

CHAPTER 14-E
RESIDENTIAL OPEN SPACE PRESERVATION – PUBLIC ACT NO. 177 OF 2001,
AS AMENDED - MCLA 125.286h *et seq.*

(Ord. No. 02-04; Effective 12-28-02)

(Ord. No. 09-01; 3/31/09)

SECTION 14E.01 DESCRIPTION AND PURPOSE; APPLICABILITY

The provisions of this Chapter are intended to carry out the provisions of Public Act No. 177 of 2001, as amended, being MCLA 125.286h *et seq.* (“Act No. 177”). In order for a landowner to exercise the open space preservation option of that statute, the land involved must be rezoned to a planned unit development (“PUD”) zoning designation pursuant to this Chapter and all of the requirements of this Chapter must be met. Additionally, the PUD provisions of Chapter 22 of this Ordinance shall also apply except to the extent that an express provision of this Chapter modifies the PUD process.

Act No. 177 requires that townships having a population of 1,800 or more and which have a zoning ordinance must adopt provisions in their zoning ordinances known as “open space preservation” provisions, which permit lands satisfying certain criteria to be developed, at the option of the landowner, with the same number of dwellings on a portion of the land specified in the zoning ordinance, but not more than 50%, that, as determined by the townships could otherwise be developed under existing ordinances, laws, and rules on the entire land area. The purpose of this Chapter is to adopt open space preservation provisions consistent with the requirements of Act No. 177.

SECTION 14E.02 DEFINITIONS

For purposes of this Chapter, the following definitions shall apply:

- (a) “Land zoned for residential development” shall mean any land located in the R-A or R-1 zoning districts pursuant to this Ordinance.
- (b) “Act No. 177” shall mean Public Act No. 177 of 2001, as amended, being MCLA 125.286h *et seq.*

SECTION 14E.03 QUALIFYING CONDITIONS

- (a) Land may be developed pursuant to the provisions of this Chapter and Act No. 177 only if all of the following requirements and conditions are met:
 - (1) The land is located in the R-A or R-1 zoning districts pursuant to this Zoning Ordinance;

- (2) The development of land pursuant to this Chapter shall not depend upon the extension of a public sanitary sewer or a public water supply system to the land, unless the development of the land without the exercise of the clustering or open space option provided for by this Chapter would also depend on such extension; and
 - (3) The clustering or open space option provided pursuant to this Chapter shall not have previously been exercised with respect to the same land.
- (b) If all of the preceding conditions and requirements listed in this Section are satisfied, the land may be developed, at the option of the landowner, in accordance with the provisions and requirements of this Chapter.

SECTION 14E.04 PERMITTED USES

- (a) Only those residential land uses permitted by the zoning district in which the land is located shall be permitted on land developed or used pursuant to the provisions of this Chapter.
- (b) Any On-Site Use Wind Energy System, including Structure-Mounted Wind Energy Systems, which is 65 feet or less in total height subject to Section 2.46 herein. (Ord. No. 09-01; 3/31/09)
- (c) Any Wind Energy System, including Structure-Mounted Wind Energy Systems, which is greater than 65 feet in total height and Anemometer (MET) Towers subject to Section 21.09 herein and when specifically authorized by the Township Board upon the recommendation of the Planning Commission. (Ord. No. 09-01; 3/31/09)

SECTION 14E.05 PROCESS

Only land located in the R-A and R-1 zoning districts is eligible for the open space preservation option provided for in this Chapter and pursuant to Act No. 177. Should the owner of a property within the R-A or R-1 zoning districts desire to take advantage of such option, the landowner must apply for a PUD rezoning approval pursuant to the procedural requirements of Chapter 22 of this Zoning Ordinance. Once the land is zoned for a PUD pursuant to this Chapter, it will be deemed a “Residential-Open Space Preservation PUD.” All of the normal minimum lot size, setback, road frontage, lot width, width-to-depth ratio, and other dimensional, frontage, and area requirements governing the development of land within the zoning district where the land is located shall apply except to the extent that such standards are expressly varied pursuant to this Chapter or where the Planning Commission and Township Board approve such a variation pursuant to the PUD approval process.

SECTION 14E.06 APPLICATION AND REVIEW PROCEDURE

- (a) The application requirements and review procedures for land proposed to be developed pursuant to the provisions of this Chapter shall be those stated in Chapters 18 and 22 of this Ordinance, governing site plans and planned unit developments, except as otherwise expressly provided in this Section and this Chapter.
- (b) In addition to the application materials required by Chapters 18 and 22 of this Ordinance, an application for the development of land under the provisions of this Chapter shall also include the following:
- (1) The Existing Zoning Yield Plan. The applicant shall prepare and submit to the Township a site plan for the purpose of demonstrating the number and location of dwelling units that could be developed on the land at issue under its existing zoning if the clustering or open space option provided for by this Chapter were not exercised. The Existing Zoning Yield Plan may be conceptual in nature, but shall include at least the following information:
- (A) Date, north arrow and scale, which shall not be more than 1" = 100', and, in all cases, the scale shall be the same as that utilized for the site development plan illustrating the proposed development using the clustering option permitted by this Chapter.
- (B) Location of all streets and driveways, existing and proposed.
- (C) Location of all lots, illustrating lot area, frontage, and the width of each lot to demonstrate compliance with the minimum requirements of the applicable zoning district.
- (D) Location of all utilities that would be necessary to serve a development under the Existing Zoning Yield Plan and which would not be located within any public road right-of-way or private street easement, or on buildable lots. Such utilities include, but are not limited to, storm water retention or detention basins, community sewage treatment systems and community water supply facilities.
- (E) If development under the Existing Zoning Yield Plan would require the use of septic tanks and drain fields, the Existing Zoning Yield Plan shall illustrate the location of all septic tanks and drain fields. The applicant shall submit proof that the proposed septic tank and drain field location for each lot would be approved, or has been approved, by the Kent County Health Department.
- (F) The location of all portions of the land that are unbuildable for residential purposes due to the presence of wetlands, severe slopes, flood plains, or other features prohibiting development for residential purposes.

- (G) If any portion of the land has frontage on a lake, river, or stream, the Existing Zoning Yield Plan shall show each such body of water, as well as the number and location of dwelling units that could be developed with frontage on or access to each such body of water under existing zoning if the open space or clustering option provided for by this Chapter were not exercised.
- (2) The Open Space Site Development Plan. The applicant shall also submit a site plan for the open space or clustering option permitted by this Chapter, which, in addition to the site plan requirements specified by Chapters 18 and 22 of this Ordinance, shall also include all of the following information:
- (A) Date, north arrow and scale, which shall not be more than 1" = 100', and, in all cases, the scale shall be the same as that utilized for the Existing Zoning Yield Plan.
- (B) The site development plan shall clearly illustrate and define the portions of the land that are proposed to remain in a perpetually undeveloped state and the portions of the land that will be utilized for clustered development.
- (C) The site development plan shall indicate the total number of acres of land that are proposed to remain in a perpetually undeveloped state, the total number of acres of land that are proposed to be used for cluster development, and the percentage of each, as compared to the total site acreage.
- (D) The site development plan shall illustrate the location of all lots and proposed building envelopes and shall indicate the lot area, frontage, and width of each lot, and the proposed front, side and rear yard building setbacks. The number of lots on the site development plan shall not exceed the number of lots on the Existing Zoning Yield Plan, as approved by the Planning Commission, and reduced to accommodate non-dwelling structures, if necessary, as described later in this Chapter.
- (E) The site development plan shall also illustrate the location and type of all proposed structures or improvements that are not dwellings.
- (F) If the proposed clustered development will include septic tanks and drain fields, the site development plan shall illustrate the location of all septic tanks and drain fields. The applicant shall submit proof that the proposed septic tank and drain field location for each lot has been approved by the Kent County Health Department.

- (G) If the development is to be served by public streets, proof that the Kent County Road Commission has granted preliminary approval of the design, layout and construction of the streets.
 - (H) If any portion of the land has frontage on a lake, river, or stream, the site development plan shall show the proposed location and number of dwelling units with proposed frontage on or access to a body of water.
 - (I) The location, construction and design of any proposed private street(s).
 - (J) The site development plan shall demonstrate that each of the proposed residential lots and proposed building envelopes is “buildable” and fully suited for the construction and use of a single-family residential dwelling.
- (3) Developable Area. When reviewing an application submitted under the terms of this Chapter, the Planning Commission shall determine whether the Existing Zoning Yield Plan accurately reflects the number and location of dwelling units that could be developed on the land under its existing zoning if the clustering or open space option provided by this Chapter were not exercised.

If the Planning Commission determines that the number and/or location of dwellings shown on the Existing Zoning Yield Plan exceeds the number of dwellings that could be permitted or developed on the land if it were developed under its existing zoning if the clustering or open space option provided by this Chapter were not exercised (or the locations are not accurate), the applicant shall submit a revised Existing Zoning Yield Plan which accurately reflects the number and location of dwellings which could have been developed under existing zoning if the Act No. 177 option were not exercised pursuant to this Chapter. For purposes of determining the number and location of dwellings that would have been permitted or developed on the land under its existing zoning if the clustering or open space option were not exercised, the following shall be deemed land not developable and shall be excluded from the formula of determining otherwise developable land area under existing ordinances:

- (A) Wetlands as defined by Michigan law.
- (B) Land located under a lake, pond, river, or stream.
- (C) Land with slopes exceeding 15%.
- (D) Land for which an on-site private septic system or private well could not be utilized under Kent County Health Department regulations.

- (E) Land located within a flood plain or which is subject to periodic flooding.
- (4) The Restrictions Document. The applicant shall submit a copy of the proposed deed restrictions, restrictive covenants, conservation easement, plat dedication, or other legal document which the applicant proposes to utilize if the proposed open space or cluster development is approved pursuant to this Chapter and which would have the legal effect of preserving in perpetuity the open space required by this Chapter in an undeveloped state. Such document shall be reviewed and approved by the Township and the Township Attorney (as to form and content) prior to recording. At a minimum, the document(s) shall provide for all of the following:
- (A) Indicate the proposed permitted use(s) of the undeveloped open space.
 - (B) Require that the open space be maintained forever in an undeveloped condition, without buildings, structures, or other improvements, except such drainage improvements, utilities, riding trails, hiking trails, picnic areas, park or playground equipment, growing of crops, agricultural structures, or similar improvements which are approved by the Planning Commission.
 - (C) Require that the undeveloped open space be maintained by the parties who have an ownership interest in it.
 - (D) Provide standards for scheduled maintenance of the undeveloped open space, including necessary pruning and harvesting of trees and new plantings.
 - (E) Provide language explicitly stating that the Township may specially assess those parties having an ownership interest in the open spaces for the purposes of maintenance and upkeep in accordance with original Township approvals if maintenance is not undertaken in a reasonable time period and manner.

The approved restrictions document shall be fully executed by all of the owner(s) of the land and shall be recorded with the Kent County Register of Deeds before any lots are sold and before any building permits are issued.

- (5) If the site development plan complies and all aspects of the proposed development satisfy all requirements of this Chapter, the Planning Commission and Township Board shall approve the site development plan and the planned unit development rezoning for the proposed development.

SECTION 14E.07 REQUIREMENTS FOR OPEN SPACE

- (a) Required Open Space. At least 50%, but no more than 80%, of the land proposed for development under the provisions of this Chapter shall remain in a perpetually undeveloped state (i.e., “open space”) by means of a conservation easement, plat dedication, restrictive covenant, or other legal instrument that runs with the land as approved by the Township Board (upon recommendation by the Planning Commission) and the Township Attorney.
- (b) Lands to be Set Aside as Open Space. It shall be the Township Board (upon recommendation from the Planning Commission) that determines which 50% or more of the land shall be set aside for open space, as well as which portion or portions of the land may be developed. At the discretion of the Township Board (upon recommendation from the Planning Commission), the land to be set aside as permanent open space need not be contiguous. The Township Board (upon recommendation from the Planning Commission) shall also determine what percentage of the total land area (between 50% and 80%) shall be set aside as permanent open space.
- (c) The following areas shall not constitute open space and may not be utilized to satisfy the open space requirement:
- (1) Any areas located within or under any public street easement or right-of-way.
 - (2) Property located under or within any private street or road easement.
 - (3) The land located under or the area within any easement for overhead utility lines.
 - (4) The area within a platted lot or site condominium unit.
 - (5) Off-street parking areas.
 - (6) Detention and retention ponds.
 - (7) Community septic drainage fields.
 - (8) The lands or area located underneath a lake, pond, river, or stream.
 - (9) The area within a wetland as defined by Michigan law.
 - (10) Lands with slopes exceeding 15%.
 - (11) Areas subject to flooding or within a flood plain.
- (d) Standards for Open Space. The following standards shall apply to the open space required pursuant to this Chapter:

- (1) The open space shall not include a golf course.
 - (2) The open space may include a recreational trail, picnic area, children's play area, greenway, linear park, an agricultural use or other use which, as determined by the Planning Commission, is substantially similar to these uses.
 - (3) The open space shall be available for all residents of the development, subject to reasonable rules and regulations. The open space may be, but is not required to be, dedicated to the use of the public.
 - (4) If the land contains a lake, stream or other body of water, the Planning Commission may require that a portion of the open space abut the body of water.
 - (5) A portion of the open space shall be located along the public street frontage abutting the land. The depth of this area shall be at least 75 feet, not including public right-of-way, and this area shall be left in its natural condition or be landscaped to help to preserve or enhance the existing views.
 - (6) A portion of the open space shall be reasonably useable by the residents of the land for passive recreational uses such as hiking or picnicking.
 - (7) Open space shall be located so as to be reasonably accessible to the residents of the development. Safe and convenient pedestrian access points to the open space from the interior of the clustered development shall be provided.
 - (8) Open space shall be located so as to preserve significant natural resources, natural features, scenic or wooded conditions, bodies of water, wetlands or agricultural land.
- (e) Use of Open Space. All dwelling units and other structures and improvements shall be located outside that portion of the land designated as open space. However, the Township Board (upon recommendation by the Planning Commission), at its discretion, may permit structures or improvements to be located in the open space if the structures and/or improvements would be consistent with the designated purpose of the open space. By way of example only, park or playground equipment could be permitted on open space designated for recreational use, or agricultural structures could be permitted on open space designated for agricultural use.

SECTION 14E.08 INDIVIDUAL LOTS, STREETS, AND OTHER IMPROVEMENTS; MISCELLANEOUS PROVISIONS

- (a) Underlying Zoning District. The development of land under this Chapter shall comply with all requirements of this Ordinance applicable to the zoning district in

which the land is located, except those setback, area, lot width to depth ratio, and yard size requirements that must be adjusted to allow the clustering option permitted under this Chapter where approved by the Township Board (upon recommendation from the Planning Commission).

- (b) Uniform Lot Size. Lots for dwellings in the clustered portion of the development shall be as uniform in area as is reasonably practicable, unless otherwise approved by the Township Board (upon recommendation from the Planning Commission).
- (c) Building Envelopes. The location and area of building envelopes, as proposed by the applicant, shall be subject to the review and approval of the Township Board (upon recommendation from the Planning Commission). The location and area of building envelopes shall be established to achieve the intent and purpose of the zoning district in which the land is located.
- (d) Required Street Frontage. Each lot shall have a minimum of at least 60 feet of frontage on a lawful street, measured at the street right-of-way line.
- (e) Lot Width. Each lot shall have a minimum lot width of 65 feet, measured at the front setback line of the underlying zoning district in which the land is located. Notwithstanding the provisions of this subsection, each lot which abuts or has frontage on a lake, river, stream or creek shall have frontage on such body of water equal to or greater than the minimum lot width requirement for the zoning district in which the land is located.
- (f) Maximum Number of Lots. The clustered portion of the development shall contain no more than the maximum number of lots, as determined from the Existing Zoning Yield Plan approved by the Planning Commission and Township Board.
- (g) Nondwelling Unit Structures. Lots containing nondwelling structures such as a clubhouse and its related amenities, shall be subject to all requirements of this Chapter applicable to lots containing dwellings and shall further be subject to all other requirements of this Ordinance and other Township ordinances applicable to the type of structure proposed. However, the Township Board (upon recommendation by the Planning Commission) may, at its discretion, permit the enlargement of a lot containing a nondwelling structure so as to reasonably accommodate it.
- (h) Perimeter Lots. Notwithstanding any other provision of this Chapter, the Township Board (upon recommendation from the Planning Commission) may require that the clustered development be designed and constructed with lot sizes and setbacks on the perimeter that will be reasonably consistent with the lot sizes and setbacks of either planned or existing adjacent uses.

- (i) Sidewalks. The Township Board (upon recommendation from the Planning Commission) may require sidewalks as deemed reasonable throughout the development.
- (j) Grading. Grading within the clustered development shall comply with the following requirements:
 - (1) To preserve the natural appearance of the land, all graded areas, cuts and fills shall be kept to a minimum. Specific requirements may be placed by the Township Board on the area of land to be graded or to be used for building, and on the size, height, and angles of cut-and-fill slopes and the shape thereof. Retaining walls may be required by the Township Board.
 - (2) All areas indicated as open space on the approved development plan shall be undisturbed by grading, excavating, structures or otherwise, except as permitted by the Township Board (upon recommendation from the Planning Commission). Drainage improvements, utility lines, riding trails, hiking trails, picnic areas, and similar recreational improvements and amenities may be placed in open space areas if approved by the Township Board (upon recommendation from the Planning Commission).
 - (3) Grading within the clustered development shall be planned and carried out so as to avoid erosion, pollution, flooding or other adverse effects upon the land, and so as to have only such minimal effect upon lakes, streams, wetlands, and the environmental characteristics of the land as may be reasonably feasible.
- (k) Private Streets. Private streets within a clustered development shall conform to the private street requirements found in Section 2.34 of this Ordinance. The Township Board (upon recommendation from the Planning Commission) may, however, modify the requirements for private streets and in doing so, shall consider the following criteria:
 - (1) The number and type of dwelling units served by the private street;
 - (2) Traffic generation;
 - (3) Existing topography and vegetation;
 - (4) Security provisions;
 - (5) Inter-relationship with the public street network;
 - (6) Future installation of public utilities; and
 - (7) Likelihood of public dedication of the roadway.

- (l) Other Laws. The development of land under this Chapter is subject to all other applicable Township ordinances, and state and federal laws, rules and regulations, including, but not limited to, rules relating to suitability of groundwater for on-site water supply for land not served by a public water system, and rules relating to the suitability of soils for on-site sewage disposal for land not served by public sanitary sewers.
- (m) Access to or Frontage on Lakes and Streams.
 - (1) An approved Residential – Open Space Preservation PUD or other approved development pursuant to Act No. 177 and this Chapter, shall comply fully with the lake access, frontage, and other requirements contained in this Ordinance (if any) with regards to lakes, rivers and streams if the property at issue has frontage on a lake, river or stream.
 - (2) No approved Residential – Open Space Preservation PUD or other development approved pursuant to Act No. 177 and this Chapter shall permit any more lots or dwellings to have access to or frontage upon a lake, river or stream than would be otherwise legally permissible under existing zoning.
- (n) County Drain Commissioner Approval. Any matters involved with drainage, retention/detention ponds, water runoff, and similar matters associated with any proposed development pursuant to this Chapter shall require the approval of the Kent County Drain Commissioner and shall be subject to the applicable rules and regulations of the same.

SECTION 14E.09 AMENDMENTS TO AN APPROVED RESIDENTIAL-OPEN SPACE PUD

- (a) An approved site plan and any conditions imposed upon its approval pursuant to an approved Residential-Open Space Preservation PUD shall not be changed except upon the mutual consent of the Township Board (after recommendation by the Planning Commission) and the applicant, except as otherwise stated below with respect to minor changes.
- (b) A minor change may be approved by the Planning Commission. The following items shall be considered minor changes:
 - (1) Reduction of the size of any building, building envelope, or sign.
 - (2) Movement of buildings or signs by no more than ten (10) feet.
 - (3) Plantings approved in the landscaping plan may be replaced by similar types of plantings.
 - (4) Changes requested by the Township for safety reasons.

- (5) Changes which will preserve natural features of the land without changing the basic site layout.

SECTION 14E.10 PERFORMANCE GUARANTEES

The Township Board, at its discretion, may require reasonable performance guarantees. Such guarantees shall be conditioned upon faithful compliance with all of the provisions and requirements of this Chapter and the approved site plan and PUD. Such performance guarantees shall be in the form of a performance bond, irrevocable letter of credit, or cash deposit in an amount and form deemed by the Township Board to be appropriate.

SECTION 14E.11 TIME LIMITATIONS FOR DEVELOPMENT

Each development approved and permitted pursuant to this Chapter shall be under substantial construction within one (1) year after the date of approval of the site plan and PUD by the Planning Commission and Township Board. If this requirement is not met, the Planning Commission may, at its discretion, grant an extension not exceeding one (1) year, provided that the applicant submits reasonable evidence showing that unforeseen difficulties or special circumstances have occurred which caused excusable delay in the commencement of the cluster or open space development. If the approved development has not been commenced within the above-stated time period or any authorized extension thereof, any zoning permits and building permits issued for the development or any part thereof shall be of no further effect. The applicant shall then be required to seek a new approval (as if starting over again) from the Planning Commission and Township Board pursuant to the requirements of this Chapter.

SECTION 14E.12 SAVINGS CLAUSE

If for any reason a court of competent jurisdiction determines that the Township cannot require an applicant to obtain a PUD rezoning approval as a prerequisite for exercising the clustering or open space/preservation development option pursuant to Act No. 177 or this Chapter, all other procedures and requirements of this Chapter shall remain applicable, including the site plan approval requirements of Chapter 18 of this Ordinance. If a court of competent jurisdiction determines that zone district(s) in addition to those listed in Section 14D.02 of this Chapter are considered “lands zoned for residential development,” the requirements of this Chapter shall apply to the lands in such additional zone district(s).