

ARTICLE 14

OPEN SPACE PRESERVATION

§14.05 - INTENT & 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 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.

§14.10 - AUTHORITY

- (A) **Open Space Preservation:** Authority to approve, approve with conditions, ~~or deny~~, or amend open space preservation shall be with the Planning Commission.
- (B) **Appeal of Decision:** The Planning Commission decision for open space preservation shall be final and may not be appealed to 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.

§14.15 - 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 Agricultural (AG) District.
- ~~(B)~~ **Unified Control:** The applicant shall have ownership and/or control of all of the area for the proposed open space preservation.
- ~~(C)~~ **Contiguous:** All property included in an open space preservation shall be contiguous.
- ~~(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:** 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.

§14.20 - PERMITTED USES

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) **Utilities:** Utility systems supporting the open space preservation development, such as a community well or community septic system.
- (C) **Open Space:** Use of open space shall be limited to agriculture, outdoor recreation, hunting, recreational trails, parks, playgrounds, and similar uses.

§14.25 - DESIGN STANDARDS

Open space preservation shall meet the design standards outlined below.

- (A) **Lot Area:** The Planning Commission may approve reduced lot areas from that required by the underlying zoning district for individual lots. 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.
- (B) **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.
- (C) **Setbacks:** The setbacks shall be the same as those setbacks for the underlying zoning district.
- (D) **Building Coverage:** The Planning Commission may approve increased building coverage for the individual lots from that allowed in the underlying zoning district by up to fifty (50) percent.
- (E) **Utilities:** All utilities within an open space preservation development shall be installed ~~underground~~ as outlined in §27.15 of this Ordinance.
- (F) **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.
- (G) **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.
- (H) **Non-motorized Circulation:** A non-motorized circulation system shall provide easy access from all of the lots to the open space area.
- (I) **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.

§14.30 - OPEN SPACE STANDARDS

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

- (A) **Minimum Open Space:** The open space area shall be at least fifty (50) percent of the area of the **total project parcel** before development.
- (B) **Not Open Space:** The following areas shall not be considered as open space area for purposes of determining the required open space area:
- (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 high-voltage utility lines;
 - (6) *Septic System:* Community sewage system drain field, treatment pond, or other treatment facilities;
 - (7) *Waterbodies:* Creeks, rivers, and lakes;
 - (8) *Wetlands & Ponds:* Fifty (50) percent of the area of wetlands and ponds; and
 - (9) *Floodplains:* Fifty (50) percent of the area within a floodplain.
- (C) **Structures:** Structures within the open space area shall be limited to a cumulative maximum building coverage of one (1) percent of the open space area.
- (D) **Ownership & Control:** The open space area shall be owned and controlled by a homeowners' association or nonprofit land or nature trust or conservancy.
- (E) **Standards:** Open space area within an open space preservation development shall meet the standards outlined below.
- (1) *Accessibility:* The open space area shall be available and accessible to all residents of the development. Safe and convenient nonmotorized 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 space area 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.
- (F) **Conservation Guarantee:** Open space area 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 area 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 (Public Act 197 of 1980).

- (2) *Use Limitations:* The guarantee shall assure that open space area 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.

§14.35 - ~~DENSITY CALCULATIONS~~ NUMBER OF LOTS

The maximum ~~density~~ number of lots 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.

§14.40 - REVIEW PROCESS

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. Submission of an application constitutes a representation that all the information is complete and accurate. An application for an open space community shall include all of the following relevant 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. 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, as outlined in §24.20 of this Ordinance.
- (C) **Review of Completeness:** An open space preservation application shall be reviewed by the Director of Planning and Zoning for completeness, as outlined in §24.10(C) of this Ordinance.
- (D) **Review of Conventional Plan:** The conventional plan shall be reviewed as outlined below.
- (1) *Approving Authority:* The Director of Planning and Zoning, in consultation with other Township and agency officials, shall determine if the conventional plan is feasible. Upon written request of the applicant or the Director of Planning and Zoning, the Planning Commission shall be the approving authority.
 - (2) *Feasibility:* If the approving authority determines that a conventional plan could not feasibly be developed, it shall provide a list of areas requiring attention.
- (E) **Scheduling:** Upon declaration of an administratively complete open space preservation application, and, if the Director of Planning and Zoning is the approving authority, a feasible conventional plan 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.
- (F) **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.

(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.

(G)(H) Contact with Planning Commissioners (Ex-parte Contact): Direct communication with members of the Planning Commission before a hearing with the intent to influence the member's action or decision shall be prohibited. Written comments may be submitted to the Director of Planning and Zoning for distribution to the Planning Commission. This shall not prohibit the Director of Planning and Zoning from promulgating staff reports and other related materials to the Planning Commission.

(H)(I) Public Hearings: Open space preservation shall be reviewed by the Planning Commission at a public hearing, as outlined in §24.40 of this Ordinance.

(H)(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 or land division. 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)(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.

(K)(L) Conditions of Approval: The Planning Commission may impose reasonable conditions in granting an approval, as outlined in §24.45 of this Ordinance.

(L)(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.

(M)(N) 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 & 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)(O) Recording: The applicant shall record a description of the project with the Register of Deeds, with a copy provided to the Township.

- (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 specific developmental standards for the open space preservation;
 - 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.
- ~~(O)~~(P) *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. The open space preservation approval shall remain valid while the site plan application is being processed.
 - (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 approvals 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.
- ~~(P)~~(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 making a written 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.

- ~~(Q)~~**(R) 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.
- ~~(R)~~**(S) Rehearing:** A request for a rehearing shall be submitted within (30) days of the decision becoming final and shall be processed as outlined in §24.55 of this Ordinance.
- ~~(S)~~**(T) 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, except as permitted in §24.60 of this Ordinance.
- ~~(T)~~**(U) Suspension:** An open space preservation approval may be suspended temporarily and immediately by the Planning Commission, as outlined in §24.65 of this Ordinance.
- ~~(U)~~**(V) Revocation:** An open space preservation approval may be revoked by the approving authority, as outlined in §24.70 of this Ordinance.

End of Article 14.

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