

March 2019 Report on the Activities of the Ecological Advocacy Committee (EAC) to the South Bend Board of Park Commissioners

Submitted by: Steve Sass (Committee Chair)

Additional committee members (2019):

Lindsay Chadderton

Alicia Czarnecki

Amy Kryston

Sarah Nerenberg

Rachel Novick

Andrew Tucker

Allison Turner

Past members who participated in 2018 discussions:

Teri Hebert

Greg Koehler

For the period covering: January 1, 2018, to March 13, 2019

Completed Work

- **Governor Joe Kernan Park slope assessment** - At the request of John Martinez, VPA Director of Facilities and Grounds, EAC members Sass and Tucker along with liaison Harrington visited Governor Joe Kernan Park on July 24, 2018, to assess and advise on the selection of vegetation to plant within the steep bank between the lower trail and Northside Blvd. The committee concluded that the existing vegetation, the majority of which are exotic, invasive species, are the primary means of bank stabilization. In areas where invasive shrubs were cut, but not treated with herbicide, the invasive vegetation appears to be growing back at an even more aggressive rate. There was also substantial erosion below and linear with the area where vegetation was removed; suggesting that the creation of "river windows" may have negatively contributed to hillside erosion.



Erosion following rain resulting in the discharge of sediment into the St. Joseph River



An interpretive sign explaining the removal of invasive plants being swallowed by regrowth of cut invasive plants

Recommendations by the committee

- The committee concluded that there are no short-term vegetative fixes for the hillside. Removal of existing vegetation will further exacerbate erosion.
- The committee recommends hiring an expert consultant to study options for the slope, which could include terracing or other means of stabilization.
- In areas where disturbances are created through the removal of vegetation, the committee recommends that the Park Department consider using silt fencing to minimize the flow of sediment into the river.
- **Coal Line Trail** - The committee was asked to consult on ecological implications related to the construction of the Coal Line Trail and how it would potentially impact Muessel Grove Park. The committee found no direct threats of ecological damage.
- **Leeper Park duck pond** - The EAC was asked by the Park Department to issue an opinion on the ecological aspects of the Leeper Park duck pond. The committee voted unanimously in favor of supporting the option to remove the duck pond as part of the park's redesign.

In the months following the vote, EAC chair Sass was present to support and defend the EAC's and city's stance at two public town hall events and on social

media. Sass also attended the February 4, 2019, meeting of the Historic Preservation Commission, and spoke to the Commission on behalf of the EAC's decision to support the removal of the duck pond. The Commission subsequently voted to grant a Certificate of Appropriateness to the Leeper Park redesign project.

- **Dark sky, outdoor lighting and the Natural Resource Management Plan (NRMP)** - Following the November 2017 adoption of the Natural Resource Management Plan by the Board of Park Commissioners, Chuck Beutter, a local amateur astronomer and responsible lighting advocate, addressed the Park Board and EAC members about his disappointment over the exclusion of responsible outdoor lighting from the list of "identified areas of concern" in the Natural Resource Management Plan.

After the meeting, the EAC invited Mr. Beutter to address the committee, which he did at our July meeting. In two meetings that followed, the EAC discussed Mr. Beutter's presentation, and in December, the EAC voted unanimously to recommend to the Park Department that "responsible outdoor lighting," and "riverbank erosion" be added to the list of areas of concern in the NRMP.

- **Review of city's Arbor Day tree giveaways** - At the March 2018 meeting of the EAC, South Bend VPA Volunteer Coordinator Amy Roush presented to the EAC about upcoming events including the Arbor Day Native Tree Giveaway. The EAC requested a list of the planned tree species to be given away. Upon examination, the committee determined that nearly all of the species of trees to be given away were exotic to Indiana, and most of them were exotic to North America. The EAC pointed out this discrepancy to both the Park Department as well as to the Department of Sustainability; both of whom had been promoting the sale. Subsequently, both departments dropped the word "native" from the advertising.

On January 16, 2018, City Forester Brent Thompson provided a list of the 2019 Arbor Day giveaway tree species and the EAC is thrilled to report that all seven species of trees are native to Indiana.

- **Review of documents pertaining to the city's list of recommended trees** -

Following the discussion regarding the Arbor Day, the EAC, with the dual function of being the Citizen's Tree Board, delved deeper into the city's tree policies. Beginning with the document entitled *Tree Suitable for Planting in South Bend* and its companion spreadsheet, committee member Sass enlisted the expertise of friend and regional natural resources professional Amanda Smith. Over the course of several weeks, Sass and Smith studied the documents and compiled a

48 page report to the EAC. Mr. Thompson pointed out that many of the concerns raised by the EAC were as a result of other city agencies and their contractors not following proper protocol with regards to tree planting and maintenance.

At the May 2018 meeting of the EAC, the committee discussed matters of urban forestry with City Forester Brent Thompson, who displayed an eager willingness to work with the committee. The EAC learned of South Bend Municipal Code Chapter 19, which pertains to trees and vegetation, and of specific sections of this chapter:

19-9, gives the Board of Park Commissioners the "exclusive jurisdiction and authority" to "adopt and enforce rules, regulations and specifications relative to" ... "planting and removal of trees and shrubs upon, along or within the limits of the public streets, tree and lawn areas, parks and other public places of the City."

19-13, pertains to prohibited species of trees within the "tree and lawn area."

19.14, pertains to prohibited species of shrubs citywide.

At the conclusion of the discussion with Mr. Thompson, the EAC voted unanimously to draft a letter of recommendation to the Park Board of Commissioners that contained two key elements:

1. That the Park Board make recommendations to the Common Council to update South Bend Municipal Code Section 19-13 and 19-14, which were last updated in 1962.
2. That the Park Board actively enforce the municipal codes pertaining to vegetation as per the jurisdiction bestowed unto them by South Bend Municipal Code 19-9.

The report was sent to the Board of Park Commissioners, and committee chair Sass was present to answer questions at the June 2018 Park Board Meeting.

- **Rum Village Dog Park**

The EAC was presented with design plans for the dog park at Rum Village weeks before construction took place. There was no opportunity for the committee to consult on the project as the design had been finalized.

Work in Progress

- **Howard Park**

The EAC was not brought into the design phase of Howard Park early enough to be able to consult on any elements of the project including the selection of tree species to replace those that were lost. As a result, the EAC has requested that the Park Department provide frequent updates on upcoming changes to additional park properties and to consult with the EAC as the earliest possible phases.

- **Presentation to the PARC Committee and Proposed Ordinance Changes**

Following the June Park Board meeting, committee chair Sass and Park Director Aaron Perri were invited by South Bend Common Council Member and PARC Committee Chair Sharon McBride to speak to the PARC Committee on the matters of revising the prohibited vegetation ordinances. On June 26, Perry, Sass, and Thompson met with the PARC committee with Sass presenting on the need for ordinance updates including the inclusion of vegetation that is on the Official Indiana Invasive Species List as defined by the Indiana Invasive Species Council.

In the months following the meeting, the EAC took up the task of writing changes to ordinances 19-13 and 19-14, and on March 12, 2019, Sass presented the proposed changes to the PARC Committee:

Proposed Changes to Ordinances 19-13 and 19-14

Overview of changes

The existing Section 19-13 pertains to trees planted within the "tree and lawn areas" as previously defined in Section 19. The proposed amendments change 19-13 to represent all vegetation planted within city limits, and it ties the prohibited list to the official IISC list of invasive plants.

The existing Section 19-14 pertains to species of prohibited shrubs citywide. The proposed amendment removes the antiquated *Berberis* ban and reassigns the section to pertain to the "tree and lawn area." The amendment also defines prohibited species of non-invasive plants, which are considered by the City Forester to be unsuitable for planting in the "tree and lawn area," and identifies them by their taxonomic names.

Current Ordinances

Sec. 19-13. - Prohibited species of trees.

No catalpa, soft maple, box elder, cottonwood, poplar, ailanthus, mountain ash, horse chestnut, birch, mulberry, willow, Carolina poplar, basswood, Chinese elm, nut-bearing trees or conifers, or any tree having weeping or pendulous branches, shall be planted in any tree and lawn area or upon, along or within the limits of any public street.

(Code 1962, § 38-8)

Sec. 19-14. - Prohibited species of shrubs.

No person shall sell or plant within the City the "berberis vulgaris," commonly known as the tall barberry, or the "berberis purpurea," commonly known as the purple barberry.

(Code 1962, § 38-9)

Proposed Amended Ordinances

Sec. 19-13. - Prohibited species of vegetation

No person shall sell, plant or knowingly propagate within the City any species of aquatic or terrestrial tree, shrub, vine or other vascular plants that are listed on the Official Invasive Plant List as created and maintained by the Indiana Invasive Species Council.

Sec. 19-14. - Prohibited species of vegetation in the "tree and lawn area"

No species of vegetation as defined by Chapter 9, Section 19-13 shall be planted in any tree and lawn area or upon, along or within the limits of any public street. Additional prohibited trees and shrubs in this area shall include Boxelder (*Acer negundo*), Silver Maple (*Acer saccharinum*), Paper Birch (*Betula papyrifera*), Ash (*Fraxinus* spp.), Ginkgo (*Ginkgo biloba* - female only), Osage Orange (*Maclura pomifera*), White Poplar (*Populus alba*), Cottonwood (*Populus deltoides*), Lombardy Poplar (*Populus nigra*), Black Locust (*Robinia pseudoacacia*), Willow (*Salix* spp.), Mountain Ash (*Sorbus americana*), Black Walnut (*Juglans nigra*), conifers and any trees with pendulous or weeping branches, and other vegetation deemed inappropriate by the City Forester and the Citizen's Tree Board."

- **Coordination of City Departments**

As previously mentioned, at the May EAC meeting, City Forester Thompson cited miscommunication between various city departments as an ongoing problem. As such, Director Perry coordinated a productive October 2018 meeting

between various city departments including Engineering, Forestry, Historic Preservation, Public Works, and Venues Parks and Arts. EAC Chair Sass attended on behalf of the EAC.

Action Items

- Representatives of city agencies present agreed to improve interdepartmental communication and adherence to written standards.
- As part of the of the Department of Public Works revisions of the City Standards and Specifications, they are coordinating with the City Forester in order to incorporate references to the approved trees lists and proper tree protection in construction.
- The EAC will work with Forester Thompson to revise the documents and standards pertaining to tree protection and preservation.
- The EAC will work with Forester Thompson to suggest revisions to the City of South Bend's *Construction Standards and Specifications*.

Note: During the March 2019 EAC meeting, Mr. Thompson reported that communication between city departments has greatly improved since the October meeting.

- **Leeper Park Design Oversight**

EAC chair Sass was present at the December 4, 2018, public unveiling of the tentative plans for Leeper Park. Sass took notes of potential areas of EAC involvement including the selection of vegetation, the likelihood of continuing nuisance wildlife issues (Canada Geese), and the opportunity for environmental education outreach with the slated observation platform.

The EAC requested updates on Leeper and other projects, and VPA coordinator Patrick Sherman obliged by attending and providing updates about Leeper, West Bank Trail and Pinhook Park at the committee's March 2019 meeting. The committee requests continual, frequent updates on park improvement projects.

- **Seitz Park Vegetation**

City Forester Thompson provided the EAC with a copy of the proposed planting list for Seitz Park. Unlike Howard Park, Seitz Park is not finalized. The EAC will continue to work with Mr. Thompson and report to the Park Board at a future date.

- **Pinhook Park Design Oversight**

The committee was shown a preliminary site plan from Mr. Sherman at the March 2019 meeting. EAC chair Sass has been invited and will serve in the focus group for Pinhook Park. EAC member Czarnecki will be in this group via her official capacity with the Department of Public Works.

- **Elbel Park - Wetland Ownership and Stewardship**

In the fall of 2018, the EAC had back to back discussions pertaining to the legal ownership and the stewardship of Mud and Cedar Lakes; the wetlands adjacent to Elbel Park. The committee has obtained copies of the property deeds of all of the properties surround Mud and Cedar Lakes. None of deeds, including those of the property belonging to the City of South Bend denote that the property lines extend into the water, and at least two of the deeds specifically state that the land ownership ends at the water's edge.

In November, EAC Chair Sass contacted Indiana DNR Division of Nature Preserves Assistant Director Tom Swinford seeking help and guidance. In subsequent weeks, Mr. Swinford reported that he had contacted both the Division's land acquisition specialist as well as state officials from the Division of Water. Mud Lake is officially designated by the State of Indiana as a "public lake," which places certain restrictions on what can and cannot be done to it. It also places control, but not necessarily ownership of the lake to the Indiana Department of Natural Resources. Assistant Director Swinford indicated that a complete survey of all of the properties surrounding the lake(s) may be a necessary first step in determining legal ownership.

The EAC came to the consensus opinion to recommend that the city consult with expert real estate legal counsel to determine the legal ownership of the lake(s) for the following reasons:

- Environmental stewardship - The ecological report commissioned by the city and released in 2017 indicated that the wetlands surrounding Elbel Park are extremely high-quality natural remnants of which a fraction of 1% remain in Indiana. The wetlands are under attack from the exotic invasive plant Common Reed (*Phragmites australis*), and without proper stewardship, many of the state endangered, threatened and rare species, which are present in the wetlands could be lost forever. It is also worth noting that damage to the aquatic ecosystem could negatively impact the golf operation as the beauty of the wetland is perhaps the largest draw of the golf course.

- Impact to nature trail - Following the ecological report, the Park Department committed to establishing a nature trail at Elbel Park. Part of this nature trail consists of creating a loop that is formed by crossing Mud Lake via the artificially created "land bridge," which was presumably illegally and created by the city decades ago for the purpose of creating a shortcut to move equipment from one side of Mud Lake to the other. If Elbel is to become a multi-use park with a trail that bisects the lake, then proper ownership should be established.

- **Orkin Pest Control**

Local representatives from Orkin Pest Control addressed the EAC at the March 2019 committee meeting. Orkin is offering to donate services to the Park Department by providing free removal of stinging insect nests. The EAC expressed concern that insect nest removal should be limited to areas such as pavilions and playgrounds and not to natural areas. Committee members also expressed concern about the use of chemicals. The Department will work with Orkin to draw up a memorandum of understanding and re-present to the EAC at a later date.

- **35th Street Wetlands**

The EAC continues to be interested in the proposed development of the 35th Street Wetland Property, originally identified by committee member Tucker. The EAC expressed a desire to the Park Department to be involved in the early planning stages for the proposed park.

Announcements

- Committee member Greg Kohler resigned on March 4, 2019, citing scheduling conflicts. The committee now stands at eight members.
- Beginning in May, 2019, the EAC will begin keeping and submitting minutes internally. Prior to this, the Park Department has assumed the responsibility of keeping the minutes of the EAC meetings.

Questions to the Park Board of Commissioners

1. **Continued request for guidance regarding NRMP Action Matrix -**

Upon completion of the Natural Resource Management Plan, the committee became interested in advancing the "Identified Topics of Concern" into specific action items. The Park Department advised the EAC that action items derived

from the topics of concern should not be included within the NRMP, but instead created in a separate “action matrix.” The EAC requests additional guidance.

- 2. Frequency and methods of communications regarding EAC and Park Board** - The EAC realizes that “periodic reports” to the Park Board and to the Common Council's PARC Committee are mandated by Resolution 0004-2016, which is the legislation that created the EAC. The EAC would like guidance from the Park Board as to the frequency and manner of these periodic reports.

Other Notes

- Committee member Novick hosted a community luncheon with Notre Dame students minoring in sustainability. Committee chair Sass and liaison Harrington attended and presented ideas for partnering with students for capstone projects. The ideas will be summarized and presented in writing to Ms. Novick to disseminate to her students.
- In October 2018, Committee member Novick introduced the EAC to Nicole Degla, a Notre Dame student working towards a minor in sustainability. Ms. Degla's focus is on invasive plant species in the nursery trade. VPA Project Coordinator Matthew Moyers and EAC Chair Sass met with Ms. Degla on October 26, 2018, to discuss ways in which VPA/EAC could partner with her on her capstone project. However, progress was slowed because the Common Council is not yet ready to proceed with the prohibited vegetation ordinance amendments that would be critical to her involvement.
- On April 17, 2018, Committee Chair Sass addressed the Goshen City Council during the public commenting in support of an ordinance that would have created an ecological advocacy committee for the City of Goshen. The status of this initiative is unclear.