

# ARTICLE XXII

## Open Space Community

### (PLANNED UNIT DEVELOPMENT)

#### SECTION 2200 - INTENT

It is the intent of this Article to ~~offer~~ encourage an alternative to traditional residential and other development 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:

- A. encouraging assuring the use of Township land in accordance with its character and adaptability;
- B. assuring the permanent preservation of open space and other natural resources, including agricultural lands;
- C. providing recreational facilities within a reasonable distance of all residents of an Open Space Community development;
- D. allowing innovation and greater flexibility in the design of residential and other 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 neighbouring properties; and,
- G. encouraging a less sprawling form of development, thus preserving open space as undeveloped land.

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

To that end, provisions of this Article are intended to result in land use developments substantially consistent or compatible with the zoning district in which it is proposed, with modifications and departures from generally applicable requirements made in accordance with standards provided in this Article to insure appropriate, fair and consistent decision making.

The Open Space Community district is established as an overlay district applicable to all zoning districts in the Township with the exception of the Industrial District. **Allowance of higher density housing than the underlying zoning would normally allow will encourage developers to opt for the Open Space Community/PUD option.**

## **2201 - SCOPE**

For the purposes of this article, an "Open Space Community" is defined as a predominately 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. Compatible professional and commercial uses as stated in Section 2204.3 may be allowed within an Open Space Community subject to requirements specified in this Ordinance and other township ordinances and regulations. Inclusion of professional and commercial uses in an Open Space Community is a privilege and shall be allowed only upon the recommendation of the Planning Commission and approval of the Township Board of Trustees.

## **2202 - ELIGIBILITY CRITERIA**

To be eligible for Open Space Community consideration, the applicant must present a proposal for a primarily residential development that meets each of the following requirements:

- A. Recognizable Benefits. An Open Space Community shall result in a recognizable and substantial benefit, both to the residents of the development 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, provision of transition areas from adjacent land uses, unique site design features, unified access, preservation or restoration of woodlands, wildlife corridors and open space, particularly along major thoroughfares, buffering development from lakes, rivers, streams, and wetlands, and preservation, restoration or creation of wetlands or wildlife habitats. This benefit should accrue in spite of any foreseeable detriments of the proposed development.
- B. Open Space. The proposed development shall provide at least one of the following open space benefits:
  1. Significant Natural Assets/Site Analysis Plan. The site contains significant natural assets such as woodlands, individual trees over twelve (12) inches in diameter, measured at breast height, rolling topography with grades exceeding 15%, significant views, natural drainage ways, **undeveloped** water frontage or bodies, floodplains, regulated or non-regulated wetlands, or natural corridors that connect quality wildlife habitats or similar features, which it would be in the best interest of the Township to preserve and which might be negatively impacted by conventional **low density** 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, passive recreational facilities, soccer fields, ball fields, bike paths, bridle trails or similar facilities which provide a feature of community-wide significance and enhance residential development. ~~A golf course may qualify as a recreational facility, but only if it is already in existence and is being preserved as part of the Open Space Community.~~

3. Creation of Natural Features. If the site lacks existing natural features, it can also qualify if the development will create significant woodland or grassland features, restore or create wetlands or wildlife habitat, protect or enhance a significant wildlife corridor, provide significant space for community gardens, or such other contributions as the Planning Commission may find significant.

C. 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 agreed to as part of the Open Space Community plan approval process. This agreement and guarantee shall be memorialized in a written Agreement in recordable form satisfactory to the Township Board and Township counsel.

*How can this be done?? Some kind of Condo common area agreement? Should include some examples of what has been done before.*

A proposed form of this Agreement (which shall bind all successors and future owners in fee title to commitments made as a part of the proposal) shall be presented by applicant as part of the application. In this regard, see Section 2203.8 (F) below. 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.

D. 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. Except as provided in the last sentence of Section 2202 (B)(1) and in Section 2203.15 below, all open space areas shall be equally available to all residents of the Open Space Community.

E. 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 as necessary to satisfy the Township Board and Township counsel that the development will be completed in its entirety as proposed.

F. 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/or 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 or other impact resulting from the proposed Open Space Community. An unacceptable, significant, adverse effect on the quality of the surrounding community and/or the natural environment in comparison to the impacts associated with conventional development shall be considered to be an unreasonable impact. 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, or illustrating other site development options to demonstrate that 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.

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

## **SECTION 2203 - PROJECT DESIGN STANDARDS**

A proposed Open Space Community shall comply with the following project design standards:

2203.1 Location. An Open Space Community may be approved within any zoning district in the Township except Industrial.

2203.2 Other Design Standards.

A. Yards and Setbacks. Unless modified by the Planning Commission following the standards herein, all residential dwellings shall meet the yard, lot width and bulk standards required by Article V (R-1 Residential District) except that side lot lines for dwellings may be reduced to no less than five (5) feet.

B. Dwelling Density. Except as provided in Section 2204 (Optional Provisions For Exemplary Projects), the number of dwelling units allowable within an Open Space Community project shall be determined by the underlying zoning **increased by 10% for incentive purposes** (or, if the underlying zoning does not specify a density, as approved by the Planning Commission).

C. Maximum Allowable Residential Density. The maximum allowable residential density for the entire project shall be computed and then rounded off to the

nearest whole figure as follows: fractional units of .5 or greater shall be rounded up to the next whole number; fractional units less than .5 shall be rounded down to the next whole number. The maximum allowable residential density shall be established by a site plan showing traditional residential development, to be submitted as part of the application.

2203.3 Gross Area. The Gross Area of the Open Space Community shall include all areas to be used for residential purposes, including off-street parking for residences, and all open space devoted exclusively for residential use or for natural resource preservation or agricultural use or open space preservation, but not easements, rights-of-way and streets. Gross Area shall be used for computing the percentages of open space.

2203.4 Public Hearing. All Open Space Community plans under this article will require a public hearing.

2203.5 Water and Sewer Service. If there is public water or sewer service available to the site on which any Open Space Community development is proposed, the Planning Commission shall require connection into the system. An Open Space Community project located within the Township without access to public water or sewer service shall be designed in accordance with the rules and regulations of the Jackson County Health Department, the Jackson County Drain Commissioner and any other applicable Federal, State or local rules and regulations, and approved by the Jackson County Health Department.

2203.6 Base Zoning Regulations/Compliance With Other Laws. Unless specifically waived or modified by the Planning Commission, all Zoning Ordinance requirements for the underlying zoning district and other Township regulations shall remain in full force **with the exception of the 10% incentive increase in allowed density**. All Open Space Community projects must also comply with all applicable Federal, State and local rules and regulations.

2203.7 Regulatory Flexibility.

A. Zoning Ordinance. 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:

1. Yard, lot width, height and bulk standards and any other similar requirement may be modified, provided that such modifications results in enhanced buffering from adjacent land uses or public right-of-ways, preservation of natural features or a similar benefit. Any modification to lake, stream, or river standards must also be approved by all applicable Federal, State or local authorities.
2. Standards that apply to entryway features such as decorative gates (non-closable), walls, signs, fences and other similar features 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.

B. Required Findings. Any regulatory modification shall be approved through a finding by the Planning Commission that the deviation will result in a recognizable benefit to the community and/or 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 in an Open Space Community 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.

C. Enumeration of Specific Deviations. A table shall be provided as part of the site plan which specifically details all proposed deviations from the Zoning Ordinance, such as from required area, height and setback regulations, off-street parking regulations, general provisions, and/or subdivision regulations which would otherwise be applicable to the uses and development proposed in the absence of this Open Space Community Article. This table should identify the specific Ordinance provisions from which deviations are sought, the reasons therefor, and the mechanisms to be utilized for the protection of the public health, safety, and welfare in lieu of the regulations from which deviations are sought. Only those deviations consistent with the intent of this Ordinance shall be considered.

#### 2203.8 Open Space Requirements.

A. Common Land All land within a development that is not devoted to ??????????, an accessory use, vehicle access, vehicle parking, a roadway, an approved land improvement, or, if professional or commercial use, 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.

B. Minimum of Fifty Percent (50%). 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. Except as noted in Section 2203.8.C, any undeveloped land area within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of ~~twentyfive percent (25%)~~ **fifty percent (50%)** of the open space shall be (1) upland area exclusive of **regulated and unregulated** wetlands, (2) which is accessible to all residents of the Open Space Community, and (3) not include golf course fairways or private roads.

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

1. 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.

2. Any **permanent or annually** submerged land area **either natural or man-made**.
3. Any portion of the project used for professional or commercial purposes.
4. Any required setbacks.

D. Location of Open Space. The common open space may be located (1) centrally, (2) along the road frontage of the development, (3) as necessary to preserve significant natural features, or (4) as necessary to connect open spaces throughout the development **or adjoining developments**. 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 vegetative condition. The open space along the exterior public roads shall be landscaped with native vegetation sufficient to provide a **minimum** seventy percent (70%) year round opacity within three (3) years of planting (as determined by the Zoning Administrator). Preservation of existing trees shall be encouraged.

E. Connection May be Required. Connections with adjacent open space, public land or existing or planned pedestrian/bike or similar paths may be required by the Planning Commission **if feasible**.

F. Irrevocable Conveyance. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is acceptable to the Planning Commission, the Township Board and Township counsel such as:

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

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 plant material **with the exception of prescribed burns or other noxious weed control**;
  - c. Use of motorized off road vehicles;
  - d. Cutting, filling or removal of vegetation from wetland areas;

e. Any other restriction reasonably appropriate under the circumstances.

2. Require that the dedicated open space be maintained by parties who have an ownership interest in the open space **through a formal agreement.**
3. Provide standards for scheduled maintenance of the open space.
4. Provide for maintenance to be undertaken by the Township of Henrietta 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 if approved as part of the site plan, shall be strictly prohibited.

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.

2203.9 Compatibility with Adjacent Uses. The proposed location of accessory uses or structures that are of a significantly different scale or character than the abutting 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 use of adjacent lands.

2203.10 Transition Areas. Where the Open Space Community abuts another zoning district or a substantially different use, 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. The Planning Commission 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. Similar Housing. 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. Natural Features. Woodlands, natural features or a landscaped greenbelt sufficient to provide an obscuring effect and/or a dust, odor or noise barrier.
- C. Open Space. Open or recreation space.
- D. Topographical Buffer. Significant changes in topography, which provide an effective buffer.

2203.11 Architectural and Site Element Design. Residential facades shall not be dominated by

garages; at least forty percent (40%) of residential units shall have side entry garages or recessed garages where the front of the garage is at least five (5) feet behind the front line of the living portion of the principal dwelling. The intent of encouraging recessed or side entry garages is to enhance the aesthetic appearance of the development and minimize the aesthetic impact resulting from the close clustering of units allowed under these regulations. The Planning Commission may require elevation drawings to be furnished for any or all structures.

Signage, lighting, entryway features, landscaping, building materials for the exterior of all structures, and other features of the project, shall be designed and completed with the objective of achieving an integrated and cohesive development, consistent with the character of the community, surrounding development, and natural features of the area. The Planning Commission shall require street or site lighting where appropriate. Dark sky lighting is encouraged and may be required by the Planning Commission.

2203.12 Access. Direct access onto a County road or State highway may 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), or further if required by state or county regulations. Open Space Communities shall also meet or exceed the access requirements set forth by the Jackson County Road Commission and the Michigan Department of Transportation for roadways or access drives.

2203.13 Internal Roads. Internal roads within an Open Space Community may be public or private.

A. Private Roads Encouraged. Construction of private roads as a means of providing access and circulation is encouraged. The Planning Commission may allow deviation from the standards of the Township private road ordinance then in effect if a significant benefit will result. In any event, private roadways shall be paved with pavers, concrete or asphalt. The Planning Commission may also require provision to be made for the following:

1. Roads to be placed so as to connect with abutting land or to be able to be extended to serve additional land in the future.
2. Significant natural features such as mature trees, natural slopes, wildlife corridors or habitats, wetlands or other water bodies to be preserved.

B. Maintenance Plan Required. 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 and Township counsel.

C. Landscaping of Internal Roads. Both sides of all internal roads shall be landscaped with street trees and vegetation. Existing trees and vegetation shall be preserved as much as possible in meeting this requirement in order to preserve the rural atmosphere of the site.

2203.14 Pedestrian Circulation. The Open Space Community plan shall provide (shielded)

lighted pedestrian access to all open space areas from all residential areas, connections between open space areas, public thoroughfares, and connections between appropriate on and off-site uses. Trails within the Open Space Community may be constructed of gravel, woodchip or other similar material, but the Planning Commission may require construction of eight (8) foot wide asphalt bike paths through portions of the development or along any public right-of-way abutting the Open Space Community. Setback locations for school bus stops shall be provided on the site plan.

2203.15 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. In such cases, these areas would qualify as open space. The Planning Commission may also require a minimum of twenty-five (25) feet wide undisturbed open space setbacks 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 2204 - OPTIONAL PROVISIONS FOR EXEMPLARY PROJECTS**

The Planning Commission may allow an exemplary Open Space Community to include one or more of the following optional provisions. In order to qualify for an optional provision, the applicant must demonstrate, to the satisfaction of the Planning Commission, that the proposed project exceeds the minimum standards for Open Space Community eligibility under Section 2202 (Eligibility Criteria).

In order to qualify for development under the optional provisions of this section, all structures within the project, including single-family dwellings, shall be subject to architectural review by the Planning Commission. Buildings shall provide harmony with adjacent uses in terms of texture, materials, peaked rooflines and massing, but there shall be a variation of front facade depth and rooflines to avoid monotony. Building elevation drawings shall be required for all structures.

2204.1 Density Bonus. A **additional** density bonus of up to ~~fifteen percent (15%)~~ **ten percent (10%)** may be allowed **in addition to the base 10% density bonus** at the discretion of the Planning Commission, based upon a demonstration by the applicant of design excellence in the Open Space Community. The Planning Commission may require that an Open Space Community proposed for a high density residential area must be served by public sanitary sewer and have a high level of clustered development where a minimum of sixty percent ~~(60%)~~ **(75%)** of the Open Space Community is common open space. The following elements shall be considered when determining the open space **additional** density bonus, which shall not exceed a maximum ~~fifteen percent (15%)~~ **ten percent (10%)**:

A. Mixture of Housing Types. An integrated mixture of housing types, costs and densities including attached housing, housing built to the standards set forth in the Americans With Disabilities Act, elderly cottage housing opportunity (ECHO), and/or detached condominiums (similar to ECHO) consisting of twenty percent (20%) of the total number of

units is encouraged.

- B. Perimeter Transition Areas. Providing perimeter transition areas along the roadway and on all other sides of the development. The transition area shall utilize a mixture of the following to create an aesthetically pleasing opaque wall: native plantings creating the look and feel of a rural roadside, a greenbelt area, various landscape plantings, berming, and/or decorative walls/fencing. A minimum of 200 feet along the roadway and at least 150 feet deep from the roadway on all other sides is recommended. However, the depth and location of the transition area may be modified and/or waived by the Planning Commission based on existing site conditions and adjacent uses.
- C. Unified Design. Utilizing creative architectural design that establishes a distinctive unity where all homes share a thematic character. The following shall be incorporated:
1. Roof Types: In order to provide a variation on facades of the structures, peaked rooflines shall be a minimum 4 to 12 pitch. Architectural accents such as cupolas, cross gables, and dormers are also encouraged.
  2. Doors/Windows: The location, orientation, and proportion of doors and windows should be used to define the character and enhance the facade of the structure.
  3. Porches: Porches, in various forms, shall be used to provide a semi-public place for units within the development. Various designs of porches, covered patios, stoops, balconies in the front, and terraces are encouraged.
  4. Garages: A mixture of recessed front-entry, side-entry, and detached garages shall be provided. Detached garages shall be located to the rear of the principal structure. Frontentry garages shall be set back at least five (5) feet from the plane established by the front building line (exclusive of the front porch). Front-entry garages shall be limited to a maximum capacity of two vehicles and are encouraged to utilize two separate overhead doors.
- D. Recreational Facilities. Providing active recreational facilities such as a golf course, bike path, bridle trail, baseball diamond, soccer field, tennis court, basketball court, sand volleyball court, fitness trails, playgrounds or community clubhouses.
- E. Cleanup of Blighted Site. Extensive cleanup of blighted site, including cleanup of site contamination. Cleanup of site contamination shall involve a baseline environmental assessment (BEA) approved by the Michigan Department of Environmental Quality.
- F. Other. Additional elements as determined by the Planning Commission which will provide a material benefit to all residents of the development and the Township in general.

2204.2 Multiple Family Component. In an Open Space Community with a gross area of fifteen (15) acres or more, up to fifty percent (50%) of the dwelling units may be other than single-family dwellings regardless of the underlying zoning. Such units shall meet the following design standards:

- A. Front Yard. The minimum building setback from an internal road shall be twenty-five (25) feet from the public street right-of-way or private road easement. The Planning Commission may reduce the setback based upon a determination that off-street parking will be adequate, and that the modification will preserve natural features or that the rear yard buffer will be increased by one (1) foot for each one (1) foot of reduction in the front yard setback in no instance shall the front yard setback be reduced below a minimum of

fifteen (15) feet. Buildings that front on two streets must provide the required front yard setback from both streets.

- B. Rear Yard. A twenty (20) foot rear yard shall be maintained for all buildings. Where the rear of a building abuts the side or rear of another residential structure, the minimum spacing between the structures shall be the combined total of the two setback requirements.
- C. Side Yards. A ten (10) foot setback shall be maintained to the side of all residential buildings. Where two buildings are located side-by-side, a thirty-five (35) foot spacing shall be maintained between apartment buildings.
- D. Off-Street Parking Lots. Off-street parking lots serving three (3) or more dwelling units shall provide a ten (10) foot wide open green space area around the perimeter of the parking lot and internal landscaping in islands.
- E. Setback Variation. The building setback requirements may be varied provided they are specifically indicated on the Open Space Community plan and the Planning Commission determines the variation does not negatively impact adjacent properties and provides a recognizable benefit. Building setback requirements on the perimeter of the development shall not be reduced below thirty-five (35) feet.
- F. Mixture of Housing. The Planning Commission may require a mixture of housing types, costs and densities similar to those described in Section 2204.1.A to make up the non-single family units.

2204.3 Professional/Commercial Component. An Open Space Community may incorporate a professional and/or commercial land use component, provided that all of the following are met:

- A. Size. The professional/commercial component shall be located on a lot of sufficient size to contain all commercial structures, parking, and landscape buffering: 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. Uses. All professional/commercial uses shall be of a type which the Planning Commission believes is compatible with and complimentary to the residential area.
- C. Design. The Planning Commission finds that the architectural design of the professional and/or commercial structures is compatible with the balance of the development.
- D. Pedestrian Access. All commercial structures are connected to a pedestrian access system servicing the project.
- E. Vehicular Access. The Planning Commission may require that vehicular access be available only from an access drive to professional and/or commercial areas that connects directly with a State or County highway.
- F. Parking and Loading Areas. All parking and loading areas serving the commercial uses shall be to the rear or side of the structure and fully screened from view of any public roadway, except that the Planning Commission may allow up to twenty-five percent (25%) of the minimum number of required parking spaces in the front yard. Where the

parking lot is visible from residential units or open space, it shall be planted with a landscape buffer consisting of vegetation sufficient to provide seventy percent (70%) year round opacity within three (3) years after planting (as determined by the Zoning Administrator).

G. Size. The size of all professional and commercial uses within such an area shall be subject to approval by the Planning Commission, recorded as a deed restriction on the property, and shall be restricted to the following:

1. Small food and beverage stores for the sale of: groceries, fruit, meat, baked goods, dairy products, beverages and liquor, to be consumed on or off the premises.
2. Appropriately sized or small personal service establishments such as barber shops, beauty salons, laundry pick-up, and similar uses.
3. Appropriately sized or small child care or day care centers.
4. Offices for the professions or occupations of 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, may be permitted, subject to findings by the Planning Commission that (a) a use and size 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.

H. Certificate of Occupancy. No structure within the professional/commercial land use component of an Open Space Community shall be occupied without receiving a certificate of occupancy from the Township.

1. A request for a certificate of occupancy for a professional/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 subsection 2204.3.G. Approval shall not be granted to a use that is inconsistent with the intent and/or requirements of this Article, the intent being that professional and commercial services will enhance the quality of residential life and foster a rural or village character.
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 professional or commercial 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 2205 - PROJECT STANDARDS**

In considering any application for approval of an 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 XII of this Ordinance, as then in effect as well as the following standards and requirements:

- 2205.1 Compliance with the Open Space Community Concept. The overall design and land uses proposed in connection with an Open Space Community shall be consistent with the intent of the Open Space Community concept set forth in Section 2200 above, as well as with any specific design standards set forth herein.
- 2205.2 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 as necessary to 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.
- 2205.3 Impact of Traffic. The Open Space Community shall be designed to minimize the impact of traffic generated by the proposed development on surrounding uses.
- 2205.4 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.
- 2205.5 Compliance with Applicable Regulations. The proposed Open Space Community shall comply with all applicable Federal, State, and local regulations.
- 2205.6 Township Master Plan. The proposed Open Space Community shall be consistent with and further the implementation of the Township Master Plan.
- 2205.7 Conditions. Reasonable conditions may be required with the special approval of an 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 approval.

## **SECTION 2206 - GENERAL REQUIREMENTS**

2206.1 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 and escrow deposits.

A. Neighborhood Meeting Prior to Application. Prior to submitting an application for an Open Space Community, a neighborhood meeting shall be held by the developer(s) and/or property owner(s) to advise neighboring property owners of their request. Written notice of this neighborhood meeting shall be given by the developer(s) and or property owner(s) to all property owners of record within one thousand feet (1000 feet) of the proposed Open Space Community by first-class mail at least ten days prior to the meeting; provided however, that if the proposed Open Space Community will be located in an agricultural zone, and will contain more than fifteen (15) dwelling units or a professional/commercial component, then all property owners of record within one-half mile (.5) of the proposed Open Space Community must be notified. This meeting will not replace the need for a Public Hearing by the Planning Commission.

2206.2 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.

2206.3 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 to the plan is adopted by the Township. This affidavit shall be satisfactory in all respects to Township counsel, and may be contained in the Agreement referred to in Section 2202 (C) above. 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.

2206.4 Land Use Permit. Following final approval of the Open Space Community site plan by the Township 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, and Federal permits. The Township may require that copies of all required permits be filed with the Township as the work proceeds.

2206.5 Work Schedule/Initiation and Continuation of Construction. The Planning Commission may require the developer(s) and/or owners to submit a proposed start date/completion schedule as part of the Open Space Community application. If construction has not commenced within twenty-four (24) months of final approval or such other time as may be set by the Planning Commission, 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. The granting of an extension is a privilege, not a right. Once work has begun on an Open Space Community project, it shall be carried forward with reasonable diligence by the developer(s) and/or owner(s).  
Continuing Adherence to Plan. Except for variances permitted under

2206.6 the last sentence of Section 2203.7 (B), any property owner who fails to 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.

2206.7 Performance Guarantee. The Planning Commission may require that one or more performance guarantees satisfactory to the Township Board and Township counsel, be deposited with the Township to insure completion of improvements.

## **SECTION 2207 - SCHEDULED PHASING**

2207.1 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.

2207.2 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 2206.5.

## **SECTION 2208 - REVISION OF APPROVED PLANS**

2208.1 Minor Changes.

A. Changes to an approved Open Space Community plan may be permitted by the Planning Commission following normal site plan review procedures for the following:

1. Reduction of density;
2. Changing non-single family dwelling units to single-family dwelling units;
3. **Minor** realignment of roads;
4. Modifications to setbacks;
5. Increasing the amount of open space;
6. Changes to landscaping, provided the number and density of plantings is not

decreased;

7. Change in the size of retention ponds by no more than 10%;

8. Changes to the phasing plan; and

9. Other minor changes similar to the above, as determined by the Planning Commission.

B. Minor changes shall be subject to the finding of all of the following:

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

2. Such 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

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

2208.2 Major Revisions. Changes to approved plans for an Open Space Community that do not qualify as minor under Section 2208.1 may be revised by resubmitting a final Open Space Community site plan for approval following the procedures of this Article **and must include a public hearing per Section 2203.4.**