

**ARTICLE 22.50
RESIDENTIAL OPEN SPACE PRESERVATION
DEVELOPMENT OPTION**

Section 22.51 PURPOSE

The purpose of the Open Space Preservation Option is to comply with Section 16(h) as added to the Township Zoning Act Public Act 184 of 1943 by Public Act 177 of 2001 (Act 177). Act 177 requires Township to provide an “Open Space Preservation” option to landowners which provides for the same maximum number of home sites to be developed but which allows them to be clustered on no more than 50% of the land. Act 177 requires that the remaining land, which must be in excess of 50% exists perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant or other legal means which runs with the land. The intent of the Section is to establish the procedures and standards for review and approval of developments under the Open Space Preservation Option and to ensure full compliance with the regulations in this Ordinance and other applicable Ordinances and State and Federal regulations.

Section 22.52 STATEMENT OF PRINCIPLES

The Open Space Preservation Option is an optional method of development that shall be permitted after review and recommendation by the Planning Commission, a public hearing, and approval of the Township Board after having found that the proposed Open Space Preservation Option meets the following requirements:

- Section 22.52.1 The land proposed to be developed is zoned at a density equivalent to two or fewer dwelling units per acre or if the land is served by public sewer system, three or fewer dwelling units per acre which includes specifically the R1E, RIA, RID Residential and Ag Agricultural zoning classifications.

- Section 22.52.2 Not less than 50% of the land area will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

- Section 22.52.3 The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the development option provided by this provision would also depend upon such an extension.

- Section 22.52.4 The development option provided pursuant to this Section has not previously been exercised with respect to the subject property.

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Section 22.53 CHANGE OF DENSITY

No application shall be accepted for any use which would exceed the overall density permitted in the zoning district.

Section 22.54 APPLICATION

An application for the Open Space Preservation Option shall be made by the owners of any tract where use of the Open Space Preservation Option is contemplated. The application shall be accompanied by a fee and shall cover the cost of evaluating the plan as to the principles and requirements set forth in this Article.

Section 22.55 APPLICATION INFORMATION

An application for approval of the Open Space Preservation Option shall contain the following information:

Section 22.55.1 A metes and bounds survey of the acreage comprised in the proposed Open Space Preservation Option development.

Section 22.55.2 A topographic survey including natural and man-made features at a scale of 1 inch equals 50 feet or 1 inch equals 100 feet with a contour interval not to exceed 2 feet.

Section 22.55.3 A Site Analysis which identifies the character, structure and potential of the site as it relates to this Section. The analysis shall include a minimum of the following:

Section 22.55.3(a) Contiguous land uses

Section 22.55.3(b) Topography

Section 22.55.3(c) Drainage

Section 22.55.3(d) Soils

Section 22.55.3(e) Vegetation

Section 22.55.3(f) Existing conditions including structures, utilities and vehicular circulation.

Section 22.55.3(g) Special features. All portions of land that are unbuildable for residential purposes due to the presence of wetlands, severe slopes, flood plains or other features prohibiting residential development.

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Section 22.55.4 The General Development Plan for the Open Space Preservation Development Option which shall include:

5.4(a) A clear illustration of the portions of land to remain undeveloped and the portions of land that will be used for the clustered development.

5.4(b) The total number of acres of land to remain undeveloped and total number of acres to be developed and the percentages of each as compared to the total site acreage.

5.4(c) A clear illustration of the proposed lots and building envelopes to include lot area, frontage width and setbacks.

5.4(d) Location and type of all proposed structures and improvements that are not dwelling units.

5.4(e) If the development requires septic tanks and drain fields, the location of each shall be indicated. The applicant shall also provide the required permits of approval from Monroe County Health Department or the Michigan Department of Environmental Quality.

5.4(f) If the development is to be served by public streets, approval of the Monroe County Road Commission as to the design, layout and construction of the streets. If private streets are intended to serve the development, they must conform to the requirements of the Frenchtown Charter Township Zoning Ordinance and Engineering Design Standards Ordinance, as amended.

Section 22.55.5 Parallel Plan. A Parallel Plan shall be submitted with each application. The Plan shall illustrate how the property would be developed under a conventional single family residential development consistent with the existing conventional zoning requirements for the parcel as to lot area, lot width, depth etc. In addition, any area which cannot be developed including such areas as wetlands, etc., shall be excluded in the calculation of developable area. This Plan shall be utilized to compute the total number of lots that may be permitted on any given parcel. In the event that the property could be developed as a conventional one-acre subdivision in an A-Agricultural or an R1-E single-family residential zoning district, and in order to encourage development under this Open Space Preservation Option, a density bonus in the amount of 10% may be permitted if the property is developed under the Open Space

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Preservation Option. The intent of the density bonus is to encourage development under the Open Space Preservation option rather than as a conventional subdivision. The 10% bonus shall be calculated based on the number of units that can be achieved and developed pursuant to the requirements of a conventional one (1) acre single family residential development as shown and submitted to the Planning Commission in the Parallel Plan required pursuant to this Section.

Amended October 12, 2004, by Zoning Ordinance No. 200-69.

Section 22.55.6 Title commitment or other suitable documentation demonstrating that no development rights have been sold or otherwise transferred to any other person, entity or lands.

Amended October 12, 2004, by Zoning Ordinance No. 200-69.

Section 22.56 PUBLIC HEARING REQUIREMENTS

A public hearing shall be held by the Planning Commission on the proposed Open Space Preservation Option Development in order to acquaint the public with the proposal prior to the finishing of detailed plans and specifications by the applicant. Notice of the hearing shall be published in a newspaper which circulates in the Township not less than fifteen days before the application will be considered. The notice shall state that an application for development of the Open Space Preservation Option will be the subject of a public hearing and also should indicate the date, time and place for the public hearing and when and where written comments will be received concerning the request. It shall further describe the property that is the subject of the request.

Section 22.56.1 Open Space Development Requirements: All Open Space Preservation Areas shall meet the following provisions:

6.1(a) Grading in the open space shall be minimal and limited to those areas where accessory uses and/or structures have been approved by the Planning Commission. Existing topography shall be preserved to the extent feasible.

6.1(b) Stormwater management ponds may be included and/or constructed within the open space area provided such basins or ponds shall be designed compatible with the open space areas. These stormwater management facilities shall appear as though they are part of the natural landscape. Fencing adjacent to basin areas shall be prohibited.

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6.1(c) Allowable Structures: Any structure(s) or building(s) accessory to a recreation, conservation or agriculture use may be erected within the open space, subject to approval by the Planning Commission.

Section 22.56.2

Open Space Location: The location of the Open Space Preservation Areas shall meet the following standards to the greatest extent feasible:

6.2(a) In addition to Primary and Secondary Conservation Areas, open space shall be provided along the public street rights-of-way to provide additional buffering from the traffic and enhance views from the roadway provided the open space along such rights-of-way shall generally have a depth of at least fifty (50) feet. The open space along a right-of-way shall be either preserved in a natural wooded condition, or landscaped. The open space shall contain native species and shall have a minimum of one (1) evergreen tree, two (2) shrubs, and one (1) large deciduous tree for each forty (40) linear feet of road frontage. Such plantings shall be planted in staggered rows or clustered into groupings to provide a natural appearance. Preservation of existing trees may be credited, towards meeting the requirement for number of trees listed in this subsection. Berms shall not be permitted.

6.2(b) The open space provides an ecological link to permanent openspace in surrounding lands and is located to connect open spaces, public parks, or bicycle/pedestrian paths throughout the community.

6.2(c) The open space is designed and located to be centrally positioned or in close proximity to all or most of the dwelling units.

6.2(d) All sensitive environmental feature areas, natural features and animal and plant habitats of significant value are included in the Open Space Preservation Areas and are adequately protected.

Section 22.56.3

Guarantee of Open Spaces: The Open Space Preservation Areas shall be set aside by the developer through an irrevocable conveyance or restriction that is found acceptable to the Planning Commission, such a conservation easement, as defined in this Ordinance. Such conveyance shall assure that the open space will

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be protected from all forms of development, except as shown on an approved site plan, and shall not be changed to another use. Such conveyance shall provide for each of the following:

6.3(a) Indicate the proposed allowable use(s) of the dedicated open space. The Planning Commission may require the inclusion of open space restrictions that prohibit the following:

1. Dumping or storing of any material or refuse;
2. Activity that may cause risk of soil erosion or threaten any living plant material;
3. Cutting or removal of live plant material except for removal of dying or diseased vegetation;
4. Use of motorized off-road vehicles;
5. Cutting, filling or removal of vegetation from wetland areas; and/or
6. Use of pesticides, herbicides or fertilizers within or adjacent to wetlands;
7. Any other restriction deemed appropriate by the Planning Commission.

6.3(b) Require that the dedicated open space be maintained by parties who have an ownership interest in the open space, such as a homeowners association;

6.3(b) Provide an open space maintenance agreement that guarantees scheduled maintenance of the open space; and,

6.3(c) Provide for maintenance to be undertaken by Frenchtown Charter Township in the event that the dedicated open space is inadequately maintained, or is determined by the Township to be a public nuisance, with the assessment of costs upon the property owners.

Amended July 8, 2008, by Zoning Ordinance Amendment No. 200-95

Section 22.56.4 Setbacks from Natural Features: A minimum of a fifty foot wide setback shall be required from the edge of any lake, pond, river, stream or wetland, provided that the Planning Commission may permit trails, boardwalks, observation platforms or other structures of a similar nature which enhance passive enjoyment of the natural amenities within the setback.

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Section 22.57 APPROVAL OR DISAPPROVAL BY THE PLANNING COMMISSION

Within a reasonable time following the public hearing, the Planning Commission shall recommend approval of development under the Open Space Preservation Option if the requirements of this Article and the Township Zoning Act are met. If the requirements are not met, the Planning Commission shall recommend disapproval of the development under that option to the Township Board with the reasons for their recommendation of disapproval and the requirements which are not met.

Section 22.58 TOWNSHIP BOARD ACTION

Upon receipt of the recommendation of the Planning Commission, the Township Board shall review the application along with the recommendation and shall approve the application if it meets the requirements or deny the application if it does not.

Section 22.59 APPROVAL BY THE TOWNSHIP BOARD

Approval by the Township Board. If the Township approves the application to develop under the Open Space Preservation Option the applicant shall have a period of two years from the date of approval by the Board to submit and receive approval of a conservation easement, and either deed restrictions or a master deed for approval of the Township Board. Such approval to develop pursuant to the Open Space Preservation Option shall not constitute approval of a plat under the Land Division Act and Subdivision Control Ordinance or site plan approval under the Condominium Act. The Township Board upon written request of the applicant may grant an extension of the time if the Board finds that the applicant has acted in good faith and has made a substantial effort to complete the process within the time frame established by the Ordinance. Failure to request such an extension prior to the expiration of the two year period, shall be deemed an abandonment of the approval to develop under the Open Space Preservation Option.

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Section 22.60 OPEN SPACE RESTRICTIONS AND EASEMENT REQUIREMENTS

If the Township Board gives approval to proceed under the Open Space Preservation Option in accordance with the requirements as set forth in this Article, the applicant shall submit to the Planning Commission and Township Board proposed restrictions in the appropriate form based on the type of development proposed and a conservation easement appropriate for recording setting forth the requirements upon which said approval is based. Such restrictions shall include a provision that they may not be amended without the written approval of the

Township Board. Such restrictions shall provide for at least the following:

- 6.1 Metes and bounds survey of the acreage comprised in the proposed Open Space Preservation area.
- 6.2 The manner of ownership of the land.
- 6.3 The manner of the ownership and dedication of the Open Space Preservation area in the form of a conservation easement, and former restriction, easement, covenant or condition in the deed.
- 6.4 The restrictive covenants required for membership rights and privileges, maintenance and obligation to be assessments for the Open Space Preservation area.
- 6.5 The General Development Plan shall be incorporated by reference and as an exhibit.
- 6.6 The site analysis shall be incorporated by reference and as an exhibit.

Section 22.61 ALTERATION, TERMINATION OR REVOCATION OF OPEN SPACE PRESERVATION OPTION

Section 22.61.1 Final approval by the Township Board of the deed restrictions and easement with regard to the Open Space Preservation area signifies the completion of the Open Space Preservation development application process. The applicant shall comply with all conditions or requirements of the General Development Plan and restrictions

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provided for which shall be recorded in the record of the Township Board's approval and shall remain unchanged except upon the mutual written consent of the Township and the property owner.

Section 22.61.2 Once a parcel has been included within a general development plan for an Open Space Preservation Development Option or the Board has approved such Plan, no development may take place in such area nor may any use thereof be made except in accordance with the approved general development plan unless the plan is terminated as provided herein.

Section 22.61.3 An approved General Development Plan and restrictions may be terminated by an applicant prior to any development within the Open Space Preservation area involved, by filing with the Township Clerk and recording in the Monroe County Register of Deeds Office, an affidavit so stating. The approval of the General Development Plan and restrictions as to the Open Space Preservation Option shall terminate upon said recording. No approved General Development Plan or restrictions shall be terminated after any development commences within the Open Space Preservation Development Option area except with the written approval of the Township Board and of all parties of interest in the land.

Section 22.61.4 An Open Space Preservation Development Option approval may be revoked by the Township Board in any case where the conditions of such approval have not been met. The Township Board shall give the applicant notice of its intention to revoke such permit at least ten days prior to review said permit at an open meeting. At the conclusion of such review, the Township Board may revoke the approval if it finds that a violation in fact exists and has not been remedied prior to the date of the hearing.

Amended February 11, 2003 by Zoning Ordinance No. 200-51.