

ARTICLE XX

OPEN SPACE PRESERVATION

§ X.05 - INTENT & PURPOSE

The intent and purpose of this Article is to:

- ~~(A) Allow for a higher quality of residential development than could otherwise be achieved with conventional development;~~
- (A) Provide alternate development options that comply with MCL 125.3506 (Public Act 110 of 2006), as a qualified local unit of government; and
- (B) Preserve ~~natural drainage systems,~~ open space, ~~farmlands~~agricultural lands, rural character, woodlands, wetlands, natural drainage systems, natural topography, environmentally-sensitive areas, ~~and existing natural vegetation, and other natural features;~~
- (C) Allow development that is consistent with the Township's Master Plan;
- (D) Reduce soil erosion by limiting the amount of clearing and grading necessary for development; and
- ~~(E)(A) Provide alternate development options that comply with MCL 125.3506 (Public Act 110 of 2006), as a qualified local unit of government; and~~
- ~~(F)~~(E) Develop Establish the standards and the review process for open space preservation developments.

§ X.10 - AUTHORITY

- (A) **Open Space Preservation:** Authority to approve, approve with conditions, or deny open space preservation shall be with the Planning Commission.
- (B) **Conservation Easement:** Authority to approve, approve with conditions, or deny an open space preservation conservation easement shall be with the Township Board, with advice from the Township Attorney.
- (C) Variance Review:** Authority to approve, approve with conditions, or deny a variance associated with open space preservation shall be with the Zoning Board of Appeals.
- (D) **Appeal of Decision:** Authority to hear an appeal of an open space preservation decision shall be with the Zoning Board of Appeals.

§ x.15 - QUALIFYING CONDITIONS

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

- (A) **Zoning District:** The property shall be located in a Rural Residential (RR) or Agriculture (A) Zoning District.
- (B) **Unified Control:** The property shall be under single ownership or control.
- (C) **Property Size:** The property shall ~~be have a lot area of~~ at least five (5) acres in size and shall not be divided by an existing street.
- (D) **Water & Sewer:** The open space preservation development shall not be dependent on extension of a **municipal water or sewer system** unless the conventional development of the land would also depend on an extension of a municipal water or sewer system.
- (E) **No Previous Open Space Preservation:** The open space preservation or open space community option has not been previously used for any of the property.

§ x.20 - DENSITY CALCULATIONS

The maximum density in an open space preservation development shall be determined as outlined below.

- (A) **Number of Lots:** The maximum number of lots shall not exceed the number of lots that could be created in a conventional plan.
- (B) **Conventional Plan:** A conventional plan showing how the site could be developed, according to the underlying zoning standards and other local, county, state, and federal standards, shall be provided by the applicant. Detailed engineering, such as finished grading and stormwater details, shall not be required, unless the approving authority determines that information is necessary to determine the feasibility of the conventional plan.
- (C) **Feasibility:** If the approving authority determines that the conventional plan is not feasible, the conventional plan shall be revised and resubmitted.
- (D) **Conventional Plan Waiver:** The approving authority may waive the requirement for a conventional plan if it makes a written finding that the number of proposed lots is significantly below what would be feasible for the site. The applicant shall request such a waiver in writing at the time of application.

§ x.25 - DESIGN STANDARDS

Open space preservation shall meet the design standards outlined below.

- (A) **Open Space:** At least fifty (50) percent of the area of the total project ~~site parcel~~ shall remain as open space.
- (B) **Lot Area:** The approving authority may approve reduced lot areas from that required by the underlying zoning district. Lots with on-site septic systems shall have a lot area of at least one (1) acre or be large enough to accommodate two drain fields, according to the Environmental Health Department, whichever is greater.
- (C) **Lot Width & Frontage:** The approving authority may approve reduced lot widths and frontages from those required by the underlying zoning district, but all lots shall be at least sixty-six (66) feet wide.
- (D) **Setbacks:** The setbacks shall be the same as those setbacks for the underlying zoning district.

- (E) **Lot Coverage:** The approving authority may approve increased lot coverage for the individual lots from that required by the underlying zoning district by up to **XX** percent.
- (F) **Utilities:** All utilities serving lots in an open space preservation development shall be installed underground.
- (G) **Fire Protection:** Fire protection measures, such as (DRY) hydrants or other on-site water supply, shall be provided in an open space preservation development that has public water or lot areas of one half (0.5) acres or less.
- (H) **Lot Access:** Lots within an open space preservation development shall have access from either an internal private road-street or shared driveway. Lots shall not have individual driveways from public streets.
- (I) **Pedestrian Circulation:** A pedestrian circulation system shall provide easy access from all of the lots to the open space. The approving authority may require that the system be installed along one side or both sides of the internal streets.
- (J) **Natural Features:** The development shall be designed to promote the preservation of natural features, including, but not limited to, scenic vistas, mature woodlands, landmark trees, wetlands, floodplains, waterbodies, steep slopes, and special plant and animal habitats.

§ **X**.30 - PERMITTED USES

Open space area and individual lots within open space preservation developments may be used as outlined below.

- (A) **Lots:** ~~Individual lots shall have the same permitted uses, special land uses, and accessory uses as the underlying zoning district in which the open space preservation development is located~~ Use of individual lots shall be limited to residential uses that are permitted in the underlying zoning district.
- (B) **Open Space:** Use of open space shall be limited to agriculture, outdoor recreation, hunting, recreational trails, parks, playgrounds, and similar uses.

§ **X**.35 - OPEN SPACE STANDARDS

Open space used to calculate the required area of open space shall meet the standards outlined below.

- (A) **Not Eligible Open Space:** The following areas shall not be considered as open space:
- (1) **Lots:** Any individual lot within the development that will be used for a dwelling, club house, or other similar structure or use;
 - (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) **Overhead Utilities:** Fifty (50) percent of easements for overhead utility lines;
 - (6) **Stormwater Management:** Stormwater detention and retention ponds;
 - (7) **Septic System:** Community sewage system drain field, treatment pond, or other treatment facilities ~~drain fields~~;
 - (8) **Waterbodies:** Creeks, rivers, ~~and~~ lakes, and ponds;

(9) *Wetlands & Ponds*: Fifty (50) percent of the area of wetlands ~~and ponds~~;

(10) *Floodplains*: Fifty (50) percent of the area within a floodplain; and

(11) *Slopes*: Fifty (50) percent of steep slope areas. (DEFINITION).

(B) 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.

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

~~(B)~~ (D) Standards: Open space within an open space preservation development shall meet the standards outlined below.

(1) *Accessibility*: The open space shall be available and accessible to all residents of the development. Safe and convenient pedestrian access points shall be provided.

(2) *Waterbody*: If the project parcel contains a waterbody or is adjacent to the waterbody, the approving authority may require that all or a portion of the open space abut the waterbody.

~~(3) Street Frontage~~: ~~A portion of the open space shall be located along public street frontage and shall have a depth of at least fifty (50) feet from the right-of-way.~~

~~(4)~~ (3) Preservation: Open spaces shall be located to preserve significant natural resources, scenic vistas, natural features, mature woodlands, landmark trees, wetlands, waterbodies, agricultural land, steep slopes, and special plant and animal habitats.

~~(C)~~ (E) Guarantee: Open space shall be guaranteed through an irrevocable recorded document, approved by the Township, recorded with the Register of Deeds, with a copy provided to the Township.

(1) *Methods of Guarantee*: The open space may be preserved through a recorded deed restriction, covenants that run perpetually with the land, dedication to a land conservancy, or conservation easement established by the State of Michigan Conservation and Historic Preservation Act, MCL 324.2140 (PA 197 of 1980).

(2) *Use Limitations*: The guarantee shall assure that open space will be protected from development, except that shown on an approved plot plan, and that the following activities shall be prohibited:

a. *Dumping*: Dumping and storage of any material or refuse;

b. *Soil Disturbance*: Activities that increase soil erosion or threaten living plant materials;

c. *Off-road Vehicles*: Use of motorized, off-road vehicles, except those used for maintenance;

d. *Plant Removal*: Cutting or removal of live plant material, except for dying or diseased vegetation, invasive species, seasonal pruning, necessary maintenance, and agricultural products;

e. *Wetland*: Cutting, filling, or removal of vegetation from wetland areas; and

f. *Chemicals*: Use of pesticides, herbicides, or fertilizers within or adjacent to wetlands and waterbodies.

§ x.40 - REVIEW PROCESS

Open space preservation applications shall be reviewed as outlined in this Section below.

(A) Application Materials: An application shall include the following materials:

- (1) *Application Form:* A signed and completed application form;
- (2) *Fee:* An application fee, as outlined in the adopted fee schedule;
- (3) *Site Plans or Survey:* 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; ~~and~~
- (4) *Conventional Plan:* A conventional plan showing how the site could be developed using conventional zoning standards;
- ~~(4)~~(5) *Master Deed:* A draft master deed for the development;
- ~~(5)~~(6) *Conservation Guarantee:* A draft of the documents guaranteeing the conservation of the open space; and
- ~~(6)~~(7) *Additional Materials:* Any additional information determined necessary by the Director of Planning and Zoning.

(B) Review of Completeness: An open space preservation application 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) business 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. This period may be extended at the applicant's request in writing. If the review letter is not issued within the above period, it 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) day period described above, unless the application has been declared incomplete, shall be considered the date the application is administratively complete.

(C) Scheduling: Upon declaration of an administratively complete open space preservation application by the Director of Planning and Zoning, 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.

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

~~(C)~~(E) *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.

~~(D)~~(F) *Applicant's Responsibilities:* The applicant shall post a public notice sign or signs, provided by the Township, 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.

~~(E)~~(G) *Notice of Hearing:* The Township shall give public notice of the open space preservation hearing, as outlined in Section XX of this Ordinance and STATE REFERENCE HERE.

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

(I) *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.

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

- (1) *Approval:* If an open space preservation application is approved, the Planning Commission shall cite its reasons for approval and any conditions necessary for approval, and the applicant may apply for a site plan approval. The concurring vote of at least four (4) members of the Planning Commission shall be necessary to approve an open space preservation application.
- (2) *Denial:* If an open space preservation application is denied, the Planning Commission shall cite its reasons for denial.
- (3) *Postpone:* If the Planning Commission determines that the open space preservation application does not contain enough information 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.

(K) *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;

(5) *Recording:* HERE

(L) *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.

(M) *Acceptance of Conditions:* Open space preservation approval shall only be effective upon acceptance of the approval and any conditions of the approval by the applicant.

(G)(N) *Copies of Site-Open Space Preservation Plan:* The applicant shall submit four (4) hard copies and a digital copy, in a format acceptable to the Township, of ~~the associated site plan for~~ the open space preservation plan. Two hard (2) copies shall be returned to the applicant after they have been stamped and signed.

- (1) *Modifications and Conditions:* The ~~site~~ plan shall include any modifications and conditions required for approval.

(2) *Signatures:* The ~~site~~ 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 ~~site~~ plan shall become a part of the record.

~~(H)~~**(O)** *Expiration:* Open space preservation approval shall be valid for ~~eighteen (18) months~~ a period from the date of approval, as outlined below.

~~(1)~~ *Site Plan Application:* An application for a site plan review shall be submitted within ~~this time~~ eighteen (18) months for open space preservation that will be a subdivision or site condominium or the open space preservation approval shall be considered expired.

~~(1)~~~~(2)~~ *Land Division Application:* An application for a land division shall be submitted within six (6) months for open space preservation that will be a land division or the open space preservation approval shall be considered expired.

~~(2)~~~~(3)~~ *Effect:* Open space preservation applications that have expired shall be resubmitted for review as a new application.

~~(3)~~~~(4)~~ *Extension Request:* If an application for an extension has been submitted ~~prior to~~before the expiration date, the ~~preliminary site plan~~ open space preservation approval shall remain valid until the Director of Planning and Zoning makes a decision.

(P) *Extension:* The Director of Planning and Zoning may grant one (1) extension of an open space preservation approval 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 before the expiration date;

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

(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 preservation on those properties or on the site; and

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

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

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

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

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

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

(1) *Changed Conditions:* The approving authority, upon inspection, finds proof of changed conditions that contributed to the denial; or

(2) *Changes to Site Plan Open Space Preservation:* Substantial changes have been made to the open space preservation ~~development application~~ that addresses the reasons for denial.

~~(K) **Extension:** The Director of Planning and Zoning may grant one (1) extension of an open space preservation approval 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 before the expiration date;~~
- ~~(2) **Applicant Effort:** The applicant has made a good faith effort to submit a site plan application in a timely manner, and the delay was not the result of actions or inaction of the applicant;~~
- ~~(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 preliminary site plan on those properties or on the site; and~~
- ~~(4) **Current Standards:** The approved open space preservation development shall be in compliance with this Ordinance at the time of extension.~~

~~(L)~~(S) **Revocation:** An open space preservation approval may be revoked by the approving authority as outlined below.

- (3) **Notice:** Notice shall be sent to the applicant of the possible revocation, including the time and place the revocation will be considered and the reason for the revocation.
- (4) **Public Hearing:** The revocation shall be heard at a public hearing.
- (5) **Decision Criteria:** In order to revoke an open space preservation approval, the approving authority shall find any one (1) of the following to be true:
 - a. **Ordinance Standard:** The execution or use of a **Preliminary Certificate of Zoning Compliance** related to the open space preservation approval is not consistent with a standard of this Ordinance as it existed at the time of approval;
 - b. **Site Plan and Conditions:** The execution or use of the site plan or a **Preliminary Certificate of Zoning Compliance** related to the open space preservation approval is not consistent with the approved open space preservation development, any condition of approval, or any written commitment; or
 - c. **Fraud:** The approval was a result of fraud or misrepresentation of facts.
- (6) **Effect:** Upon revocation of an open space preservation, 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.

~~(T) **Suspension:** An open space preservation approval 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 open space preservation approval, 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.

End of Article xx.

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