

LtCol Geoffrey P. Lyon, USMC (Ret.)
2203 Fort Ward Place
Alexandria, VA 22304-1015
January 14, 2014

Rashad M. Young
Alexandria City Manager
310 King Street
Room 3500
Alexandria, VA 22314

Re: Abatement of Public Nuisance (Two Series of Inoperative Street
Lights) on Public Streets (Ellicott Street & Fort Ward Place)

Dear Mr. Young:

As a resident of Alexandria since 1986, I have been generally pleased with how the City of Alexandria has managed its resources and tax-dollars over the years. Nevertheless, I am concerned by the fact that two series of street lights in my neighborhood, which were duly reported as inoperative to Dominion Virginia Power ("Dominion Power") in July/August of 2103, have not yet been repaired. My concerns reflect those of neighbors also living without operative street lights on darkened streets. This issue of inoperative street lights in our neighborhood has been a perennial issue for over twenty years.

Problem of Chronically Inoperative Street Lights on Ellicott Street and Fort Ward Place

In our neighborhood, we have street lights only on one side of the street. Consequently, when a series of street lights is inoperative, the entire street suffers a complete Black-Out. Since each street light is approximately sixty yards apart, the fact that a string of three street lights is inoperative means that approximately 240 yards of Ellicott Street and 240 yards of Fort Ward Place are respectively in a **Black-Out Condition**.

To date, the only action that has occurred is that Dominion Power appeared and taped Pole Notices on the Six Inoperative Street Lights indicating that "*Underground Repairs*" were required.

The String of Three Inoperative Street Lights on Fort Ward Place are permanently Pole-Numbered as follows:

- NN95
- NN85
- NN 88

- Additionally, Dominion Power taped on the Fort Ward Place Pole Notices a **Work Request (“WR”) # 8725287** and a **‘Pole Inspection/Tape Date’** of **09/08/13**.

The String of Three Inoperative Street Lights on Ellicott Street are permanently Pole-Numbered as follows:

- OL 88
- OL 29
- OM 12
- On the Ellicott Street Pole Notices, Dominion Power only indicated:
“Underground Cable Damage”
 - o Curiously, Dominion Power failed to list on the Pole Notices either (1) the Work Request Number and/or (2) the Pole Inspection/Paste Date of the Notices.

More significantly, both the Ellicott Street and Fort Ward **“Black-Outs”** occur at Corner Intersections where Children and other Pedestrians frequently seek to safely traverse the Streets in the dark hours of the morning, dawn, dusk and night. Unless your car is equipped with hi-tech headlights that scan/turn *ahead* of the car itself, the visibility is almost nil when you are turning into an adjacent street. In fact, on one occasion, I almost failed to detect a neighbor’s daughter in the street on a bicycle as I was making my turn onto Fort Ward Place. Also on of note is that the Corner of Ellicott Street and Marlboro Street is where school children embark or disembark in the dark from their school buses.

Consequently, it is fair to say that the current lighting conditions on Ellicott Street and Fort Ward Place constitute an threat to public health and safety, not to mention a life-threatening/unconscionable public nuisance that needs to be abated as soon as possible by the City of Alexandria (the “Principal”) through liaison with Dominion Power (its Contractual “Agent”).¹

Given the fact that the City of Alexandria has through its Employees and/or Agents – i.e., Dominion Power - failed to abate this nuisance in a reasonable/timely period of time, it is now incumbent upon the City of Alexandria to immediately take all necessary measures

¹ Please ensure that the City of Alexandria and/or Dominion Power contacts me at gplyon@hotmail.com and/or at 202-646-5186 prior to commencing any underground electrical repairs so as to minimize the risk that Dominion Power will cut our underground Sprinkler System Heads/Pipes. In the event that the Sprinkler System is damaged, my assumption is that Dominion Power and/or its Insurance Company (not necessarily the City of Alexandria) is liable. Please have your City Attorney research this issue and then advise me in writing as to the respective legal liabilities of the City of Alexandria and Dominion Power.

Similarly, I would request that City of Alexandria and/or Dominion Power contact all other affected Homeowners so that their Sprinkler Systems are also protected.

to abate this threat to public health and safety – to abate this life-threatening and unconscionable public health nuisance.

Attached for your information is **Enclosure (A)** - a “**Memorandum on Public Health Nuisances/Municipal Liability**” that addresses the pertinent Virginia Statutes, Regulations and Case Law applicable to Municipalities that fail to timely abate imminent threats to public health and safety – fail to abate life-threatening/ unconscionable public nuisances such as these multiple “**Street Black-Outs.**”

Please liaise with the respective City Department Heads who have been copied with this letter and its attached Legal Memorandum to ensure that this public health and safety nuisance is properly and swiftly abated. In the event that I have omitted relevant City Departments, please ensure that they are also informed and made part of the solution.

Additionally, I would request that you task your Internal Audit Department (the “Ethical Advocate”) with ascertaining, *inter alia*, why the City of Alexandria has contracted-out Street Light Repair to Dominion Power with no City Employee/Manager exercising any effective Command, Control and/or Contract Administration Functions over Dominion Power.

Moreover, you may deem this letter to be a Hotline Complaint of Fraud, Waste and Abuse that necessitates a full investigation (pursuant to operative regulations) by your “Ethical Advocate” – specifically, your Internal Audit Department.

Additionally, in light of these concerns, I would request that your City Solicitor append a Cover Letter to this Correspondence and forward it to the Commonwealth of Virginia State Corporation Commission (“Commission”) which has jurisdiction, *inter alia*, over Public Utility Corporations such as Dominion Power. The City Solicitor’s Letter should request that the Commission initiate an Investigation into the apparent Contract and/or Rate Payer Fraud that has been allegedly perpetrated upon the City of Alexandria and its Taxpayers by Dominion Power – one of its Regulated Utilities.

Finally, attached for your review is **Enclosure (B)** – a “**Memorandum on Proposed Contract Administration Remedies to Fix Chronic Street Light Blackouts.**”

In the event that Officials of the City of Alexandria are not interested in filing either a Hotline Complaint of Fraud, Waste and Abuse with their Internal Audit Department (their “Ethical Advocate”) and/or filing a complaint with the Commission, please so advise in writing and I will file the Complaints in my personal capacity. Forcing me, however, to perform Civic Duties/Functions that are clearly within the Official Scope of the Authorized Duties of City Officials certainly raises the specter of Dereliction of Duty – not to mention Fraud, Waste and Abuse perpetrated upon the Constituent/Taxpayer.

Thank you for your assistance and cooperation in these matters that involve important issues of contract administration and the appropriate/legal expenditure of hard-accrued Taxpayer Dollars. Feel free to contact me at 703-578-3686 (Home), 202-646-5186 (Work) or via email at gplyon@hotmail.com if you have any further questions.

Respectfully,



GEOFFREY P. LYON

Enclosure (A): Memorandum on Public Health Nuisances/Municipal Liabilities

Enclosure (B): Memorandum on Proposed Contract Administration Remedies To Fix Chronic Streetlight Blackouts

Copies to:

Mayor of Alexandria (William D. Euille)

Vice Mayor of Alexandria (Allison Silberberg)

City Council Members

- John T. Chapman
- Timothy B. Lovain
- Redella S. "Del" Pepper
- Paul C. Smedberg
- Justin Wilson

Alexandria City Attorney (James L. Banks, Esq.)

Director, Alexandria Transportation and Environmental Services Department
(Richard Baier)

Seminary Hill Association

Concerned Residents of Ellicott Street and Fort Ward Place

Note: All Correspondence to the City Manager and other Alexandria City Officials was Hand-Delivered with a Receipt that was Date-Stamped by the Pertinent Office.

MEMORANDUM: PUBLIC HEALTH NUISANCES/MUNICIPAL LIABILITY

To conserve time and effort, the findings will be summarized in bullet format.

Legal Points and Authorities

1. **Abatement or Removal of Nuisances** VA Code Ann Section 15.2-115 (2009)
 - a. “A municipal corporation **may compel the abatement** or removal of **all nuisances**, *including but not limited to* the removal of weeds from private and **public property** and snow from sidewalks; the covering or removal of offensive, unwholesome, unsanitary or unhealthy substances allowed to accumulate in or on any place or premises; the filling in to the street level, fencing or protection by other means, of the portion of any lot adjacent to a street where the difference in level between the lot and the street constitute a **danger to life and limb**; the raising or draining of grounds subject to be covered by stagnant water; and the razing or **repair of all unsafe, dangerous** or unsanitary **public** or private buildings, walls or **structures** which constitute a **menace to the health and safety** of the occupants thereof or the **public**.” (Emphasis added.)
2. **General Powers of Counties** VA Code Ann Section 15.2-1200 (2009)
 - a. “Any county may adopt such measures as it deems expedient **to secure and promote the health, safety and general welfare of its inhabitants** which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.” (Emphasis added.)
3. **Common Law Pertaining to Public Nuisances**
 - a. “**We agree with Hawthorn that, ordinarily, a municipal corporation has no immunity from liability for injury cause by a nuisance.** *Hawthorn v. City of Richmond*, 253 VA 283 at 287; 484 S.E. 2d 603, 607; 1997 VA Lexis 93; 97; *City of Portsmouth v. Weiss*, 145 VA 94, 109; 133 S.E. 781, 786 (1926); *see Chalkley v. City of Richmond*, 88 VA 402, 409; 14S.E. 339, 341-42 (1891).”

ENCLOSURE (A)

4. **Statutory Power Pertaining to Public Nuisances and Recreational Facilities: Liability of Localities in the Operation of Parks, Recreational Facilities and Playgrounds.** VA Code Ann Section 15.2-1809 (2009)
 - a. “No city or town which operates any park, recreational facility or playground shall be liable in any civil action or any proceeding for damages resulting from any injury to the person or from a loss of or damage to the property of any person caused by any act or omission constituting **ordinary negligence** on the part of any office or agent of such city or town in the maintenance or operation of any such park, recreational facility or playground. **Every such city or town shall, however, be liable for damages for the gross negligence of any of its officers or agents in the maintenance or operation of any such park, recreational facility or playground.**” (Emphasis added.)

5. **Statutory Authority of Sanitary Districts** VA Code Ann Section 21-118 (2009)
 - a. “The governing body shall have the same power and authority for the abatement of nuisances in such sanitary district as is vested by law in the councils of cities and towns for the abatement of nuisances therein, and it shall be the duty of the governing body to exercise such power when any such nuisance shall be shown to exist.”

6. **City of Alexandria Health Department Regulations**
 - a. “Environmental Health Services provides an array of services to the citizens of Alexandria through programs designed to **prevent infectious and non-infectious foodborne and waterborne diseases and disabilities.** It also strives to promote health, protect the environment, and **eliminate unsanitary and unsafe conditions and public nuisances.**” (Emphasis added.)

Analysis/Conclusion

The City of Alexandria has a clear-cut duty to abate public health nuisances that pose an imminent threat to life or limb that its Civic Employees and/or its Agents – i.e., “Dominion Power”- allegedly created, aggravated, condoned and/or ignored.

Now that the City of Alexandria has been formally and officially notified of this serious public health nuisance and imminent threat to life and limb, it would constitute “gross negligence” - if not “unconscionable behavior that shocks the conscience” – if the City of Alexandria and its Officials do expeditiously abate this serious public health nuisance and threat. Failure to exercise due diligence and good faith efforts to abate a known serious public nuisance once notified is unconscionable.

Any legal immunity conferred by statute, regulation or case law upon the City of Alexandria and its Officials is vitiated by "gross negligence" that is tantamount to "unconscionable behavior that shocks the conscience."

Without belaboring the point, "gross negligence/unconscionable behavior" may be defined as acts or omissions that evince a willful and/or reckless disregard for public health and safety when confronted with demonstrably objective facts of a known imminent threat to public health and safety.

Put quite simply, whenever a municipality creates and maintains a public health and safety nuisance that is tantamount to a "Snakepit," then it has a corresponding duty to its citizens to abate that "Snakepit" once formally and officially apprised of the "Snakepit's" existence.

**MEMORANDUM: PROPOSED CONTRACT ADMINISTRATION REMEDIES
TO FIX CHRONIC STREET LIGHT BLACKOUTS**

1. As previously mentioned, task your Internal Audit Department with reviewing all the terms and conditions of the City of Alexandria's Contract with Dominion Power with a view toward ascertaining what, if any, alleged Contract Fraud, Waste and/or Abuse exists.
 - a. Also task your Internal Audit Department with ascertaining what, if any City Department/Employee, exerts Contract Administration Responsibilities over Dominion Power.
 - b. Then, task your Internal Audit Department with ascertaining whether or not any City Department/Employee was allegedly "Missing-in-Action" with respect to his/her clearly delineated Official Duties of Contract Administration with respect to Dominion Power.
 - c. Once the Internal Audit Department Investigation Report is completed, then ensure that the Report is provided to the Mayor, Vice Mayor, the City Attorney and all Five City Council Members for Review/Remedial Action, as deemed appropriate or necessary.
 - d. Please advise me in writing when this Internal Audit Department Investigation Report is completed so that I or other concerned Taxpayers may seek a copy (if not exempt) pursuant to the Virginia Freedom of Information Act ("VFOIA") (Chapter 37, Title 2.2, Effective July 1, 2008).
 - i. Of course, I (or others) reserve the right, pursuant to VFOIA, to seek copies of any and all Contracts between the City of Alexandria and Dominion Power – to include any and all underlying correspondence (email or otherwise) assuming that is not formally exempt pursuant to statute/regulation.
2. As previously mentioned, task your City Solicitor with filing a Complaint/Grievance with the Commonwealth of Virginia State Corporation Commission ("Commission") which has jurisdiction, *inter alia*, over Public Utility Corporations such as Dominion Power.
 - a. Once the Complaint/Grievance is filed is then ensure that Copies are provided to the Mayor, Vice Mayor, the City Attorney and all Five City Council Members for Review.
 - b. Once the Commission finishes its Investigation and issues its Findings, then ensure that that Copies are provided to the Mayor, Vice Mayor, the City Attorney and all Five City Council Members for Review.

ENCLOSURE (B)

