

*for John Craig*

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April 26, 2021

**By E-Mail**

The Hon. Justin M. Wilson  
The Hon. Elizabeth B. Bennett-Parker  
The Hon. Canek Aguirre  
The Hon. John Taylor Chapman

The Hon. Amy B. Jackson  
The Hon. Redella S. "Del" Pepper  
The Hon. Mohamed E. "Mo" Seifeldein

c/o City Clerk  
[Gloria.Sitton@alexandriava.gov](mailto:Gloria.Sitton@alexandriava.gov)  
Alexandria City Hall  
301 King Street  
Alexandria, Virginia 22314

**Re: April 27, 2021 Agenda Item # 18, File Number 21-0959:  
Consideration of a motion to rescind the vote denying the request  
for Master Plan Amendment #2020-0008, Rezoning #2020-0004,  
Development Special Use Permit #2020-10027, Transportation  
Management Plan Special Use Permit #2020-00076 and Vacation  
#2020-00004 for the Braddock West Development at 1352, 1356,  
1360 and 1362 Madison Street, 1319, 1321, 1323, 1325, 1327 and 1329  
Wythe Street**

Dear Mayor Wilson and Members of the Council:

This firm represents John E. Craig in connection with the above referenced item that has been published on the Agenda for your April 27, 2021 meeting of the City Council. Mr. Craig appeared before you in opposition to the applications which were denied at your public hearing on Saturday, March 13, 2021. We write to object to your consideration of the proposed motion to rescind because the action is expressly barred by the clear and unequivocal provisions of the Alexandria Zoning Ordinance enacted to prohibit the exact actions proposed in the City Manager's Memorandum dated April 21, 2021. **The proposed motion to rescind the final City Council vote denying the Braddock West applications on March 13, 2021 is illegal and should not be allowed.**

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**I. Mr. Craig's Interest in Ensuring Compliance with the Law that Prohibits Recission by this Council of its Final Vote on a Zoning Application**

All citizens, taxpayers and property owners in Alexandria should be outraged by the illegal proposal to rescind the final vote that was duly taken on March 13, 2021. But having appeared at the March 13th public hearing in opposition to the proposed zoning applications, Mr. Craig has a heightened interest in insuring the City Council follows the Rules in this case.

John Craig owns and lives in his home located at 627 North West Street, Alexandria, Virginia, Tax Map Number 054.03-06-27. *See* Deed Book 020002788 PG 0990 in the City of Alexandria Land Records. Mr. Craig purchased his home in January of 2002 and has been a citizen of Alexandria and paid real estate taxes on his property in Alexandria for more than 19 years.

His property is approximately 100 feet away from the proposed Braddock West project. (See attached map.).

As you heard directly from Mr. Craig during the public hearing on March 13, 2021, he has serious concerns about any approval of the requested zoning amendments and SUP applications because the plans for the property and its surroundings have failed to adequately address the dangerous flooding that regularly occurs at the site and surrounding properties, among other concerns.

**II. The City Council Properly Denied the Zoning Applications.**

Given his concerns about the project and its impacts on his own and other neighboring properties, Mr. Craig was delighted when, at the conclusion of the March 13, 2021 public hearing, the majority of the members of the City Council voted to deny the application. Specifically, after Ms. Pepper's motion to approve failed on a 3-4 vote (Wilson, Parker, Pepper: Yes; Aguirre, Chapman, Jackson; Seifeldein: No), the Mayor called for a motion to deny the applications. That motion was necessary, as the City Attorney confirmed, "so that its clear that's what you're going forward with." The motion to deny the applications passed 4-3 (Aguirre, Chapman, Jackson; Seifeldein: Yes; Wilson, Parker, Pepper: No). At the end of the day, there was a unanimous vote to adjourn the session, and the matter cannot be reconsidered.

The Council's proper denial of the application will allow the Developer and the City to better engage with the community about the project after the current COVID-

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19 Emergency is abated. It will also allow the Developer and the City to develop better long-term plans for this important site which is so prominently placed at the very entrance of the Braddock Road Metro Station. Mr. Craig hopes that the improved plans will better address the critical issue of flooding in his neighborhood. The proper zoning and development of this area directly impacts his health and safety and the value of his home, as well as the health and safety of those in the neighborhood and those attempting to access the Metro at Braddock Road.

### **III. The Law Prohibits Further Consideration of the Zoning Applications for One Year After the Council Denied Them.**

Contrary to the advice provided by the City Attorney during the City Council Meeting of April 6, 2021 (Video Record 5:29-5:32), after the March 13, 2021 session was adjourned, reconsideration of the denial of the proposed Master Plan Amendment #2020-0008, is expressly prohibited by the Zoning Ordinance:

*Reconsideration of application. The subject matter of an application for a map amendment which has been denied by the city council shall not be considered thereafter by the planning commission or the city council for a period of one year unless the new application differs in a material respect from the application which was denied, in which case it may be considered after a period of six months.*

Alex. Zon. Ord. § 11-904(D)(“Processing of master plan amendment.”)(emphasis added). And Rezoning #2020-0004, is expressly prohibited by an identical provision of the ordinance:

*Reconsideration of application. The subject matter of an application for a map amendment which has been denied by the city council shall not be considered thereafter by the planning commission or the city council for a period of one year unless the new application differs in a material respect from the application which was denied, in which case it may be considered after a period of six months.*

Alex. Zon. Ord. § 11-805(D)(“Processing of zoning amendment”)(emphasis added).

Reconsideration of the Council’s denial of the Development Special Use Permit #2020-10027 and Transportation Management Plan Special Use Permit #2020-00076 is expressly prohibited by a similar provision of the Zoning Ordinance.

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***If an application for a special use permit is denied by city council, neither the planning commission nor city council shall consider an application for the same special use on the same site again within one year of the date of denial unless the new application differs in a substantial and material way from the prior one, in which case it may be reconsidered after six months.***

Alex. Zon. Ord. § 11-507 (“Reconsideration”)(emphasis added). Moreover the SUPs are completely dependent on the rezoning applications.

Notwithstanding the clear and unequivocal provision of the Zoning Ordinance prohibiting “***any consideration***” of the denied applications for one year, the City Manager’s April 21, 2021 Memorandum suggests that the Council may now purport to rescind its final vote pursuant to Section 2-1-49 of the City Code, which provides:

**Sec. 2-1-49 - Reconsideration of questions.**

(a) A motion to rescind any prior final vote or action of city council may be entertained at any time; provided, that no such motion, made at a special meeting, shall be entertained unless there are present at such special meeting at least the number of council members as were present when the vote or action to be rescinded occurred.

Alex. Code § 2-1-49. Incorrectly relying on Robert’s Rules of Order, the Staff asserts that the Council may act under this provision because there has been no reliance on the vote denying the rezoning and SUPs. But Robert’s Rules of Order specifically provide that “the actions of any deliberative body are also subject to applicable procedural rules prescribed by local, state, or national law ***and would be null and void if in violation of such law.***” Robert’s Rules of Order Newly Revised 1:5 (12<sup>th</sup> ed. 2020) (emphasis added).

Basic rules of statutory construction demonstrate the reconsideration of the Council’s zoning denial is illegal.

It is firmly established that, “when one statute speaks to a subject generally and another deals with an element of that subject specifically, the statutes will be harmonized, if possible, and if they conflict, the more specific statute prevails.” *Commonwealth v. Brown*, 259 Va. 697, 706, 529 S.E.2d 96, 101 (2000). This is so because “a specific statute cannot

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be controlled or nullified by a statute of general application unless the legislature clearly intended such a result.” Id.

*Gas Mart Corp. v. Bd. of Sup'rs of Loudoun Cty.*, 269 Va. 334, 350, 611 S.E.2d 340, 348 (2005); *accord Covell v. Town of Vienna*, 280 Va. 151, 162, 694 S.E.2d 609, 616 (2010).

If, as the City Manager’s April 21, 2021 Memorandum suggests, the Council has the power to rescind its deliberate denials of rezoning and SUP applications whenever it wants to, the provisions of Alex. Zon. Ord §§ 11-507, § 11-805(D) and § 11-904(D), would be completely illusory. In addition to violating the rule quoted above, the Staff’s interpretation would also violate the Rule that, “it is well-established that a statute should not be read in such a manner that will make a portion of it useless, repetitious, or absurd.” *Jones v. Conwell*, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984); *see also Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004)(“Words in a statute should be interpreted, if possible, to avoid rendering words superfluous.”).

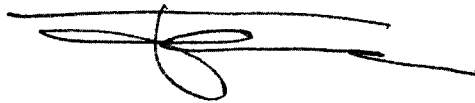
The cooling off period mandated by Alex. Zon. Ord. §§ 11-507, § 11-805(D) and § 11-904(D), protects both the City Staff, the Council and the Citizens of Alexandria from the substantial burdens of repeatedly revisiting the same contentious issues of City Zoning more than once a year. Aside from protecting the taxpayers from the burdens of having City Government resources spent on the same development proposal over and over until it is granted, these laws protect the neighbors and citizens from constantly undergoing the burdens of monitoring the City docket and appearing at public hearings to repeat the same arguments while the developer hopes for a different result.

In sum, the advertised motion to rescind the denial of the West Braddock rezoning and SUPs is expressly prohibited by the Alexandria Zoning Ordinance. It would be illegal and *ultra vires* for the Counsel to “*consider*” the applications during the mandatory cooling off period. It will be the job of the new Council to consider any new zoning applications for this property.

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For these reasons we respectfully request that you remove item number 18 from your April 27, 2021 docket as required by City's Zoning Ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Thorpe Richards, Jr.", with a long horizontal stroke extending to the right.

John Thorpe Richards, Jr.

*Counsel for John E. Craig*

JTR/ban  
Enclosure

cc. Mark Jinks (By E-Mail: [mark.jinks@alexandriava.gov](mailto:mark.jinks@alexandriava.gov))  
Joanna C. Anderson (By E-Mail: [joanna.anderson@alexandriava.gov](mailto:joanna.anderson@alexandriava.gov))  
Jonathan P. Rak (By E-Mail: [jrak@mcguirewoods.com](mailto:jrak@mcguirewoods.com))



City of Alexandria, Virginia

Map Title



Legend

- Tax Map Index
- Parcels
- Blocks
- Metro Stations
- Metro Lines
  - Blue
  - Yellow
  - Yellow Blue
- City Boundary
- Rail Lines
- Parcels
- Buildings
- Surface Water
- Streams
- Parks
- City of Alexandria

Notes

376.2 0 188.08 376.2 Feet

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
City of Alexandria, VA

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.  
**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

## Gloria Sitton

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**From:** BARBARA BEACH <bpbeach@aol.com>  
**Sent:** Monday, April 26, 2021 1:38 PM  
**To:** Gloria Sitton  
**Subject:** [EXTERNAL]Fwd: Braddock West Development Item 18 4/27/21 Docket

Please see below and accept my failure to copy apology. Thank you. Barbara

Barbara P. Beach, Esq.  
614 S Royal St  
Alexandria, VA 22314  
bpbeach@aol.com  
703.683.3434

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Please excuse any typos...I am either using a very small keyboard or dictating the message.

Begin forwarded message:

**From:** BARBARA BEACH <bpbeach@aol.com>  
**Date:** April 26, 2021 at 11:17:38 AM EDT  
**To:** Joanna Anderson <Joanna.Anderson@alexandriava.gov>  
**Cc:** Mark Jinks <Mark.Jinks@alexandriava.gov>, Justin Wilson <justin.wilson@alexandriava.gov>, Amy Jackson <Amy.Jackson@alexandriava.gov>, John Chapman <john.taylor.chapman@alexandriava.gov>, Mo Seifeldein <Mo.Seifeldein@alexandriava.gov>, Del Pepper <Del.Pepper@alexandriava.gov>, Elizabeth Bennett-Parker <elizabeth.bennettparker@alexandriava.gov>, Canek Aguirre <Canek.Aguirre@alexandriava.gov>, Christina Brown <Christina.Brown@alexandriava.gov>, Karl Moritz <karl.moritz@alexandriava.gov>  
**Subject:** Re: Braddock West Development

Thank you for your response Joanna.

The City Code Zoning ordinance reads:

“The subject matter of an application for a map amendment which has been denied by the city council **shall not be considered** thereafter by the planning commission or the city council for a period of one year”

I note that the dictionary defines consider as:

- 1: to think about carefully: such as
  - a: to think of especially with regard to taking some action

Once Council adjourned the meeting where the vote occurred, the action taken was final and the zoning application was denied.



The Zoning Ordinance says you cannot “consider” the “subject matter” again. It does not merely say you shall not vote on it again, but clearly states you shall not consider it again. How do you even get it on the docket if you are not considering it? There is no way a motion to rescind can even be made without it being a “consideration” of the subject matter because the vote being rescinded concerns the zoning of Braddock Road West which is the subject matter.

You are reading the Code to negate the sections of the Zoning Ordinance. With due respect that is not proper statutory interpretation.

With kind regards, Barbara

Barbara P. Beach, Esq.  
614 S Royal St  
Alexandria, VA 22314  
bpbeach@aol.com  
703.683.3434

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On Apr 26, 2021, at 9:48 AM, Joanna Anderson <Joanna.Anderson@alexandriava.gov> wrote:

Dear Barbara:

Thank you for contacting the City Manager regarding your concern regarding the motion to rescind the City Council’s vote on March 13, 2021 denying the land use applications for the project known as Braddock West.

As you note, City Code Section 2-1-49 provides City Council with the ability to reconsider previous votes either with a motion to reconsider at the same meeting or a motion to rescind at subsequent meetings. This is a common procedural tool that is also available in Robert’s Rules of Order. The result of a successful motion to rescind is the matter is back on the table for City Council to act on as if the previous vote did not happen. In this case, the City Council is acting on the same application not a new application.

You note that the Zoning Ordinance indicates that for a period of one year the City Council shall not consider a new application for the same matter if an application is denied. This appears in Section 11-805(D) for map amendments, Section 11-905(D) for mater plan amendments, and Section 11-507 for SUPs. These provisions are intended to

Barbara Beach

Dear Mr. Jinks:

I am in receipt of a memorandum from your office to city Council concerning the zoning actions taken on the Braddock Road development. I write to bring to your attention the code prohibitions to this item returning to Council docket.

I agree that section 2 -1-49 of the city code is a general statutory provision addressing procedures such as a motion to rescind. I disagree however that the statute permits the docketing or consideration for city Council of any matter relating to the master plan amendment or rezoning of the Braddock Road property.

My disagreement is based on two very specific sections of the Alexandria code. Those sections specifically states as follows:

11-905 - Action on master plan amendment.

(D)

Reconsideration of application. The subject matter of an application for a map amendment which has been denied by the city council shall not be considered thereafter by the planning commission or the city council for a period of one year unless the new application differs in a material respect from the application which was denied, in which case it may be considered after a period of six months

11-805 - Processing of zoning amendment.

D)

Reconsideration of application. The subject matter of an application for a map amendment which has been denied by the city council shall not be considered thereafter by the planning commission or the city council for a period of one year unless the new application differs in a material respect from the application which was denied, in which case it may be considered after a period of six months

Statutory construction mandates that specific statutes govern over general statutes. In this instance you have a general procedural process statute versus the specific zoning reconsideration prohibition statute. For these reasons, placing the Braddock Road item on the docket thereby asking Council to consider it in any manner is ultra vires. I ask that you remove it from the docket rather than expose the City Council to sanctions.

Thank you for hearing me out.