

## ARTICLE XX

### OPEN SPACE COMMUNITIES

#### § XX.05 - INTENT & PURPOSE

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The intent and purpose of this Article is to:

- (A) Encourage the preservation of the Township's agricultural operations, rural character, natural resources, and sensitive environmental areas;
- (B) Encourage the use of land in accordance with its character and adaptability;
- (C) Preserve open spaces, scenic vistas, agricultural lands, rural character, woodlands, wetlands, natural drainage systems, natural topography, environmentally sensitive areas, existing vegetation, and other natural features;
- (D) Reduce soil erosion by limiting the amount of clearing and grading necessary for development;
- (E) Preserve contiguous open spaces and natural features;
- (F) Encourage ~~a less sprawling~~ more innovative forms of residential developments;
- (G) Encourage innovative design of residential developments;
- (H) Facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- (I) Encourage compatibility of design and use between neighboring properties;
- (J) Allow for flexible design of residential developments as planned unit developments in order to preserve open spaces, woodlands, and other natural resources;
- (K) Allow for residential planned unit developments, as provided in MCL 125.3503 (Public Act 110 of 2006); and
- (L) Establish the standards and the review process for open space communities.

#### § X.10 - AUTHORITY

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- (A) **Open Space Community:** Authority to approve, approve with conditions, or deny an open space community shall be with the Planning Commission.
- (B) **Appeal of Decision:** Authority to hear an appeal of an open space community decision made by the Planning Commission shall be with the Zoning Board of Appeals.
- ~~(B)(C) **Conservation Easement:** Authority to approve, approve with conditions, or deny an open space community conservation easement shall be with the Township Board, with advice from the Township Attorney.~~
- ~~(C)(A) **Appeal of Decision:** Authority to hear an appeal of an open space community decision shall be with the Zoning Board of Appeals.~~

## § x.15 - QUALIFYING CONDITIONS

Property may be developed as open space ~~preservation community~~ if all of the conditions below are met.

- (A) **Zoning District:** The property shall be located within an Open Space ~~Preservation Community~~ (~~OSPOSC~~) Zoning District.
- (B) **Unified Control:** The applicant shall have complete ownership or control of the area proposed for an open space community.
- ~~(C) **Size:** The property shall have a lot area of at least five (5) acres in size.~~
- ~~(D)~~(C) **No Previous Open Space:** The open space community or open space preservation option has not been previously used for any of the property to be developed as part of the open space community.

## § xx.20 - DENSITY BONUS

In reviewing an ~~Open-open Space-space~~ community, the Planning Commission may allow additional lots or dwelling units beyond those allowed in a conventional plan, as outlined below.

- (A) **Conventional Plan:** A conventional plan shall serve as the basis for granting any density bonuses.
- (1) **Conventional Plan:** The conventional plan shall show how the site could be developed, according to underlying zoning standards and other local, county, state, and federal standards. ~~The Planning Commission may require that the conventional plan show D~~etailed engineering, such as finished grading and stormwater details, ~~shall not be required, unless the Planning Commission if it~~ determines that information is necessary to determine the feasibility of the conventional plan.
  - (2) **Feasibility:** If the Planning Commission determines that the conventional plan is not feasible, the conventional plan shall be revised and resubmitted.
  - ~~(3) **Lot Calculation:** Lot Area x .85 or something like that.~~
- (B) **Additional Open Space:** The Planning Commission shall grant a three (3) percent increase in the number of lots/dwelling units from the conventional plan for each one (1) percent increase of the open space area density bonus for open space communities that provide additional open space area beyond the minimum required, as outlined below. The maximum increase in density from additional open space bonus shall be fifty (50) percent of the lots/dwelling units allowed in the conventional plan.
- ~~(1) **Non-agriculture Zoning Districts:** A two point five (2.5) percent increase of the number of lots/dwelling units from the conventional plan shall be granted for each one (1) percent increase of the open space area.~~
  - ~~(2) **Agriculture District:** A three point five (3.5) percent increase in the number of lots/dwelling units from the conventional plan shall be granted for each one (1) percent increase of the open space area.~~

(C) **Superior Design:** The Planning Commission shall grant a density bonus for specific superior design characteristics. A ten (10) percent density increase in the number of **lots/dwelling units** from the conventional plan shall be granted for each superior design element that is found to be true below. The maximum increase in density from superior design bonuses shall be fifty (50) percent of the **lots/dwelling units** allowed in the conventional plan.

- (1) *Open Space Area Dedication:* ~~Dedication~~ Dedicating of usable open space area to a public entity or a nonprofit land or nature conservancy that has the effect of increasing or enhancing the public use and enjoyment of scenic areas, waterfronts, natural areas, or other significant environmental areas or the dedication of usable open space for other public use that clearly addresses a need in the community;
- (2) *Open Space:* ~~Dedication~~ Dedicating of more than sixty (60) percent of the area of the total project parcel as permanent open space area;
- (3) *Buffer:* Providing additional buffer along exterior streets;
- (2)(4) *Landscaping:* Providing additional landscaping that uses native species;
- (3) ~~*Open Space Area Location:* Strategic placement of open space area adjacent to neighboring open space communities or other adjacent permanent open space or conservation area in a manner that supports continuous networks of environmental resources systems, including, but not limited to: wetlands, woodlands, stream corridors, and wildlife corridors and habitats;~~
- (4) ~~*Dwelling Location:* Strategic placement of dwellings and dedicated open space area in relation to adjacent agricultural operations to minimize conflict between ongoing agricultural operations and dwellings and residents in the open space community;~~
- (5) *Agricultural Operation:* Allowing agricultural operations within the open space area;
- (6) *Storm Water System:* Managing A storm water management ~~program in a manner~~ that uses natural systems to the greatest extent possible and preserves the quality and integrity of the system, rather than systems that encourage unnecessary topographic alterations, erosion, heightened impurities directed to surface and ground water systems and similar negative impacts; or
- (7) *Dwellings:* ~~Inclusion~~ Including of two-family or multiple-unit dwellings within the open space community.

## § XX.25 - GENERAL PROVISIONS

Open Space Communities shall meet the ~~following~~ general provisions outlined below.

- (A) **Overlay District:** The Open Space Community (OSC) Zoning District is an overlay district in all residential and agricultural zoning districts.
- (B) **Development Options:** Land within a residential zoning district may be developed according to the standards of that district or as an open space community, as outlined in this Article.
- (C) **Other Approvals:** In addition to the open space community approval outlined in this Article, open space communities shall also require site plan or land division approval ~~and a zoning permit~~.

- (D) **Approval of Lots:** The creation of lots as part of an open space community shall be through one (1) of the following options:
- (1) *Land Division:* ~~Approval through a~~ A land division, if the number of lots created are equal to or less than the number of lots available for splitting and according to the Township Ordinances;
  - (2) *Subdivision Plat:* ~~A subdivision plat~~ A platted subdivision; or
  - (3) *Site Condominium:* ~~As part of a s~~ A site condominium, as outlined in this Ordinance.
- (E) **Open Space Area:** All land within an open space community that is not devoted to a residential lot, street, vehicle parking, utility, building, or storm sewer shall be common area for recreation, conservation, agriculture, or preservation in an undeveloped state.

### § XX.30 - PERMITTED USES

Open space area and individual lots within an open space community shall be used as outlined below.

- (A) **Lots:** Use of individual lots shall be limited to the following uses:
- (1) *Single-family Dwellings:* Detached, single-family dwellings and associated accessory uses;
  - (2) *Two-family Dwellings:* Two-family dwellings, up to twenty ~~five~~ (2520) percent of the total dwelling units, rounded down;
  - (3) *Multiple-family Dwellings:* Multiple-family dwellings, up to a certain percentage up to twenty ~~five~~ (2520) percent of the total dwelling units, rounded down; ~~and~~
  - (4) *Other Residential Uses:* Other residential uses allowed in the underlying zoning district; and
  - ~~(4)~~ (5) *Club House:* Club house providing a meeting space for the open space community, including a pool.
- (B) **Open Space Areas:** Use of open space area shall be limited to the following uses:
- (1) *Agriculture:* Raising of crops for commercial agriculture, community farming or individual farming;
  - (2) *Passive Recreation:* Recreational trails, preserved natural areas, parks, wildlife preserve;
  - (3) *Active Recreation:* Playgrounds, hunting preserves, gazebos, and watercraft launching or mooring; and
  - (4) *Other Uses:* Other uses allowed within the underlying zoning district.

### § XX.35 - DESIGN STANDARDS

Open space communities shall meet the design standards outlined below.

- (A) **Cohesive Neighborhood:** Open space communities shall be designed to create a cohesive residential neighborhood through common open space areas for passive and active recreation that are easily accessible to all residents.

- (B) **Location of Lots:** Residential lots shall be located and organized, to the greatest extent possible, as follows:
- (1) **Alterations:** In areas that require minimum alteration of the natural environment;
  - (2) **Soils:** On the soils best suited for septic systems, for open space communities with on-site septic systems;
  - (3) **Views:** In areas least likely to block or interrupt scenic vistas, as seen from public streets;
  - (4) **Agriculture:** Upwind or adequately screened from agricultural areas that are subject to land management practices that may cause dust, odors, or similar nuisances; and
  - (5) **Adjacent Residential Lots:** At least fifty (50) feet from developed, residential lots with a lot area of two (2) acres or less.
- (C) **Utilities:** Utilities within open space communities shall meet the standards outlined below.
- (1) **Underground:** All utilities shall be installed underground.
  - (2) **Public Water and Sewer:** Public water and/or sanitary sewer service shall be provided if such services are reasonably available and capacity is available.
- (D) **Fire Protection:** Fire protection measures, such as ~~(DRY)~~fire hydrants or other on-site water supply, shall be provided.
- (E) **Lot Access:** Lots within an open space community shall have access from either an internal private street or shared driveways. Lots shall not have individual driveways from public streets.
- (F) **Circulation:** Open space communities shall provide internal circulation for vehicular and pedestrian movement.
- (1) **Vehicular Circulation:** Streets shall be constructed in a manner consistent with the Road Ordinance. They shall be designed to provide connection to future adjacent developments. ~~The Planning Commission may amend Road Ordinance standards if these things: OTHER THINGS HERE.~~
  - (2) **Pedestrian Access:** A pedestrian circulation system shall be provided ~~along both sides of the streets and provide access~~ throughout the open space community and shall provide access to non-agricultural open space area any bus stops. The pedestrian circulation system shall be designed to connect with future adjacent developments and to accommodate existing and planned non-motorized improvements. They may be constructed of concrete, asphalt, gravel, wood chips, or similar materials.
- (G) **Bus Stop:** For open space communities with an anticipated ~~school-school~~-age population of at least ten (10) students, a bus stop shall be provided at a location approved by the school district.
- (H) **Natural Features:** Open space communities shall be designed to promote the preservation of natural features, such as mature woodlands, steep slopes, wetlands, floodplains, stream corridors, and special plant and animal habitats.
- (I) **Waterbody & Wetland Buffer:** All waterbodies that drain from the site shall have ~~a one hundred fifty (10050)~~ a one hundred fifty foot wide natural buffer. Pesticides shall not be used in this buffer, except those deemed necessary to address a public health emergency. Paths may be installed in this area, and a small maintained area may be installed along the waterbody.

## § XX.40 - OPEN SPACE AREA STANDARDS

Open space area used to calculate the required open space area and density bonuses shall meet the standards outlined below.

(A) **Minimum Open Space:** The open space area shall be at least twenty (20) percent of the area of the total project parcel before to development.

(B) **Not Open Space:** The following shall not be considered open space area:

- (1) *Lots:* Any area within a lot not under common ownership;
- (2) *Rights-of-way:* The area within all public and private street rights-of-way and access easements;
- (3) *Parking:* Off-street parking areas;
- (4) *Golf Course:* Golf courses, driving ranges, or putting greens;
- (5) *Utility Easements:* Fifty (50) percent of easements for overhead or below-ground utilities;
- (6) *Stormwater Management:* Stormwater detention and retention ponds, unless the stormwater management system makes use of natural systems;
- (7) *Septic System:* Community sewage system drain field, treatment pond, or other treatment facilities;
- (8) *Waterbodies:* Creeks, rivers, lakes, and ponds;
- (9) *Wetlands:* Fifty (50) percent of the area of wetlands;
- (10) *Floodplains:* Fifty (50) percent of the area within a floodplain; and
- (11) *Slopes:* Fifty (50) percent of steep slope areas.

(C) **Wetland, Waterbody, and Slope Limitations:** Wetlands, waterbodies, and steep slopes shall contribute no more than fifty (50) percent of the required open space area or the area used to calculate density bonuses.

(D) **Structures:** Structures within the open space area shall be limited to a cumulative maximum lot coverage of one (1) percent of the open space area.

(E) **Ownership/Control:** The open space area shall be owned and controlled by a homeowners' association, public entity, or land trust.

(F) **Design/Location:** Open space area shall be designed and located as outlined below.

- (1) *Exterior Roads:* Open space areas shall be located along all exterior public streets and shall have a depth of at least one hundred (100) feet.
- (2) *Adjacent Open Space Areas:* If an open space community is adjacent to an established open space community, open space preservation development, or other recreation area with a contiguous open space area, it shall include some open space area adjacent to that open space area.
- (3) *Open Space Area Between Clusters:* Open space areas between residential lots shall have a width of at least one hundred (100) feet.
- (4) *Accessibility:* Open space areas shall be available and accessible to all residents of the development. Safe and convenient pedestrian access points shall be provided.

- (5) *Waterbody*: If the project parcel contains a waterbody or is adjacent to a waterbody, the approving authority may require that all or a portion of the waterbody be abutted by open space area.
- (6) *Preservation*: Open space areas shall be located to preserve significant natural resources, scenic vistas, steep slopes, and special plant and animal habitats.

**(G) Conservation Easement**: A conservation easement shall ensure that the dedicated open space area will be protected from all forms of development.

**(1) Allowable Uses**: The conservation easement shall list the proposed allowable uses for the open space area.

**(2) Restrictions**: The conservation easement shall prohibit the following activities within the open space area:

a. *Dumping*: Dumping or storage of hazardous material or refuse;

b. *Soil Erosion*: Activities that may cause soil erosion;

c. *Off-road Vehicles*: The use of off-road vehicles, except for agricultural and maintenance vehicles;

d. *Vegetation Removal*: The cutting or removal of vegetation, except for invasive species, sick, damaged, or dead vegetation, and agricultural operations.

a-e. *Chemical Use*: The use of pesticides, herbicides, or fertilizers within fifty (50) feet of surface waterbodies and wetlands, except those deemed necessary to address a public health emergency.

~~(G)~~**(H) Guarantee of Preservation**: The open space area shall remain in that state in perpetuity, subject to uses approved by the Township or in the approved site plan. Further division of the open space area ~~of or~~ its uses for purposes other than those ~~on in~~ the approved site-open space community plan shall be prohibited. ~~The applicant shall guarantee that all open space area shall be preserved ETC.~~

## § XX.45 - REVIEW PROCESS

Open space communities shall be reviewed as described below.

**(A) Application**: The applicant shall submit a complete and accurate open space community application form provided by the Township for that purpose. The application shall include all of the relevant materials, as outlined below, and any additional materials determined necessary by the Director of Planning and Zoning. Submission of an application constitutes a representation that all the information is complete and accurate. An application for an Open Space community shall include the following:

- (1) *Application Form*: A signed and completed application form;
- (2) *Fee*: An open space community application fee, as outlined in the adopted fee schedule;
- (3) *Site Plans or Surveys*: The applicant shall submit at least one (1) hard copy and a digital copy of the associated site plan or survey, in a format acceptable to the Township, with the application, and shall submit at least fifteen (15) additional hard copies following the review of completeness. If the application is being reviewed at the same time as a site plan, additional copies are not needed for the open space community application.

- (4) *Conventional Plan*: A conventional plan showing how the site could be developed using conventional zoning standards;
- (5) *Master Deed*: A draft master deed for the development;
- (6) *Conservation Guarantee*: A draft of the documents guaranteeing the conservation of the open space areas; and
- (7) *Additional Materials*: Any additional information determined necessary by the Director of Planning and Zoning.

~~(B)(A) *Public Hearings*: Open space communities shall be reviewed by the Planning Commission at a public hearing. (LOCATION?)~~

(B) *Preapplication Meeting*: The applicant shall meet with Township Officials, other agencies, and other interested parties before submission of an open space community application.

(1) *Intent*: The intent of the preapplication meeting is to inform Township Officials and other interested parties of the general concept of the proposed development and to provide the applicant with feedback and guidance concerning the application. Statements made in the course of a preapplication meeting shall not be legally-binding on any party nor construed as representing approval or actions the approving authority may make during open space community review.

(2) *Township Attendance*: The Director of Planning and Zoning shall invite the following individuals to attend the preapplication meeting:

a. Other Township Officials, including, but not limited to: the Planning Commission Chair, the Township Engineer, and the Township Attorney; and

b. Officials from other agencies, including, but not limited to: the Washtenaw County Road Commission, the Washtenaw County Environmental Health Department, the Washtenaw County Water Resources Commissioner, the Dexter Area Fire Department, and local schools.

(3) *Applicant Attendance*: The applicant, or an agent, shall attend and shall be responsible for inviting individuals responsible for preparing the open space community plan.

(C) *Review of Completeness*: An application for an open space community shall be reviewed by the Director of Planning and Zoning for completeness.

(1) *Review Letter*: The Director of Planning and Zoning shall issue a review letter within fourteen (14) days of receiving the application stating whether the application is complete or, if not, what additional materials or information is necessary for it to be considered complete. If the review letter is not issued within the above period, the application shall be placed on the next available Planning Commission agenda.

(2) *Administratively Complete*: The date on which the Director of Planning and Zoning declares an application complete or the expiration of the fourteen (14) days described above, unless the application has been declared incomplete, shall be considered the date the application is administratively complete.

(D) *Scheduling*: Upon declaration of an administratively complete open space community application, the application shall be placed on the next available agenda for the Planning Commission. The applicant may request it be placed on a later meeting agenda or may request a special meeting, with payment of an additional special meeting fee.



**(E) Right to Enter Property:** Submission of an open space community application shall constitute permission for the Township to access the property to complete onsite investigations for the purpose of administering this Article.

**(G) Transmission of Materials:** The Director of Planning and Zoning or appropriate official or body shall transmit all relevant records and other materials to the Planning Commission.

**(H) Applicant's Responsibilities:** The applicant shall post a public notice sign or signs on the site, clearly visible from each adjacent street and mark the property, at least fifteen (15) days before the public hearing. The public notice sign(s) and marking shall be maintained in good condition until a decision is made.

**(I) Public Hearings:** Open space communities shall be reviewed by the Planning Commission at a public hearing. (LOCATION?)

~~(J)~~**(J) Notice of Hearing:** The Township shall give public notice of the open space community public hearing as outlined in §xx of this Ordinance and **STATE REFERENCE HERE**.

~~(K)~~**(K) Hearing Appearance:** Any party may appear in person or by duly-authorized agent or attorney at public hearings.

~~(L)~~**(L) Hearing Recess:** The Planning Commission may recess public hearings for open space communities from time to time with notice conforming to the requirements of the Open Meetings Act.

~~(M)~~**(M) Planning Commission Review:** The Planning Commission, following a public hearing, shall approve, approve with conditions, deny, or postpone an open space community using the standards in this Article.

**(1) Approval:** If an open space community is approved, the Planning Commission shall cite its reasons for approval and any conditions necessary for approval, and the site plan may be approved. The concurring vote of at least four (4) members of the Planning Commission shall be necessary to approve an open space community.

**(2) Denial:** If an open space community is denied, the Planning Commission shall cite its reasons for denial.

**(3) Postpone:** If the Planning Commission determines that the open space community application does not contain enough information necessary to conduct a review, additional information is necessary, or significant changes are necessary to receive approval, it may postpone review until a later date and shall cite the reasons for postponement.

~~(N)~~**(N) Conditions of Approval:** The Planning Commission may impose reasonable conditions in granting an approval related to the following:

**(1) Health, Safety, & Welfare:** Conditions shall be designed to protect the health, safety, and welfare of those who will use the site under consideration, residents and landowners immediately adjacent to the site, and the community as a whole;

**(2) Public Services & Facilities:** Conditions shall be designed to ensure that public services and facilities affected by a proposed activity will be capable of accommodating the resulting increased service and facility loads;

**(3) Police Power:** Conditions shall be related to the valid exercise of the police power and purposes that are affected by the activity;

**(4) Compliance:** Conditions shall be necessary to ensure compliance with the standards and provisions of this Ordinance, other Township Ordinances, or state and federal law;

~~Recording: here~~

~~(N)~~(O) **Decision Criteria:** The Planning Commission shall approve or approve with conditions an Open Space Community upon finding that all of the following are true:

- (1) *Recognizable & Substantial Benefit:* The open space community shall result in a recognizable and substantial benefit to the ultimate users of the project and the community that would otherwise be unfeasible or unlikely using conventional development;
- (2) *Public Service Capacity:* The open space community shall not place an unreasonable burden on the provision of public services, such as, but not limited to, fire protection, police protection, schools, streets, and utilities;
- (3) *Landscaping:* The landscape shall be preserved in its natural state to a greater extent possible than using conventional development;
- (4) *Open Space Area Design:* The open space area has been located and designed to protect natural features and preserve important natural areas and views to a greater extent possible than using traditional development; and
- (5) *Economic Impact:* The open space community shall not impede the continued use or development of surrounding properties for uses permitted on those properties.

~~(O)~~(P) **Timely Decisions:** The Planning Commission shall render its decision within sixty (60) days of the date the application is administratively complete, unless a delay is agreed to by the applicant and the Planning Commission. The decision shall become final upon adoption of meeting minutes or signing of a resolution by the Township, whichever occurs first.

~~(P)~~(Q) **Acceptance of Conditions:** Open space community approval shall only be effective upon acceptance of the approval and any conditions of the approval by the applicant.

~~(Q)~~(R) **Copies of Open Space Community Plan:** The applicant shall submit four (4) hard copies and a digital copy, in a format acceptable to the Township, of the open space community plan. Two hard (2) copies shall be returned to the applicant after they have been stamped and signed.

- (1) *Modifications and Conditions:* The plan shall include any modifications and conditions required for approval.
- (2) *Signatures:* The plan shall be stamped and signed by the Planning Commission Chair or Acting Chair and the Director of Planning and Zoning and signed by the applicant.
- (3) *Record:* The plan shall become a part of the record.

~~(S) Recording:~~ The applicant shall record a description of the project with the Register of Deeds, including the full legal description, the date of Township approval, and a declaration that all of the improvements will be installed as approved, with the Register of Deeds. ~~The approval shall not be effective until the Township is provided with copies of this recording. This recording may be included as part of a development agreement.~~

(1) Township Approval: The document shall be reviewed and approved by the Township before recording.

(2) Information: The document shall include at least the following information:

- a. Legal Description: A full legal description for the property;
- b. Approval Date: The date of the Township's approval;
- c. Conditions: Conditions of approval;
- d. Development Standards: A list of the development standards;

e. *Modification of Standards:* A list of modifications of standards; and

f. *Declaration:* A declaration that all of the improvements shall be installed as approved.

(3) *Permits:* The Township shall not issue any permits for the project and work shall not commence until the Township receives a copy of the recorded document.

(4) *Development Agreement:* The document may be incorporated as part of the development agreement.

~~(R)~~(T) *Expiration:* Open space community approval shall be valid for a period from the date of approval, as outlined below.

(1) *Site Plan:* ~~When an open space community will be a subdivision or site condominium, A~~an application for a site plan review shall be submitted within eighteen (18) months ~~for open space communities that will be a subdivision or site condominium~~from the date that the open space community was approved or the open space community shall be expired.

(2) *Land Division:* ~~When an open space community will be a land division, A~~an application for a land division shall be submitted within six (6) months ~~for open space communities that will be a land division~~from the date that the open space community was approved or the open space community shall be expired.

(3) *Effect:* Open space community applications that have expired shall be resubmitted for review as a new application.

(4) *Extension Request:* If an application for an extension has been submitted before the expiration date, the Open Space community shall remain valid until the Director of Planning and Zoning makes a decision.

~~(S)~~(U) *Extension:* The Director of Planning and Zoning may grant one (1) extension of an approved open space community for a period of up to one (1) year, upon finding that all of the following are true:

(1) *Application Date:* The application for an extension was submitted prior to the expiration date;

(2) *Applicant effort:* The applicant has made a good-faith effort to submit a final site plan application in a timely manner, and the delay was not the result of actions or inaction of the application;

(3) *Substantial Changes:* There have been no substantial changes on abutting properties since the original approval that would raise concern of the impact of the approved open space community on those properties or the site; and

(4) *Current Standards:* The approved open space community shall be in compliance with this Ordinance at the time of extension.

~~(T)~~(V) *Amendments:* An associated site plan may be amended as part of site plan review if all of the following criteria are met:

(1) *Open Space Area:* The amendments do not reduce the quantity or quality of the open space area from what was originally approved;

(2) *Number of Lots:* The amendments do not increase the quantity of individual lots or dwelling units; and

(3) *Original Approval:* The amendments are consistent with the intent of the original approval.

~~(U)~~(W) **Rehearing:** A rehearing shall be processed in the same manner as the original application, including a new fee, unless initiated by the Planning Commission or Township Board. A request for a rehearing shall be made within thirty (30) days of the decision becoming final. The only grounds upon which a rehearing of a previously-denied site plan shall be granted is if the approving authority, upon inspection, finds one (1) or more of the following to be true:

- (1) *New Evidence:* Newly-discovered evidence is available;
- (2) *Inaccurate Evidence:* Evidence previously relied upon is found to be inaccurate; or
- (3) *Procedures:* Proper procedures were not followed.

~~(V)~~(X) **Reapplication:** An open space community application that has been denied shall not be resubmitted for a period of one (1) year from the date the decision became final, unless:

- (1) *Changed Conditions:* The Planning Commission, upon inspection, finds proof of changed conditions that contributed to the denial; or
- (2) *Changes to the Application:* Substantial changes have been made to the open space community that addresses the reason(s) for denial.

~~(W)~~(Y) **Revocation:** An approved ~~Open-open Space-space Community-community~~ may be revoked by the Planning Commission as outlined below.

- (1) *Notice:* The applicant shall receive notice of the possible revocation, including the time and place the revocation will be considered and the reason(s) for the revocation.
- (2) *Public Hearing:* The revocation shall be heard at a public hearing.
- (3) *Decision Criterial:* In order to revoke an approved open space community, the Planning Commission shall find any of the following to be true:
  - a. *Ordinance Standard:* The execution or use of a **Zoning Permit/ Preliminary Certificate of Zoning Compliance** related to the approval is not consistent with a standard of this Ordinance as it existed at the time of approval;
  - b. *Condition of Approval:* The execution or use of a **Zoning Permit/ Preliminary Certificate of Zoning Compliance** related to the approval is not consistent with any condition of approval;
  - c. *Commitments:* The execution or use of a **Zoning Permit/ Preliminary Certificate of Zoning Compliance** related to the approval is not consistent with any written commitment; or
  - d. *Fraud:* The approval was a result of fraud or misrepresentation of facts.
- (4) *Effect:* Upon revocation of an open space community, all activity shall cease immediately, except for work directly related to securing the site or correcting a violation.

~~(X)~~(Z) **Suspension:** An approved open space community may be suspended temporarily and immediately by the Planning Commission as outlined below.

- (1) *Notice:* The applicant shall receive notice of the possible suspension, including the time and place the suspension will be considered and the reason(s) for the suspension.
- (2) *Public Hearing:* A public hearing shall not be necessary for suspension of an approved open space community.

- (3) *Decision Criteria:* In order to suspend an approved open space community, the Planning Commission shall find both of the following to be true:
  - a. *Threat:* An severe and immediate threat exists to the health, safety, and welfare of neighboring persons or properties; and
  - b. *Delay:* The delay required for noticing would be detrimental to efforts to mitigate or respond to the threat.
- (4) *Effect:* Upon suspension of an open space community, all activity shall cease immediately, except for work directly related to securing the site or correcting a violation as approved by the Director of Planning and Zoning.

## § XX.50 - MODIFICATION OF STANDARDS

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The Planning Commission may modify specific standards of this Ordinance as part of open space community review, as outlined below.

**(A) District Developmental Standards:** The standards of the underlying zoning district, including, but not limited to, setbacks, lot coverage, lot area, or lot width, may be modified, as outlined below.

- (1) *Decision Criteria:* In order to grant a modification of district developmental standards, the Planning Commission shall make a written finding that all of the following are true:
  - a. *Recognizable & Substantial Benefit:* The open space community shall result in recognizable and substantial benefit to the ultimate users and the community;
  - b. *Higher-Quality Development:* The open space community shall result in a higher-quality development than that permitted by the underlying zoning district; and
  - c. *Modification Necessary:* The recognizable and substantial benefit and higher-quality development ~~would-could~~ not be achieved without the modification.
- (2) *Limitations:* All lot widths and frontages shall be at least fifty (50) feet, and all lot areas shall be adequate to fit any necessary on-site water or septic system.
- (3) *Documentation:* The open space community application shall list all of the requested modified district developmental standards, and the approved plan shall list all of the modified district developmental standards that were approved by the Planning Commission.

**(B) Design Standards:** The design standards of this Article may be modified, as outlined below.

- (1) *Decision Criteria:* In order to grant a modification of design standards, the Planning Commission shall make a written finding that all of the following are true:
  - a. *Intent & Purpose:* The modification shall be consistent with the intent and purpose of open space communities;
  - b. *Public Purpose:* Strict adherence to the standard will not serve a valid public purpose;
  - c. *Higher-Quality:* The modification shall be necessary to achieve a higher-quality development than would be possible otherwise; and
  - d. *Nuisance & Safety:* The modification shall not create a nuisance or safety hazard.

(2) *Limitations:* HERE (SECTION x.35)

- (3) *Documentation:* The open space community application shall list all of the requested modified design standards, and the approved plan shall list all of the modified design standards that were approved by the Planning Commission.

(C) *Open Space Area Standards:* The open space area standards of this Article may be modified, as outlined below.

- (1) *Decision Criteria:* In order to grant a modification of district developmental standard, the Planning Commission shall make a written finding that all of the following are true:

- a. *Intent & Purpose:* The modification shall be consistent with the intent and purpose of open space communities;
- b. *Public Purpose:* Strict adherence to the standard will not serve a valid public purpose;
- c. *Higher-Quality:* The modification shall be necessary to achieve a higher-quality development than would be possible otherwise; and
- d. *Nuisance & Safety:* The modification shall not create a nuisance or safety hazard.

- (2) *Limitations:* Modifications shall be limited to the design and location of open space area. (LIST THE SECTIONS?)

- (3) *Documentation:* The open space community application shall list all of the requested modified open space area standards, and the approved plan shall list all of the modified open space area standards that were approved by the Planning Commission.

(D) *Street Standards:* The standards for private streets in the Street Ordinance may be modified, as outlined below.

- (1) *Decision Criteria:* In order to grant a modification of a street standard, the Planning Commission shall make a written finding that all of the following are true:

- a. *Intent & Purpose:* The modification shall be consistent with the intent and purpose of Street Ordinance and open space communities;
- b. *Public Safety & Access:* The modification shall still allow for unobstructed, safe, and continuous access to all lots and common areas for everyday use and emergency responders;
- c. *Other Improvements:* The modification shall still allow adequate room for the street, utilities, and drainage;
- d. *Parking:* There is adequate space for visitor parking within the development;
- e. *Pedestrian Circulation:* The modification shall not have a negative impact on pedestrian circulation; and
- f. *Higher-Quality:* The modification shall be necessary to achieve a higher-quality development than would be possible otherwise.
- g. *Nuisance & Safety:* The modification shall not create a nuisance or safety hazard.

- (2) Limitations: Modifications shall be limited to the following:
- a. Private Streets: Streets that will not be dedicated to the Road Commission;
  - b. Right-of-way: The right-of-way width;
  - c. Cul-de-sac: Cul-de-sac configuration;
  - d. Curve Radii: The curve radius of the street; and
  - e. Street Width: The width of the street.
- (3) Documentation: The open space community application shall list all of the requested modified street standards, and the approved plan shall list all of the modified open space area standards that were approved by the Planning Commission.

**End of Article XX.**

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