

**HEATH TOWNSHIP**

**ALLEGAN COUNTY**

**ORDINANCE NO. 58**

**OPEN SPACE COMMUNITY**

Adopted: December 8, 2003

Effective: December 30, 2003

An Ordinance to amend the Township Zoning Ordinance by adding Chapter XXI, entitled Open Space Community in order to provide an alternative to traditional subdivisions, to preserve a traditional rural character of land use by the creation of small residential nodes contrasting with open space and less intensive land use. This district is established as an overlay district applicable to all single family, residential and agricultural districts.

**SECTION I**

**CHAPTER XXI B PURPOSE**

Section 21.01. It is the intent of this Chapter to offer an alternative to traditional subdivisions through the use of Planned Unit Development legislation, as authorized by Section 16(c) of the Township Zoning Act (Public Act 184 of 1943, as amended) and pursuant to the Open Space Preservation Act ( Public Act 177 Of 2001) for the purpose of:

- A. encouraging the use of Township land in accordance with its character and adaptability;
- B. assuring the permanent preservation of open space, agricultural lands, and other natural resources;
- C. providing recreational facilities within a reasonable distance of all residents of the Open Space Community development;
- D. allowing innovation and greater flexibility in the design of residential developments;
- E. facilitating the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- F. ensuring compatibility of design and use between neighboring properties; and,
- G. 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 Chapter is not intended as a device for circumventing 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 and agricultural districts.

## **SECTION II**

### **SECTION 21.02 B SCOPE**

Section 21.02. 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.

## **SECTION III**

### **SECTION 21.03 B ELIGIBILITY CRITERIA**

Section 21.03. To be eligible for open space community consideration, the applicant must present a proposal for residential development that meets each of the following:

- A. 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. The benefits can be provided through site design elements in excess of the requirements of this Ordinance, such as high quality architectural design, extensive landscaping, provide transition areas from adjacent residential land uses, unique site design features, unified access, preservation of woodlands and open space, particularly along major thoroughfares, and buffering development from lakes, rivers, streams and wetlands. This benefit should accrue, in spite of any foreseeable detriments of the proposed development.
- B. Minimum Project Size. The minimum size of an open space community development shall be five (5) acres of contiguous land.
- C. Open Space. The proposed development shall provide at least one of the following open space benefits:
  1. Significant Natural Assets. The site contains significant natural assets such as woodlands, individual trees over twelve (12) inch diameter, measured at breast height, rolling topography with grades exceeding 15%, significant views, natural drainage ways, water bodies, floodplains, regulated or non-regulated wetlands, or natural corridors that connect quality wildlife habitats which would be in the best interest of the Township to preserve and which might be negatively impacted by conventional residential development. This determination shall be made by the Planning Commission after review of a

Site Analysis Plan, prepared by the applicant, that inventories these 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.

2. Recreation Facilities. If the site lacks natural features, it can qualify if the development will preserve an existing recreation facility or provide usable recreation facilities to which all residents of the development shall have reasonable access. Such recreation facilities include areas such as a neighborhood park, golf course, passive recreational facilities, soccer fields, ball fields, bike paths or similar facilities which provide a feature of community-wide significance and enhance residential development.
  3. Creation of Natural Features. If the site lacks existing natural features, it can also qualify if the development will create significant woodland features. The creation of significant woodland features shall be considered providing perimeter buffer plantings and interior street tree plantings at a rate double (2 x) what is required by this Ordinance.
- D. 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.
- E. Cohesive Neighborhood. The proposed development shall be designed to create a cohesive community neighborhood through common open space areas for passive or active recreation and resident interaction. All open space areas shall be equally available to all residents of the Open Space Community.
- F. 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.
- G. Density Impact. The proposed type and density of use shall not result in an unreasonable increase in the need for or impact to public services, facilities, roads, and utilities in relation to the use or uses otherwise permitted by this Ordinance, and shall not place an unreasonable impact to the subject and/or surrounding land and/or property owners and occupants and/or the natural environment. The Planning Commission may require that the applicant prepare an impact statement documenting the significance of any environmental, traffic or socio-economic impact resulting from the proposed open space community. An unreasonable impact shall be considered an unacceptable significant adverse effect on the quality of the

surrounding community and the natural environment in comparison to the impacts associated with conventional development. The Planning Commission may require that the applicant prepare a quantitative comparison of the impacts of conventional development and the open space community plan to assist in making this determination (such as an overlay of conceptual development plans, on a natural features map, illustrating other site development options to demonstrate the impacts have been minimized to the extent practical). If the cumulative impact creates or contributes to a significant problem relative to infrastructure demand or environmental degradation, mitigation shall be provided to alleviate the impacts associated with the open space community.

H. Township Master Plan. The proposed development shall be consistent with and further the implementation of the Township Master Plan.

**SECTION IV**

**SECTION 21.04 B PROJECT DESIGN STANDARDS**

Section 21.04. A proposed open space community shall comply with the following project design standards:

- A. **Location.** An open space community may be approved within any of the following zoning districts: AG, R1, and R1-A.
- B. **Permitted Uses.** An open space community is generally restricted to single family detached or attached residential dwellings.
- C. **Dwelling Density.** The number of dwelling units allowable within an open space community project shall be determined through preparation of a parallel plan.

1. The applicant shall prepare, and present to the Planning Commission for review, a parallel design for the project that is consistent with State, County and Township requirements and design criteria for a tentative preliminary plat. The parallel plan shall meet all standards for lot size (as shown in paragraph B), lot width and setbacks as normally required, public roadway improvements and private parks, and contain an area which conceptually would provide sufficient area for storm water detention. Lots in the parallel plan shall provide sufficient building envelope size without impacting wetlands regulated by the Michigan Department of Environmental Quality.

2. The parallel plan shall be prepared with the following minimum lot areas. The parallel plan is only used to determine allowable density for an open space community project. The following parallel plan minimum lot areas incorporate a density bonus for qualifying open space community projects that meet all requirements of this ordinance:

Underlying Zoning	Parallel Plan Minimum Lot Size
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District	(square feet)
AG	70,000
R1-A	35,000

3. The Planning Commission shall review the design and determine the number of lots that could be feasibly constructed and be economically viable 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. The Planning Commission may grant a density bonus for exemplary projects.

D. **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.

E. **Regulatory Flexibility.**

1. 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 as a part of the approval process for the following:

a. Yard, lot width, and bulk standards may be modified, provided that such modification results in enhanced buffering from adjacent land uses or public right-of-ways, or preservation of natural features. Any modification to the Natural River District standards must also be approved by the Michigan Department of Environmental Quality, if required.

b. Standards that apply to entryway features such as decorative gates (non-closable), walls and signs may be modified, provided that the overall entranceway design is reviewed by the Planning Commission and found to be consistent with the proposed open space community and the character of the surrounding area in terms of size, materials, color, lighting and landscaping.

2. 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. This provision shall not preclude an individual lot owner from seeking a variance following final approval of the Open Space Community, provided such variance does not involve alterations to open space areas as shown on the approved Open Space Community site plan.

F. **Open Space Requirements.**

1. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway or, an approved land improvement shall be set aside as common land for recreation, conservation, agricultural uses, or preserved in an undeveloped state. Grading in the open space shall be minimal, with the intent to preserve existing topography.
2. An open space community shall maintain a minimum of fifty percent (50%) of the gross area of the site as dedicated open space held in common ownership. A minimum of ten percent (10%) of the open space shall be upland area that is accessible to all residents of the Open Space Community and not include golf course fairways.
3. 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. This provision shall not preclude the future dedication of a private road easement to a public road agency.
  - b. Any submerged land area.
  - c. Any portion of the project used for commercial purposes.
  - d. The required setbacks surrounding a residential structure that is not located on an individual lot or condominium site.
4. The common open space may either be centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development. The open space along the exterior public roads shall generally have a depth of at least one hundred (100) feet, either landscaped or preserved in a natural wooded condition. The open space along the exterior public roads shall be landscaped with a minimum of one (1) evergreen tree or canopy tree for each twenty (20) 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 frontage landscaping requirement.
5. Connections with adjacent open space, public land or existing or planned pedestrian/bike paths may be required by the Planning Commission.
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,
  - 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).
- d. Such conveyance shall assure that the open space will 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. The Planning Commission may require the inclusion of open space restrictions that prohibit the following:
    - a. Dumping or storing of any material or refuse;
    - b. Activity that may cause risk of soil erosion or threaten any living plan material;
    - c. Cutting or removal of live plant material except for removal of dying or diseased vegetation;
    - d. Use of motorized off road vehicles;
    - e. Cutting, filling or removal of vegetation from wetland areas;
    - f. Use of pesticides, herbicides or fertilizers within or adjacent to wetlands.
  - (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 Heath 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.

G. **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. Open space may include golf course area, provided that it forever remains outdoor recreation or natural undeveloped land.

H. **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.

I. **Compatibility with Adjacent Uses.** The proposed location of accessory uses or structures that are of a significantly different scale or character than the abutting residential districts, such as access drives, parking areas, solid waste pick-up points, swimming pools, tennis courts and facilities of a similar nature, shall not be located near the boundary of the development or so as to negatively impact the residential use of adjacent lands.

J. **Transition Areas.** Where the Open Space Community abuts a single family residential district, the Planning Commission may require a transition area. Grading within the transition area shall be minimal unless needed to provide effective buffering or accommodate drainage. If the grade change adjacent to single family residential is to be varied by more than three (3) feet, the site plan shall include cross sections illustrating existing and proposed grades in relation to existing and proposed building heights. Perspective renderings from adjacent residential units are encouraged. The Planning Commissions may review the proposed transition area to ensure compatibility. The Planning Commission may require that the transition area consist of one or more of the following:

- (a) A row of single-family lots or condominium sites similar to adjacent single family development in terms of density, lot area, lot width, setbacks and building spacing.
- (b) Woodlands, natural features or a landscaped greenbelt sufficient to provide an obscuring effect.
- (c) Open or recreation space.
- (d) Significant changes in topography which provide an effective buffer.

K. **Access.** Direct access onto a County road or State highway 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).

L. **Internal Roads.** Internal roads within an open space community may be public or private.

1. Construction of private roads as a means of providing access and circulation is encouraged. Private roadways within an open space community must meet the design requirements of the Township. The Planning Commission may modify these requirements, if all of the following findings are made:

- a. There is no potential for the road to connect with abutting land or be extended to serve additional land in the future.

b. Significant natural features such as mature trees, natural slopes, wetlands or other water bodies would be preserved through allowing a modification to the Private Road standards.

2. Where private roads are developed, a maintenance plan, including a means of guaranteeing maintenance assessments from the affected property owners, shall be reviewed and approved by the Township Planning Commission.

3. Both sides of all internal roads shall be landscaped with street trees. For road frontages of individual lots or condominium sites, a minimum of two (2) canopy trees shall be provided per dwelling. For sections of road that do not abut lots or condominium sites, one canopy trees shall be provided on each side for every fifty (50) feet or road. Existing trees to be preserved within five (5) feet of the road right-of-way or easement may be credited towards meeting this requirement.

M. **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. The Planning Commission may also require a minimum of twenty five (25) foot wide undisturbed open space setback from the edge of any, lake, pond, river, stream or wetland; provided that the Planning Commission may permit trails, boardwalks, observation platforms or other similar structures that enhance passive enjoyment of the site=s natural amenities within the setback.

## SECTION V

### SECTION 21.05 B PROJECT STANDARDS

Section 21.05. 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 and the following standards:

A. **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.

B. **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:

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.
- C. **Impact of Traffic.** The open space community shall be designed to minimize the impact of traffic generated by the proposed development on surrounding uses.
- D. **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.
- E. **Compliance with Applicable Regulations.** The proposed open space community shall comply with all applicable Federal, state, and local regulations.
- F. **Township Master Plan.** The proposed open space community shall be consistent with and further the implementation of the Township Master Plan.
- G. **Conditions.** Reasonable conditions may be required with the special approval of a Open Space Community, to the extent authorized by law, for the purpose of ensuring that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, protecting the natural environment and conserving natural resources and energy, ensuring compatibility with adjacent uses of land, promoting the use of land in a socially and economically desirable manner, and further the implementation of the Township Master Plan. Conditions imposed shall be designed to protect natural resources, and the public health, safety and welfare of individuals in the project, those immediately adjacent and the community as a whole; shall be reasonable related to the purposes affected by the Open Space Community; shall be necessary to meet the intent and purpose of this Ordinance and implement the Township Master Plan; and be related to the objective of ensuring compliance with the standards of this Ordinance. All conditions imposed shall be made a part of the record of the special approved.

## SECTION VI

### SECTION 21.06 B GENERAL REQUIREMENTS

Section 21.06. In considering any application for approval of an open space community site plan, the applicant shall complete the following requirements:

- A. **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.
- B. **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.

- C. **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.
- D. **Land Use Permit.** Following final approval of the open space community site plan and final approval of the engineering plans, 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.
- E. **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.
- F. **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.
- G. **Performance Guarantee.** The Planning Commission may require that a performance guarantee, be deposited with the Township to insure completion of improvements.

## SECTION VII

### SECTION 21.07 B SCHEDULED PHASING

Section 21.07. In considering any project that proposes to be phased, the following shall apply:

- A. **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.
- B. **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.

## SECTION VIII

### EFFECTIVE DATE AND REPEAL OF CONFLICTING ORDINANCES

This ordinance shall take effect eight days following proper publication of notice of its adoption in accordance with and subject to Michigan Public Act 297 of 1996. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

#### **HEATH TOWNSHIP**

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