Herr Lane. The traffic study found that 11,000 to 13,000 cars, trucks and school buses use Herr Lane every day from HWY42 to Westport Rd. The Kentucky Transportation Cabinet has said that a traffic light at the entrance to BHS and the Providence Point apartments would not be allowed! Even with turning lanes this is a traffic disaster waiting to happen! My suggestion is that the KYTC puts in a traffic light at this location to be used from 7am to 9am and again from 2:30pm to 5:30pm! Is this possible to alleviate some of the traffic gridlock? How is the Planning Commission and the Board of Zoning Adjustments able to find a way to approve the application from Hagan Properties to build Providence Point apartment complex of 520 apartments? Please ask Hagan Properties to scale back their Providence Point apartment complex to better fit into the neighborhood. The slip ramp from 264 to HWY 22 and the ramps from 264 to Westport Road have only made traffic worse, not better. Please help the people who live in this area and send their children to school every day to have a consistent quality of life. Traffic congestion and more apartments are not needed in this area. I could go on to discuss the flooding in Thornhill, a quiet neighborhood, of HWY 22 and across from Ballard High School and other development that is slated to take place on Herr Lane that will only add to the traffic chaos and degrade the quality of life for the residents in this area. My friends will be discussing these other issues! Please do not approve the Providence Point apartment complex of 520 apartments on Herr Lane across from Ballard High School. Thank you for your consideration of my request. Sincerely, Pat Roles

Would you Yes
like the
Louisville
Metro case
manager to
contact you
to discuss

your
comments? *

Board of Zoning Adjustments

Louisville Metro Council District: 7 - Paula McCraney paula.mccraney@louisvilleky.gov

Case Manager: Dante St. Germain dante.st.germain@louisvilleky.gov

RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those holding the fate of our Neighborhood in your hands,

My name is Melissa Nemtsov, my address is 7110 Greenlawn Rd, Louisville, KY 40222. I am a resident of the city of Graymoor-Devondale. I'm writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the justification for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

The thousands of residents in each of these neighborhoods will be adversely affected if the essential character of the general vicinity is permitted to change, again, at the will of the developer. The citizens of these neighborhoods have made considerable investment in their homes, with a key selling point of the look and feel of the neighborhood (including building heights), serving in their decision to purchase. Simply put, the residents do not want imposing apartment buildings in their backyards. The residents should not be collectively disenfranchised at the whim of a developer seeking to place dense apartment buildings in their midst.

The proposed height increase is yet another circumvention of the requirement of the zoning regulations in this area. Permitting this change would be a further deviation from the Town Center form District and is detrimental to the neighborhood. This property has evolved to the current zoning after a series of zoning changes, which have been granted in the past. To continue to layer zoning changes and deviations on top of one another at the developers request is to abandon the residents of the areas.

Denying this request will not deprive the applicant of the reasonable use of the land, rather it would hold the applicant responsible for the reasonable use of this land, which is conforming to the current standards in height so that this development fits into the surrounding areas. The developer can still maintain "contemporary design preferences of greater ceiling heights" by making edits to their plans. The assertion that denying this variance would "deprive the applicant of the reasonable use of the land or would create unnecessary hardship" is to put the legacy of the Hagan family before the interests of the thousands of residents surrounding this property in the cities of Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor.

Sincerely,

Melissa Nemtsov

Board of Zoning Adjustments

Louisville Metro Council District: 7 - Paula McCraney paula.mccraney@louisvilleky.gov

Case Manager: Dante St. Germain dante.st.germain@louisvilleky.gov

RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those holding the fate of our Neighborhood in your hands,

My name is Dmitry Nemtsov, my address is 7110 Greenlawn Rd, Louisville, KY 40222. I am a resident of the city of Graymoor-Devondale. I'm writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the justification for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

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Sincerely,

Dmitry Nemtsov

St. Germain, Dante

From: John Uhl <juhl@twc.com>
Sent: Tuesday, April 20, 2021 11:37 AM
To: McCraney, Paula D.; St. Germain, Dante
Subject: RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

Follow Up Flag: Follow up
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Board of Zoning Adjustments

Louisville Metro Council District: 7 - Paula McCraney paula.mccraney@louisvilleky.gov

Case Manager: Dante St. Germain dante.st.germain@louisvilleky.gov

RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those holding the fate of our Neighborhood in your hands,

My name is John Joseph Uhl, residing at 3704 Quial Hollow Ct. Louisville, Ky. 40241. I am writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the [justification](#) for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

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Sincerely,

John J Uhl

St. Germain, Dante

From: carol raskin <cllraskin@yahoo.com>
Sent: Wednesday, April 21, 2021 10:13 AM
To: McCraney, Paula D.
Cc: St. Germain, Dante
Subject: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

Follow Up Flag: Follow up
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Board of Zoning Adjustments
Louisville Metro Council District: 7 - Paula McCraney
Case Manager: Dante St. Germain

RE: Providence Point (20-DDP-0045) Development, Zoning Variance Request: 20-VARIANCE-0104

To those holding the fate of our Neighborhood in your hands,

My name is Carol Raskin, 2111 Croghan Cross, Louisville KY 40207 (Indian Hills). I have a direct interest in this matter, because it will add an immense amount of traffic to an already heavily travelled 2-lane road, Herr Lane. It is the most direct route to and from Lyndon and Westport Village for those of us who do not travel on the Watterson. The proposed development is also across the street from the entrance to a large public high school, and close to Wilder Elementary School. Allowing the development closer to Herr Lane, is totally opposite of what will need to be done, if this development is permitted. Herr Lane will need at a minimum a third lane for turning or perhaps 2 more lanes, to offset the increased traffic and protect the students. I'm writing to implore you to deny the request for variance in building height increase as requested in this case.

Overall, the justification for this variance is tone deaf, cherry-picked and condescending in nature to the residents of areas surrounding this development. The justification presupposes that the only affected properties are commercial in nature, but ignores the residents of the immediate surrounding areas: Thornhill, Crossgate, Indian Hills, Windy Hills, Graymoor-Devondale, Northfield, Old Brownsboro Place, Bancroft and Glenview Manor and glosses over the fact that all the other commercial concerns in the area adhere to zoning standards which are being requested for variance here.

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Sincerely,
Carol Raskin

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

April 13, 2021

LETTER OF PROTEST TO THE METRO LOUISVILLE
PLANNING COMMISSION RE: 20-DDP-0045 Plan 032221
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.

1. The public has been denied due process by the selected procedure of the Planning Commission in this case. On April 1, 2021, the Planning Commission waived the presentation of 'substantial evidence' on the critical issues of drainage management and resulting downstream flooding in this case.

2. The Kentucky Constitution protects the property rights of Dennis Dolan as well as other residents along Thornhill Creek. He is currently in a civil lawsuit against MSD and Chief Engineer David Johnson in Jefferson Circuit Court. Civil action No. 17-CI-006803. Section 13 of the Kentucky Constitution prohibits taking private property for public use without prior just compensation.

3. Despite testimony and letters from Mr. Dolan and others, the Planning Commission closed the evidentiary portion without requiring the applicant to meet his burden of proof that his proposed drainage plans are reasonable under the law and will not cause or contribute to downstream flooding.

4. The Planning Commission waived the requirement to actually show what the proposed drainage management plan will be either: a) splitting the Providence Point drainage into an illegal 'off-site' portion and a second 'on-site' portion to be detained, while the 'off-site' portion is accelerated into

the Ballard Basin and Thornhill Creek or, b) proposed future agreement with Jefferson County Public Schools to enlarge the detention capacity of the Ballard Basin to provide the Providence Point detention. The affected public faced with these two options had no idea what is actually proposed.

5. The option explored at the April 1 hearing waived presentation of substantial evidence on the impact and legality of splitting the Providence Point drainage into two separate streams 'off-site' and 'on-site.' Kentucky law recognizes no such distinction and MSD exceeds the scope of its authority in granting Providence Point this preferred privilege. Under controlling Kentucky law, Providence Point is the servient property that must accept the runoff flow from All Peoples Church:

In Klutey v. Commonwealth, Department of Highways, Ky., 428 S.W.2d 766 (1967), our Supreme Court switched from the "common enemy" doctrine to the rule of "reasonable use." The rule of "reasonable use" balances the "common enemy" doctrine (which favors the upper owner) and the "civil law" doctrine (which favors the lower owner). Id. at 769. Under the "reasonable use" rule, the Court views the diffused surface water as a nuisance problem and attempts to balance the "reasonableness of the use by the upper owner against the severity of damage to the lower owner...." Id.

Walker v. Duba, 161 S.W.3d 348, 350 (Ky.App. 2004). Under the law, when the storm water crosses the property line from All Peoples Church to Providence Point, the servient property is bound to accept it unless it is injurious and unreasonable. MSD has no authority to grant an exemption to Providence Point and no authority to cause the 'off-site' drainage to be collected at the property line and accelerated through pipes to the Ballard Basin— **without detention**. This is an unconstitutional grant of special privilege with dire consequences for people downstream of the Ballard Basin. §§ 2, 3 of the Kentucky Constitution.

6. The Planning Commission closed the evidentiary portion to the affected neighbors but opened it up to allow MSD Chief Engineer David Johnson, PE, a Defendant in the civil litigation, to give sworn testimony of a generalized nature about the timing of peak flows in the Ballard Basin.

"I will tell you that detailed numbers have not been done, I've been doing this about two decades and we never went into detailed hydraulic analysis at the preliminary stage, that's something that's a construction detail. I'm sure that whether Gresham Smith or Mindel Scott or whoever that's going to do the construction plans for this job they know to do that, and one thing we told them, we've had meetings with them, we said you know, that despite the fact that you're providing 50 per cent reduction in your detention basin we're also going to look at the outlet to your property, which is that culvert under Herr Lane, we can't increase peak flows there. And I will tell you with my experience, with them detaining 50 per cent grabbing water from (?) yes they're going to speed that up, but I do believe that those hydrographs will not come in at the same time, the off-site water will be in and out of the system before the detention basin gets to its peak. So we're very very confident that the peak flows at the property line will not be increased and will be decreased. And we won't approve the plan if they're not decreased or at least meet the current . . . but that's where the storm water stands at. So we're very aware of these issues so that's why we are putting these extra restrictions on this development."

This testimony fails the test of substantial evidence because it is basically, no evidence.

"Substantial evidence has been defined as evidence which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person. *Id.* In determining whether evidence is substantial, we must take into account anything in the record that fairly detracts from its weight."

Kentucky Board of Nursing v. Ward, 890 S.W.2d 641, 643 (Ky. App. 1994).

Through records and testimony the Planning Commission was made aware that downstream neighbors from the basin and property have been flooded in 1997, 2006 and 2015.

The Planning Commissioners know by records submitted that, neighbors were able to pressure MSD (at the time of the 2011 State Auditor Audit that found MSD had paid million dollar legal fees to bond counsel and internal special counsel) to contract for a hydraulic analysis of the same watershed. A copy was sent to the Planning Commission record. At the time, fall 2011, the MSD Chief Engineer and Executive Director Bud Schardein were both dismissed because the Mayor, members of Metro Council and the public, had lost confidence in them. But here the Planning Commission seems happy to accept the Chief Engineer's assurances that storm water that has flooded residents will be dealt with in future construction plans? The applicant did not carry his burden of proof.

7. David Johnson PE is wrong and obfuscates and omits substantial evidence in his description of the hydrographs that could be proven by showing the study to the Commission:

"And I will tell you with my experience, with them detaining 50 per cent grabbing water from (?) yes they're going to speed that up, but I do believe that those hydrographs will not come in at the same time, the off-site water will be in and out of the system before the detention basin gets to its peak. So we're very very confident that the peak flows at the property line will not be increased and will be decreased."

The error is that the buildings and parking lots of Ballard High School, the stormwater from the streets, Herr Lane and Brownsboro Road and with approval of the 'off-site' diversion of All Peoples Church drainage that is the Providence 'possible' proposal, all these peak flows will occur at the same time and

reach the Chadford Way culverts at essentially the same time. These early peak flows from directly connected impervious areas are the cause of peak flow flooding. The Providence Point plan will exacerbate early peak flow flooding and approval based on this questionable advice of David Johnson is error and denied residents protection of their property. The residents hope there are still members of the Planning Commission that will not accept such paltry demonstrations as meeting the standard of proof required of the applicant.

8. The undisputed history of flooding raises a substantial evidence issue concerning storm water management. MSD's history of sewer overflows that caused it to be sued in a Clean Water Act lawsuit by the EPA and Kentucky Division of Water raise a substantial evidence question regarding the management of waste water discharging from 520 new apartments and related businesses into the existing 12 inch sewer pipe. The applicant was required to produce for inspection the lateral extension application so that residents could object to the flow and management. The 12 inch existing sewer pipe is likely not sufficient for handling the flows and residents have a right to know if the creek will be dug up to install a new sewer line. The applicant has not addressed these impacts with substantial evidence.

9. This storm water plan converts runoff from All Peoples Church into directly connected runoff to Thornhill Creek. The hydraulic impact should not contribute to early peak flooding, and if it does, the Church becomes a part of MSD's unreasonable storm water management scheme that has caused property injury to affected property owners. MSD and JCPS have never obtained a permit under the Kentucky Dam Safety Act for the Ballard basin and it is operated in violation of statute. KRS 151.250. Please add these comments to the formal record and post them in the digital record of 20-DDR-0045.

Sincerely,



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

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

City of Thornhill Mayor Julea Lawson