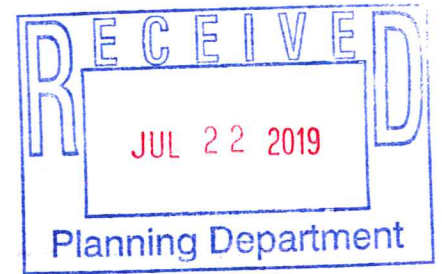


July 22, 2019

City of McMinnville Planning Department
Attn: Jamie Fleckenstein, Associate Planner
231 NE Fifth St. – McMinnville OR 97128



RE: July 23, 2019 City Council Hearing
City Council Review of Two (2) Major Amendments to Planned Development Overlay Ordinances
and 108 Lot Subdivision Request
Oak Ridge Meadows

The Obligatory Rebuttal

The intent of the opposition has never been to cry foul over petty inconveniences or inconsequential elements of the process of development. It was also never intended to limit the density of the proposed development. As a matter of fact, we have always agreed with much of the proposal. Our intent was to protect valuable wetlands and the integrity of three (four counting Oak Ridge Meadows) neighborhoods from a development that could cause irreparable damage. These are valid and worthy objections that we feel need to be considered carefully for the sake of the city.

We have been coming at our opposition from the view of what we feel is going to be best long-term for the city of McMinnville. We have put thousands of dollars towards experts and attorney's in order to do a job that we feel should have been done by the Planning Department or the developer to begin with. Environmental impacts most specifically.

No outside permits were filed with agencies that will have to give their eventual authority before building can begin. While I realize that the comprehensive codes allow for this, I believe the circumstances of this particular basin should have been an exception since it is so complex and contains many diverse characteristics that call for input from those agencies. Should those agencies deny any building, we have wasted a whole lot of time and money, as has the city.

We have been in touch with those agencies; DEQ, Division of State Lands, and Army Corp of Engineers. All three agree that they should have been consulted

first to determine if building is even possible. More steps are in the works, but those determinations will come after this hearing has been resolved.

Claim: Staff and developer have continually stated that the Parks Department WILL take over maintenance of the greenway parks in 2032. Planning Director stated empathetically at the last Planning Commission meeting (audio/video available online) that the Parks Department would take over maintenance in 2032 despite testimony from the Parks Department stating otherwise. How does one department head override the budget and testimony of another?

Answer: The Parks Department has stated that they can not guarantee, and most likely WON'T be doing so.

From your package page 127/128 response from agencies, specifically Public Works Department Parks:

Page 127 & 128

- McMinnville Public Works Department Parks: 1. It is my understanding that this application seeks to add a private .85 acre "nature park", and a 5.6 acre public greenway space. The narrative and included maps indicate that the public open space would essentially follow Baker Creek around the perimeter of the subdivision. The narrative notes that the concept includes pedestrian trails with chipped material proposed for surfacing. It appears the proposed public park lies in the floodplain area. a. While we recognize the value of such open space, and the opportunity for future connections along Baker Creek, our position remains that the Public Works Division is not in a position to take on additional public parkland and the associated maintenance costs and responsibilities at this time. The recent "add-back" funding proposal for parks maintenance was intended to allow the Division to begin to restore service levels to pre2013 levels, begin to address maintenance backlogs and to include maintenance costs for the planned NW Neighborhood park. The addition of new lands at this point, especially in light of the fact we are adding the NW park, will result in negative service level impacts at existing facilities. Based on those concerns, our recommendation would be that the proposed greenway remain privately owned until such time that resources are available to maintain and operate it as public open space. b. The site as proposed would present significant challenges to get equipment and or vehicles in to perform maintenance.

From the same Staff Report, Page 120, under condition #9:

...The greenway, all pedestrian/bicycle access ways, and trails shall be maintained by a Homeowner's Association (HOA) until 2032, at which time all maintenance responsibilities shall be transferred to the

City. An agreement between the HOA and the City shall be signed memorializing the responsibilities of the HOA and the City

And what exactly will be in the contract? Will the contract defining HOA responsibilities be released should the Parks Department be unable or unwilling to take over maintenance? How can a contract contain a guarantee that the Parks Department has continually stated won't be guaranteed? If the Parks Department won't give a guarantee, does that mean the development is dead since condition #9 won't be met? Also, if the Parks Department says that the design makes it difficult to get machinery and equipment into the areas that need maintenance, how does the Planning Department or developer expect an HOA to do better? What happens to the park should the Parks Department NEVER take over the maintenance? Has the HOA just wasted thousands of dollars over a decade to watch it go back to blackberries? Will the HOA be forced (by contract??) to continue the difficult and expensive maintenance? All valid questions regarding a condition by the Planning Department that is not concise in its explanation.

I'd like to request that should the Parks Department still refuse to guarantee a 2032 take-over date, that the Oak Ridge Meadows HOA **NOT** be held responsible for any maintenance for the greenway from day one, unless and until the Parks Department is able or willing to do so. AND if there is no park, the developer should continue to pay property taxes until such a time. Dumping an unusable piece of property onto the city, or the HOA and holding them financially liable, I personally find irresponsible at best. The yet to be formed HOA has no voice. I'd like to make sure their interests are protected.

Claim by Premier, reiterated by staff on more than one occasion: The reason the original development didn't proceed in 2004/2005 was because of the great recession.

Answer: The great recession didn't begin until 2008, 3-4 years after original approval, 8 years after the original Oak Ridge PD was approved. No forward movement was done on either Phase 4 of Oak Ridge, or any phase of Oak Ridge Meadows at any point.

Even if the recession had been the cause of no forward movement on Premier's part, nearly all people in the US were affected by it and none were granted allowances, do-overs, or exceptions to loss.

Claim: Staff and City Attorney state that opponents are not allowed to use any future development (i.e. Shadden Road) as consideration in any part of their opposition, despite having Exhibit 27 already admitted as part of Premier's application addressing Shadden specifically.

Answer: Staff and Premier *were* allowed to use future developments in their arguments, specifically citing the Toth Property and a road that they say must go in to accommodate a future development. See next claim.

Claim: Staff says there will eventually be a road on Les Toth's property along with a full development. (justifying need for Pinehurst to go through wetlands)

Answer: Les Toth's two letters state he absolutely will NOT allow any building on his property. Also, an updated FEMA map in the form of a LOMR will likely show that Les Toth's entire field has become 100-year flood plain according to the hydrology report submitted by PBS. No building will be possible according to McMinnville's comprehensive codes. No road will be built unless it's a bridge. Les Toth's property does not fall under the "Goal Post Rule" and should be updated with a LOMR immediately.

Claim: A development MUST be built on Les Toth's property eventually because it's in the UGB and on the list of buildable inventories.

Answer: By updating FEMA with a LOMR, the property will likely be re-classified as flood plain which will accomplish the same goal – removing the property from the UGB as unbuildable. The city won't have it in inventory any longer and can expand the UGB accordingly.

Claim: Planning Director states (audio/video files from 2nd PC hearing & LOMR is addressed in staff report for 1st Council hearing), that an updated city-wide FEMA map revision would take up to 5 years to complete and a LOMR would take 6 to 12 months.

Answer: An updated FEMA map in the form of a site-specific LOMR would take 3 to 6 months according to our hydrologist who has performed many of them with an average of 5 months. We're not asking for an entire city update, although I believe it would be in the city's best interests to do so since the Cozine drainage will be facing the same thing we're facing now on the Baker Creek drainage.

Claim: Staff states that in order to update hydrology, an extra staff person might need to be hired at an added continual expense to the city (audio/video file from 1st Council hearing).

Answer: Most of the hydrology work has been done by our hydrologist should the city choose to use their professional conclusions. The additional work to update it to LOMR standards could easily be done at much less time and expense. PBS is an unbiased professional company with 40 years of experience and has given no bias towards our cause.

Even if staff doesn't wish to use PBS's report, they could still hire a hydrology engineering firm to do the one-time job without requiring an additional staff member.

A second hydrology study was done by Premier and was to have been completed by the end of May. Yet, no hydrology study has been submitted to date. It leaves me wondering why it wasn't submitted.

Claim: When Premier was asked why they only put 7 houses in the wetlands, their response was that they were being environmentally friendly and putting the least amount of impact on the wetlands that they could.

Answer: Now that it appears 5 houses in the cul-de-sac may be in the 100-year flood plain (from the hydrology report submitted by FOBC), the first action taken by Premier was to cram those 5 homes into the environmentally sensitive wetlands they claimed they were protecting. Staff, Friends of Yamhill County, Yamhill Soil & Water Conservation District have all stated that minimal impact on the wetlands is necessary. ***We feel that no amount of impact on the wetlands is acceptable.***

Claim: If 4822 is denied, the city will lose the possibility of a walking path/greenway

Answer: We feel this is not necessarily the truth. The walking path/greenway is in admitted 100-year flood plain even by 1983 standards. Per current comprehensive codes, no homes will ever be built that close to the creek. As this renders the property useless to Premier, our contention is that they will deed it to the City just like they planned to do in the new 4822 application and for the same reasons. They likely won't want to keep paying property taxes on land they can't use, and the city can create and maintain it, according to Developers, in 2032 (or whenever they have the budget to do so).

Claim: (during discussion at final PC meeting – audio file available) One of the commissioners asked if 4822 could proceed if the 11.47 acres were omitted. Staff did not answer, but developer's team did – **which we feel was NOT appropriate, or allowable.** I believe it was Ron Pomeroy that said that it could NOT proceed since 4822 includes 35 acres, not 24.

Answer: In actuality, I believe the intent of the question was misunderstood and therefore answered incorrectly. The original 4822 (24 acres) was already approved and could, in fact, go forward if plans are submitted that meet the original qualifications, **which include 25 conditions that have yet to be met – including a full-use second access** (emphasis mine). (Reference Staff report in your current packet). Why did staff not address this at the PC hearing when specifically asked and why did they allow the developer, with an obvious bias, to answer it instead?

From current staff report: It should be noted that if this planned development amendment is not approved, the provisions of Ordinance 4822 are still binding on the site. A development proposal could be made that meets the conditions of the existing planned development overlay. Ordinance 4822, as it currently exists, does not include parcel R441701300, or provisions to require private and/or public open space.

Staff states continually that the “new” 4822 is a better version due to the parks the city would be gaining, however, I've already addressed, in my opinion, that misconception.

Claim: Shadden would be a fire and emergency access only with locking gates.

Answer: Exhibit 27 states that the road would have to be strong enough to support a fire truck in the rain. NOT that it's designed **Only for fire trucks in the rain**, or emergency vehicles. Logical Fallacy

Staff has since stated that Exhibit 27 was referencing an emergency access and that we have misunderstood its intent (current staff report). However, Exhibit 27 does NOT state this, nor did the key presenters at both neighborhood meetings. More than one neighbor testified to the fact that during neighborhood meetings both Premier & Stafford addressed the availability of Shadden immediately to lessen the burden of construction traffic. Premier denies this, yet others testified otherwise.

It shouldn't matter either way. If the road is strong enough to support a fire truck in the rain and is available, WHY should it be locked and only used for emergency vehicles? Stafford did **not** put that condition on it (for emergency use only) at his neighborhood meeting (which I attended and heard him talk about). It would certainly be strong enough to support construction vehicles until such a time as the improved and paved road was turned over to the city.

This particular sticking point has a bad odor to it, in my opinion.

At the city council meeting, staff joked about how much time they'd have to take to present the proposed development. They stated that it would take longer due to the fact that there were three separate land use decisions on the table.

We were given 3 minutes each to discuss our concerns which would have normally covered one land use decision discussion. Shouldn't we have been given 9 minutes each since there were three separate land use decisions on the table, as well?

Claim: From Staff slide presentation at first City Council meeting it states that opposition was given a total of 163 minutes over two hearings (75 minutes the

first night and 88 the second). Presumably this was to argue our assertion of how unfair it felt having only 3 minutes each to testify.

Truth: The first PC hearing had opposition testimony for only 29 minutes and the 2nd PC hearing at 59 minutes. Our time giving testimony was over-stated by staff by nearly double.

PC Hearing #1	Time Stamp	total minutes/seconds
Sandi C.	2:26:30	1.15
Catherine O.		3.10
Tim R.		1.45
Mike C.		3.25
Scott		4.05
Bill		3.30
Steve F		3.42
Gail N.		2.50
Mark B.		3.00
Lon S.		1.00
Ray C.		.06
Andrew G		.30

PC Hearing #2	Time Stamp	total minutes/seconds
Friends of Yamhill County	1:04:30	3.56
Jim T.		3.16
Mark Davis		2.30
Melba S.		2.59
Yamhill County Soil & Water		3.30
Daniel		1.35
Sarah H.		1.00
Mark B.		3.22
Sarah Fox		.50
Steve Fox		4.30
PBS		3.00
Bill K.		5.35
Sandi		3.37
Mike R		4.00

Mike C.	3.16
Catherine O	3.19
Scott	5.43
Cathy G	2.55







Claim: Page 54 of slide presentation to City Council by Staff states that public testimony was *largely oppositional*.

Answer: The public testimony was not largely oppositional; it was **ALL** oppositional. There was no public input at either hearing that was in favor. I don't even recall any written testimony that was in favor outside of Staff and developer.

Being misrepresented in small ways many times over, adds to the illusion that we're whining and worse. It is frustrating and it's hard to continue to not call it out, so I apologize for venting it here.

Claim: Staff reports in News Register that the Friends of Baker Creek were misrepresenting the number of acres of wetlands affected by development

Answer: Staff had Pacific Habitat's delineation report prior to the first public hearing and used it in their testimony, but it was not made available online until I requested it be made available *AFTER* the hearing. The report listed the acreage affected. All we knew for certain was that we called the lower basin the "wetlands" and it consisted of those same 11.47 acres.

-  [Premier Development FAQ Sheet Received 5-3-19](#) (279 KB)
-  [Friends of Baker Creek 4-18-19 PowerPoint Presentation](#) (10 MB)
-  [Wetland Delineation Report](#) (24 MB)
-  [Wetland Land Use Notice Response](#) (1 MB)
-  [Wetland Land Use Notification](#) (1001 KB)
-  [Testimony Received after Public Hearing 4-22-19](#) from Valerie Kelly (17 KB)

The date the delineation report was made available to us was between 4/22 and 5/3 – no exact date is stamped on the report itself, but the list of testimony

published is in chronological order as to when it was made available. This has happened on several occasions where I have had to call and ask to have testimony made available online. Granted, some of the delay on some testimony was certainly because staff had been extremely busy, but in the case of the wetland delineation, it should have been made available to us before we were made to look foolish at the hearing and in the News Register. As it turns out, maybe we weren't so far off the mark after all.

And on that note:

Claim: Pacific Habitat shows on their maps the areas that were delineated and were wetlands.

Answer: There are several areas of heavy blackberry cover that were inaccessible, and we believe weren't sampled, yet were considered to NOT be wetlands. Those areas were all around the confirmed wetlands and should have, at the very least, been noted in Pacific Habitat's report as inaccessible and undocumented. Those blackberry inundated areas are places where Premier plans to build homes and their .85 acre park and should have been sampled before developer stated that delineation was complete.

The testimony book turned in by FOBC under Environmental Impacts, shows drone photos of those areas along with a note from DSL that also noted that not all areas had been delineated. This also includes the upper 24 acres of the original 4822. No delineation has been done there according to the report from Pacific Habitat.

Claim: Wendi Kellington, developer's attorney, said, shame on you Yamhill County Soil and Water District for overstating the acreage of wetlands.

Answer: See above comment about not having the delineation report available.

Claim: Wendi Kellington stated emphatically that "We all know this doesn't flood", when a mistakenly incorrectly dated flood photo was entered into testimony.

Answer: It was a flood photo. **Flood.** Photo.

Claim: Staff keeps taking one small part of our hydrology report stating that the likelihood of flooding Crestbrook isn't going to be affected by this development.

Answer: While technically that is currently correct with 2" of rain, the bigger picture is that flooding is already occurring on the farm fields north of the basin and will continue to get worse. That's prime farmland currently in use with crops. Floods take out topsoil every time and eventually, the basin that exists now will also exist in those fields, taking away value from the property owners in county jurisdiction.

Farm Fields located on the north side of Baker Creek



Schwartz Farm Field View

Same Farm Field December 18, 2018 Flooding

Also true is the fact that our report uses only current conditions and doesn't account for future additions to the Baker Creek Drainage (although it notes that future impact should be seriously noted). The County isn't required to keep track of their input to the creek and already over 1000 acres of drained filbert orchards have been added and have certainly added to the flooding. More development, more tiled drainage, more city development above and below (all the way to Evans Street) also add to the flooding. Stating that the proposed development has no effect on Crestbrook is inaccurate. Every development from here forward will have an effect. Which straw breaks the camel's back is the only question. The basin that contains the wetlands and what we believe are now floodplain, need to be preserved in order to hold the flood waters when they come. Filling

and diking it now, will eliminate the extra room that is needed and will continue to be needed in the future.

Thank you for your time and consideration. I really do appreciate the chance to present before the council.

As I've stated on our Friends of Baker Creek Face Book page, at last month's city council meeting, despite not being able to talk, it was the first time in this entire process where I feel we were heard. Thank you for allowing us to be heard regardless of how Tuesday night turns out.

Sandi Colvin
2718 NW Pinot Noir Drive
McMinnville, OR 97128

Sarah Sullivan

From: Jamie Fleckenstein
Sent: Monday, July 22, 2019 1:36 PM
To: Sarah Sullivan
Cc: Heather Richards
Subject: FW: Testimony submission
Attachments: We sent you safe versions of your files; Rebuttal July 23.docx

Here's the attachment...

Jamie Fleckenstein, PLA
Associate Planner

City of McMinnville
231 NE 5th Street
McMinnville, OR 97128
(503) 474-4153
jamie.fleckenstein@mcminnvilleoregon.gov

From: Sandi Colvin [mailto:sandicolvin@gmail.com]
Sent: Monday, July 22, 2019 12:28 PM
To: Jamie Fleckenstein <Jamie.Fleckenstein@mcminnvilleoregon.gov>
Subject: Testimony submission

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

Jamie,

Please enter this into public testimony.

Thanks!

Sandi

--

...and when you get the choice to sit it out or dance...I hope you dance.