

ENVIRONMENTAL CONCERNS COMMITTEE

FEBRUARY 20, 2019 MEETING MINUTES

<u>MEMBERS PRESENT:</u>	Paul Manstrom, Chair; Phil Dietrich, Vice Chair; Ian Magnuson; Joe Bower; Gail Walter; Aaron Wright;
<u>EXCUSED ABSENCES:</u>	Mary Clare Griffith
<u>UNEXCUSED ABSENCES:</u>	None
<u>STAFF:</u>	Christina Anderson, City Planner; Jamie McCarthy, Development Project Coordinator; Amy Thomas, Recording Secretary

1. ROLL CALL (Excused Absences)

- The meeting was called to order at 4:30 PM

3. APPROVAL MINUTES (January 19, 2019):

- Ms. Walter requested the following changes: Page 2, 3rd bullet point under Bird Safe Building Design Update, replace “someone” with “Linnea Rowse, Conservation Program Coordinator.” Fourth bullet point, “Lynea” should be “Linnea.” Sixth bullet point, change “suggested finding” to “queried.”
- Mr. Wright, supported by Mr. Magnuson, moved approval of the minutes as amended. With a voice vote, the motion carried unanimously.

2. APPROVAL OF AGENDA:

- There were no changes to the agenda.
- Mr. Dietrich, supported by Mr. Wright, moved approval of the Agenda as submitted. With a voice vote, the motion carried unanimously.

4. ANNOUNCEMENTS:

- Mr. Wright introduced Eric Brown, ECC applicant. There are currently four open seats on the ECC.

5. NON-AGENDA COMMENTS BY OTHERS:

- Postponed.

6. PRIORITY BUSINESS:

Natural Features Protection Overlay Presentation by the City of Kalamazoo.

- Christina Anderson stated that the idea for natural features protection came about through the City’s 2025 Master Plan, which was approved in October of 2017.
- The Natural Features Protection Overlay is intended to protect the unique environmental features in the City of Kalamazoo. The Master Plan contains a work plan with details about creating the Overlay, which is scheduled to be completed in 2019.
- On December 3, 2018, the City Commission voted in favor of a six-month moratorium on projects involving parcels in the City of Kalamazoo that are noted in the Master Plan as having natural features. The draft ordinance needs to go through the public comment process, Planning Commission and City Commission review/approval by June 3, 2019, which is the date that the moratorium will expire. The Commission approval process will begin in April.
- There are three phases to larger natural features protection in the City of Kalamazoo. The planning staff are in phase one of creating the Overlay in the Zoning Code. The next two phases will be: 2. Creating a more detailed mapping study of natural features in the City of Kalamazoo and, 3. Stewardship of natural features. For instance, if your property is adjacent to a property with a natural feature, how can you be a better steward of that natural feature and the land. It is anticipated that phases 2 and 3 will begin in the summer of 2019.
- Since December 3, 2018, City staff have been working with the Advisory Technical Committee, which is comprised of individuals from the community that who have a background in water, slopes, soil, plants, trees, development, law, etc. The Committee members have been working together to create a framework of basic standards for the Overlay, which has been posted on the City’s website for review.
- There are four meetings scheduled over the next two weeks for City staff to take comments and concerns regarding the NFP overlay. In addition to the ECC meeting, which is geared toward environmental groups, there will be two neighborhood meetings, one in the Winchell Neighborhood on February 20th and one in the Eastside Neighborhood on February 27th. At the end of next week, there will be a presentation to the development community, which will include architects, engineers, planners, property owners and development corporations.

- In Late March there will be a City-wide meeting in the VanDeusen ????? room of the Public Library in downtown Kalamazoo. That meeting will be open to everybody. There will also be a public hearing at the Planning Commission meeting and the City Commission meetings.
- Ordinance approval at the City Commission level consists of two steps; 1. A first reading of the NFP Overlay and scheduling of the public hearing and, 2. The public hearing. Public comment will be taken at both of those meetings.
- There are four guiding principles that the planning staff has been working with, which are based on comments made at the December 3rd City Commission meeting, discussion from the technical group and City staff input: 1. The Overlay does not mean no development can happen. 2. The standards need to protect the defining feature. 3. City staff needs to be able to manage and implement the standards that are created. 4. This will be a city-wide ordinance.
- City staff decided that an Overlay in the Zoning Code would be most effective and the best for the City to implement. The NFP Overlay would be another layer of standards in addition to the existing zoning designations/standards. The overlay standards take precedence over the base standards when there is a conflict.
- The zoning overlay has three main pieces: 1. Standards associated with the natural feature. 2. Site development standards. 3. Review bodies and processes .
- Jamie McCarthy stated that the draft Overlay is available for review on the Imagine Kalamazoo website. Flood plane protection is not addressed in the NFP overlay, it is addressed in Storm Water Management Performance Standard #6, which is more strict than what the State of Michigan requires. Storm water is managed through the Public Services Department and the Building Official and they are in the process of remapping the flood plane. The Planning staff will work with the Public Services Department to update the standards regarding flood planes.
- Setbacks that are used to address water resources and wetlands will have a different meaning than they do in the rest of the zoning ordinance. Setbacks in the overlay will mean no building or paving; the land in the setback cannot be disturbed. Also, a barrier fence and natural vegetation will be required for protection/filtration of water in the setback area. The State of Michigan has laws regarding local jurisdictions and what they can regulate regarding wetlands.
- The tree standard is for individual trees that don't meet the definition of a woodland but are still important to protect. New for the NFP Overlay will be a setback for trees, which is 1.5 feet per every 1" of trunk diameter. No building will be allowed in the area of that root zone so the trees will have a chance to survive.
- In addition, there will be a list of special status trees, which included Michigan native trees of varying sizes. The ordinance describes how the process will be done, where trees can be removed, etc. and that will be covered during the site plan review process. Trees that are removed will need to be replaced; there is a list of acceptable trees to be used. The developer will be required to have a tree survey done by an Arborist.
- If you have a woodland on your property, you will have the same setback during and after construction. There are a few exceptions to that rule. An assessment of the property will be done to select areas of preservation based on the location of the higher quality trees.
- There will be a setback at the top and toe of the slope. There is a no disturbance area through the face of the slope. No construction, paving or removal of vegetation will be allowed in those areas. There will be a focus on connecting the slope to other natural features such as streams, woods, wetlands etc. Slopes will be a priority for protection.
- The natural heritage areas are to meant to preserve natural areas such as Oak Savannahs, remnant prairies and rare species. There will be a public data base regarding the natural features inventory. If a rare species is found within a 50-mile radius of a proposed development, the developer will be required to do an on-site survey for those species.
- The site development standards are an extra layer in addition to the NFP Overlay. The goal is to enhance areas that already exist. Existing use restrictions, such as wellhead protection, will be used in the NFP Overlay. Chemicals, hazardous materials etc. are referenced in the Wellhead Protection Ordinance.
- Some areas of the development have to remain as open space. The lot coverage rules have been changed; there will be an extra buffer for NFP properties. All native species are to be used in the landscaping for commercial developments. The capture requirement for storm water will be increased. Infiltration will be required when it is allowed.
- Ms. Anderson advised that the review board will be set up to assist with review of projects that are covered by the NFP Overlay. It will be similar to the downtown design review process. The NFP overlay review board will consist of members who have expertise in the six natural features. The board members would be officially reviewed/appointed through the City Clerk's office, the Mayor and the City Commission.
- The NFP Overlay Board will review projects that go to site plan review; not all projects go through the site plan review process. The NFP Overlay Board would need to review/approve projects prior to review by the Site Plan Review Committee.
- There will be a two-step review process for larger projects needing a rezoning or a variance, or projects within a certain distance of a body of water, a publicly used open space or a project that has multiple natural features onsite. These projects will go through the NFP Overlay Committee and the Planning Commission.
- Changes have been made to the Future Land Use Map in the Master Plan to show the NFP Overlay rules. The City of Kalamazoo is committed to doing a gap analysis which will be included in Phase 2.
- City staff will compile a list of questions regarding the NFP Overlay and then post the answers to those questions on the website.

The following questions and comments were discussed during the public comment portion of the meeting;

- **What is the setback for individual trees and where is that information?** Under the section regarding construction fencing there are details regarding setbacks for trees. That section also talks about trees that need to be preserved, such as trees of a certain size and trees of a certain species. The top of page 4c refers to construction protection, which talks about the critical root zone and the location of the fencing but the language could be more clear about what that means beyond construction and site disturbance. The setback line goes with the critical root zone.
- **If there are smaller trees on the edge of the setback, will the setback take into account how much the tree will grow as it matures?** The way the ordinance is currently written, only the diameter of the tree at the time of construction would be taken into consideration. A request was made to allow space for the trees to grow.
- **What type of fence is allowed for tree protection? You can't just put up a snow fence?** The fencing required in the overlay will be more durable than what the City currently requires.
- **The State defines a wetland as being two acres or more; are you are restricted by what the State requires?** Yes, but wetland regulations are in flux. Wetlands are viewed collectively, not just what is on a particular property.
- **How is the buffer distance from a water body determined?** The buffer would be based on the size of the parcel. Twenty-five feet is the minimum buffer in an urban area. A twenty-five foot buffer on a smaller parcel would require a variance. Fifteen to twenty foot buffer zones might be allowed on smaller sites. The 25-foot buffer if based on research and is just for new developments.
- **If the critical root zone is more than 25 feet, would the overlay provide for protection in excess of 25 feet?** Yes, that is the intent. Vegetation within the critical root zone should also be protected.
- **Does the requirement to maintain 25 percent of a woodland refer to the parent parcel? Twenty-five percent of a larger parcel vs. a smaller parcel could be a huge difference.** The size is not written into the ordinance right now. The intention is to allow for development but to not eliminate the woodland. A suggestion was made to look at the entire resource and determine what the limit will be.
- **The City is in the process of creating a Climate Action Plan, have carbon sinks been considered? It might be helpful to do an evaluation of acreage for woodland properties. If a significant portion of woodlands is eliminated, that doesn't allow as many options in the future. A newly planted tree is not processing as much carbon as a mature tree. Maybe that could be built into phase 2 of the NFP Overlay process? A suggestion was also made to look at habitat corridors, which might tie in with sustainability and the Climate Action Plan (CAP). A suggestion was made to rate the tree species list. Woodlands cover multiple parcels on the map shown. The standards should address multiple scenarios. Depending on what type of tree you are planting, the ratio changes.**
- **What are the setbacks along waterways? Differences in setbacks based on the size of the lot could be cumbersome. If there is a half-acre lot next to a five-acre lot, the smaller property would have a ten-foot setback and the larger property would have a twenty-five foot setback. It was suggested that the floodplain be used as the setback; that would also help protect the floodplain.**
- **Will there be education to make developers aware of the NFP Overlay early in the development process?** That is one of the reasons City staff has been talking with developers. They have been discussing the possibility of having a how-to guide to show what the development process will be. There will be notations in the database containing details about the NFP Overlay. Discussions are ongoing with regard to educating people about the NFP Overlay. A suggestion was made to include commercial and residential realtors with the education component.
- **Have NFP Overlay examples online to show the percentage of each parcel that will be saved. Will a larger percentage be saved?** There is no maximum size on parcels in the NFP. At this point, only the water setbacks are determined by the size of the parcel. Trees will be standard for the root zone. For woodlands, it will depend on the quantity of woodlands on the site. Conservation of slopes and rare/endangered species is not based on the size of the parcel.
- **Other natural features can't be encroached upon or they won't survive.** relates to woodlands states that you are allowed to leave or remove a portion of the woodland. There is a separate layer which refers to a ratio of pervious vs. impervious surface on a parcel. The percentage of pervious surface that is required increases with the size of the parcel. The NFP Overlay states that those areas are meant to be undisturbed. It is preferable to locate the pervious surface next to the natural feature to provide an additional buffer and that will benefit the woodlands.
- **Have the NFP Overlay zones been approved yet, do they actually exist?** No, that will happen though the Planning Commission. First, the standards/text will be added to the zoning codes, then the Overlay will be added to the existing zoning map. The standards and the overlay both need to be approved by the Planning Commission and the City Commission. There is no overlay zone right now.
- **Who will decide what the zones will be and how is that related to the overlay?** There is one NFP Overlay and that will get mapped on the same parcel that has the natural features protection from the Master Plan. The overlay zone will provide the standards that regulate what can be done with the six natural features.
- **How does the NFP Overlay relate to the land use map?** The future land use map says that, in the future, certain uses (commercial, residential, etc.) would be appropriate for a particular parcel. The Vermeulen property is listed as

commercial property on the future land use map. City staff is using what the future land use plan said would be appropriate for natural features protection, then creating the overlay district and mapping it. The overlay has to apply to all parcels in the City of Kalamazoo. The overlay standards aren't tied to the use/zone of the parcel, they are tied to the feature to be protected. The overlay will be mapped and made official through the Planning Commission and City Commission process. Any individual parcel change has to go through its own process through the Planning Commission and the City Commission.

- **Who created the map in the Master Plan?** City staff created the map in the Master Plan. Only the parcels designated in Master Plan will be in this first step in the overlay process. The Master Plan was approved by the community and the City Commission. The one exception is for Kleinstuck Preserve, which has already been added to the overlay process, that map could expand as the overlay process continues. That would be a continuation of this process with a committee of experts and public input.
- **Is the phase 2 gap process intended to cover what was missed during the Master Plan, such as lakes and water ways with no protection?** Yes, there will be a study of all the features that we regulate to determine what is not included and what needs to be considered. That will be done after the initial NFP overlay is approved.
- **How can we be sure that features that are unprotected will be protected in the future?** There is no guarantee that any particular property will be included. The Master Plan is the starting point but a more detailed analysis will be done. The planning staff can't walk through every property to do an analysis. Each feature will require a different approach; that process will start as soon as possible. Any change to the zoning map, such as supplemental parcels to be added to the overlay, will require approval through the Planning Commission and the City Commission and that will include an opportunity for public input.
- **We need a map that goes with the ordinance.** The map of the overlay might not include all of the parcels that everyone thinks should be included but it will be a starting point. Standards will be set for projects in those locations while we move forward with a study to determine if anything is missing and what regulations will be required.
- **Concern was expressed that something valuable might slide under the radar if it not on the map.** The moratorium only applies to parcels designated in the Master Plan with the overlay. Other parcels are not covered by the moratorium. Use of a moratorium is not always the ideal tool. Having a district map ready to go would be preferable. Zoning projects have two phases, the text amendment and the map, which can be changed through the appropriate process.
- **The map was not presented at earlier public meetings. When did City staff develop the NFP Overlay map? Also, what will happen with the slope along the corridor where the creek is located?** The slope is usually studied with topography maps. There are priority slopes that are protected; not every slope in the City is protected. Priority slopes would have a 20% slope or greater (the 20% is measured between the ten foot contour lines of a topography map) and would be associated with another natural feature or the slope would be on multiple parcels.
- **No one has to go on site to look at the slope? (according to what's written)– it is constantly changing and needs to be looked at.** When the Building Department reviews permits for properties that have a slope, they would visit the site. They will also use existing surveys to make their decisions. the City will not resurvey a property. City staff uses information that is brought to their attention. If there are questions, they can investigate and revise plans when necessary.
- **What is the definition of native species? Some plants are not good for native pollinators; which plants could be a problem? There are different qualities of native plants. Single family homes don't require site plan review. The Planner will still look at the project but the whole committee will not review it? Native species might be in limited supply and that could be an issue. The requirements are in the zoning code and the project still needs to meet the standards.**
- **It is important to be consistent for planning proposes but Asylum Lake is a unique property. It would be prudent to make exceptions or different standards for such an environmental assessment. There is concern regarding additional runoff into Asylum Lake. The lake is a huge community resource and there should be something to protect that resource. That would be very difficult. The Vermeulen property is currently zoned residential but not on the future land use map.**
- **All properties should be taken into consideration. Just make sure the NFP Overlay works for Asylum Lake, that is the litmus test.** Publicly used spaces are well-valued. There will be a requirement for adjacent properties to go through the two-step review process.
- **There would be an additional review for properties that abut natural areas.** Land adjacent to land which is publicly used for open space or recreation would require the two-step review process, which includes review by the Natural Features Protection Review Board and the Planning Commission. The Review Board would make a recommendation to the Planning Commission.
- **If a request is made to rezone a property to commercial zoning, will it be subjected to NFP review?** No, the additional restrictions on that piece of property are required because it is next to a special resource. Other factors would require the two-step review process. If a parcel did not have those other features but it abuts an area used for public recreation, it would still require the two-step review process.
- **There is a question as to whether or not there are valuable trees or animals, etc. on the Vermeulen property. But it is next to the Asylum Lake Preserve so it would still go through the two-step process?** Yes.

- **Can we add the definition of “a preserve” as a natural feature?** Use of the word “Preserve” (Kleinstuck Preserve and Asylum Lake Preserve) implies no development vs. land which is used for private property.
- **Invasive plant species such as Japanese Knotweed, etc. can be in the fill dirt used in developments and can cause issues with the infrastructure. How will the buffer strip around the development be properly established and maintained over time?** The ordinance would require the buffer strip to be added into the storm water agreement to hold property owners responsible for the buffer strip. The City could hold a bond to be released over time if the buffer strip is properly maintained. Also, the City has a mechanism in place to deal with property owners who are not meeting their site plan requirements.
- **Can the fine be increased for issues regarding noise and light? A thousand dollar fine is not significant to big developers.** 1. Fines would be assessed per infraction, not per site. 2. Currently, there is a \$77.00 fine for a zoning infraction. 3. There are three pieces to the fine. The ticket is \$1,000, there could also be court costs and the judge could rule to have the property owner replace, mitigate or restore a feature. City staff could also put a stop work order on a project if trees are removed that should have remained in place.
- **Did the commission talk about noise and light pollution and regulations above current ones.** City staff did not recall that being discussed but they can follow up with it.
- **Concern was expressed regarding possible infringement from developments on land intended for public use, such as birds flying into window glass next to the preserve, blinking lights and cell towers that could also be harmful to wildlife.** Those details are covered in the last section in the site development standards.
- **Concern was expressed regarding hazardous chemicals that might be used and how that would be dealt with in the standards.** During site plan review, details need to be provided regarding chemicals to be used on site. City staff will refer to the wellhead protection regulations to determine what is being regulated and what is not.
- **The City of Kalamazoo has storm water collection standards. What if someone uses an unusually large amount of water on site that is not storm water?** All water is regulated on site. The same requirements apply for how you treat and manage it.

The remainder of the ECC agenda was postponed to a future meeting.

9. ADJOURNMENT:

The meeting adjourned at 6:15 p.m.



Recording Secretary