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A statement by Bert Ely to the Alexandria City Council
May 12, 2012

The City should withdraw its BZA appeal

Mr. Mayor and members of Council, I am Bert Ely. As you know I have a long-standing interest in waterfront issues, including serving as a member of the Waterfront Plan Work Group. I also now serve as a co-chair of Citizens for an Alternative Alexandria Waterfront Plan, or CAAWP.

I come before you today to urge the City, in the strongest possible terms, to withdraw the appeal it filed yesterday in the Alexandria Circuit Court. The City is foolishly appealing a decision by the Board of Zoning Appeals to reverse the Planning Director's determination that a protest filed by almost 200 property owners against a change in the W-1 zone incorporated in the Waterfront Small Area Plan was invalid.

This appeal is absurd. You, the Council, appointed seven citizens to serve on a board created by the City's charter to hear zoning appeals, as provided for under a zoning ordinance that you, the Council, adopted and to hear those appeals under procedures spelled out in the zoning ordinance that you, the Council, adopted and can modify at any time.

In carrying out its assigned responsibilities, the BZA carefully deliberated the issues raised by the W-1 zoning protest in the context of interpreting Section 11-808 of the City's zoning ordinance. In appealing the BZA's decision, Council has created the especially absurd situation where the City is effectively suing itself by virtue of having to name the BZA as one of the respondents in the appeal.

Worse, this appeal will cost the City tens of thousands of taxpayer dollars in legal fees paid to an expensive, high-powered law firm. On top of that, the City will have to pay additional thousands of dollars in fees to provide legal counsel to the BZA since it is among the named respondents in the City's appeal. Far worse, hundreds of Alexandria citizens are having to spend tens of thousands of their hard-earned, after-tax dollars in legal fees trying to force the City to play by the City's own rules – the protest provisions in the zoning ordinance.

There is an easy, costless resolution to this mess – accept the BZA's decision and then fix the zoning ordinance, specifically Section 11-808, which sets out the protest procedure. You, members of Council, have the power to do just that. Specifically, delete the words "text or" from Section 11-808(D) of the zoning ordinance. Doing so will eliminate the precedential effect of the BZA decision that the Mayor cited as the City's justification for the appeal.

While Council is at it, it should modernize this section of the zoning ordinance by dropping the reference to the use of a planimeter to measure the land area eligible to protest a zoning map change. In clear violation of this requirement, City staff no longer use a planimeter; instead, they use a Geographic Information System, or GIS, to measure the applicable land area. Interestingly, when determining where to circulate protest petitions, CAAWP scrupulously complied with the zoning ordinance by using a planimeter.

Mister Mayor and members of Council, the City needs to stop fighting with its citizens, and wasting taxpayer money. Accept the BZA's decision in the waterfront zoning matter, drop the appeal to the Circuit Court, and act on the BZA's recommendation by appointing a committee to review the language of Section 11-808 of the zoning ordinance.

Thank you for your time. I welcome your questions.