

From: [Shelli Clark](#)
To: [Elaine McCloskey](#)
Subject: tree preservation
Date: Saturday, February 25, 2023 3:00:10 PM

Caution! This message was sent from outside your organization.

Dear Chairman Simpson and members of the Planning Commission,
Thank you for your service on behalf of the citizens of Delaware. The proposals for the March 1, 2023, Planning Commission meeting have areas of concern.

There are no metrics provided on tree removal and replacement for the Terra Alta cases. Please redress and require calculations of tree removal compared to replacement. The community needs data to track and respond to tree canopy loss. Please table this decision until those numbers can be added to the agenda packet for the community to see and respond to at your next meeting.

Additionally, I ask that you object to the use of the Chapter 1168 flexibility statement for Case 2023-0322. Delaware deserves economic development that respects our community and natural resources. Requiring the applicant to pay “approximately half” of \$294,321 for a \$811,348 tree removal impact fee is not enough. They should be incentivized to preserve our green infrastructure if they want to operate in our community. Please vote to have the changes to the application of Chapter 1168 removed, for the sake of the citizens. Then the applicant can choose to preserve trees, plant trees elsewhere, or pay the full tree fee so that the City can plant replacement trees. (It’s worth noting that our science-backed, scaling fee with alternatives established in Chapter 1168 meets the requirements set forth by the judge in *FP vs Canton, Michigan*.) The point of Chapter 1168 is tree preservation for the well-being of our community; please reinstate it.

I also ask you to make a motion opposing the use of economic incentive dollars to pay for any portion of the tree fee. Economic incentive dollars are taxpayer dollars. The taxpayers do not wish to pay for corporate tree removal.

We rely on you to hold the development community accountable and represent the people of Delaware County.

Thank you,
Shelli Clark
6056 Cheyenne Creek Dr.
Lewis Center (Orange Township)

From: [Rich Bradley](#)
To: [Elaine McCloskey](#)
Subject: comment on actions related to case 2023-0320 and 0023-0322
Date: Sunday, February 26, 2023 4:45:05 PM

Caution! This message was sent from outside your organization.

Dear Chairman Simpson and members of the Planning Commission,

Please know I appreciate your service on behalf of the citizens of Delaware.

I am concerned about proposed minimal impact fee for tree removal for Cases 2023-0320 and Case 2023-0322. These project's proposed substantial tree removal will harm the community's environment. The applicants should either plant replacement trees, preserve trees, or pay the entire tree fee so that replacement trees can be planted by the city. Chapter 1168 should be reinstated for the well-being of our community. Trees not only improve local air quality, shade conditions, and aesthetic value; they provide habitat for wildlife and sequester carbon.

At the very least no public incentive dollars should be used to pay the tree fees. As a taxpayer, I do not want my taxes to pay for tree removal.

In each case when substantial tree removals are contemplated as part of a project, it is essential that realistic scaling based on evidence be employed to assess the fees collected are sufficient to repair the harm.

Responsible development, that includes recognition and preservation of the aesthetic and environmental values of Delaware, is essential to make our community thrive.

Thank you,

Richard Bradley

From: [Anna Willow](#)
To: [Elaine McCloskey](#)
Date: Monday, February 27, 2023 9:21:36 AM

Caution! This message was sent from outside your organization.

Dear Chairman Simpson and members of the Planning Commission,
I am writing to briefly note several concerns with the proposals for the March 1, 2023, Planning Commission meeting.

First: There are no metrics provided on tree removal and replacement for the Terra Alta cases. Please redress and require calculations of tree removal compared to replacement. The community needs data to track and respond to tree canopy loss. Please table this decision until those numbers can be added to the agenda packet for the community to see and respond to at your next meeting.

Additionally: I ask that you object to the use of the Chapter 1168 flexibility statement for Case 2023-0322. Delaware deserves economic development that respects our community and natural resources. Requiring the applicant to pay “approximately half” of \$294,321 for a \$811,348 tree removal impact fee is not enough. They should be incentivized to preserve our green infrastructure if they want to operate in our community. Please vote to have the changes to the application of Chapter 1168 removed, for the sake of the citizens. Then the applicant can choose to preserve trees, plant trees elsewhere, or pay the full tree fee so that the City can plant replacement trees. (It’s worth noting that our science-backed, scaling fee with alternatives established in Chapter 1168 meets the requirements set forth by the judge in *FP vs Canton, Michigan*.) The point of Chapter 1168 is tree preservation for the well-being of our community; please reinstate it.

I also ask you to make a motion opposing the use of economic incentive dollars to pay for any portion of the tree fee. Economic incentive dollars are taxpayer dollars. The taxpayers do not wish to pay for corporate tree removal.

We rely on you to hold the development community accountable and represent the people of Delaware.

Thank you,
Anna Willow, 56 Lobdell Drive

Dear members of the Planning Commission,

Thank you for your service on behalf of the citizens of Delaware. The proposals for the March 1, 2023, Planning Commission meeting have areas of concern.

There are no metrics provided on tree removal and replacement for the Terra Alta cases. Please require calculations of tree removal compared to replacement. The community needs data to track and respond to tree canopy loss. Please table this decision until those numbers can be added to the agenda packet for the community to see and respond to at your next meeting.

Additionally, I ask that you object to the use of the Chapter 1168 flexibility statement for Case 2023-0322. Delaware deserves economic development that respects our community and natural resources. Requiring the applicant to pay "approximately half" of \$294,321 for a \$811,348 tree removal impact fee is not enough. They should be incentivized to preserve our green infrastructure if they want to operate in our community. Please vote to have the changes to the application of Chapter 1168 removed, for the sake of the citizens. Then the applicant can choose to preserve trees, plant trees elsewhere, or pay the full tree fee so that the City can plant replacement trees. (It's worth noting that our science-backed, scaling fee with alternatives established in Chapter 1168 meets the requirements set forth by the judge in *FP vs Canton*, Michigan.) The point of Chapter 1168 is tree preservation for the well-being of our community; please reinstate it.

I also ask you to make a motion opposing the use of economic incentive dollars to pay for any portion of the tree fee. Economic incentive dollars are taxpayer dollars. The taxpayers do not wish to pay for corporate tree removal.

We rely on you to hold the development community accountable and represent the people of Delaware.

At the request of a commissioner via email this week, I wish to provide more complete commentary on the City's tree preservation ordinance, Chapter 1168, and the City's reaction to rework it in light of the [Sixth Circuit Court decision in *FP vs. Canton*](#) via the existing flexibility statement.

I trust that you all have read the court decision and understand the judge's requirement to provide rough proportionality. The judge writes: "The parties agree that there is an 'essential nexus' between Canton's 'legitimate' interest in forest and natural resource preservation and the permit conditions. See *Dolan*, 512 U.S. at 386. Therefore, we need only address the 'rough proportionality' prong of *Nollan and Dolan*." (p.9, but see full document for all context). The judge specifically recommends connecting the ordinance to community environmental concerns using science, as well as recognizing alternatives such as on-site tree replacement. When you review the City of Delaware's tree ordinance, you will see that it does both of those things already in 1168.01 and 1168.07. Additionally, as opposed to the tree ordinance in the Sixth Circuit case, our tree ordinance provides a scaling fee by applying a price per a caliper inch for tree removal in the Schedule of Fees. It is the opinion of myself and many others that these factors allow Chapter 1168 to meet the specific criteria referenced by the Sixth Circuit Court judge.

Additionally, if the City wished to shore-up Chapter 1168, my peers and I have offered many good-faith suggestions on how to do that. For the past year, we have provided Delaware's Tree Ordinance Working Group with suggestions on how to expand the science of its applicability in 1168.01 as well as reference metrics for calculating tree removal impact. Unfortunately, the City has not advanced the work on this for over 5 months and has ignored our requests for updates.

A science-backed applicability statement could be expanded to read as follows:

1168.01. - Purpose. Research and science demonstrate the ecological and community benefits that trees provide to our society. For example, trees:

- A. (a) Improve air quality;
- B. (b) Provide oxygen;
- C. (c) Clean drinking water;
- D. (d) Counteract climate change by absorbing carbon dioxide ;
- E. (e) Reduce noise pollution
- F. Reduce and light glare ;
- G. (f) Provide critical habitat for wildlife;
- H. (g) Help maintain healthy soil and prevent erosion.
- I. Reduce and moderate stormwater runoff;
- J. (h) Enhance visual and aesthetic qualities;
- K. (i) Increase property values; and
- L. (j) Save energy.
- M. Contribute to public health, both physical and mental
- N. reduce stormwater load on the Olentangy and its tributaries (Delaware Run, Horseshoe Run etc)
- O. capture groundwater at the source
- P. filter particulates, including pollutants targeted for reduction in the Olentangy Watershed such as nitrogen, phosphorous, and lowering sediment loads.
- Q. mitigate flooding
- R. mitigate non-point source pollution
- S. stabilize streambanks
- T. have traffic calming impacts that make roadways safer, including calming driver attitudes and promoting slower speeds
- U. sequester carbon
- V. provide privacy
- W. protects biodiversity through providing habitat
- X. provide windbreaks
- Y. mitigate heat islands and reduce surface temperatures
- Z. have a cooling effect on the Earth through the evaporation and transpiration of water via leaves
- AA. absorb carbon dioxide and other air pollutants that would otherwise contribute to climate change.

This edited text of 1168.01 was submitted to the City, attorney, and Tree Ordinance Working Group in September 2022. To our knowledge, there has been no movement to adopt it.

For providing more information on calculating tree removal impact in US dollars in order to further justify the fee, my peers and I read many scholarly journal articles and resources and compiled a list of contemporary references. These were provided to the Tree Ordinance Working Group, City staff, and attorney in June 2022. We highlighted one approach in particular that provided a proven metric for the calculations, referenced here: Nowak, David J. and Tim Aevermann (2019). "Tree compensation rates: Compensating for the loss of future tree values," *Urban Forestry & Urban Greening*, Volume 41, Pages 93-103. <https://doi.org/10.1016/j.ufug.2019.03.014>, article download available at <https://www.fs.usda.gov/treesearch/pubs/57918>. There were other references as well, which Dave Efland could provide to you.

Implementing these two changes would further strengthen Chapter 1168 although, again, based on the judge's ruling and our existing code it may not even be necessary.

So, yes, I disagree with those who express their opinion that Chapter 1168 is invalid and that we can't apply it based on an extremely broad understanding of the decision in *FP vs Canton*. We simply cannot use a broader "unconstitutional taking" claim to invalidate all of Chapter 1168 when the specific concern was rough proportionality. Two other lawyers I have talked with agree that having a tree ordinance that meets the requirement of the rough proportionality guidelines of the case is the crucial point. As an aside: I am a citizen who volunteers her time on these issues, and it's really not suitable to ask me for a legal defense; I am a member of the public who can give public comment and if you want a legal perspective you should be asking the lawyer whom the City hired to work on the Chapter 1168 rewrite. He would fairly present the many sides of this issue.

One aspect I touched on but have not fully discussed is the City government's unwillingness to work in a publicly-accountable way in these current cases as well as by including tree removal text in PMUs. By asking this Commission to apply the "flexibility" statement for Chapter 1168 in those instances rather than update the code in a public-facing way, they have subverted our civic processes and put these Commissioners in a very difficult position. You should not have to continually make this decision about tree preservation. It should be part of a standardized, formalized City code. Although a rewrite of the code may not strictly be necessary, my peers and I are willing to support this process of rewriting Chapter 1168 *should it move forward*. Unfortunately, after only 3 meetings, the Tree Ordinance Working Group has not had any meetings since September and requests for related information since May have continuously been forgotten by city management.

Is it correct for the City to ignore these efforts of tree advocates -- and for so long? Is it correct for the City to change our existing Code through practice (asking the Commission to apply flexibility statements) rather than go through the official public process of changing the code? Why should developers and planners get to make these negotiations outside of the eyes of the public? (Why are the trees a bargaining chip to begin with?) If we're going to rewrite our Code, where is the public-facing movement on that?

Understandably, it will be difficult for City staff to not take these questions personally but they must see these as the general concerns of the public. I hope you will encourage them to not personally identify with these statements but to work on being open to public input and concerns. (One must have reasonable expectations of civic engagement when they work in government, after all.)

In conclusion, I hope that you now have more understanding on why the people object to the removal of trees generally as well as in these specific cases. Protecting our tree canopy is not really any different than protecting our streams and waterways, which we do. Like with other environmental disturbances, the community feels the impact of tree removal. And so we have good reason to want to defend the trees, as referenced in multiple ways above.

In summary, please note that specifically I am asking you to do the following:

- (1) Table the Terra Alta cases until the next meeting so that data on tree removal can be added to the record.
- (2) Remove the application of the 1168 flexibility statement for case 2023-0322. If the applicant cannot afford to remove trees, they can preserve them. Use of the flexibility statement to rewrite City code is inappropriate.
- (3) Object, on the record, to the use of taxpayer-dollars to pay any portion of the applicant's tree fee for case 2023-0322.

Also, I would add:

(4) Ask for information on designated wetlands for the property in case 2023-0322, as well as how they will be mitigated or preserved. And a note that trees should not be removed from wetlands, in order for them to operate optimally. (I don't think either of us have the energy to dive into issues of existing wetlands right now, but please just ask for the information.)

Thank you for your time.

Regards,
Stacy Chaney-Blankenship,
943 Executive Blvd, Delaware, Ohio 43015