

CHAPTER 23

CONSERVATION SUBDIVISION PLANNED UNIT DEVELOPMENT OPTION

SECTION 23.01 PURPOSE. The intent of this Chapter is to offer an alternative to the pervasive rural subdivision using planned unit development (PUD) procedures as authorized under the Michigan Zoning enabling Act, as amended. These provisions encourage greater innovation and offer more flexibility in the design of open space/cluster residential developments than can be achieved under the provisions of the underlying A-1 Agricultural and R-1 Agricultural and Rural Estates Districts. They are intended to preserve the rural character of the land by promoting the creation of compact residential clusters that are encompassed and veiled by open space and less intensive land uses. The Conservation Subdivision Planned Unit Development provisions allow variation from permitted lot density, lot area and width standards for lots in single family residential developments in exchange for improved open space, enhanced screening and buffering techniques and amenities and other design considerations such as single loaded streets that will enhance the rural quality of life.

Land use goals and objectives for the Township which may be better accomplished through the use of the Conservation Subdivision Development provisions include the following:

- (a) The provision of meaningful buffers between agricultural land and operations and more intensive residential development.
- (b) The conservation and preservation of woodlands and sensitive environmental areas such as wetlands in the Township and to otherwise minimize the disturbance of woodlands, steep slopes, ridgelines, wetlands and stream corridors in the design of new development.
- (c) To facilitate the continued use of farmland while accommodating residential development that will not over capacitate the soil, aquifers and roadways.
- (d) To recognize the value of and to facilitate the creation of "developed" open space and recreation facilities such as golf courses, man made lakes, equestrian facilities and passive athletic grounds within residential developments in concert with undeveloped open space, as defined by the Michigan Zoning Enabling Act, as amended.
- (e) Greater accessibility to natural areas and developed open space and recreation land by their inclusion within new developments as common areas.
- (f) The provision of "developed" recreation and open space facilities that are privately financed and maintained for the use of residents in the development and/or the public.

SECTION 23.02 PERMITTED USES. The uses permitted within conservation subdivision developments are restricted to detached single family residential dwellings, customary residential accessory uses and structures and improved and unimproved open space. At the time of PROJECT approval, the Planning Commission may approve the following uses as allowable uses of open space:

- (a) Agricultural accessory buildings and limited agricultural activities when conducted within the open space areas designated within the development. For the purposes of this Section agricultural activities shall be limited to the growing of trees, crops, fruits and vegetables and/or the raising, breeding, training and keeping of farm animals. Areas made part of the development intended to support farming activities shall be located,

arranged and restricted to minimize any nuisance or hazard to the residents of the development.

- (b) Natural areas, golf courses, equestrian facilities, tennis courts, ball fields, trails, playgrounds, community buildings and similar recreational facilities as well as day care facilities. Such uses shall be accessory to the residential uses in the development and designed to be primarily used by residents of the development unless specifically designed and authorized by the Planning Commission as public use facilities.
- (c) Accessory structures and buildings customarily associated with single family residential dwellings shall be subject to the requirements, unless otherwise specified herein, residential accessory buildings shall be regulated by the provision that pertains to accessory buildings in Chapter 11, Section 11.09. The location, size appearance and use of buildings and structures associated with an approved open space use shall be established by the Planning Commission as a condition of approval of the planned unit development plan approval for a Development.

SECTION 23.03 LOCATION PRINCIPLES. The following general principles shall be utilized to evaluate the location of any proposed conservation subdivision district. The principles will be applied by the Planning Commission as general guidelines to help assess the impact and appropriateness of the development and its design.

- (a) **Protecting Natural and Cultural Features.** All conservation subdivision developments shall be designed to promote the preservation of natural features and or cultural features. Significant wildlife habitats, sensitive environmental lands, productive and unique farmland and scenic vistas, historic structures are to be conserved and/or protected where practical.
- (b) **Access to Public or Private Roadway.** Conservation subdivision developments shall have at least one property line abutting a public or private roadway. All entrances and exits shall be directly to or from said roadways. In the case of a parcel having frontage on more than one public or private roadways, the Planning Commission shall determine the most appropriate number and location of access point or points.
- (c) If an already existing private road is to be used it must be in compliance with the Salem Township Private Road ordinance, the PUD approval can be held in lieu of Private Road proof of compliance.

SECTION 23.04 AREA REGULATIONS.

- (a) **Minimum Development Acreage:** The minimum size of any Conservation Subdivision Development shall be ten (10) acres of contiguous land.
- (b) **Minimum Required Open Space:** Unless permitted under the provisions of Section 23.07 of this chapter, the minimum amount of preserved and protected open space contained in any Conservation Subdivision shall be forty five percent (45%) of the gross acreage of the project. The open space shall meet the open space criteria of Section 23.09 of this Chapter. A minimum of forty-percent (40%) of the protected open space shall be held in common or in public ownership. The balance of the minimum required protected open space may be held privately. All lands intended to be held in common and all open space which is to be preserved but not held in common or by the public shall be protected by

restrictions meeting the criteria of Sections 23.12 and 23.13 of this Chapter. *(Amended 01-04-11)*

- (c) Lot Area: The average area for all house lots in the development shall not be less than forty-thousand (40,000) square feet provided that:
 - (1) The forty-thousand (40,000) square foot lot average may be reduced to accommodate bonus density increases allowed under Section 23.07 if all of the other area regulations of this Section (23.04) are met. *(Amended 01-04-11)*
 - (2) The minimum lot area shall be not less than twenty thousand (20,000) square feet. *(Amended 01-04-11)*
 - (3) No portion of a lot exceeding two acres shall be used in calculating adherence to the required minimum average.
 - (4) The well and septic facilities for each lot that is not served by public water and/or sewer shall be approved by the State or County Health Department having jurisdiction. Note: Although parcel size may meet minimum Township requirements contained herein, it may fail to meet health agency size and isolation.
- (d) Lot Width: The minimum lot width at the front building line for lots served by individual on site septic systems shall be 110 feet. For lots served by public sewer or private community wastewater collection and treatment systems, the minimum lot width at the front building line shall be ninety (90) feet. The lineal street frontage for individual lots may be less than the required lot width when the lot is arranged along a cul-de-sac street, or other street curve. The lot width at the street may also be reduced for individual unique situations where strict adherence to a minimum frontage requirement would contribute unnecessarily to an inefficient lot arrangement, or to the wasting of otherwise appropriate building sites. *(Amended 01-04-11)*
- (b) Front Yard: There shall be a front yard setback of not less than thirty (30) feet.
- (c) Side Yard: For residential buildings, there shall be a side yard setback of not less than ten (10) feet.
- (d) Rear Yard: There shall be a rear yard of not less than twenty-five (25) feet.
- (e) Exterior setbacks: The setback of any residential dwelling, residential accessory structure or other building approved in the development shall be a minimum of fifty (50) feet from any property not included within the development.
- (f) Accessory Buildings: No residential accessory building shall be constructed within any required front yard setback. No detached accessory building shall be closer than ten (10) feet to the dwelling or within any required side or rear setbacks. No accessory building within the residential areas shall exceed fourteen (14) feet in height.
- (g) Common Area setbacks: For all other buildings and structures permitted by the Planning Commission in common areas within the development, the minimum front, rear, and side-yard setbacks shall be fifty (50) feet.

SECTION 23.05 HEIGHT REGULATIONS. No residential building or structure shall exceed thirty five (35) feet in height. All other buildings and structures shall not exceed their usual and customary heights.

SECTION 23.06 MINIMUM FLOOR AREA. Each one story dwelling unit shall have a minimum of eight hundred sixty (860) square feet of usable floor area, exclusive of porches, garages, basements, or utility areas. In the case of a dwelling unit of more than one (1) story the minimum area shall be one thousand (1000) square feet of floor area with a ground floor area of at least six hundred fifty (650) square feet.

SECTION 23.07 MAXIMUM BASE DENSITY AND DENSITY BONUS.

Through the preservation of permanent developed and undeveloped open space and the use of subdivision design techniques that limit the impacts on the rural character, the total number of lots permitted in a Conservation Subdivision Development may be allowed to exceed the number of dwelling lots achievable utilizing the least restrictive of the by right lot area standards of the underlying Zoning District. *(Amended 1-04-11)*

- (a) Minimum Open space: No bonus will be granted unless at least forty five (45%) percent of the gross acreage is set aside as permanently protected open space. *(Amended 1-04-11)*
- (b) Maximum Bonus: The combined total number of bonus dwelling units granted shall not exceed fifty (50%) percent of the base number of dwelling units achievable under the conventional density and lot area requirements for the district.
- (c) Bonus Dwelling Units: The number of dwelling units granted as bonuses shall be earned bonuses derived as follows:
 - (1) Open space in excess of forty five (45%) percent. One bonus dwelling unit will be granted for each two (2) acres of preserved open space, in excess of the 45% required under Section 23.04. *(Amended 1-04-11)*
 - (2) Streetscape and buffer bonus. One bonus dwelling unit and an twenty thousand (20,000) square foot reduction in the minimum amount of open space required under Section 23.04 may be granted for each three hundred (300) feet by two hundred-fifty (250) feet deep (measured from the edge of existing or proposed right-of-way) increment of uninterrupted open space that is preserved directly adjacent to an existing public roadway or existing residences. *(Amended 1-04-11)*

As a variation to the two hundred-fifty (250) feet of streetscape depth, the Township may in its discretion allow the creation of a seventy-five (75) foot deep (measured from the edge of existing or proposed right-of-way) professionally landscaped, planted and maintained, or a dense naturally vegetated and maintained, buffer along the adjacent existing public road right of way or between new home sites and existing residences adjacent to the development.
 - (3) Open space improvements. One bonus dwelling unit and an twenty thousand (20,000) square foot reduction in the minimum amount of open space required under Section 23.04 may be granted for each five hundred (500) foot increment of five (5) feet wide concrete side walk or asphalt pathway linking residential units and natural open space contained in the development. *(Amended 1-04-11)*
 - (4) Single loaded streets. One bonus dwelling unit and an twenty thousand (20,000) square foot reduction in the minimum amount of open space required under Section 23.04 will be granted in exchange for each three hundred (300) lineal feet of frontage by one hundred fifty (150) foot deep single loaded (homes on only one side) internally constructed street. *(Amended 1-04-11)*

- (5) Public Dedication of Open space. Dedication of land for public use including trails and active recreation areas is encouraged. A density bonus for open space dedicated to the public for such purpose shall be computed on the basis of one lot or building site for each two (2) acres of open space accessible to the public. The decision to accept an applicant's offer to dedicate open space for public access shall be at the discretion of the Township Board, who shall be guided by the Planning Commission and any officially adopted Township or county plans and policies for parks, recreation and open space.
 - (6) Contribution to an Open Space Acquisition and Maintenance Fund. The Planning Commission may in consultation with the Township Board allow a density bonus for the express purpose of generating income or endowment for a Township open space acquisition and maintenance fund. For each bonus lot granted in a development, not otherwise justified by the above immediately preceding paragraphs (1) through (5), a minimum of seventy-five (75%) percent of the value improved lot (as determined by an independent and certified appraiser) must be donated to an open space endowment fund created for such purposes. The fund must be restricted to expenditures used for the public acquisition and maintenance of open space and recreation land located anywhere within the Township. *(Amended 1-04-11)*
 - (7) Improved access: Developments located on unimproved public streets (gravel) may not be granted bonus dwellings if in the discretion of the Planning Commission, it is determined that the condition of the public roadway from which primary access will be derived is in sub-standard condition and deterioration would be materially accelerated by the project; and the roadway is not scheduled for improvements in the foreseeable future. Bonus densities may be subsequently authorized for development at the request of the developer once appropriate roadway improvements have been made.
- (d) Existing Zoning Plan. In addition to the information required above, the applicant must also submit a separate Existing Zoning Plan. This plan is to be prepared for the purpose of demonstrating the number of dwelling units that could be developed on the land under its existing zoning if the open space preservation option provided by this Section were not exercised. The Existing Zoning Plan may be conceptual in nature but shall include at least the following information:
- (1) Date, north arrow and scale, which shall not be more than 1" = 200'.
 - (2) Location of streets and utility right-of-way adjacent to and within the site.
 - (3) Location of all lots, illustrating lot area and width of each lot to demonstrate compliance with the minimum requirements of the applicable zoning district.
 - (4) Location of all utilities that would be necessary to serve a development under the Existing Zoning Plan.
 - (5) If development under the Existing Zoning Plan would require the use of septic tanks and drain fields, the applicant shall submit documentation from the Allegan County Health Department that the soils on each proposed lot are suitable for on site disposal systems.
 - (6) The Existing Zoning Plan shall illustrate all un-buildable land, which shall include slopes of 20% or greater, regulated and unregulated wetlands, public utility easements, floodplains, and other similar features which limit or prevent construction

of buildings or roads. No more than 50% of the area of designated wetlands, streams, flood plains, slopes in excess of 20%, existing ponds or lakes or other bodies of water may be included in calculating the number of developable lots in an existing zoning plan.

- (7) Identification of the limits of any required "natural vegetation zone" and/or "transition zone" adjacent to a riparian feature, as established by the Riparian Area Protection Overlay Zone standards contained in Chapter 25. *(Amended 02-08)*

SECTION 23.08 DETERMINATION OF NUMBER OF LOTS

The Planning Commission shall determine whether the Existing Zoning Plan accurately reflects the number of lots that could be developed on the land under its existing zoning if the clustering option provided by this Section were not exercised.

The Commission shall either approve the number of lots illustrated on the Existing Zoning Plan or require the Plan to be revised to accurately reflect the number of lots which could be developed on the land under the standards required for preparing the Existing Zoning Plan in this Section.

SECTION 23.09 OPEN SPACE REQUIREMENTS

- (a) Open Space. All open space included within developments created under the provisions of this Section shall remain in a perpetually undeveloped state by means of restrictions and other legal instruments that runs with the land. *(Amended 1-04-11)*

- (1) Common Ownership of Preserved Areas. Any land intended to be used as common area by home owners shall be set aside for their exclusive use. All such lands shall be designated on the site plan and shall be protected by restrictions running with the land. The restrictions shall be reviewed and approved as to wording by the Township Attorney to assure the following:

- (a) That title to the open space would be held in common by the owners of all dwelling units in the cluster development.
- (b) That a permanent organization for maintenance and management of such area would be assured by legal documents prior to the issuance of any building permits or the sale of any property.
- (c) That the restrictions would be sufficient to assure the permanent preservation of the open space.
- (d) That the restrictions could be enforced by all property owners and by the Township.

SECTION 23.10 STANDARDS FOR APPROVAL. In addition to the general standards and requirements provided in Chapter 15, the following standards for approval shall be considered by the Planning Commission when considering requests for conservation subdivision planned unit developments:

- (a) Do the proposed uses of the open space consider and use to the best advantage the overall size, shape, topography and location of the parcel proposed for the conservation subdivision?

- (b) Does the open space include any irreplaceable natural features located on the parcel, such as but not limited to significant views, stream beds, threatened or endangered plant species, significant stands of trees, and individual trees of significant size or variety?
- (c) Will the approval of this development grant a substantial benefit, to both residents of the development and the Township in general, which under more traditional zoning, would not occur?
- (d) Compatibility with Adjacent Uses: The proposed Conservation Subdivision site plan shall set forth in detail all specifications with respect to height, setbacks, density, parking, circulation, landscaping, views, and other design features that exhibit due regard for the relationship of the development to surrounding properties, the character of the site, and the land uses. In determining whether this requirement has been met, consideration shall be given to:
 - (1) The bulk, placement, and materials of construction of proposed structures.
 - (2) Pedestrian and vehicular circulation.
 - (3) The location and screening of vehicular use or parking areas.
 - (4) The provision of landscaping and other site amenities.
- (e) Impact of Traffic: The Conservation Subdivision project shall be designed to minimize the impact of traffic generated by the proposed development on surrounding uses.
- (f) Protection of Natural Environment: The proposed project shall be protective of the natural environment and avoid or minimize the pollution, impairment, or destruction of the environment according to the Michigan Environmental Protection Act and any other relevant law or regulation.
- (g) Access to Open Space: The proposed project shall assure access to the designated open space area by residents within the conservation subdivision project site, or by the public if the open space is publicly owned. This requirement may be waived if ownership of the open space is dedicated for agricultural purposes.
- (h) Compliance with Applicable Regulations: The proposed project shall comply with all applicable federal, state, county and local regulations unless specifically waived in writing or approved under these provisions.

SECTION 23.11 UNIFIED CONTROL. The proposed development shall be under single ownership or control, such that there is a single person or entity having proprietary responsibility for the full completion of the project. The applicant shall provide sufficient documentation of ownership or control in the form of agreements, contracts, performance guarantees, covenants and or deed restrictions that indicate that the development will be completed in its entirety, as proposed.

SECTION 23.12 COMMON OWNERSHIP OF PRESERVED AREAS.

Any land intended to be used as common area by home owners shall be set aside for their exclusive use. All such lands shall be designated on the site plan and shall be protected by restrictions running with the land. The restrictions shall be reviewed and approved as to wording by the Township Attorney to assure the following:

- (a) That title to the open space would be held in common by the owners of all dwelling units in the cluster development.

- (b) That a permanent organization for maintenance and management of such area would be assured by legal documents prior to the issuance of any building permits or the sale of any property.
- (c) That the restrictions would be sufficient to assure the permanent preservation of the open space.
- (d) That the restrictions could be enforced by all property owners and by the Township.

SECTION 23.13: PRESERVED AREAS NOT OWNED IN COMMON. Land areas which are to be preserved but not held in common ownership shall be designated on the site plan and shall be protected by restrictions running with the land. The restrictions shall be reviewed and approved as to wording by the Township Attorney to assure the following:

- (a) That the proposed manner of holding title to the preserved open land is acceptable to the Township.
- (b) That the proposed restrictions would adequately preserve the natural features and regulate the use of the open land.
- (c) That the restrictions could be enforced by all property owners and by the Township.

SECTION 23.14 GENERAL ADMINISTRATIVE REQUIREMENTS.

- (a) Procedures: Application for review and approval of a conservation subdivision shall be made in accordance with the provisions of Chapter 15 SPECIAL USES PROCEDURE FOR AUTHORIZATION, Section 15.02.
- (b) Effect of Approval:
 - (1) Approval of a Conservation Subdivision proposal shall not require, nor shall it be construed as an amendment to the zoning ordinance. All improvements and uses of the site shall be in conformity with the approved site plan and comply fully with any conditions imposed by the Planning Commission.
 - (2) Any development involving a land division that is not exempted under the State Land Division Act, Act 288 of 1968, as amended shall require subsequent or concurrent review as a platted subdivision or site condominium.
- (e) Recording of Action: The applicant shall record an affidavit with the Allegan County Register of Deeds containing the full legal description of the project site, specifying the date of final Township approval, and declaring that all improvements will be carried out in accordance with the approved Conservation Subdivision site plan unless an amendment is adopted by the planning Commission. In addition, all deed restrictions and easements shall be duly filed with the Allegan County Register of Deeds and copies of recorded documents shall be presented to the Township Clerk.
- (f) Continuing Adherence to Plan: Any property owner who fails to conform to an approved Conservation Subdivision plan shall be deemed in violation of the use provisions of the Zoning Ordinance and shall be subject to the penalties for same.
- (g) Performance Guarantee: The Planning Commission may require that a performance guarantee, in accordance with Chapter 15, be deposited with the Township to insure completion of improvements.

SECTION 23.15 SCHEDULED PHASING. When proposed construction is to be phased, the project shall be designed in a manner that allows each phase to fully function on its own regarding service, utilities, circulation, facilities, and open space. Each phase shall contain the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the Conservation Subdivision project and surrounding properties.

SECTION 23.16 REVISION OF APPROVED PLAN.

- (a) General Revisions: Approved plans for Conservation Subdivision developments may be revised, under the same procedures required for initial approval set forth in Chapter 15.
- (b) Minor Changes: Notwithstanding any provision in the Ordinance to the contrary, minor changes to an approved Conservation Subdivision plan, including changes to the project phasing, may be permitted by the Planning Commission following the site plan review procedures of Chapter 14. Such minor changes may be approved by the Planning Commission without resort to the public notice and hearing procedures set forth in Chapter 15 if the Planning Commission specifically finds:
 - (1) Such changes will not adversely affect the initial basis for granting approval;
 - (2) Such changes shall not result in the increase in density or reduction of open space area or a change in the use of open space use as originally approved.
 - (3) The change is internal and does not have a direct relationship to an adjacent property.