



BOARD OF SUPERVISORS OF ELECTIONS COMPLAINT FORM

PLEASE PRINT ALL INFORMATION

Name of Complainant Max A. van Balgooy

Street Address 313 Twinbrook Parkway

City Rockville State MD Zip 20851

Daytime Phone Number 301-251-6371 Fax Number _____

E-mail Address max.vanbalgooy@gmail.com

Complaint against the following person(s) (include contact information, if known): _____

Anonymous person(s) to be identified.

Section of *Chapter 8 – Elections* allegedly violated: 8-73(a) Failure to register as campaign committee. 8-101(7) Distribution of anonymous campaign literature.

Please explain the basis for your complaint. If necessary, attach additional sheets.

See attached

Date alleged violation occurred: On or about October 20, 2013.

I, Max A. van Balgooy, hereby declare, under the penalties of perjury, that the information provided in connection with this complaint is, to the best of my knowledge, true and correct.

Signature of Complainant

Oct. 22, 2013

Date

City Clerk's Office Use Only
Date & Time Received:

BASIS OF COMPLAINT – ADDITIONAL SHEETS

Specifically, I allege the following violations of Rockville's Code:

Count 1: Violation of §8-101(7). Distribution of anonymous campaign literature.

§8-101 states in relevant part:

Prohibited practices.

The following persons shall be guilty of prohibited practices and shall be punished in accordance with the provisions of this section:

(7) Every person who publishes or distributes or causes to be published or distributed any pamphlet ... relating to or concerning any candidate ... unless such ... clearly indicates the name of the candidate, person or campaign committee responsible for the literature and contains, but set apart therefrom, an authority line which shall include the name and address of the person, treasurer, or campaign manager responsible for the publication or distribution of the same.

The flyer directly relates to and concerns multiple candidates in this election. In the second panel of page 2, the flyer directly calls for the election of Bridget Newton, Don Hadley, and Claire Marcuccio Whitaker to the Rockville Mayor and Council.

The unknown persons who published and distributed the King Farm flyer (Exhibit 1) failed to:

- Clearly indicate the name of the candidate, person or campaign committee responsible for the literature.
- Include an authority line with the name and address of the person, treasurer, or campaign manager responsible for the publication or distribution of the same.

Count 2: Violation of §8-73(a). Failure to register a campaign committee.

§8-73 states in relevant part:

(a) Every campaign committee, as defined in [section 8-1](#) of this chapter shall appoint and constantly maintain a chairperson and a treasurer, whose names and residences addresses shall be filed with the City Clerk.

Rockville City Code defines a campaign committee as:

any combination of two (2) or more persons appointed by a candidate, or candidates, or any other person or formed in any other manner which has as

a principal purpose to assist or attempt to assist in any manner the promotion of the success or defeat of any candidate, candidates, principle or proposition which has been, will be, or is being sought to be submitted to a vote at any City election. [§8-1]

On the second panel of page 2, the King Farm flyer (Exhibit 1) directly calls for the election of Bridget Newton, Don Hadley, and Claire Marcuccio Whitaker to the Rockville Mayor and Council. It is clear that whoever is behind this effort clearly has as a principal purpose the assistance of the promotion of the success and defeat of multiple candidates in this City election.

The flyer was copied and distributed by hand to one of Rockville's largest neighborhoods. It is likely that more than one person was involved and two persons were seen distributing the flyers in King Farm on October 20, 2013. If that is the case, those individuals were required to appoint and maintain a chairperson and treasurer and file their names and addresses with the City Clerk.

Note that under §8-1 it is irrelevant whether the candidates the illegal literature advocates for – Bridget Newton, Don Hadley, and Claire Marcuccio Whitaker – had to form the committee or even know about it. If two or more persons work together to assist or promote the success or defeat of any candidate or candidates, they are defined by law as a campaign committee.

The persons who published and distributed Exhibit 1 failed to:

- File the name and address of a chairperson and treasurer with the City Clerk.

Count 3: Violation of §8-73(b) and §8-1. Failure to report campaign and election contributions.

§8-73 states in relevant part:

(b) If any committee, directly or indirectly, expends five hundred dollars (\$500.00) or more to aid or oppose the nomination or election of any candidate, regardless of the purpose for which the committee is formed, the treasurer of such committee shall report, on the form prescribed in [section 8-82](#) of this chapter, a statement of contributions and expenditures to the treasurer appointed by the candidate being so aided.

§8-1 states in relevant part:

A campaign committee is not required to report campaign and election contributions and expenditures unless such campaign committee expends more than five hundred dollars (\$500.00) to aid or oppose the nomination or election of any candidate as provided in [Section 8-73\(b\)](#).

Anonymous literature has already been an unwelcome feature of this election. An anonymous postcard was printed and mailed to City residents in September (Exhibit 2) concerning the City's Adequate Public Facilities Ordinance.

Team Rockville exercised restraint in not filing a complaint at the time, reasoning that though the postcard could clearly be read to oppose the election of candidates in this election in violation of §8-73(b), because it did not explicitly call for the election of one candidate over another, we let it pass.

But with the appearance of the King Farm flyer (Exhibit 1), it is clear that this restraint was misplaced. Illegal campaign literature like this is highly unusual in Rockville, thus it is reasonable to believe that the same group that created and distributed the King Farm flyer (Exhibit 1) also created and distributed the APFO postcard (Exhibit 2).

If it is found that the distribution of Exhibit 1 constituted activity by a campaign committee, and if two or more people who distributed Exhibit 1 are among the group that printed and mailed Exhibit 2, then this committee's activity is well above \$500 level that requires reporting of campaign contributions and expenditures.

When determining the status of Exhibit 2, note that under §8-73(b), it is the *intent* of the creators and distributors of the material that matters. The Code contains no requirement for an explicit message to vote for one candidate over another. It is for the Board to determine whether given the timing of the mailing and its general content, the *intent* of those who created and distributed the postcard was to aid or oppose the election of any candidate.

The unknown persons who published and distributed the anonymous literature failed to:

- Report campaign and election contributions and expenditures as required on October 3, 2013.

Count 4: Request for immediate injunction under §8-112.

§8-112 states:

The Board of Supervisors of Elections, the Chairman of the Board of Supervisors of Elections, on behalf of the Board, or any aggrieved party having sustained a direct injury may seek an immediate injunction against any violation of the provisions of this chapter.

Team Rockville is suffering a direct injury to its prospects for election due to this illegal behavior, and is therefore an aggrieved party under the Code. As its representative, I seek an immediate injunction against any further violations of Chapter 8 of the City Code.

Dirty and underhanded campaigning has not occurred in recent memory, and with just two weeks remaining in hotly contested Mayor and Council races, it must be stopped immediately to prevent its corrosive nature from spreading and becoming a typical tactic in Rockville and undermining our fair election practices. It is essential that the Board of Supervisors of Elections investigate those responsible for these violations of the City Code, halt the activity, and issue municipal infractions to those responsible for the City Attorney to prosecute. I request an immediate investigation into the identity of the parties responsible for the behavior detailed in Counts 1-3 and then the issuing of an injunction to preserve the integrity of this and future elections in Rockville.

What's APFO and APFS?

Why are they important to King Farm, and City of Rockville?

- Rockville enacted its **Adequate Public Facilities Ordinance (APFO)** and **Adequate Public Facilities Standards (APFS)** in 2005.
- Quoting from the Ordinance "*The Adequate Public Facilities Ordinance (APFO) establishes procedures and standards necessary to ensure that adequate public facilities and services are provided concurrent with new development and redevelopment.*"
- *APFO and APFS help to prevent the school being overcrowding, roads being over congested, ensures adequate fire and emergency services, and water and sewer capacity.*
- **APFO and APFS are the regulations used to protect City of Rockville citizens quality of life.**
- Waivers/changes to APFO/APFS, will directly lead to overdevelopments near or adjoining King Farm.
- Resulting in the destruction of beautiful forest and open spaces, the bird and animal habitats.
- Schools being even more overcrowded (take College Garden Elementary as an example, which is already 30% over capacity, children are studying in the trailers).
- Worsen traffic congestions, higher noise level
- Even higher population density, and much more
- **Causing our property values to go down**

Developers VS. Citizens

The Proposed Waiver would Negatively Impact our Lovely Home King Farm

- September 12, 2013 a proposal drafted by Councilman Tom Moore and Councilman John Hall (with the support of Councilman Mark Pierszchala) for major revision of the APFS was distributed to City of Rockville Mayor and Council via email.
- The Moore/Hall proposal would allow **waiver or exemption** of the school space requirement for virtually any development as long as it is 2000 feet away and within 7/10ths of a mile of a metro station. (**Our lovely King Farm falls within the range.**)
- The proposed plan also ignore any impact of newly generated traffic as a condition of approval of the development.
- Another feature of the Moore/Hall plan was the time table proposed which would fast track any further consideration of the new proposal so that there will be **no further involvement of the Planning Commission.**
- **Mark Pierszchala has a vision for the City of Rockville which is to turn Rockville into Crystal City**
- There was substantial resistance (from Councilmen Moore, Hall, and Pierszchala) to build a Public Hearing at the Mayor and Council meeting, but thanks to Councilwoman Newton and Mayor Maruccuccio a public hearing was successfully held at City Hall on September 30th, 2013.
- Our Treasurer W. Thomas Curtis, represented King Farm Citizens; Christina Ginsberg, President of the Twinbrook HOA, and many other citizens of Rockville all testified to oppose the changes to APFO.
- The proposed time table originally required the Mayor and Council to vote on the Moore/Hall proposal and the developer's proposal by the end of October is now postponed to after the November election.

Statistics and Facts on King Farm = Your Vote Counts in this Election

- King Farm Total Population: 10,800 (3,600 households on a 440-acre land)
- City of Rockville Total Population: 62,867 (8,685 acres)
- This makes King Farm's gross residential density **more than three times** that of the city of Rockville.
- King Farm is used as the case study by MBA program as a good model for new urbanism.
- King Farm was cited as Smart Growth Illustrated by U.S. Environmental Protection Agency.
- In 2001, King Farm won a Charter Award from the Congress for the New Urbanism.
- In 2011 Election, only 8% of King Farm residents voted.
- This coming election---
- Show them that we care about our community
- Show them we matter
- Strength is in numbers; we need the votes from all eligible King Farm residents in order to be heard!
- **Please vote for the candidates who care about the citizens, not friends to the developers because our community is worth it!**

Source: http://newurbanismwatershed.unc.edu/PDF/king_farm.pdf, wikipedia, and EPA.

3

Who should King Farm Citizens Support on November 5th, 2013?

- **Bridget Newton** (Candidate for Rockville Mayor)
- **Don Hadley** (Candidate for Rockville Council member)
- **Claire Marcuccio Whitaker** (Candidate for Rockville Council member)

are siding with the citizens, and have all publicly **opposed** waiver/changes to the **APFO** and **APFS**.

They support sustainable growth of Rockville, not overdevelopments which led to deteriorating of quality of life for all City of Rockville citizens.

Polling Place for King Farm residents: King Farm Community Center

4

ALERT: This Monday Night Say No To Waivers

APFO WAIVER = OVERCROWDED SCHOOLS, TRAFFIC GRIDLOCK

In Brief:

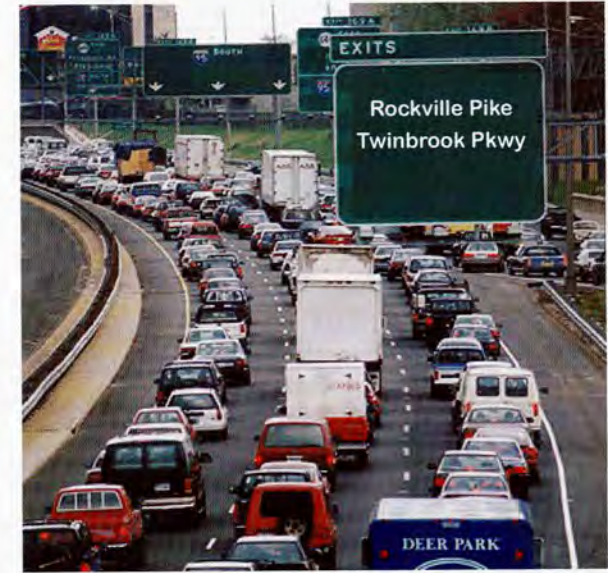
The Mayor and Council are holding a public hearing this Monday September 30 - 7 pm regarding a proposal to create a loophole in our City's growth-control laws, allowing developers to circumvent normal zoning rules and build projects that will worsen school overcrowding and traffic gridlock. This proposal is a really bad idea for Rockville.

Background:

Rockville has an Adequate Public Facilities Ordinance (APFO). Along with its companion law, the Adequate Public Facilities Standards (APFS), the APFO is a counterbalance to the ever-increasing pressures of overdevelopment on our City's quality of life. There is, of course, pressure from development special interests to weaken the APFO/APFS and open the floodgates to rampant new overdevelopment. The citizens of Rockville have repeatedly and overwhelmingly voiced their support for the APFO, and have repeatedly and overwhelmingly opposed weakening of these crucial growth-control laws. However, development special interests and their friends on the City Council are making another attempt, with a rush job in the closing days of this Council's term, to revise the APFS, and thereby significantly weaken our APFO. This waiver proposal is buried within a "cleanup of language" amendment, alongside some other relatively harmless provisions. Don't be fooled. It would allow dangerous waivers from the normal zoning laws, special favors for developers who don't want to play by the rules, as other businesses must do.

How would this loophole work?

By supermajority vote, the governmental body considering a development application (e.g. the Mayor and Council, the Planning Commission, or the Board of Appeals) could grant a waiver from the APFO school and traffic standards for any new development in Town Center or within 2000 feet of any Metro station. These areas are where almost all of the large developments are expected to be built in Rockville, and the 2000-foot provision reaches well into what are single-family neighborhoods today. The criteria for the waiver are vague, basically that the project is somehow good for the City, with the merits of the development largely left to the subjective tastes of the deciding body.



What if we let this happen?

- **Rampant overdevelopment**, adding to school overcrowding and traffic gridlock. This is guaranteed, since the waivers would only be needed if the schools were already overcrowded to the legal limit, and the roads were already too crowded to allow development under the normal rules.
- **Flood of lawsuits from developers** if their projects somehow don't get waivers. The taxpayers would have to pay the legal costs, of course. The proposal contains only the vaguest criteria for whether the City grants a waiver or not, so any decision one way or the other can and will be challenged in court as "arbitrary and capricious."
- Corruption of our political process, as **developers compete for special favors**. Campaign contributions, lobbying, well, you know the rest.

What can I do?

Email the Mayor and Council at mayorandcouncil@rockvillemd.gov and tell them **"NO WAIVERS!"**

Come to City Hall and testify at the public hearing this **Monday evening 7 pm, September 30**. You don't have to speak very long, a simple **"NO WAIVERS!"** will suffice.

For more information email: savetheapfo@gmail.com

APFO WAIVER = OVERCROWDED SCHOOLS, TRAFFIC GRIDLOCK

NO WAIVERS!
SAVE THE APFO



Say NO to the APFO Waivers!

No Waivers
P.O. Box 10163
Rockville, MD 20849

PRSRT STD
U.S. Postage
PAID
Suburban, MD
Permit No. 1

Concerned Rockville Citizen