IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

Elijah Shaw & Patricia Raynor, Plaintiffs, v. Metropolitan Government of Nashville and Davidson County, Defendant.	))))))	No. 17-1299-II

RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs summary judgment does not disprove every rational basis for the client prohibition. Rather, it ignores the long-standing approval the courts have given to zoning and distinctions permitted between commercial and residentially zoned properties and attempts to compare the Plaintiffs to very different types of uses and to properties that are not zoned residential.

I. RESTRICTING RESIDENTIALLY ZONED PROPERTY TO RESIDENTIAL USES PASSES THE RATIONAL BASIS TEST UNDER EQUAL PROTECTION AND SUBSTANTIVE DUE PROCESS ANALYSIS.

A. THE RATIONAL BASIS TEST IS A QUESTION OF LAW, NOT FACT, AND DOES NOT REQUIRE EVIDENCE.

The Sixth Circuit has explained the relationship between the Fourteenth Amendment and constitutional challenges:

> A first requirement of any law, whether under the Due Process Clause or Equal Protection Clause, is that it rationally advance a legitimate government policy. Two words ("judicial restraint") and one principle (trust in the people that "even improvident decisions will eventually be rectified by the democratic process") tell us all we need to know about the light touch judges should use in reviewing laws under the standard. So long as judges can conceive of some plausible reason for the law—*any* plausible reason, even one that did not motivate the legislators who enacted it—the law must stand, no matter how unfair, unjust, or unwise the judges may consider it as citizens.
>
> ... The signature feature of rational basis review is that governments will not be placed in the dock for doing too much or for doing too little in addressing a policy question.... [R]ational basis review does not permit courts to invalidate laws every

> time a new and allegedly better way of addressing a policy emerges, even a better way supported by evidence and ... by judicial factfinding. If legislative choices may rest on "rational speculation unsupported by evidence or empirical data," it is hard to see the point of premising a ruling on unconstitutionality on factual findings made by one unelected federal judge that favor a different policy. Rational basis review does not empower federal courts to "subject" legislative line-drawing to "courtroom" factfinding designed to show that legislatures have done too much or too little.

DeBoer v. Snyder, 772 F.3d 388, 404–405 (6th Cir.2014) (emphasis added).

The courts of appeals which have directly addressed this issue, whether in the context of equal protection or substantive due process, have concluded that whether a classification is rationally related to a legitimate governmental interest presents a question of law for a court, not a question of fact. *See, e.g., Myers v. County of Orange,* 157 F.3d 66, 74-75 & n. 3 (2d Cir. 1998); *FM Properties Operating Co. v. City of Austin,* 93 F.3d 167, 172 (5th Cir. 1996); *Midnight Sessions Ltd. v. City of Philadelphia,* 945 F.2d 667, 682 (3d Cir. 1991), *overruled on other grounds, United Artists Theatre Circuit, Inc. v. Township of Warrington,* 316 F.3d 392, 410 (3d Cir. 2003); *Izquierdo Prieto v. Mercado Rosa,* 894 F.2d 467, 471 (1st Cir. 1990).

Judge Trauger has described the meaning of the phrase "rational basis" as a term of art:

> The term "rational" has a special meaning in constitutional law. It does not mean that a law must be reasonable, sensible, well-founded, effective, or supported by evidence. In fact, in many contexts (including public education), state legislatures and policymakers can make "rational" decisions that, when implemented, are unreasonable, counter-productive to a stated goal, or contrary to all past experience and evidence. When a federal court conducts a rational basis review, the review is limited to determining only whether there is a *conceivable* rational *relationship* between the policy and a legitimate governmental objective. The rational relationship need not even be articulated by the policymakers defending the policy choice, and there may be no actual proof supporting that decision (in fact, there could even be proof demonstrating that the policy does not, in fact, achieve the desired result).
>
> In sum, where rational basis review applies—as is the case here—the U.S. Constitution allows state legislators and policymakers to make both excellent

> decisions and terrible decisions, provided that the decisions are based on some conceivable modicum of rationality at the time of their passage or application in practice. The U.S. Constitution does not permit a federal court to evaluate or rule upon the wisdom of these decisions, even where the policy may be unfair, misguided, or counter-productive. Thus, when a federal court finds that a policy is "rationally related to a legitimate government objective," the court is not endorsing the policy, finding that it is empirically supported, or concluding that it is a wise idea. The court is merely ruling that the U.S. Constitution *does not forbid* a state or locality from adopting or applying that policy.

Wagner v. Haslam, 112 F. Supp. 3d 673, 692–93, 2015 WL 3658165 (M.D. Tenn. 2015) (underlined emphasis added). Judge Trauger explained that an "irrational" policy would be one completely unrelated to the classification at issue:

> By contrast, one can conceive of performance metrics that would be truly irrational, such as basing a Tennessee teacher's evaluation on the test scores of students in Arizona, whether the Nashville Sounds baseball team had a winning season that school year, or the State of Tennessee's economy on evaluation day. It is inconceivable that a Tennessee teacher's "value added" to a student's performance would bear any relationship to those metrics. By contrast, it is rational to believe that a teacher can impact the school-wide performance of both her own students and other students at that school by being an effective teacher and by improving the overall educational environment at the school. ...

Id. at 696 (emphasis added).

Contrary to Plaintiffs' assertions, evidence is not required to support a rational basis:

> The plaintiffs' arguments that there is no evidence in the record to establish a genuine safety risk from helicopter operations, and that the law will increase any potential risk and disruption by forcing longer flights, do not establish that the statute is irrational. To the contrary, under the rational basis test, specific evidence is not necessary to show the relationship between the statute and its purpose. *See Newton v. Cox,* 878 S.W.2d at 110. Rather, this Court asks only whether the law is reasonably related to proper legislative interests. *Id.* We conclude that it is. …
>
> Although the plaintiffs contend that there is no evidence to support classifying helicopter operators within nine miles of the park differently from any others in Tennessee, such evidence is unnecessary; the relevant inquiry is whether there is a reasonably conceivable set of facts to justify the classification within the statute. We have concluded that there is such a set of facts which justifies the classification.

Riggs v. Burson, 941 S.W.2d 44, 52-53 (Tenn.1997).

A court's "standards for accepting a justification for the regulatory scheme are far from daunting. A proffered explanation for the statute need not be supported by an exquisite evidentiary record; rather we will be satisfied with the government's 'rational speculation' linking the regulation to a legitimate purpose, even 'unsupported by evidence or empirical data.'" *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) (emphasis added).

B. METRO'S INTERESTS IN PROHIBITING CLIENTS FROM VISITING HOME-BASED BUSINESSES PASSES MUSTER FOR A FACIAL CHALLENGE.

A legislative act is facially constitutional unless no set of circumstances exist under which the Act would be valid:

> A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances exists* under which the Act would be valid. The fact that the Bail Reform Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an "overbreadth" doctrine outside the limited context of the First Amendment.

United States v. Salerno, 481 U.S. 739, 745 (1987) (emphasis added). In determining whether a law is facially invalid, a court must be careful not to go beyond the statute's facial requirements and speculate about "hypothetical" or "imaginary" cases. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449–50 (2008).

The same standard applies under the Tennessee Constitution:

> Our charge is to uphold the constitutionality of a statute wherever possible. *State v. Pickett,* 211 S.W.3d 696, 700 (Tenn.2007). "In evaluating the constitutionality of a statute, we begin with the presumption that an act of the General Assembly is constitutional." ... The presumption of constitutionality applies with even greater force when a party brings a facial challenge to the validity of a statute. *Gallaher,* 104 S.W.3d at 459. In such an instance, the challenger must establish that no set of circumstances exists under which the statute, as written, would be valid.

Waters v. Farr, 291 S.W.3d 873, 882 (Tenn. 2009).

In this case, the client restriction passes both a facial substantive-due-process or an equal-protection challenge. "[U]nless a fundamental right is implicated, a statute comports with substantive due process if it bears "a reasonable relation to a proper legislative purpose" and is "neither arbitrary nor discriminatory. "*Riggs v. Burson*, 941 S.W.2d 44, 51 (Tenn. 1997). The same rational basis test is used in the analysis of equal protection, where a statute does not interfere with a fundamental right or involve a suspect class. *Id.* at 53.

The Supreme Courts of the United States and Tennessee have reviewed and approved many rational bases for separating residential and commercial districts. An equal protection and substantive due process challenge, to businesses being excluded from residentially zoned properties, was *exactly* the issue decided by the United States Supreme Court in *Village of Euclid*:

> The serious question in the case arises over the provisions of the ordinance excluding from residential districts apartment houses, business houses, retail stores and shops, and other like establishments. This question involves the validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded. Upon that question this court has not thus far spoken.

Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 390 (1926) (emphasis added).

The reasons offered for this exclusion were stunningly similar to those presented by the Metropolitan Government (through its 30.02(6) witness Carter Todd) in this case:

> Some of the grounds for this conclusion are promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; suppression and prevention of disorder; facilitating the extinguishment of fires, and the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community, by excluding from residential areas the confusion and danger of fire, contagion, and disorder, which in greater or less degree attach to the location of stores, shops, and factories.. ...
>
> The establishment of such districts or zones may, among other things, prevent

> congestion of population, secure quiet residence districts, expedite local transportation, and facilitate the suppression of disorder, the extinguishment of fires, and the enforcement of traffic and sanitary regulations. ...
>
> The exclusion of places of business from residential districts is not a declaration that such places are nuisances or that they are to be suppressed as such, but it is a part of the general plan by which the city's territory is allotted to different uses ...
>
> [T]he exclusion of business establishments from residence districts might enable the municipal government to give better police protection. Patrolmen's beats are larger, and therefore fewer, in residence neighborhoods than in business neighborhoods. A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. ...
>
> 'Aside from considerations of economic administration, in the matter of police and fire protection, street paving, etc., any business establishment is likely to be a genuine nuisance in a neighborhood of residences. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc. * * *
>
> [T]he segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life, greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections, decrease noise and other conditions which produce or intensify nervous disorders, preserve a more favorable environment in which to rear children, etc. With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. ... detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities-until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed.

Id. at 391-395 (emphasis added).

After review of the rational reasons, the Supreme Court decided that these restrictions were sufficiently related to the public health, safety, and general welfare to pass constitutional muster:

> If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

Id. at 395.

The Tennessee Supreme Court adopted the reasoning and holding of *Euclid* in 1927, when it upheld a Memphis ordinance divided the city into districts, where "[t]he general purpose of the ordinance is to exclude industrial and commercial enterprises from residential districts, and to so regulate the construction of buildings, both for commercial and residential purposes, as to properly conserve the health and welfare of persons residing within the city, and to conserve and protect the property rights of owners of land within the several districts." *Spencer-Sturla Co. v. City of Memphis*, 155 Tenn. 70, 290 S.W. 608, 609 (1927).

The Court found the division of residential and commercial areas a valid exercise of police powers that did not violate due process or equal protection:

> It seems to us that the application of the foregoing quotations to the statute under consideration is obvious. The reduction of fire hazards, provisions to reduce congestion in dwelling houses and neighborhoods, provisions designed to secure to families in their homes and laborers in their places of employment sufficient light and fresh air for their comfort and health, have a direct relation to and connection with the public purposes for which the police power may be exercised. So also are provisions for the preservation of property values. We think the segregation of residence districts from commercial districts within a particular city, the control of the height and bulk of buildings with regard to the area of the lot on which such buildings are constructed, the limitation of the number of families who may occupy a single dwelling, are powers which may be reasonably exercised by a municipal government for the protection and promotion of the public health, safety, morals, and welfare; and we have not been able to find any constitutional inhibition against the reasonable exercise of such powers by the state or municipality. ...
>
> Having reached the conclusion that the statute is a valid exercise of the police power, under the Constitution of Tennessee, it necessarily results that we overrule the further contention of the plaintiff in error that the statute is in violation of the

> first section of the Fourteenth Amendment to the Constitution of the United States. The holding of the Supreme Court in *Village of Euclid v. Ambler Realty Co.*, *supra*, would also force us to overrule this contention.

Id. at 613. (emphasis added).

The Plaintiffs acknowledge "It is true that Tennessee courts have long recognized a legitimate interest in the basic idea of residential zoning." (Plaintiffs' Memorandum of Law in support of Plaintiffs' Motion for Summary Judgment, p. 18).

Under these circumstances, where the reasons proffered by the Metropolitan Government for separating residential and commercial uses have been approved by the U.S. and Tennessee Supreme Courts, it certainly cannot be said that there is "no set of circumstances" under which the client-prohibition would be valid. Therefore, the facial challenge fails.

C. METRO'S INTERESTS IN PROHIBITING CLIENTS FROM VISITING HOME-BASED BUSINESSES PASSES MUSTER FOR AN AS-APPLIED CHALLENGE.

Nor can Plaintiff establish a constitutional violation, as applied, despite arguing that clients' visitations to their neighborhoods would be harmless. The law places the burden on the Plaintiffs, to show that there is no rational basis for prohibiting clients from home-based businesses. *Rivergate Wine & Liquors, Inc. v. City of Goodlettsville*, 647 S.W.2d 631, 634 (Tenn. 1983). The law does not require the Metropolitan Government to examine every property that may be subject to a law, to determine if its use is consistent with the purposes or principles of the classification.

And legislation "does not violate the Equal Protection Clause merely because the classifications [it makes] are imperfect." *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). A law can be underinclusive or overinclusive without running afoul of the Equal Protection Clause. *New York Transit Authority v. Beazer*, 440 U.S. 568, 592 n.38 (1979); *also see Millennium Taxi Serv., L.L.C. v. Chattanooga Metro. Airport Auth.*, No.

E200800838COAR3CV, 2009 WL 1871927, at *8 (Tenn. Ct. App. June 30, 2009) ("A classification having some reasonable basis "is not unconstitutional merely because it results in some inequality.""). "Rational basis review does not empower … courts to 'subject' legislative line-drawing to 'courtroom' factfinding designed to show that legislatures have done too much or too little. *DeBoer v. Snyder*, 772 F.3d 388, 404–405 (6th Cir. 2014)).

The fact that exclusive residential zoning districts might exclude particular businesses "neither offensive nor dangerous" does not make a zoning scheme invalid. *Village of Euclid*, *supra* at 388.

The Supreme Court stated in this regard that:

> [T]he exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive nor dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this court has upheld, although drawn in general terms so as to include individual cases that may turn out to be innocuous in themselves. Hebe Co. v. Shaw, 248 U. S. 297, 303, 39 S. Ct. 125, 63 L. Ed. 255; Pierce Oil Corp. v. City of Hope, 248 U. S. 498, 500, 39 S. Ct. 172, 63 L. Ed. 381. The inclusion of a reasonable margin, to insure effective enforcement, will not put upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation. In the light of these considerations, we are not prepared to say that the end in view was not sufficient to justify the general rule of the ordinance, although some industries of an innocent character might fall within the proscribed class.

Id. at 388–89 (emphasis added).

Since *Euclid*, the courts have consistently upheld zoning laws that protect residential neighborhoods as a valid exercise of police power under rational basis review despite the fact that they often deprive a landowner "some freedom to use the land for all purposes." *Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood, Ohio,* 699 F.2d 303, 308 (6th Cir. 1983); *see also, Village of Belle Terre v. Boraas,* 416 U.S. 1, 9 (1974) (upholding a

zoning ordinance that limited the number of cohabiting, non-related individuals to two in an effort to create a "quiet place where yards are wide, people few, and motor vehicles restricted"); *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977) (upholding the denial of a building permit for multi-family low income housing); *Memphis v. Green,* 451 U.S. 100 (1981) (upholding an ordinance that diverted the flow of commuter traffic from a residential neighborhood).

Plaintiffs makes numerous arguments to challenge the client-prohibition as applied to themselves, in attempting to disprove the rational reasons provided by Metro's 30.02(6) witness. These are addressed in turn below, *although it is key to remember that only one rational reason needs to be accepted by the court in order for the ordinance to pass the rational basis test.*

One argument set forth by Plaintiffs is that there is no practical difference between a business that exists quietly in a home and a business that receives numerous clients each day. (Plaintiff's memorandum, p. 18 ("The Metro zoning code welcomes commerce in residential zones.") This is absurd. With all other factors remaining the same (number of social visitors, time spent at the house by the residents), a house that receives clients each day will necessarily create more traffic in the neighborhood.

In this case, *Plaintiffs are asking the Court to authorize up to 12 clients each day*. (Complaint, Prayer for Relief ¶ B). Assuming they work 6 days a week, *this means 72 additional visitors will likely be visiting that house each week*. If there are 5 houses on a street that have home businesses and also decide to receive clients, we are now *up to new 360 visitors on that street, each week*. The numbers will quickly reach an unsustainable level for neighborhoods, neighborhood streets, and families.

Concern about the generation of additional traffic is a legitimate rational reason that has been approved by the U.S. Supreme Court ("[T]he segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life, greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections...".). *Vill. of Euclid, supra at* 391-395.

As Carter Todd testified on Metro's behalf, residential streets do not have the same infrastructure as commercial districts for supporting traffic. This is a rational basis for taking steps to prevent adding *hundreds of cars* to a neighborhood each week. *Fallin v. Knox Cty. Bd. of Comm'rs*, 656 S.W.2d 338, 343 (Tenn. 1983) (adding traffic to the point where a road would become inadequate and hazardous is a rational reason for disapproving a rezoning); *MC Properties, Inc. v. City of Chattanooga*, 994 S.W.2d 132, 135 (Tenn. Ct. App. 1999) (limiting commercial development where appropriate infrastructure had not been built passed the rational basis test).

Plaintiffs also argue that their neighbors cannot be disturbed by their clients visiting the neighborhood, because their businesses are sound-proofed and quiet. But it is self-evident that the Plaintiffs' business disturbed a neighbor in some way, because someone reported their business to the Metro Codes Department. Plaintiffs find significance in the fact that many of the reports that come into Codes of home businesses cannot be verified, but in this case the reports were accurate.

And even a quiet business with clients visiting can cause many concerns – in addition to the increased traffic as discussed above, the business furnishes an excuse for unknown persons to enter a neighborhood. This reason was cited by the Carter Todd in his testimony (Deposition p.

85) and endorsed by the U.S. Supreme Court as a rational reason for restricting commercial businesses from residential areas:

> [T]he exclusion of business establishments from residence districts might enable the municipal government to give better police protection. Patrolmen's beats are larger, and therefore fewer, in residence neighborhoods than in business neighborhoods. A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. ...

Vill. of Euclid, supra at 391-395 (emphasis added). Plaintiffs assert that there is no evidence that unknown people will cause concern within a neighborhood, but "under the rational basis test, specific evidence is not necessary to show the relationship between the statute and its purpose. Rather, this Court asks only whether the law is reasonably related to proper legislative interests." *Riggs v. Burson,* 941 S.W. 2d 44, 52 (Tenn. 1997). This is because a court's "standards for accepting a justification for the regulatory scheme are far from daunting. A proffered explanation for the statute need not be supported by an exquisite evidentiary record; rather we will be satisfied with the government's 'rational speculation' linking the regulation to a legitimate purpose, even 'unsupported by evidence or empirical data.'" *Craigmiles v. Giles,* 312 F.3d 220, 224 (6th Cir. 2002) (emphasis added).

Plaintiffs attempt to disprove this concern by pointing to the allowance that was made for short-term rentals in residential neighborhoods, without acknowledging the fact that renting a room for someone to sleep in is a quintessential residential use that has long taken place in residential areas (for longer rental periods, of course).

In addition, Plaintiffs ignore the fact that the Metropolitan Council has now determined that short term rentals are not ideally suited for residentially zoned areas – so it has attempted to greatly restrict non-owner occupied short-term rental use in one and two-family residential neighborhoods. Metropolitan Ordinance No. BL 2017-608 (filed with the Court on 6/14/19).

However, the State of Tennessee has nullified some of these restrictions, by determining that existing permit-holders may continue to operate in residential areas. Tenn. Code Ann. § 13-7-603. The fact that the Metro Council has attempted to eliminate many STRPs from residential areas, but has not been allowed to do so, is not a justification for now allowing up to 72 additional visitors per week to visit each home-businesses in a residential area.

Plaintiffs also claim that that Metro's concern that commercial spaces will be vacant if residential businesses may receive customers is an illegitimate interest. Plaintiffs characterize this interest as illegal "economic protectionism" but it is not. Both cases cited by Plaintiffs involve unrelated legal concepts favoring one type of business over another. *Bean v. Bredesen*, No. M200301665COAR3CV, 2005 WL 1025767, (Tenn. Ct. App. May 2, 2005) involved the standard *under the commerce clause*, which requires that a state cannot favor in-state interests over out-of-state interests unless it is tethered to a legitimate local purpose unrelated to economic protectionism and if this purpose cannot be served as well by other reasonably available non-discriminatory means. Here, the standard is rational basis review, which involves an entirely different analysis.

In *Craigmiles v. Giles,* 312 F.3d 220 (6th Cir. 2002), the Sixth Circuit invalidated a state statute that *explicitly favored one commercial group over another* (funeral directors versus casket retailers). Finding no rational relationship to any of the articulated purposes of the state, the only logical conclusion was that the statute existed as a form of economic protectionism for the funeral directors. *Id.* at 228.

In this case, the client prohibition is not favoring one business over another for no rational reason – it is carrying out the important governmental interest in preserving a healthy

residential area and a healthy commercial district. These are legitimate rational reasons, as discussed in *Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992).

In *Nordlinger*, the U.S. Supreme Court stated that the government has a legitimate interest in local neighborhood preservation, continuity, and stability and "can decide to structure its tax system to discourage rapid turnover in ownership of homes and businesses, for example, in order to inhibit displacement of lower income families by the forces of gentrification or of established, "mom-and-pop" businesses by newer chain operations. By permitting older owners to pay progressively less in taxes than new owners of comparable property, the Article XIIIA assessment scheme rationally furthers this interest."

The *Norlinger* Court also endorsed additional rational bases articulated by Carter Todd (Todd Deposition, pp. 99-100) – specifically, a legitimate governmental interest in stability of a community and in investment based expectations :

> This Court previously has acknowledged that classifications serving to protect legitimate expectation and reliance interests do not deny equal protection of the laws. "The protection of reasonable reliance interests is not only a legitimate governmental objective: it provides an exceedingly persuasive justification...."

Id. at 13. These reliance interests are significant here - it is appropriate for a government to want investments in commercial areas to be stable, and to honor the wishes of homeowners who chose not to buy a home in a mixed-use neighborhood and do not expect or desire commercial visitors in their residential neighborhoods. Plaintiffs' personal desires to have their properties be zoned differently, to allow clients, cannot trump the legitimate expectations of all their neighbors to the continuation of their homes' residential zoning.

II. PLAINTIFFS' LACK OF SUCCESS REZONING DOES NOT JUSTIFY STRIKING DOWN THE CITY-WIDE CLIENT PROHIBITION.

Plaintiffs express frustration with the failure of their effort to rezone their properties to SP ("Specific Plan"), a different zoning classification that would allow visitors to their home business. (Complaint, ¶¶ 123-134). They could have challenged the denial of the rezoning through a declaratory judgment or inverse condemnation action, but chose not to do so. *Brown v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2011-01194-COA-R3CV, 2013 WL 3227568 (Tenn. Ct. App. June 21, 2013); *Varner v. City of Knoxville*, No. E2001-00329-COA-R3CV, 2001 WL 1560530, at *1 (Tenn. Ct. App. Nov. 29, 2001).

Plaintiffs have represented to the Court that this lawsuit does not challenge the Metropolitan Council's denial of their SP rezoning applications. (Plaintiffs' Response in Opposition to Motion to Dismiss, p. 21).

Plaintiffs' attempts to rezone to SP were disapproved by the Planning Commission - Shaw[1] and Raynor[2] because they were inconsistent with the neighborhood maintenance policy and because Ms. Raynor's was an inappropriate use of the SP process because they did not allow for context sensitive design.

Under these circumstances, there is no basis for any kind of equal protection analysis comparing the Plaintiffs' situation (residing in a residential district) with properties that are zoned SP (a different zoning classification). A denial of a rezoning does not disprove the rational basis for this classification and does not support a declaratory judgment action to declare the city-wide distinction between residential and commercial property unconstitutional.

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[1] https://www.youtube.com/watch?v=-cqlYESBtxo&list=PLAAE32390485B37DB&index=121 (starting at 29:40).

[2] https://www.youtube.com/watch?v=JtJOKTB02bM&list=PLAAE32390485B37DB&index=117 (starting at 18:50).

Respectfully submitted,

DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
JON COOPER, #023571
Director of Law

/s/ Lora Fox
Lora Barkenbus Fox, #17243
Catherine J. Pham, #28005
[redacted]

[redacted]

/s/ Lora Fox
Lora Barkenbus Fox