

**A statement by Bert Ely to the Alexandria City Council
opposing a further restriction on zoning protests**

December 14, 2013

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12-14-13

Mr. Mayor and members of Council, I am Bert Ely and a long-time participant, from a citizen's perspective, in planning and zoning issues, especially along the waterfront and elsewhere in Old Town.

I speak today in opposition to the proposed amendment to Section 11-808(E)(3) of the City's Zoning Ordinance that would weaken the ability of property owners to protest a zoning map amendment.

Before addressing why I oppose this amendment, it is important to note that the Planning Commission, by a vote of 6 to 0, rejected the proposed amendment. Unfortunately, the staff report on the Planning Commission's action fails to explicitly state that the Planning Commission rejected the proposed amendment. Instead, despite having lost before the Planning Commission, staff now wants Council to override the Planning Commission's recommendation. Council should ask City staff why it has not been straight forward with Council as to what the Planning Commission recommended.

Turning to the substance of the change staff is seeking, the effect of the proposed change would greatly restrict the ability of landowners to protest map amendments by expanding the limitations in which a protest of a change in the zoning map could not be initiated.

That is, if the map amendment was associated with "a new or substantially revised small area plan chapter of the master plan," then the map amendment could not be protested. That wording raises this question: What is meant by "substantially revised," or to put this question in another form: What characteristics of changes in a small area plan would differentiate a "substantially revised" plan from one that is only insubstantially revised?

Before acting on this zoning ordinance change, Council should ask the City Attorney if the proposed amendment is consistent with Chapter 9.13 of the City Charter, which reads in part: "an application of motion to amend the boundaries of a zone . . . signed by owners of twenty percent or more either of the area of land within the boundaries of such proposed change or of the area of land within 300 feet of the boundaries of the land affected by such proposed change"? This charter language, which I have attached to my statement, contains no limitation related to revisions in a small area plan, substantial or not. I argue that the ordinance change staff has proposed conflicts with this provision in the charter.

In closing, we already have seen Council severely limit the ability of landowners to protest zoning changes by barring protests against text amendments. Enough is enough – Council should not now unnecessarily, and perhaps unlawfully, severely restrict protests against map amendments.

Thank you for your time today. I welcome your questions.

Sec. 9.13 Effect of protest by twenty per cent of the owners of property.

If a protest is filed with the city clerk against an application of motion to amend the boundaries of a zone or to amend the terms of an adopted conditional zoning proffer or zoning condition, signed by the owners of twenty percent or more either of the area of land within the boundaries of such proposed change or of the area of land within 300 feet of the boundaries of the land affected by such proposed change, the council shall not approve the application or motion, or adopt the ordinance making such amendment, by less than three-fourths affirmative votes of the members of council. Streets, alleys and lands dedicated to public use or lands owned by the city, Commonwealth, or federal government shall not be included in computing the abovementioned areas.

Any such protest shall be filed not later than 12 o'clock noon on the last working day before the day on which a public hearing on the application or motion is first conducted by the city council. Once any such protest has been filed no changes thereto by way of addition, substitution, amendment or withdrawal, may be made after said 12 o'clock noon deadline. (Acts 1960, ch. 8, § 1; Acts 1966, ch. 12, § 1; Acts 1966, ch. 83, § 1; Acts 1971, Ex. Sess., ch. 166, § 1; Acts 1974, ch. 595, § 1, Acts 1988, ch. 157; Acts 1990, ch. 652, § 1)

Underlining supplied.

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Thank you, Mayor Euille, Vice Mayor Silberberg, and members of the Council. I am Michael Hobbs, residing at 419 Cameron Street.

You are considering three possible amendments to the “protest petition” provision of the Zoning Ordinance. Since I do not even pretend to any expertise on the use of planimeters or the intricacies of condominium ownership, I want to confine my comments to the third item: the suggestion that the scope of protest petitions be further reduced so that they would apply only to Map Amendments which amount to “spot zoning,” outside the context of any Master Plan or Small Area Plan amendments.

Last March, you adopted an amendment of the protest petition provisions to delete any reference to “text” amendments. The stated purpose was not to narrow the permissible scope of protest petitions, but to remove any ambiguity, and to correct what you believed was a misimpression that they could be lodged against text amendments as well as map amendments.

Several witnesses urged, regardless of your conclusion as to the meaning of the existing ordinance, that you consider whether there might be unforeseen or unnecessary consequences to the proposal then before you. When the Planning Commission endorsed the amendment, it asked staff to consider several possible further amendments to the protest provisions. I believe that the sense of its discussion was, at least in part, to provide some assurance to concerned citizens that their questions would be carefully considered—that you would take care not to go farther than was really necessary or intended to restrict the availability of their right to protest proposed zoning changes which they believed would be grievously harmful to their interest, whatever the particular mechanism employed to effect that change.

In fact, the amendment to Subsection (E) which the Planning Commission considered last week did not redress any degree to which your simple March 2013 amendment restricted the right to file protest provisions. Indeed, it would have restricted such protests still further, with the result that practically nothing would remain of this right which has been protected in our ordinance for decades. I believe what was proposed went far beyond the stated purpose of “clarifying” or “removing ambiguity” from this provision: it would have substantially curtailed its applicability, not only to Text Amendments, but now to Map Amendments as well. I believe that is why the Planning Commission decided unanimously not to recommend such an amendment.

The staff report for the Commission had suggested that the amendment would be appropriate because Map Amendments that implement a Small Area Plan are already the subject of a substantial public process—that “this process inherently already provides the same protection afforded by the protest petition provision.” That is not correct; the Small Area Plan discussion does not provide the same protection. The protest petition, if properly filed, requires a three-

fourths “supermajority” vote of the Council; to adopt a Small Area Plan, the barest majority is enough. With this amendment, not even the agreement of three dissenting Councilmembers could deter the adoption of a zoning change which the petitioning landowners believed would do them grave and needless damage.

If the opportunity for aggrieved landowners to speak in community meetings and public hearings were alone sufficient to safeguard their rights in all circumstances, then there would be no rationale for any protest petition provision at all—because all zoning changes, whether by text or map amendment, whether as part of a Small Area Plan or not, must be considered in a public hearing before Council adopts them.

The staff report said, further, that the intent of the protest provision is simply “to give land owners in the closest proximity to a change to the zoning map the ability to require additional scrutiny when the change resembles disfavored spot zoning.” I believe that is also an incorrectly narrow statement of the intent. The present ordinance says that petitions will not be heard against map amendments that are “part of a comprehensive...new or substantially revised zoning ordinance.” There is a great deal of conceptual space between a “comprehensive rezoning”—such as that adopted in Alexandria in 1992—and a “spot zoning” applying only to one parcel. If the intent of the protest provision had been merely to preclude or discourage spot zoning, and nothing more, the drafters could have said so.

Please consider, also, that the standard that must be met in order to lodge any protest petition is not at all casual or superficial. Allowing some scope for petitions beyond spot zoning situations does not open the doors to a flood of abuse, even by a hypothetical tiny minority of recalcitrant, obstreperous malcontents. The requirement that more than 20% of the nearby landowners agree and sign the petition is a guard against frivolous objection. 20% of the landowners in a given area is in fact more than the total proportion of citizens who have voted in many of our local and state elections over the years. It is probably no accident that the staff reported only a half-dozen protest petitions over the past ten years—and that is even before you adopted any restrictions on their use, for text amendments or for map amendments to more than single parcels.

I hope that most of you would agree with the staff’s statement that the protest procedure “is an important right of landowning citizens.” But the proposed further curtailment of that right now, added to the limitations adopted last March, would reduce it to practically nothing. There is no compelling public need that requires you to make of the protest provision a practical nullity. The proposed new policy would make this section more complicated, not less so.

Since the Planning Commission acted, some have speculated that you might overrule their considered and unanimous judgment—might resurrect and adopt this further, dramatic limitation on protest petitions. Such an action could not help but appear churlish at best, vindictive at worst—and would address no compelling public need. I would urge you, rather, in the spirit of “peace on earth, good will toward men,” to adopt this Text Amendment as recommended unanimously by the Planning Commission—and not to open or reopen old or new wounds.

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The staff report said, further, that the intent of the protest provision is simply “to give land owners in the closest proximity to a change to the zoning map the ability to require additional scrutiny when the change resembles disfavored spot zoning.” I believe that is also an incorrectly narrow statement of the intent. The present ordinance says that petitions will not be heard against map amendments that are “part of a comprehensive...new or substantially revised zoning ordinance.” There is a great deal of conceptual space between a “comprehensive rezoning”—such as that adopted in Alexandria in 1992—and a “spot zoning” applying only to one parcel. If the intent of the protest provision had been merely to preclude or discourage spot zoning, and nothing more, the drafters could have said so.

Please consider, also, that the standard that must be met in order to lodge any protest petition is not at all casual or superficial. Allowing some scope for petitions beyond spot zoning situations does not open the doors to a flood of abuse, even by a hypothetical tiny minority of recalcitrant, obstreperous malcontents. The requirement that more than 20% of the nearby landowners agree and sign the petition is a guard against frivolous objection. 20% of the landowners in a given area is in fact more than the total proportion of citizens who have voted in many of our local and state elections over the years. It is probably no accident that the staff reported only a half-dozen protest petitions over the past ten years—and that is even before you adopted any restrictions on their use, for text amendments or for map amendments to more than single parcels.

I hope that most of you would agree with the staff’s statement that the protest procedure “is an important right of landowning citizens.” But the proposed further curtailment of that right now, added to the limitations adopted last March, would reduce it to practically nothing. There is no compelling public need that requires you to make of the protest provision a practical nullity. The proposed new policy would make this section more complicated, not less so.

Since the Planning Commission acted, some have speculated that you might overrule their considered and unanimous judgment—might resurrect and adopt this further, dramatic limitation on protest petitions. Such an action could not help but appear churlish at best, vindictive at worst—and would address no compelling public need. I would urge you, rather, in the spirit of “peace on earth, good will toward men,” to adopt this Text Amendment as recommended unanimously by the Planning Commission—and not to open or reopen old or new wounds.

Thank you for your consideration.

Statement of Michael E. Hobbs
for the City Council
December 14, 2013

Text Amendment #2013-0003

Thank you, Mayor Euille, Vice Mayor Silberberg, and members of the Council. I am Michael Hobbs, residing at 419 Cameron Street.

You are considering three possible amendments to the “protest petition” provision of the Zoning Ordinance. Since I do not even pretend to any expertise on the use of planimeters or the intricacies of condominium ownership, I want to confine my comments to the third item: the suggestion that the scope of protest petitions be further reduced so that they would apply only to Map Amendments which amount to “spot zoning,” outside the context of any Master Plan or Small Area Plan amendments.

Last March, you adopted an amendment of the protest petition provisions to delete any reference to “text” amendments. The stated purpose was not to narrow the permissible scope of protest petitions, but to remove any ambiguity, and to correct what you believed was a misimpression that they could be lodged against text amendments as well as map amendments.

Several witnesses urged, regardless of your conclusion as to the meaning of the existing ordinance, that you consider whether there might be unforeseen or unnecessary consequences to the proposal then before you. When the Planning Commission endorsed the amendment, it asked staff to consider several possible further amendments to the protest provisions. I believe that the sense of its discussion was, at least in part, to provide some assurance to concerned citizens that their questions would be carefully considered—that you would take care not to go farther than was really necessary or intended to restrict the availability of their right to protest proposed zoning changes which they believed would be grievously harmful to their interest, whatever the particular mechanism employed to effect that change.

In fact, the amendment to Subsection (E) which the Planning Commission considered last week did not redress any degree to which your simple March 2013 amendment restricted the right to file protest provisions. Indeed, it would have restricted such protests still further, with the result that practically nothing would remain of this right which has been protected in our ordinance for decades. I believe what was proposed went far beyond the stated purpose of “clarifying” or “removing ambiguity” from this provision: it would have substantially curtailed its applicability, not only to Text Amendments, but now to Map Amendments as well. I believe that is why the Planning Commission decided unanimously not to recommend such an amendment.

The staff report for the Commission had suggested that the amendment would be appropriate because Map Amendments that implement a Small Area Plan are already the subject of a substantial public process—that “this process inherently already provides the same protection afforded by the protest petition provision.” That is not correct; the Small Area Plan discussion does not provide the same protection. The protest petition, if properly filed, requires a three-

fourths “supermajority” vote of the Council; to adopt a Small Area Plan, the barest majority is enough. With this amendment, not even the agreement of three dissenting Councilmembers could deter the adoption of a zoning change which the petitioning landowners believed would do them grave and needless damage.

If the opportunity for aggrieved landowners to speak in community meetings and public hearings were alone sufficient to safeguard their rights in all circumstances, then there would be no rationale for any protest petition provision at all—because all zoning changes, whether by text or map amendment, whether as part of a Small Area Plan or not, must be considered in a public hearing before Council adopts them.

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Thank you for your consideration.

13
12-14-13

Jackie Henderson

From: tsoapes45@verizon.net
Sent: Wednesday, December 11, 2013 12:33 PM
To: City Council; City Council Aides; Jackie Henderson; Community Relations
Subject: Call.Click.Connect. #43442: Mayor, Vice Mayor City Council I am writing in regard to Text Amendment

Dear *Call.Click.Connect.* User

A request was just created using *Call.Click.Connect.* The request ID is 43442.

Request Details:

- Name: Tom Soapes
- Approximate Address: No Address Specified
- Phone Number: 7036841547
- Email: tsoapes45@verizon.net
- Service Type: Mayor, Vice Mayor City Council
- Request Description: I am writing in regard to Text Amendment #2013-0003 that you will consider on December 14. I urge you to vote in accordance with the recommendation of the Planning Commission and against the proposed portion of the amendment that would preclude protest petitions against Map Amendments that implement Small Area Plans. The arguments in favor of precluding such petitions are far from compelling. Just because the processes of writing small area plans is inclusive does not guarantee that the wishes of the affected community are included in the final plan. The other argument that precluding protests makes for an easier process is also not persuasive. The opportunity for citizens to voice their concerns should always take precedence over ease of making changes in zoning standards.
- Expected Response Date: Wednesday, December 18

Please take the necessary actions in responding, handling and/or updating this request at the [Call.Click.Connect. staff interface.](#)

If you need assistance with handling this request, please contact CommunityRelations@alexandriava.gov or call 703.746.HELP.

This is an automated email notification of a *Call.Click.Connect.* request. Please do not reply to this email.

13
12-14-13

Jackie Henderson

From: hildes66@aol.com
Sent: Wednesday, December 11, 2013 12:08 PM
To: City Council; City Council Aides; Jackie Henderson; Community Relations
Subject: Call.Click.Connect. #43439: Mayor, Vice Mayor City Council Dear Mayor Euille, Vice Mayor Silberberg

Dear *Call.Click.Connect.* User

A request was just created using *Call.Click.Connect.* The request ID is 43439.

Request Details:

- Name: Carl Hildebrand
- Approximate Address: No Address Specified
- Phone Number: 703-299-1176
- Email: hildes66@aol.com
- Service Type: Mayor, Vice Mayor City Council
- Request Description: Dear Mayor Euille, Vice Mayor Silberberg and Members of the City Council

We urge you to retain the right of Alexandria citizens to file a protest petition to map amendments. We understand that the Planning Commission has also recommended this action in their public hearing on Dec. 3, 2013 (File No. TA13-003).

We see the right to a protest petition as a mechanism of last resort for citizens to express their opposition to proposed map amendments.

Sincerely,
Judy and Ed Hildebrand
110 Quay Street
Alexandria, VA

- Expected Response Date: Wednesday, December 18

Please take the necessary actions in responding, handling and/or updating this request at [the *Call.Click.Connect.* staff interface.](#)

If you need assistance with handling this request, please contact CommunityRelations@alexandriava.gov or call 703.746.HELP.

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13
12-14-13

Jackie Henderson

From: waudr@comcast.net
Sent: Tuesday, December 10, 2013 12:50 PM
To: City Council; City Council Aides; Jackie Henderson; Community Relations
Subject: Call.Click.Connect. #43409: Mayor, Vice Mayor City Council Dear City Council Members,Regarding

Dear *Call.Click.Connect.* User

A request was just created using *Call.Click.Connect.* The request ID is 43409.

Request Details:

- Name: Roger Waud
- Approximate Address: No Address Specified
- Phone Number: 703-838-7603
- Email: waudr@comcast.net
- Service Type: Mayor, Vice Mayor City Council
- Request Description: Dear City Council Members,

Regarding the Text Amendment #2013-0003, Section 11-808 on Protest petitions,the proposed amendment would preclude protest petitions against Map Amendments which implement Small Area Plans. The Planning Commission voted against this amendment at its meeting on December 3rd. I strongly request that you also vote against this amendment at your Council meeting this Saturday, December 14th. As a resident and property owner in North Old Town I do not want to lose my ability to have legal authority to protest, if need be, via petition against Map Amendments which implement a Small Area Plan in in my area.

Sincerely,
Roger Waud

- Expected Response Date: Tuesday, December 17

Please take the necessary actions in responding, handling and/or updating this request at the [Call.Click.Connect. staff interface](#).

If you need assistance with handling this request, please contact CommunityRelations@alexandriava.gov or call 703.746.HELP.

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