ORDINANCE NO. 060605-01

Natural Resource Conservation Ordinance

The Village Board of the Village of Fontana on Geneva Lake, Walworth County, Wisconsin, do ordain as follows:

SECTION 1.

Section 18-28 of the Municipal Code of Village of Fontana on Geneva Lake is hereby repealed and recreated to read as follows:

Sec. 18-28. Natural Resource Conservation Ordinance.

A. Purpose. The purpose of this ordinance is to:

1. Promote the preservation and planting of trees and beneficial natural vegetation in order to preserve the Village's character as a naturally wooded community;
2. Alleviate the negative visual, economic and environmental impact of indiscriminate or excessive removal, clear-cutting and destruction of larger, more mature trees and their canopy, while not unduly interfering with the right of village property owners to appropriately remove trees on private property.
3. Assist in the control, drainage and restoration of land disturbed;
4. Aid in the stabilization of soil by the prevention of erosion and sedimentation
5. Reduce the negative impact of storm water runoff and the cost associated therewith;
6. Protect the waters of the state of Wisconsin and Geneva Lake;
7. Encourage environmentally responsible development;
8. Preserve and enhance property values within the Village of Fontana;
9. Generally protect, promote and enhance the quality of life, public health and safety and general welfare of the people in the Village of Fontana;

B. Prohibited Acts.

1. Tree Removal Control. Except as provided herein, no person shall cut down, remove, damage or destroy, or authorize the cutting down, removal, damage or destruction of any protected tree as defined herein, without having first obtained a Tree Removal and Land Disturbance Permit as provided herein.
2. Clear-cut Prohibition. The clear-cutting of any lot within the Village is prohibited unless a Conditional Use Permit has been obtained.
3. Topping Prohibition. The topping of any tree is prohibited.

C. Protected Trees. The Village hereby declares that the following are protected trees for the purpose of this Natural Resource Conservation Ordinance:

1. Trees of any size located on any Village owned property, including any public right of way.

2. Trees of any size which are planted or retained as part of a landscape plan which is a component of a General Development Plan or Precise Implementation Plan in any planned development zoning district, or as shown on any plat, certified survey map, site plan, grading permit, building permit or landscape plan otherwise approved by the Village for any other form of development.
3. Any tree eight inches or more in DBH.
4. Trees of any size located within the shoreyard set-back area pursuant to Sec. 18-33 of the municipal code.

D. Permitted Acts. Trees may be removed only with the issuance of a Tree Removal and Land Disturbance Permit. The owner of fee simple title to any lot may apply for a Tree Removal and Land Disturbance Permit pursuant to the following requirements:

1. Application for Tree Removal and Land Disturbance Permit. Application for a Tree Removal and Land Disturbance Permit shall be made in narrative form within a letter and shall be accompanied by the following documentation:
   a. A complete and signed narrative which includes, among other things, the reason for the proposed tree removal; and the following:
      1) Name and address of the property owner.
      2) Name and address of applicant if other than the owner accompanied by a written, signed letter of consent from the property owner.
      3) A description by lot and block number of the premises for which the permit is sought.
      4) A sketch depicting lot size with approximate location, size in DBH and type of tree (s) to be removed or destroyed and approximate location, caliper and type of tree (s) to be planted in replacement of those removed or destroyed.
      5) The following may also be required as determined by the Zoning Administrator if tree removal or destruction is pursuant to any project requiring a grading permit, building permit or landscaping plan:
         a) A <u>Certified Tree Survey</u> depicting location, species and DBH of all trees on the property with a DBH above 8 inches prepared by a certified arborist.
         b) A <u>Tree Preservation Plan</u> prepared by a certified arborist designating trees to remain and trees to be removed, necessary tree protection zones and a listing of all mitigation procedures needed including, but not limited to, pruning, mulching and fertilizing. All trees on adjacent properties with drip lines over the construction site or other areas to be disturbed or compacted by vehicle maneuvering, materials staging, equipment use, dumpster and other waste disposal, parking and soil stockpiling

must also be protected from construction damage with appropriate protection zones as established in Subsection d.), below. As part of this Tree Preservation Plan, all trees over 8 inches in DBH proposed for removal, or otherwise not intended for protection, shall be clearly identified with a ribbon tied around the tree at breast height as of the date of plan submittal to the Village.

c) A Engineered Site Plan including, but not limited to, the building footprint, driveways, patios, decks, swimming pools and utility trenches.

d) Construction Site Management Plan which depicts tree protection areas, materials staging areas, equipment use areas, dumpster and other waste disposal locations, parking and soil stockpile locations.

e) Grading Plan

b. An application filing fee in an amount as may be established by Village Board resolution from time to time.

2. Upon receipt of an application, the enforcement officer shall visit the location and inspect the land and trees which are the subject of the application in order to determine the effect of removal upon:

a. The drainage and storm water runoff and other physical conditions of the land, adjacent properties and the roadway.

b. The stability of the soil of the subject land with particular concern for whether erosion will be created.

c. Growth and development of the remaining trees on the subject land and adjacent property.

d. Loss of tree species.

e. Effect of tree removal on neighboring property and the neighborhood, in general.

3. The enforcement officer shall within ten business days of the receipt of a completed application grant or deny the requested permit. The failure of the enforcement officer to act upon an application for the removal of a tree (s) within ten business days of receipt of same shall constitute approval of said application and entitle the applicant to the permit requested unless an extension of the ten day period has been agreed upon between the applicant and the enforcement officer before the period expires.

4. The Village zoning administrator, as part of the review of an application for a Tree Removal and Land Disturbance Permit, or at any other time, may obtain an opinion and technical/professional guidance from a certified arborist with the cost thereof to be recovered from the applicant by the Village.

5. Any Tree Removal and Land Disturbance Permit pursuant to this Natural Resource Conservation Ordinance shall be of a limited duration specified in the permit. Within three business days after removal of a tree pursuant

to a Tree Removal and Land Disturbance Permit, notice of completion shall be given in writing to the Village zoning administrator. A Tree Removal and Land Disturbance Permit may be issued subject to a stated list of conditions designed to protect trees and advance the purpose of this Natural Resource Conservation Ordinance.

6. Application for a Tree Removal and Land Disturbance Permit constitutes consent by the property owner for the enforcement officer to conduct site inspections in furtherance of this Natural Resource Conservation Ordinance at such times and in such manner as deemed necessary by the Village.

7. Criteria for Issuance of Tree Removal and Land Disturbance Permit. In determining if a tree permit application shall be approved and a Tree Removal and Land Disturbance Permit shall be issued, the Village zoning administrator shall make the following findings:

   a. That the applicant has made every reasonable effort to incorporate existing trees into applicant's plan for use of the lot and has taken all reasonable steps to minimize the number of trees to be removed; and

   b. That the trees proposed to be removed are the minimum number necessary so as to accomplish the applicant's stated purpose for the tree removal; and

   c. That the condition of the trees proposed for removal with respect to disease, danger of falling, proximity to existing structures and high pedestrian and/or vehicular traffic areas or interference with existing utility services cannot be controlled or remedied through reasonable preservation or preventative procedures and practices; and

   d. That removal of the trees is necessary to enable the reasonable and conforming use of the lot which would otherwise be prevented by the presence of the trees sought for removal; and

   e. That removal will be carried out in a way to limit damage to other protected trees.

   f. Exceptions. The terms of this Natural Resource Conservation Ordinance shall not apply to the following and include a waiver of any fee (s):

      1) All licensed or governmental tree nurseries shall be exempt from the terms and provisions of this Ordinance in relation only to those trees which are planted and grown for resale to the general public in the ordinary course of business or those trees which are planted and grown for a public purpose.

      2) Removal of any tree that is diseased, dead, injured or in danger of falling to the extent that said tree's continued presence threatens the immediate health or safety of nearby persons or property; provided, however, that the person removing such a tree preserves evidence and

documentation as to the removed tree and applies for a Tree Removal and Land Disturbance Permit within three business days after the removal. Any tree suspected of having Oak Wilt must be evaluated professionally and removed according to current ANSI standards if found to be diseased.

3) Removal of any tree during emergency conditions such as a tornado or other natural disasters of similar scope by a public or private utility, the Village or any other municipality having jurisdiction in order to prevent an interruption of public or private service or other public services or to restore interrupted service.

4) Removal of trees by the Village from the right of way for roads or streets maintained by the Village for public utilities maintained by the Village.

5) Removal of nuisance or weed trees, unless they have been designated as landmark trees. The species of such trees includes, but is not limited to, the following:

   a) Box Elder,
   b) Buckthorn, and
   c) Cottonwood.

8. Tree Protection During Development. Any construction or land disturbing construction activity on a lot, whether requiring a building permit or not, shall only be undertaken in such a way as to preserve protected trees. The following steps shall be followed in all construction or land disturbing construction activities and may additionally be imposed as conditions with regard to any Tree Removal and Land Disturbance Permit or building permit issued by the Village:

   a. Prior to beginning any site preparation, land disturbance construction activity or any construction, all areas proposed for such activities shall be clearly marked-out on the subject property by a continuous minimum two inch wide painted line. This "disturbance boundary line" shall be maintained for clear visibility throughout the time period of site disturbance activities. The location of this line shall be inspected and certified by The Zoning Administrator in writing as consistent with the approved development permit(s) and associated conditions, prior to any site disruption activities. At minimum, this clearly marked disturbance boundary line and required protective barriers shall be placed at the drip line around all protected trees which are not to be removed or otherwise subject to damage. Said protective barriers shall be a minimum of four feet high and shall be kept in place directly upon the disturbance boundary line continuously by the property

owner, permit applicant and site workers until construction or land disturbing construction activity is complete. Snow fencing or other similarly visible continuous barrier fencing is required.

b. Clearly readable and understandable signage shall be used to supplement the marking of the disturbance boundary line and the required protective barrier in marking staging areas.

c. The grade of land located within the drip line shall not be raised or lowered more than one inch.

d. No soil stockpiling, storage of materials, discharge of contaminants into the soil, movement of construction equipment or vehicles shall be permitted within the drip line of any protected tree not to be removed.

e. No attachments shall be made to any protected trees which are not subject to be removed.

f. Any protected tree which dies or is severely damaged during construction or land disturbing construction activities or is found to be in a state of unnatural decline within a three-year period after said activities cease shall be subject to the tree mitigation obligation set forth at Section 18-28, D, 9 herein.

9. Tree Mitigation Policy.

a. Each protected tree removed in accordance with this Natural Resource Conservation Ordinance and in accordance with a valid Tree Removal and Land Disturbance Permit shall be replaced on the same lot within three months or the beginning of the next planting season, whichever is sooner. Each replacement tree shall measure a minimum of two (2) inches in caliper.

b. For purposes of this mitigation, the person to whom the Tree Removal and Land Disturbance Permit is issued or any successor/owner shall be responsible for maintaining the health of any replacement tree for three years from planting. Should any replacement tree die or be in a state of unnatural decline at any time during said three year period, the permit holder shall be required to replace the tree with a tree of similar size within three months or the beginning of the next planting season of said determination. Thereafter the three year maintenance period for said replacement tree shall begin anew and so on thereafter with subsequently replaced trees. At any time the Village zoning administer may require the permit holder to obtain a bond or a letter of credit on terms acceptable to the Village for 150% of the estimated cost of a replacement tree with a minimum not less than two inches in caliper so as to secure continuing performance of this monitoring and tree survival obligation.

c. In the event a permit holder is able to demonstrate that replacement is not a viable alternative, the applicant shall pay a tree removal

replacement fee in the amount of 100% of the estimated cost of a replacement tree having a minimum two inches in caliper. Said tree removal replacement fee shall be held by the Village in a segregated tree reforestation fund to be used as determined by the Village Park Commission or the Village Tree Board for such purposes as the Village Park Commission or Village Tree Board deem appropriate in furtherance of the Village's commitment to maintain the Village's tree canopy.

d. Persons providing written documentation that a tree has been planted on the same lot within the previous five years shall be exempt and not required to replace the removed tree.

10. Penalties. Any person violating any provisions of this Natural Resource Conservation Ordinance shall be subject to those penalties and enforcement remedies provided in Article 12; provided, however, that in addition to said penalties, any person who removes a protected tree without a Tree Removal and Land Disturbance Permit as provided herein shall, in addition to any other penalty, be required to install a replacement tree. Thereafter, the person who violates this ordinance shall be subject to the obligations imposed herein at Section 18-28, D, 9.

11. Appeals. Any person desiring to appeal a decision for any reason shall do so in writing to the Village Park Commission or the Village Tree Board.

SECTION 2.

Section 18-17 is hereby amended as follows:

The following definitions are hereby created to be inserted alphabetically into Section 18-17 of the Municipal Code of the Village of Fontana:

"ANSI" is the American National Standards Institute.

"Caliper" is the term used for small trees and is measured at six inches to twelve inches above grade.

"Clear-cutting" shall mean the removal or destruction of 30% or greater of the trees having a DBH of eight inches or more on a Village lot within a twelve month period.

"Crown" shall mean the upper mass or head of a tree created by its branches and leaves.

"DBH" shall mean the diameter at breast height, which, for the purposes of this ordinance, shall be measured at four and one-half (4 ½) feet above grade on trees of four inches in diameter or greater.

"Destroy" shall mean to kill or damage irreparably, which shall be deemed to include, but not be limited to, damage inflicted to the root system by machinery, storage of materials and soil compaction, change of natural grade above or below the root system or around the trunk; damage inflicted on the tree permitting fungus, pests or other infestation; excessive pruning or thinning leading to a failure to thrive; paving over the root system with any impervious materials within such proximity as to be fatally harmful to the tree; or application of any toxic substance.

"Drip Line" shall mean a limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than eight feet from the tree trunk, whichever is greater.

"Enforcement Officer" means the Village designated zoning administrator or certified arborist appointed by the zoning administrator for the purpose of enforcing the terms of this ordinance.

"Landmark Tree" shall mean any tree so designated by the Park Commission or the Tree Board for its natural beauty, majestic stature, historical significance, location, memorial designation or other qualities deemed appropriate.

"Person" shall mean any individual or entity whose existence is recognized by law, including, but not limited to, any partnership, corporation (for profit, nonprofit or municipal and its agencies), firm, association or any combination of the foregoing.

"Topping" means the specific reduction in the overall size of a tree and/or the cutting back of branches or limbs to such a degree so as to remove the normal canopy and disfigure the tree.

"Tree" shall mean any woody plant with a main stem or multiple stems with branches protruding above the root flare.

"Tree canopy" shall mean the upper and outermost points of a tree created by the tree's crown.

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause, phrase of this ordinance or the particular application thereof shall be held invalid by any court, administrative agency or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses or phrases under application shall not be affected thereby.

SECTION 4. EFFECTIVE DATE

This ordinance shall be in full force and effect upon and from its passage, approval and publication as required by law.

PASSED AND ADOPTED by the Village Board of the Village of Fontana on Geneva Lake, Walworth County, Wisconsin, this 6th day of June, 2005.

VILLAGE BOARD OF THE VILLAGE OF
FONTANA ON GENEVA LAKE

By: _____
Village President

Attest: _____
Village Clerk