

Vera Kolias

From: sharonsmithmd@aol.com
Sent: Tuesday, August 06, 2019 6:47 PM
To: Vera Kolias
Subject: Development of elk rock estates

Hello,

I am deeply concerned about the proposed construction of houses on 19th St, north of The park by Elk Rock. These proposed houses are planned to be built in a sensitive area and will do damage to our river and the wildlife of our park. A few years ago there was a bald eagle's nest on this property. It is too sensitive for the high density construction that has been proposed.

I hope the city blocks the housing project and protects the invaluable assets of our river and park. It is these things that makes Milwaukie a special place to live.

Sincerely,
Sharon Smith

Vera Kolas

From: raggamuffin100@juno.com
Sent: Tuesday, August 06, 2019 6:58 PM
To: Vera Kolas
Subject: Elk Rock Estates

Greetings Kolas V,

Thank you for taking the time to read my email.

I am very much opposed to this elk rock Estates proposition. It is a horrible idea which will have a negative impact upon our waters, the birds, the animals, the trees, the soil, and yes even the insects.

The congestion this will cause is not good. Most likely the developer will take down trees on the property and that's no good. Oregon has been and is losing too many Trees.

Bottom line it would devastating.

I really don't know what more to say, but just No! a big fat-big fat, fat, fat no!

What more can be done - can I do to help not let this happen?

Thank you again for your time.

CarlaMaria Buscaglia

Milwaukie resident

Vera Kolias

From: Beth Lorio <betheenea@hotmail.com>
Sent: Tuesday, August 06, 2019 8:35 PM
To: Vera Kolias
Subject: No Elk Rock Estates

Hello,

I live on SE 19th in the Island Station neighborhood and I am absolutely opposed to the development of three story apartments across from Elk Rock Island. The Elk Rock Island area and wetlands should be PRESERVED not developed. If Milwaukie is going to set itself up as a truly environmentally forward thinking city, developing such sensitive and precious land is the LAST thing we should be doing. Please reconsider the Elk Rock Estates proposal. It is clearly about profit rather than care for our green spaces.

Sincerely,
Beth Lorio

Rebuttal to the applicant's message of August 6, 2019 on NR-2018-005.

The nest in question is most certainly a bald eagle's nest. Please see the attached photo of one of the adults feeding a chick in the nest in 2012. The photo was taken from the front porch of my house at 12114 SE 19th Ave. The nest is small because it was only a couple of years old, having been started after the larger nest on Elk Rock Island that the pair had been using to raise chicks blew down in a storm.

The existence of an active bald eagle's nest in the area was widely known among the birding community and we regularly had people visiting the neighborhood to view the parents and their chicks. This is information that could be confirmed with one phone call to the Portland Audubon Society or other local birding group. I seriously question HHPR's "expert's" knowledge and commitment to finding the truth.

Theresa Silver, MS (biology)
12114 SE 19th Ave
Milwaukie, OR



Dear Vera--

Regards NR-2018-005, herein find rebuttal to several of applicant's written comments made in the open comment period of July 23, 2019 through August 6, 2019.

In applicant's message to the Planning Commission dated August 6, 2019, on page 1, applicant reasserts the unsubstantiated claim that the application is for Needed Housing. Applicant does not in that message or elsewhere in the written record provide any evidence to substantiate the claim. ORS 197.303 states specific criteria which define Needed Housing, and applicant has not provided any evidence whatsoever which in any way addresses those criteria. Simple repetition of the assertion that NR-2018-005 is needed housing does not make the assertion true.

Also, in the same comment period, the City Attorney and others filed a memo stating the city's position on the applicability of the Needed Housing statute to NR-2018-005. I concur with the city's analysis that development in the HCA is not required for the city to meet projected housing need. Since development in the HCA is not required to meet need, I further concur that when the applicant chose to pursue development in the HCA, applicant knowingly and deliberately chose to place the application into a discretionary pathway. For the applicant to then turn around and claim that the approval pathway for NR-2018-005 should be other than discretionary is an abuse of the regulatory framework within which development in the HCA may even be considered at all.

In applicant's message, on page 2 applicant references Statewide Planning Goal 15 (Goal 15), also known as Oregon Administrative Rule (OAR) 660-015-0005 [1]. Under Goal 15 A.1, because none of the exceptions of K.3 apply, applicant's proposal constitutes an intensification of use. By including residential construction, road construction, driveway construction, and by designing for future use and storage of automobiles and other small-motor vehicles (lawnmowers, leaf-blowers, hedge trimmers, etc.), applicant's proposal would pave over and pollute existing habitat in the Greenway. These outcomes run counter to the protection, conservation, enhancement, and maintenance of the Greenway; see Goal 15 A.1 and Goal 15 A.2. Since the proposed intensification of use runs counter to the above Greenway goals, and since Goal 15 A.1 allows only those intensifications of use which are consistent with the Greenway goals, applicant's proposal cannot be allowed under Goal 15.

In applicant's message, on page 2 applicant references Milwaukie Comprehensive Plan Chapter 4 [2], "Land Use," "Residential Land Use and Housing Element," "Objective #1-Buildable Lands." Note that in subsection "Planning Concept" of the above, the Comprehensive Plan states: "Lands with the Special Policies Classification (natural hazards) have constraints that are sufficient to preclude most standard types of development techniques." The subject property has two Special Policies Classifications, for both Drainage (flood plain) and Wildlife Habitat (the HCA). The section "Objective #1-Buildable Lands" specifically excludes flood plain, wildlife habitat, and other special classification lands from the 34 acre estimate of acreage buildable for residential purposes. Applicant's attempt to cite this section and Map 6 to justify new residential construction in the flood plain and in the HCA is a major misinterpretation of this section of the Milwaukie Comprehensive Plan.

In applicant's message, item 5.C on page 3 references the eagle's nest on the subject property. Applicant claims that HHPR's expert examines the nest and concluded that it is not an eagle's nest. I personally observed a breeding pair of bald eagles use a nest on Elk Rock Island for at least two seasons. After that time, the nest on Elk Rock Island collapsed. The breeding pair of eagles then

constructed the nest in question on the subject property from scratch, using it for several seasons, and raising and fledging bald eagle chicks in and from it.

Since the HHPR expert reached a determination of past nest use which is in direct contradiction of my personal experience as a neighborhood resident and observer of local wildlife, I question whether the HHPR expert's opinion can be trusted regards current use or occupancy of the nest. Bear in mind that eagles do not nest year-round. Bald eagles typically return to this area in winter, hatch chicks in early spring, and are gone from the nest as soon as chicks fledge. If for whatever reason chicks do not hatch or do not survive, adults will then leave the nest for the summer and fall, not returning until the following winter.

In applicant's message on pages 5-6 (Exhibit 1), applicant claims that attached homes would not fit into the neighborhood. In actuality, there is an existing duplex at 11919 SE 19th Avenue, on the river side of SE 19th between SE Bluebird and SE Eagle. This residence was constructed in 2011. Also, the Exhibit mentions a financial loss associated with demolishing existing structures. Commercial loss is not one of the criteria included in the list of criteria associated with making a land use decision, and so commercial loss is immaterial to the land use decision. Also, applicant has asked for multiple variances to accommodate proposed plans in the flood plain, but does not contemplate asking for any variances to accommodate alternate plans which would concentrate all development in the upland portion of the subject property.

Additionally, prior comments to the written record have included at least six possible alternatives in addition to the alternative advanced by staff. Other suggestions from the written record include:

- I. No-build option
- II. Add one new residence/duplex/rowhouse set in the upland area between existing houses
- III. Make a boardwalk on posts and piers and put homeless pods on it, repurposing existing residences as kitchen/bath/shower facilities for the pods
- IV. Remodel and/or build duplexes at the approximate locations of buildings 7, 8, 9, 10, 11,12 in applicant's plans
- V. Same as IV, but swap westernmost duplexes with the north-south private drive to reduce total fill under the private drives
- VI. Ten-unit SRO between the existing residences, see for comparison Jolene's First Cousin [3].

Applicant's complete failure to initiate any alternative proposal may be indicative of a deliberate decision to disregard the requirement of considering alternatives to developing in the HCA.

In applicant's message, in Exhibit 3 (pages 8-13 inclusive), applicant discourses extensively, and frequently erroneously, on reasonable precautions related to flooding at the site. For one thing, on pg 10 of the message (pg 3 of exhibit 3), applicant writes "In this case the finish floors are proposed to be set higher than the highest flood event ever recorded for the Willamette River." This claim is not supported by the historical record at the river gages bracketing the subject site.

While there is no river gage at Elk Rock Island, the area is bracketed by gages at Oregon City below the falls, and at Portland.

At Oregon City below the falls, the historical flood crests are [4]:

Historic Crests

- (1) 50.50 ft on 02/05/1890
- (2) 48.10 ft on 12/25/1964
- (3) 48.00 ft on 12/05/1861
- (4) 47.80 ft on 01/09/1923

(5) 46.04 ft on 02/09/1996

Note that the inundation of February 1996 is not the highest crest; it is the fifth highest crest. The flood of December 1964 exceeded the inundation of February 1996 by two feet, and the highest recorded crest, for the flood of 1890, exceeded the inundation of February 1996 by over four feet.

At Portland, the historical flood crests are [5]:

Historic Crests

- (1) 33.00 ft on 06/07/1894
- (2) 30.00 ft on 06/14/1948
- (3) 30.00 ft on 06/01/1948
- (4) 29.80 ft on 12/25/1964
- (5) 28.70 ft on 02/06/1890
- (6) 28.55 ft on 02/09/1996
- (7) 28.20 ft on 06/24/1876
- (8) 27.30 ft on 07/01/1880
- (9) 26.40 ft on 06/04/1956
- (10) 26.20 ft on 06/14/1882

Note that for Portland, the inundation of February 1996 doesn't even make the top 5. At this gage, the flood of December 1964 exceeded the inundation of February 1996 by over a foot, and the highest recorded crest exceeded the inundation of February 1996 by over four feet. Also note in the Great Flood of 1862, “[f]lood waters were so high that at Oregon City at the flood's crest on December 5, the steamer *St. Clair* was able to run the falls, ...” [6]. In the inundation of 1996, by comparison, the falls at Oregon City were flat, but were not submerged at a depth sufficient for a marine vessel to run the falls.

In light of the gages which bracket the subject site each having multiple recorded historical flood crests exceeding by more than a foot the flood crest used to establish base flood elevation for the project, the Exhibit 3 statement that base flood elevation plus one foot exceeds the historical record is a ridiculous claim. The historical record soundly establishes that the inundation of February 1996 is not an isolated event in the recorded history of the Willamette River, but rather that floods comparable to that flood, and exceeding that flood, recur through the historical record.

Even if we discount the severity of floods in 1862 and 1890 which predate the post-WWII flood control dams, we are still faced with the Christmas flood of 1964 and the inundation of February 1996 both occurring within approximately 70 years, with the 1964 flood having markedly higher crests at both bracketing gages. If anything, the floods of 1964, 1890, and 1862 put the inundation of February 1996 into a context in which it appears to be a fifty-year or forty-year flood. In that light, the claim on page of Exhibit 3 (page 9 of the applicant's message) of “[t]he 1996 flood is not the base flood and was somewhere between the base flood and the 500 year flood” simply does not bear scrutiny in the context of the historical record. While comprehensive plan chapter 3 objective #1 item (3) does state “The finished elevations of the lowest floor of buildings and streets will be a minimum of 1.0 foot above the 100 year flood elevation,” the 100 year flood elevation is not there defined to be the FEMA-designated 100 year flood elevation. With respect to item 2 of Exhibit 3 of the applicant's message, the historical record supports a stance that the elevation of the inundation of February 1996 is not less than the actual 100 year flood elevation, and can be treated as the 100 year flood elevation for all planning purposes including those of the Comprehensive Plan.

Having established that the historical record supports a view that the inundation of February 1996 is

not an isolated event but rather one of a series of comparable reoccurring floods, consider next the Exhibit 3 item 3 claims regarding cut and fill in the floodplain. Applicant correctly notes that MMC 18.04.150.F.2.a states “[n]o net fill in any floodplain is allowed,” but fails to expand upon that statement to include the area inundation of February 1996 as a floodplain. By any reasonable understanding of the recurring floods of 1862, 1890, 1964, and 1996, any areas inundated in February 1996 constitute a volume which serves as a floodplain on a roughly fifty-year interval. Note further that the inundation of February 1996 is specifically called out in MMC 18.04.030 “Definitions” as part of the meaning of “flood management areas”. The planning commission may reasonably consider the elevation of the inundation of February 1996 to define a floodplain for the purposes of “any floodplain” in MMC 18.04.150.F.2.a, and thus require balanced cut and fill below the elevation of the inundation of February 1996. Recall in this context that MMC 18.04.080 states in part:

“In the interpretation and application of this chapter, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the City; ”

The applicant has applied the incorrect elevation when determining whether cuts and fills are balanced within the floodplain, as this determination should be made for all volumes below an elevation no lower than that of the inundation of February 1996.

Applicant's misapplication of Needed Housing statute, misapplication of Statewide Goal 15, misapplication of Milwaukie Comprehensive Plan, mischaracterization of the eagle nest on the property, refusal to investigate developing only the upland area of the property, and repeated misunderstanding of flood protection requirements are collectively difficult to reconcile with an intention to fully and completely comply with city code and best practices in the furtherance of the best interest of the neighborhood, the City, and relevant State of Oregon interests. Applicant's proposal NR-2018-005 does not appear to be compatible with the protection of the floodplain, nor does it appear to be compatible with the goals and purposes of the Willamette Greenway, and it should therefore be denied.

Sincerely,
Steve Gerken
12114 SE 19th Avenue
Milwaukie

References

[1] “Oregon’s Statewide Planning Goals & Guidelines GOAL 15: WILLAMETTE RIVER GREENWAY OAR 660-015-0005”, <https://www.oregon.gov/lcd/OP/Documents/goal15.pdf>. Retrieved 2019-08-08.

[2] “CHAPTER 4 -- LAND USE”, http://www.qcode.us/codes/milwaukie/view.php?topic=comprehensive_plan-4&frames=on. Retrieved 2019-08-10.

[3] “Jolene's First Cousin”, <https://guerrilladev.co/jolenes-first-cousin/>. Retrieved 2019-08-10.

[4] “Historical Crests for Willamette River below Falls at Oregon City”, https://water.weather.gov/ahps2/crests.php?wfo=pqr&gage=orco3&crest_type=historic. Retrieved 2019-08-11.

[5] “Historical Crests for Willamette River at Portland”, https://water.weather.gov/ahps2/crests.php?wfo=pqr&gage=prto3&crest_type=historic. Retrieved 2019-08-11.

[6] “Great Flood of 1862 - Wikipedia” https://en.wikipedia.org/wiki/Great_Flood_of_1862#Oregon. Retrieved 2019-08-11.

Vera Kolias

From: Theresa Silver <tsilver@alumni.reed.edu>
Sent: Tuesday, August 13, 2019 3:06 PM
To: Vera Kolias
Subject: Rebuttal to eagle nest claims in NR-2018-005

Rebuttal to the HHPR raptor expert's comment in the applicant's August 6 message for NR-2018-005.

From Harry Nehls with the Portland Audubon Society:

"Bald Eagles usually build two nests, then alternate using them from time to time. They may have abandoned it for some reason, or may use it again when they want."

So while the nest is currently inactive, we cannot yet assume that it won't be used again at some time in the near future.

Theresa Silver, MS (biology)
12114 SE 19th Ave
Milwaukie, OR

Sent from my iPhone