

## ARTICLE IX: OPEN SPACE PRESERVATION

### Section 901 Intent

- B. It is the intent of this article to offer an open space preservation option to developers as authorized by Act 179 of 2001 for the purpose of:
  - 6. Assuring the permanent preservation of open space, agricultural lands, and other natural resources;
  - 7. Allowing innovation and greater flexibility in the design of residential developments;
  - 8. Encouraging a less sprawling form of development, thus preserving open space.
- B. For the purpose of this article the term “open space” shall refer to a natural state preserving natural resources, natural features, or scenic or wooded conditions; **agriculture use**; or a similar use or condition.
- C. Development in accordance with the Open Space Preservation provisions of this Ordinance can be in the form of a platted **subdivision**, a **site condominium** development or other legal means.

### Section 902 Eligibility Criteria

- A. To be eligible for open space preservation consideration, the applicant must present a proposal for residential development that meets each of the following:
  - 1. **Minimum Project Size.** The minimum size of an open space preservation development shall be 5 acres of contiguous land.
  - 2. **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.
  - 3. **Guarantee of Open Space.** The applicant shall guarantee to the satisfaction of the **Planning Commission** that all open space portions of the development will be maintained in the manner approved. Documentation shall be presented that binds all successors and future owners in fee title to commitments set forth in the applicant’s proposal. This provision shall not prohibit a transfer of ownership or

control, provided notice of such transfer is provided to the City and the land uses continue as approved in the open space preservation site plan.

### Section 903 Project Design Standards

- A. A proposed open space preservation project shall comply with the following project design standards:
1. The open space preservation option is applicable only in the H-1 and H-2 Districts and restricted to residential development.
  2. Unless specifically waived or modified by the **Planning Commission**, and excepting the minimum lot area, all Zoning Ordinance dimensional requirements for the underlying zoning district and other City regulations shall remain in full force.
  3. The developer shall maintain a minimum of 35% of the gross area of the site as dedicated open space. Land dedicated for open space does not include a golf course, street rights-of-ways, unbuildable land areas, or submerged land areas but may include a recreational trail, picnic area, children's play area, greenway or linear park. The dedicated open space may be, but is not required to be, dedicated to the use of the public.
  4. The number of dwelling units allowable within an open space preservation project shall be determined in the following manner: The applicant shall prepare and present to the **Planning Commission** a design of the area that is consistent with the existing City zoning requirements. The **Planning Commission** shall review the design and determine the number of lots that could be feasibly constructed on the property. This number, as determined by the **Planning Commission**, shall be the maximum number of dwelling units allowable for the open space preservation project.
  5. To encourage flexibility and creativity consistent with the open space preservation 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. Any regulatory modification approved by the **Planning Commission** shall result in a higher quality of development than would be possible using conventional zoning standards. The regulatory modifications are not subject to variance approval of the **Zoning Board of Appeals**. No part of an open space preservation site plan may be appealed to the **Zoning Board of Appeals**.
  6. 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:

- a. recorded deed restrictions in perpetuity,
  - b. covenants that run perpetually with the land, or
  - c. 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) or
  - d. deeded property to the City.
2. Such **conveyance** shall assure that the open space "will be protected from all forms of development and shall never be changed to another use." Such **conveyance** shall:
    - a. Indicate the proposed allowable use(s) of the dedicated open space.
    - b. Require that the dedicated open space be maintained by parties who have an ownership interest in the open space.
    - c. Provide standards for scheduled maintenance of the open space.
    - d. Provide for maintenance to be undertaken by the City of Munising in the event that the dedicated open space is inadequately maintained, or is determined by the City to be a public **nuisance**, with the assessment of costs upon the property owners of the development.
  3. The dedicated open space shall forever remain open space, subject only to uses set forth on the approved **site plan**. Further **subdivision** of open space land or its use for other than recreation or conservation shall be strictly prohibited.
  4. Accessory structures related to a recreation, or conservation use may be erected within the dedicated open space, subject to the approved open space preservation **site plan**. These accessory structures shall not exceed, in the aggregate 1% of the total **required open space** area.
  5. Direct access onto a public road shall be required for all developments receiving approval under the open space preservation option.
  6. The developer shall be responsible for construction of roads providing access into and circulation within the new development.
  7. 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 preservation **site plan** preserve these areas in a natural state and adequately protect them as nature preserves or limited access areas.

#### Section 904 Project Standards

- D. In considering any application for approval of an open space preservation **site plan**, the **Planning Commission** shall make the determinations on the basis of the standards for

site plan approval set forth in Article VI Site Plan Review as well as the following standards and requirements:

1. Compliance with the project design standards in Section 903.
2. The open space preservation project shall be designed to minimize the impact of traffic generated by the proposed development on surrounding uses.
3. The proposed open space preservation project shall be protective of the natural environment.
4. Compliance with all applicable federal, state, and local regulations.

#### Section 905 Application and Approval Process

- A. The application for approval of an open space preservation proposal shall be in accordance with procedures for consideration of a **Conditional Use Permit**. The required materials and fees shall be submitted to the **Zoning Administrator**.
- B. Approval of an open space preservation proposal shall be upon issuance of a **Conditional Use Permit** following a public hearing. All improvements and uses of the site shall conform with the approved open space preservation site plan and comply fully with any conditions imposed by the **Planning Commission**.
- C. 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 City approval, and declaring that all improvements will be carried out in accordance with the approved open space preservation site plan unless an amendment is adopted by the **Planning Commission**. In addition, all deed restrictions and easements shall be duly filed with the Alger County Register of Deeds with certified copies of recorded documents presented to the City.
- D. Following final approval of the open space preservation site plan by the **Planning Commission**, a **zoning compliance permit** may be obtained from the **Zoning Administrator**. It shall be the responsibility of the applicant to obtain all other applicable township, city, county, state or federal permits.
- E. If construction has not commenced within one year of final approval, all City approvals become null and void. The applicant may make written application to the **Planning Commission** for an extension, not to exceed 12 months. A maximum of two extensions may be allowed.
- F. The **Planning Commission** may require that a performance guarantee, in accordance with the Section 705 D of the Zoning Ordinance, be deposited with the City Treasurer to insure completion of improvements.

#### Section 906 Revision of Approved Plans

- A. Minor changes to an approved open space preservation **site plan** may be permitted by the **Planning Commission** following normal **site plan** review procedures outlined in Section 605, subject to the finding of all of the following:
  - 1. Such changes will not adversely affect the initial basis for granting approval;
  - 2. Such minor changes will not adversely affect the overall open space in light of the intent and purpose of such development as set forth in this Article; and,
  - 3. Such changes shall not result in the reduction of open space area as required by this Ordinance.
  
- B. Changes which are a substantial departure from the approved **site plan** or alter the character or intent of the development will require the resubmission of the proposal to the **Planning Commission** for a public hearing.