

My View | Jeremy Flachs

# Karig hearing was a visit to Alice's 'Wonderland'

On Jan. 20, our city council voted 6-1 to approve the development at Karig Estates without modification, a vote which denied the appeal of the Beth El Hebrew Congregation and many citizens. The single vote in favor of the appeal was Mayor Allison Silberberg. Council's vote allows the developer to clear cut 40 to 50 mature trees on steep slopes. It represents yet another vote that trashes the idea that Alexandria is an "Eco City."

Those appealing were trying to protect a forested ravine on the Karig Estate next to Beth El on Seminary Road. The ravine features unstable soils held together by a mature forest. The ravine contains a perennial wetland and is coursed by an intermittent stream fed by seeps and springs near Seminary Road.

It bears repeating that the appeal was not an effort to stop all development. Instead, the appeal requested that the city enforce its own environmental regulations and move the new homes closer to Seminary Road and out of the environmentally sensitive, forested ravines. The most disappointing aspect of this journey was that the property owner, developer and citizens were all agreeable to building the new homes on the level and dry "plateau" portion of the property which overlooks the ravines. To reach a solution, someone on city staff or on council needed to show leadership and mediate a compromise. Sadly, no one except Silberberg was up to the task, and she was outvoted.



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To understand what happened, some background is necessary. Years ago, the city enacted regulations designed to protect the Chesapeake Bay. Waters flowing directly into tributaries of the Potomac River are given the status of a Resource Protection Area, which prevents disturbance of any kind within 100 feet of the water source. This protection from any disturbance or development is granted to perennial water sources, such as springs and streams flowing year-round.

Intermittent streams, which flow above ground only during part of the year and may not connect directly to the Bay, are granted lesser protection consisting of a 50-foot ring of protection. Karig and the surrounding properties have been well documented by the city's own experts as containing waters deserving of both 100 and 50 foot rings of protection. The city's experts in these matters include Rod Simmons, the natural resource manager, and Anthony Fleming, a consulting geologist. Both informed senior staff and council that the city was approving a development that violated its environmental

regulations.

On Jan. 20, with council assuming the role of enabler, senior staff tested the patience of citizens by holding an Alice in Wonderland-style hearing where black means white and regulations do not mean what they say. With the exception of Silberberg and to a lesser extent Councilor Del Pepper, our council seemed mesmerized by city staff, made few inquiries, dismissed the citizen testimony and defaulted in its leadership role.

The retort will be that Karig is a by-right development and the owner can do as it wishes. This is not the case for several reasons. Even a by-right development must conform to existing environmental regulations. Instead, we witnessed a near total abdication of environmental protections by the Office of Environmental Quality. And the block face/set back determination by Planning and Zoning was a contorted exercise in how to use discretion to destroy one of the few remaining old age forests in the city.

The above referenced scientists, Simmons and Fleming, advised council that construction would likely unleash numerous problems, potentially catastrophic, for both the new homeowners and the adjacent neighbors. The city responded that it relies on the developer to provide data, and the data provided looked good enough to approve the development.

Specific requests by citizens to both council and

KARIG

FROM | 37

staff for Simmons or Fleming to be called as witnesses were rebuffed on the ground that “the city has to speak with one voice.” Simmons was informed by his supervisors that he could not testify and to butt out. As in a Wonderland, the scientists with the knowledge were muzzled and the all-knowing engineers with their mathematical models run the show.

It is fact that Strawberry Run is a tributary of the Potomac River that flows through the west end of the city. It is fact that much of its headwaters are on Karig and then are undergrounded through the neighbors’ backyards until flowing from a large pipe on Fort Williams Parkway where it “daylights” as the RPA protected Strawberry Run. In the view of senior staff and council, water deserving of RPA status when it flows out of a pipe at Fort Williams Park is not deserving of RPA status when it enters the pipe at Karig. According to the city, the perennial wetland and seeps which form the headwaters of Strawberry Run are not part of Strawberry Run. Only in Wonderland can senior staff and city councilors avoid the obvious.

Transportation & Environmental Services staff elaborated that because the wetland water entered a pipe, it could not be accorded the RPA protection deserving of waters which flow into the Chesapeake Bay. But on the other hand, they stated, if the water flowed through a partially enclosed trough, rather than a pipe, the city would have granted the waters RPA protection. Only in this Wonderland are such distinctions drawn and of any meaning. According to the Army Corps, the fact the water eventually flow-

ing into the Chesapeake Bay may enter a pipe is of no significance when determining RPA protection. The city determined otherwise, overruling the strong opinions from its own scientists.

T&ES staff further testified at the council hearing that experts had used the “North Carolina” and “Fairfax County” stream assessment techniques to verify there was no intermittent stream and no RPA on Karig. But both assessments require a written score sheet and assessments by various experts, including a botanist. A review of documents produced after the hearing through a FOIA request confirmed there is no scoresheet or other documentation for Karig, leaving the question as to why T&ES staff stated otherwise to council. Only in Wonderland do senior staff and council rely on nonexistent stream assessments while ignoring hard facts produced by Simmons and Fleming.

If the city had classified Karig’s perennial wetland as the RPA that it is, and acknowledged the obvious intermittent stream, the required 100 and 50-foot buffer zones would have likely eliminated construction of two of the four proposed homes. At a minimum, the homes would all have shifted much closer to Seminary Road.

And, while the city and the developer both made noise that it would be unfair to protect the ravine because the existing maps did not show the RPA and intermittent stream, the perennial spring fed wetland flowing into Strawberry Run did appear on the city’s geologic map, a publicly available resource.

The question to be asked is not only what is fair for the developer, who may have taken advantage of poorly documented maps

published by the city, but also what is best for the citizens of Alexandria. The fact that the city’s RPA map is incomplete should result in an apology by the city, and then the city should update its maps and remedy its mistake. But in Wonderland, the incomplete becomes the norm and the obvious is obfuscated.

The regulations and protections applicable to Karig were so contorted by staff as to be nearly unrecognizable. At one point, staff testified that the Army Corp of Engineers had determined the wetland was not a RPA. Fifteen minutes later, with our mayor quoting the applicable regulations, the staff walked back and admitted it was the city and not the Army Corps which determined the wetland was not a RPA.

During another exchange, staff was asked by Silberberg at least three times if Anthony Fleming was hired by the city to author the city’s geologic atlas, “Geologic Atlas of the City of Alexandria, Virginia and Vicinity – By Anthony H. Fleming, Licensed Professional Geologist, 2015.” Initially, no one on staff professed to know the answer. Finally, a staffer admitted that yes, the city had hired Fleming. But Fleming had previously emailed each council member his detailed analysis of why the Karig development was a non-starter, citing his Geologic Atlas and other scientific studies. Other than Silberberg, no one on council acknowledged there even was a person named Fleming who authored the city’s geologic study. This is another trait of legislating in Wonderland. Experts disappear when convenience so dictates.

All the while the city attorney sat on his hands proclaiming impotence. There

was no questioning of the misstatements and obfuscation. Instead, it fell to Silberberg to research the law during the hearing and correct misstatements. If one had to guess, legal advice to council was driven by a desire to avoid a potential lawsuit by the developer, who was represented by the same attorney who defeated the city in an unrelated case regarding a tussle over an easement affecting an alley in Old Town.

What is even more disturbing is city staff and council both were aware that the neighbors and developer were close to a compromise. And where was the city attorney during this discussion? No, he insisted to Pepper, it would be fruitless to send the site plan back to the planning commission, and in Wonderland, that was all council needed to hear. I respectfully suggest this advice did not serve the larger interests of our city.

I offer this additional observation: Council is seated with intelligent and caring people who have in the past demonstrated the leadership lacking with Karig. Look back to how some of our council members fought courageously to shut down the Mirant plant which was polluting Old Town with dangerous coal dust. With Mirant, council exercised real leadership, even to the point of pushing staff to do its bidding for the sake of the city’s environment and health.

Is it possible that some on council have been there too long? Is it possible some have become too close to the staff they direct, to the point they have lost objectivity? We elect council to set the agenda and serve the citizens. We do not elect city staff. Council should never abdicate its leadership to staff, even well-meaning staff.