



To: City Council
From: Nicholas Wikar
Planning and Zoning Administrator
Date: June 6, 2022
Subject: Ordinance to Repeal and Replace Chapter 98: Trees;
Amend City of the Village of Douglas Zoning Ordinance,
Article 2: Definitions; Article 16: General Provisions;
Article 21: Landscaping, Buffering, and Fencing; and
create Article 20: Environmental Protection Standards
(Ordinance 04-2022)

The City of the Village of Douglas City Council shall consider Planning Commission Recommendations to create Article 20: Environmental Protection Standards and amend Article 2: Definitions, Article 16: General Provisions, and Article 21: Landscaping, Buffering, and Fencing, of the Zoning Ordinance. Pursuant to Section 28.07, Council shall consider the May 18, 2022 Findings of Fact and recommendations in a first reading.

The Planning and Zoning Administrator has prepared draft amendments, as recommended by the Douglas Planning Commission to replace existing tree provisions in Chapter 98: Trees, Code of Ordinances, for review by the City Attorney and consideration by City Council in a second reading and public hearing.

There is limited financial burden associated with legal review, publication, and codification of Ordinance amendments.

It is recommended City Council consider repeal and replacement of Chapter 98: Trees, Code of Ordinances, in a Public Hearing June 20, 2022, to create Article 20: Environmental Protection Standards, and amend Article 2: Definitions; Article 16: General Provisions; Article 21: Landscaping, Buffering, and Fencing of the Zoning Ordinance in the City of the Village of Douglas, Michigan

**PLANNING COMMISSION
CITY OF THE VILLAGE OF DOUGLAS
CITY HALL – 86 W. CENTER STREET, DOUGLAS, MI
REGULAR (ORGANIZATIONAL) MEETING
WEDNESDAY, MAY 18, 2022 – 7:00 PM**

- A. Call to Order: Chair Buszka called the meeting to order at 7:00 P.M.
- B. Roll Call: Present – Florian, Heneghan, O’Malley, Pattison, Seabert, Whiteley, Buszka
Also Present – City Planner Nick Wikar
1. Approval of Agenda
*Motion by Pattison, with support from Whiteley, to approve the May 18, 2022.
Motion carried by unanimous roll call vote.*
 2. Approval of the minutes
 - a. Regular Meeting: April 13, 2022
*Motion by Pattison, with support from Florian, to approve the April 13, 2022, minutes.
Motion carried by unanimous roll call vote.*
 - b. Special Meeting: April 27, 2022
*Motion by Pattison, with support from Whiteley, to approve the April 27, 2022, minutes.
Motion carried by unanimous roll call vote.*
- C. Public Comments:
1. Verbal – No verbal comments received
 2. Written – Letter from Marta Petter in opposition to the proposed Kayak building at Wade Bayou.
- D. New Business
1. Amendment of Douglas Planning Commission Bylaws
The draft bylaws are necessary to reflect changes to Officers, to separate the positions and assign duties for Vice-Chair and Secretary, to ensure compliance with the Michigan Planning and Enabling Act (MPEA), PA 33 of 2008, and the Michigan Zoning Enabling Act (MZEA), PA 110 of 2006.

*Motion by Pattison, with support from Seabert, to approve amendment of the Douglas Planning Commission Bylaws, and Call for Nominations to initiate Election of Officers.
Motion carried unanimously by roll call vote.*
 2. Consideration of amendment(s) to Article 6 Officers:
 - a. *Motion by Pattison, with support from Seabert, to nominate Buszka as Planning Chair.
Hearing no further nominations, the Clerk called for a roll call vote.
Motion carried by unanimous roll call vote.*
 - b. *Motion by Buszka, with support from Seabert, to nominate Pattison as Vice-Chair.
Hearing no further nominations, the Clerk called for a roll call vote.
Motion carried by unanimous roll call vote.*
 - c. *Motion by Pattison, with support from Buszka, to nominate Heneghan as Secretary.*

Hearing no further nominations, the Clerk called for a roll call vote.
Motion carried by unanimous roll call vote.

3. Public Hearing: Site Plan Review – Addition, Principal Building
Withdrawn.
Motion by Seabert, with support from Florian, to cancel and withdraw the application for 100 Blue Star Hwy (Christine Ferris). Motion carried by unanimous roll call vote.
4. Public Hearing: Site Plan Review – Screening and Site Changes, 294 W. Center Street (Christopher LaBelle)
Applicant seeks to obtain Site Plan Review approval for site changes. The application requires review by Planning Commission in Public Hearing, for compliance with the Site Plan Review standards of Section 24.03

Motion by Seabert, with support from Florian, to open the public hearing. Motion carried by unanimous roll call vote.

- a. Applicants request for dumpster retaining wall, some landscape, three French drains, also has plans for driveway.
- b. No Public Comments
- c. Staff has Administratively approved the fencing and signage. No parking details have been submitted. If application is approved staff requests it be approved for only one year, the applicant would then be required to return to staff. There has been nothing completed without a permit.

Motion by Seabert, with support from Florian, to close the public hearing. Motion carried by unanimous roll call vote.

Motion by Pattison, with support from Florian, to approve for Site Plan Review for site changes to the property, zoned C-1 Village Center District, located at 294 W Center Street, Douglas, Michigan. Motion carried by unanimous roll call vote.

5. Public Hearing: Site Plan Change in Use (Dwelling, Two Family) Accessory Structure and site changes; R-3 Neighborhood Conservation District, 36 N Union Street (Jennifer Klungle). This application requires review by Planning Commission in Public Hearing, for compliance with the Site Plan Review standards of Section 24.03

Motion by Pattison, with support from Heneghan, to open the public hearing. Motion carried by unanimous roll call vote.

- a. Applicants request to obtain Site Plan Review approval, for construction of a new accessory structure. The home was purchased in 2018 and advertised as a potential rental property. Property owner would like to make good on the property. A fence has been installed and vines are now being removed.
- b. Public Comment: No comments received
- c. Staff remarks: Currently one illegal structure on the property. The fence piece closest to Union St. must be lowered. The driveway going off Wall St is encroaching

into the right of way and should be narrowed. The illegal signage and playground equipment has been removed.

- d. Commission Comments: Why does the City make the residents pay for sidewalks.

Motion by Seabert, with support from Whiteley, to close the public hearing. Motion carried by unanimous roll call vote.

Motion by Florian, with support from Whiteley, to approve with conditions the application for Site Plan Review for Two-Family Dwelling, Accessory Structure(s) and site changes to the property, zoned R-3 Neighborhood Conservation District, located at 36 N. Union Street, Douglas, Michigan.

Conditions of compliance as pertains to the hot tub, trees, driveway encroachment, accessory structure setbacks, fence, and playground.

- a. *Section 6.02 District Summary – District Permitted Uses/Site and Building Placement Standards, R-3 Neighborhood Conservation District*
- b. *Section 16.13 Accessory Uses, Buildings, and Structures*
- c. *Section 19.05 Site Development Requirements – Marking/Designation/Screening, Off Street Parking and Loading*
- d. *Section 21.01 Landscaping, Fencing, Walls, and Screening*

Motion carried by unanimous roll call vote.

- 6. **Public Hearing: Planning Commission Recommendations – Amendment, Zoning Ordinance Recommendation of amendments to Repeal and Replace Chapter 98: Trees of the City of the Village of Douglas Code of Ordinances.**

Motion by Pattison, with support from Florian, to open the public hearing. Motion carried by unanimous roll call vote.

- a. Applicant – City of Douglas
- b. Public Comments: Tracey Shafroth inquired as to the areas in the City that required tree planting, which trees are to be planted, and advised the City to think about what it would like to look like in terms of the trees.
- c. Staff: Tree protection is what the City hears a lot, Chapter 98 includes shrubs, this section was not removed. There are currently plans for the City to apply for Tree City USA.
- d. Planning members appreciate where the City is heading. This move is admirable however the City has two types of soil, and this should be considered when choosing trees. Other suggestions from members surrounded contacting the State Forestry for assistance on developing a plan.

Motion by Seabert, with support from Pattison, to close the public hearing. Motion carried by unanimous roll call vote.

Motion by Pattison, with support from Florian, to recommend that City Council amend the following Zoning Ordinance - Chapter 98: Trees, City of the Village of Douglas Code of Ordinances. Motion carried by unanimous roll call vote.

E. Old Business

Public Hearing (Tabled); Site Plan Review & Waterfront Construction Application (Major) – Accessory Structure Bulkhead/Revetment, Deck Stirs and Site changes to Sensitive Lands; R-2 Residential District. 156 Lakeshore Dr.

Motion by Pattison, with support from Seabert, to table the application for 156 Lakeshore Dr. until the August meeting at which point applicant will have submitted all pertinent permits, late fees/fines, and documentation relating to the unpermitted construction on the site. Motion carried by unanimous roll call vote.

F. Report of Officers, Members, Committees – Planning & Zoning Administrator

Wika report his staff report will be available sometime in June. He informed Commission there will be an uptick in Ordinance work.

Planning Commissioners expressed frustration with all the building going on without permits, this is on the City Council for not addressing the need for a higher fine. Also brought to discussion was the need to plant the trees at the new library and how to undo a PUD that is not in compliance.

G. Public Comments: Tracey Shafroth offered her services if there was a need for assistance on the trees.

H. Adjournment

Motion by Seabert, with support from Pattison, to adjourn. Motion carried by gavel of the Chair. (9:05)

Section 2.05 Definitions Beginning with the Letter "D":

DESTROY, TREE. To remove (cut down) a protected tree or to perpetrate any intentional act of negligence which will cause a protected tree to decline or die within a period of two years. This shall include but not be limited to: damage inflicted upon the root system of a protected tree by the application of toxic substances, damage by the operation of equipment and vehicles, damage caused by excavation or fill within the drip line of a protected tree, or damage caused by alteration of natural physical conditions.

DIAMETER BREAST HEIGHT (DBH). A tree's diameter in inches measured four and one-half feet above the ground.

DRIP LINE. An imaginary vertical line extending downward from the outermost edge of a structure or tips of a tree's branches to the ground.

Section 2.07 Definitions Beginning with the Letter "F":

FOOTPRINT. The ground area of a lot or parcel of land enclosed or to be enclosed by the exterior walls or perimeter of principal and accessory buildings, and any associated improvements including, but not limited to; pools, decks, patios, walks, tennis courts, driveways and utility services.

Section 2.17 Definitions Beginning with the Letter "P":

PROTECTED TREE. A tree that is six inches DBH or greater in size.

Section 2.21 Definitions Beginning with the Letter "T":

TREE. Any self-supporting woody plant growing upon the earth which usually provides one main trunk and produces a distinct head with many branches.

TREE PROTECTION ZONE (TPZ). The area between the line extending ten feet beyond a tree's footprint and the property line.

**ARTICLE 20:
ENVIRONMENTAL PROTECTION STANDARDS**

Section 20.01 Intent and Purpose

This article is intended to regulate the environmental protection standards in the city, and to preserve, protect and enhance valuable natural resources entrusted to its citizens. To protect the health, safety and welfare of its citizens, to establish standards limiting the impact upon, and ensuring the restoration of lands sufficient to safeguard the ecological and esthetic environment necessary for the city. To provide protective regulations against hazardous conditions; to establish regulations and procedures and control activities relative to environmental conditions within the public street rights-of-way of the city.

Section 20.02 Tree Protection and Preservation

*This section regulates the planting and removal of trees from public street rights-of-way in the city; removal and replacement of trees; City-authorized list of acceptable trees as **approved by resolution of City Council**; and hazardous and diseased trees; to control erosion and prevent canopy loss.*

1) Trees in the Public Right-of-Way and Public Property. The tree canopy contributes to the visual character of the city and trees are important natural resources and assets of the city. Therefore, every effort must be made to ensure that only the minimum numbers of protected trees are removed prior to construction of new structures, or alterations/additions to existing structures and in other approved circumstances. It is the intent of this section that a permit should not be granted for the removal of a protected tree where a reasonable alternative design solution exists that is consistent with the use of the property.

- a) Permit Required. Zoning permit required for the purpose of planting, maintenance, and removal of trees within the public rights-of-way.
 - 1. No tree upon any public right-of-way or public property shall be destroyed, pruned, girdled, broken, bent, wounded, or have notices or signs tacked upon without the consent of the Planning and Zoning Administrator or under the direction of the Planning Commission.*
 - 2. Zoning review shall be required for and prior to the removal, relocation, or destruction of any tree located within any public street right-of-way; provided, however, that no such permit shall be required in order for the city to remove or otherwise affect any tree located within a public street right-of-way, and the city retains its authority with respect to public street rights-of-way, irrespective of the provisions of this article.*
 - 3. No person shall climb or walk upon the branches of a protected tree in any public right-of-way or public property while wearing spurs or other climbing attire unless such person is in the permitted act of removing or maintaining a tree.**

4. *No trees or shrubs shall be planted upon any public right-of-way or public property without the consent of the Zoning Administrator.*
 5. *No trees shall be planted at public expense upon private property unless a public easement has been granted in a form acceptable to the city.*
 6. *Limited Lighting of Trees. Trees located in the public street rights-of-way or otherwise on public property shall not be decorated with strings of lights placed or maintained on or within them, nor shall such trees otherwise be lighted by other types of lighting placed on or within the trees; provided, however, that during the annual holiday season lights in observance of the season may be placed on such trees, in a manner that will not harm or damage the trees, but they shall not be placed on the trees earlier than November 1 and they shall be removed from the trees not later than the following March 31; but provided further, that such lights placed on trees in the public street rights-of-way in observance of the annual holiday season may remain on the trees after March 31 if approved by City Council, subject to terms and conditions imposed by, and if the lights are placed only on or around the tree trunk, not the crown of the tree, and if the tree will not be harmed or damaged thereby.*
- b) *Application for permit. A person seeking a tree removal permit for the removal, relocation or destruction of a tree within a public street right-of-way, shall complete a Zoning Review Application and submit the application to the Planning and Zoning Administrator. The applicant shall also prepare and submit to the Administrator, a site plan including at least the following information:*
1. *The tree or trees that are proposed to be removed, relocated or destroyed. Such trees shall also be identified by written description or by a photograph. The location and general description of the other protected trees within the adjacent street right-of-way that are proposed to remain undisturbed shall also be stated; and*
 2. *A description of any grade changes or other changes within the street right-of-way that may occur as a result of the proposed tree removal, if such changes or results will have an adverse effect on any trees remaining in that part of the street right-of-way adjacent to the applicant's property.*
- c) *Administrative Approval. The Zoning Administrator shall grant and approve a permit for tree removal upon finding that all of the following requirements are satisfied:*
1. *The applicant has submitted a site plan or other information satisfactorily demonstrating that the number of trees and the particular trees proposed to be removed are the minimum number needed to be removed in order to achieve the results sought by the applicant;*

2. *The applicant has satisfactorily demonstrated that harm or other negative impacts to the remaining trees on that part of the street right-of-way adjacent to the applicant's property will be minimized or avoided;*
3. *There are no desirable, prudent or reasonably feasible alternatives whereby the desired results could be achieved, other than the removal, relocation or destruction of the trees indicated by the applicant;*
4. *The tree or trees proposed for removal, relocation or destruction need to be removed for at least one of the following reasons:*
5. *They are a safety hazard;*
6. *They are interfering with or obscuring the clear vision of motor vehicle drivers;*
7. *They are likely to injure, damage or disrupt persons, property or utility service; and/or*
8. *They are preventing or substantially obstructing reasonable access to a lot or parcel of land;*
9. *The proposed tree removal would not materially increase the risk of flooding or erosion on the property or on adjacent property, nor adversely affect a wetland or watercourse; and*
10. *In the case of proposed removal of a protected tree for reasonable access to an existing or proposed building or other improvement, there is no feasible alternative location for the proposed access without resulting in unnecessary hardship on the part of the applicant.*

The Zoning Administrator may include reasonable terms and conditions in any permit for tree removal or may request the Planning Commission to review the application pursuant to Article 24, with site plan meeting the requirements of Section 24.02, in order to ensure that the intent of this article will be fulfilled and to minimize damage to, encroachment upon, or interference with other trees within the public street right-of-way. The members of the Planning Commission may be assisted in their official responsibilities by staff members of the city, including the City Manager, City Engineer, Superintendent of Streets, Director of the Department of Public Works and a licensed arborist referred by the City Engineer or appointed by the City Council.

- d) *Appeal of Denial of Permit. In the event that a permit applicant is aggrieved by the denial of a permit for tree removal, or by the approval of a permit but with conditions with which the applicant disagrees, the applicant may appeal such action by the Zoning Administrator to the Zoning Board of Appeals, as their jurisdiction allows pursuant to Section 29.04. Any requirement decision, or determination by the Planning Commission made pursuant to this Article shall not be appealed to the Zoning Board of Appeals.*
1. *The applicant shall file such appeal in writing, stating the action complained of and the reasons and grounds for which the applicant believes that the action should be reversed, amended or modified.*

2. *The completed application for the appeal shall be filed with the Zoning Administrator, who shall forward it to the Zoning Board of Appeals. The Zoning Board of Appeals shall convene within a reasonable time to consider the appeal. Any such meeting by the Zoning Board of Appeals shall be subject to the provisions of the Michigan Open Meetings Act.*
 3. *At a meeting, the Zoning Board of Appeals shall consider the appeal filed by the applicant pursuant to Section 29.08.*
 4. *The decision by the Zoning Board of Appeals in such a case shall constitute the final decision by the city with respect to the permit application for the tree removal.*
 5. *Any party aggrieved by a decision of the Zoning Board of Appeals may appeal to the circuit court pursuant to Section 29.09.*
- e) *Tree Replacement Program. It is the intent of the city to maintain the numbers and the character of its trees; therefore, each tree lost in its public rights-of-way or public properties shall be replaced by an appropriate tree.*
1. *Replacement trees shall measure no less than three inches in diameter as measured from six inches above the ground level.*
 2. *Trees lost by age, disease or by acts of nature shall be replaced as soon as possible at the discretion of the City Manager, under the direction of the Department of Public Works.*
 3. *Where a tree is lost within the public right-of-way or public property by negligent or intentional vandalism, the person, vehicle owner, or agent responsible shall be charged for the value of an equally sized replacement. If such a replacement is not available locally, the value of the tree will be computed from the State Forestry and Shade Tree "evaluation formula" and the responsible person shall be invoiced that amount to compensate for costs of removal and planting of a replacement.*
- 2) *Tree Protection During Construction or Development.*
- a) *While removing trees for construction or development the owner shall take all reasonably necessary precautions to protect the remaining protected trees.*
 - b) *Neither a property owner nor its agent shall cause or allow any construction or development activity to occur within the drip line of a protected tree, nor shall any solvents, building materials, vehicles, construction equipment, soil deposits, fill or other harmful materials be allowed to be placed, kept, parked or stored within the drip line of the trees.*
- 3) *Tree Removal on a Vacant Lot or Parcel. On any lot or parcel where construction or development is not proposed, a tree removal permit shall be required prior to the removal of any protected tree in accordance with Section 22.02(1)(c).*

[RESERVED FOR FUTURE USE]

Section 20.20 Penalty.

1) Failure of any person to comply with any of the terms, provisions, or requirements of this article shall constitute a zoning violation a municipal civil infraction upon first offense. The procedures for the issuance of municipal civil infraction citations and other matters pertaining to the issuance thereof shall be as stated in §§ 34.01 through 34.07 of the City of the Village of Douglas Code of Ordinances.

a) The fine payable upon admission or determination of responsibility by a person served with a municipal civil infraction citation, for a violation of this chapter, shall be as stated in § 34.06 of the city code.

b) The persons authorized under § 34.02 to issue municipal civil infraction citations shall be authorized to issue such citations for violations of this article.

2) Upon second offense of violation or failure to comply with any of its requirements of this article shall constitute a misdemeanor, upon conviction thereof, be fined not more than five hundred (\$500.00) dollars or imprisoned for not more than 90 days, or both. Each day such violation continues shall be considered a separate offense.

a) All penalties remedies, and enforcement relative to the provisions of this Ordinance shall be in accordance with the applicable provisions this Ordinance.

b) The person upon whom notice to abate a non-permitted sign is served, shall have five (5) days from receipt of said notice to abate the same. Upon failure of the person to comply or apply to the City of the Village of Douglas, or it's designated agent in writing, the City shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof. These costs shall then be assessed against the property owner.