

# ZONING ORDINANCE: OPEN SPACE COMMUNITY

Hamburg Township, MI

Zoning Ordinance Hamburg Township, Livingston County, Michigan

## ARTICLE 14.00

### OPEN SPACE COMMUNITY

(Adopted 1/16/92)

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#### Section 14.1. Intent

It is the intent of this Article to offer an alternative to traditional subdivisions through the use of planned unit development legislation, as authorized by Section 16(c) of the Township Rural Zoning Act (Public Act 184 of 1943, as amended) for the purpose of:

- encouraging the use of Township land in accordance with its character and adaptability;
- assuring the permanent preservation of open space, agricultural lands, and other natural resources;
- allowing innovation and greater flexibility in the design of residential developments;
- facilitating the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- ensuring compatibility of design and use between neighboring properties; and,
- encouraging a less sprawling form of development, thus preserving open space as undeveloped land.

These regulations are intended to preserve a traditional rural character to the land use pattern in the Township through the creation of small residential nodes contrasting with open space and less intensive land uses. This Article is not intended as a device for ignoring the Zoning Regulations of the Township, the standards set forth therein, nor the planning concepts upon which the Zoning Ordinance has been based.

These regulations are intended to result in a specific development substantially consistent with Zoning Ordinance standards, yet allow for modifications from the general standards to insure appropriate, fair, and consistent decision making.

The open space community district is established as an overlay district applicable to all single

family residential districts.

### **Section 14.2. Scope**

For the purposes of this Article, an "open space community" is defined as a predominately single family residential development in which dwelling units are placed together into one or more groupings within a defined project area. The dwelling units are separated from adjacent properties or other groupings of dwellings by substantial open space that is perpetually protected from development. Commercial uses, as stated in Section 14.4.13., may be allowed within open space communities of fifty (50) acres or more.

### **Section 14.3. Eligibility Criteria**

To be eligible for open space community consideration, the applicant must present a proposal for residential development that meets each of the following:

**14.3.1. *Recognizable Benefits.*** An open space community shall result in a recognizable and substantial benefit, both to the residents of the property and to the overall quality of life in the Township. This benefit should accrue, in spite of any foreseeable detriments of the proposed development.

**14.3.2. *Minimum Project Size.*** The minimum size of an open space community development shall be five (5) acres of contiguous land. To qualify for a commercial land use component, and/or the inclusion of dwellings other than single family units, an open space community must have a minimum gross site of twenty-five (25) acres. To qualify for commercial land use under Section 14.4.13., a site must have a minimum of fifty (50) acres.

**14.3.3. *Open Space.*** The proposed development shall contain at least as much open space area as would otherwise be required by the existing underlying zoning.

**14.3.4. *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, covenants, and/or deed restrictions that indicate that the development will be completed in its entirety as proposed.

**14.3.5. *Guarantee of Open Space.*** The applicant shall guarantee to the satisfaction of the Township Planning Commission that all open space portions of the development will be maintained in the manner approved. Documents shall be presented that bind all successors and future owners in fee title to commitments made as a part of the proposal. This provision shall not prohibit a transfer of ownership or control, provided notice of such transfer is provided to the Township and the land uses continue as approved in the open space community plan.

### **Section 14.4. Project Design Standards**

A proposed open space community shall comply with the following project design standards:

**14.4.1. Location.** An open space community may be approved upon any residentially zoned land in the Township.

**14.4.2. Permitted Uses.** An open space community is generally restricted to single family residential dwelling units. In projects of fifty (50) acres or more, a commercial component, as limited in Section 14.4.13. may be approved. Also, in projects of (25) acres or more, up to fifty percent (50%) of the dwelling units may be other than single family dwelling units, provided that the total number of dwelling units does not exceed the density for the site as computed in Section 14.4.8.

**14.4.3. Base Zoning Regulations.** Unless specifically waived or modified by the Planning Commission, all Zoning Ordinance requirements for the underlying zoning district, except for minimum lot area, and other Township regulations shall remain in full force. In no event shall the minimum lot area required for computation purposes of Section 14.4.8 be greater than 30,000 square feet.

**14.4.4. Open Space Requirements.**

A. An open space community shall maintain a minimum of forty percent (40%) of the gross area of the site as dedicated open space held in common ownership. Except as noted in Section 14.4.5., any undeveloped land area within the boundaries of the site may be included as required open space.

B. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, an approved land improvement, or, if applicable, a commercial use, shall be set aside as common land for recreation, conservation, agricultural uses, or preserved in an undeveloped state.

C. The total area of dedicated open space shall equal or exceed the total area by which all dwelling unit lots are reduced below 30,000 square feet.

D. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the Planning Commission, such as:

- recorded deed restrictions,
- covenants that run perpetually with the land, or
- a conservation easement established per the State of Michigan Conservation and Historic Preservation Act, Public Act 197 of 1980, as amended (M.C.L. 399.251).

Such conveyance shall assure that the open space "ill be protected from all forms of development, except as shown on an approved site plan, and shall never be changed to another use. Such conveyance shall:

1. Indicate the proposed allowable use(s) of the dedicated

open space.

2. Require that the dedicated open space be maintained by parties who have an ownership interest in the open space.
3. Provide standards for scheduled maintenance of the open space.
4. Provide for maintenance to be undertaken by the Township of Hamburg 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.

**14.4.5. *Areas Not Considered Open Space.*** The following land areas are not included as dedicated open space for the purposes of this Article:

- A. The area of any street right-of-way proposed to be dedicated to the public.
- B. Any submerged land area.
- C. Any portion of the project used for commercial purposes.

**14.4.6. *Continuing Obligation.*** The dedicated open space shall forever remain open space, subject only to uses approved by the Township on the approved site plan. Further subdivision of open space land or its use for other than recreation, conservation or agricultural purposes, except for easements for utilities and septic systems, shall be strictly prohibited.

**14.4.7. *Allowable Structures.*** Any structure(s) or building(s) accessory to a recreation, conservation or agriculture use may be erected within the dedicated open space, subject to the approved open space plan. These accessory structure(s) or building(s) shall not exceed, in the aggregate, one percent (1%) of the required open space area.

**14.4.8. *Dwelling Density.*** The permitted density of residential uses within an open space community shall not exceed the density allowed by the underlying residential zoning district based upon a minimum lot area no greater than 30,000 square feet. All computations shall be stated to the nearest square foot.

The number of dwelling units allowable within an open space community project shall be determined in the following manner:

The applicant shall prepare, and present to the Planning Commission for review, a parallel design for the project that is consistent with State and Township requirements and design criteria for a tentative preliminary plat. This design shall include all information as required by the guidelines adopted by the Planning Commission pursuant to Section 14.6.1. The Planning Commission shall review the design and determine the number of lots that could be feasibly constructed following the parallel

design. This number, as determined by the Planning Commission, shall be the maximum number of dwelling units allowable for the open space community project.

**14.4.9. Regulatory Flexibility.** To encourage flexibility and creativity consistent with the open space community concept, the Planning Commission may grant specific departures from the requirements of the Zoning Ordinance for yard, lot, and bulk standards as a part of the approval process. In projects of fifty (50) acres or more, specific areas may be designated for commercial land uses that serve the open space community. Any regulatory modification shall be approved through a finding by the Planning Commission that the deviation shall result in a higher quality of development than would be possible using conventional zoning standards. Regulatory modifications are not subject to variance approval of the Zoning Board of Appeals. No part of an open space community plan may be appealed to the Zoning Board of Appeals.

**14.4.10. Access.** Direct access onto a County road shall be required to an open space community. The nearest edge of any entrance or exit drive shall be located no closer than two hundred (200) feet from any existing street or road intersection (as measured from the nearest intersection right-of-way line).

**14.4.11. Internal Roads.** Construction of private roads as a means of providing access and circulation is encouraged. Private roadways within an open space community are exempted from the design requirements of the Township Private Road Ordinance, if the following findings are made by the Planning Commission: (As Amended 11/24/92)

a deed restriction is placed on the project site that perpetually vests fee simple of the land area in the parties adjoining the road and prohibits future transfer to the public; and,

a maintenance plan, including a means of guaranteeing maintenance assessments from the affected property owners, is reviewed and approved by the Township Planning Commission.

**14.4.12. Natural Features.** The development shall be designed to promote the preservation of natural features. If animal or plant habitats of significant value exist on the site, the Planning Commission, as a condition of approval, may require that the open space community plan preserve these areas in a natural state and adequately protect them as nature preserves or limited access areas.

**14.4.13. Commercial Component.** An open space community with a gross area of fifty (50) acres or more may incorporate a commercial land use component, provided that all of the following are met:

A. The total area occupied by the commercial land uses may not exceed five percent (5%) of the gross area of the open space community or five (5) acres, whichever is less.

B. All commercial uses shall be compatible with the residential area.

C. The Planning Commission finds that the architectural design of the

structures is compatible with the balance of the development.

D. All commercial structures are connected to a pedestrian access system servicing the project.

E. Vehicular access is available only from an access drive to the open space community that connects directly with M-36.

F. If a proposed project cannot provide direct access to M-36, the Planning Commission may approve a commercial land use component for an open space community project located on any paved County thoroughfare, subject to:

1. A special land use hearing on the location of the use being held prior to consideration by the Planning Commission. The hearing shall be conducted according to the procedures stated in Section 3.5. of this Ordinance, and

2. The Planning Commission making the finding that the overall site layout, including the architectural design and the vehicular circulation pattern, is:

- Compatible with the surrounding land uses, and
- Will not have a significant detrimental effect on the character of surrounding residential uses.

A. All parking and loading areas serving the commercial uses shall be to the rear of the structure and fully screened from view of any public roadway.

B. The allowable commercial uses within such an area shall be recorded as a deed restriction on the property and shall be restricted to the following:

1. Food and beverage stores for the sale of: groceries, fruit, meat, baked goods, dairy products, beverages and liquor.

2. Personal service establishments such as barber shops, beauty salons, laundry pick-up, and similar uses.

3. Child care or day care centers.

4. Subject to findings by the Planning Commission that (a) a use is consistent with the intent of this Article and (b) provides no significant negative impact on the open space

community project or other surrounding land uses, offices for the following professions or occupations may be permitted: doctor; dentist; attorney; engineer; accountant; architect; financial consultant or broker; publisher; real estate broker; secretarial services; and similar uses as determined by the Planning Commission.

I. No structure within the commercial land use component of an open space community shall be occupied without a valid certificate of occupancy from the Township.

1. A request for a certificate of occupancy for a commercial structure within an open space community shall be reviewed by the Zoning Administrator to insure compliance with this Article.

2. A certificate of occupancy may be approved only for uses identified in sub-section 14.4.13(H). Approval shall not be granted to a use that is inconsistent with the intent and/or requirements of this Article.

3. The initial certificate of occupancy for a commercial structure or portion of a commercial structure within the open space community shall not be approved until fifty percent (50%) of the physical improvements related to the residential components of the total open space community plan are complete, notwithstanding an approved schedule for project phasing.

4. A certificate of occupancy may be revoked by action of the Zoning Administrator, if a use is conducted in a manner that does not comply with the intent of this Article and/or any other requirements of this Ordinance.

### **Section 14.5. Project Standards**

In considering any application for approval of a open space community site plan, the Planning Commission shall make their determinations on the basis of the standards for site plan approval set forth in Article 4.00, as well as the following standards and requirements:

**14.5.1. *Compliance with the Open Space Community Concept.*** The overall design and land uses proposed in connection with an open space community shall be consistent the intent of the open space community concept, as well as with specific design standards

set forth herein.

**14.5.2. *Compatibility with Adjacent Uses.*** The proposed open space community 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:

- A. The bulk, placement, and materials of construction of proposed structures.
- B. Pedestrian and vehicular circulation.
- C. The location and screening of vehicular use or parking areas.
- D. The provision of landscaping and other site amenities.

**14.5.3. *Impact of Traffic.*** The open space community shall be designed to minimize the impact of traffic generated by the proposed development on surrounding uses.

**14.5.4. *Protection of Natural Environment.*** The proposed open space community shall be protective of the natural environment. It shall comply with all applicable environmental protection laws and regulations.

**14.5.5. *Compliance with Applicable Regulations.*** The proposed open space community shall comply with all applicable Federal, state, and local regulations.

## **Section 14.6. General Requirements**

**14.6.1. *General Application Requirements.*** The application for approval of an open space community shall be made according to procedures and guidelines adopted by resolution of the Planning Commission. The required materials shall be submitted to the Township Zoning Administrator with all required fees.

**14.6.2. *Effect of Approval.*** Approval of an open space community 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 open space community site plan and comply fully with any conditions.

**14.6.3. *Recording of Action.*** The applicant shall record an affidavit with the 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 open space community plan unless an amendment is adopted by the Township. In addition, all deed restrictions and easements shall be duly filed with the register of deeds of the County and copies of recorded documents presented to the Township.

**14.6.4. *Land Use Permit.*** Following final approval of the open space community site

plan and final approval of the engineering plans by the Township Engineer, a land use permit may be obtained. It shall be the responsibility of the applicant to obtain all other applicable Township, County, State or Federal permits.

**14.6.5. *Initiation of Construction.*** If construction has not commenced within twenty-four (24) months of final approval, all Township approvals become null and void. The applicant may apply in writing to the Planning Commission for an extension, not to exceed twelve (12) months. A maximum of two (2) extensions may be allowed.

**14.6.6. *Continuing Adherence to Plan.*** Any property owner who fails maintain an approved site design shall be deemed in violation of the use provisions of the Zoning Ordinance and shall be subject to the penalties for same.

**14.6.7. *Performance Guarantee:*** The Planning Commission may require that a performance guarantee, in accordance with the Section 5.3. of the Zoning Ordinance, be deposited with the Township to insure completion of improvements.

### **Section 14.7. Scheduled Phasing**

**14.7.1. *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 services, 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 open space community and the residents of the surrounding area.

**14.7.2. *Timing of Phases.*** Each phase of the project shall be commenced within twenty-four (24) months of the schedule set forth on the approved site plan. If construction of any phase is not commenced within the approved time period, approval of the plan shall become null and void, subject to the requirements of Section 14.5.10. (A).

### **Section 14.8. Revision of Approved Plans**

**14.8.1. *General Revisions.*** Approved plans for an open space community may be revised in accordance with the procedures set forth in Section 14.5.

**14.8.2. *Minor Changes.*** Notwithstanding Section 14.8.1., minor changes to an approved open space community plan may be permitted by the Planning Commission following normal site plan review procedures outlined in Article 4.00, subject to the finding of all of the following:

A. Such changes will not adversely affect the initial basis for granting approval;

B. Such minor changes will not adversely affect the overall open space community in light of the intent and purpose of such development as set forth in this Article; and

C. Such changes shall not result in the reduction of open space area as required herein.

**OPEN SPACE COMMUNITY APPROVAL PROCESS**