

## Part 19

### Open Space Provisions

#### §27-1901. Purpose.

1. The overall intent of these open space provisions is to identify those residential zoning districts where the designation of open space is explicitly applicable and further, to identify related use regulations, locational criteria, performance standards and ownership and maintenance requirements for land to be held for conservation, preservation, or enhancement of natural and cultural resources and amenities or for recreational or civic use or any combination thereof. These provisions are designed to:

A. Provide an effective means for identifying and organizing and maintaining open space.

B. Preserve natural environmental resources and maintain ecological stability by:

(1) Encouraging the preservation of land in floodplains and thus supplement Floodplain District regulations.

(2) Limiting the development of prohibitive and precautionary slopes.

(3) Protecting and enhancing the quality of existing watercourses, wetlands and other water resources, including riparian buffers.

(4) Encouraging the preservation of groundwater resources and the Groundwater Protection District through the provision of open space areas for groundwater recharge.

(5) Minimizing the disruption of woodland and forest areas.

C. Provide for necessary active and passive recreation areas, and civic amenities to complement existing and proposed open space and recreational uses and trails.

D. Create a contiguous network of interconnected open spaces that link with open spaces within the tract, and to neighboring tracts with existing or proposed open spaces.

E. Encourage the preservation of existing and potential agricultural land through the identification and use of open space lands which are suited for agricultural production, particularly prime agricultural land.

F. Preserve historic resources by:

(1) Promoting the preservation of significant historical and cultural sites and structures as open space, especially those on the National Register of Historic Places, and those on inventories of the State and County.

(2) Protecting the character of historic and cultural sites and structures by encouraging the designation of surrounding land as open space.

G. Preserve scenic resources and scenic viewsheds.

H. Aid in the implementation of the Comprehensive Plan and the Park, Open Space and Recreation Plan.

**§27-1902. Applicable Districts.**

1. Although residential open space is encouraged to be maintained, organized and designated everywhere in the Township, the provisions of this Part are particularly applicable to:

A. The RR District, Part 6, involving cluster development in accordance with §27-603.2

## **§27-1903. Use Regulations.**

### **1. Permitted Principal Uses.**

A. Conservation of open land in its natural state (for example, woodland, fallow field or managed meadow).

B. Noncommercial recreational uses, including parks, playgrounds, playfields, greens, trails and structures related thereto for residents of the community and the Township, including golf courses.

C. Agricultural uses which do not require structures.

D. Planted areas used for buffering and screening purposes and noise control.

E. Structures presently existing in areas to be designated as open space.

F. Municipal use.

G. Earthen stormwater management facility.

H. Neighborhood open space uses such as greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Board of Supervisors.

### **2. Permitted Accessory Uses.**

A. Uses customarily incidental to the principal uses permitted in subsection 1.

B. Signs which are customarily incidental to the principal uses as are otherwise permitted in accordance with Part 22.

### **3. Conditional Uses.**

A. The following uses and their related accessory uses, provided a satisfactory environmental assessment report is prepared as set forth in Part 18:

(1) Parking which is customarily incidental to the principal uses permitted in subsection 1, and other applicable provisions of this Code.

(2) Bridges.

(3) Stormwater detention basins.

(4) Boundary fences and walls.

(5) Agricultural uses which require structures.

4. Prohibited Uses and Activities.

A. Structures other than those associated with subsections 1, 2 and .3.

B. Soil, rock, water or mineral extraction or removal, other than in association with any uses related to subsections 1, 2, or 3 above.

C. Removal of topsoil other than in association with any uses related in subsections 1, 2, or 3 above.

D. Cutting or removal of live trees or other flora, except where such vegetation must be cut or removed to accommodate uses associated with subsections 1, 2, or 3 above, or for the removal of invasive species.

E. Storage of materials that may be hazardous to the health, safety and general welfare of the Township.

**§27-1904. Determination of Open Space Areas.**

Locational Criteria. The required open space in a cluster development shall meet the requirements of the applicable zoning district and this Part. In addition, the open space shall be designed according to the standards in §22-403A, the four step design process and §22-617, "Cluster Development," in the Subdivision and Land Development Ordinance [Chapter 22].

## **§27-1905. Calculating Open Space Areas**

1. When computing open space for purposes of determining compliance with the minimum open space requirements set forth in §27-1836, the following shall not be counted as open space:

- A. Rights-of-way or easements proposed for dedication.
- B. Areas to be used for permanent soil erosion and sedimentation control and areas for non-earthen stormwater management structures.
- C. Areas used for retail sales of agricultural products or areas of uses accessory thereto.
- D. Roads, parking areas or parking lots which are paved, unless same are part of the required active open space.
- E. Yards and minimum lot areas for existing or proposed dwelling units.
- F. Water and Sewage Treatment facilities with permanent above ground facilities.

2. Buffers for Adjacent Public Parkland. Where the proposed development adjoins public parkland, a natural greenway buffer at least 150 feet deep shall be provided within the development along its common boundary with the parkland, within which no new structures shall be constructed, nor shall any clearing of trees or understory growth be permitted (except as may be necessary for street or trail construction). Where this buffer is unwooded, the Board of Supervisors may require vegetative screening to be planted, or that it be managed to encourage natural forest succession through “no-mow” policies and the periodic removal of invasive alien plant and tree species.

## **§27-1906. Performance Standards.**

In addition to the regulations of §§22-616 and 22-617 of the London Grove Township Subdivision and Land Development Ordinance [Chapter 22], the following shall apply:

A. **Minimum Contiguous Area.** Any land parcel designated as open space shall have a contiguous area of not less than 1 acre, except for the open space area within a green which shall not be less than 5,000 square feet.

B. **Minimum Parcel Width.** The configuration of any parcel of open space shall provide for a minimum width of 30 feet, except for: (1) the open space of a green, which shall not be less than 50 feet in width; (2) a trail corridor designed exclusively to connect areas of open space or other destinations, and not otherwise located within an area of common open space, which shall be not less than the minimum right-of-way width as required by this Section.

C. **Maximum Impervious Surface Coverage.** Not more than 5 percent of the total area of designated open space shall be covered by impervious surfaces; and not more than one-half of any individual parcels of open space shall be covered by impervious surfaces, including buildings.

D. **Minimum Setback.**

(1) Any building within the designated open space shall be located no fewer than 55 feet from the perimeter property lines; and no less than 25 feet from any new lot line created within a tract.

(2) Any structure within the designated open space shall be located no less than 30 feet from the perimeter property lines; and no less than 25 feet from any new lot line created within a tract, except for signs, boundary fences, walls, street trees, and the like.

E. **Area Configuration.**

(1) The open space designated within a development area shall not be merely leftover or unusable land. It shall be laid out to the satisfaction of the Board of Supervisors providing a maximum of accessibility to the residents of a development area, and shall conform to the design standards of §22-617 of the London Grove Township Subdivision and Land Development Ordinance.

(2) Existing and/or proposed trails accessible to the public shall be incorporated in any development where such trails have been indicated on the adopted Trail System Map. Where no trails have been indicated on the adopted Trail System Map, the applicant shall provide local/collector trails as a means of connection to the publicly-accessible Comprehensive Trail System. Any new trail shall comply with the standards in §22-617 of the London Grove Township Subdivision and Land Development Ordinance [Chapter 22].

#### **§27-1907. Ownership, Maintenance, and Management of Open Space**

1. Except to provide for permitted recreational and open space uses, designated open space shall be restricted from further subdivision or land development by deed restriction, conservation easement or other agreement in a form acceptable to the Township and duly recorded in the office of the Recorder of Deeds of Chester County. The applicant shall submit a declaration of covenants, easements and restrictions to evidence the restrictions related to the open space. Subject to such permanent restrictions, any of the following methods listed and no other may be used, either individually or together, to preserve, own and maintain open space:

- A. Dedication in fee simple.
- B. Dedication of easements.
- C. Transfer of fee simple title or development rights and easements to a land trust or private conservation organization.
- D. Homeowners association.
- E. Condominium agreement.

F. Individual private ownership, when the land is used for agricultural purposes, restricted to agricultural use only, and protected by a conservation easement held by the Township or a private conservation organization.

2. The following specific requirements are associated with each of the various methods:

A. Fee Simple Dedication.

(1) The Township may, but shall not be required to, accept an offer of a deed of dedication provided that:

(a) Such land is accessible to the residents of the Township.

(b) There is no cost of acquisition other than any costs incidental to the transfer of ownership, such as title insurance and recording fees.

(c) The Township agrees to and has access to maintain such lands.

(2) Where the Township accepts dedication of open space that contains improvements, the Board of Supervisors may require the posting of financial security to ensure structural integrity of said improvements, as well as the functioning of said improvements for a term not to exceed 18 months from the date of acceptance of dedication. The amount of financial security shall not exceed 15 percent of the actual cost of installation of said improvements.

B. Dedication of Easements. The Township may, but shall not be required to, accept easements for public use of any portion of open space and, the title of which is to remain in the common ownership by condominium or homeowners association, provided that:

(1) Such land is accessible to the residents of the Township.

(2) There is no cost of acquisition other than any costs incidental to the transfer of ownership, such as title insurance.



(3) A satisfactory maintenance agreement is reached between the developer, condominium or homeowners association and the Township.

C. Transfer to a Private Conservation Organization. With permission of the Township, the landowner or developer may transfer either the fee simple title with appropriate deed restrictions running in favor of the Township or the development rights or easements to a private, nonprofit organization among whose purposes is to conserve open space land, provided that:

(1) The organization is acceptable to the Township and is a bona fide conservation organization with perpetual existence.

(2) The organization is chartered under the laws of the Commonwealth of Pennsylvania to administer deed restrictions limiting eventual disposition of such property for the purposes stated in its articles of incorporation.

(3) The conveyance contains appropriate provisions for proper reverter or re-transfer in the event that the organization becomes unwilling or unable to continue carrying out its functions.

(4) A maintenance agreement acceptable to the Township is entered into by the landowner or developer and the organization.

D. Homeowners Association. The restricted open space land and associated facilities may be held in common ownership by a nonprofit homeowners association. If a homeowners association is formed, it shall be governed according to the following regulations:

(1) The landowner or developer shall provide the Township with a description of the organization, including its bylaws and methods for maintaining open space which shall be acceptable to the Township Solicitor.

(2) The organization is to be organized by the landowner or developer and operating with financial subsidization by the

landowner or developer, if necessary, before the sale of any lots within the development.

(3) Membership in the organization is mandatory for all purchasers of dwelling units therein and their successors. The conditions and timing of transferring control of the association from developer to homeowners shall be identified.

(4) The association shall be responsible for maintenance and insurance on common open space land, enforceable by liens placed by the homeowners association. Maintenance obligations also may be enforced by the Township which may place liens to recover its cost. Any governmental body with jurisdiction in the area where the development is located may place liens on the owners of the open space to collect unpaid taxes.

(5) The members of the organization shall share equitable the costs of maintaining and developing open space, in accordance with procedures established by them. If a member fails to pay his pro rata share, then a lien against an individual property may be made in accordance with the provisions for same in the bylaws of the organization. Association dues shall be structured to provide for both annual operating costs and to cover projected long-range costs relating to the repair of any capital facilities (which shall be deposited in a sinking fund reserved for just such purposes).

(6) The organization shall be responsible for maintenance of insurance and taxes on open space.

(7) In the event of a proposed transfer, within the methods here permitted, of common open space land by the homeowners association or of the assumption of maintenance of such land by the Township, notice of such action shall be given to all property owners within the development.

(8) The organization shall have or hire adequate staff to administer common facilities and maintain the open space to the satisfaction of the Board of Supervisors.

(9) The homeowners association may lease open space lands to any other qualified person or corporation for operation and maintenance of such lands, but such a lease agreement shall provide:

(a) That the residents of the development shall at all times have access to open space lands contained therein (except that access to land that is actively farmed shall be limited to time of the year when the fields are fallow).

(b) That the common open space land to be leased shall be maintained for the purposes set forth in this Part.

(c) That the operation of open space facilities may be for the benefit of the residents only or may be open to the residents of the Township, at the election of the Board of Supervisors.

(10) The lease shall be subject to the approval of the Board of Supervisors and any transfer or assignment of the lease shall be further subject to the approval of the Board of Supervisors. Lease agreements so entered upon shall be recorded with the Recorder of Deeds of Chester County within 30 days of their execution, and a copy of the recorded lease shall be filed with the Township Manager.

(11) Homeowners association documentation demonstrating compliance with the provisions herein shall be filed with the final subdivision and land development plans. At the time of preliminary plan submission, the applicant shall provide a draft homeowners association documentation with sufficient detail to demonstrate feasible compliance with this Section.

E. Condominium Agreement. The open space and associated facilities may be held in common through the use of condominium agreement(s) approved by the Board of Supervisors. Such agreements shall be in conformance with the Uniform Condominium Act, as may be amended. All open space land shall be held as common elements or limited common elements. To the degree applicable, condominium agreement(s) shall comply with the provisions of subsection .2.B for homeowners associations. Condominium agreement(s) shall be filed

with the final subdivision and land development plans. At the time of preliminary plan submission, the applicant shall provide draft condominium agreement(s) with sufficient detail to demonstrate feasible compliance with this Section.

F. If open space is held in private ownership, per subsection .1.F, such open space shall be protected in accordance with subsection .8.B and C.

G. In the event of any proposed transfer of open space within the methods permitted in this Section or of the assumption of maintenance of open space land by the Township as hereinafter provided, notice of such action shall be given to all affected property owners.

3. In the event that the organization established to own and maintain open space or any successor organization, shall at any time after designation fail to maintain the open space in reasonable order and condition in accordance with any and all approved plans, the Township may serve written notice upon such organization or upon the residents and owners setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof and shall state the date and place of a hearing thereon which shall be held within 14 days of the notice.

A. At such hearing the Township may modify the terms of the original notice as to the deficiencies and may give an extension of the time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within said 30 days or any extension thereof, the Township, in order to preserve the taxable values of the properties and to prevent the open space from becoming a public nuisance, may enter upon said open space and maintain the same for a period of one year, at the expense of the organization. The cost of any such maintenance shall be borne by the owners of lots within the development from which the open space was derived. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the residents and owners.

B. Before the expiration of said year, the Township shall, upon its initiative or upon the request of the organization responsible for the maintenance of the open space, call a public hearing upon notice to such organization or to the residents and owners of the project to show cause why such maintenance by the Township shall not, at the election of the Township, continue for a succeeding year. If the Township shall determine that such organization is ready and able to maintain said open space in reasonable condition, the Township shall cease to maintain said open space at the end of said year. If the Township shall determine such organization is not ready and able to maintain said open space in a reasonable condition, the next succeeding year and subject to a similar hearing and determination in each year thereafter. The decision of the Township in any such case shall constitute a full administrative decision subject to the judicial review at the expense of the homeowners association or other entity.

C. The cost of such maintenance by the Township shall be assessed ratable against the properties within the project that have a right of enjoyment of the open space and shall become a municipal lien on said properties. The Township, at the time of entering upon said open space for the purpose of maintenance, shall file a notice of such lien in the office of the Prothonotary of Chester County upon the properties affected.

D. This shall not require the Township to take any action, or limit any remedies permitted by law.

4. The open space shall be assessed in accordance with Act 180 of 1996, the Planned Communities Act.

5. A plan for the management of the open space shall be submitted for Township review prior to any final plan approval. Such plan shall be in accordance with §22-617 of the London Grove Township Subdivision and Land Development Ordinance [Chapter 22].