October 3, 2022

**Comments of Jim Rossi to Metro Nashville Planning Commissioners and Staff,**

**In Opposition Proposed Policy Change to Bellevue’s Community Plan: Part I**

**2021SP-061-001 & 2021CP-006-001**

Dear Planning Staff and Commissioners:

My name is Jim Rossi, and I am firmly opposed to this proposed policy change for Bellevue's Community Plan, as well as the upzoning of the parcel at 1084 Morton Mill Rd. for the high-density apartments known as “Ariza Bellevue.”

My family and I live at 7704 Scenic River Lane, on the bend of the Harpeth River immediately downstream from this proposed project site. We moved to Bellevue from Green Hills two years ago, because we expected our neighborhood and community was committed to maintaining a balance between suburban growth and rural preservation. Moving to Bellevue added a considerable daily commute over I-40 to our daily schedule, but we bought our home because we keep horses and our neighborhood (designated T2 Rural and zoned AR2) provides an opportunity for a rural use while still close to many of the suburban amenities that our family enjoys. Like the parcel at 1084 Morton Mill Rd., the T2 Rural transect and AR2 zoning (two homes per acres) applies to parcels in our neighborhood.

      Two issues are before the Planning Commission, and have been combined for purposes of placing this developer’s proposal on a future meeting agenda:  1) a request to amend Bellevue's Community Plan to apply the T3-NE transect (rather than T2 Rural) to this parcel (2021CP-006-001); and 2) a proposed zoning change from AR2 (the current designation) to the developer's proposed SP (2021SP-061-001).

Part I of my comments below highlights why the Planning Commission should not amend the current T2 Rural transect policies for this parcel in Bellevue’s Community Plan. As you are aware, this is a complicated proposal that raises important issues for Bellevue and for Nashville, so I hope you can excuse the detail and length of my comments. In Part II of my comments (to be filed when appropriate), I will discuss issues related to the proposed SP, which as proposed I also firmly believe that the Planning Commission should reject.

**A. Background to this Parcel and its Surrounding Area in Bellevue**

Nashville’s approach to land regulation uses form-based transect policies to help promote predictability and consistency in decisionmaking rather than favor ad hoc changes to the general plan (NashvilleNext, as reflected in various community plans) to accommodate specific development proposals that require zoning changes. In evaluating a proposed zoning change, the Planning Commission's inquiry is not limited to merely determining that existing regulations would permit a proposed land use. Judicial decisions recognize that the policies in a Community Plan are relevant to how the Commission decides to exercise its professional judgment to rezone a parcel of property for a development. *Hudson, et al. v. Metro*, No. M2019-01081-COA-R3-CV (Tenn. Ct. App. 2020).

Before making a decision to change policies for or to "upzone" a parcel, it is important to consider the context and history of the land. 1084 Morton Mill Rd. has been zoned agricultural preservation as far back as anyone can remember, and no property owner has expectations otherwise. Before reviewing this request, please look carefully at a map. Examine how the Harpeth River meanders and flows through Williamson County and then through Bellevue. You will see that 1084 Morton Mill Rd. is a unique parcel located on a sharp bend of the Harpeth River.

Several features of this parcel and its surroundings make this upzoning request *sui generis*:

* The Harpeth River meanders through residential neighborhoods in Bellevue and has a history of repeated, and sometimes devastating, riverine flooding. By definition, a free flowing river lacks traditional flood control via dams and presents special challenges related to flood management for land parcels adjacent to the river, especially where there is a *foreseeable risk of extreme flooding*.[[1]](#footnote-1) If approved, this proposal would be the first high-density apartment development on the banks of the Harpeth River. This makes the treatment of this proposal an important precedent going forward for how land regulators in both Davidson County and upstream Williamson County will approach flood resilience along the Harpeth River as they address a new generation of growth at the outskirts of Nashville at the same time that the frequency of intense rainfall events is increasing.[[2]](#footnote-2)
* As proposed, the Ariza Bellevue apartments would connect via a bridge to Coley Davis Rd. in the .2% annual flood risk area (what is also known as the “500-year flood map”). This connection would serve as the sole point of vehicular access to any major corridor for 600-800 new apartment residents. More than 2000 downstream residents already depend on Coley Davis Rd. as their sole access to a major corridor. Near Highway 70S, the same end of Coley Davis also serves as the sole vehicular access point for a Metro recycling facility, a hotel, and a dozen or so soccer fields. Given these uses of Coley Davis Rd., traffic is already at a standstill at times outside of weekday rush hour peaks. No significant improvements related to flood risk or traffic mitigation have been proposed—by this developer or Metro—on Coley Davis Rd.
* Looking again at a map, you can see that almost every road connecting residential neighborhoods in Bellevue along the Harpeth River is limited to two lanes, including Coley Davis Rd. This road infrastructure adjacent to the river lags in expansion for multiple reasons, including a historical lack of development intensity, environmental constraints, and repair costs associated with recurring flooding. By contrast, other areas of Bellevue, such as portions of 70S and other commercial corridors with three or more lanes, have been designed with capacity to support infill development.
* Beyond providing the only current access route for more than 2000 residents, Coley Davis Rd. provides the sole point of access for two kinds of *critical infrastructure*.[[3]](#footnote-3) First, more than 250 elderly residents in assisted and independent living depend entirely on Coley Davis Rd. for emergency vehicle access, as do the long-term care staff and families of nursing home residents. Second, Coley Davis Rd. provides the sole means of vehicular access for TVA’s 500-161 kv Davidson transmission substation (an interconnection with TVA that provides a significant amount of the bulk power to NES to serve the entire population of Nashville). This is adjacent to the Nashville Electric Service McCrory Substation, which serves as a retail distribution grid for approximately 9100 retail customers. Because Coley Davis Rd. is the sole vehicular means of access to critical infrastructure the road itself—including the point of interconnection with proposed new bridge infrastructure—should be considered a form of critical infrastructure for planning purposes.[[4]](#footnote-4) Building and maintaining critical infrastructure, including a new bridge interconnection in a .2% annual flood risk area, presents a foreseeable risk of harm to property and safety and is not consistent with best practices for emergency management planning.[[5]](#footnote-5)
* During the 2010 flood, significant portions of Coley Davis Rd. were under more than three feet of water, presenting a serious danger to anyone attempting to cross it. Several TVA transmission towers collapsed and NES’s McCrory Substation was under three to four feet of water and suffered significant damage. Repair vehicles were unable to reach these facilities for days. Much of Coley Davis Rd., including the portion that would connect to this proposed complex via bridge, sits in a .2% annual flood risk area.[[6]](#footnote-6) During the 2010 flood more than 2000 residents downstream were stranded and forced to shelter in place for days. Downstream residents suffered devastating property losses during the 2010 flood (a .1 to .2% annual flood event), and also experienced damaging floods (and significant property loss) in 2019 and 2021—both of which were 1% annual flood risk events. Continued flooding on and around 1084 Morton Mill Rd. is *foreseeable* (under both the 1% and .2% annual flood risk measures), presenting a prospect of future legal liability related to any additional development in the area that contributes to flooding or adds to flood management difficulties for existing residents.

**B. Bellevue's Community Plan, Its Green Network, and the Existing T2 Transect for this Parcel Should Not Be Amended**

 At the outset, it is important to note that the Bellevue Community Plan (adopted in 2017 as a part of NashvilleNext) specifically identifies 1084 Morton Mill Rd. a part of its “Green Network” in the concept map. This Green Network designation is given to land with sensitive environmental features that has an important flood resilience role for the community. P. 14. Green Network areas follow sensitive environmental features and rural areas that provide natural resources, ecological services (like cleaning air and water), and passive and active recreation opportunities. The Concept Map for Bellevue consistently places undeveloped parcels on the Harpeth River in the Green Network (including the parcel at 1084 Morton Mill Rd.) primarily because of their sensitive features and flood management role.

After designating 1084 Morton Mill Rd. as part of the Green Network, the Bellevue Community Plan clearly applies the T2 Rural transect to the parcel. This parallels the transect treatment of many other low-density parcels with similar topographical features that sit adjacent the Harpeth River.

Bellevue’s Community Plan provides no shortage of options for high-density housing development. According to the Plan, “In the Bellevue community, Transition and Infill areas include areas around existing centers and along corridors, such as Old Hickory Boulevard, Highway 70 between centers, and Charlotte Pike. The Bellevue community also has a Transition policy area located east of One Bellevue Place (the former location of the Bellevue Mall), along Sawyer Brown Road.” P. 17. The clear policy of Bellevue’s Community Plan is to promote high-density development where there is road and other infrastructure to support it. In addition to new high-density development, redevelopment including high-density apartments has already occurred at Bellevue One on 70S and is under way at the location of the former Sams Club at the corner of I-40 and Old Hickory as well. Many parcels along 70S with aging commercial buildings are expected to undergo redevelopment with more high-density housing in the coming decade too.

Suburban transects throughout Bellevue’s Community Plan provide stability for many neighborhoods and have encouraged homeowners to invest in living and raising their families in neighborhoods with a low-density suburban feel. An example of this is Morton Mill Rd., where zoning supports single family homes in the residential neighborhoods surrounding the parcel at 1084 Morton Mill Rd.

Many parcels in Bellevue, including 1084 Morton Mill Rd., are designated under the T2 Rural transect. T2 Rural has allowed many homeowners in Bellevue (including my family) to invest in small farms, owning several acres and supporting activities such as keeping horses. Bellevue prides itself on preserving the diversity of land forms throughout the community. As our Community Plan states, “Across the community, significant differences in rural and suburban character exist . . . . These differences are one of the strengths of the Bellevue community, and community members are clearly committed to preserving this diversity.” P. 7. This is exactly what attracted my family to invest in purchasing a home in Bellevue.

 As a T2 Rural transect parcel, 1084 Morton Mill Rd. currently is used for an economically profitable horse farm that is operated by a tenant who leases and lives on the premises. This is a viable T2 Rural land form for this parcel:

“Unlike small rural towns in outlying counties, Davidson County’s T2 Rural areas are near, and sometimes adjacent to, T3 Suburban and even T4 Urban areas. This proximity to more intensely developed areas means T2 Rural residents can enjoy convenient access to nearby retail and services while also living in a rural setting. Combined with low-density development patterns, convenient access to retail and services diminishes the market demand for, as well as the need to accommodate, extensive commercial development.”

III-CCM-103. One purpose of T2 transect is to “[p]ermit grouping of development on less environmentally sensitive soils *that will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for development. . . .*” Id. at 104 (emphasis added). Significant portions of this parcel are in the flood plain and the current use of the land for a commercial horse farm allows this land to serve as pastureland for dozens of horses owned by clients of the current tenant. This land form complements surrounding neighborhoods (many of which have rural parcels and also have horses) and minimizes the burden this parcel places on road and flood management infrastructure.

 The T2 transect is widely used throughout Bellevue to preserve open space, manage flooding, and spread the burdens of growth on infrastructure. According to the Bellevue Community Plan:

“Through the experience of the 2010 flood and other flooding events, Nashville has learned the value of preserving woodlands, steep slopes, floodways, floodplains, and natural wetland areas. *Preservation of these areas aids absorption of excess water, protects and improves water quality, provides habitat for wildlife, and provides attractive natural areas.* Nashville/Davidson County places restrictions on buildings in the floodway and floodplain, and has come to value the use of land adjacent to the community’s waterways for park land, including greenways, and natural habitat.” P. 11 (emphasis added).

T2 Rural is intended to designate a permanent, viable and desirable form of character for parcels throughout Bellevue, including 1084 Morton Mill Rd.:

“The transect system is used to ensure diversity of development in Nashville/Davidson County. *It recognizes that portions of the Bellevue community are suburban and other neighborhoods are rural in character and should be encouraged to remain that way.* Both development patterns are viable and desirable, but thoughtful consideration must be given to development proposals to ensure that these different forms of development are maintained.” P. 21 (emphasis added).

Policies in Bellevue’s Community Plan use transects, such as T2 Rural, to help spread the burdens of new development on vehicular traffic throughout the community, rather than focusing these impacts disproportionately on a single area, such as Coley Davis Rd.

“The suburban development pattern has created the *need to mitigate traffic congestion*, improve the mixture of land uses, add other transportation options, such as walking and biking, and find ways to preserve rural areas and environmentally sensitive features. Striking a balance between the pressures for development and conserving the natural beauty found throughout the area is one of the Bellevue community’s greatest challenges.” P. 24 (emphasis added).

The T2 Rural transect for 1094 Morton Mill is also harmonious with surrounding existing uses of land—low density residential homes—as allowed for adjacent parcels under the suburban transect.

 The developer’s website claims that the T2 Rural transect for 1084 Morton Mill Rd. was a “holding place” assigned by the Planning Commission until an attractive bid is made to develop it.[[7]](#footnote-7) This claim is not consistent with the history of land regulation for this parcel. The parcel at 1084 Morton Mill Rd. has been zoned agricultural as long as anyone can remember. Treating the application of the T2 transect to this parcel as a “holding place” is inconsistent with placing this parcel in the Green Network and with the policies in Bellevue’s Community Plan.

On the next downstream bend of the Harpeth River (where my family lives) land with almost identical topographic characteristics to the parcel at 1084 Morton Mill Rd. is also designated T2 Rural. In my neighborhood, this transect and accompanying AR2 zoning have allowed a 9-home subdivision that is accessible via a private driveway across CSX tracks. Applying the T2 Rural transect to 1084 Morton Mill Rd. helps to advance policies repeatedly identified in the Bellevue Community Plan such as preserving flood resilience on the sensitive bends of the Harpeth River and spreading the burdens of growth throughout Bellevue in areas where road infrastructure is constrained. The developer’s claim that T2 Rural is a holding place for this parcel—not a deliberate policy choice—also rejects the very idea of form-based zoning in NashvilleNext, which treats the Concept Map and transects for land parcels as guidelines for future land regulation decisions.

 Should the Planning Commission wish to consider other development options for this parcel, it is not constrained to T3-NE. The existing T2 Rural transect is more consistent with the land form design of the Concept Map and the policies articulated in Bellevue’s Community Plan for this parcel. To the extent that a horse farm at 1084 Morton Mill Rd. is no longer viable, development of new residential homes are allowed under the current T2 Rural transect, which supports AR2 zoning (one home per two acres). As many as 10-20 homes could be constructed in a hamlet style on this parcel under existing zoning, and made accessible via a modest adjustment to existing private driveway across the CSX tracks (similar to the hamlet form development on Scenic River Ln.).[[8]](#footnote-8) If the Planning Commission should determine that there is a need to shift away from T2 Rural to facilitate or promote higher density development on this parcel, transect options other than T3-NE would provide a better for surrounding neighborhoods. The T3-NE transect is clearly designed to apply to new development where there are *multiple* points of vehicular access, which are presumably not feasible for this parcel due to the cost of building multiple bridges coupled with the man-made constraint of railroad tracks, making other transect policies more appropriate to the parcel.

Finally and no less important, in evaluating whether to amend Bellevue’s Community Plan it is appropriate for the Planning Commission to consider the interests and preferences of neighboring property owners. Residents in neighborhoods immediately adjacent to this parcel have expressed significant opposition to the proposal to change Bellevue’s Community Plan’s policies for 1084 Morton Mill Rd. to support this proposed SP. More than 1300 Bellevue residents, concentrated heavily in surrounding neighborhoods, have signed a petition opposing this proposed change to the Community Plan and zoning amendment. This includes more than 90% of the senior residents in the Harpeth Meadows independent living facility who are concerned with impacts on emergency vehicle access with additional traffic on Coley Davis Rd. In my neighborhood, a cul de sac just downstream from this development, neighbors are 100% united in opposition to this change—primarily related to our lived experiences with multiple 100-year flood events over the past decade, even where these flood events are not proportionate to actual rainfall. To my knowledge, not one single resident views the current use of this parcel as not viable, undesirable, or inconsistent with surrounding neighborhoods. Most Bellevue residents do not see the proposed T3-NE transect for this parcel as harmonious with surrounding neighborhoods or with what we consider Bellevue to be. Put simply, this is an ad hoc request for a major change to the Bellevue Community Plan for a parcel in the Green Network that does not fit with the policy balance the community has made between growth and preservation, especially along the infrastructure constrained bends of the Harpeth River.

**CONCLUSION**

Bellevue’s Community Plan strikes a balance to support high density development throughout the community while also preserving the rural land form for purposes of flood management and spreading burdens of growth on infrastructure. The T2 Rural transect policies make as much sense for the parcel at 1084 Morton Mill Rd. as it does for other parcels along the Harpeth River, and needs to be preserved. Not every land parcel in Nashville and its suburbs is appropriate for high-density apartment development, especially areas such as the flood prone and traffic access challenged bends of the Harpeth River.

Should the Planning Commission decide it is appropriate to amend the transect policies for this parcel in the Bellevue Community Plan, the proposed SP for this parcel may merit discussion. However, addressing details of the SP (including any specific benefits and impacts it is expected to present) before carefully evaluating the land forms that are appropriate for this parcel under Bellevue’s Community Plan places the cart before the horse and is inconsistent with NashvilleNext. Separately, when the time is appropriate, I will file my comments in opposition to the proposed SP zoning amendment for the project (2021SP-061-001).

1. FEMA defines from .2 to 1% annual flood risk as a “moderate” flood hazard. FEMA, *Guidance for Flood Risk Analysis and Mapping: Riverine Mapping and Floodplain Boundary Guidance* 1 (Dec. 2020), available at <https://www.fema.gov/sites/default/files/documents/fema_riverine-mapping-and-floodplain-guidance.pdf>. [↑](#footnote-ref-1)
2. *See, e.g*., Sara Kuta, *Federal Flood Maps are Outdated Because of Climate Change, FEMA Director Says,* Smithsonian Magazine, Sept. 9, 2022, available at <https://www.smithsonianmag.com/smart-news/federal-flood-maps-are-outdated-because-of-climate-change-fema-director-says-180980725/>. [↑](#footnote-ref-2)
3. The legal definition of “critical infrastructure” varies across different regulatory programs but it is clear that critical infrastructure typically includes health care workers, including long-term care workers, and electric power substations that are necessary to maintain the power grid. [↑](#footnote-ref-3)
4. According to the Department of Homeland Security, critical infrastructure also “includes the vast network of highways, connecting bridges and tunnels, railways, utilities and buildings necessary to maintain normalcy in daily life. Transportation, commerce, clean water and electricity all rely on these vital systems.” *See* <https://www.dhs.gov/science-and-technology/critical-infrastructure>. TVA’s transmission of substantial amounts of power relies access to the substation at the end of Coley Davis Rd., especially during emergency times of flooding when distribution and transmission towers may collapse, as several did during the 2010 floods. [↑](#footnote-ref-4)
5. Recent FEMA and ASCE publications recommend elevating critical infrastructure above the .2% annual flood elevation if feasible—and certainly do not recommend approving and constructing projects that would make the elevation of critical infrastructure above the .2% annual flood elevation less feasible in the future. [↑](#footnote-ref-5)
6. If approved, this apartment project’s footprint would extend across the river to connect with Coley Davis Rd. near the drainage pipes for a flood management facility called “Harpeth Flood Control No. 1." This facility (multiple large retention ponds, adjacent to a former Shoneys and the Royal Range firearms facility) connects via two tunnels under I-40 to a man-made levee on which Coley Davis Rd. was built. These tunnels allow excessive water from riverine flooding to flow into retention ponds during flood conditions, helping to manage flood impacts for downstream residents. Metro Water Service’s *2013 Unified Flood Preparedness Plan* identified recommended improvements to Harpeth Flood Control No. 1 to help future flood management in the area.  *See* <https://filetransfer.nashville.gov/portals/0/sitecontent/WaterServices/docs/reports/UFPP%20Final%20report.pdf>, at pp. 92-95. Almost a decade later, none of these infrastructure improvements have been made or, to my knowledge, are presently planned for the area. [↑](#footnote-ref-6)
7. According to the Ariza Bellevue website, “Planning staff has indicated in previous conversations that the T2-RM designation was intended to ensure Planning has a voice in any future developments on the parcel such as the one we propose.” *See* <https://www.arizabellevue.com/bellevue-faq.html>. If the Bellevue Community Plan intended to designate this parcel for future development it would have designated it T3-NE (explicitly designed for evolving neighborhoods), not T2 Rural. [↑](#footnote-ref-7)
8. The developer claims that private driveway access across CSX tracks is not possible and precludes any other feasible development of this property. This is misleading. CSX has an application process for existing private crossing access that would allow for a private driveway permission to cross tracks to access a small number of landlocked homes, with an indemnification, insurance, maintenance, and termination agreement, where there is no other reasonable means of access. *See* <https://www.csx.com/index.cfm/library/files/customers/property-real-estate/grade-crossing/existing-private-grade-crossing-application-packet/>. The bottom line is that a private driveway crossing the tracks for less dense development of 1084 Morton Mill is no more of a challenge to negotiate—and is no less feasible from a cost perspective—than is a crossing agreement for the proposed SP’s high-density development of the parcel, especially given that there is already a private easement with CSX (currently supporting 12 crossings per day) that has not been forfeited. This current easement from CSX appears to pre-date subdivision of this bend of the parcel into two parcels, and has been used been used for generations to access both land parcels. Metro now owns the adjacent land parcel and has a legal interest in the CSX easement that is as strong as the current owner of 1084 Morton Mill Rd., since it depends on this as an easement by necessity to access Bellevue Park. [↑](#footnote-ref-8)