

From: [Linda](#)
To: tony.fernandez5@gmail.com; sundevels98@yahoo.com; bacantrell@charter.net; klanespencer@uwalumni.com; ["Ledell Gmail"](#); mcsheppard@madisoncollege.edu; nicole.solheim@gmail.com; [Heck, Patrick](#)
Cc: [Plan Commission Comments](#)
Subject: Legistar 71082
Date: Tuesday, May 24, 2022 9:59:07 AM

Fact checking of a recently posted public comment:

Assertion: "I urge you to follow the lead of, for example, Massachusetts, which now requires a simple majority from the City Council if the rezoning would increase the number of homes allowed."

Fact: Rezoning in Massachusetts, in general, require a 2/3 vote, except for multifamily housing or mixed-use development in an "eligible location." Massachusetts did away with protests petitions in January 2021 (20% of land extending 300 feet) for multifamily housing or mixed-use development in an eligible location. By July 2021, **protest petitions were reinstated** (50% of land extending 300 feet). (Rezoning also often require approval of the state Attorney General.)

Assertion: "Madison's current 3/4 requirement on the petition of 20% of nearby landowners is based on the Hoover era Standard State Zoning Enabling Act, a model law published in 1926."

Fact: The *Standard State Zoning Enabling Act* recognized that many laws had already been enacted, based on the first one enacted in New York City. (New York's dates back to at least 1919.)

From: [ulrike dieterle](#)
To: [Plan Commission Comments](#)
Cc: [dieterle michael](#); [ulrike dieterle](#); [Vidaver, Regina](#)
Subject: Item 71082 - Repeal of MGO Sec.28.182(5)(2) ("Protest Petition") and amending MGO Sec.28.182(5)(b) to include a two-thirds (2/3) favorable vote by Common Council to pass zooming map amendments.
Date: Monday, May 23, 2022 4:38:43 PM

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We are opposed to any change to MGO Sec. 28.182(5)(C) which addresses protest petitions.

Residents should not be denied the right to petition. To remove this potential process is another attempt to silence neighborhood voices in favor of supporting the financial well-being of developers, many of whom do not reside in Madison or even in Wisconsin. It is time for the City and its decision-making bodies to listen to residents and to seriously consider their quality of life issues. The Plan Commission and, ultimately, Common Council should not be undermining neighborhood "rights" which were amended fairly recently, in fact, in 2017. Discomfort with democratic processes should not result in the elimination of those processes. Broad input, including dissent and disagreement, are part of living in a true democracy. Please do not place expediency above the well-being of our community.

Thank you. Ulrike and Michael Dieterle, 323 N Blackhawk Ave, Madison 53705

From: Beth Sluys [<mailto:sluysb@aol.com>]

Sent: Monday, May 23, 2022 4:08 PM

To: bacantrell@charter.net; district20@cityofmadison.com; district2@cityofmadison.com; district3@cityofmadison.com; jshagenow@yahoo.com; klanespencer@uwalumni.com; ledell.zellers@gmail.com; mcsheppard@madisoncollege.edu; nicole.solheim@gmail.com; tony.fernandez5@gmail.com; allalders@cityofmadison.com

Subject: Agenda Item 6, Plan Commission meeting 052322

Beth Sluys, District 18

Agenda Item 6

Legistar Item # 71082

In opposition to this item.

**Per the city's website:
Verified Protest Petition**

Individuals who wish to protest a proposed zoning map amendment may file a protest petition document before the Common Council meeting at which the proposed zoning map amendment will be considered. If enough residents in the area file a protest, the measure will need to be approved by three-fourths of the Common Council rather than the standard majority. Individuals wishing to file a protest petition should contact the Zoning Administrator at (608) 266-4551 for more information.

It is the intent of the protest petition to give the community a tool to provide the request for more in depth conversations about zoning and development issues that will directly impact where they live. To deny the residents the opportunity to make such a strong request is counter to the democratic process. Residents in our city are facing the de-evolution of planning and the continued lessening of ways to be engaged in the planning and zoning process, whether in this instance of removing the protest petition, or in other ways currently under consideration such as "retiring" well thought out neighborhood plans as we are being pushed to consider planning districts.

The petition allows for options to be considered and to better help the decision makers to understand all the local issues at hand.

Protest petitions bring an extra light on zoning and development related issues that warrant the extra mile of being discussed. It allows neighbors to speak to neighbors and to learn from them what their concerns are and to give a voice to those who sign the petition. Not all protest petitions are completed by high priced attorneys or well paid consultants.

Often solutions are brought forward that make better sense and offer a broader scope to the project at hand.

Is it a bad thing to ask that we take the time to consider all options when impacting the local community?

Please keep the protest petition in place.

Thank you,

Beth Sluys

From: Chelsea Bingiel <cbingiel@gmail.com>
Sent: Monday, May 23, 2022 12:15 PM
To: Planning <planning@cityofmadison.com>
Subject: Agenda Item #6: Support alternative plan

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I just wanted to clarify my registration of "Neither support nor oppose". I read that there is an alternative to the plan to remove the protest petition and keep a simple majority vote. I'm in favor of this alternative plan, public opinion and research will still be done and I don't think all development plans should require a 2/3 majority especially if they're not controversial in the first place. I think this will help things get done faster, we need more housing yesterday and a lot of these areas need to face hard truths and scale to fit our growing size.

From: Matt Brink <mbrink@veridianhomes.com>
Sent: Monday, May 23, 2022 4:08 PM
To: Stouder, Heather <HStouder@cityofmadison.com>
Subject: Tonight's Plan Commission - Agenda Item 6 - Legistar 71082

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Hi Heather, I am reaching out ahead of tonight's Plan Commission to discuss agenda item 6. Veridian is a member of Smart Growth, and Bill Connors has submitted a letter opposing the portion of this ordinance amendment that would require 2/3 favorable vote by Common Council to pass zoning map amendments.

I want to express Veridian's concern about this potential change as amplification to Smart Growth's overall concerns.

These provisions should at the very least be bifurcated and discussed separately as they are opposing points and counteract each other in such a way that an affirmative vote on the 2/3 threshold outstrips the benefits of removing the protest provision from the process. As evidenced by history and stated by Alder Heck in Madison.com in relation to the protest petition, "It is clear to us that the petitions didn't accomplish anything." I believe it is clear that the protest provision should be rescinded.

As it pertains to a 2/3 thresholds for ALL rezoning - that is an extremely high threshold and it should not be applied with a broad brush. The rationale for such a move needs to be discussed at far greater lengths before it should even be considered much less voted upon.

This discussion should be tabled until a much more in depth discussion can take place with stakeholders.

Thank you as always.

Matt Brink

Director of Land Development

Office: 608-226-3122

Mobile: 608-225-8878

Leave a Review: [Google](#) | [Facebook](#)

VeridianHomes.com



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Plan Commission
RE: May 23, 2022 Meeting
Agenda #6, Legistar 71082, Repeal of Protest Petitions

I urge the Commission to vote *against* the alternate amendment, which would discontinue the rezoning protest petition process and would allow all zoning changes to be approved with a simple majority vote on the Common Council.

Wisconsin's Republican government repealed the protest petition requirement in 2018. They outlawed inclusionary zoning at the same time. Does this mean that Madison, with its long history of progressive values, should follow that lead just because they can?

The repeal of the state statute did not mean that municipalities couldn't reform and improve the protest petition process. Concerns about equal access to the process, or worries about delays, could be easily addressed. Until fairly recently, the Planning Department maintained a brochure available to all with clear guidance about how to submit accurate petitions. In fact, the Planning Department has been on the record as recently as 2017 as "very supportive" of the protest petition process, and alluded to the importance of greater public participation in the rezoning process. Concerns that the petition policy may be cumbersome or ripe for abuse justifies REFORMING the policy. Just ending it would be like throwing the baby out with the bathwater.

The brochure is gone now, and with this proposed action, it appears that the goal is to shut out citizen participation in the rezoning process.

Many who have submitted written statements on this item have stated that the protest petition allows a small number of residents to delay or even prevent much needed housing developments in the city. Those writers did not read the Staff Report, which clearly states that there have been 13 protest petitions **in the past decade**. This averages 1 and 1/3 petitions per year. Of those 13 petitions, Staff have said that **none of those petitions impacted the outcome**. To suggest that Madison's housing issues remain unsolved somehow because of the protest petition is a cynical misstatement. Staff, on the other hand, suggest that the protest petition be discontinued specifically BECAUSE none of them has succeeded. The claim is that they take up too much valuable staff time for no real purpose. Staff needing to process 1 and 1/3 petitions each year over the past 10 years is not onerous; instead, it is the nature of the job of a public servant to – you know – serve the public.

There are a number of Council procedural items that require a 2/3 vote, such as ending debate on a question, taking a matter out of order, or extending speaking time in certain circumstances. Approval of a land use that conflicts with the existing planned use is certainly AT LEAST as important as Council procedure, if not more so.

Zoning is EVERYTHING when it comes to urban planning and land use. Zoning is the tool by which Madison decides what is appropriate for the future of the city. Zoning can encourage inclusion, create affordable and equitable housing opportunities, protect open spaces, and ensure that much-needed increased housing is designed to integrate with its surroundings through context-sensitive design and scale, a value in the city's Comprehensive Plan. When done thoughtfully, rezoning can connect people and places, improve quality of life, address environmental concerns, and help resolve the overarching issues of food and housing insecurity.

If rezoning should not be subject to higher scrutiny, either through the protest petition process or by requiring a higher affirmative vote threshold in general, I don't know what should be. The Staff Report alludes to unspecified hypothetical concerns that a higher vote threshold might negatively impact future rezonings. I urge you not to make decisions based on unfounded fears.

We're all seeing an attack on democratic principles at the national level, and I'm sad to see it's finding a foothold here in Madison. Suggestions that a rezoning protest petition is akin to "tyranny of the minority" is laughable at best, and is a cynical attempt to squelch public participation. Apparently there are those who believe that a developer who hints that they might build housing should receive carte blanche to build whatever, wherever, regardless of Madison's planning goals, regardless of the quality of life, health, and safety of the city's residents.

A protest petition can be an important tool for the public to push back against the tyranny of wealthy developers and landowners who support modern-day redlining and other discriminatory processes. It's unclear why so many people appear to be opposed to actual "planning," and instead seem to think that the few who control development in this city should just have their way.

The petition process is not the problem. Any problems within the process can be reformed. A group of residents coming together to question the adequacy of a new development can encourage the developer to build a better-quality building, increasing quality of life and access to necessary resources for all, not just for the privileged few. There's NO GOOD reason to squelch citizen participation in the workings of the city.

Upon your careful consideration, I hope you'll vote to deny the alternate amendment. If the Commission determines it is in the best interest of the city to end the rezoning protest petition, I would ask that you approve the initial amendment and require a 2/3 Common Council vote on all rezoning amendments.

Respectfully,
Sandy Blakeney

Plan Commission
Meeting of May 23, 2022
Agenda #6, Legistar #71082, Repeal of Protest Petitions

Wisconsin statutes had provided for protest petitions dating back to at least 1941 (the earliest statutes archived on the legislature's on-line law archive). 2017 Wisconsin Act 243 repealed the protest petition, Wis. Stat. 62.23(7)(d)2m.a. - this was the same Act that made inclusionary zoning illegal throughout the state, and was enacted by a Republican Governor, Senate and Assembly. Does the City, which has been known for its progressiveness, want to follow the lead of a Republican state government just because it is legal to do so?

The purpose of protest petitions has not changed. The Wisconsin Supreme Court has said: "It is true that sec. 62.23 (7) (d), Stats., is designed to protect adjacent landowners from zoning changes, and the statutes have extended a great deal of protection to such persons." *Prescher v. Wauwatosa*, 34 Wis. 2d 421, 429 (1967). "The purpose of sec. 62.23 (7) (c), Stats., was to permit protest by landowners directly affected by zoning changes. Landowners whose property borders on land to be rezoned are *directly affected because their land value and enjoyment of their property decreases.*" *Prescher*, at 431, emphasis added.

The complaint that a protest petition can delay a rezoning vote to a subsequent Council meeting is easily remedied: ordinance language could be modified to say that a petition must be filed by Thursday noon unless the Plan Commission recommended approval less than 10 days prior to the Council meeting. The ordinance was changed in 2017 to allow for filing of a petition the Monday before the Council meeting. This was because a Plan Commission meeting on a Monday could necessitate filing a petition 2½ days later if the Council meeting was on the Tuesday of the following week. The Staff Report at that time said: "Staff is generally very supportive of the extended filing period for protest petitions" and that the extended filing time "should result both in greater participation in the rezoning process and more accurate petitions."

Now, rather than wanting greater participation in the rezoning process, the goal is to shut out that participation.

Does the process, as said in the Staff Report, favor "those who have a lot of experience reviewing land use cases and have easy access to private legal counsel"? Yes. But that also can be easily corrected. One Wisconsin municipality had a webpage devoted to protest petitions and included maps to show how to calculate the 200 feet – whether the parcel to be rezoned was mid-block or on a corner, and whether the petitioners were seeking adjacent property signatures or signatures from across the street. The City updated a brochure in 2013 (attached) that explained the protest petition process, included a map and provided petition forms. If that City brochure was readily available to residents on Planning's website, the advantage of having experience and easy access to legal counsel would be largely negated.

Is the process most heavily utilized by those with time and resources, as stated in the Staff Report? Doing a protest petition does not take much in time or resources, and would take even less if the City provided clarity by posting the brochure. And if "resources" is code for "wealth", the most recent protect petition (2165 Linden) was filed in a neighborhood that has a median annual household income of \$50-65,000. (See the City's income map that was used in the

redistricting process for income.) Using the same data source that the City used for the income map, the comparable Dane County median annual household income was \$70,541.

Nor are protest petitions the exclusive domain of disgruntled homeowners. The Waterfront was opposed by fraternities and sororities. In 2011, 1001 University was opposed solely by Luther Memorial Church, Legistar 22443. (For the Luther Memorial petition, there was a question of whether the proposed project was consistent with the Comprehensive Plan. The City Attorney's office said it did not matter because the plans were approved prior to the date consistency became required under state law.)

The Staff Report lists protest petitions filed since 2013. These are not entirely accurate, I am aware of two inaccuracies. The 418 Division Council vote was not on the protest petition: the neighbors had filed an invalid protest petition and a super majority was not required; a second, valid, petition was prepared and Alder Kemble requested reconsideration; the Mayor made a ruling that reconsideration was not appropriate since the applicant had taken some sort of (undefined) steps in reliance on the approval; and, the vote to override the chair failed on a vote of 9:9 (with the Mayor casting the tie-breaking vote). The Raemisch Farm neighbors filed a valid protest petition, but the petition was never considered; instead a motion to place on file was approved.

It is also worth noting that if protest petitions are repealed, it is not just taken away from neighboring properties. Property owners (such as the listed 702 Ruskin protest petition) will also not be able to file a protest petition, thus hindering their property rights. And even when a protest petition is not successful, it may still result in a Council modification to plans (e.g., the listed 4103-4119 Portage Road).

The Staff Report states protest petitions are "most often used to oppose the development of new housing options that would bring new residents to the area." That is accurate in as far as it goes. But since housing is about the only thing being built in Madison, it makes sense that the petitions are focused on housing. It would not be accurate to say that property owners object to new residents - the problem is the size of the building is grossly oversized compared to existing buildings. Many deem that argument irrelevant, but the Comprehensive Plan is replete with references to compatible scale, the following are just three examples:

- "infill or redevelopment that occurs within an [Low Residential] area should be compatible with established neighborhood scale ...";
- for employment areas "uses should be compatible with the density and scale of surrounding development"; and,
- when discussing infill, the Comp Plan speaks to the "importance of ensuring redevelopment can integrate well with its surroundings through context-sensitive design and scale."

The Staff Report says that having a 2/3 majority vote "would elevate the consideration of rezonings nearly to that of a budget amendment, which requires a 3/4 vote." But what sort of items require a 2/3 vote? A number of Council procedures require a 2/3 vote, including: taking a matter out of order in the Council agenda, MGO 2.04(2); speaking time when a question has been divided, MGO 2.12; speaking time and number of times during debate, MGO 2.13; and, suspension of rules, MGO 2.34. Certainly rezoning, an action necessitated by a proposed use

being inconsistent with the existing planned use, is just as important as Council procedure if not more important.

Bill Connors talks of all the other Dane County municipalities and has a chart that shows only 4 of 14 Dane County municipalities have a protest petition provision. Implied in the text is that these 10 municipalities repealed their protest petition ordinances. This is not true. Many (most?) Wisconsin municipalities did not have ordinances addressing protest petitions, instead they just relied on state law. Thus, when state law was repealed, there was no ordinance provision to repeal. Though these municipalities have not taken affirmative action to reinstate protest petitions, they also have not taken affirmative action, such as which Madison is proposing, to repeal such provisions.

Bill Connors speaks to "progressive states and communities" having repealed protest petitions. Three of Wisconsin's neighboring states have state laws providing for protest petitions - Michigan, Illinois and Iowa. Only two states have repealed states laws requiring protest petitions: South Carolina (2015); and, Wisconsin (2018). Wauwatosa modified, but did not repeal, its protest petition ordinance earlier this year.

Conclusion

Strategy #3 under Neighborhoods and Housing section of the Comprehensive Plan (page 50), "Increase the Amount of Available Housing," speaks to accommodating "needed growth while protecting the historic character of older neighborhoods" and to "the importance of ensuring redevelopment can integrate well with its surroundings through context-sensitive design and scale." On page 51, the Comp Plan says: "Height, form, placement of entrances, and the distance between buildings of different scales often best prescribe how new development will fit into the surrounding context."

If enough residents believe these principles are not met by a proposed rezoning, isn't the heightened scrutiny currently required by a valid protest petition appropriate? Isn't having more residents involved in rezoning matters a good thing? (In 2017, as noted above, staff hailed this as a good thing.) Although residents could still speak at Council if the protest petition is repealed, as noted in the Drafter's Analysis, the voice of those residents is diminished. Diminished by being part of a mass public comment period at the beginning of a Council meeting when Council does not even have any context for the proposed rezoning. Diminished by the fact that many residents find Council intimidating and/or are not comfortable with public speaking, thus those people will not participate. Diminished by the fact Council will not have any clear sense of what the immediate neighbors think. Diminished by the fact that the residents will lose a mechanism for a collective voice.

Respectfully Submitted,
Linda Lehnertz

CITY OF MADISON ZONING AMENDMENT PROTESTS INFORMATIONAL PAMPHLET

Seek the Advice of Your Own Attorney

This pamphlet has been prepared by the Office of the City Attorney. It is intended as a plain language guide for zoning amendment protests and is not a substitute for a careful legal review of appropriate zoning ordinances and statutes. While the Office of the City Attorney always remains ready to assist citizens, it is important to keep in mind that its role is not to act as an advocate for either proponents or opponents of zoning ordinance map amendments and may be called upon to defend the City of Madison, the Common Council or any City board or commission regarding their recommendation and / or action on a proposal.

Therefore, in order to protect your interests, you are advised to seek the advice of your own attorney should you deem it necessary.

Published by
The City of Madison
Department of Planning & Development
February, 1994
Revised January, 2013

Introduction

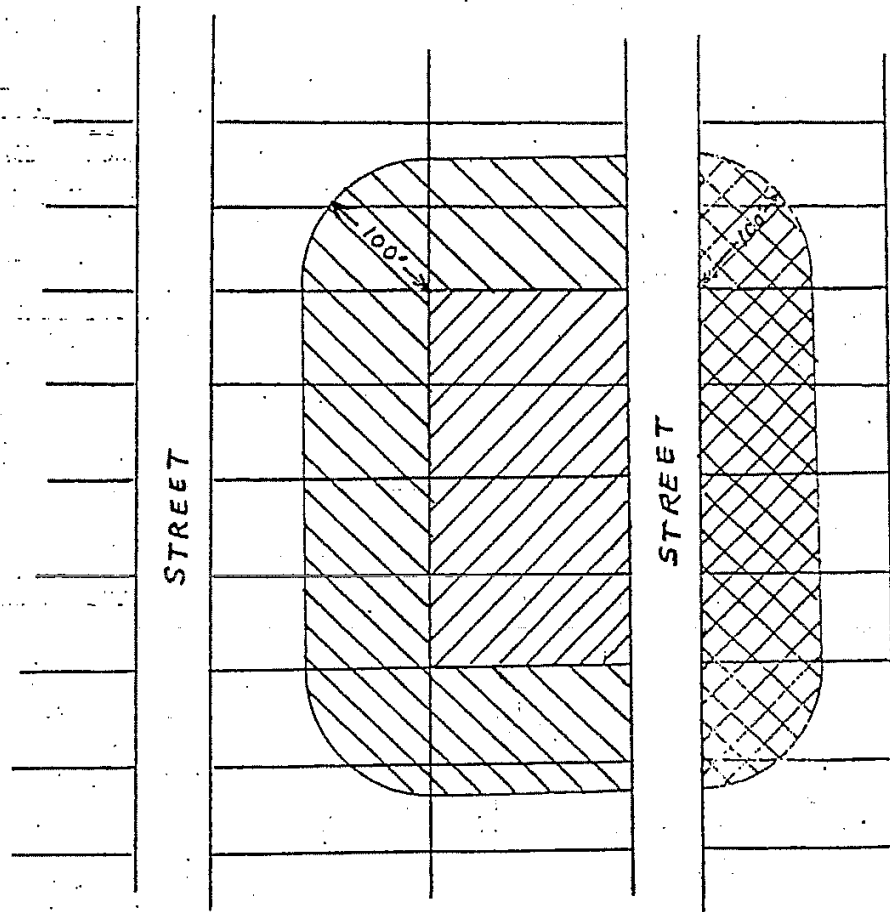
Section 28.182(5)(c), Madison General Ordinances (MGO), describes six different and separate eligibility qualifications by which those opposed to a zoning map amendment proposal affecting less than an entire zoning district can procure a sufficient number of petitioners to require the proposed ordinance amendment to be passed by three-fourths ($\frac{3}{4}$) of the members of the Common Council voting on the proposed change. The above-cited Madison ordinance expands upon the three statutory ownership of property qualifications that are found in Section 62.23(7)(d)2m., Wisconsin Statutes, to provide for zoning protests by registered electors.

The six separate eligibility qualifications for signing a zoning protest petition, any one of which is sufficient to make the proposal a three-fourth ($\frac{3}{4}$) vote item, include the following:

1. The owners of twenty percent (20%) or more of the area of land included in the proposed map amendment or modification;
2. Twenty percent (20%) of the registered electors residing in the areas of the land included in the proposed map amendment or modification;
3. The owners of twenty percent (20%) or more of the area of the land immediately adjacent extending one hundred (100) feet from the subject property;
4. The owners of twenty percent (20%) or more of the land directly opposite from the subject property and extending one hundred (100) feet from the street frontage of the opposite land;
5. Twenty percent (20%) of the registered electors residing within all buildings any part of which is on land immediately adjacent extending one hundred (100) feet from the subject property;
6. Twenty percent (20%) of the registered electors residing within all buildings any part of which is on land directly opposite the subject property and extending one hundred (100) feet from the street frontage of the opposite land.

The remainder of this informational pamphlet contains a graphic representation of the foregoing qualified areas, petition signature and filing requirements, and six separate petition forms corresponding to each of the above eligibility requirements.

A visual representation of these areas is as follows:



represents the area to be rezoned and is the area described in (1) and (4) of Page 1.



represents the adjacent area within 100 feet and is the area described in (2) and (5) of Page 1.



represents the opposite area within 100 feet and is the area described in (3) and (6) of Page 1.

Form of the Protest Petitions

The City of Madison has determined that the Uniform Law on Notarial Acts, Section 706.07, Wisconsin Statutes, is applicable to protest petitions. Although a petitioner need not sign the petition in the presence of a notary public, **the acknowledgment declaration must be made personally by each petitioner in the presence of a notary public or other officer authorized to perform notarial acts by statute.**

A protest petition might contain more than one signatory on one sheet; however, an acknowledgment for each signatory must also be included. Because the acknowledgment declaration by each petitioner is required to be made in person before a notary public, it is nearly impossible, except in very unusual circumstances, for a petition containing more than a few signatures to also include the necessary acknowledgment for each signature on the same sheet. Acknowledgments can be on a separate sheet or sheets and attached to the petition. The protest petition organizer should check signatures and acknowledgments to be certain there is a properly executed acknowledgment for each signature on the petition(s).

All owners of a parcel are required to sign protest petitions in order for any particular property to be counted. For example, if a parcel of property is owned by joint tenants or tenants-in-common, both joint tenants or all tenants-in-common must properly sign and acknowledge a petition in order for that parcel of property to be counted toward the requirement for the $\frac{3}{4}$ vote. Also, the City Attorney is of the opinion that all of the owners of all of a condominium's units must sign protest petitions in order for the underlying condominium property to be counted, because condominium unit owners own an undivided percentage interest in the common elements of a condominium per statute, which common elements include all of a condominium except its units.

Attached you will find blank petition forms for each of the six separate eligibility requirements of protest. Remember, one and only one of the six classifications is necessary to make the proposed zoning ordinance amendment a $\frac{3}{4}$ vote item.

Although there are five forms of certificates of acknowledgment described in Section 706.07(8), Wisconsin Statutes, and each of these is acceptable, and some may be necessary under some circumstances (e.g., where a corporation is the title holder of land), upon the back of each attached blank petition form you will find a form of certificate of acknowledgment which should be used in the vast majority of cases involving persons signing a protest petition in their capacity as individuals.

Time for Filing Protest Petitions

Section 28.182(6)(4)c. & d., MGO, specifies that zoning protest petitions must be filed with the City Clerk by noon on the Thursday preceding the meeting at which the Common Council will consider the proposed zoning map amendment. Petitions received later than noon on Thursday will not be considered. If the Council does not act upon the ordinance at that meeting, then protest petitions may again be filed until noon on the Thursday before the next meeting at which the Council will act.

Removing Names from Protest Petitions

Once a petitioner signs a petition, that petitioner remains free to have his or her signature “removed” from the petition. The following is the procedure for so doing. The petitioner, in such a case, should sign a statement that he or she wishes to withdraw the prior protest petition signature and acknowledge that withdrawal in conformity with the Uniform Law on Notarial Acts statute. Remember to date the execution of such a document so that it can be determined which was most recently signed. These withdrawal documents also must be submitted to the City Clerk by noon on the Friday prior to the meeting at which the Common Council will reconsider the item.

Reminder

In order to protect your interests, you are advised to seek the advice of your own attorney should you deem it necessary.

STATE OF WISCONSIN)

) SS

COUNTY OF DANE)

On this _____ day of _____, 20____, before me,

_____ (name of officer) the undersigned officer, personally appeared
_____ (name of acknowledger) known to be (or satisfactorily proven) to be the
person whose name is / was subscribed to this (attached) petition opposed to rezoning and
acknowledged that he / she executed the same for the purposes therein contained.

In witness where of I hereunto set my hand and official seal.

Name of Officer
Notary Public, State of Wisconsin
My commission _____

(S E A L)

STATE OF WISCONSIN)

) SS

COUNTY OF DANE)

On this _____ day of _____, 20____, before me,

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My commission _____

(S E A L)

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STATE OF WISCONSIN)

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Notary Public, State of Wisconsin
My commission _____

(S E A L)

STATE OF WISCONSIN)

) SS

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Notary Public, State of Wisconsin
My commission _____

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STATE OF WISCONSIN)

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acknowledged that he / she executed the same for the purposes therein contained.

In witness where of I hereunto set my hand and official seal.

Name of Officer
Notary Public, State of Wisconsin
My commission _____

(S E A L)

From: [Marsha Cannon](#)
To: [Plan Commission Comments](#)
Subject: Agenda Item #6 - Legistar #71082 - Oppose Repeal of Protest Petition
Date: Monday, May 23, 2022 12:52:08 PM
Attachments: [Comments on proposed changes to Protest Petition.docx](#)

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Hello, Commissioners,

I plan to speak at this evening's meeting:

- Support existing protest petition ordinance that requires 3/4 vote of Common Council members present.
- Would support a blanket requirement for a 2/3 vote in support of all rezoning only if it includes a vehicle to officially document neighborhood concerns.
- Strongly oppose eliminating protest petitions altogether.

Written comments are attached.

Sincerely,

Marsha Cannon
5 Cherokee Cir. Unit 202
Madison, WI 53704
608.251.1276 (land line, no text)
608.692.1276 (Pete's cell)

Madison Plan Commission Meeting, May 23, 2022
Agenda Item #6 - Proposed Repeal of Protest Petition Process

A core motivation for zoning is community control over its land use, appearance, and future quality of life.

For major developments, a valid protest petition empowers citizens to formally oppose a zoning proposal. Well-funded developers have huge resources to influence zoning/rezoning, and to get it done quickly. The protest petition empowers citizens to be heard officially, as a group.

In February, the Raemisch Farm Work Group organized a successful protest petition effort. Volunteers went door-to-door after work, in the dark winter cold. They obtained notarized signatures from owner-occupants of 25 existing homes adjacent to a proposed development on 63 acres of ag land. They had urged the developer to postpone bringing several hundred new residents to a location soon to be bombarded by ear-shattering noise from F-35 fighter jets. But the developer had control and persisted.

The citizens' protest petition got City government's attention. Common Council evaluated how the proposed zoning risked future residents' health and quality of life. The outcome: postponement with a 14-6 vote to place the proposal on file without prejudice.

Would Raemisch Farm rezoning have been rubber-stamped by Common Council without the protest petition? I'm not a fortune teller. What I *can* say is the protest petition is a crucial tool in a democracy. A wealthy developer might check all the boxes for zoning approval, but who will ensure future quality of life for the community?

- I support the existing protest petition ordinance that requires 3/4 vote of Common Council members present.
- I would support a blanket requirement for a 2/3 vote in support of all rezoning only if it includes a vehicle to officially document neighborhood concerns.
- I strongly oppose eliminating protest petitions altogether.

Marsha Cannon
5 Cherokee Circle, #202
Madison, WI 53704
(608) 251-1276
mpcannon76@gmail.com

From: [Mary Pustejovsky](#)
To: [Plan Commission Comments](#)
Subject: petition process
Date: Monday, May 23, 2022 12:11:56 PM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Hello

I am writing to support the repeal of the petition process. However, I do not believe we need to have a 2/3 majority for projects. Alder Bennett has submitted an amendment, and I support that. I lived in Austin for 7 years and they have a state law similar to the protest ordinance here. It meant that wealthy homeowners torpedoed good projects, close to transit. They killed projects that meant sites stayed as vacant parking lots instead of housing for people. It was very depressing and Austin's housing costs have risen dramatically. I love Madison and I don't want it to go the way of Austin, becoming a playground only for the rich who can afford to live here. All these extra appeals processes cause housing costs to increase, even if the housing eventually gets built.

Thank you
Mary Pustejovsky



Robert C. Procter
Government Affairs Director
Axley Brynerson, LLP
rprocter@axley.com
(608) 283-6762

Re: Legistar File ID # 71082
Zoning Protest Petition / Supermajority Zoning Amendments

TO: Plan Commission

FROM: Realtors® Association of South Central Wisconsin¹
Robert C. Procter, Government Affairs Director

DATE: May 23, 2022

The Realtors® Association of South Central Wisconsin **supports the repeal of the Zoning Protest Petition**. The Realtors® Association **strongly opposes amending the zoning code to require a 2/3 majority threshold for the approval of zoning amendments**.

The existing zoning protest petition and the proposed new 2/3 majority threshold are antithetical to the City's Comprehensive Plan. It is nonsensical to allow 6 alders (7 alders under the proposed new threshold) to stop a proposed rezoning that is recommended by the Plan Commission, that is supported by 14 alders (13 under the proposed new threshold), and that is consistent with the City's Comprehensive Plan—a plan that was subject to significant public input, adopted by the Plan Commission, and adopted by the City Council.

The history of zoning protest petitions pre-dates comprehensive planning. Prior to comprehensive planning, the zoning protest was a safeguard for property owners that relied on the zoning maps to know what future uses could be made of the neighboring properties. Since property owners had no way to know what the future use of a neighboring property would be, the initial zoning ordinances included zoning protest petitions to protect property owners from unknown future changes by making it more difficult to adopt a zoning amendment.²

In 1999, Wisconsin adopted its comprehensive planning statute. Now a person purchasing a property can rely on the comprehensive plan to know the planned future use of the neighboring properties. The property owner is better protected by the Comprehensive Plan process than by zoning protest petitions or supermajority requirements because the plan goes through a significant planning process that involves the stakeholders in that neighborhood. The property owners have a say in the future uses of the neighboring properties.

In fact, the zoning protest petition and a 2/3 majority requirement are contrary to all of the public participation that goes into the City's Comprehensive Plan. The zoning protest petition and a 2/3 majority requirement are not about good government. They are just tools that can be used to delay and stop uses and projects that neighborhood stakeholders included in the Comprehensive Plan, that have been vetted and approved by the Plan Commission, and have the approval of a significant majority of the City Council.

¹ RASCW represents more than 3,400 members of the housing industry in South Central Wisconsin. RASCW supports the housing industry through advocacy for its members and consumers.

² The nation's first comprehensive zoning ordinance (New York 1916) included a zoning protest petition, which was "a device for the protection of the property owner . . . to prevent easy or careless changes in the zoning regulations." Edward M. Bassett, Zoning, page 330 (1922). https://www.russellsage.org/sites/default/files/Basset_Zoning_0.pdf

From: [William Ochowicz](#)
To: [Plan Commission Comments](#)
Cc: [Stouder, Heather](#)
Subject: Agenda Item 71082 - Rezoning Petitions
Date: Friday, May 20, 2022 9:08:20 PM

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Hello Commissioners,

I want to voice my opinion in support of the removal of rezoning petitions, and against the 2/3 majority required for rezoning. Rezoning should require a simple majority vote by the Common Council if approved by the Plan Commission.

Madison's current 3/4 requirement on the petition of 20% of nearby landowners is based on the Hoover era [Standard State Zoning Enabling Act](#), a model law published in 1926. The same administration also published "[A Zoning Primer](#)" which states:
"Suppose you have just bought some land in a neighborhood of homes and built a cozy little house. There are two vacant lots south of you. If your town is zoned, no one can put up a large apartment house on those lots, overshadowing your home, stealing your sunshine and spoiling the investment of 20 years' saving."

It is safe to say that some of the ideas from this era are outdated, including the idea of zoning petitions. I urge you to follow the lead of, for example, Massachusetts, which now requires a simple majority from the City Council if the rezoning would increase the number of homes allowed.

Thank you,
Will Ochowicz

From: [Darrin Wasniewski](#)
To: [Plan Commission Comments](#)
Subject: Agenda item 71082
Date: Sunday, May 22, 2022 9:35:34 PM

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To the members of the planning commission:

I am a resident of 4211 Doncaster Dr, Madison, WI 53711 and I am writing to express mixed support for agenda item 71082. I strongly support the repeal of the petition process for zoning map amendments, but adamantly oppose increasing the majority for zoning changes from a simple majority to a 2/3 majority.

Thank you for considering my opinion in your deliberations.

Best,

--

Darrin Wasniewski



May 19, 2022

Dear Plan Commission Members:

Downtown Madison, Inc. (DMI) strongly urges the Plan Commission to recommend that the Common Council to adopt part of the proposed protest petition ordinance, Legistar File #71082. As written, the proposed ordinance would accomplish two contradictory objectives: (1) repeal the protest petition process, and (2) increase the affirmative vote of the Common Council required to approve all zoning map amendments from a simple majority to two thirds vote of all alders. DMI urges you to recommend to the Common Council to repeal the protest petition process AND not adopt the provision seeking the requirement of a two-thirds affirmative vote on all rezoning.

Many progressive communities around the country are both repealing their protest petitions and removing supermajority (two-thirds) vote requirements for rezoning approvals because these provisions were originally created by and often empower those with the most time, resources, connections, and knowledge to the detriment of those not as privileged. As a community, Madison should work to improve the public participation process so that all voices are heard, not just those with privilege. The proposed ordinance changes do not improve the process; the changes elongate it and could ensure many good, community supported projects are not built (including much-needed projects to increase housing densities). By simply repealing the protest petition and not adding additional voting thresholds, our policymakers will streamline the process and better ensure that community-supported projects cannot be derailed by merely a few, strong, voices.

DMI asks the Plan Commission to recommend to the Council to repeal the protest petition. Thank you for your time and your service to our city. Have a great day.

Sincerely,

A handwritten signature in black ink that reads "Jason Ilstrup". The signature is written in a cursive, flowing style.

Jason Ilstrup
President
Downtown Madison, Inc. (DMI)

From: [Will Hardt](#)
To: [Plan Commission Comments](#)
Subject: Feedback on agenda item 71082
Date: Sunday, May 22, 2022 6:09:54 PM

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Hello,

I support the repeal of the protest petition process, but I oppose requiring a 2/3 majority to pass zoning changes. I think the protest petition process should be repealed, but the proportional vote required to pass zoning changes should not be raised.

Thanks,
Will Hardt

From: [Kara Coffman](#)
To: [Plan Commission Comments](#)
Subject: Item 1082
Date: Sunday, May 22, 2022 9:50:12 AM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Plan Commission Members,

I'm writing to express support for repealing the protest petition process for zoning map amendments. Protest petitions allow for homeowners to obstruct the building of new housing, especially multifamily housing, which Madison desperately needs.

However, I request that you reject the 2/3 majority requirement for passing zoning map amendments. Raising the bar for passing zoning map amendments is an unnecessary roadblock in building more housing. If we are to increase housing supply enough to meet demand, the city should be removing excessive requirements like this, not adding to them.

Thanks for your consideration,

Kara Coffman

From: [Whitney Cook](#)
To: [Plan Commission Comments](#)
Subject: Legistar 71082 comment
Date: Saturday, May 21, 2022 9:09:45 AM

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Hello

I would like to comment on this Monday's proposed ordinance, legistar 71082. I am very happy to see the repeal of the protest petition process. We need affordable housing in Madison, and the protest petition process slows down and stops viable developments we need as a community.

For the same reason, I am opposed to increasing the affirmative vote on rezoning to a two-thirds vote of the adlers voting. A super majority vote will slow important housing development, adding a new hurdle just as you are removing another.

I hope you will consider removing the two-thirds vote requirement and make this ordinance truly housing-friendly. Our community needs it.

Best regards,
Whitney Cook
6146 Sandstone Dr., Madison

From: [Mike Z](#)
To: [Plan Commission Comments](#)
Subject: Oppose Item 6 (#71082) May 23 Plan Commission
Date: Monday, May 23, 2022 8:29:54 AM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Plan Commissioners,

I am writing in opposition to the imposition of a 2/3 required vote for passing zoning changes at the Common Council in place of protest petitions (Item 6, #71082). Although I favor the elimination of the protest petition, because it allows a small minority to interrupt needed housing and other development for the entire city, the current plan to do so essentially creates a filibuster on zoning. This would allow the minority to impose its will on the majority for **every** zoning change. That seems like an even worse situation than currently where protest petitions can require a 3/4 vote margin on just some zoning changes.

Please revise this to eliminate the protest petition, but still only require a majority vote for approval of zoning changes.

Sincerely,
Michael Zenz
2609 Dahle St.
Distinct 12

From: [Nicholas Davies](#)
To: [Plan Commission Comments](#)
Subject: Yes on repealing "protest petition" (71082)
Date: Monday, May 23, 2022 12:34:27 AM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Plan Commission members,

I urge you to support item 71082. We have seen an emerging pattern where the current "protest petition" process can be weaponized against any proposed development, by a very small number of petitioners, with no real basis of complaint.

It doesn't matter how attentive and compromising the developer has been. It doesn't matter how arbitrary the objections to development are. This process can require a very high vote count for approval.

Often these protest petitions are brought forth by fewer people than the number of people who will live in the proposed building. The threshold is 20% of the surrounding neighborhood. That number becomes easier to reach, the less dense the area is. If the residential density of the surrounding area has been artificially suppressed, by means of single-family zoning (a key part of the redlining toolkit), the threshold can be quite low indeed.

This process also inherently favors those with time and resources to put into it. So you don't see it come into play as often in more working-class neighborhoods.

Those 20% who object get to raise the council vote required to approve, but the other 80%, who may be affirmatively consenting and approving of the planned development, have no way of lowering the vote threshold. This process considers their voices worthless.

The higher vote threshold is also, in effect, giving a quarter of city-wide representation to existing landowners who of course already have an alder of their own on the council.

When you add all of this up, this protest petition process is egregiously inequitable. It's highly biased towards a segregated status quo, towards the landed gentry. It is slowing our city's progress on closing the housing shortage, and it is slowing our city council's progress on conducting meetings at all.

We suffer from tyranny of the minority at so many levels of government. Presidential elections that are decided against the popular vote, and a SCOTUS stacked by those presidents. A US Senate that does not represent the American people. A severely gerrymandered state legislature, where the loser of the popular vote has almost a supermajority. A Joint Finance Committee (comprised of reps of ~33% of the state, mostly from the losing party) that has taken powers from offices elected statewide. I've had enough of that. Haven't you?

Thank you,

Nick Davies
3717 Richard St

From: [William Taylor](#)
To: [Plan Commission Comments](#)
Subject: Concern with 5/23 Agenda Item 6
Date: Thursday, May 19, 2022 5:56:03 PM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Good afternoon,

I'm writing to express my concern with Item 6 on the agenda for the 5/23 Plan Commission meeting, Legistar #71082.

I urge you to recommend to the Common Council to repeal the protest petition process, as a small group of landowners should not have the right to block housing for the greater community. But I also urge you to recommend to the Common Council to reject the section of Item 6 that requires a two-thirds supermajority to pass zoning map amendments. If a majority of our representatives agree on a rezoning resolution, they should not be blocked from doing so.

Madison residents that are increasingly priced out of the housing market don't need our local leaders to create unnecessary roadblocks to building more homes when we're in the midst of a housing shortage that gets worse by the day.

Thank you for your time.

- William Taylor

From: [Bill Connors](#)
To: [Plan Commission Comments](#)
Cc: tony.fernandez5@gmail.com; sundevis98@yahoo.com; bacantrell@charter.net; [Albouras, Christian](#); [Kathleen Spencer](#); ledell.zellers@gmail.com; mcsheppard@madisoncollege.edu; [Nicole Solheim](#); [Heck, Patrick](#); [Currie, Jael](#); [Stouder, Heather](#)
Subject: Comments on Agenda Item 6 - Legistar 71082
Date: Thursday, May 19, 2022 2:18:02 PM
Attachments: [image.png](#)
[Vote Required for Rezoning Dane Co Cities Villages 2022-05-19.pdf](#)

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Plan Commission Members:

I am writing to you regarding item 6 on the agenda for your meeting on May 23, 2022, Legistar #71082. This proposed ordinance would do two contradictory things: (a) repeal the protest petition process and (b) increase the affirmative vote required to approve ALL zoning map amendments (rezoning) from a majority of the Common Council to two thirds of alders voting.

Smart Growth urges you to recommend to the Common Council that it adopt the part of the ordinance that would repeal the protest petition process and NOT adopt the part of the ordinance that would increase the required affirmative vote for ALL rezoning. It would be better not to adopt the proposed ordinance as a whole if it contains both provisions.

The requirement of a supermajority vote is applied to situations where heightened scrutiny is appropriate, such as a budget amendment. I ask you to consider why every proposed rezoning that is consistent with the city's Comprehensive Plan should be treated like a budget amendment. That is what this proposed ordinance would do.

Three quarters of the Common Council is 15 votes. Two thirds of the alders voting, if all 20 alders vote, is 14 votes—and this requirement would apply to ALL rezoning if the ordinance, as introduced, is adopted.

If the affirmative vote of the Common Council required to approve a rezoning is increased from a majority to two thirds, it will increase the number of instances where the Plan Commission recommends a rezoning as being consistent with the Comprehensive Plan and then the Common Council does not follow the Plan Commission's recommendation—because a minority of the Common Council, for whatever reason, votes no.

I understand there is data showing there were few instances in the past where it would have changed the result if the required affirmative vote to approve a rezoning had been two thirds instead of a majority. But past results might not be a good predictor of the future, when the composition of the Common Council is constantly changing.

The Wisconsin Legislature repealed a state law requiring communities to include a protest petition process in their zoning codes. After the repeal of the state law, many Wisconsin cities and villages have repealed their protest petition processes—while leaving the affirmative vote required to approve a rezoning at a majority. I have attached a spreadsheet showing the results of a poll of Dane County cities and villages that I recently conducted.

Progressive states and communities throughout the country have repealed protest petition processes AND requirements for a supermajority vote to approve rezoning because they recognize both of those provisions empower privileged, “not in my back yard” residents on some occasions to stop changes in their neighborhoods which they oppose. Often, the changes they oppose are multi-family housing development projects.

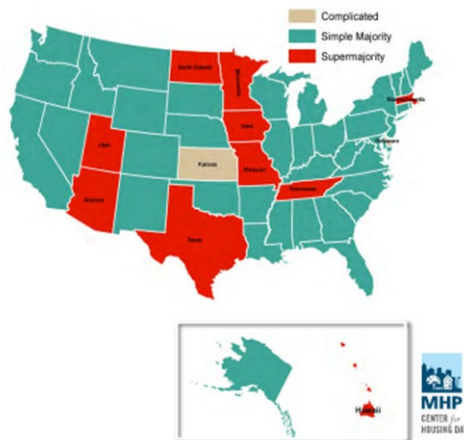
I encourage you to read the articles and PowerPoint slides linked below about why housing advocates seek to repeal protest petition processes AND oppose requiring a two-thirds affirmative vote to rezone property.

- An analysis of protest petitions and related repeals throughout the country: <https://www.mercatus.org/publications/urban-economics/rezoning-protest-petitions-are-ripe-reform>
- An article on this issue written by the author of "*Generation Priced Out: Who Gets to Live in the New Urban America*": <https://shelterforce.org/2020/08/12/rejecting-trumpism-massachusetts-is-expected-to-pass-housing-choice/>
- A PowerPoint presentation on the Massachusetts Housing initiative referenced in the above article, which is now law. It reduced voting thresholds from supermajority to majority for most rezonings: <https://www.chapa.org/sites/default/files/Chris%20Kluchman.pdf>
- See slide 13 (also pasted below) for a slide showing the US breakdown on states that require two thirds versus a majority.

Challenge: Improving Zoning is VERY Difficult

Massachusetts is an outlier for requiring a supermajority vote to amend, modify, or adopt zoning ordinances or bylaws

- **Massachusetts is one of only 10 states in the country that requires a supermajority to change local zoning.** It is the only state in New England with a supermajority requirement.
- **This causes problems when local governments want to change zoning.**
- Especially in Towns, where **Town Meeting must approve zoning amendments, the 2/3 voting threshold** can be a barrier to new zoning that would allow for increased housing production.



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Thank you for your consideration.

Bill Connors
Executive Director
Smart Growth Greater Madison, Inc.
608-228-5995 (mobile)
www.smartgrowthgreatermadison.com

25 W Main St - 5th Floor, Suite 33
Madison, WI 53703

Dane County Cities and Villages--Affirmative Vote Required to Amend Zoning Map

Updated May 19, 2022

	Affirmative Vote Ordinarily		Protest Petition Available?		Notes
	Majority	Two-Thirds	Yes	No	
Cottage Grove	X			X	
DeForest					
Fitchburg	X			X	Supermajority required to remove agriculture restriction
Madison	X		X		
McFarland	X		X		
Middleton	X			X	
Monona	X			X	
Mount Horeb					
Oregon	X		X		Supermajority required if Plan Commission gives negative recommendation
Stoughton	X			X	
Sun Prairie	X			X	
Verona	X			X	
Waunakee	X		X		
Windsor	X		?	?	

From: [Alex Thomason](#)
To: [Plan Commission Comments](#)
Subject: Plan Commission Legistar #71082 Comment
Date: Thursday, May 19, 2022 1:50:28 PM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

I am writing to support the repeal of MGO Sec. 28.182(5)(c) ("Protest Petition") as proposed in Legistar #71082.

I **do not** support the amending of MGO Sec. 28.182(5)(b) to include a two-thirds (2/3) favorable vote for zoning map amendments.

I understand the intent of repealing the "Protest Petition" as it currently adds to the cost/complexity of zoning amendments, but adding the new barrier of a 2/3 vote by the Council is a step in the wrong direction.

This will inevitably delay the construction of new housing at a time when housing costs are rising and availability is diminishing.

Zoning amendments should be passed by a simple majority vote as they have up until this point.

Thank you,
Alex Thomason