

PLANNING COMMISSION

Minutes
April 11, 2007
DRAFT

The City of Kalamazoo Planning Commission meeting was called to order by Commissioner Kuseske at 7:05 p.m. in the City Commission Chambers, 241 W. South St., Kalamazoo, MI 49007. Approximately a dozen additional people were in attendance.

MEMBERS PRESENT

Terry Kuseske, Chair; Frank Cody, Vice Chair; Sonja Dean; James Kneen; Linda Wienir; Reed Youngs

MEMBERS EXCUSED

Merilee Mishall

MEMBERS ABSENT

Casey Fawley, Bertha Stewart

GUESTS

Barb Miller, City Commission Liaison

CITY STAFF

Keith Hernandez, Deputy Director/City Planner, Rob Bauckham, Assistant City Planner; John Kneas, Assistant City Attorney; Amy Thomas, Recording Secretary

ROLL CALL

Planner Hernandez completed roll call and determined that the aforementioned members were present.

AGENDA (April 11, 2007)

There were no changes to the agenda.

Commissioner Cody, supported by Commissioner Kneen, moved approval of the April 11, 2007 Planning Commission Agenda as presented. With a voice vote, the motion carried unanimously.

MINUTES (March 1, 2007)

Commissioner Wienir requested the following changes: Page 3, line 4, should be, "Whites" Rd., no apostrophe. Page 4, line 7 should be, "Damon's" with an apostrophe. Page 4, second paragraph, "Whites" (no apostrophe).

Commissioner Youngs, supported by Commissioner Cody, moved approval of the March 7, 2007 Planning Commission Minutes as amended. With a voice vote, the motion carried unanimously.

COMMUNICATIONS AND ANNOUNCEMENTS

Planner Hernandez read into the record a letter from Leslie Decker, Director of SARA (Stuart Area Restoration Association). The letter requests that the Planning Commission take no further action regarding the proposed overlay for the Stuart Neighborhood until after the Stuart Neighborhood holds its meeting on May 15th. The meeting will be an opportunity for Stuart residents to voice their concerns about the overlay.

PUBLIC HEARINGS

P. C. #2007.05: Consideration of a request from Friendship Village for approval of the Friendship Village Garden Residential Units PUD to be located at 4301 Grand Prairie Road and the North 225 feet of 1402 N. Drake Road.

Planner Bauckham gave the staff report, which is incorporated in these minutes by reference hereto. The subject property is located north of Friendship Village on Drake Rd. and is part of the West Winds PUD, which was approved by the City Commission in 1976. The northern portion of this PUD constitutes phase I of the development, which was developed with single-family homes. The southern portion of the site, which is the subject of this request, constitutes phase II of the PUD; it is wooded and undeveloped. Friendship Village has purchased this portion of the property with the intention of developing it with duplex homes. The request also includes the north 225 feet of the existing Friendship Village site.

The new development will be known as Friendship Village Garden Residential Units PUD. The development will be comprised of 25 duplexes for a total of 50 units. Twenty of the duplexes will be developed on the west side of the property as part of phase I, and 5 would be developed on the eastern portion as part of phase II. Section 1.9 of the zoning ordinance indicates that PUDs approved prior to October of 2005 that have subsequent phases, can be reviewed using the regulations from the prior ordinance, and that is the case for this request. The new PUD will have a private road coming off the main road for the Friendship Village complex. Only emergency vehicles will be allowed to use the access to the north; it will be a gated access. The duplex units will be from 1,300 to 1,800

square feet; some will have garden or walk-out areas. They will all have attached garages.

There are plans for a future clubhouse and pool on the southwest portion of the site. There will be a landscaping buffer around the perimeter of the site, which will be comprised of trees and shrubs. There will be grading changes to accommodate the new duplexes. Sixty existing trees will be removed, but a greater number of new trees will be planted once the construction is done. The utilities will be underground. Storm water generated from the site will be partially directed to the city's storm water system and partially retained on site. There will be sidewalks and a walking path to connect the new site to the current site. Decorative street lights will line the street. The developer is requesting fewer units than what the zoning allows; they are asking for 50 units, but they could have up to 80 units. Accordingly, there will be a large amount of open space remaining. There are single-family homes to the north and east of the subject property, the Maplebrook Apartments and a church are located to the west. The Site Plan Review Committee reviewed the plan on March 26th; changes were made and approval of the plan was recommended. City staff feels that the proposed project meets the requirements for a PUD and they are recommending approval of the project.

Commissioner Cody confirmed that there won't be any public streets running through the PUD to be constructed.

Commissioner Kneen advised that he works in a similar field as the applicant. Therefore, due to the potential for conflict of interest, he will not be voting on this application.

Commissioner Youngs inquired as to who would have control over the storm water retained on site. Planner Bauckham advised that Friendship Village will have control over the on-site storm water. During the site plan review process, the city engineers looked at the detailed plans of the system and approved them. The private road will be built to city standards, but Friendship Village will maintain it.

Commissioner Youngs advised that he has experience dealing with road construction and traffic issues. Based in the information that was given, it appears that there will be approximately 200 vehicles per day coming in and out of the new PUD. He inquired if Drake Road would accommodate the increased traffic. Planner Bauckham advised that Drake Road was modified not too long ago to accommodate an increase in traffic. Retirees would likely not have as many trips in and out of the facility as, for example, a college apartment complex.

Commissioner Wienir inquired if the W. Main Hill Neighborhood or other neighborhood associations were involved in the planning of this PUD. Planner Bauckham stated that the Westwood Neighborhood Association was contacted regarding the proposed project. The applicants have had meetings with the neighbors regarding this project.

Commissioner Wienir stated that she would be interested in having information about the presentation that the applicants made to the Westwood Neighborhood. Jay Wise from Slocum Architects was present to answer questions. He introduced Stan Clouse, the Executive Directive of Friendship Village, who advised that the presentation to the neighborhood took place in November 2006. Invitations were sent to the neighbors surrounding the PUD to attend the meeting at Friendship Village. The applicants discussed their ideas and asked for the neighbors' comments. Someone inquired if any of the dead-end streets would become pass-throughs; and Mr. Clouse stated that was not the intent. Questions were asked about the buildings to be constructed. Someone inquired if a fence would be added. Mr. Clouse stated that some additional vegetation would be planted but a fence would not be installed.

Commissioner Wienir inquired if the people at Friendship Village know about the proposed project and if they are supporting it. Mr. Clouse responded in the affirmative and stated that there have been 2 or 3 monthly meetings with the residents of Friendship Village. Slocum Architects presented information similar to what was covered tonight.

Commissioner Kneen inquired if the condominiums would be constructed all at once or one at a time. Mr. Clouse advised that the financing is a line of credit; as the condos are sold, more will be built. The average cost will be approximately \$250,000 for a 1,300 square foot condo with a lower level. People who have expressed interest in purchasing a condo have their name on a priority list and some have already provided a down payment.

Public Hearing

Tracy Smith, 1535 Northampton, advised that she was not present at the November meeting, but the neighbor across the street attended that presentation. She asked the following questions: 1. Where and when will the development start? 2. The north areas are to have vegetation, but what about the south side? 3. There are markers on the property; do they represent the property line or the easement?

Mr. Wyse advised that the stakes represent the location of the landscape buffer. The development will start across from the proposed clubhouse and to the east, then around the loop. Ms. Smith stated that the construction would be by her house on Northampton. She inquired if there would be a fence or a buffer. Mr. Wyse stated that trees would be added for an additional buffer. Ms. Smith stated that she needs time to move some plantings onto her property. Mr. Wyse advised that May 15th is the anticipated start date. It will take 90 to 100 days to put in the infrastructure.

Paul Cronin, 4311 Kingsbrook, inquired as to where the construction traffic will go when the project is being built. Mr. Wyse ????? stated that the construction traffic will not be on Kingsbrook. Mr. Cronin commented that someone put up a fence along their road to prevent kids from the neighboring high school from cutting through the nearby woods.

He expressed concern that landscaping would get flattened if planted in that area. He inquired if a metal fence would be installed. Mr. Wyse ????? replied that a fence would not be installed in that area.

Commissioner Youngs, supported by Commissioner Kneen, moved to close the public hearing on P.C. #2007.05. With a voice vote, the motion carried unanimously.

Commissioner Cody, supported by Commissioner Wienir, moved approval of P.C. #2007.05: Consideration of a request from Friendship Village for approval of the Friendship Village Garden Residential Units PUD to be located at 4301 Grand Prairie Road and the north 225 feet of 1402 N. Drake Road. With a roll call vote, the motion carried unanimously. Commissioner Kneen abstained.

P.C. #2007.04: Consideration of a request from the city Department of Public Services to approve a Wellhead Protection Overlay Zoning District and to amend Section 3.5 of the Zoning Ordinance for the overlay.

P.C. #2007.06: Consideration of a request from the city Department of Public Services to approve the Performance Standards for Groundwater Protection within Wellhead Protection Capture Zones and Stormwater Quality Management, and to amend Sections 8.3.H.7.L.& X. of the Zoning Ordinance.

Commissioner Kuseske advised that P.C. #2007.04 and P.C. #2007.06 would be voted on separately.

Planner Bauckham stated that these two items pertain to improving groundwater and wellhead protection and storm water management within the City of Kalamazoo. Both of these items represent changes to the existing zoning ordinance. The first one is an overlay district similar to the riverfront zoning overlay that the Planning Commission approved several months ago. These standards will be applied to the existing well head capture zones within the city, in part to prevent certain new uses from going into these zones, which have a high risk for possible chemical contamination. The performance standards are an amendment to the site plan chapter of the ordinance for use primarily in the site plan review process. Planner Bauckham advised that John Paquin, Water Resources Manager, Public Services Department, and his staff have worked many years on these documents. It is hoped that the overlay will be in place shortly to protect the city's ground water.

Mr. Paquin stated that the goal of these strategies is to minimize the risk to drinking water and improve the surface water quality. The City of Kalamazoo's public water supply system is the second largest ground base/drinking water supply system in the state of Michigan. There are 19 different well fields across much of Kalamazoo County. There are 102 production wells producing drinking water, with 122,000 people served. The city

has contracts with 10 units of government to provide water. On average, the City of Kalamazoo provides 20 million gallons of water to their customers per day; the city can provide more than twice that amount if needed.

The Wellhead Protection Zoning Overlay has four main objectives, which are as follows:

1. Prevent the creation or establishment of non-compatible land uses within these highly sensitive zones when there is potential for contamination of the drinking water sources. Those types of land uses can also make it much more difficult for the city to maintain its system. For instance, when the city needs to replace one of its wells, it needs to obtain permits from the state. The state looks at land uses within the area and they could deny the permit if the risk is not minimized.
2. Protect groundwater by existing land uses. In other words, the land uses are already allowed in these zones. However, the risk is high enough that the city wants more protective measures, such as secondary containment.
3. Minimize interruptions to business by regulating only specific high-risk activities within specific capture zones.
4. Prevent/minimize public and private losses due to contamination of public water supplies by avoiding having to expend the city's money to remediate existing well fields, or to replace existing assets.

Referring to the map, Mr. Paquin advised that the magenta-colored areas represent a one-year time of travel. Blue areas indicate a 10-year time of travel. The wellhead protection areas or capture zones are defined as the surface or subsurface area surrounding a well field in which contaminants are reasonably likely to move toward and reach a well field under the pumping conditions. It took many years and substantial funds to develop this sophisticated groundwater modeling. These zones are state approved through the Michigan Department of Environmental Quality. It took six separate groundwater models to accomplish the current product. The time of travel refers to the time span that it would take for a spill to reach a well field.

The next step was for city staff to look at known and potential contaminate sources and attribute risk to those sites. Of the 19 city well fields, 7 had detections of contamination. Two of the primary well fields, one by Crosstown and one by WMU on Kendall and Howard, had such severe contamination that the city had to spend millions of dollars to incorporate air stripping capabilities to remove the chlorinated solvents that reached the well fields. The intention of the overlay is to prevent that type of situation from occurring again. The strategy is to look at these two zones independently. The 10-year time of travel is not as high a risk to the well fields so fewer uses would be prohibited in those areas. A one year time of travel is much more sensitive and more activities would be prohibited in those areas. There are over 300 types of sites in the contaminate search inventory. There are many known contaminated sites; gas stations are a source of much of the contamination. One goal of the overlay is to prevent such uses in areas with a one-year time of travel.

Another issue to be dealt with is the existing businesses that are nonconforming uses. The following rules would apply to those businesses: 1. They would have to conform to

performance standards and incorporate some additional protective measures to prevent contaminants from reaching the aquifer and/or; 2. They would have to develop a spill control plan. Twenty local businesses have already done this on a voluntary basis several years ago. The plan would provide information on what to do if a spill occurred. Some of the other ordinance components include requirements on how to report a release of contaminants. There is also a requirement to report a closure of a facility that has hazardous substances on site. Included in the overlay is information on variance and appeal rights. If the responsible party cannot be located in an emergency, there are also instructions on how to respond to that situation.

The performance standards go hand in hand with the wellhead protection overlay. The performance standards are engineering controls or best management practices that businesses can implement to minimize risk. The performance standards are also a reference document for staff to use during site plan review to better address location of a business in reference to the capture zones and to look at storm water issues.

The city has an MDEQ permit for its Phase II storm water. City staff must make sure that the storm water that reaches the city's system meets local standards so the city is in compliance with state standards. The standards deal with types of use issues; construction and dewatering, etc. Many of these standards have been in place for years in other communities such as Portage and Battle Creek. There are specific site plan review standards which pertain to refueling establishments, repair shops, junk yards, salvage yards, etc. The standards contain specifics on what should be done to minimize impact to the aquifer if there were a release at those sites.

One of the main components is storm water quality management, which looks at a site in relationship to capture zones. In other words, a particular use might not be allowed in a one-year time of travel in order to prevent infiltration because the run-off carries with it a lot of pollutants. However, the same use might be encouraged outside of the wellhead protection area. Another area of consideration is the appropriate treatment of water before it reaches the storm water system. This has been done for years but this sets additional standards for areas such as parking lots, which contain contaminants such as oil and grease. Mr. Paquin stated that city staff believes the combination of the zoning overlay and the performance standards are a good idea. There are 241 sites in the city that are at risk to the drinking water supply and 72 of them are known contaminated sites. A release of those contaminants could reach our well fields. According to a survey done last year, 75% of citizens surveyed supported an ordinance and other management strategies for the city to use. History shows that millions of dollars have been invested to clean up the water supply. Accordingly, it is more cost effective to be proactive about protecting the water supply as opposed to being reactive when contamination occurs.

Commissioner Cody referred to the enforcement provision in the ordinance. He mentioned that a violation would be noted by written communication. It also says that any violation is subject to a \$500 fine or 90 days in jail. He questioned if that would be

the first action taken when a problem occurred; it doesn't seem very clear in the ordinance. Mr. Paquin advised that such a fine would be typical enforcement and could be applied per day for instances where people are not cooperating. The objective would be to settle those issues before such enforcement was necessary.

Commissioner Wienir referred to the document pertaining to performance standards and hazardous waste on page 21, section 3.5. She inquired if that would have stopped the current proposal to dump PCB's at the former Allied paper site. Mr. Paquin advised that the overlay and standards were not specifically designed for the Allied Paper site, which is not a licensed or permitted landfill. A landfill would be prohibited in any capture zone. Also, if something was already there it would fall under the category of a non-conforming use. At this point, it could be viewed as the release of a regulated substance, which would be in violation of the ordinance. The Allied site is an extreme example but the overlay and performance standards could be used as a tool to address some of those issues.

Commissioner Wienir mentioned that someone at the EPA informed her that a licensed site is not necessary for superfund projects. Mr. Paquin advised that if the city were to propose the same use for the property, it would not meet the necessary requirements.

Commissioner Kneen inquired as to what the city would do if contamination was detected in a couple of years. Mr. Paquin stated that the attorneys are studying that issue.

Commissioner Dean inquired as to the location of the Allied paper site within the wellhead protection area. Mr. Paquin advised that it is in the 5-year time of travel zone, and is located near Portage Creek. The performance standards address a 5-year time of travel also for the purposes of site plan review. If this ordinance were in place and someone proposed a landfill in that location, city staff would not allow that use.

Commissioner Cody inquired if federal legislation would supercede regulations established by the city. Mr. Paquin commented that this issue is still being studied.

Commissioner Youngs commented that the center downtown area is within a one-mile time of travel. Does this mean there will be a one-year time of travel from each wellhead in the city? Mr. Paquin stated that the groundwater modeling doesn't allow for the drawing of a radius. The computer modeling takes all hydrogeologic information regarding the aquifer and the surrounding area and simulates how a water particle tracks and reverts, which is known as reverse particle tracking. The boundary around the magenta area is the 365 day time of travel. Coincidentally, that shape may be close to the one-year time of travel, but every well field is different and the shape of the capture zones vary.

Commissioner Youngs inquired as to how the City of Kalamazoo could make sure that other jurisdictions also protect the water supply; would they also adopt the overlay? He referred to the Georgia Pacific site as an area of concern in the township. Mr. Paquin stated that many of the wellheads are outside the City of Kalamazoo; the city has to protect its facilities first. Mr. Paquin advised that the City of Kalamazoo has ongoing dialogues to update the water contracts with neighboring governments. City staff will encourage the townships to adopt the overlay as is or to make changes that would protect everyone's interests.

Commissioner Kuseske referred to U.S. 131 where it runs through the southwestern portion of the city. He inquired as to the impact of the salt from the highway on the well in that area. Mr. Paquin stated that he hasn't seen the impact of that situation. He commented that there is limited research regarding station 22. A truck spilling its load on the highway would be more of an emergency than the effect of road salt.

Commissioner Kuseske inquired if the composition of the soil makes the City of Kalamazoo more vulnerable because the travel time of pollutants is increased. Mr. Paquin stated that deposits of sand and gravel from glaciers make it difficult to predict how contamination will affect the well fields. The City of Kalamazoo has an abundant groundwater supply, but some of it is vulnerable to surface contamination.

Commissioner Wienir expressed concern with regard to the volume of truck traffic that would be in Kalamazoo to transport toxic waste to the Allied paper site. She commented that she didn't find anything in the overlay that would address this situation. Mr. Paquin confirmed that the overlay does not refer to that issue because there are other ordinances to address those situations. The overlay is intended to protect the water supply from on-site contamination.

Commissioner Youngs noted that the city yards facility on Stockbridge is within the one year time of travel. He inquired if there were any problems with that site. Mr. Paquin advised that the city is continually trying to improve their management of the site. Storm water is treated on that site and there are protective measures in place, but it is a goal of city staff to continually improve those facilities.

Public Hearing

John Hilliard, 2009 Sheridan, Milwood, board member of the Milwood Neighborhood Watch Association, board member of the Milwood Area Business Association and member of the Kalamazoo Environmental Justice Coalition. Mr. Hilliard stated that he supported the city's efforts. However, he encouraged city staff to address the Allied paper site and the Georgia Pacific site as soon as possible. Mr. Hilliard stated that he represents the Milwood, Edison and Westnedge Hill Neighborhoods and other parts of the community. Mr. Hilliard expressed concern for the health and welfare of the people in the community. He suggested taking a strong look at the potential for leaks and spills

from the trucks that would be transporting the contaminated material. He commented that the EPA doesn't want to spend 12 to 14 million dollars to send the contaminated material to the Detroit area where it belongs. Mr. Hilliard advised that the contamination would amount to a four-story pile of poison, and he suggested reviewing the ordinances that govern this situation. He offered assistance and urged those present to ask for support if needed.

Commissioner Kneen, supported by Commissioner Dean moved to close the public hearing on P.C. #2007.04 and P.C. #2007.06. With a voice vote, the motion carried unanimously.

Planner Hernandez advised that after the Planning Commission acts on this document, it may appear on the agenda again if there is need for amendments. That may happen before the document goes to the City Commission, if it is approved by the Planning Commission. Accordingly, it may be necessary to convene a special meeting of the Planning Commission to hold another hearing on the amendments.

Commissioner Kneen stated that he agreed with Mr. Hilliard's comments. He questioned what the community and the commission could do to help prevent the contaminants from being dumped at the Allied paper site, and he commended city staff for pursuing options for dealing with that situation.

Commissioner Cody, supported by Commissioner Dean, moved approval of P.C. #2007.04: Consideration of a request from the city Department of Public Services to approve a Wellhead Protection Overlay Zoning District and to amend Section 3.5 of the Zoning Ordinance for the overlay. With a roll call vote, the motion carried unanimously.

Commissioner Wienir, supported by Commissioner Youngs, moved approval of P.C. #2007.06: Consideration of a request from the city Department of Public Services to approve the Performance Standards for Groundwater Protection within Wellhead Protection Capture Zones and Stormwater Quality Management, and to amend Sections 8.3.H.7.L. & X. of the Zoning Ordinance. With a roll call vote, the motion carried unanimously.

CITIZENS' COMMENTS REGARDING NON-AGENDA ITEMS

None

OLD BUSINESS

None

NEW BUSINESS

Planner Hernandez referred to the State Planning Enabling Act, which was updated last year. The Act includes a stipulation to have someone from the Planning Commission to also serve on the Zoning Board of Appeals (ZBA) and this needs to be done as soon as possible. Planning Commissioners interested in serving this dual role should contact Commissioner Kuseske as soon as possible. The ZBA meeting is scheduled for the second Thursday of each month and begins at 7:00 p.m.

CITIZENS' COMMENTS

None

CITY PLANNER'S REPORT

Planner Bauckham stated that scheduled for the May Planning Commission agenda is a special use permit for a day care. The facility will be located in a house and will accommodate from 7 to 12 children.

Also possible for the May agenda is a site plan for the BTR park.

Site Plan review is going very well this year; there have been 10 more projects reviewed at this point than were reviewed by this time last year.

Commissioner Cody inquired as to the status of the Planning Commission retreat. Planner Hernandez advised of the need to come up with a format for the retreat. That information will be included in an e-mail to the Planning Commissioners.

Commissioner Dean referred to the amendments for the water wellhead protection overlay and the repercussions for failure to comply. She commented that \$500 will not likely deter larger companies. Commissioner Kneen added that the fine would be assessed on a daily basis. Attorney Kneas stated that the fine for this misdemeanor is limited by state statute to 90 days and/or a \$500 fine and it isn't possible to charge more. It might be possible to charge each separate offense on a daily basis. It might also be possible to pursue the matter in Circuit Court under nuisance abatement and look at civil damages.

Commissioner Kneen inquired as to how the situation with the Allied paper site occurred. Mike Wetzel, Environmental Services Superintendent with the Public Services Dept., advised that city staff is looking at that issue. They are researching the rules and trying to answer questions that have been asked. At one point in time, many years ago, the Allied site was a type 3 landfill licensed by the state. It was grandfathered in because it predated the regulations. As the regulations changed, there were attempts to get it permitted as a

type 3 landfill, but it never attained full permit status, and it doesn't appear on the list of current licensed landfills. In the past, each paper mill operated its own landfill on its own site, but that predated the current standards.

Commissioner Wienir advised that there would be a meeting at Western Michigan University regarding the PCB issue. Experts from WMU and the EPA will speak during the presentation, which will be held at the Bernhard Center in room 209 on April 12th. She stressed that the word temporary as used by the EPA has a different definition.

Commissioner Kuseske acknowledged City Commissioner Barb Miller in the audience, and thanked her for attending the April Planning Commission meeting.

ADJOURNMENT

Commissioner Kneen, supported by Commissioner Dean, moved to adjourn the April 11, 2007 Planning Commission meeting.

The meeting adjourned at approximately 8:30 p.m.

Respectfully submitted,

Keith Hernandez, AICP
Deputy Director/City Planner
Community Planning & Development