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## MEMORANDUM

**To:** The City of the Village of Douglas Planning Commission  
**Date:** March 1, 2023  
**From:** Tricia Anderson, AICP  
Andy Moore, AICP  
**RE:** **Planning Commission Bylaws - Discussion**

Earlier this year, the Planning Commission discussed a desire to either adopt a resolution or amend their bylaws to the effect that would prohibit members of the Planning Commission from meeting with the applicant and staff with less than a quorum (less than 4 members) outside the setting of a public meeting, with the exception of the chairperson, who would be permitted to meet with the applicant and staff to discuss an application outside of a public meeting. We discussed this topic briefly with the Planning Commission and concluded that an amendment to the bylaws would be the most appropriate way to enact this new rule.

It should be noted that this type of meeting between the applicant and a group of Planning Commission members equating to less than a quorum outside of a public meeting setting is not a violation of the open meetings act, only when a staff member or consultant is facilitating the meeting. This type of meeting should not be confused with *ex-parte contact*. The desire of the Planning Commission is to simply add this prohibition as a new rule within the bylaws. An article from MSU Extension is provided that explains ex-parte contact.

While reviewing the current bylaws to find an appropriate area to insert the new rule, we noticed that there is a great deal of unnecessary language incorporated into the bylaws, such as procedural information as it relates to processing applications that the Planning Commission will act on and even procedures for processing applications that the Zoning Board of Appeals will act on. We would recommend that the Planning Commission consider updating the entire bylaws document to modernize and simplify the language. We have provided a sample ordinance that was drafted for a different community for the Planning Commission to review and decide if this is something they are interested in having us do.

Please feel free to reach out to us with any questions.

# CITY OF THE VILLAGE OF DOUGLAS

## PLANNING COMMISSION

### BYLAWS

As Amended:

August 6, 1984; June 10, 1984; August 20, 1986; October 16, 1995; April 14, 2021; **May 18, 2022.**

#### ARTICLE 1 NAME OF COMMISSION

The name of this organization shall be the Douglas Planning Commission.

#### ARTICLE 2 AUTHORIZATION

The Authorization for the establishment of this Planning Commission is set forth under Section 2 of Public Act 285 of 1931, the Municipal Planning Commission, and includes all duties and responsibilities incurred under Article II of Public Act 33 of 2008, the Michigan Planning Enabling Act, as amended; and shall also assume all duties of the Zoning Commission as prescribed according to Public Act 110 of 2006, the Michigan Zoning Enabling Act, as amended.

Power and duties for planning and zoning of City of the Village of Douglas are delegated to the Douglas Planning Commission by the Douglas Village Council by Ordinance No. 79 of May 3, 1982 in accordance with the aforementioned enabling laws.

#### ARTICLE 3 PURPOSE

The following policies and procedures have been prepared to assist the City Council, Planning Commission, City Clerk, and other affected City officers in the administration of the City of the Village of Douglas Zoning Ordinance. These policies and procedures are intended as a quick reference and guide for the Village in implementing various procedures to follow regarding planned unit developments, special uses, variances, and rezoning requests. The procedure and requirements in processing applications in these areas are set forth in detail in the Zoning Ordinance, and in many cases it will be necessary for Council, the Planning Commission or others to review the Zoning Ordinance to make sure it's various provisions are complied with.

#### ARTICLE 4 MEMBERSHIP

Membership shall consist of seven or nine qualified electors of the City of the Village of Douglas, of whom up to three but no more than one-third of the members may be the Mayor, one or more member of City Council, and City Manager. All members shall be appointed by the Mayor, subject to approval by a majority vote of the members of City Council. Member's compensation shall be determined

from time to time by the City Council. Members shall be reimbursed for reasonable and necessary expenses incurred in the exercise of their duties.

The terms of the Mayor and City Council member(s) shall correspond to their official tenure, and the term of the City Manager shall correspond with the tenure of the Mayor. Annually, there shall be appointed two (2) members to the Commission, who shall serve for a term of three (3) years. Members shall hold their appointed office until their successors are appointed, except that the terms of the Mayor, City Council member(s), and City Manager shall in no case extend beyond their tenure as outlined above.

#### ARTICLE 5 DUTIES AND RESPONSIBILITIES

The Planning Commission shall meet at least once a month on a date and time set by the Commission and shall conduct all business related to the Zoning Ordinance involving the Planning Commission at such meeting. Officers of the Planning Commission shall be elected by its members annually. Officers will be the Chair, Vice Chair and Secretary. The Secretary is responsible for assisting with minutes of the meetings and providing the City Clerk with the original record of the minutes.

#### ARTICLE 6 OFFICERS

- Section 1     The officers of the Planning Commission shall consist of a Chair, Vice Chair and Secretary.
- Section 2     The Chair shall preside at all meetings and hearing of the Planning Commission and shall have duties normally conferred by parliamentary usage on such officers.
- Section 3     The Vice Chair shall act for the Chair in their absence. In the absence of both the Chair and Vice Chair, if a quorum is present, the members shall caucus and appoint a temporary Chair, who shall then preside for that meeting only.
- Section 4     The Secretary shall assist with findings of fact, written recommendations, minutes, and records of the Commission. Meeting minutes from the last regular meeting shall be presented to the commission at the following meeting.

#### ARTICLE 7 ELECTION OF OFFICERS

- Section 1     An annual organization meeting shall be held each year at the regularly scheduled May meeting of the Commission.
- Section 2     Nominations shall be made from the floor at the annual

organizational meeting and election of the officers specified Article 6 shall follow immediately thereafter, as set forth in Section 12.34 of Act 285.

Section 3 A candidate receiving a majority vote of the entire membership of the Planning Commission shall be declared elected and shall serve for one (1) year or until their successor shall take office.

Section 4 Vacancies in office shall be filled immediately by regular election

#### ARTICLE 8 STAFF

Section 1 The Planning and Zoning Administrator shall be appointed by the City Council and shall be charged with the carry out the responsibilities of the Planning and Zoning Administrator as set forth in the Zoning Ordinance.

Section 2 The City Clerk shall be the primary record keeper for the administration of the Zoning Ordinance and shall receive applications and collect fees submitted pursuant to the Zoning Ordinance. The City Clerk shall further coordinate with the Mayor and/or the Planning Commission Chairperson, the scheduling of Public Hearings, arrange for newspaper publications, and generally coordinate the flow of information between the public, the Council, and Commission members, the Building Inspector, the Planning and Zoning Administrator, the City Attorney, and the City Engineer.

Section 3 The City Attorney shall assist the City Council and Planning Commission on such legal matters as may be required concerning the implementation, interpretation, and administration of the Zoning Ordinance. The City Attorney shall attend meetings and/or public hearings of the City Council and/or Planning Commission, when requested to do so by the Council, its Mayor, the Planning Commission, or its Chair.

Section 4 The City Engineer shall assist the City Council and/or the Planning Commission in the review of site plans, planned unit development proposals, rezoning requests, and such other matters which may arise from time to time within the Zoning Ordinance. The City Engineer shall attend meetings and/or public hearings of City Council and Planning Commission when so requested by Council, the Mayor, the Commission, or its Chair.

Section 5 The Building Inspector shall be responsible for all on-site

inspections during the various phases of construction once commenced following the issuance of a Building Permit. The Building Inspector shall insure that all construction is in compliance with the approved site plans and shall report any violations to the Planning and Zoning Administrator. The Building Inspector shall, when necessary, consult with the City Engineer and/or City Attorney to assure full compliance with the state and local construction code, as well as the Zoning Ordinance.

## ARTICLE 9 MEETINGS

Section 1 Regular meetings shall be held monthly as scheduled by the Commission at the annual organization meeting, said schedule to be posted at City Hall. In the event of conflict with holidays or other events, a majority at any meeting may change the date of said meeting.

Section 2 A quorum shall consist of five (5) members. The number of votes necessary to transact business shall be five (5), except as provided in Act 285, Section 8, all votes shall be decided by a majority. Voting shall be by voice vote except when a member of the Commission requests a roll call vote.

All members present shall vote on every question unless they disqualify themselves or are excused from voting by a majority of the members present. No member of the Commission shall participate in the hearing or decision of such Commission upon any zoning matter other than the preparation and enactment of an overall or Comprehensive Plan, in which they are directly or indirectly interested in a financial sense. In the event of such disqualification such fact shall be entered on the records of the Commission.

Section 3 Special meetings may be called by the Chair or a majority of the Commission members, as deemed necessary.

Section 4 All meetings, or portions of meetings, shall be open to the public. All meetings will be conducted in accordance with Public Act 267 of 1976, known as the "Open Meeting Act".

Section 5 Unless otherwise specified, Robert's Rule of Order shall govern the proceedings at the meetings of this Commission.

## ARTICLE 10 ORDER OF BUSINESS

The recommended order of business at regular meetings shall include;

- a. Call of order
- b. Roll Call
- c. Public Comment (limit 5 minutes please)
- d. Communications
- e. New Business
- f. Old Business
- g. Reports of Officers, Members, Committees
- h. Public Comment (limit 5 minutes please)
- i. Adjournment

Section 1 Specific requests or applications received by the Commission prior to the meeting shall be listed under the appropriate heading.

Section 2 A motion from the floor must be made and passed to dispense with any item on the agenda or change the order of the agenda.

#### ARTICLE 11 PUBLIC HEARINGS

Section 1 In addition to those required by law, the Commission may hold public hearings when it is decided that such hearings will be in the public interest.

Section 2 Subject to the provisions of any applicable State Act and/or County Ordinance, public hearings shall be held on; the adoption or amendment of a Master Plan, the adoption, amendment or consideration of a Special Use permit as authorized by a Zoning Ordinance, or the preliminary approval of a plat subdivision, or Planned Unit Development.

Section 3 A petitioner who seeks to amend the Zoning Ordinance or other plan element shall file a petition with the Planning Commission through the office of the Planning and Zoning Administrator.

Section 4 At a public hearing before the Commission, the petitioner shall first present the facts and arguments in support of the case and those who oppose the petitioner shall follow. The petitioner shall be given time for a rebuttal. There shall be no rebuttal of the rebuttal. To maintain orderly procedure, each side shall precede without interruption by the other. No record or statement shall be recorded or sworn to as evidence for any court of law without notice to the parties.

Section 5 In the presentation of a case the burden shall be upon the petitioner to supply all information, including charts diagrams, and other exhibits, necessary for a clear understanding of the problem. The

Commission may discontinue the hearing when in its judgment the petitioner has not provided sufficient evidence on which to make a determination.

Section 6 Every person appearing before the Commission shall abide by the order and directions of the Chair. Discourtesy, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges of the Commission and shall be dealt with as the Commission directs. Every person shall state their name, address, and interest in the case at the start of the presentation.

Section 7 The Commission may continue or postpone the hearing of any case

#### ARTICLE 12 PLANNED UNIT DEVELOPMENTS

Section 1 The approval of applications for a planned unit development shall comply with Article 24 and Article 27 of the Zoning Ordinance, as amended.

Section 2 An application for preliminary development plan approval shall be obtained at the City Clerk's office and shall be submitted by the applicant to the City Clerk along with twelve copies of the application, plus the initial filing fee as set in the Schedule of Fees.

Section 3 The information requested on the application shall constitute the preliminary development plan and site application shall be returned to the applicant and shall not be accepted until complete.

Section 4 Upon receipt of the completed application and copies, the City Clerk shall transmit one (1) copy to the City Engineer, and one (1) copy to the City Attorney and shall further make available to each of the Planning Commission members a copy of the application.

Section 5 Upon receipt of the applications, the City Attorney and City Engineer shall review each application within thirty (30) days from date of receipt. If, after consultation with each other, they agree that the application is in compliance with the City Ordinance, they shall notify the City Clerk to schedule a public hearing on the application in accordance with Section 27.05 of the Zoning Ordinance.

Section 6 The public hearing shall be held before the Planning Commission. At the public hearing, the applicant shall present his proposed preliminary development plan to the public and shall answer such questions as may be presented to the applicant by the public. The Planning Commission shall further hear the comments of the public concerning the proposed plan. The Planning Commission shall not

be obligated to vote on the proposed plan the night of the hearing. The Planning Commission shall receive and consider written recommendations from the City Engineer and City Attorney concerning the proposed preliminary development plan. The Planning Commission may then approve, approve with conditions, or deny the proposed preliminary development plan. Approval must be by majority vote or a quorum of Planning Commission members. At the time the vote is taken, the Planning Commission members should state their reasons or basis for their vote. If a preliminary development plan is approved with conditions, those conditions shall be clearly stated and reduced to writing by the Commission Secretary. If the proposed preliminary development plan is denied, another plan will be considered only after a re-application is filed with the City Clerk.

- Section 7 The City Council does not have to approve the development plans in a planned unit development project. If the Planning Commission approves the preliminary plan, the applicant shall then submit a final development plan together with twelve (12) copies thereof to the City Clerk. The Clerk shall transmit a copy of the final development plan to the City Engineer for his recommendations and shall also make the said plan available to the City Attorney, as well as to the members of the Planning Commission.
- Section 8 Within thirty (30) days, the City Engineer shall submit his written recommendations and comments as to the proposed final development plan to the City Clerk's office for transmission to the Planning Commission. The Planning Commission shall then review the final development plan at its next available meeting, and shall consider the recommendations of the City Engineer, approve with conditions, or deny the final development plan. Any approval with conditions shall be reduced to writing and shall become a part of the final development plan. No alterations or changes shall be allowed thereafter without re-applying in accordance with the procedure for the original approval. No approval shall become effective until all fees and charges due the City have been paid.
- Section 9 In order to approve the final development plan, the Planning Commission must find that the purpose, objectives, and requirements of Article 27, as amended, of the Zoning Ordinance have been met. The purpose and objectives of the Ordinance are found in Section 27.01 and Section 27.02, as amended. If the plan generally does not meet these objectives, the final development plan should not be approved.
- Section 10 After approval of the final development plan by the Planning



Commission, a Building Permit will be issued; however, prior to issuance the Planning commission may, at its discretion, require a performance bond, irrevocable letter of credit or certified check be filed with the City Clerk by the applicant to ensure that the development will be executed in accordance with the approval of the final development plan.

- Section 11 Preliminary or final approval by the Planning commission of a planned unit development does not constitute site plan approval. Final site plans for the project or any portion thereof must be presented to the Planning Commission and acted upon as required by Article 24 of the Zoning Ordinance.

#### ARTICLE 13 SPECIAL USE PERMITS

- Section 1 Special uses are those uses that are allowed in various zone districts only with special approval of the Planning Commission. Only special uses, which are provided in Article 25 of the Zoning Ordinance, as amended, or elsewhere in the Ordinance, may be considered for approval by the Douglas Planning Commission.
- Section 2 A person requesting a special use may obtain an application for the same at the City Clerk's office, and shall submit the application to the City Clerk, together with the application fee.
- Section 3 After receiving the application, the City Clerk shall transmit copies of the application to the Planning Commission members. The City Clerk shall then have published in the local newspaper a notice that the special use request has been received. The notice shall contain the information specified in Section 25.02 of the Ordinance, as amended, and shall also be sent by Certified Mail or personally served on all owners of real property within three hundred (300) feet of the subject property, and to all occupants of all structures within three hundred (300) feet of the subject property as described in Section 25.02 of the Ordinance, as amended. The notice shall be sent or served and published not less than fifteen (15) days prior to the date at which time the application will be considered by the Douglas Planning Commission.
- Section 4 It should be noted that a public hearing is not required under the Ordinance unless it is specifically requested by either the Planning commission, the applicant, or a property owner or occupant within three hundred (300) feet of the subject property. Usually, a request for a public hearing will not be made; however, if such a request is made, notice of the public hearing shall be published in the local newspaper and mailed or personally served on all property owners or occupants within three hundred (300) feet of the boundary of the

property in question. If the applicant or the Planning Commission requests a public hearing, only notification of the public hearing is required. A decision by the Planning Commission on a special land use request shall not be made, however, unless notification of the request for special land use approval, or notification of a public hearing on a special land use request has been given.

Section 5 After the notices have been sent and published as required, and after a public hearing has been held, if one has been requested, then the Planning commission may approve, or approve with conditions, or deny the special land use request. Approval of the request shall be reduced to writing by the commission Secretary, and shall clearly state any conditions of approval, which have been made by the Planning commission. A copy of the approval, or approval with conditions, shall be sent to the applicant.

Section 6 When a vote is taken on a special land use request, the Planning Commission members shall state their conclusions and vie the basis for their decision. To grant approval, the Planning Commission must find the following:

- a. That the proposed use is intended to serve the area or neighborhood where located; and,
- b. That it can be conducted at the proposed location without interfering with the enjoyment of substantial property rights of the other owners in the surrounding vicinity.
- c. It should be noted that all home occupations which are approved as special used are subject to the limitations and conditions set forth in Section 16.04 of the Zoning Ordinance, as amended.

#### ARTICLE 14 VARIANCES

Section 1 The Zoning Board of Appeals has jurisdiction over requests for a variance under the Zoning Ordinance.

Section 2 An application for a request for a variance may be obtained at the City Clerk's office, and shall be submitted to the City Clerk, together with the required filing fee.

Section 3 Upon receipt of the application for a variance, the City Clerk shall send a copy of the application to the City Attorney and shall transmit one (1) copy to the Chair of the Zoning Board of Appeals.

- Section 4 Upon receipt of the application, the Chair of the Zoning Board of Appeals, in consultation with the City Clerk, shall schedule a date and time for the Zoning Board of Appeals to meet and consider the variance request. Notice of the meeting shall be sent to the applicant and to all property owners and occupants within three hundred (300) feet of the subject property. The notice likewise shall be published in the local newspaper. All notices shall be served and published not less than fifteen (15) days prior to the meeting date of the Zoning Board of Appeals to consider the request.
- Section 5 The Zoning Board of Appeals may grant a variance only in accordance with the standards and requirements as set forth in Section 29.05 of the Zoning Ordinance. Unless all of the requirements and standards can be met, the application for a variance must be denied. Also, if the Zoning Board of Appeals finds that the zoning requirements as written in the Ordinance can be met by the applicant, the application must be denied.
- Section 6 A majority vote of all the members of the Zoning Board of Appeals is required to approve a variance request except that a concurring two-thirds vote of all of the members of the Zoning Board of Appeals shall be required to grant a variance from uses of land permitted in the Zoning Ordinance.
- Section 7 The Board of Appeals may grant a variance subject to conditions, which shall be reduced to writing by the City Clerk and set forth on the variance approval. A copy of the approval with conditions shall be transmitted to the applicant by the City Clerk.
- Section 8 At the time of taking the vote on the application for a variance, the Board of Appeals members should state their conclusions and basis for their decision. If it appears that a practical hardship is not unique, but is a common hardship on other individuals, it shall transmit such findings to the Planning Commission, who may consider the appropriateness of amending the Zoning Ordinance if they so desire.

#### ARTICLE 15 REZONING

- Section 1 A rezoning request is a request to amend the Zoning Ordinance by changing the present zoning of a given area of land within the City, to a new zone.
- Section 2 An application for rezoning shall be obtained from the City Clerk's office and shall be submitted to the City Clerk, together with the

required fee. Twelve (12) copies of the application shall be submitted, in addition to the original application.

Section 3 Upon receipt of the application, a copy of the rezoning application shall be transmitted to each member of the Planning Commission, and to the Planning and Zoning Administrator.

Section 4 The City Clerk, when notified by the Planning Commission shall then schedule a public hearing to be held before the Planning Commission. Notice of the public hearing shall be published not less than fifteen (15) days prior to the hearing. A copy of the notice shall also be sent to the applicant, as well as to the owners of any other property, which lies within the area proposed to be rezoned. The notice shall contain the following information:

- a. The name of the applicant.
- b. The legal description of the property proposed to be rezoned.
- c. A description of the requested zoning change and a description of the present zoning.
- d. The date, time, and place of the public hearing.

(NOTE: That the notice does not have to be sent to property owners or occupants within three hundred (300) feet of the subject property, unless the property lies within the area requested for rezoning.)

Section 5 Notice shall also be sent to any public utility, or railroad within the district or zones affected by the request not less than fifteen (15) days prior to the public hearing. Such notification is required, however, only if such utility or railroad has registered with the City Clerk its name and address for the purpose of receiving such notice.

Section 6 After the public hearing has been held before the Planning Commission, it shall transmit its recommendations and findings to the City Council, which must subsequently vote on the rezoning request.

Section 7 At the meeting of the City Council, the rezoning request may be approved by a majority of the Council members unless a protest petition has been filed with the City Clerk and/or the City Council. If a proper protest petition has been filed, the request then can only be approved by a 2/3rds vote of the City Council.

Section 8 A protest petition is valid if it is signed by either the owners of at least twenty (20) per cent of the area of land included in the proposed zoning change; or the owners of at least twenty (20) per

cent of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included within the proposed zoning change. (Public land is excluded in calculating the twenty (20) per cent land area requirement.)

When voting on the proposed rezoning, the Council members should state their conclusions and the basis for their decision. This is especially important in these cases, if their decision is challenged in court, and will avoid a claim that the decision was made arbitrarily or capriciously and will avoid the court sending the request back to the Council for another vote so the basis for the decision can be established in the record. The City Clerk will record the vote and reasons given.

Section 9 Generally speaking, rezoning requests should be granted sparingly and only when the rezoning will not violate the general purposes and intent of the City land use plan on which the existing Zoning Ordinance is based. If the rezoning request will not violate the general intent and purposes of the land use plan and will be of some benefit to the public as well as the applicant, and where there are compelling reasons for changing the zoning plan, the City may grant the rezoning request.

Section 10 If the Council approves the rezoning request, the Zoning Ordinance shall then be amended by an amended ordinance prepared by the City Attorney and signed by the Mayor and the City Clerk. This amending ordinance shall then be published at least one (1) time in the local newspaper within fifteen (15) days from the date of its adoption. It shall contain the effective date of the ordinance and shall state the time and place where a copy of the amending ordinance may be purchased or inspected.

#### ARTICLE 16 SITE PLAN REVIEW

Section 1 Applications for site plan approval must comply with Article 24 of the Zoning Ordinance as amended and shall be made on an application available at the City Clerk's office.

Section 2 A site plan application and subsequent approval by the Planning Commission is required for all land uses, except permitted detached single-family dwellings and two-family dwellings.

Section 3 The applicant shall file the application together with twelve (12) copies with the City Clerk's office and be advised at that time that

the applicant will be billed for the City's actual costs in reviewing the application. Upon receipt of the application, the Clerk shall make available copies to the individual commission members, and, if necessary, the City Engineer and/or City Attorney. The application shall also be sent to the Planning and Zoning Administrator for written opinion. Within forty-five (45) days of the filing of the application, the Planning Commission shall review the application and either denies the application or grant approval of the application. If the Planning Commission denies the application, it shall state its reasons for denial. If the Planning Commission requires that the site plan be revised, it shall notify the applicant of revisions which are requested, and the applicant shall then resubmit the site plan with the revisions required.

Section 4 After the site plan has been approved, one (1) copy of the application shall be returned to the applicant by the City Clerk indicating that approval has been granted, and that a Building Permit may be issued. A copy of the zoning application for the building permit, signed by the Planning and Zoning Administrator will also need to be presented before a permit can be issued.

Section 5 The Planning Commission, in considering a site plan, shall follow the standards provided in Section 24.03 of the Zoning Ordinance.

Section 6 In approving a site plan, the Planning Commission may require that a bond or other financial guaranty be furnished by the applicant to ensure compliance with the approved plan.

Section 7 The City Clerk shall determine the cost to the City in approving the site plan and shall bill the applicant in accordance with such costs as soon as possible after the review procedure has been completed. No approval shall be effective until all such charges have been paid in full to the City.

Section 8 It should be noted that Public Hearings or notices to surrounding property owners are not required under Article 24 for site plan review, when not associated with a Planned Unit Development.

Section 9 A site plan shall be approved if it contains the information required by the Zoning Ordinance and is in compliance with the Zoning Ordinance and the conditions imposed there under, other applicable ordinances, and State and Federal statutes.

#### ARTICLE 17 FINAL DISPOSTION OF CASES

Section 1 The final disposition of any case shall be in the form of an order

setting forth the findings and determinations of the Commission together with any modifications, specifications, or limitations which it makes, with reasons, therefore.

Section 2 The Commission may dismiss a case for lack of prosecution or lack of jurisdiction. When a petitioner has failed to appear at two consecutive meetings, the case shall be dismissed.

Section 3 A petitioner may not withdraw a case after a roll call vote has been ordered by the Chair.

Section 4 A case which has been withdrawn by the petitioner shall not again be placed on the docket for consideration within a period of twelve (12) months after the date of withdrawal.

Section 5 A case which has been decided adversely to the petitioner shall not again be placed on the docket for consideration until twelve (12) months after the date of decision.

Section 6 A record shall be kept of those speaking before the Commission at such hearings.

#### ARTICLE 18 AMENDMENTS

Section 1 Amendments to these rules of procedure may be made by the Commission at any regular or special meeting upon the affirmative vote of a majority of the entire membership of the Commission.

Section 2 The suspension of any rule may be ordered at any meeting by a unanimous vote of Commission members present.


*Motion: Pattison, Seibert*

YEAS: 7 NAYS: 0 ABST: 0; Bylaws Declared: Adopted, May 5, 2022.

Certified By:

  
Paul Buszka, Chair  
Douglas Planning Commission

July 6, 2022  
Date:

  
Pam Aalderink, City Clerk  
City of the Village of Douglas

July 6 2022  
Date:

PLANNING COMMISSION

BY-LAWS

Community Name

*Adopted*

*[insert date]*

*Prepared by*

[Community name] PLANNING COMMISSION



## BY-LAWS AND RULES OF PROCEDURE

### I. AUTHORITY.

These By-laws and Rules of Procedure are adopted by the [community name] Planning Commission (hereinafter referred to as the "Commission") pursuant to the Michigan Planning Enabling Act, Act 33 of 2008, as amended, and the [community name] Ordinance, as amended.

### II. MEMBERSHIP.

#### A. Members

The Planning Commission shall consist of seven (7) members, or such other number determined by the [legislative body] and authorized by law, who shall be appointed in accordance with the [community name] Zoning Ordinance.

#### B. Officers

1. Officers and their selection. At the first meeting of the Commission in the calendar year, the Commission shall select from its membership a Chairperson and Vice-Chairperson, who shall serve for a one (1) year period and who shall be eligible for reelection.
2. Duties. A Chairperson shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein. The Vice-Chairperson shall act in the capacity of the Chairperson in the absence of the Chairperson and shall succeed to the office of Chairperson in the event of a vacancy in that office in which case the Commission shall select a successor to the office of Vice-Chairperson at the earliest practical time. The [legislative body] member of the Planning Commission shall not be eligible to serve as Chairperson of the Planning Commission in accordance with the Michigan Planning Enabling Act, and by default, cannot become Vice-Chairperson.
3. Tenure. The officers shall take office immediately following their election. The term of each member shall be three (3) years, and until a successor is appointed and qualified, except that a [legislative body] member appointed as a member of the Planning Commission shall have a term corresponding with that person's term as a member of the [legislative body]. The duration of the terms of members first appointed to the Commission shall vary, though not exceeding three (3) years, so that terms will expire in

different years. A successor shall be appointed not more than one month after the term of the preceding commission member has expired. All vacancies for unexpired terms shall be filled for the remainder of such term.

C. Secretarial Duties

1. Secretary. The Commission may select from its membership a Secretary or it may select a non-member to act as Secretary. The Secretary shall have the responsibility of keeping the minutes or record of all meetings and other pertinent records, conducting all necessary correspondence, and performing such other administrative duties as are designated by the Commission.
2. Zoning Administrator. The Zoning Administrator or other person authorized by the [legislative body] shall be responsible for preparing and giving all notices of public hearings and meetings, preparing, posting and otherwise serving all Open Meetings Act meeting notices, notifying Commission members of meetings, delivering communications, petitions, reports and related items of business to the Commission, and preparing all written decisions or orders of the Commission.

- D. Membership Rules. The [legislative body] may remove a member of the Planning Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. It shall be considered an act of nonfeasance if a member has three (3) consecutive unexcused absences from regularly scheduled meetings or if a member misses at least fifty percent (50%) of the meetings, both regular meetings and special meetings, within a twelve (12) month period. As the first step in the removal proceedings, the Secretary shall prepare a memorandum requesting that the member resign. If the member fails to resign, a request shall be made by the Commission to the [Mayor/Supervisor – Appointing official] to take the next step in the removal process.

- E. Annual Report. The Commission shall prepare and submit to the [legislative body] an annual written report concerning the Commission's operations during the preceding year and the current status of its planning and zoning activities, including, if desired, recommendations concerning actions by the [legislative body] related to planning and zoning within the City. The annual report to the [legislative body] shall be prepared and submitted during the first month of each calendar year, covering the preceding calendar year, or as soon thereafter as practicable.

III. MEETINGS.

A. Types of Meetings

1. Regular meetings. Regular meetings of the Commission may be held in the City Hall on a date established by the Commission at the first meeting of the Commission in the calendar year. The date, time and place shall be posted at the City Hall no later than ten (10) days after the date of the meeting establishing the regular meeting dates. Any changes in the date, time or place of the regular meetings shall be posted and noticed in the same manner as originally established. When a regular meeting date falls on or near a legal holiday, the Commission may select suitable alternate dates in the same month in accordance with the Open Meetings Act.
2. Special meetings. Special meetings may be held at the call of the Chairperson, or they may be scheduled in advance during a regular meeting; and in both instances, at least two (2) days' notice shall be given in advance of the meeting by posting a copy of the notice at the City and by mailing or delivering a copy of the notice, or by contacting each member of the Commission.

B. Place of Meetings

Regularly scheduled meetings may be held in City Hall. Whenever the regular meeting place of the Commission shall appear inadequate for members of the public to attend, the Chairperson may change the meeting to a larger facility located in or near City Hall. A notice of such change shall be prominently posted on the door of the regular meeting place.

C. Time of Meetings

Regularly scheduled meetings shall begin at 7:00 PM unless the Commission has established by majority vote an earlier or later starting time. The Commission shall not begin considering any matter on the agenda not yet under consideration by the hour of 10:30 o'clock in the evening except by unanimous consent of the Commission members present. Matters on the agenda and not yet acted upon at the time of adjournment will be placed on the agenda of the next regular meeting or special meeting, if one is called.

D. Change in Schedule of Regular Meetings

Changes in the schedule of regular meetings shall not be made except upon the approval of a majority of the Commission members in attendance.

E. Notice of Meetings

1. Regular meetings. Dates of regular meetings of the Commission shall be established at the Commission's first meeting of the calendar year and notice of the dates, time and place of such meetings shall be posted in a conspicuous place at the City Hall within ten (10) days of the establishment of said meeting dates and copies of the schedule of regular meetings shall be delivered or mailed to each member of the Commission. Any changes in the date, time or place of a regular meeting shall be posted at the City Hall within three (3) days after the meeting at which the change is made and at least two (2) days before the rescheduled regular meeting, and notice of the change shall be given to each member of the Commission at least two (2) days before the rescheduled meeting.
2. Special meetings. Notice of special meetings shall be posted in a conspicuous place at the City Hall and given to each member of the Commission at least two (2) days before the special meeting. Such notice shall be served by the Zoning Administrator upon the members personally, left at the member's usual place of residence, or mailed to them in ordinary first-class mail. The notice shall contain the date, time, place, and purpose of the meeting.
3. Notification to media and others. The Zoning Administrator shall notify, without charge, any newspaper or radio or television station of such meeting schedule, schedule changes, or special meetings, whenever such newspaper or radio or television station shall have filed with the Commission a written request for such notice. The Zoning Administrator shall also notify other individuals or organizations of regular meeting schedules, changes in the schedule, or special meetings, but only upon their written request. The Zoning Administrator shall mail all such notices by first class mail.

F. Quorum

In order for the Commission to conduct business or take official action, a quorum consisting of at least four (4) of the seven (7) members of the Commission shall be present. When a quorum is not present, no official action, except closing of the meeting, may take place. The members of the Commission may discuss matters of interest, but can take no action until the next regular or special meeting. In the event the Commission shall meet and a quorum is not present, the Commission, upon the action of a majority of those present, may adjourn the meeting to another day provided that proper notice is given to the members and to the public.

IV. PUBLIC HEARINGS.

A. In General

If the time for notice allows, meetings at which public hearings are held shall be scheduled for the next regular or special meeting.

B. Notice of Public Hearings

Public hearings shall be scheduled and due and proper notice shall be given in accordance with the [community name] Zoning Ordinance and the Michigan Zoning Enabling Act (PA 110 of 2006, as amended).

C. Conflict of Interest

1. Disqualification from participation as a member. A member shall be disqualified from participating and voting on any issue in which the member has a conflict of interest. If a Commission member has disclosed a conflict of interest, or if the Commission has determined by majority vote that a member has a conflict of interest, the Commission member shall depart from the table and shall not participate in any way in the matter.
2. Definition of conflict of interest. A member of the Commission shall be deemed to have a conflict of interest as to any matter or proceeding pending before the Commission if, without limitation: (1) the member has a direct or indirect pecuniary or financial interest in the outcome of the matter at issue; or (2) the matter at issues involves the member's business or place of employment; or (3) participation in making a decision might violate the letter or spirit of a member's code of professional ethics or responsibility; or (4) the member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
3. Raising issue of conflict of interest. Although the issue of whether or not a member has a conflict of interest should be raised by the member who believes he/she has a conflict of interest, the issue of a conflict of interest may also be raised by another member of the Commission or by the applicant for the matter at hand. The issue should be raised prior to the commencement of the public hearing or the discussion on the subject matter or as soon as the conflict of interest is discovered.
4. Determination of issue of conflict of interest. The determination of a conflict of interest shall be made by the Commission upon motion of the member claiming a conflict of interest or upon motion of

another member of the Commission, and by majority vote of those present and voting.

5. Grounds for removal. Failure of a member to raise the issue of a possible conflict of interest and to have the Commission rule upon it shall constitute malfeasance in office and shall be grounds for removal from office.

D. Conduct of a Public Hearing

1. Opening remarks by the chairperson. The Chairperson of the Commission shall officially open the hearing and he/she shall provide a brief description of the subject of the hearing and any history or other information which might be relevant to the hearing.
2. Announcement of hearing rules. The Chairperson or shall also announce the following hearing rules:
  - a. This is a public hearing designed to receive comments on the above subject. Only comments regarding this subject will be accepted, and the Commission and applicant for relief will not be required to answer questions posed by members of the public unless deemed appropriate by the Chairperson.
  - b. All persons wishing to comment shall be given an opportunity to do so.
  - c. The person addressing the Commission should state his/her name and address and make comments directly to the Commission.
  - d. Each person speaking shall limit his/her comments to three (3) minutes.
  - e. Everyone shall have an opportunity to speak before a person is allowed to speak a second time.
  - f. If at any time during the hearing, the Chairperson feels no other relevant comments are being stated or the public is out of order, a motion may be requested to close the public hearing. The Chairperson may, at his/her discretion, terminate unreasonably repetitive, irrelevant, or lengthy comments which are non-productive to the issue at hand.
3. Remarks and/or recommendations by others. The Commission may allow the Zoning Administrator, Planner, Attorney, or other

consultant to address the Commission in regard to the matter at hand to make a recommendation if the Commission deems it appropriate.

4. Conduct of the Public Hearing

- a. Presentation by Applicant. This shall include remarks by applicant or spokesman for applicant directed to the Planning Commission, if any.
- b. Reading or summary of written correspondence received by the Planning Commission;
- c. People in audience addressing the Planning Commission with regard to the application;
- d. Applicant's response. The Planning Commission may provide the applicant with an opportunity to respond to matters raised by the public or to questions posed by the Planning Commission.

7. Deliberations

- a. Upon conclusion of the presentations and relevant public comment, the Chairperson shall close the public portion of the hearing for Commission deliberations. No further input shall be allowed from the applicant or public after commencement of deliberations unless specifically requested or permitted by the Commission.
- b. Deliberations should involve the following:
  - (1) A discussion among the members of the Commission;
  - (2) Formulation of a motion rendering a decision on the matter before the Commission, which motion must include the reasoning or rationale in support of the decision, and any conditions imposed.

- 8. Voting on motion. Before the motion is voted upon, it may be restated by the Secretary for purposes of clarifying the meaning of the motion. The motion should then be voted upon, with all members present voting and without any member abstaining.

9. Announcement of decision and adjournment. The announcement of the results of the voting and the meaning of the decision should be done by the Chairperson.

## V. CONDUCT OF MEETINGS.

### A. Order of Business

The order of business at a Commission meeting shall be as follows:

- I. Call to order.
- II. Roll call.
- III. Approval of minutes of previous meeting.
- IV. Approval of agenda.
- V. Public comments and communications concerning items not on the agenda.
- VI. Old business (any unfinished or ongoing business).
- VII. New business.
- VIII. Public hearing(s).
- IX. Other matters to be reviewed by the Commission.
- X. Administrative items.
- XI. Adjournment.

Where a meeting includes a public hearing, consideration of old and new business may be waived to allow more time for consideration of the subject of the hearing.

### B. Motions

Motions for decisions on matters before the Commission may be restated by the Secretary before a vote is taken. The name of the maker and supporter of the motion shall be recorded and the reasoning or rationale for the decision shall be clearly stated in the motion, along with any conditions, if applicable.

### C. Voting

Voting shall ordinarily be by voice vote; provided, however, that a roll call vote may be required if requested by any Commission member or directed by the Chairperson. All members of the Commission, including the Chairperson, except where it has been determined that the member has a conflict of interest, shall vote on all matters. A member shall be excused from participating and voting if that person has been determined to have a conflict of interest pursuant to IV, C hereof. No member shall abstain from voting unless it has been determined that he has a conflict of interest.



Unless otherwise required by law, an affirmative vote of a majority of the Planning Commission members present and voting shall be required for the approval of any motion, resolution or other action or decision by the Commission.

D. Rules of Order

All meetings of the Commission shall be conducted in accordance with generally accepted parliamentary procedures as governed by *Robert's Rules of Order*.

E. Minutes or Record of Meeting

The Secretary of the Commission shall maintain or keep minutes or a record of its proceedings and copies of the minutes or record shall be filed in the office of the City Clerk, and they shall be a public record. The minutes shall contain a brief synopsis of the meeting, including a complete statement of all motions and recording of votes; a complete statement of the decision or recommendation, including any conditions thereto, made on any action taken by the Commission; and a recording of attendance. All correspondence and other communications, any written resolutions, decisions or other documentation of action taken, any exhibits submitted at hearings shall be attached to the minutes or other record of the proceedings.

VI. OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS.

A. Open Meetings Act

1. All meetings of the Commission shall be held in accordance with the Open Meetings Act, Act 267 of 1976, as amended (MCL 15.261 et. seq).
2. All deliberations and decisions of the Commission shall be made at a meeting open to the public.
3. A person shall be permitted to address a hearing of the Commission under the rules established in Subsection IV, D, and to address the Commission concerning non-hearing matters under the rules established in Subsection V, A, to the extent that they are applicable.
4. A person shall not be excluded from a meeting of the Commission except for a breach of the peace committed at the meeting.

B. Freedom of Information Act

All records, files, publications, correspondences and other materials are available to the public for reading, copying and other purposes as governed by the Freedom of Information Act.

VII. AMENDMENTS.

These By-laws and Rules of Procedure may be amended by the Commission by a concurring vote of the majority of those Commission members present for the conduct of business during any regular or special meeting, provided that all members have received in advance a copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

VIII PLANNING COMMISSION APPROVAL.

Planning Commission Approval. These By-laws and Rules of Procedure and any amendments shall be approved by the Planning Commission.

Revisions to these By-laws were adopted by the Planning Commission at a regular meeting held on [insert date].

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Planning Commission Secretary

## Avoid ex parte contact to ensure impartiality

Kurt H. Schindler, [Michigan State University Extension](#) - July 23, 2012

While it's difficult to avoid ex parte contact, it's important for planning commissions and boards of appeals to do so.

For members of a local planning commission, or zoning boards of appeals, it is particularly difficult to avoid having *ex parte* contact.

*Ex parte* contact happens when a member of a planning commission or zoning board of appeals (ZBA) are contacted by someone outside of the meeting concerning a pending issue, such as approval of a special use permit, planned unit development, site plan, or appeal. This type of contact should be avoided.

But to many, avoiding this type of contact is counter-intuitive. We believe one should hear concerns and listen. That is, after all, local representative government. So this becomes a big concern whenever presenting an education program on planning and zoning ethics.

But here is the other side of that coin: if a member of the planning commission or ZBA has a conversation on the street, etc. then how does someone else ever know what was said and have an opportunity to respond, supporting the conversation or refuting it? That basic level of fairness is important and what a planning commission and ZBA should strive for.

It is similar to going to court. You expect the judge to be fair and neutral. You expect that both sides to hear what the other has to say, and you have a fair opportunity to respond. If you did not even know the conversation took place, let alone what was said, you do not have any ability to respond. You would not expect the judge to be swayed by some talk about the case s/he had outside the courtroom.

In Michigan, planning commissions and ZBAs are administrative bodies. They are duty-bound to make decisions based on standards (found in the zoning ordinance), not on what the popular majority wants. Representing the will of the majority of electors in a community is the job of the legislative body – the township board, village council, city council or county board of commissioners. It is not the job of the planning commission or ZBA.

The planning commission and ZBA need to behave closer to the expectation of fairness one has for a court. Some basic points are:

- Make sure that every member of the planning commission, ZBA, gets to hear everything that is said.
- What is said should be said at a public meeting, not elsewhere.
- Members of a planning commission and ZBA should not pre-judge a case.
- Make sure that others also hear everything that is said, and that others have an opportunity to respond.

The basic idea is that all members and all people that are interested enough to be at the meeting can hear all sides of an issue, and can add to or respond to what has been said. One federal court said it well:

“Parties at the hearing . . . are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is impartial in the material, having had no prehearing or *ex parte* contacts concerning the question at issue . . . .” – *Fasano V., Board of County Commissioners of Washington County*.

So what does a planning commissioner or ZBA member do when someone stops you on the street or during a site inspection? Explain to them about *ex parte* contact, ask them to attend the meeting or hearing and share their concerns so everyone can hear, or write a letter to the commission or ZBA.

If this approach fails, then as soon as you can, take detailed notes on what that person said. At the hearing or meeting, explain that the person spoke to you and would not stop, that you tried to get them to attend the meeting, but to the best of your ability this is what was said. Then using your notes, repeat what you were told. Name the person you are reporting about. This is not perfect, but it gets the comments on the record at the meeting and allows others to hear and respond.

Often issues of *ex parte* contact occur during site inspections. So the planning commission and ZBA should talk through how they want to handle this and should spell out their procedures in their bylaws (planning commission) or rules of procedure (ZBA). Samples of both can be found at on [Schindler's Land Use Page](#).

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