A rebuttal of key points in City Manager Rashad Young's February 15, 2013, letter to Interested Members of the Community

The following numbered paragraphs relate to each of the numbered segments in City Manager Rashad Young's February 15, 2013, letter to "Interested Members of the Community" regarding the Alexandria City Council's apparent decision to have a revote on rezoning portions of the Alexandria waterfront.

1 – "At the same time, City Council approved a text amendment to include the zoning changes necessary to carry out the [waterfront] Plan."

Wrong. In fact, the zoning text amendment failed, by a 5-to-2 vote, because, as the Board of Zoning Appeals (BZA) later ruled, a supermajority vote of at least 6-to-1 was required to adopt the change in the W-1 Waterfront Mixed Use Zone. A supermajority vote was required because a valid zoning protest petition was submitted in a timely manner to Planning and Zoning Director Faroll Hamer.

2 – "that Text Amendment has been delayed due to litigation that challenges the procedure for approving the zoning changes."

Wrong. The litigation in question is the City's appeal of the BZA decision requiring a supermajority vote by Council. The unrelated appeal to the Virginia Supreme Court would not bar zoning changes along the waterfront. The City could move ahead with those zoning changes if it simply dropped its appeal of the BZA decision. Private property owners along the waterfront could then seek the rezoning of their properties, if they thought it necessary.

3 – "The continuing litigation is preventing the [waterfront] Plan from reaching its full potential."

Wrong. If the City dropped its appeal of the BZA decision mentioned above, individual landowners could then petition Council for a zoning change affecting just their property. That is what Carr properties indicated it would do for its proposed hotel at Duke and South Union.

4 – "This week City Council provided guidance to me."

Misleading. That guidance was provided by Council during a closed-door executive session at its February 12, 2013, meeting, a session that lasted one hour and forty-five minutes. In effect, behind closed doors, Council debated and apparently voted on an important land-use policy matter with a citywide impact that should have been debated and voted on in public. This behind-closed-doors decision-making contravenes the increased transparency in decision-making City leaders claim they seek to achieve.

5 – "the Planning Commission . . . [will] consider a text amendment to the W-1 Waterfront Mixed Use Zone at their next meeting on Tuesday, March 5, 2013, that will then be considered by City Council at their public hearing on Saturday, March 16, 2013."

Misleading. Council clearly is trying to rush enactment of a zoning change that has citywide ramifications without allowing for a reasoned review and debate about the merits of eliminating the right of affected property owners to protest, via the petitioning process, a text amendment to the City's zoning ordinance. Changes to the Zoning Ordinance usually take months, and sometimes several years, to give all stakeholders an opportunity to consider and understand the implications of proposed changes in the ordinance. The Planning Commission and City Council need to slow down this train before all Alexandrians get run over by it. Most importantly, City staff has refused to release the text of the proposed amendments to the Zoning Ordinance, leaving concerned citizens in the dark at to exactly what Council is trying to accomplish. Perhaps it is the goal of the Council and City staff to keep citizens in the dark.

6 – "In an effort to address the concerns raised by the opponents in the litigation."

Wrong. Neither City staff nor any member of City Council spoke with any of the citizen litigants defending the BZA in the waterfront litigation as to whether the changes in the Zoning Ordinance that Council seems intent on making would address the litigants' concerns.

7 – "City Council will proceed as if there is a valid protest petition requiring a supermajority vote on this matter."

Wrong. A valid protest petition already exists – it was filed with the City over a year ago, in January 2012. Director Hamer, however, determined that the protest petition was invalid, so some of the petitioners filed an appeal to the BZA that should have immediately stopped all further action on the proposed text amendment. Council proceeded, though, to vote on the zoning change, approving it by a 5-to-2 vote, one vote short of the supermajority requirement the BZA later ruled was required. That BZA ruling is what the City is appealing in the Alexandria Circuit Court. Worse, Young's statement implies that Council effectively voted, during its closed-door meeting on February 12, as to how it would vote in public when it takes up the proposed zoning change. Of course, Council members could change their mind before March 16 and decide to amend the Zoning Ordinance by a simple majority vote.

8 – "clarify that the protest petition provision that triggers the supermajority vote applies only to map amendments not to text amendments."

Wrong. A change in Section 11-808 of the Zoning Ordinance to bar protest petitions for text amendments would serious weaken property owners' rights citywide – Council could then greatly alter the permitted activities within a zone by a simple majority vote. Eliminating the right to protest changes in the permitted uses in a zone would directly contravene Section 9.13 of the City Charter, which provides for a protest petition in cases where an amendment to the Zoning Ordinance would affect a "zoning condition;" i.e., the permitted uses in a zone. The City Charter can only be amended by the Virginia General Assembly. The City cannot undermine property rights guaranteed by the City Charter.

9 – "This action provides the Community with an opportunity to get beyond the litigation."

Wrong. The City can readily "get beyond the litigation" by simply dropping its appeal of the BZA decision mandating a supermajority vote on any change in the permitted uses in the W-1 Waterfront Mixed Use Zone. Ending this litigation is within the sole control of the City.

10 – "it ensures that implementation [of the waterfront plan] advances comprehensively, rather than in a piecemeal way."

Wrong. The Waterfront Small Area Plan, which Council has adopted, provides for a comprehensive plan for the waterfront. Zoning changes within the Waterfront Small Area Plan that are compatible with the Plan can readily be sought by individual land owners on a parcel-by-parcel basis.

11 – "This funding is needed to support the flood mitigation, parks, piers, promenades and activities"

Wrong. Leaving aside the wisdom of the Waterfront Small Area Plan that Council adopted, it is the Plan, not waterfront zoning, per se, that will guide the development of the waterfront that will, in turn, generate the funds the City believes it needs to fund certain waterfront-related projects.