



**SPECIAL MEETING AGENDA
November 11, 2002 – 7:30 P.M.
Council Board Room – City Hall
500 West Big Beaver, Troy, Michigan 48084
(248) 524-3300**

CALL TO ORDER

ROLL CALL

**Mayor Matt Pryor
Robin Beltramini
Cristina Broomfield
David Eisenbacher**

**Martin F. Howrylak
David A. Lambert
Anthony N. Pallotta**

1 Appointment of Temporary Civil Service Commissioner
(Act 78 Board) 7:30 – 7:35

2 Goals and Objectives Presentation 7:35 – 9:00

BREAK 9:00 – 9:10

3 Proposed Zoning Ordinance Text Amendment –
R-1A and R-1B, Open Space Preservation 9:10 – 10:00

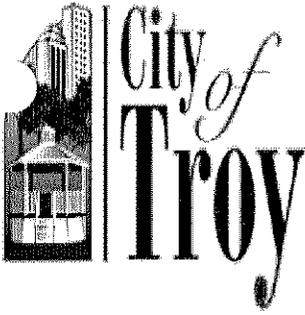
PUBLIC COMMENT

ADJOURN

Respectfully submitted,

John Szerlag, City Manager

NOTICE: People with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk at (248) 524-3316 or via e-mail at clerk@ci.troy.mi.us <<mailto:clerk@ci.troy.mi.us>> at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.



To: Mayor and City Council
From: John Szerlag, City Manager
John M Lamerato, Assistant City Manager/Finance and Administration
Tonni L. Bartholomew, City Clerk
Lori Grigg Bluhm, City Attorney
Date: October 30, 2002
Subject: TEMPORARY CIVIL SERVICE COMMISSIONER

Several years ago, the City of Troy established a firefighters and police officers civil service commission, which was authorized under PA 78 of 1935. This commission is sometimes referred to as the Act 78 commission. Under state law, a civil service commission can only be created in municipalities with full-time paid members in the police and/or fire department. Essentially, the duties of the civil service commission include the certification of eligible police and/or fire employees for employment or promotion and the review of suspension and/or discharge of fire fighters and police officers.

State law mandates that the civil service commission be comprised of three members. The first member is an appointment of the Mayor, with the consent of City Council. The police and fire departments appoint the second member. These two commissioners select a third member. Each member serves a six year term.

Unfortunately, state law does not address situations where there is a potential conflict of interest in a hearing. There is a meeting of the Troy Civil Service Commission scheduled for November 12, 2002. At that time, the Commission will address an appeal brought by Ms. Castiglione, who was a police academy student of Mr. Cannon. Her attendance and performance at the police academy will necessarily be an issue of her appeal, and therefore it is my recommendation that Mr. Cannon refrain from participation in the appeal. Commissioner Canon subsequently confirmed that he would not be able to participate in the appeal, since he has been temporarily called to active military duty, and will be out of the country for approximately one year. Since meetings are held on an as-needed basis only, it is unknown whether Mr. Cannon will miss any other meetings during this period. Mr. Cannon has requested to remain on the commission and serve until the expiration of his term in April 2006.

At the last meeting, both Commissioners expressed a desire for a temporary replacement for Mr. Cannon. Norman (Don) Michaelson, a former member of the Commission and a current resident of Troy, was suggested as a temporary replacement. Mr. Michaelson has knowledge of the duties and procedures of the Commission, and would be able to effectively participate in the appeal scheduled for November 12, 2002. He served for approximately eighteen years, and has indicated a willingness to serve on a temporary basis. He is likely the only former member still qualified for appointment. Since Mr. Cannon is the mayoral appointment, this temporary appointment should be made by the Mayor and confirmed by City Council.

If you have any questions, or would like more information about Mr. Michaelson, please let us know.

F-1

Suggested Resolution
 Resolution #2002-11-
 Moved by
 Seconded by

RESOLVED, That _____ is hereby **APPOINTED** by the Mayor and confirmed City Council to serve on the Act 78 Civil Service Commission for a Temporary replacement for David Cannon for a temporary term for up to one year to expire on or prior to November 16, 2003.

Yes:
 No:

Act 78 Civil Service Commission

Mayor, Approved by Council (1)- 6 years
Police/Fire Departments (1) – 6 years
Civil Service (1) – 6 years

Temporary Term expires on or before 11-16-2003

Temporary replacement for David Cannon while on Military Leave

CURRENT MEMBERS

NAME	TERM EXPIRES
David Cannon	Apr. 30, 2006
Donald E. McGinnis, Jr., Ch. - (Police/Fire)	Apr. 30, 2004
Patrick Daugherty - (Civil Service)	Apr. 30, 2008

INTERESTED APPLICANTS

NAME	DATE APPLIED	DATE SENT TO COUNCIL
David J Easterbrook	9/25/01/9/2003	10/01/01
Norman (Don) Michaelson	10/30/0/	11/04/02
Brian M Powers	10/15/02/10/2004	10/21/02
Robert F Rogowski	11/14/01/11/2003	12/17/01
Christopher A Sobota	2/14/02/2/2004	2/18/02
Peter Ziegenfelder	12/07/00/6/11/01	12/18/00 - 07/09/11

November 7, 2002

TO: The Honorable Mayor and City Council Members

FROM: John Szerlag, City Manager

SUBJECT: Proposed Format for First Meeting of Goals and Objectives

At our Special Meeting on November 11 I'll be handing out a hard copy of the PowerPoint presentation for goals, objectives and tasks proposed for 2003-2005, and beyond. Included as part of the presentation are comments provided to me by individual members of Council when we had one-on-one discussions about Troy's vision for the future.

As we addressed previously, this issue will span at least two meetings. As such, there's no pressure to make any decisions on the topics contained therein at this first session. However, direction from the governing body would be appreciated at our second session.

I look forward to seeing you on Monday.

JS/mr\Szerlag\2002\To M&CC\First G&O Session

November 7, 2002

To: The Honorable Mayor and City Council

From: John Szerlag, City Manager
Gary Shripka, Assistant City Manager/Services
Lori Bluhm, City Attorney
Nino Licari, Assessor
Mark Stimac, Director of Building and Zoning
Mark F. Miller, Planning Director

Subject: PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) –
Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation

EXECUTIVE SUMMARY

- *Requirements of House Bill No. 5029/Open Space Preservation*

This amendment to the City and Village Zoning Act, PA 207 of 1921, requires the City of Troy to adopt Open Space Preservation provisions for the R-1A and R-1B Zoning Districts by December 14, 2002. These provisions will permit property owners the option of developing all of the permitted dwelling units on a portion the property, if the balance of the property remains open space in an undeveloped state. The open space area shall be at least 20% of the overall property, and permanently protected with a conservation easement or other legal restriction. Such provisions can be exercised once by the land owners. These Open Space Preservation provisions are commonly known as cluster zoning or open space zoning. However, the amendment to the City and Village Zoning Act does not prescribe the typical elements of an open space zoning option.

- *City Management and Planning Commission Recommendations*

City Management along with the City Attorney's Office and Planning Commission worked together to draft proposed Open Space Preservation provisions. The Planning Commission recommended approval of an amendment on September 10, 2002. City Management continues to recommend approval of this City Management/Planning Commission version of the Open Space Preservation zoning ordinance amendment.

The intent of the City Management/Planning Commission version only addresses compliance with the Open Space Preservation amendment to the City and Village Zoning Act. The basic premise is that there should be no negative impact on existing one family neighborhoods. Further, it is recommended that the existing

CR-1 (Cluster) Zoning District provisions should be reviewed and amended, separately and at some time in the future

- *City Council Amendments*

City Council direction to City Management provided revisions to the City Management/Planning Commission proposed amendment. The following City Council revisions are provided for in the City Council proposed amendment:

1. Elimination of the parallel plan requirement.
2. Permit gross property density calculations at 1.6 (R-1A) or 2.2 (R-1B) units per acre.
3. Reduce front yard setbacks to 20 feet.
4. Permit duplexes/two family attached units on properties of 2 acres in size.
5. Eliminate the 50 % upland requirement for the open space.
6. Provisions for maintenance of the open space.
7. Attached units shall have no more than a 75% common wall relationship.

RAMIFICATIONS OF COUNCIL RECOMMENDATIONS

- Duplex units could reduce existing single family property values.
- Consolidation of properties occurs ministerially and reaching the 2 acre threshold can easily be achieved to permit duplexes.
- Property owners could be encouraged to up-zone from R-1C, R-1D and R-1E to R-1B in order to maximize units per acre and utilize duplexes.
- Negative impact on existing single family neighborhoods.
- Elimination of parallel plan would have the effect of permitting development on existing non-conforming lots, that cannot presently be developed without a variance being granted by the Board of Zoning Appeals (i.e. setbacks, lot size) or increasing density on parcels when compared with conventional zoning techniques.
- With the elimination of parallel plan the City Assessor or Building Official has no direction to what standard should be used for minimum lot size and minimum lot width when reviewing lot split applications.
- Attached condominiums and rental developments will be permitted by right in the R-1A and R-1B districts, and reviewed only by the Planning Commission with no discretionary powers to deny and no public notification requirement.
- Duplexes would be permitted by right on larger individual lots with only an administrative review of the size, open space, and setback requirements. Adjacent property owners would have no notice or input in this significant revision to the expected development on adjoining sites.

OTHER ISSUES BROUGHT FORTH BY COUNCIL

- Concern regarding units per acre permitted when there are no sanitary sewers available.
- Only 20% of the total units permitted could be duplexes.
- Special Use Approval requirement for duplexes.

ATTACHMENTS

1. Open Space Preservation text amendments per City Council direction.
2. Open Space Preservation text amendments as recommended by City Management and the Planning Commission.
3. City Attorney correspondence.
4. Richard Carlisle, City's planning consultant, correspondence.
5. Richard Beltz correspondence.
6. Map, Existing Parcels Permitted to Have 2 or More Dwellings.
7. Diagrams of minimum lots sizes and setbacks.
8. Aerial photo with overlay of potential duplex locations.
9. John Szerlag, City Manager, correspondence, October 25, 2002.
10. Background information from the October 21, 2002 regular meeting.
11. Background information from the October 14, 2002 study session.
12. Background information from the October 7, 2002 regular meeting.

CC: Planning Commission
Planners (3)
File/ZOTA 194

**PROPOSED CITY MANAGEMENT/PLANNING COMMISSION VERSION
TEXT AMENDMENT**

Open Space Preservation Option

10.00.00 ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer's option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

- A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.
- B. To encourage developers to use a more creative approach in the development of residential areas.
- C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.
- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan shall contain the following, in addition to the information required on a complete site plan:

- A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open

space) shall be provided, including the following:

1. Legal description of dedicated open space, including dedicated easements.
2. Topographical survey of dedicated open space.
3. Types of soil in dedicated open space.
4. Description of natural features on dedicated open space.
5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.

B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:

1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.
- D. The option has not previously been exercised on the parcel.

34.60.04 Dwelling Unit Density:

- A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a "parallel plan".

1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.
2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

- A. Overall density shall not exceed the number determined in the parallel plan.
- B. Setback provisions shall remain, except:
 1. Front yard setbacks may be reduced to not less than 25 feet.
 2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.
 3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.
- C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.
- D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

- A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include

a recreational trail, picnic area, children's play area, greenway, or linear park. As used in this section, the term "greenway" shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.

- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
 - 1. Area proposed as single family residential lots.
 - 2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 - 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development.
- E. Protection of Open Space

1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
2. 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:
 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or subdivision plat. Open space may include a recreational trail, children’s play area, greenway or linear park.

**PROPOSED CITY COUNCIL VERSION
TEXT AMENDMENT
Open Space Preservation**

10.00.00 **ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS**

10.20.08 *The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.*

34.00.00 **ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS**

34.60.00 **OPEN SPACE PRESERVATION OPTION**

This option may be utilized, at the developer's option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall serve as the intent of the Open Space Preservation option:

- A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.
- B. To encourage developers to use a more creative approach in the development of residential areas.
- C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.
- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan shall contain the following, in addition to the information required on a complete site plan:

A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:

1. Legal description of dedicated open space, including dedicated easements.
2. Topographical survey of dedicated open space.
3. Types of soil in dedicated open space.
4. Description of natural features on dedicated open space.
5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.

B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:

1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
2. The proposed manner of regulating the use of the common facilities and maintenance of these areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

A. The land is zoned for R-1A or R-1B residential development.

- B. The percentage of land area specified in Section 34.60.06 below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned, developed and maintained as one integral unit.
- D. The option has not previously been exercised on the parcel.

34.60.04 Dwelling Unit Density:

- A. The number of dwelling units allowable within the Open Space Development shall be as follows:
 - 1. 1.6 units per acre in the R-1A One Family Residential District.
 - 2. 2.2 units per acre in the R-1B One Family Residential District.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

- A. Setback provisions shall remain, except:
 - 1. Front yard setbacks may be reduced to not less than 20 feet.
 - 2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent zoning districts.
 - 3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.
- B. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.
- C. The permitted uses shall be restricted to the following:

1. Single family detached residential development.
2. Two family attached residential development provided the development meets the following:
 - i. The parcel is at least 2 acres in area.
 - ii. A common party wall does not have over seventy-five (75) percent of its area in common with an abutting dwelling unit.
1. Residential accessory structures.
2. Non-commercial recreation uses.

34.60.06 *Open Space Requirements:*

- A. **Minimum Requirements:** An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section 34.60.06 E1 below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be dedicated to the use of the public or residents of the residential development. Except as noted in Section 34.60.06 E1 below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space.
- B. **Common Open Space:** Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area

system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.

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

1. Area proposed as single family residential lots or units.
2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
3. The area of any street right-of-way or equivalent private road easement.

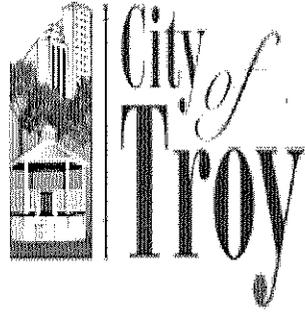
D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development.

E. Protection of Open Space

1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase "conservation easement" means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction,

easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

2. 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:
 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or subdivision plat. Open space may include a recreational trail, children's play area, greenway or linear park.
 - c. Indicate the proposed maintenance plan for the dedicated open.



TO: Mayor and Members of City Council
FROM: Lori Grigg Bluhm, City Attorney *LB*
Susan M. Lancaster, Assistant City Attorney *JML*
DATE: November 8, 2002
SUBJECT: Open Space Preservation

The new legislation, requiring qualified cities and villages to adopt "open space preservation" ordinances, has generated a variety of different responses from the local governing units. It should be noted that this new law explicitly states that it is "subject to the right of referendum." By including this language in the text of the bill, the legislature recognized the right of local control, where the voters could reject the mandate of open space preservation if the municipal charter permitted it. This law could easily be challenged if the voters reject the open space provisions that a developer seeks to utilize.

Some municipalities are not required to adopt new open space preservation ordinances. Others have not yet amended their ordinances, nor expressed an intention to do so. This could again provide another avenue for the state mandate to be challenged. Most of the jurisdictions that have amended their ordinances adopt only the bare minimum requirements of the state law. Under MCL 125.584f, "each qualified city shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land specified in the zoning ordinance, but not more than 80%, that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, rules, on the entire land area..." Almost all other communities have required a parallel plan to determine the portion of land that could otherwise be developed.

There are a couple of unique ordinances that provide the local municipality with the right to a hearing before allowing the use of the open space development option. (Waterford Township, Southgate) However, the state law provides developers with a right to use this option one time only with respect to that land. Therefore, if a review process is incorporated into Troy's proposed ordinance, we would recommend that it be similar to a site plan review, where approval is mandated where the developer has complied with all conditions.

Other than the requirement of perpetual preservation of the open space, the state law does not set forth any other conditions to the open space preservation option for qualified municipalities (sewered municipalities with densities at 2 or fewer dwelling units per acre or unsewered municipalities with densities at 3 or fewer dwelling units per acre). Following this, a developer could challenge a municipality's imposition of additional requirements. In Troy's case, these additional requirements could include a requirement that 50% of the perpetually preserved property be uplands. Another requirement is the reservation of the municipality to approve the method of perpetual preservation. Although there is a potential for challenge, since our local ordinance would extend beyond state law, this is a requirement that is reasonable, and would likely survive any challenge as comporting with the intent of the open space preservation. This is especially true if the City provides additional incentives to the developers that are beyond the requirements of the new state legislation.

If you have any questions concerning the above, please let us know.

CITY OF SOUTHGATE

ORDINANCE NO. _____

OPEN SPACE DEVELOPMENT

AN ORDINANCE TO AMEND TITLE 6 OF THE SOUTHGATE CITY ZONING CODE TO PROVIDE FOR AN OPEN SPACE DEVELOPMENT OPTION TO SECTION 1298.03 OF THE CODE TO PERMIT CLUSTERED USE OF THE PARCEL WHILE PRESERVING OPEN SPACE WITHIN IT. THE CITY OF SOUTHGATE, WAYNE COUNTY, MICHIGAN, HEREBY ORDAINS:

Section 1. Title 6 of the Southgate City Zoning Code shall be amended by adding a new Section 1298.036 entitled "Open Space Development Option" to permit clustered development on a parcel so as to create and preserve open space, which shall read as follows:

1298.036 OPEN SPACE DEVELOPMENT OPTION.

(a) **Purpose**

The purpose of this section is to provide an alternative means of development to the landowner on land which is residentially zoned that would create the same number of home sites, but cluster the homes on no more than 50 percent of the land, while leaving the unused land perpetually in an undeveloped state by means of a construction easement, plat dedication, restrictive covenant or other legal means that runs with the land as required by Section 4(f) of State Public Act 207 of 1921, as amended (the City and Village Zoning Act).

These regulations are intended to provide flexibility in certain zoning requirements to preserve the natural features in open space that might be lost through more traditional subdivision development. Only land that is zoned at a density equivalent to 2 or fewer dwelling units per acre, or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre, are eligible for application of the provisions of this Section.

(b) **Definitions.**

For purposes of this Section, the following terms shall apply.

1. *Adjusted parcel acreage:* Net parcel area after the acreage of all lakes, ponds, streams, 50% of regulated wetlands, property within a 100 year flood plain, public rights-of-way, and utility easements are deducted.
2. *Density:* Equals the number of dwellings units situated on or to be

developed on the adjusted acreage parcel. Density of a site shall be based upon the total dwelling unit count achieved from a concept layout plan prepared by the applicant and accepted by the City showing the subject site as a single-family detached development meeting the design requirements established for the zoning district in which it is located, (Please refer to Section 1298.01, Schedule of Area Regulations.) Actual density shall also be determined by compliance with all setbacks, parking, open space and other site design requirements. The resulting development yield, determined through such computation shall be distributed throughout not more than 50 percent of the subject site's buildable area. All remaining land area shall perpetually remain in an undeveloped state pursuant to Section 1298.036.2.C, below.

3. *Open Space Preservation Area:* Any undeveloped land area within the boundaries of the parcel within an open space residential development, which is designed and intended to conserve on a permanent basis environmental features for the common use or enjoyment of the residence of the development or the public or dedicated to an agricultural use. Such open space may contain accessory structures and improvements appropriate for recreational purposes, as provided by ordinance, such as recreational trails, picnic areas, children's play areas, greenways or lineal parks. The following are not to be considered open space by this definition:

- Golf courses
- The area of any street right-of-way proposed to be dedicated to the public
- Access easements for private roads or underground or overhead utilities
- The required setback surrounding an existing residential structure that is not located on an individual lot or condominium site
- Parking and loading areas

(c) Eligibility Criteria.

In selecting the open space overlay option, the applicant must present a proposal for residential development that meets each of the following:

1. *Open Space.* To be eligible for open space overlay option, the proposed development shall contain at least 50% of the land area that will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restricted covenant, or other legal means that runs with the land.
2. *Unified Control.* The proposed development shall be under single ownership or control such that there is a single person or entity having

proprietary responsibility for the full completion of the project. The applicant shall provide sufficient documentation of ownership or control in the form of agreements, contracts, covenants, and/or deed restrictions that indicate that the development will be completed in its entirety as proposed.

3. *Protection From Development in Perpetuity.* The applicant shall guarantee to the satisfaction of the City that all open space preservation areas will remain perpetually in their undeveloped state as required. Further, subdivision open space lands or their use for other than recreation, conservation, or agricultural shall be prohibited.
4. *Density Impact.* The proposed type and density use shall not result in an unreasonable increase in the need for or impact upon public services, facilities, roads, and utilities in relation to the use or uses otherwise permitted in this zoning ordinance, and shall not place an unreasonable impact upon the subject site and surrounding land, surrounding property owners and occupants, and/or the natural environment.
5. *Community Master Plan.* The proposed development shall be consistent with and further the implementation of the City Master Plan, as may be amended.

(d) Flexibility Allowances.

1. Subject to the limitations specified below, the Planning Commission may grant specific departure from their requirements of the zoning ordinance for yard setback, lot area and/or width, and bulk standards as part of the approval process to encompass flexibility and creativity consistent with the open space preservation concept, provided such modification results in enhanced buffering from adjacent land uses or public rights-of-way, or further preservation of natural features.
2. Regulatory modifications are not subject to variance approval by the zoning board of appeals. No part of an open space community plan may be appealed to the zoning board of appeals. Any deviation of an approved plan shall require approval from the planning commission. This provision shall not preclude an individual lot or dwelling unit owner from seeking a variance following final approval of an open space community, provided such variance does not involve alterations to open space areas as shown on the approved open space plan.
3. A plan submitted in connection with the Section shall be subject to the following limitations:

- A. The minimum floor area for all units constructed under this option shall be at least equal to the minimum floor area requirements for the single-family residential district in which the project is to be constructed.
- B. The maximum number of units attached shall not exceed four (4) units per building. The maximum number of buildings allowed in any one (1) cluster shall not exceed four (4) buildings.
- C. The exterior design of the structures shall be compatible with existing single family structures located in the general area of the project in regards to architectural style, size, overall floor area and heights. Variety in the design of individual units shall be provided by the use of design details, which do not appear to be continuous or repetitious. An exterior design pattern, which is repetitious throughout the project, shall not be permitted.
- D. Yard requirements shall be provided under this option as follows:
 - (1) Spacing between groups of attached or between unattached buildings shall be equal to at least 25 feet in the Residential Estates District, measured between the nearest points of adjacent buildings.
 - (2) Any side of a building adjacent to a dedicated public right-of-way or private street or drive shall not be nearer to such public right-of-way or private street or drive than thirty-five (35) feet.
 - (3) This nature of development, when abutting a front yard of an existing recorded subdivision which is not a part of the project plan submitted under this section, shall cause all dwelling units facing such subdivision to relate through its front or entrance façade and shall treat such side of the groupings as front yards.
 - (4) No building shall be located closer than thirty (35) feet to the outer perimeter (property line) of the site.
- E. The maximum height of buildings under this option shall be thirty-five (35) feet.
- F. The location of open space preservation areas shall meet the following standards to the greatest extent feasible:
 - (1) The open space is provided along a public street right-of-way to provide additional buffering from the traffic and enhance views from

the roadway provided the open space along such right-of-way shall generally have a depth of at least 50 feet.

- (2) The open space provides an ecological link to permanent open space in the surrounding lands and is located to connect open spaces, public parks or bicycle/pedestrian paths throughout the community.
- (3) The open space is designed and located to be contiguous to all or most of the dwelling units. Open access to required open space under the provisions of this section shall be provided.
- (4) All sensitive environmental feature areas, natural features and animal and plant habitats of significant value are included in the open space preservation areas and are adequately protected.

G. Where the proposed development abuts an existing conventional single-family use, an orderly transition shall occur, if sufficient area exists within the parcel to allow it, using one or more of the following techniques:

- (1) Detached single-family dwellings subject to the schedule of regulations;
- (2) Open or recreation space;
- (3) Changes in topography which provide an effective buffer;
- (4) A major or secondary thoroughfare.

H. Open space areas shall represent at least 50 percent of the subject site's adjusted parcel acreage.

(e) Plan Review Procedures

1. Review by the Planning Commission shall follow the standards, procedures and submittal requirements adopted by the City for approval of site plans, condominiums, platted subdivisions or land divisions, as may be applicable, and the criteria of Section 1298.036.6 below.
2. In submitting a proposed layout under this section, the sponsor of the development shall include, along with the project plan, master deed documents, floor plans, topography drawn at two (2) foot intervals, main floor grade elevations relative to the existing topography, all computations relative to acreage and density, and any other details which will assist in

reviewing the proposed plan.

3. All land not intended to be conveyed to individual dwelling unit owners under this option shall be protected by conservation easements, plat dedications, restrictive covenants, or other legal means which runs with the land and which prohibits their development in perpetuity. Such legal means must be approved by the City Attorney to assure such unused land remains perpetually in an undeveloped site. The City may require the inclusion of open space restrictions that prohibit the following:
 - A. Dumping or storing of any materials or refuse.
 - B. Activity that may cause a risk of soil erosion or threaten any living plant material.
 - C. Cutting or removal of live plant material except for removal of dying or diseased vegetation.
 - D. The use of motorized off-road vehicles.
 - E. Cutting, filling or removal of vegetation from wetland areas.
 - F. Use of pesticide, herbicides, or fertilizers within or adjacent to wetlands.

(f) Approval Criteria.

Approval of a proposed development shall be predicated upon a positive finding that all of the following criteria have been met:

1. The design shall promote the goals, objectives, and policies of the City Master Plan;
2. Open space areas shall be provided in suitable locations that offer convenient access by residents and adequate screening from nearby dwelling units;
3. Natural assets, wildlife habitat areas, or sites having historic archaeological or cultural value shall be protected;
4. Individual lots, buildings, and roadways, and open space areas shall be designed to minimize the alteration of environmental site features;
5. The design of structures shall be compatible with existing single-family structures located in the general area in terms of architectural style, size,

overall floor area, building height and neighboring building orientation.

6. Clustering of the dwelling units shall occur in a manner which preserves the basic amenities and qualities normally associated with single-family living (such as, but not limited to, privacy, personal open space, and adequate natural lighting and ventilation) while allowing for innovative site layout and open space areas.

Section 2. **Severability.** The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance or portions of this Ordinance.

Section 3. **Savings Clause.** The repeal provided for herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending litigation or prosecution of any right established or occurring prior to the effective date of this Ordinance. Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 11 above shall be void from the date the modification was made.

Section 4. **Repeal.** All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such conflict or inconsistency, hereby expressly repealed.

Section 5. **Publication.** The City Clerk shall cause this Ordinance to be published in the manner required by law.

Section 6. **Effective Date.** This Ordinance shall become effective immediately October _____, 2002.

AUTHENTICATION

**This is to certify that the below signed do hereby
authenticate the foregoing record of the Ordinance
therein set forth.**

Suzanne K. Hall, Mayor

Cecilia S. Dally, City Clerk

Adopted: _____

Published by Postng: _____

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STATE OF MICHIGAN
COUNTY OF OAKLAND
CHARTER TOWNSHIP OF WATERFORD

TEXT AMENDMENT TO ZONING ORDINANCE
[Open Space Preservation]

AN ORDINANCE TO AMEND WATERFORD TOWNSHIP ORDINANCE NO. 135, THE "ZONING ORDINANCE", ARTICLE XXV, BY ADDING A NEW SECTION 2544 TO PROVIDE THE OPTION FOR DEVELOPERS TO DEVELOP CERTAIN RESIDENTIAL PROPERTY WITH 50% OF OPEN SPACE IN ORDER TO COMPLY WITH THE MANDATES PROVIDED IN ACT 177 OF THE PUBLIC ACTS OF 2001.

THE CHARTER TOWNSHIP OF WATERFORD ORDAINS:

Section 1 of Ordinance

The Zoning Ordinance shall be amended by adding a new section 2544 of Article XXV, reading as follows:

Section 2544

A. Intent and Purpose

The intent of this Ordinance is to encourage the long-term preservation of open space and natural features and the provision of recreation and open space areas in accordance with Act 177 of the Public Acts of 2001.

B. Eligibility Requirements

This Ordinance shall be applicable to residential properties zoned S-F, Suburban Farm District if such properties are served by municipal sewers, and to properties zoned S-F, Suburban Farm District if the properties are not served by municipal sewers. The provisions in this Section shall supplement the existing regulations applicable within the referenced zoning districts in the event a developer or owner of property elects to submit its proposed development under the open space preservation option provided in this Section.

C. Open Space Preservation Option

Property meeting the eligibility requirements of this Section may be developed, at the owner's option, with the same number of dwelling units on a portion of the land as specified herein that, as determined by the approving body, could have otherwise been developed on the same land under current ordinances, laws and rules, subject to and in accordance with the regulations of this Section.

D. Density Calculation

The density of dwelling units shall not exceed the density customarily developable in the zoning district in which the proposed development is located, developed with a conventional layout and with all applicable laws and ordinances being observed.

1. A parallel plan shall be submitted to the approving body in order to establish the maximum permitted density. The parallel plan shall identify how a parcel could be developed under the conventional standards of the specific zoning district in which the property is situated (without application of this section), and the requirements of all other applicable State and municipal regulations and standards. The parallel plan shall provide lots with building envelopes of sufficient size, taking into consideration sanitary sewage disposal capacity (only on property where there is a question of soil capacity will it be necessary to undertake actual soil analysis or County review), topography, easements or encumbrances, drainage retention/detention areas, along with all necessary roads and road-related improvements, without impacting natural areas and features required to be preserved under applicable law and ordinance. All unbuildable areas and areas with limitations to development must be accurately identified on the parallel plan, including, but not limited to, wetlands, watercourses, drains, floodplains, steep slopes, woodlands and similar features. It is not the intent of this provision to generally require detailed engineering in the preparation of this plan, however, it must be a realistic plan of development, taking into consideration the actual assets and constraints of the property.
2. The approving body shall make the determination that a parallel plan is acceptable once it meets all applicable Township ordinance requirements and, based on the parallel plan, determine the number of units permitted under the open space preservation option provided in this Section.

E. Design and Application Requirements

The following design and application requirements shall apply to a proposed open space development under this Section. The design requirements shall be incorporated into a preliminary plat, if the land is proposed to be developed as a subdivision under the Land Division Act, and otherwise incorporated into a site plan in accordance with the requirements of this Ordinance.

1. A minimum of 50% of the gross site area shall be preserved as permanent open space in an undeveloped state in the manner set forth in Section F., below.
2. Permanent open space shall include the site's most significant natural, environmental, agricultural and/or cultural features, including, but not limited to the following; however, in an open space development under this Section, an "undeveloped state" shall not include a golf course:
 - a. Wetlands, floodplains, and natural watercourses;
 - b. Woodlands;
 - c. Scenic views;
 - d. Historical structures;

- e. Recreational pathways and other permitted recreational facilities;
 - f. Buffers from major thoroughfares and more intense land uses; and
 - g. Similar features acceptable to the approving body.
3. The applicant for an open space development shall be entitled to an approval under this Section; provided, the following aspects of the proposed development plan shall be reviewed following a public hearing for discretionary approval by the approving body:
 - a. The area and width of the resulting individual lots and building setback requirements under the open space preservation option shall be reasonable and rationally related to the type of development proposed and shall comply with the standards, requirements and intent of the specific zoning district in which the proposed development is located to the maximum extent feasible. Factors to be considered in determining the reasonableness of the area, width and setback requirements shall include the amount of open space, the density as determined by the approving body under the parallel plan, and the required setbacks, minimum lot width, and maximum lot coverage for the particular zoning district. Final area, width and setback requirements under the open space preservation option plan shall be approved by the approving body, in the manner set forth in Section G., below.
 - b. Lot layout and configuration shall result in lots or units feasible for development and use of residences, and in the maintenance of a reasonable buffer between an open space development hereunder and adjacent public thoroughfares and other land which is developed, or may be developed for non-cluster residential development. Each lot or unit shall be depicted on the plan with a proposed building envelope, in which a proposed residence may be constructed and used, including all likely improvements, without the necessity of the grant of a variance by the Zoning Board of Appeals.
 4. Open space areas shall be accessible to all lots in the development, either directly from the internal road network or, if approved in the discretion of the approving body, directly from another manner of access providing perpetually existing and maintained pedestrian accessibility to all lots.
 5. Preserved open space shall be connected with adjacent open space, public land, and existing or planned safety paths, where feasible, as determined by the approving body.
 6. Approval of an open space option development does not constitute a change in the zoning of the property, and, except as specifically provided in this section, all other regulations applicable within the zoning district of the property and development shall apply.

7. Restrictions.

- a. Nothing in this section shall allow the construction of multi-family residential units in a single family residential district.
- b. Nothing in this section shall allow a development to result in the creation of a nuisance or a danger or hazard to the health, safety and welfare of any person or property.
- c. The development shall not result in an unreasonable burden upon public services and/or facilities, taking into consideration the capacity and availability, considering the existing and anticipated future use of such services and facilities.
- d. The development shall be designed to avoid an unreasonable burden upon the subject and/or surrounding properties, taking into consideration economic, aesthetic, traffic, noise and other applicable and relevant planning and/or engineering considerations.
- e. Any development proposed utilizing the open space preservation option provided in this section shall, to the greatest extent feasible while remaining consistent with the requirements of Public Act 177 of 2001, comply with all zoning regulations and design standards applicable to the property.

F. Open Space Maintenance and Preservation

1. All open space shall remain perpetually in an undeveloped state by means of a conservation easement to be recorded with the Oakland County Register of Deeds. All such conservation easements shall clarify ownership, access/use rights, and perpetual maintenance, and shall be approved by the approving body prior to final approval of the development, and shall be received and approved as to substance and form by the Township attorney prior to acceptance by the approving body.
2. Nothing in this section shall be construed to require the property owner to convey fee title ownership of the open space to the public.

G. Review Process

1. All proposed open space preservation option developments shall be submitted and reviewed in accordance with the procedure applicable under this ordinance to the type of development being proposed (i.e., subdivision, condominium, site condominiums, etc.) and in accordance with the development standards in this section and other applicable ordinances. The "approving body", as referenced in this section, shall mean the body designated in this ordinance as having the authority to grant final plan approval to the proposed development.

2. In addition to all other submittals and information required under this ordinance, all open space preservation option plans submitted to the Township shall include a resource inventory that contains the following:
 - a. All floodplains, wetlands, and bodies of water;
 - b. A woodlands analysis identifying all regulated woodlands;
 - c. All wildlife habitat areas;
 - d. An analysis of on-site soils and topography to identify limitations to development; and
 - e. An analysis of the cultural features of the site, including but not limited to, scenic views, historic structures, patterns of original farm fields, fences or stone walls, and recreational uses.

H. Definitions

The definitions set forth in Act 177 of the Public Acts of 2001 shall be incorporated, and considered a part of, this Section.

Section 2 of Ordinance

All of the regulations of the Zoning Ordinance shall remain in effect, amended only as provided above.

Section 3 of Ordinance

Any and all criminal or civil proceedings initiated by the Township and pending, and all vested rights on the effective date of this Ordinance, are saved and may be consummated according to the law and ordinance enforced at the time they were commenced.

Section 4 of Ordinance

The effective date of this Ordinance shall depend on whether the ordinance is requested to be submitted to the Township electors for approval. A notice of intent to make such a request must be submitted within seven (7) days of publication of the ordinance. If such a notice has not been timely submitted, this ordinance shall take effect on the eighth day following publication. If a notice of intent is timely filed, a petition requesting the submission of this ordinance to the Township electors must be filed within thirty (30) days of publication of the ordinance. If such a petition has not been timely filed, this ordinance shall take effect on the 31st day following publication. If such a petition has been timely filed, this ordinance shall take effect immediately upon the final determination by the Township Clerk that a majority of the registered electors in the Township have voted to approve it.

A petition requesting submission of this ordinance to a vote of the electors must be signed by a number of registered Township electors equal to not less than 15% of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected.)

This Ordinance shall be published in full in a newspaper of general circulation in the Charter Township of Waterford qualified under State Law to publish legal notices and shall become effective upon publication, as provided by law.

CERTIFICATION

The foregoing ordinance was adopted by the Township Board of the Charter Township of Waterford at a meeting of the Board duly called and held on the -day of ____ 2002.

CHARTER TOWNSHIP OF WATERFORD

By _____
Betty Fortino, Township Clerk

Introduced:
Adopted:
Published:
Effective:

Carlisle/Wortman Associates Inc.

Mark Miller, Planning Director

November 7, 2002

Page 2

aside, in perpetuity, land that would be otherwise developable. Therefore, in most circumstances, that would not include wetlands.

Permitting increased density and attached units within otherwise single family neighborhoods, has the same effect as rezoning. However, no public input is required and potential impacts on neighboring properties will not be addressed.

I would advise the City that most, if not all, communities we work with are enacting zoning amendments which meet the minimum requirements of PA 177. In the future, if the City wishes to provide additional incentives to preserve open space, we believe there are a number of approaches that can be pursued. However, such alternatives need to consider providing proper procedures for protection of neighborhoods.

I hope this is helpful. If you have any questions, please don't hesitate to contact me.

CARLISLE/WORTMAN ASSOCIATES, INC.



Richard K. Carlisle, PCP

RKC:ss

225-01-2201

CC: J. Szorlag
G. Shripka
T. Barthelmeier
L. Blum

November 5, 2002

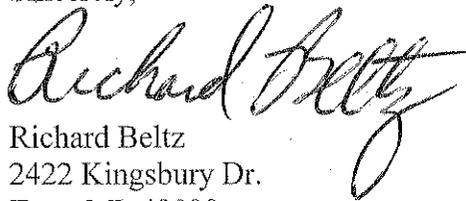
Mark Miller
Planning Director
City of Troy

Dear Mr. Miller:

I am requesting that I be allowed to address the Troy City Council at its 11/11/02 Study Session regarding the proposed Zoning Ordinance Amendment permitting development options in the R-1A & R-1B residential zones. My neighbors and I have many concerns with the proposed amendment and I believe a frank discussion is needed.

Please see that this communication is directed to the correct entity to facilitate this request.

Sincerely,



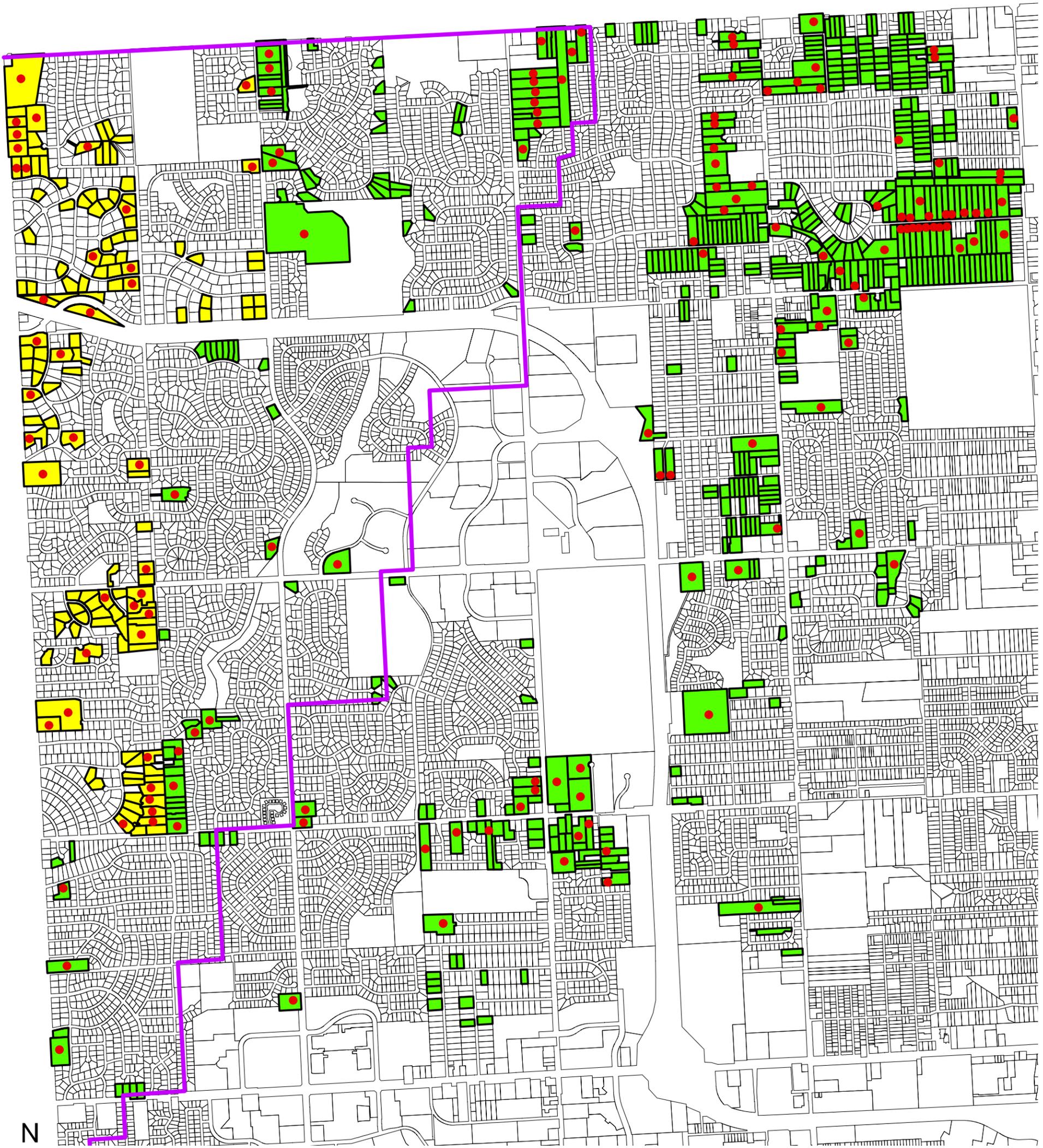
Richard Beltz
2422 Kingsbury Dr.
Troy, MI 48098
(248) 649-0388

REC'D

NOV 05 2002

PLANNING DEPT.

EXISTING PARCELS PERMITTED TO HAVE 2 OR MORE DWELLINGS UNDER CITY COUNCIL PROPOSED ORDINANCE REVISIONS



KEY

- R-1B Parcels .91 ac. or greater
- R-1A Parcels 1.25 ac. or greater
- Evergreen Sewer District Boundry*
- Parcels
- R-1A & R-1B Parcels 2 ac or greater**

NOTE:
AS CURRENTLY PROPOSED - DUPLEXES
COULD BE BUILT ON THESE EXISTING
PARCELS WITHOUT PLANNING COMMISSION
OR CITY COUNCIL APPROVAL

* NUMBER OF SEWER TAPS AVAILABLE IN EVERGREEN
SEWER DISTRICT MAY BE LIMITED

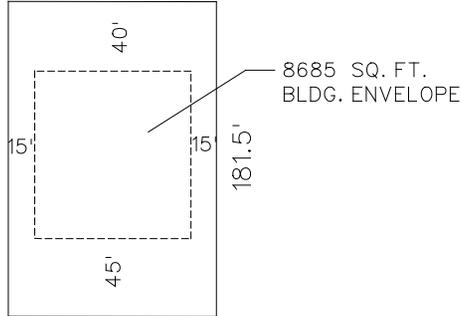
** THERE ARE CURRENTLY 38 R-1A AND 117 R-1B
PARCELS 2 AC. OR GREATER

R-1A ZONE

STANDARD

Min. Lot Size 21780 Sq. Ft..

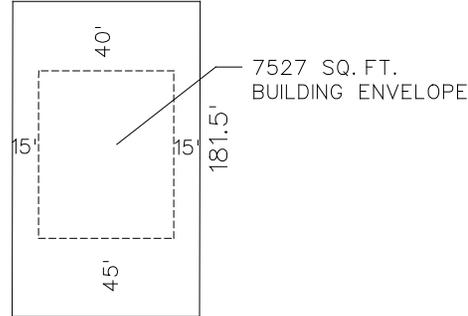
INTERIOR LOT
120' FRONT



LOT AVERAGE

Min. Lot Size 19602 Sq. Ft.

INTERIOR LOT
108' FRONT

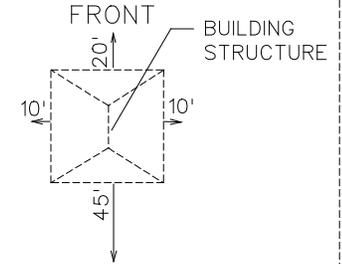


(CITY COUNCIL VERSION)

OPEN SPACE

1.6 Units / Per Ac.

INTERIOR LOT
NO MIN. LOT SIZE OR LOT WIDTH



NOTE: MINIMUM FLOOR AREA IN R1A ZONED PROPERTY IS 1400 SQUARE FEET.

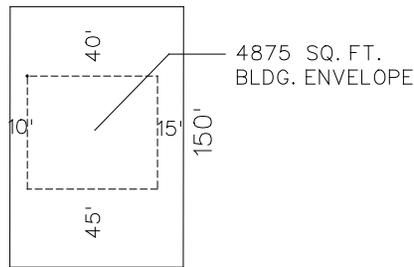
11-06-02

R-1B ZONE

STANDARD

Min. Lot Size 15000 Sq. Ft..

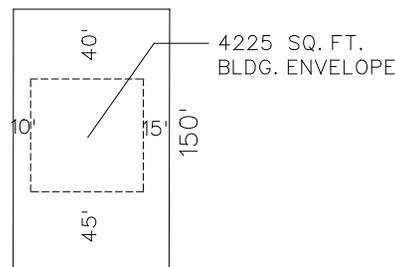
INTERIOR LOT
100' FRONT



LOT AVERAGE

Min. Lot Size 13500 Sq. Ft.

INTERIOR LOT
90' FRONT

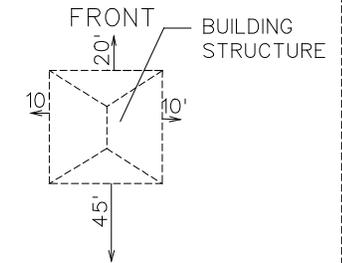


(CITY COUNCIL VERSION)

OPEN SPACE

2.2 Units / Per Ac.

INTERIOR LOT
NO MIN. LOT SIZE OR LOT WIDTH

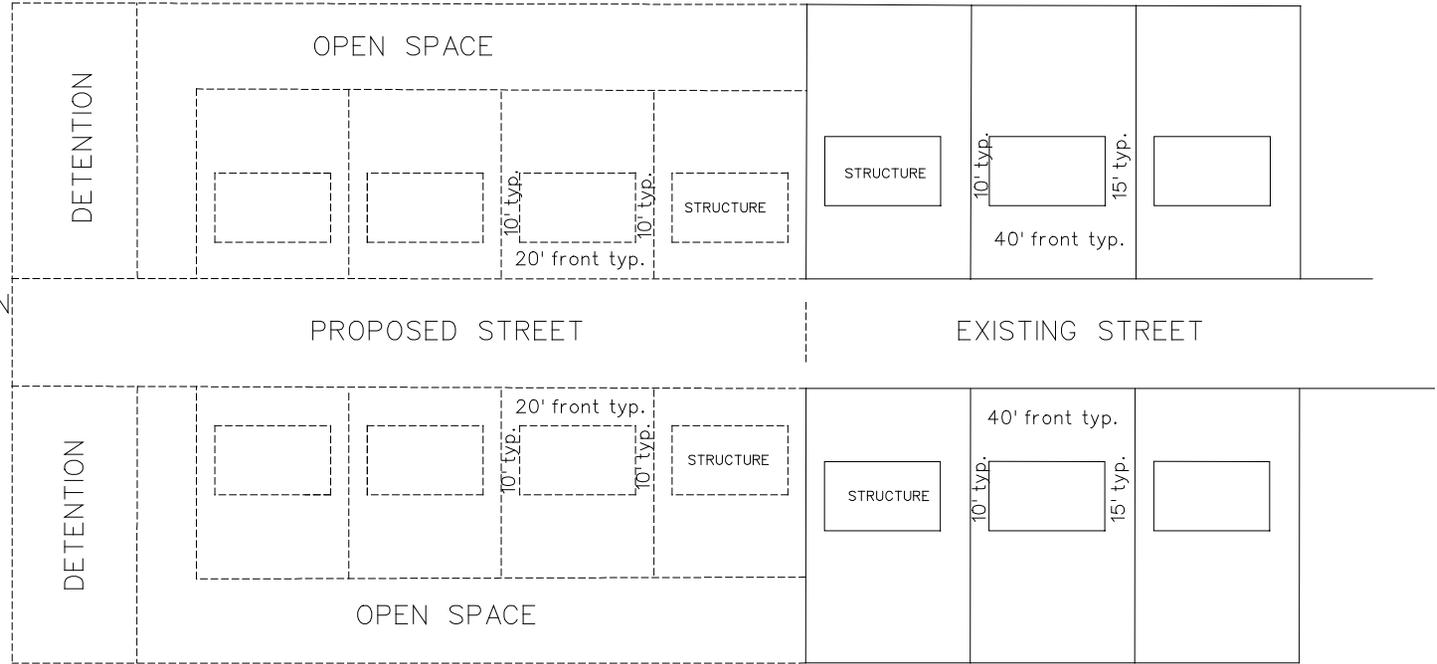


NOTE: MINIMUM FLOOR AREA IN R1B ZONED PROPERTY IS 1400 SQUARE FEET.

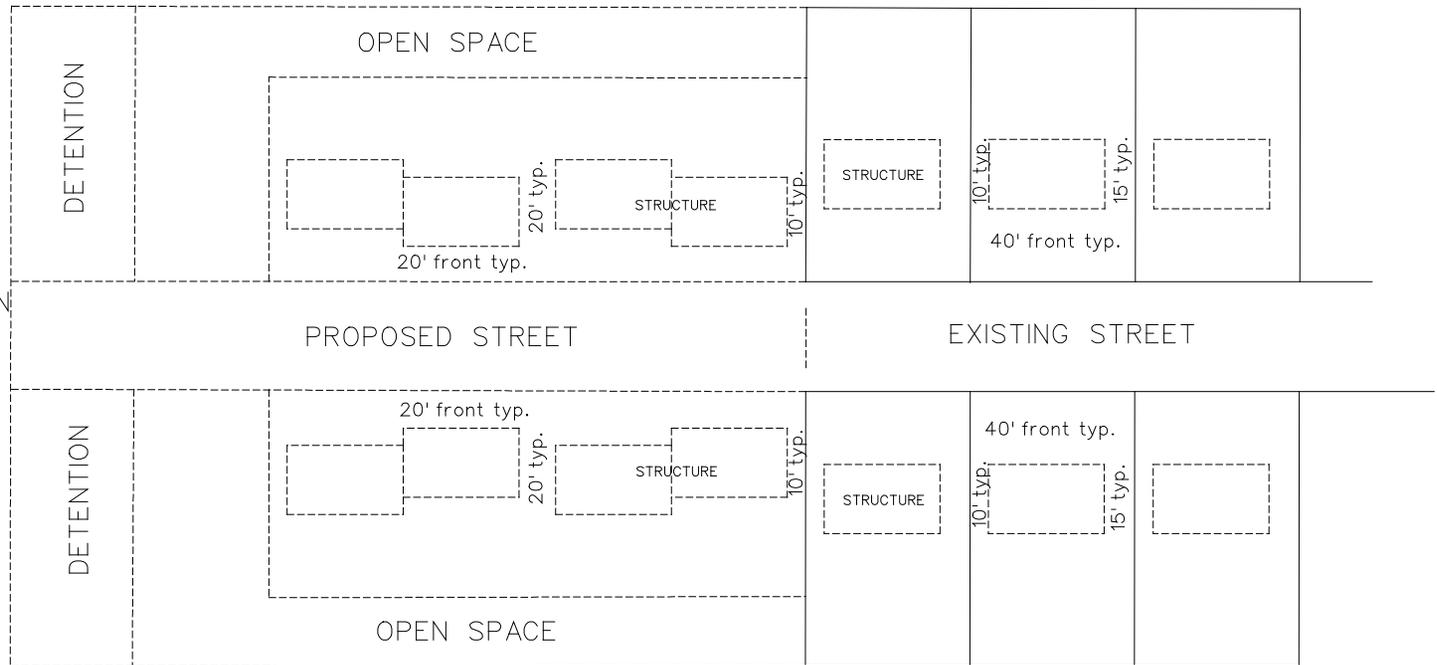
11-06-02

CITY COUNCIL VERSION

OPEN SPACE PRESERVATION
SINGLE FAMILY DETACHED
R-1B ZONING



OPEN SPACE PRESERVATION
DUPLEX
R-1B ZONING



OPEN SPACE PRESERVATION OPTION
CITY COUNCIL VERSION EXAMPLE
2.11 AC R-1B SITE
2 UNITS PERMITTED



OTTAWA DRIVE

20 FT

10 FT

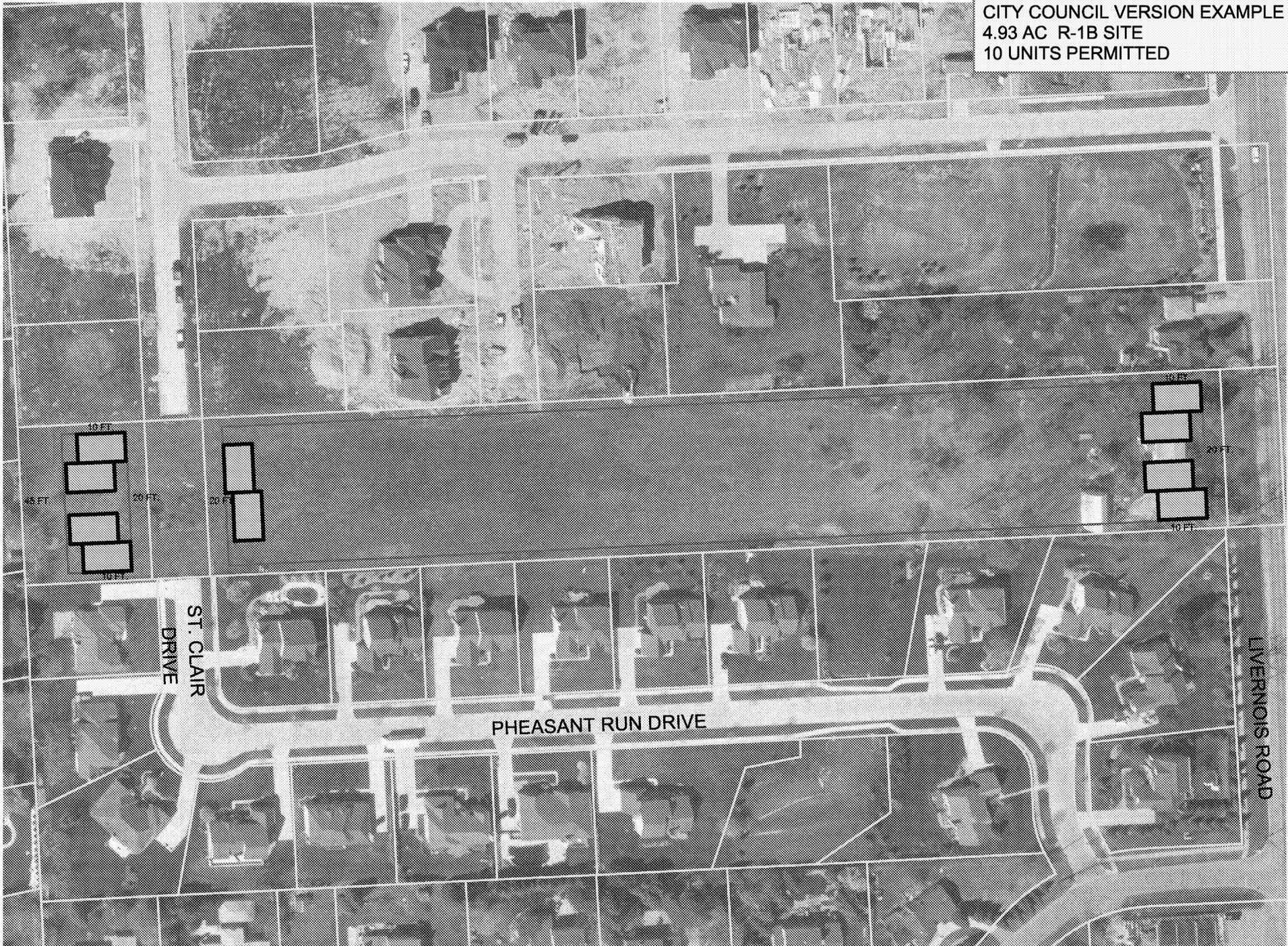
10 FT

46 FT

0 50 100 200 Feet



OPEN SPACE PRESERVATION OPTION
CITY COUNCIL VERSION EXAMPLE
4.93 AC R-1B SITE
10 UNITS PERMITTED



0 50 100 200 Feet



October 25, 2002

TO: The Honorable Mayor and City Council Members

FROM: John Szerlag, City Manager

SUBJECT: Revised R-1A and R-1B Map Delineating Existing Parcels Permitted to have Two or More Dwellings Under Council-Proposed Ordinance Revisions

At the last City Council meeting staff distributed a map delineating the location of existing parcels where a duplex could be constructed under proposed ordinance revisions advanced by City Council. We were also asked to identify those sites having at least four acres. Council Member Broomfield subsequently requested that the map be revised to indicate the number of parcels that are currently two acres or more in size.

It's my understanding that the intent of having a restriction on the size of parcels in order to build a duplex was meant to limit the number of such attached structures throughout R-1A and R-1B districts. However, while it's possible to identify all such parcels as of today, the number could change tomorrow. This is because property owners and/or developers could assemble individual contiguous properties having less than two acres so that the end product would be greater than two acres. And this could be accomplished at the Assessing Department's counter without any input from Management, Planning Commission or City Council. That site would thus become eligible by right to construct a duplex or series of duplex homes.

For further information, I'm also enclosing a copy of all parcels zoned R-1A and R-1B.

As always, please feel free to call me should you have any questions.

Date: October 15, 2002

To: The Honorable Mayor and City Council

From: John Szerlag, City Manager
Gary Shripka, Assistant City Manager/Services
Lori Bluhm, City Attorney
Nino Licari, City Assessor
Mark Stimac, Director of Building and Zoning
Mark F. Miller, Planning Director

Subject: PUBLIC HEARING - PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B
Open Space Preservation/Cluster Development

BACKGROUND INFORMATION

City Management working in tandem with the City Attorney's Office and Planning Commission, drafted the proposed Open Space Preservation provisions. It was decided to only address compliance with the Open Space Preservation amendment to the City and Village Zoning Act, because of the December 14, 2002 deadline imposed by amendments to the City and Village Zoning Act. The Planning Commission presented the draft language at a Public Hearing on September 10, 2002. The Planning Commission and City Management have recommended approval of this Zoning Ordinance text amendment.

City Council considered the draft proposed Open Space Preservation provisions at a Study Session on October 14, 2002. The City Council generally believed that the language needed to contain provisions to encourage developers to utilize the Open Space Preservation Development Option. City Council proposed revisions to the draft text at the October 14, 2002, Study Session.

STAFF ANALYSIS OF PROPOSED REVISIONS AS DISCUSSED BY CITY COUNCIL:

As part of the review at the regular meeting of October 7, 2002 as well as the study session held on October 14, 2002, certain amendments to the Planning Commission proposal were suggested by members of City Council. One of the revisions discussed by Council was to eliminate the need to develop the "parallel plan". The "parallel plan" in the Planning Commission recommendation was used to show the maximum development potential of the property in question based upon standard ordinance provisions. Utilizing this number the developer could then develop an open space preservation plan that would allow this same number of units on not more than 80% of the property. The remaining 20% of the land would then be preserved in an undeveloped state through some legal restrictions. Instead, as Council discussed, the maximum number of units would be determined by a factor of 1.6 units per acre in the R-1A District and 2.2 units per acre in the R-1B District. Another suggested Council

modification was to eliminate the restriction of the use to one family detached dwellings and allow for the use of the property to be one or two family residential dwellings.

The elimination of the parallel plan would allow for the development of lands that were either not eligible for additional development or development at all, under the current regulations. This would allow parcels that do not meet current minimum lot width to be developed as a single family home site. This would also allow parcels that are 1.25 acres or .91 acres in the R-1A or R-1B Districts respectively, to construct a duplex on the property. Since the development of a single lot would not require platting, approval of a condominium plan, or acceptance of public easements, the approval process would be one that would be without public notice, public meetings, or the opportunity for public comment. In addition, since Section 42.15.00 of the Zoning Ordinance specifically prohibits the City from enforcing private deed restrictions, the City would have no authority to prohibit permits for a duplex on any parcel meeting the size, open space, and setback requirements of the ordinance. Another item of concern is that currently properties that have no access to our public sanitary sewer facilities must be developed at a lower density because of the amount of property required for an effective septic field. However, Council's proposed modification would allow for these properties to be developed at a higher density reserved for properties served by public sewers.

PROBABLE RAMIFICATIONS

City Management has highlighted the following probable ramifications of the revisions as discussed by City Council:

1. The elimination of the requirement of the parallel plan would have the effect of permitting development on existing non-conforming lots that cannot presently be developed without a variance being granted by the Board of Zoning Appeals (i.e. setbacks, lot size) or increasing density on parcels when compared with conventional zoning techniques.
2. With the elimination of the requirement of the parallel plan the City Assessor has no direction as to what standard should be used for minimum lot size and minimum lot width when reviewing lot split applications for parcels in the R-1A and R-1B zoning districts.
3. Attached condominiums and rental developments will be permitted by right in the R-1A and R-1B districts, and reviewed only by the Planning Commission with no discretionary power to deny and no public notification required.
4. Duplexes would be permitted by right on larger individual lots with only an administrative review of the size, open space, and setback requirements. Adjacent property owners would have no notice or input in this significant revision to the expected development on adjoining sites.

CONCLUSION

Given the probable ramifications of open space preservation option development inherent in the ordinance provisions discussed by Council, three resolutions have been prepared:

- 1) Resolution A authorizes changes to the open space option development ordinance as discussed by City Council at the October 14, 2002 study session.
- 2) Resolution B postpones this matter to another study session, which will be held at a time convenient for you.
- 3) Resolution C adopts the original ordinance recommended by City management and the Planning Commission, which meets the bare requirements of the open space preservation development option of the State Law.

ATTACHMENTS

Attached to this memorandum include the following:

1. The proposed amendment as discussed by City Council.
2. The proposed Open Space Preservation amendment, which was recommended for approval by the Planning Commission, showing proposed revisions.
3. Background information from the October 14, 2002 study session.
4. Background information from the October 7, 2002, regular meeting.

Please feel free to contact staff if you have any questions.

cc: Brent Savidant, Principal Planner
Susan Lancaster, Assistant City Attorney
file/ZOTA-194

Proposed Resolutions

PUBLIC HEARING - PROPOSED ZONING ORDINANCE TEXT AMENDMENT
(ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space
Preservation/Cluster Development

Suggested Resolution A, as discussed by City Council at the October 14, 2002 Study Meeting.

Resolution #2002-

Moved by

Seconded by

RESOLVED, that Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation, of the Zoning Ordinance, be adopted, as printed on attachment 1.

Yes:

No:

Suggested Resolution B

Resolution #2002-

Moved by

Seconded by

RESOLVED, that the Open Space Preservation Option, be postponed to Study Session on _____, 2002.

Yes:

No:

Suggested Resolution C, as recommended by City Management and the Planning Commission

Resolution #2002-

Moved by

Seconded by

RESOLVED, that Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation, of the Zoning Ordinance, be adopted, as printed on attachment 2 and recommended for approval by the Planning Commission and City Management.

Yes:

No:

MODIFIED VERSION AS DISCUSSED BY CITY COUNCIL
WITH REDLINE
Open Space Preservation Option

10.00.00 **ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS**

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 **ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS**

34.60.00 **OPEN SPACE PRESERVATION OPTION**

This option may be utilized, at the developer's option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall **serve as the intent of govern the approval or disapproval of the proposed Open Space Preservation option Plan:**

- A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.
- B. To encourage developers to use a more creative approach in the development of residential areas.
- C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.
- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan shall contain the following, in addition to the information required on a complete site plan:

A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:

1. Legal description of dedicated open space, including dedicated easements.
2. Topographical survey of dedicated open space.
3. Types of soil in dedicated open space.
4. Description of natural features on dedicated open space.
5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.

B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:

1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
2. The proposed manner of regulating the use of the common facilities and **maintenance of these** areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06 below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned, developed **and maintained** as one integral unit.

34.60.04 Dwelling Unit Density:

- A. The number of dwelling units allowable within the Open Space Development shall be **as follows: determined through the preparation of a "parallel plan"**.
 - 1. **1.6 units per acre in the R-1A One Family Residential District** ~~The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.~~
 - 2. **2.2 units per acre in the R-1B One Family Residential District** ~~The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.~~

34.60.05 Regulatory Flexibility: To comply with the "open space preservation" provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

- A. ~~Overall density shall not exceed the number determined in the parallel plan.~~
- B. Setback provisions shall remain, except:

1. Front yard setbacks may be reduced to not less than **20 25** feet.
 2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent zoning districts.
 3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.
- C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.
- D. The permitted uses shall be restricted to single family detached **and two family attached** residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

- A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section 34.60.06 E1 below. As used in this section, "undeveloped state" means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. As used in this section, the term "greenway" shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, ~~but is not required to be,~~ dedicated to the use of the public **or residents of the residential development**. Except as noted in Section 34.60.06 E1 below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all

residents of the Open Space Preservation development or the City of Troy shall not be wetlands.

- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
1. Area proposed as single family residential lots **or units.**
 2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development.
- E. Protection of Open Space
1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed

restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase "conservation easement" means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

2. 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:
 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or subdivision plat. Open space may include a recreational trail, children's play area, greenway or linear park.
 - c. **Indicate the proposed maintenance plan for the dedicated open.**

**PROPOSED ZONING ORDINANCE TEXT AMENDMENT
PLANNING COMMISSION RECOMMENDATION**

Open Space Preservation Option

Amend the indicated portions of the One Family Residential Districts and the Residential Development Options text in the following manner:

(Underlining, except for major section titles, denotes changes.)

10.00.00 ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer's option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

- A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.
- B. To encourage developers to use a more creative approach in the development of residential areas.
- C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.
- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan shall contain the following, in addition to the information required on a complete site plan:

A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:

1. Legal description of dedicated open space, including dedicated easements.
2. Topographical survey of dedicated open space.
3. Types of soil in dedicated open space.
4. Description of natural features on dedicated open space.
5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.

B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:

1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.

34.60.04 Dwelling Unit Density:

A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a “parallel plan”.

1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.

2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

A. Overall density shall not exceed the number determined in the parallel plan.

B. Setback provisions shall remain, except:

1. Front yard setbacks may be reduced to not less than 25 feet.

2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.

3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.

C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.

D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of

the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.

- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
1. Area proposed as single family residential lots.
 2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be

centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development.

E. Protection of Open Space

1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
2. 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:

 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or subdivision plat. Open space may include a recreational trail, children’s play area, greenway or linear park.

To: John Szerlag, City Manager
Gary Shripka, Assistant City Manager
Lori Grigg Bluhm, City Attorney
Mark Miller, Planning Director

From: Robin Beltramini, Council member

Subject: Open Space Preservation Option

Date: October 10, 2002

Mayor Matt and I had dinner this evening and discussed potential changes to the proposed open space preservation option. I will give you the changes and then, *in italics*, the thought behind the suggestions. Also, I will be home in the morning, if you feel the need to have a dialogue about this.

34.60.04

A. The number of dwelling units allowable within the Open Space Development shall not exceed 1.6 units per acre in R1-A districts and 2.2 units per acre in R1-B districts.

While open space is (now) a "by right" style of development, it seems to be the will of this council and the people of Troy to encourage preservation of natural features/open space. Therefore, some sort of incentive, however small, must be offered to encourage use of this development option rather than the "cookie cutter" which would be the parallel plan. Because this is a permitted use, I see no reason to offer an incentive as large as that which could be obtained through the use of CR-1 zoning. The mayor prefers a larger incentive, but agrees that CR-1 is still an option for someone seeking greater density.

34.60.05

Somewhere in here we need to state, specifically, whether or not lot averaging is allowable.

- A. Overall density shall not exceed 1.6 units per acre in R1-A districts and 2.2 units per acre in R1-B districts.
- B. 1. Front yard setbacks may be reduced to not less than 20 feet.
- C. No change
- D. The permitted uses shall be restricted to single family residential development, residential accessory structures, and non-commercial recreation uses.

The density change was explained above. Front yard setbacks being reduced allow for the potentially larger setbacks in the rear, thereby decreasing the impact on an existing neighborhood. In D, "detached" has been deleted. It would be preferable to allow some degree of attachment of the single-family homes to accommodate the setback

and preservation requirements. It is not necessary to allow as many as four units to be attached (as in CR-1) but, two-unit buildings could facilitate development under this option.

34.60.06 A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent of the gross are of the site as. . . Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of five percent (5%) of the gross area of the site shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.

I disagree with Matt and believe that the minimum of 50% of the minimum required open space being upland should be stated as 10% of the gross site area. But both of us believe that we must offer some parameters for the accessibility requirement.

While I'm not sure that it is appropriate to add development standards in 34.60.xx, it is probably appropriate to add accessibility requirements (e.g., access to communal open space shall be by means of streets or pedestrian access-ways; in the case of wetlands, boardwalks of materials with a life span of "x" will be provided, etc.) somewhere. Folks could be directed through a new section in 10.50—a new 10.50.06 which leads to specifics if the Open Space Preservation Option is used. Also included in such specifics would be the standards for attachment of units. Our suggestion is that the requirements for common walls be similar to those used in CR-1, but allow up to seventy-five percent area in common, instead of the fifty percent used in cluster—and that these be garage walls only.

34.60.04 Dwelling Unit Density:

A. The number of dwelling units allowable within the Open Space Development shall be up to 1.2 the density of the current zoning

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots providing the following:

A. Overall density shall not exceed 1.3 times the density allowed for the current zoning

B Setback provisions shall remain, except:

1. Front yard setbacks may be reduced to not less than 25 feet.

2. Rear yard setbacks shall be not less than 35 feet.

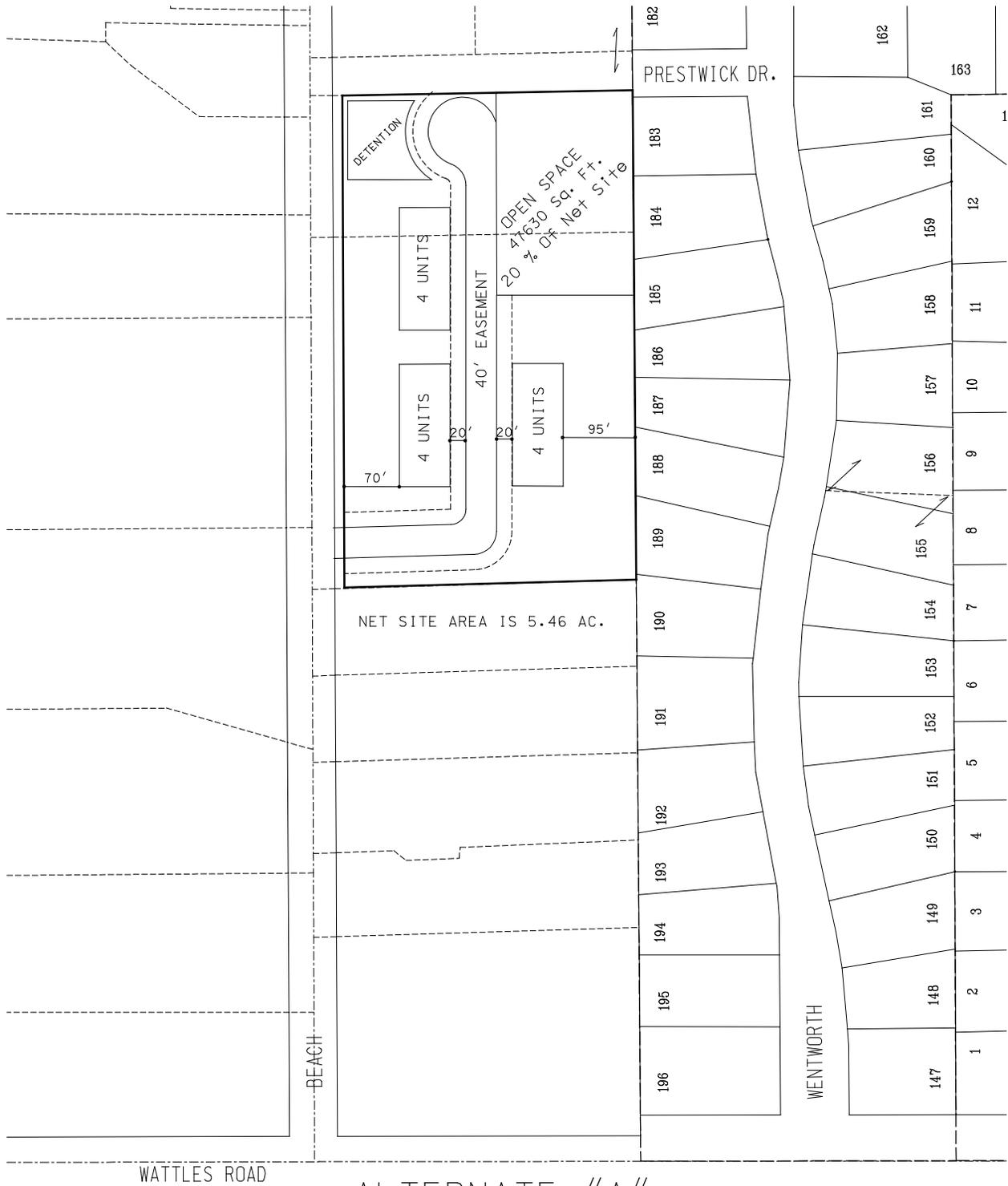
3. Side yard setbacks from adjoining properties shall not be less than current zoning, but units may be attached within the development.

C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.

D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreational

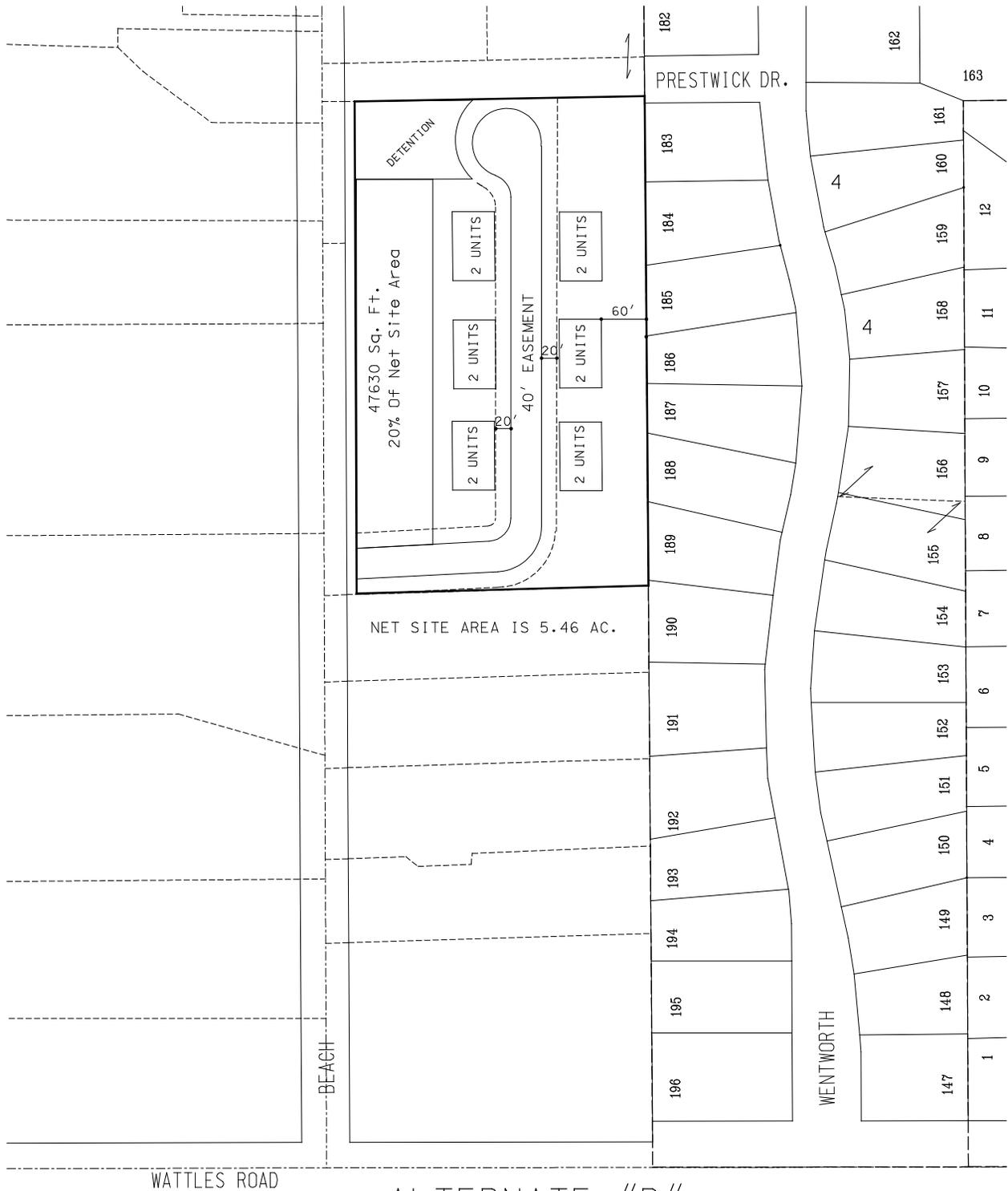
34.60.04 Dwelling Unit Density:

Minimum Requirements: An Open Space Preservation development shall maintain a minimum of **20%** of the gross area of the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. *Land in an undeveloped state may include a recreational trail, picnic area, children’s play area, greenway, or linear park.* As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space.



ALTERNATE "A"

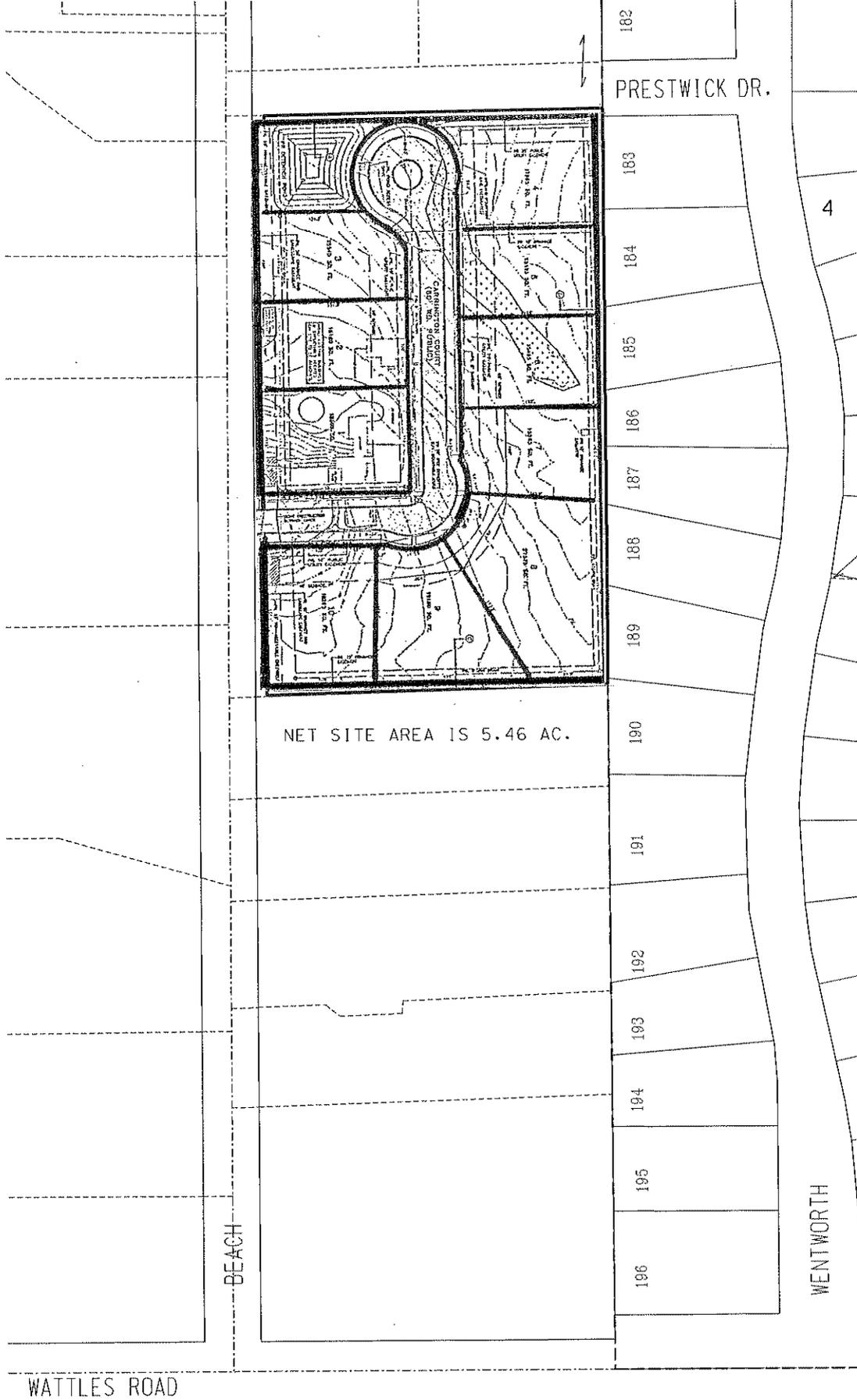
12 UNITS ATTACHED WITH
20% OPEN SPACE AND DETENTION
BASE ON 2.2 D.U. / AC.



ALTERNATE "B"
12 UNITS ATTACHED WITH
20% OPEN SPACE AND DETENTION
BASE ON 2.2 D.U. / AC.



ALTERNATE "C"
10 UNITS DETACHED WITH
20% OPEN SPACE AND DETENTION
BASED ON PARALLEL PLAN

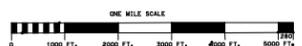


10 LOT SUBDIVISION WITH
TENTATIVE PRELIMINARY PLAT
APPROVED ON SEPT. 9, 2002

R-1A & R-1B ZONED AREAS



LEGEND	
■	R-1A ONE FAMILY RESIDENTIAL
■	R-1B ONE FAMILY RESIDENTIAL



October 1, 2002

To: Honorable Mayor and City Council

From: John Szerlag, City Manager
Gary Shripka, Assistant City Manager/Services
Lori Bluhm, City Attorney
Mark F. Miller, Planning Director

Subject: PUBLIC HEARING - PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B
Open Space Preservation

RECOMMENDATION

The Planning Commission and City Management recommend approval of the Open Space Preservation provisions.

BACKGROUND INFORMATION

On December 14, 2001 House Bill No. 5029 took immediate effect, and amended the City-Village Zoning Act, PA 207 of 1921. The amendment requires the City of Troy to adopt Open Space Preservation provisions for the R-1A and R-1B Zoning Districts, by December 14, 2002. These provisions will permit property owners the option of developing all the permitted dwelling units on a portion of the property, if the balance of the property is undeveloped. The undeveloped land area shall be permanently protected with a conservation easement or other legal restriction. Such provisions can be exercised once by the land owners. These Open Space Preservation provisions are commonly known as cluster zoning or open space zoning. However, the amendment does not prescribe the typical elements of an open space zoning option.

The Planning Department, City Attorney's Office and Planning Commission worked together to draft the proposed Open Space Preservation provisions. It was decided to only address compliance with the Open Space Preservation amendment to the City and Village Zoning Act, because of the December 14, 2002 deadline. The existing CR-1 Zoning District provisions should be reviewed, but separately and at some time in the future. In addition, the basic premise of the provisions is that there should be no negative impact on existing one family neighborhoods.

Generally, cluster developments are viewed as positive, except that the City of Troy experience demonstrates concern regarding density and setbacks in relation to existing homes. Cluster developments, have generally exceeded the surrounding neighborhoods' density (units per acre), when all of the project land is used in the density calculations. Unusable areas such as regulated wetlands and roads increase unit density beyond the surrounding single family neighborhoods. The parallel plan determines the density (units

per acre), when a developer submits a typical subdivision/site condominium. Then the units can be clustered to protect open space and not negatively impact the surrounding one family neighborhoods. In addition, the cluster units are required to maintain an equivalent rear yard setback, to maintain the one family neighborhood character of the adjacent properties. It is the intent of the proposed Open Space Preservation amendment to eliminate negative impacts of cluster development and comply with state law.

Attached to this memorandum include the proposed Open Space Preservation amendment, City and Village Zoning Act amendment, Planning Commission minutes and public comment. Please feel free to contact Mark Miller, Planning Director, if you have any questions.

Attachments (7)

Cc: Mark Stimac, Director of Building and Zoning
Brent Savidant, Principal Planner
Susan Lancaster, Assistant City Attorney
file/ZOTA-194

PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation

Suggested Resolution

Resolution #2002-10-

Moved by

Seconded by

RESOLVED, That Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation, of the Zoning Ordinance be **ADOPTED** as recommended by the Planning Commission and City Management a copy shall be attached to the original Minutes of this meeting.

Yes:

No:

PROPOSED ZONING ORDINANCE TEXT AMENDMENT

Open Space Preservation Option

Amend the indicated portions of the One Family Residential Districts and the Residential Development Options text in the following manner:

(Underlining, except for major section titles, denotes changes.)

10.00.00 ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer’s option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

- A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.
- B. To encourage developers to use a more creative approach in the development of residential areas.
- C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.
- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan

shall contain the following, in addition to the information required on a complete site plan:

- A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:
1. Legal description of dedicated open space, including dedicated easements.
 2. Topographical survey of dedicated open space.
 3. Types of soil in dedicated open space.
 4. Description of natural features on dedicated open space.
 5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.
- B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:
1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
 2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
 3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.

34.60.04 Dwelling Unit Density:

A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a "parallel plan".

1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.

2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the "open space preservation" provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

A. Overall density shall not exceed the number determined in the parallel plan.

B. Setback provisions shall remain, except:

1. Front yard setbacks may be reduced to not less than 25 feet.

2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.

3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.

C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.

D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an

undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.

- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
1. Area proposed as single family residential lots.
 2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located

to preserve significant natural features, or located to connect open spaces throughout the development.

E. Protection of Open Space

1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
2. 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:

 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or subdivision plat. Open space may include a recreational trail, children’s play area, greenway or linear park.

CITY AND VILLAGE ZONING ACT (EXCERPT)

Act 207 of 1921

125.584f Qualified city or village zoning ordinances; option of landowner to develop land zoned for residential development; requirements; limitations; "qualified city" or "qualified village" defined; zoning ordinance provisions cited as "open space preservation."

Sec. 4f. (1) Subject to subsection (4) and the right of referendum if provided by charter, beginning 1 year after the effective date of the amendatory act that added this section, each qualified city or qualified village shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land specified in the zoning ordinance, but not more than 80%, that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area, if all of the following apply:

(a) The land is zoned at a density equivalent to 2 or fewer dwelling units per acre, or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre.

(b) A percentage of the land area specified in the zoning ordinance, but not less than 20%, will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, as prescribed by the zoning ordinance.

(c) The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the option provided by this subsection would also depend upon such an extension.

(d) The option provided pursuant to this subsection has not previously been exercised with respect to that land.

(2) After a landowner exercises the option provided pursuant to subsection (1), the land may be rezoned accordingly.

(3) The development of land under subsection (1) is subject to other applicable ordinances, laws, and rules, including rules relating to suitability of groundwater for on-site water supply for land not served by public water and rules relating to suitability of soils for on-site sewage disposal for land not served by public sewers.

(4) Subsection (1) does not apply to a qualified city or qualified village if both of the following requirements are met:

(a) Since October 1, 2001, the city or village has had in effect a zoning ordinance provision providing for both of the following:

(i) Land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area.

(ii) If the landowner exercises the option provided by subparagraph (i), the portion of the land not developed will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

(b) On or before the enactment date of the amendatory act that added this section, a landowner exercised the option provided under the zoning ordinance provision referred to in subdivision (a) with at least 20% of the land area remaining perpetually in an undeveloped state.

(5) As used in this section, "qualified city" or "qualified village" means a city or village, respectively, that meets all of the following requirements:

(a) Has adopted a zoning ordinance.

(b) Has a population of 1,800 or more.

(c) Has land that is not developed and that is zoned for residential development at a density described in subsection (1)(a).

(6) The zoning ordinance provisions required by subsection (1) shall be known and may be cited as the "open space preservation" provisions of the zoning ordinance.

History: Add. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

CITY AND VILLAGE ZONING ACT (EXCERPT)

Act 207 of 1921

125.600 Definitions; short title.

Sec. 20. (1) As used in this act:

(a) "Agricultural land" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forage and sod crops; grains, feed crops, and field crops; dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.

(b) "Airport" means an airport licensed by the Michigan department of transportation, bureau of aeronautics under section 86 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.86.

(c) "Airport approach plan" means a plan, or an amendment to a plan, adopted under section 12 of the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.442, and filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(d) "Airport layout plan" means a plan, or an amendment to a plan, that shows current or proposed layout of an airport, that is approved by the Michigan aeronautics commission, and that is filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(e) "Airport manager" means that term as defined in section 10 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.10.

(f) "Airport zoning regulations" means airport zoning regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.431 to 259.465, for an airport hazard area that lies in whole or part in the area affected by a zoning ordinance under this act.

(g) "Conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(h) "Development rights" means the rights to develop land to the maximum intensity of development authorized by law.

(i) "Development rights ordinance" means an ordinance, which may comprise part of a zoning ordinance, adopted under section 13.

(j) "Greenway" means a contiguous or linear open space, including habitats, wildlife corridors, and trails, that link parks, nature reserves, cultural features, or historic sites with each other, for recreation and conservation purposes.

(k) "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.

(l) "Other eligible land" means land that has a common property line with agricultural land from which development rights have been purchased and that is not divided from that agricultural land by a state or federal limited access highway.

(m) "PDR program" means a program under section 14 for the purchase of development rights by a city or village.

(n) "Undeveloped state" means a natural state preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

(2) This act shall be known and may be cited as the "city and village zoning act".

History: Add. 1996, Act 571, Eff. Mar. 31, 1997;—Am. 2000, Act 383, Imd. Eff. Jan. 2, 2001;—Am. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

9. PUBLIC HEARING - PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation

Public hearing opened and closed.

RESOLUTION

Moved by Littman

Seconded by Storrs

RESOLVED, that the Planning Commission hereby recommends to the City Council that the Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation, of the Zoning Ordinance to read as follows:

(Underlining, except for major section titles, denotes changes.)

10.00.00 **ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS**

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 **ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS**

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer's option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.

B. To encourage developers to use a more creative approach in the development of residential areas.

C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.

- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan shall contain the following, in addition to the information required on a complete site plan:

- A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:
 - 1. Legal description of dedicated open space, including dedicated easements.
 - 2. Topographical survey of dedicated open space.
 - 3. Types of soil in dedicated open space.
 - 4. Description of natural features on dedicated open space.
 - 5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.
- B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:
 - 1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
 - 2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
 - 3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.

34.60.04 Dwelling Unit Density:

- A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a “parallel plan”.
 - 1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.
 - 2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

- A. Overall density shall not exceed the number determined in the parallel plan.
- B. Setback provisions shall remain, except:
 - 1. Front yard setbacks may be reduced to not less than 25 feet.
 - 2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.
 - 3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.

- C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.
- D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

- A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.
- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
 - 1. Area proposed as single family residential lots.

2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development.
- E. Protection of Open Space
1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
 2. 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:
 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or

subdivision plat. Open space may include a recreational trail, children's play area, greenway or linear park.

Yeas:
All present (8)

Nays:

Absent:
Vleck

MOTION CARRIED

7. OPEN SPACE PRESERVATION AMENDMENT

Discussions were held by the Commission on the proposed Zoning Ordinance Text Amendment Open Space Preservation Amendment. It was agreed that the Commission is ready to move forward.

Mr. Waller commented that Open Space should be put on GIS.

6. ORDINANCE REVISION DISCUSSION (ZOTA 194) – Residential Development Options - Open Space Preservation

Mr. Chamberlain asked if there were any comments regarding the draft ordinance.

Ms. Lancaster stated that she thought it was good although she questioned C.4 saying it leaves too much discretion under C and that we may not want to put it under C. It may be better to put it under A.

Mr. Chamberlain stated that C.4 becomes A.5.

Ms. Lancaster stated that under State Law, once a land owner uses this, they can no longer use it again. Once the property owner chooses to use this on a specific parcel, he can no longer make any further requests.

Mr. Miller stated that we should clarify what kinds of condominiums are permitted and asked the Commission if they wanted detached condominiums exclusively.

Mr. Chamberlain asked, can we change State Law?

Ms. Lancaster stated that State Law doesn't really address the types of structures permitted.

Mr. Miller stated that maybe we should find a new location for that requirement. Move second sentence in C.1 to 4.e.

Mr. Chamberlain asked does this take care of our deadline in December with the City?

Mr. Miller replied, yes.

Mr. Starr asked, does the State Law require any minimum size?

Mr. Miller replied, no it doesn't. We need to address that minimum amount of area preserved; 20% of the open space.

Ms. Lancaster stated that this is the developer's choice by ownership.

Mr. Littman stated that 20% is fine with him. Is that what the State specifies. If we want, can we make it 30% or 40%?

Mr. Miller answered, yes. Further, the number of units per acre with or without sewers, in relation to the State Law, dictates only the R-1A and R-1B zoning districts are affected by this State Law and Amendment.

Mr. Chamberlain stated we will see this again in two (2) weeks and will then set up a public hearing for our regular meeting in September.

9. UNIFIED SITE DEVELOPMENT OVERLAY DISTRICT - Corrected
OPEN SPACE PRESERVATION

Mr. Chamberlain stated that what we got in this package is wrong. We've got to get in front of City Council, the Cluster, and hopefully Mark's got something for us to see and hear other than what was handed to us. This thing is called Chapter 37.10.00. of the Zoning Ordinance, Article XXXVII.

Mr. Miller stated, that previously, we handed out to you the amendments to the City and Village Zoning Act, which created the open space preservation provisions, which basically state that the R-1A and R-1B zoning districts, by right of ownership, if 20% is preserved in a natural state, you would be able, by right, to do a cluster development. And in effect, this has to be adopted by us to comply with the State Act provisions by December 15, 2002.

Mr. Chamberlain asked, so the issue then of what Council did a meeting or so ago wanting something from us by September, we're not addressing that?

Mr. Miller stated that is exactly what we're addressing. So from a strategic standpoint, what I would like to propose is to revise the whole cluster ordinance. However, I'm not sure if that's a wise route, because we have to address the State Act separately. There are two different issues. This is a first shot at this, and it only addresses compliance with the State Act. It is not addressing a complete rewrite of cluster provisions.

Mr. Chamberlain stated, then this takes care of their Finch Road spot, right?

Ms. Lancaster asked if Finch Road was R-1A or R-1E.

Mr. Miller stated it was R-1B. One thing noted is that they would comply within this framework if they elected to take this route. But, the way this is written with the parallel plan, the density will not exceed a subdivision development. When you lay out a subdivision, you almost never can maximize density, because it would have to be perfect dimensions to put a street in, including lot depth and width. So you never max out the density. But when you cluster, you can maximize the density. Also, there is a little bonus in our current ordinance. So what we did in this ordinance is that you have to prepare a parallel plan as part of the submittal. A subdivision layout with at least the minimum requirements for R-1A or R-1B, and you have to lay out a road 60 foot wide, and put in the lots and if you have regulated wetlands you can't build on those wetlands. That's the problem with the way our current cluster ordinance is written. You take a wetland area, and look at the poster child, Rochester Villa, you can take all that potential density, and you shift it and cram it into one area. So actually you're overbuilding beyond what you could have because it was unbuildable to begin with. So you submit a parallel plan, we make sure it complies with the current requirements in that it can be built as a traditional development. That gives you your density. It's

an actual density so you're not overbuilding the site. That's the premise with this proposal. If you disagree with that, we need to know, because that's the basic premise of this ordinance in front of you.

Mr. Chamberlain asked the Board if they understood what Mr. Miller just presented.

Mr. Kramer replied, yes, but that could be less than our ordinance allows, right?

Mr. Miller said it will be because our ordinance has ultimate density, for instance, 3.8 units an acre. But whenever you divide subdivisions, you never get that density.

Mr. Kramer asked, so your parallel preparation would indicate that maybe your max density would be 2.5 per acre, and that's all they could build under this.

Mr. Miller stated the reasoning for that is, in effect, with clustering, you're overbuilding beyond when compared to traditional lots in subdivisions. Why should you overbuild?

Mr. Chamberlain stated, and maybe at the same time really putting a strain on the infrastructure.

Mr. Miller replied, right. And that's the premise in doing the parallel plan.

Ms. Lancaster stated the mandatory things in here from the State Act are set out in the shell provision which is eligibility criteria, see on page 2. Those are the things that are mandated by the state, so when you read through there, that's coming right out of the open space preservation option. Those are the things we are required to do and also F, which is the twenty (20) percent.

Mr. Savidant stated that the State Act says a minimum of twenty (20) percent open space. So that's what's in there now, twenty (20) percent. Do you want to go thirty (30) percent, do you want to go fifty (50) percent? Twenty (20) percent is a minimum.

Mr. Chamberlain stated there would be a task force comprised of a couple of the Commissioners, Mr. Savidant out of the Planning Department and Ms. Lancaster out of the Legal Department to work on this throughout the next couple of weeks and bring it to fruition and bring it back into the Board in late August or early September so that we can meet the City Council's deadline.

Mr. Savidant stated he was passing out copies of CR-1 for comparison so that it kind of gives you some insight as to where we are going with this thing. One think that Mr. Miller and I talked about was requiring if there was an adjacent trailway or planned trailway, to provide a connection through the area of open

space so you can expand and improve the system of non-motorized trails. So there are some things like that. We can add in there, taking yourself a little bit further away from the bare bones of the state requirements, but it makes the text a little more appropriate for the City of Troy, but I don't want to say too much because you haven't had a chance to read this yet. I think next meeting there's going to be some good conversation.

Mr. Miller stated that this just gives the developer the option to be able to cluster if they so desire. They don't have to use this. Personally, I think clustering is a great thing, however, I do not like our current cluster ordinance because it does two things. One, if you have a natural feature, you get to calculate your density from there, even if it's a preserved area, and in effect you're jacking up the density. Second, goes back to why we want a parallel plan, the current CR-1 increases density.

Ms. Lancaster asked, the density isn't really getting jacked up because of the state law, but the reason it's getting jacked up is because they now can change their spacing to get more houses where they wouldn't get in a traditional development.

Mr. Miller stated that's one way. Another way is our current ordinance allows you to use your calculation on unbuildable areas, and I'm trying to prevent that. You should not allow unbuildable areas to be used in your density calculation.

REC'D

AUG 23 2002

August 22, 2002

PLANNING DEPT.

MARK
 BREW
 ZOTA
File

City of Troy Planning Commission
500 W. Big Beaver Road
Troy, Michigan 48084

RE: Proposed open space preservation development

Dear Commissioners:

It is my understanding that the above referenced subject will be discussed at the Planning Commission Study meeting on August 27, 2002, or September 10, 2002.

In reading the proposed open space preservation option development, I have the following comments.

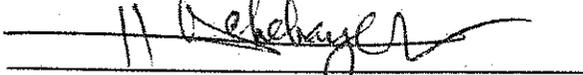
1. Density should be based on the current zoning not on what is called "parallel plan" especially when the parallel plan yields less density than the current zoning will allow.
2. Over all density shall be equal to the density allowable by the current zoning. Needless to say that the current cluster district based on the underlying zoning provide for a bonus density. In the absence of a bonus density at least you should keep density the same as that of the current zoning.
3. Setbacks, front set back of thirty five (35) feet is good, rear set back should be thirty five (35) feet in order to provide flexibility in applying the cluster option. If the site is surrounded by different zoning classification then the least allowable rear setback should be used not to exceed thirty five (35) feet. Side set backs should be kept at a minimum of fifteen (15) feet.
4. Open space should be limited to fifteen percent, not twenty percent.

5. In general the proposed open space preservation development should have provisions that help develop difficult shape parcel configuration.

I thank you for taking these comments into consideration.

Sincerely,

Choice Development Corporation



Youssef (Joe) Chehayeb
Vice President

Cc: Planning Commissioners
Mr. John Szerlag, City Manager
Mr. Mark Miller, Planning Director

October 1, 2002

To: Honorable Mayor and City Council

From: John Szerlag, City Manager
Gary Shripka, Assistant City Manager/Services
Lori Bluhm, City Attorney
Mark F. Miller, Planning Director

Subject: PUBLIC HEARING - PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B
Open Space Preservation

RECOMMENDATION

The Planning Commission and City Management recommend approval of the Open Space Preservation provisions.

BACKGROUND INFORMATION

On December 14, 2001 House Bill No. 5029 took immediate effect, and amended the City-Village Zoning Act, PA 207 of 1921. The amendment requires the City of Troy to adopt Open Space Preservation provisions for the R-1A and R-1B Zoning Districts, by December 14, 2002. These provisions will permit property owners the option of developing all the permitted dwelling units on a portion of the property, if the balance of the property is undeveloped. The undeveloped land area shall be permanently protected with a conservation easement or other legal restriction. Such provisions can be exercised once by the land owners. These Open Space Preservation provisions are commonly known as cluster zoning or open space zoning. However, the amendment does not prescribe the typical elements of an open space zoning option.

The Planning Department, City Attorney's Office and Planning Commission worked together to draft the proposed Open Space Preservation provisions. It was decided to only address compliance with the Open Space Preservation amendment to the City and Village Zoning Act, because of the December 14, 2002 deadline. The existing CR-1 Zoning District provisions should be reviewed, but separately and at some time in the future. In addition, the basic premise of the provisions is that there should be no negative impact on existing one family neighborhoods.

Generally, cluster developments are viewed as positive, except that the City of Troy experience demonstrates concern regarding density and setbacks in relation to existing homes. Cluster developments, have generally exceeded the surrounding neighborhoods' density (units per acre), when all of the project land is used in the density calculations. Unusable areas such as regulated wetlands and roads increase unit density beyond the surrounding single family neighborhoods. The parallel plan determines the density (units

per acre), when a developer submits a typical subdivision/site condominium. Then the units can be clustered to protect open space and not negatively impact the surrounding one family neighborhoods. In addition, the cluster units are required to maintain an equivalent rear yard setback, to maintain the one family neighborhood character of the adjacent properties. It is the intent of the proposed Open Space Preservation amendment to eliminate negative impacts of cluster development and comply with state law.

Attached to this memorandum include the proposed Open Space Preservation amendment, City and Village Zoning Act amendment, Planning Commission minutes and public comment. Please feel free to contact Mark Miller, Planning Director, if you have any questions.

Attachments (7)

Cc: Mark Stimac, Director of Building and Zoning
Brent Savidant, Principal Planner
Susan Lancaster, Assistant City Attorney
file/ZOTA-194

PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation

Suggested Resolution

Resolution #2002-10-

Moved by

Seconded by

RESOLVED, That Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation, of the Zoning Ordinance be **ADOPTED** as recommended by the Planning Commission and City Management a copy shall be attached to the original Minutes of this meeting.

Yes:

No:

PROPOSED ZONING ORDINANCE TEXT AMENDMENT

Open Space Preservation Option

Amend the indicated portions of the One Family Residential Districts and the Residential Development Options text in the following manner:

(Underlining, except for major section titles, denotes changes.)

10.00.00 ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer’s option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

- A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.
- B. To encourage developers to use a more creative approach in the development of residential areas.
- C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.
- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan

shall contain the following, in addition to the information required on a complete site plan:

- A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:
1. Legal description of dedicated open space, including dedicated easements.
 2. Topographical survey of dedicated open space.
 3. Types of soil in dedicated open space.
 4. Description of natural features on dedicated open space.
 5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.
- B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:
1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
 2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
 3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.

34.60.04 Dwelling Unit Density:

A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a “parallel plan”.

1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.

2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

A. Overall density shall not exceed the number determined in the parallel plan.

B. Setback provisions shall remain, except:

1. Front yard setbacks may be reduced to not less than 25 feet.

2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.

3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.

C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.

D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an

undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.

- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
1. Area proposed as single family residential lots.
 2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located

to preserve significant natural features, or located to connect open spaces throughout the development.

E. Protection of Open Space

1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
2. 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:

 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or subdivision plat. Open space may include a recreational trail, children’s play area, greenway or linear park.

CITY AND VILLAGE ZONING ACT (EXCERPT)

Act 207 of 1921

125.584f Qualified city or village zoning ordinances; option of landowner to develop land zoned for residential development; requirements; limitations; "qualified city" or "qualified village" defined; zoning ordinance provisions cited as "open space preservation."

Sec. 4f. (1) Subject to subsection (4) and the right of referendum if provided by charter, beginning 1 year after the effective date of the amendatory act that added this section, each qualified city or qualified village shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land specified in the zoning ordinance, but not more than 80%, that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area, if all of the following apply:

(a) The land is zoned at a density equivalent to 2 or fewer dwelling units per acre, or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre.

(b) A percentage of the land area specified in the zoning ordinance, but not less than 20%, will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, as prescribed by the zoning ordinance.

(c) The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the option provided by this subsection would also depend upon such an extension.

(d) The option provided pursuant to this subsection has not previously been exercised with respect to that land.

(2) After a landowner exercises the option provided pursuant to subsection (1), the land may be rezoned accordingly.

(3) The development of land under subsection (1) is subject to other applicable ordinances, laws, and rules, including rules relating to suitability of groundwater for on-site water supply for land not served by public water and rules relating to suitability of soils for on-site sewage disposal for land not served by public sewers.

(4) Subsection (1) does not apply to a qualified city or qualified village if both of the following requirements are met:

(a) Since October 1, 2001, the city or village has had in effect a zoning ordinance provision providing for both of the following:

(i) Land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area.

(ii) If the landowner exercises the option provided by subparagraph (i), the portion of the land not developed will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

(b) On or before the enactment date of the amendatory act that added this section, a landowner exercised the option provided under the zoning ordinance provision referred to in subdivision (a) with at least 20% of the land area remaining perpetually in an undeveloped state.

(5) As used in this section, "qualified city" or "qualified village" means a city or village, respectively, that meets all of the following requirements:

(a) Has adopted a zoning ordinance.

(b) Has a population of 1,800 or more.

(c) Has land that is not developed and that is zoned for residential development at a density described in subsection (1)(a).

(6) The zoning ordinance provisions required by subsection (1) shall be known and may be cited as the "open space preservation" provisions of the zoning ordinance.

History: Add. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

CITY AND VILLAGE ZONING ACT (EXCERPT)

Act 207 of 1921

125.600 Definitions; short title.

Sec. 20. (1) As used in this act:

(a) "Agricultural land" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forage and sod crops; grains, feed crops, and field crops; dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.

(b) "Airport" means an airport licensed by the Michigan department of transportation, bureau of aeronautics under section 86 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.86.

(c) "Airport approach plan" means a plan, or an amendment to a plan, adopted under section 12 of the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.442, and filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(d) "Airport layout plan" means a plan, or an amendment to a plan, that shows current or proposed layout of an airport, that is approved by the Michigan aeronautics commission, and that is filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(e) "Airport manager" means that term as defined in section 10 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.10.

(f) "Airport zoning regulations" means airport zoning regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.431 to 259.465, for an airport hazard area that lies in whole or part in the area affected by a zoning ordinance under this act.

(g) "Conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(h) "Development rights" means the rights to develop land to the maximum intensity of development authorized by law.

(i) "Development rights ordinance" means an ordinance, which may comprise part of a zoning ordinance, adopted under section 13.

(j) "Greenway" means a contiguous or linear open space, including habitats, wildlife corridors, and trails, that link parks, nature reserves, cultural features, or historic sites with each other, for recreation and conservation purposes.

(k) "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.

(l) "Other eligible land" means land that has a common property line with agricultural land from which development rights have been purchased and that is not divided from that agricultural land by a state or federal limited access highway.

(m) "PDR program" means a program under section 14 for the purchase of development rights by a city or village.

(n) "Undeveloped state" means a natural state preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

(2) This act shall be known and may be cited as the "city and village zoning act".

History: Add. 1996, Act 571, Eff. Mar. 31, 1997;—Am. 2000, Act 383, Imd. Eff. Jan. 2, 2001;—Am. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

9. PUBLIC HEARING - PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation

Public hearing opened and closed.

RESOLUTION

Moved by Littman

Seconded by Storrs

RESOLVED, that the Planning Commission hereby recommends to the City Council that the Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation, of the Zoning Ordinance to read as follows:

(Underlining, except for major section titles, denotes changes.)

10.00.00 **ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS**

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 **ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS**

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer's option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.

B. To encourage developers to use a more creative approach in the development of residential areas.

C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.

- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan shall contain the following, in addition to the information required on a complete site plan:

- A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:
 - 1. Legal description of dedicated open space, including dedicated easements.
 - 2. Topographical survey of dedicated open space.
 - 3. Types of soil in dedicated open space.
 - 4. Description of natural features on dedicated open space.
 - 5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.
- B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:
 - 1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
 - 2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
 - 3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.

34.60.04 Dwelling Unit Density:

- A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a “parallel plan”.
 - 1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.
 - 2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

- A. Overall density shall not exceed the number determined in the parallel plan.
- B. Setback provisions shall remain, except:
 - 1. Front yard setbacks may be reduced to not less than 25 feet.
 - 2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.
 - 3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.

- C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.
- D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

- A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.
- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
 - 1. Area proposed as single family residential lots.

2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development.
- E. Protection of Open Space
1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
 2. 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:
 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or

subdivision plat. Open space may include a recreational trail, children’s play area, greenway or linear park.

Yeas:
All present (8)

Nays:

Absent:
Vleck

MOTION CARRIED

7. OPEN SPACE PRESERVATION AMENDMENT

Discussions were held by the Commission on the proposed Zoning Ordinance Text Amendment Open Space Preservation Amendment. It was agreed that the Commission is ready to move forward.

Mr. Waller commented that Open Space should be put on GIS.

6. ORDINANCE REVISION DISCUSSION (ZOTA 194) – Residential Development Options - Open Space Preservation

Mr. Chamberlain asked if there were any comments regarding the draft ordinance.

Ms. Lancaster stated that she thought it was good although she questioned C.4 saying it leaves too much discretion under C and that we may not want to put it under C. It may be better to put it under A.

Mr. Chamberlain stated that C.4 becomes A.5.

Ms. Lancaster stated that under State Law, once a land owner uses this, they can no longer use it again. Once the property owner chooses to use this on a specific parcel, he can no longer make any further requests.

Mr. Miller stated that we should clarify what kinds of condominiums are permitted and asked the Commission if they wanted detached condominiums exclusively.

Mr. Chamberlain asked, can we change State Law?

Ms. Lancaster stated that State Law doesn't really address the types of structures permitted.

Mr. Miller stated that maybe we should find a new location for that requirement. Move second sentence in C.1 to 4.e.

Mr. Chamberlain asked does this take care of our deadline in December with the City?

Mr. Miller replied, yes.

Mr. Starr asked, does the State Law require any minimum size?

Mr. Miller replied, no it doesn't. We need to address that minimum amount of area preserved; 20% of the open space.

Ms. Lancaster stated that this is the developer's choice by ownership.

Mr. Littman stated that 20% is fine with him. Is that what the State specifies. If we want, can we make it 30% or 40%?

Mr. Miller answered, yes. Further, the number of units per acre with or without sewers, in relation to the State Law, dictates only the R-1A and R-1B zoning districts are affected by this State Law and Amendment.

Mr. Chamberlain stated we will see this again in two (2) weeks and will then set up a public hearing for our regular meeting in September.

9. UNIFIED SITE DEVELOPMENT OVERLAY DISTRICT - Corrected
OPEN SPACE PRESERVATION

Mr. Chamberlain stated that what we got in this package is wrong. We've got to get in front of City Council, the Cluster, and hopefully Mark's got something for us to see and hear other than what was handed to us. This thing is called Chapter 37.10.00. of the Zoning Ordinance, Article XXXVII.

Mr. Miller stated, that previously, we handed out to you the amendments to the City and Village Zoning Act, which created the open space preservation provisions, which basically state that the R-1A and R-1B zoning districts, by right of ownership, if 20% is preserved in a natural state, you would be able, by right, to do a cluster development. And in effect, this has to be adopted by us to comply with the State Act provisions by December 15, 2002.

Mr. Chamberlain asked, so the issue then of what Council did a meeting or so ago wanting something from us by September, we're not addressing that?

Mr. Miller stated that is exactly what we're addressing. So from a strategic standpoint, what I would like to propose is to revise the whole cluster ordinance. However, I'm not sure if that's a wise route, because we have to address the State Act separately. There are two different issues. This is a first shot at this, and it only addresses compliance with the State Act. It is not addressing a complete rewrite of cluster provisions.

Mr. Chamberlain stated, then this takes care of their Finch Road spot, right?

Ms. Lancaster asked if Finch Road was R-1A or R-1E.

Mr. Miller stated it was R-1B. One thing noted is that they would comply within this framework if they elected to take this route. But, the way this is written with the parallel plan, the density will not exceed a subdivision development. When you lay out a subdivision, you almost never can maximize density, because it would have to be perfect dimensions to put a street in, including lot depth and width. So you never max out the density. But when you cluster, you can maximize the density. Also, there is a little bonus in our current ordinance. So what we did in this ordinance is that you have to prepare a parallel plan as part of the submittal. A subdivision layout with at least the minimum requirements for R-1A or R-1B, and you have to lay out a road 60 foot wide, and put in the lots and if you have regulated wetlands you can't build on those wetlands. That's the problem with the way our current cluster ordinance is written. You take a wetland area, and look at the poster child, Rochester Villa, you can take all that potential density, and you shift it and cram it into one area. So actually you're overbuilding beyond what you could have because it was unbuildable to begin with. So you submit a parallel plan, we make sure it complies with the current requirements in that it can be built as a traditional development. That gives you your density. It's

an actual density so you're not overbuilding the site. That's the premise with this proposal. If you disagree with that, we need to know, because that's the basic premise of this ordinance in front of you.

Mr. Chamberlain asked the Board if they understood what Mr. Miller just presented.

Mr. Kramer replied, yes, but that could be less than our ordinance allows, right?

Mr. Miller said it will be because our ordinance has ultimate density, for instance, 3.8 units an acre. But whenever you divide subdivisions, you never get that density.

Mr. Kramer asked, so your parallel preparation would indicate that maybe your max density would be 2.5 per acre, and that's all they could build under this.

Mr. Miller stated the reasoning for that is, in effect, with clustering, you're overbuilding beyond when compared to traditional lots in subdivisions. Why should you overbuild?

Mr. Chamberlain stated, and maybe at the same time really putting a strain on the infrastructure.

Mr. Miller replied, right. And that's the premise in doing the parallel plan.

Ms. Lancaster stated the mandatory things in here from the State Act are set out in the shell provision which is eligibility criteria, see on page 2. Those are the things that are mandated by the state, so when you read through there, that's coming right out of the open space preservation option. Those are the things we are required to do and also F, which is the twenty (20) percent.

Mr. Savidant stated that the State Act says a minimum of twenty (20) percent open space. So that's what's in there now, twenty (20) percent. Do you want to go thirty (30) percent, do you want to go fifty (50) percent? Twenty (20) percent is a minimum.

Mr. Chamberlain stated there would be a task force comprised of a couple of the Commissioners, Mr. Savidant out of the Planning Department and Ms. Lancaster out of the Legal Department to work on this throughout the next couple of weeks and bring it to fruition and bring it back into the Board in late August or early September so that we can meet the City Council's deadline.

Mr. Savidant stated he was passing out copies of CR-1 for comparison so that it kind of gives you some insight as to where we are going with this thing. One think that Mr. Miller and I talked about was requiring if there was an adjacent trailway or planned trailway, to provide a connection through the area of open

space so you can expand and improve the system of non-motorized trails. So there are some things like that. We can add in there, taking yourself a little bit further away from the bare bones of the state requirements, but it makes the text a little more appropriate for the City of Troy, but I don't want to say too much because you haven't had a chance to read this yet. I think next meeting there's going to be some good conversation.

Mr. Miller stated that this just gives the developer the option to be able to cluster if they so desire. They don't have to use this. Personally, I think clustering is a great thing, however, I do not like our current cluster ordinance because it does two things. One, if you have a natural feature, you get to calculate your density from there, even if it's a preserved area, and in effect you're jacking up the density. Second, goes back to why we want a parallel plan, the current CR-1 increases density.

Ms. Lancaster asked, the density isn't really getting jacked up because of the state law, but the reason it's getting jacked up is because they now can change their spacing to get more houses where they wouldn't get in a traditional development.

Mr. Miller stated that's one way. Another way is our current ordinance allows you to use your calculation on unbuildable areas, and I'm trying to prevent that. You should not allow unbuildable areas to be used in your density calculation.

REC'D

AUG 23 2002

August 22, 2002

PLANNING DEPT.

MARK
 BREW
 ZOTA
File

City of Troy Planning Commission
500 W. Big Beaver Road
Troy, Michigan 48084

RE: Proposed open space preservation development

Dear Commissioners:

It is my understanding that the above referenced subject will be discussed at the Planning Commission Study meeting on August 27, 2002, or September 10, 2002.

In reading the proposed open space preservation option development, I have the following comments.

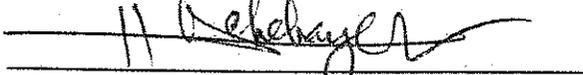
1. Density should be based on the current zoning not on what is called "parallel plan" especially when the parallel plan yields less density than the current zoning will allow.
2. Over all density shall be equal to the density allowable by the current zoning. Needless to say that the current cluster district based on the underlying zoning provide for a bonus density. In the absence of a bonus density at least you should keep density the same as that of the current zoning.
3. Setbacks, front set back of thirty five (35) feet is good, rear set back should be thirty five (35) feet in order to provide flexibility in applying the cluster option. If the site is surrounded by different zoning classification then the least allowable rear setback should be used not to exceed thirty five (35) feet. Side set backs should be kept at a minimum of fifteen (15) feet.
4. Open space should be limited to fifteen percent, not twenty percent.

5. In general the proposed open space preservation development should have provisions that help develop difficult shape parcel configuration.

I thank you for taking these comments into consideration.

Sincerely,

Choice Development Corporation



Youssef (Joe) Chehayeb
Vice President

Cc: Planning Commissioners
Mr. John Szerlag, City Manager
Mr. Mark Miller, Planning Director

September 17, 2002

To: Honorable Mayor and City Council

From: John Szerlag, City Manager
Gary Shripka, Assistant City Manager/Services
Lori Bluhm, City Attorney
Mark F. Miller, Planning Director

Subject: ANNOUNCEMENT OF PUBLIC HEARING (OCTOBER 7, 2002) -
PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) -
Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation

RECOMMENDATION

The Planning Commission and City Management recommend approval of the Open Space Preservation provisions.

BACKGROUND INFORMATION

On December 14, 2001 House Bill No. 5029 took immediate effect, and amended the City-Village Zoning Act, PA 207 of 1921. The amendment requires the City of Troy to adopt Open Space Preservation provisions for the R-1A and R-1B Zoning Districts, by December 14, 2002. These provisions will permit property owners the option of developing all the permitted dwelling units on a portion of the property, if the balance of the property is undeveloped. The undeveloped land area shall be permanently protected with a conservation easement or other legal restriction. Such provisions can be exercised once by the land owners. These Open Space Preservation provisions are commonly known as cluster zoning or open space zoning. However, the amendment does not prescribe the typical elements of an open space zoning option.

The Planning Department, City Attorney's Office and Planning Commission worked together to draft the proposed Open Space Preservation provisions. It was decided to only address compliance with the Open Space Preservation amendment to the City and Village Zoning Act, because of the December 14, 2002 deadline. The existing CR-1 Zoning District provisions should be reviewed, but separately and at some time in the future. In addition, the basic premise of the provisions is that there should be no negative impact on existing one family neighborhoods.

Generally, cluster developments are viewed as positive, except that the City of Troy experience demonstrates concern regarding density and setbacks in relation to existing homes. Cluster developments, have generally exceeded the surrounding neighborhoods' density (units per acre), when all of the project land is used in the density calculations. Unusable areas such as regulated wetlands and roads increase unit density beyond the surrounding single family neighborhoods. The parallel plan determines the density (units

per acre), when a developer submits a typical subdivision/site condominium. Then the units can be clustered to protect open space and not negatively impact the surrounding one family neighborhoods. In addition, the cluster units are required to maintain an equivalent rear yard side back, to maintain the one family neighborhood character of the adjacent properties. It is the intent of the proposed Open Space Preservation amendment to eliminate negative impacts of cluster development and comply with state law.

Attached to this memorandum include the proposed Open Space Preservation amendment, City and Village Zoning Act amendment, Planning Commission minutes and public comment. Please feel free to contact Mark Miller, Planning Director if you have any questions.

Attachments (7)

Cc: Mark Stimac, Director of Building and Zoning
Brent Savidant, Principal Planner
Susan Lancaster, Assistant City Attorney
file/ZOTA-194

PROPOSED ZONING ORDINANCE TEXT AMENDMENT

Open Space Preservation Option

Amend the indicated portions of the One Family Residential Districts and the Residential Development Options text in the following manner:

(Underlining, except for major section titles, denotes changes.)

10.00.00 ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer’s option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

- A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.
- B. To encourage developers to use a more creative approach in the development of residential areas.
- C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.
- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan

shall contain the following, in addition to the information required on a complete site plan:

- A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:
1. Legal description of dedicated open space, including dedicated easements.
 2. Topographical survey of dedicated open space.
 3. Types of soil in dedicated open space.
 4. Description of natural features on dedicated open space.
 5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.
- B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:
1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
 2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
 3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.

34.60.04 Dwelling Unit Density:

A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a “parallel plan”.

1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.

2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

A. Overall density shall not exceed the number determined in the parallel plan.

B. Setback provisions shall remain, except:

1. Front yard setbacks may be reduced to not less than 25 feet.

2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.

3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.

C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.

D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an

undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.

- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
1. Area proposed as single family residential lots.
 2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located

to preserve significant natural features, or located to connect open spaces throughout the development.

E. Protection of Open Space

1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
2. 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:

 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or subdivision plat. Open space may include a recreational trail, children’s play area, greenway or linear park.

CITY AND VILLAGE ZONING ACT (EXCERPT)

Act 207 of 1921

125.584f Qualified city or village zoning ordinances; option of landowner to develop land zoned for residential development; requirements; limitations; "qualified city" or "qualified village" defined; zoning ordinance provisions cited as "open space preservation."

Sec. 4f. (1) Subject to subsection (4) and the right of referendum if provided by charter, beginning 1 year after the effective date of the amendatory act that added this section, each qualified city or qualified village shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land specified in the zoning ordinance, but not more than 80%, that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area, if all of the following apply:

(a) The land is zoned at a density equivalent to 2 or fewer dwelling units per acre, or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre.

(b) A percentage of the land area specified in the zoning ordinance, but not less than 20%, will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, as prescribed by the zoning ordinance.

(c) The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the option provided by this subsection would also depend upon such an extension.

(d) The option provided pursuant to this subsection has not previously been exercised with respect to that land.

(2) After a landowner exercises the option provided pursuant to subsection (1), the land may be rezoned accordingly.

(3) The development of land under subsection (1) is subject to other applicable ordinances, laws, and rules, including rules relating to suitability of groundwater for on-site water supply for land not served by public water and rules relating to suitability of soils for on-site sewage disposal for land not served by public sewers.

(4) Subsection (1) does not apply to a qualified city or qualified village if both of the following requirements are met:

(a) Since October 1, 2001, the city or village has had in effect a zoning ordinance provision providing for both of the following:

(i) Land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area.

(ii) If the landowner exercises the option provided by subparagraph (i), the portion of the land not developed will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

(b) On or before the enactment date of the amendatory act that added this section, a landowner exercised the option provided under the zoning ordinance provision referred to in subdivision (a) with at least 20% of the land area remaining perpetually in an undeveloped state.

(5) As used in this section, "qualified city" or "qualified village" means a city or village, respectively, that meets all of the following requirements:

(a) Has adopted a zoning ordinance.

(b) Has a population of 1,800 or more.

(c) Has land that is not developed and that is zoned for residential development at a density described in subsection (1)(a).

(6) The zoning ordinance provisions required by subsection (1) shall be known and may be cited as the "open space preservation" provisions of the zoning ordinance.

History: Add. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

CITY AND VILLAGE ZONING ACT (EXCERPT)

Act 207 of 1921

125.600 Definitions; short title.

Sec. 20. (1) As used in this act:

- (a) "Agricultural land" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forage and sod crops; grains, feed crops, and field crops; dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.
- (b) "Airport" means an airport licensed by the Michigan department of transportation, bureau of aeronautics under section 86 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.86.
- (c) "Airport approach plan" means a plan, or an amendment to a plan, adopted under section 12 of the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.442, and filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.
- (d) "Airport layout plan" means a plan, or an amendment to a plan, that shows current or proposed layout of an airport, that is approved by the Michigan aeronautics commission, and that is filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.
- (e) "Airport manager" means that term as defined in section 10 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.10.
- (f) "Airport zoning regulations" means airport zoning regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.431 to 259.465, for an airport hazard area that lies in whole or part in the area affected by a zoning ordinance under this act.
- (g) "Conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.
- (h) "Development rights" means the rights to develop land to the maximum intensity of development authorized by law.
- (i) "Development rights ordinance" means an ordinance, which may comprise part of a zoning ordinance, adopted under section 13.
- (j) "Greenway" means a contiguous or linear open space, including habitats, wildlife corridors, and trails, that link parks, nature reserves, cultural features, or historic sites with each other, for recreation and conservation purposes.
- (k) "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.
- (l) "Other eligible land" means land that has a common property line with agricultural land from which development rights have been purchased and that is not divided from that agricultural land by a state or federal limited access highway.
- (m) "PDR program" means a program under section 14 for the purchase of development rights by a city or village.
- (n) "Undeveloped state" means a natural state preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.
- (2) This act shall be known and may be cited as the "city and village zoning act".

History: Add. 1996, Act 571, Eff. Mar. 31, 1997;—Am. 2000, Act 383, Imd. Eff. Jan. 2, 2001;—Am. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

9. PUBLIC HEARING - PROPOSED ZONING ORDINANCE TEXT AMENDMENT (ZOTA 194) – Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation

Public hearing opened and closed.

RESOLUTION

Moved by Littman

Seconded by Storrs

RESOLVED, that the Planning Commission hereby recommends to the City Council that the Articles 10.20.08 & 34.60.00 R-1A & R-1B Open Space Preservation, of the Zoning Ordinance to read as follows:

(Underlining, except for major section titles, denotes changes.)

10.00.00 **ARTICLE X ONE FAMILY RESIDENTIAL DISTRICTS**

10.20.08 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with PA 179 of 2001 (amendment to City and Village Zoning Act), subject to the requirements of Section 34.60.00.

34.00.00 **ARTICLE XXXIV RESIDENTIAL DEVELOPMENT OPTIONS**

34.60.00 OPEN SPACE PRESERVATION OPTION

This option may be utilized, at the developer's option, in the R-1A and R-1B One Family Residential zoning districts.

34.60.01 The following objectives shall govern the approval or disapproval of the proposed Open Space Preservation Plan:

A. To provide a more desirable living environment by preserving the natural character of the property, such as mature trees, wetlands, floodplains, topography, and open space for enjoyment by residents of the Open Space Preservation development.

B. To encourage developers to use a more creative approach in the development of residential areas.

C. To encourage a more efficient, aesthetic and desirable use of the land while recognizing a reduction in development costs and by allowing the developer to bypass natural obstacles.

- D. To encourage the provision of open space so benefits may accrue directly to residents of the Open Space Preservation development and to further encourage the development of recreational facilities.
- E. An Open Space Preservation development shall result in a recognizable and substantial benefit to residents of the property and to the overall quality of life in the City.

34.60.02 Application Information Requirements: The Open Space Preservation Plan shall contain the following, in addition to the information required on a complete site plan:

- A. A complete description of the land proposed to be dedicated to the city or to the common use of lot owners (herein called dedicated open space) shall be provided, including the following:
 - 1. Legal description of dedicated open space, including dedicated easements.
 - 2. Topographical survey of dedicated open space.
 - 3. Types of soil in dedicated open space.
 - 4. Description of natural features on dedicated open space.
 - 5. Other relevant information necessary to show that the proposed development qualifies for approval as an Open Space Preservation development.
- B. The proposed plan of development of the dedicated open space shall be submitted with the application and shall include the following:
 - 1. The proposed manner in which the title to land and facilities is to be held by the owners of land in the Open Space Preservation development.
 - 2. The proposed manner of regulating the use of the common facilities and areas so as to eliminate possible nuisances to other property owners and cause for enforcement by the city.
 - 3. The proposed uses of dedicated open space and the proposed improvements to be constructed by the proprietor.

34.60.03 Eligibility Criteria: To qualify for the Open Space Preservation Option, the Planning Commission shall determine that all of the following conditions are present:

- A. The land is zoned for R-1A or R-1B residential development.
- B. The percentage of land area specified in Section 34.60.06.A below must remain in a perpetually undeveloped state.
- C. The Open Space Preservation site shall be under the control of one owner or group of owners acting jointly and shall be capable of being planned and developed as one integral unit.

34.60.04 Dwelling Unit Density:

- A. The number of dwelling units allowable within the Open Space Development shall be determined through the preparation of a “parallel plan”.
 - 1. The applicant shall prepare a parallel plan for the project that is consistent with State, County and City requirements and design criteria for a tentative preliminary plat or unplatted site condominium. The parallel plan shall meet all standards for lot /unit size, lot/unit width and setbacks as normally required for the applicable one family zoning district.
 - 2. The City shall review the design and determine the number of lots that could be developed following the parallel plan. This number shall be the maximum number of dwelling units allowable in the Open Space Preservation development.

34.60.05 Regulatory Flexibility: To comply with the “open space preservation” provisions of the City and Village Zoning Act, the City may permit specific departures from the requirements of the Zoning Ordinance for yards and lots as a part of the approval process. The applicant may cluster the dwellings on smaller lots, provided the following:

- A. Overall density shall not exceed the number determined in the parallel plan.
- B. Setback provisions shall remain, except:
 - 1. Front yard setbacks may be reduced to not less than 25 feet.
 - 2. Rear yard setbacks shall be equal to or exceed the rear yard setback requirements for adjacent residential zoning districts.
 - 3. The side yard setback for buildings within the development may be reduced to permit buildings not less than 20 feet from one another.

- C. All regulations applicable to parking and loading, general provisions, and other requirements shall be met.
- D. The permitted uses shall be restricted to single family detached residential development, residential accessory structures, and non-commercial recreation uses.

34.60.06 Open Space Requirements:

- A. Minimum Requirements: An Open Space Preservation development shall maintain a minimum of twenty percent (20%) of the gross area of the site as dedicated open space which shall remain perpetually in an undeveloped state by means of one of the tools included in Section E below. As used in this section, “undeveloped state” means a natural state preserving natural resources, natural features, or scenic or wooded conditions; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children’s play area, greenway, or linear park. As used in this section, the term “greenway” shall mean a contiguous or linear open space, including habitats, wildlife corridors, and trails that link parks, nature reserves, cultural features, or historic sites with each other, for recreational and conservation purposes. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public. Except as noted in Section E below, any land area maintained in an undeveloped state within the boundaries of the site meeting the open space standards herein may be included as required open space. A minimum of fifty percent (50%) of the minimum required open space shall be upland area that is accessible to all residents of the Open Space Preservation development or the City of Troy.
- B. Common Open Space: Common open space, other common properties and facilities, individual properties, and all other elements of a Open Space Preservation district shall be so planned that they will achieve a unified open space, community green or plaza and recreation area system, with open space and all other elements in appropriate locations, suitably related to each other, the site and surrounding lands. All land within a development that is not devoted to a residential unit, an accessory use, vehicle access, vehicle parking, a roadway, or an approved land improvement, shall be permanently set aside as common land for community use, recreation or conservation.
- C. Areas Not Considered Open Space: The following land areas are not included as dedicated open space for the purposes of this Section:
 - 1. Area proposed as single family residential lots.

2. Area proposed as limited common elements of condominium developments, or land within a condominium development, which is convertible to general common elements that will not remain in a perpetually undeveloped state or land convertible to limited common elements.
 3. The area of any street right-of-way or equivalent private road easement.
- D. Location of Open Space: Common open space shall be planned in locations generally visible and accessible to all residing within the Open Space Development. The common open space may be centrally located along the road frontage of the development, located to preserve significant natural features, or located to connect open spaces throughout the development.
- E. Protection of Open Space
1. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the City, such as: recorded deed restrictions, restrictive covenants, or conservation easements, plat dedication, or other legal means that run with the land. As used in this section, the phrase “conservation easement” means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.
 2. 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:
 - a. Indicate the proposed allowable use(s) of the dedicated open space.
 - b. The dedicated open space shall forever remain open space, subject only to uses authorized by state law and approved by the City on the approved site plan or

subdivision plat. Open space may include a recreational trail, children's play area, greenway or linear park.

Yeas:
All present (8)

Nays:

Absent:
Vleck

MOTION CARRIED

7. OPEN SPACE PRESERVATION AMENDMENT

Discussions were held by the Commission on the proposed Zoning Ordinance Text Amendment Open Space Preservation Amendment. It was agreed that the Commission is ready to move forward.

Mr. Waller commented that Open Space should be put on GIS.

6. ORDINANCE REVISION DISCUSSION (ZOTA 194) – Residential Development Options - Open Space Preservation

Mr. Chamberlain asked if there were any comments regarding the draft ordinance.

Ms. Lancaster stated that she thought it was good although she questioned C.4 saying it leaves too much discretion under C and that we may not want to put it under C. It may be better to put it under A.

Mr. Chamberlain stated that C.4 becomes A.5.

Ms. Lancaster stated that under State Law, once a land owner uses this, they can no longer use it again. Once the property owner chooses to use this on a specific parcel, he can no longer make any further requests.

Mr. Miller stated that we should clarify what kinds of condominiums are permitted and asked the Commission if they wanted detached condominiums exclusively.

Mr. Chamberlain asked, can we change State Law?

Ms. Lancaster stated that State Law doesn't really address the types of structures permitted.

Mr. Miller stated that maybe we should find a new location for that requirement. Move second sentence in C.1 to 4.e.

Mr. Chamberlain asked does this take care of our deadline in December with the City?

Mr. Miller replied, yes.

Mr. Starr asked, does the State Law require any minimum size?

Mr. Miller replied, no it doesn't. We need to address that minimum amount of area preserved; 20% of the open space.

Ms. Lancaster stated that this is the developer's choice by ownership.

Mr. Littman stated that 20% is fine with him. Is that what the State specifies. If we want, can we make it 30% or 40%?

Mr. Miller answered, yes. Further, the number of units per acre with or without sewers, in relation to the State Law, dictates only the R-1A and R-1B zoning districts are affected by this State Law and Amendment.

Mr. Chamberlain stated we will see this again in two (2) weeks and will then set up a public hearing for our regular meeting in September.

9. UNIFIED SITE DEVELOPMENT OVERLAY DISTRICT - Corrected
OPEN SPACE PRESERVATION

Mr. Chamberlain stated that what we got in this package is wrong. We've got to get in front of City Council, the Cluster, and hopefully Mark's got something for us to see and hear other than what was handed to us. This thing is called Chapter 37.10.00. of the Zoning Ordinance, Article XXXVII.

Mr. Miller stated, that previously, we handed out to you the amendments to the City and Village Zoning Act, which created the open space preservation provisions, which basically state that the R-1A and R-1B zoning districts, by right of ownership, if 20% is preserved in a natural state, you would be able, by right, to do a cluster development. And in effect, this has to be adopted by us to comply with the State Act provisions by December 15, 2002.

Mr. Chamberlain asked, so the issue then of what Council did a meeting or so ago wanting something from us by September, we're not addressing that?

Mr. Miller stated that is exactly what we're addressing. So from a strategic standpoint, what I would like to propose is to revise the whole cluster ordinance. However, I'm not sure if that's a wise route, because we have to address the State Act separately. There are two different issues. This is a first shot at this, and it only addresses compliance with the State Act. It is not addressing a complete rewrite of cluster provisions.

Mr. Chamberlain stated, then this takes care of their Finch Road spot, right?

Ms. Lancaster asked if Finch Road was R-1A or R-1E.

Mr. Miller stated it was R-1B. One thing noted is that they would comply within this framework if they elected to take this route. But, the way this is written with the parallel plan, the density will not exceed a subdivision development. When you lay out a subdivision, you almost never can maximize density, because it would have to be perfect dimensions to put a street in, including lot depth and width. So you never max out the density. But when you cluster, you can maximize the density. Also, there is a little bonus in our current ordinance. So what we did in this ordinance is that you have to prepare a parallel plan as part of the submittal. A subdivision layout with at least the minimum requirements for R-1A or R-1B, and you have to lay out a road 60 foot wide, and put in the lots and if you have regulated wetlands you can't build on those wetlands. That's the problem with the way our current cluster ordinance is written. You take a wetland area, and look at the poster child, Rochester Villa, you can take all that potential density, and you shift it and cram it into one area. So actually you're overbuilding beyond what you could have because it was unbuildable to begin with. So you submit a parallel plan, we make sure it complies with the current requirements in that it can be built as a traditional development. That gives you your density. It's

an actual density so you're not overbuilding the site. That's the premise with this proposal. If you disagree with that, we need to know, because that's the basic premise of this ordinance in front of you.

Mr. Chamberlain asked the Board if they understood what Mr. Miller just presented.

Mr. Kramer replied, yes, but that could be less than our ordinance allows, right?

Mr. Miller said it will be because our ordinance has ultimate density, for instance, 3.8 units an acre. But whenever you divide subdivisions, you never get that density.

Mr. Kramer asked, so your parallel preparation would indicate that maybe your max density would be 2.5 per acre, and that's all they could build under this.

Mr. Miller stated the reasoning for that is, in effect, with clustering, you're overbuilding beyond when compared to traditional lots in subdivisions. Why should you overbuild?

Mr. Chamberlain stated, and maybe at the same time really putting a strain on the infrastructure.

Mr. Miller replied, right. And that's the premise in doing the parallel plan.

Ms. Lancaster stated the mandatory things in here from the State Act are set out in the shell provision which is eligibility criteria, see on page 2. Those are the things that are mandated by the state, so when you read through there, that's coming right out of the open space preservation option. Those are the things we are required to do and also F, which is the twenty (20) percent.

Mr. Savidant stated that the State Act says a minimum of twenty (20) percent open space. So that's what's in there now, twenty (20) percent. Do you want to go thirty (30) percent, do you want to go fifty (50) percent? Twenty (20) percent is a minimum.

Mr. Chamberlain stated there would be a task force comprised of a couple of the Commissioners, Mr. Savidant out of the Planning Department and Ms. Lancaster out of the Legal Department to work on this throughout the next couple of weeks and bring it to fruition and bring it back into the Board in late August or early September so that we can meet the City Council's deadline.

Mr. Savidant stated he was passing out copies of CR-1 for comparison so that it kind of gives you some insight as to where we are going with this thing. One think that Mr. Miller and I talked about was requiring if there was an adjacent trailway or planned trailway, to provide a connection through the area of open

space so you can expand and improve the system of non-motorized trails. So there are some things like that. We can add in there, taking yourself a little bit further away from the bare bones of the state requirements, but it makes the text a little more appropriate for the City of Troy, but I don't want to say too much because you haven't had a chance to read this yet. I think next meeting there's going to be some good conversation.

Mr. Miller stated that this just gives the developer the option to be able to cluster if they so desire. They don't have to use this. Personally, I think clustering is a great thing, however, I do not like our current cluster ordinance because it does two things. One, if you have a natural feature, you get to calculate your density from there, even if it's a preserved area, and in effect you're jacking up the density. Second, goes back to why we want a parallel plan, the current CR-1 increases density.

Ms. Lancaster asked, the density isn't really getting jacked up because of the state law, but the reason it's getting jacked up is because they now can change their spacing to get more houses where they wouldn't get in a traditional development.

Mr. Miller stated that's one way. Another way is our current ordinance allows you to use your calculation on unbuildable areas, and I'm trying to prevent that. You should not allow unbuildable areas to be used in your density calculation.

REC'D

AUG 23 2002

August 22, 2002

PLANNING DEPT.

MARK
 BREW
 ZOTA
File

City of Troy Planning Commission
500 W. Big Beaver Road
Troy, Michigan 48084

RE: Proposed open space preservation development

Dear Commissioners:

It is my understanding that the above referenced subject will be discussed at the Planning Commission Study meeting on August 27, 2002, or September 10, 2002.

In reading the proposed open space preservation option development, I have the following comments.

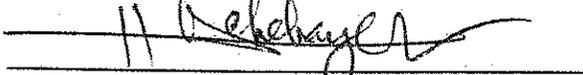
1. Density should be based on the current zoning not on what is called "parallel plan" especially when the parallel plan yields less density than the current zoning will allow.
2. Over all density shall be equal to the density allowable by the current zoning. Needless to say that the current cluster district based on the underlying zoning provide for a bonus density. In the absence of a bonus density at least you should keep density the same as that of the current zoning.
3. Setbacks, front set back of thirty five (35) feet is good, rear set back should be thirty five (35) feet in order to provide flexibility in applying the cluster option. If the site is surrounded by different zoning classification then the least allowable rear setback should be used not to exceed thirty five (35) feet. Side set backs should be kept at a minimum of fifteen (15) feet.
4. Open space should be limited to fifteen percent, not twenty percent.

5. In general the proposed open space preservation development should have provisions that help develop difficult shape parcel configuration.

I thank you for taking these comments into consideration.

Sincerely,

Choice Development Corporation



Youssef (Joe) Chehayeb
Vice President

Cc: Planning Commissioners
Mr. John Szerlag, City Manager
Mr. Mark Miller, Planning Director