

## ARTICLE XX

## OPEN SPACE PRESERVATION

## § X.05 - INTENT &amp; PURPOSE

The intent and purpose of this Article is to:

- (A) Provide alternate development options that comply with MCL 125.3506 (Public Act 110 of 2006), as a qualified local unit of government;
- (B) Preserve open space, agricultural lands, rural character, woodlands, wetlands, natural drainage systems, natural topography, environmentally-sensitive areas, 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) 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) **Appeal of Decision:** Authority to hear an appeal of an open space preservation decision made by the Planning Commission shall be with the Zoning Board of Appeals.
- (C) **Conservation Guarantee:** Authority to approve, approve with conditions, or deny an open space preservation conservation guarantee shall be with the Township Board.

## § 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) District or Agriculture (A) District.
- (B) **Unified Control:** The applicant shall have complete ownership or control of the area for the proposed open space preservation.
- (C) **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.
- (D) **No Previous Open Space:** The open space preservation or open space community option has not been previously used for any of the property to be developed as part of the open space preservation.

## § X.20 - DENSITY CALCULATIONS

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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 shall serve as the basis for determining the number of lots in the open space preservation.
- (1) **Conventional Plan:** The conventional plan shall show 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. The Director of Planning and Zoning or the Planning Commission may require that the conventional plan show detailed engineering, such as finished grading, stormwater details, and features that may impede development, upon determination that such 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.
- (C) **Conventional Plan Waiver:** The Planning Commission 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

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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 parcel shall remain as open space.
- (B) **Lot Area:** The Planning Commission 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 shall be able to meet the Environmental Health Department standards, whichever is greater.
- (C) **Lot Width & Frontage:** The Planning Commission 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 Planning Commission may approve increased lot coverage for the individual lots from that allowed in the underlying zoning district by up to fifty (50) percent.
- (F) **Utilities:** All utilities within an open space preservation development shall be installed underground.
- (G) **Fire Protection:** Fire protection measures, such as fire hydrants or other on-site water supply, shall be provided in an open space preservation development that has a municipal or community water system 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 street or a 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 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

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

- (A) **Lots:** 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

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

- (A) **Not Open Space:** The following areas shall not be considered as open space for purposes of determining the required 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;
  - (8) **Waterbodies:** Creeks, rivers, and lakes;
  - (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.
- (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.

(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) **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.

(E) **Conservation 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 or pest species, seasonal pruning, necessary maintenance, and agricultural products;
  - e. **Wetland:** Cutting, filling, or removal of vegetation from wetland areas; and
  - f. **Chemical Use:** Use of pesticides, herbicides, or fertilizers within or adjacent to wetlands and waterbodies.

## § X.40 - REVIEW PROCESS

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Open space preservation applications shall be reviewed as outlined below.

(A) **Application Materials:** The applicant shall submit a complete and accurate open space preservation 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 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. If the application is being reviewed at the same time as a site plan, additional copies are not needed for the open space preservation 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; and
  - (7) *Additional Materials:* Any additional information determined necessary by the Director of Planning and Zoning in order to determine compliance with this Ordinance and other applicable laws.
- (B) **Preapplication Meeting:** The applicant shall meet with Township Officials, other agencies, and other interested parties before submission of an open space preservation 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.
  - (8) *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 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.

- (D) **Scheduling:** Upon declaration of an administratively complete open space preservation 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 preservation application shall constitute permission for the Township to access the property to complete onsite investigations for the purpose of administering this Article.
- (F) **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.
- (G) **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.
- (H) **Public Hearings:** Open space preservation shall be reviewed by the Planning Commission at a public hearing.
- (1) **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.
  - (2) **Hearing Appearance:** Any party may appear in person or by duly-authorized agent or attorney at public hearings.
  - (3) **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.
- (I) **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.
- (J) **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:* The applicant shall record a description of the project, including the legal description and conditions of approval. The document shall be reviewed and approved by the Township before recording, and a copy of the recorded document shall be provided to the Township.
- (K) 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.
- (L) 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.
- (M) Copies of 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 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 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.
- (N) Expiration:** Open space preservation approval shall be valid for 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 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.
  - (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.
  - (3) *Effect:* Open space preservation 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 preservation approval shall remain valid until the Director of Planning and Zoning makes a decision.
- (O) 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.
- (P) *Amendments:* An associated site plan may be amended as part of site plan review by the Planning Commission 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.
- (Q) *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 Open Space Preservation:* Substantial changes have been made to the open space preservation application that addresses the reasons for denial.
- (R) *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.
- (S) *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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