

Township of Franklin, NJ
Wednesday, September 22, 2021

Chapter 253. Land Development

Article XIII. R-A Residential Agricultural District

[Added 10-23-2007 by Ord. No. O-20-2007^[1]]

[1] *Editor's Note: This ordinance also repealed former Article XIII, R-A Residential Agricultural District, as amended, and all previous language assigned to said sections of the Franklin Township Zoning Code. It also stated: "Any real property which is not located within the R-A Zone as shown on the Official Zoning Map adopted with this ordinance shall not be affected by this ordinance. Legally established pre-existing residential lots which conformed to prior zone ordinances governing the area shall continue to be governed by the bulk standards in effect for said lots preceding the passage of this ordinance. All residential and nonresidential lots which have been granted preliminary and/or final subdivision or site plan approval shall be protected from the application of this ordinance in accordance with the provisions of N.J.S.A. 40:55D-49 and 40:55D-52, including any extensions which may be granted by the Planning Board or Board of Adjustment as the case may be."*

§ 253-104. Purposes.

- A. To conserve and preserve environmentally sensitive land, including but not limited to those areas containing unique and sensitive natural features such as woodlands consisting of mature stands of forest, steep slopes, streams, floodplains and wetlands, by preventing development thereon;
- B. To safeguard supplies of drinking water and preserve water quality by promoting residential density in the Township consistent with groundwater recharge rates;
- C. To provide greater design flexibility and efficiency for developers in the siting of services and infrastructure, including the opportunity to reduce the length of new roads, utility runs, and the amount of paving required for residential development;
- D. To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes;
- E. To implement municipal policies to conserve a variety of irreplaceable and environmentally sensitive resource lands as set forth in the Township's Open Space Plan and Master Plan, including provisions for reasonable incentives to create open space for the benefit of present and future residents;
- F. To implement sound land uses policies, as identified in Franklin Township's Masterplan and as permitted by the Municipal Land Use Law;^[1]
[1] *Editor's Note: See N.J.S.A. 40:55D-1 et seq.*
- G. To protect areas of the municipality with productive agricultural soils for continued or future agricultural use, by conserving blocks of land large enough to allow for efficient farm operations;
- H. To create neighborhoods with direct visual access to open land, with amenities in the form of neighborhood open space, and with a strong neighborhood identity;
- I. To provide for the conservation and maintenance of open land within the municipality to achieve the above-mentioned goals and for active or passive recreational use by Township residents;

- J. To conserve the municipality's rural character, and to minimize perceived density, by minimizing views of new development from existing roads.

§ 253-105. General regulations.

The design of all new subdivisions in the R-A Residential District shall be governed by the following minimum standards:

- A. All land in the R-A Residential District is as designated on the Zoning Map. The base residential density is 0.4 residential units per gross acre of land net of wetlands but including wetlands buffers in accordance with applicable state and federal regulations. Two types of subdivision shall be permitted in the R-A Residential District as follows:
- (1) Type 1 - Conventional Lot Minor Subdivision, providing for rural-suburban residential or agricultural uses in conventional layouts of standard residential lots, where homes and streets are located carefully to minimize impacts on environmentally sensitive lands.
 - (2) Type 2 - Basic Conservation Major Subdivision, providing for residential uses at the density permitted by the underlying zoning. Open space lands shall constitute one-half of the tract. The flexibly designed layouts must work well with either individual wells and septic systems located on the individual lots or in the open space, or with central wells and sewage treatment facilities.
- B. The type of subdivision permitted on a particular tract is dependent on the number of lots that can be achieved with a plan as described in § 253-107. Type 1 subdivisions are permitted only on tracts that produce fewer than five lots or which are otherwise classified as minor subdivisions. Any tract that produces five lots or more shall utilize a Type 2 subdivision.
- C. Applicants will be required to submit a subdivision plan for any subdivision which is not classified a minor subdivision that includes all the site's natural resources and conditions, including but not limited to wetlands, floodplain, woodlands, slopes between 15% and 25%, slopes exceeding 25%, soil suitability for subsurface sewage disposal, existing road and utility rights-of-way, and any easements or other encumbrances following the format set forth below. The proposed design shall strictly minimize the disturbance of environmentally sensitive land, as shown on the submitted plan. The applicant shall demonstrate that the environmentally sensitive land will be protected by the proposed development plan.
- (1) The plan pursuant to this section shall be a written document prepared by or under the supervision of a licensed professional engineer of the State of New Jersey and shall include a summary of the following information which shall be attached to the plan as exhibits and shall comply with the checklist requirements to be established in accordance with this article:
 - (a) Outbound survey with topographic contours and showing the existence of all structures on site, all structures within 200 feet of the site and the extent and existence of wooded areas on site.
 - (b) Wetlands delineation as determined by the applicant's engineer. For purposes of this section, no letter of interpretation from the DEP shall be required but same shall be a condition of approval consistent with N.J.S.A. 40:55D-22(b).
 - (c) A report showing the existence or absence of all easements, restrictions or covenants affecting the lands.
 - (d) Phase I environmental assessment.
- D. New intersections with existing public roads shall be minimized. Although two means of access into subdivisions containing more than 24 dwellings are generally required for safety in accordance with RSIS, proposals for more than two entrances onto municipal roads shall be discouraged in order to avoid disruption of traffic flow.

§ 253-106. Permitted uses.

In R-A Residential Agricultural Districts, land may be used and buildings or structures erected, altered or used for any of the following purposes and no other:

- A. Single-family detached dwellings.
- B. Open space land in accordance with § **253-109** as hereinafter provided.
- C. Nonresidential uses as follows:
 - (1) Agricultural uses, including horticultural, wholesale nurseries, and the raising of crops and livestock, except as otherwise restricted, and buildings related to the same. Forestry in accordance with an approved woodland management plan, vacant woodlots and other similar silvicultural uses.
 - (2) Woodland preserve, game preserve, wildlife sanctuary, wildlife management or other similar conservation use including hunting, trapping and fishing in accordance with applicable fish and game regulations.
 - (3) Municipal building, police station, municipal park, municipal recreation area, garage for storage and repair of municipal or School Board equipment, municipal library, fire station, emergency medical services building, private or parochial school or School Board office, municipal sewage plant and other municipal uses.
 - (4) Privately owned outdoor recreation area such as parks, picnic grounds, equestrian academy, natural swimming area, golf course and golf driving range, provided that:
 - (a) The minimum lot size is 15 acres.
 - (b) The use and its design are compatible with the natural character of the site and developed areas surrounding the proposed use.
 - (c) The uses include any accessory structures required for the operation of such outdoor activity.
 - (d) Any such commercial activity as is permitted or parking area shall be screened or separated from a public street or from an adjoining property by a buffer strip of not less than 100 feet in width if grass or 50 feet in width if wooded or at the option of the applicant by a fifty-foot wide landscaped buffer with a fence six feet in height at the point of the buffer nearest the commercial activity, to assure that the proposed use shall not detract from or adversely affect the surrounding properties.
 - (5) Accessory uses customarily incidental to the principal uses, such as follows:
 - (a) An office or studio of a physician, dentist, lawyer, musician, architect, engineer or other professional person, when located within or directly connected to the dwelling used by such professional person as his private dwelling.
 - (b) Home occupations as defined by Franklin Township Ordinance § 253-190.10.
 - (c) A private garage for not more than three vehicles, provided that such garage is located at the rear of the lot or is directly connected to the dwelling.
 - (d) Signs as permitted in Article **XXXIV** of this chapter.
 - (e) Fences and swimming pools in accordance with Franklin Township ordinances.
 - (f) Farm labor facilities, customary farm buildings for livestock, for the storage of farm products or equipment or for the processing of farm products excepting therefrom the

processing of livestock or as otherwise permitted by New Jersey statutes regarding agricultural uses.

(g) Private noncommercial athletic courts and sports fields provided that no outdoor lighting shall be permitted. Athletic courts and fields shall be buffered from adjoining residential properties by either a fifty-foot buffer or a six-foot high opaque fence.

(h) Parking lot, including driveway.

D. The following uses when authorized as a conditional use by the Planning Board:

- (1) Houses of worship.
- (2) Cemeteries, provided that the lot area for such use shall not be less than 20 acres.
- (3) Hospital.
- (4) Public utility installation.
- (5) Mass transit station, rail or bus.
- (6) Convalescent home.
- (7) Club or lodge organized for fraternal or social purposes, provided that the chief activity shall not be one which is customarily carried on as a business and provided that the buildings and services shall be for the members and their guests.
- (8) Accessory uses shall be permitted on the same lot with and incidental to any principal use.

§ 253-107. Dimensional standards and density determination.

[Amended 5-26-2009 by Ord. No. O-5-2009]

- A. The maximum number of permitted dwelling units on a given tract shall be based upon a density factor of 0.4 residential units per acre applied to the gross tract acreage net of wetlands but including their buffers as defined by the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and applicable regulations of the New Jersey Department of Environmental Protection.
- (1) A site analysis plan shall be prepared for the land to be developed using the following resource reference materials: soils maps, wetlands maps, tax maps, aerial photos, existing surveys and the results of any Phase I environmental assessments in existence for the property at the time of the preparation of the site analysis plan. No field surveys, soil borings or other on-site inspection shall be required of the applicant.
 - (2) If a licensed professional engineer of the State of New Jersey certifies that less than 20% of the site is classified as wetlands in accordance with the applicable rules and regulations of the State of New Jersey, then the maximum number of residential units shall be determined as set forth below:
 - (a) A yield plan in accordance with this section shall determine the density of the land to be preserved as open space by the following formula. Gross acreage less wetlands but including their buffers multiplied by a density factor of 0.4 minus 15% (to account for street improvements and drainage facilities and other infrastructure) and then rounded up. Example: For a one-hundred-acre tract with 5% wetlands, the density calculation shall be as follows: $95 \text{ acres} \times 0.4 = 38$ — 15% (15% of 38 = 5.7) = 32.3; rounded up = 33. Thus the density for this hypothetical tract is 33 residential units which may be utilized as part of the development of a Type 2 subdivision.
 - (b) In the event that active farmland is proposed to be utilized to satisfy the open space requirements of this section; then the developer shall be entitled to one additional residential unit which shall be permitted to be built upon the farmland area (in the nature

of a farmer's residence) in order to encourage the preservation and promotion of agriculture.

- B. Dimensional standards for Type 1 – Conventional Lot Subdivision if all of the residential lots so created have frontage on an existing improved and dedicated public right-of-way. For purposes of this section, the term "improved and dedicated public right-of-way" shall include paved streets, gravel and stone roads, dirt roads and oil and chip roads which are in use by the general public as of the effective date of this ordinance.^[1]

[Added 3-13-2012 by Ord. No. O-3-12]

- (1) Maximum density: 0.67 dwelling units per acre net of wetlands but including their buffers as set forth above.
- (2) Minimum lot area: 1.5 acres.
- (3) Minimum street frontage: 150 feet.
- (4) Yard regulations. The builder or developer is urged to consider variations in the principal building position and orientation, but shall observe the following minimum standards:
 - (a) Front: 75 feet from the right-of-way of existing municipal roads; provided, however, that in the event that a proposed lot is wooded sufficiently to shield the said dwelling from the existing municipal road then a fifty-foot minimum setback shall be required if the applicant consents to restrict the said fifty-foot wooded strip from cutting.
 - (b) Rear: 50 feet minimum for principal buildings and 15 feet for accessory buildings (except that accessory buildings with a ground floor area exceeding 500 square feet shall conform to the setback requirements for principal structures).
 - (c) Side: 20 feet.
 - (d) Maximum height regulations: 35 feet.
 - (e) Setbacks from active farmland which is farmland assessed in accordance with applicable Franklin Township ordinances.

[1] *Editor's Note: "This ordinance" refers to Ord. No. O-3-12, adopted 3-13-2012.*

- C. Dimensional standards for Type 1 – Conventional Lot Subdivision if a new subdivision road is required to access the lots so created:

[Added 3-13-2012 by Ord. No. O-3-12]

- (1) Maximum density: one dwelling unit per 2.5 acres.
- (2) Minimum lot area: 2.5 acres.
- (3) Minimum street frontage: 200 feet.
- (4) Yard regulations. The builder or developer is urged to consider variations in the principal building position and orientation, but shall observe the following minimum standards:
 - (a) Front: 150 feet from existing municipal, county or state roads, but 60 feet from the right-of-way of new subdivision streets, country lanes or common driveways.
 - (b) Rear: 60 feet minimum for principal buildings and 15 feet for accessory buildings (except that accessory buildings with a ground floor area exceeding 500 square feet shall conform to the setback requirements for principal structures).
 - (c) Side: 30 feet.
 - (d) Maximum height regulations: 35 feet.
 - (e) Setbacks from active farmland assessed in accordance with applicable Franklin Township ordinances.

D. Dimensional standards for Type 2 – Basic Conservation Subdivision.

[Added 3-13-2012 by Ord. No. O-3-12]

- (1) Maximum number of units: as determined by preparation of a yield plan as described herein.
- (2) Minimum required open space land: The subdivision must designate at least 50% of the tract as open space land. Open space land shall not be used for residential lots.
- (3) Minimum lot size: There is no minimum lot size. The applicant must demonstrate that sufficient supplies of potable groundwater are available, and that the lots meet all county and state standards for septic systems or have access to public water and sewer. The lots must also meet the design standards contained in § **253-109**.
- (4) Minimum distance between houses: 20 feet.
- (5) Maximum height regulations: 35 feet.

E. Dimensional standards for Type 3 – Conservation Subdivision, Planned Residential Development:

[Added 3-13-2012 by Ord. No. O-3-12]

- (1) Minimum tract size: 10 acres in the receiving area.
- (2) Minimum required open space land: The subdivision must include at least fifty-percent open space land.
- (3) Minimum lot size: There is no minimum lot size. The applicant must demonstrate that sufficient supplies of potable groundwater are available, and that the lots meet all county and state standards for septic systems or be serviced by public sewer. The lots must also meet the design standards contained in § **253-109**.
- (4) Minimum distance between houses: 20 feet.
- (5) Maximum height regulations: 35 feet.

F. Dimensional standards for residential uses in Subdivision Type 4 — Villages, Planned Residential Development:

[Added 3-13-2012 by Ord. No. O-3-12]

- (1) Minimum tract size: 50 acres in the receiving area.
- (2) Density factor.
 - (a) Four tenths dwelling units per gross acre as determined by a yield plan as described herein.
 - (b) If centralized water and sewer systems are available, density will be increased to four dwelling units per acre for single-family detached dwellings and six dwelling units per acre for single-family attached dwellings and multifamily dwellings in the receiving area portion of the tract. An affordable housing component will be required in accordance with Article **XIV**.
- (3) Minimum required open space land. The subdivision must include at least fifty-percent open space land. Not less than 20% of this open space land shall be in a form usable to and accessible by the residents, such as a central green, neighborhood squares or commons, recreational playing fields, woodland walking trails, other kinds of footpaths, a community park, or any combination of the above. In addition, no more than 50% of the minimum required open space land may be comprised of active recreation facilities such as playing fields, golf courses, tennis courts, etc. Open space land shall not be used for residential lots.
- (4) Minimum lot size: There is no minimum lot size. The applicant must demonstrate that sufficient supplies of potable groundwater are available, and that the lots meet all county and state standards for septic systems or have public sewer and water or an approved on-site

wastewater treatment works and disposal facilities. The lots must also meet the design standards contained in § **253-109**.

- (5) Minimum distance between houses: 20 feet.
- (6) Maximum height regulations: 35 feet.

G. Dimensional, intensity and design standards for Village Mixed Use/Commercial Areas in Type 4 Subdivisions:

[Added 3-13-2012 by Ord. No. O-3-12]

- (1) Use intensity standards.
 - (a) New commercial buildings in the Mixed Use/Commercial Area and their associated parking spaces shall not occupy more than 15% of the net developable land area of the entire Village.
 - (b) Village shop buildings and their parking areas should typically be allowed to occupy up to 80% of their building sites, with relatively little land between structures or between structures and the sidewalk. Parking areas shall generally be located behind shops or to one side, if adequately screened from the street, and shall be the primary focus of landscaping and buffering efforts where they abut adjoining residential lots.
- (2) Minimum Lot Size. The minimum lot size for nonresidential uses in Village Mixed Use/Commercial Subdistrict shall be determined by adding 20% to the land area needed for the structure, on-lot parking, ingress/egress, and any on-site infrastructure that is required (e.g., septic disposal areas, stormwater management areas). The additional 20% shall constitute setbacks and landscaped buffers.
- (3) Minimum street frontage: 50 feet.
- (4) Setback regulations.
 - (a) Front: no minimum required; maximum setback 15 feet.
 - (b) Rear: 20 feet.
 - (c) Side: five feet.
- (5) Maximum height regulations: 35 feet (75 feet for church steeples).
- (6) Additional design standards.
 - (a) New buildings in this subdistrict shall be subject to a maximum front setback in order to maintain a strong sense of streetscape. Such buildings shall generally be of two-story construction, and shall be designed in accordance with the design standards set forth below. Maximum building height and coverage are controlled by other provisions in this chapter governing maximum height and minimum parking standards.
 - (b) Ground floor space shall generally be reserved for pedestrian-oriented retailing and services, with offices and housing above.
 - (c) Each Village/Mixed Use Commercial Area shall have a primary common area or green of at least 10,000 square feet, which should ideally be surrounded by two-story development that may include commercial, residential, civic and institutional uses. This primary common area shall border on the principal street running through the Mixed Use/Commercial Area, or be located so as to constitute the terminal vista of that street. This central green shall be located within 1,500 feet of 80% of all dwelling units in the village. (Alternatively, two greens of at least 6,000 square feet may be substituted for the central green. In order to meet the distance/proximity standard, no green shall contain more than ten-percent coverage by impervious surfaces.)

(7) Parking.

- (a) Nonresidential off-street parking shall be to the side or rear, or located within internal parking areas not visible from the street.
- (b) On-street parking spaces along the street frontage or a lot (except where there are driveway curb cuts) shall be counted toward the minimum number of parking spaces required for the use on that lot.
- (c) On-street parking spaces shall be designed to be parallel to the curb.
- (d) Off-street parking may be located within 600 feet (measured along a publicly accessible route) from the lot containing the use to which the parking is accessory. Said lot containing the parking shall be owned or leased to the owner of the principal use, or the lot containing the parking shall be dedicated to parking for as long as the use to which it is accessory shall continue and it is owned by an entity capable of assuring its maintenance as accessory parking.

§ 253-108. Residential design standards for subdivisions.

- A. Residential lots shall not encroach into open space land.
- B. All new dwellings shall meet the following setback requirements:
 - (1) From all external road ultimate right-of-way: 100 feet.
 - (2) From all other tract boundaries: 50 feet.
 - (3) From buildings or barnyards housing livestock and active farmland which is assessed as farmland in accordance with applicable Franklin Township ordinances.
 - (4) From active recreation areas such as courts or playing fields (not including tot-lots): 150 feet.
 - (5) In major subdivisions, dwellings shall be accessed from interior streets, rather than from roads bordering the tract.
- C. All residential subdivisions shall utilize a three-step design process as follows:
 - (1) Open Space Design: All potential conservation areas are to be identified and include wetlands, floodplains, slopes over 15% and all natural features.
 - (2) House site location: House sites should be located not closer than 100 feet from a conservation area unless governed by wetland setback standards provided by the NJDEP.
 - (3) Street and lot layout: Proposed streets shall be located in a way that avoids or at least minimizes adverse impacts on conservation areas. Street connections should be utilized wherever possible to minimize the number of new cul-de-sacs. Where possible, home construction along one side of a roadway should be considered to provide scenic views of the preserved open space.

§ 253-109. Open space land use and design standards.

Protected open space land shall meet the following standards:

- A. Uses permitted on open space lands. The following uses are permitted in open space land areas:
 - (1) Conservation of open land in its natural state (for example, woodland or managed meadow); provided, however, that if open space land to be dedicated for open space purposes is wooded at the time of said dedication, it shall remain wooded and shall only be cleared at the

discretion and with the approval of the Planning or Zoning Board as appropriate or may include harvesting of trees in accordance with an approved woodland management permit as set forth herein.

- (2) Agricultural and horticultural uses, including raising crops or livestock, wholesale nurseries, associated buildings, excluding residences that are specifically needed to support an active, viable agricultural or horticultural operation. Specifically excluded are commercial livestock operations involving swine and slaughterhouses; pastureland for horses used solely for recreational purposes. Equestrian facilities shall be permitted.
- (3) Forestry, in keeping with established best management practices for selective harvesting and sustained-yield forestry in accordance with an approved woodland management plan.
- (4) Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and with similar potential impact as determined by the Planning or Zoning Board as appropriate.
- (5) Active noncommercial recreation areas, such as playing fields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required open space land unless otherwise permitted by the Planning or Zoning Board as appropriate. Playing fields, playgrounds, and courts shall not be located within 100 feet of abutting properties unless permitted by the Planning Board. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, minimally lighted, properly drained and provide safe ingress and egress.
- (6) Golf courses, including their parking areas and associated structures, may comprise up to half of the minimum required open space land, but shall not include driving ranges or miniature golf.
- (7) Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integrated part of the open space.
- (8) Easements for drainage, access, sewer or waterlines, or other public purposes.
- (9) Underground utility rights-of-way and aboveground utility easements. Street rights-of-way may traverse conservation areas but shall not count toward the minimum required open space land.
- (10) Woodland preserve, game preserve, wildlife sanctuary, wildlife management or other similar conservation use including hunting, trapping and fishing in accordance with applicable state regulations.

B. Open space design standards.

- (1) Where the proposed development adjoins public parkland, a natural open space buffer at least 150 feet deep shall be provided within the development along its common boundary with the parkland, within which no new structures shall be constructed, nor shall any clearing of trees or understory growth be permitted (except as may be necessary for street or trail construction). Where this buffer is unwooded, the Board may require vegetative screening to be planted, or that it be managed to encourage native forest succession.

C. Other requirements.

- (1) No portion of any building lot may be used for meeting the minimum required open space land. However, active agricultural land with farm buildings, excluding areas used for residences, may be used to meet the minimum required open space land.
- (2) Pedestrian and maintenance access, excluding those lands used for agricultural or horticultural purposes, shall be provided to publicly held open space land in accordance with the following requirements:

- (a) Each neighborhood shall provide one centrally located access point in accordance with RSIS standards.
 - (b) Access to open space land used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations.
 - (c) Public access to privately held open space lands may be denied or restricted.
- (3) All open space land areas that are not wooded or farmed shall be landscaped.

§ 253-110. Permanent open space protection through conservation easements.

The required open space land shall be subject to permanent conservation easements prohibiting future development and defining the range of permitted activities pursuant to § **253-109** of this article. (For example, the clearing of woodland habitat shall generally be prohibited, except as necessary to create trails, active recreation facilities, or spray irrigation facilities.) The determination of necessity shall lie with the Planning or Zoning Board as appropriate. A list of permitted and conditional uses of open space lands is contained in this article in § **253-109**.

§ 253-111. Ownership and maintenance of open space land and common facilities.

- A. Development restrictions. All open space land shall be permanently restricted from future subdivision or development. Under no circumstances shall any development be permitted in the open space at any time, except for those uses listed in § **253-109A**.
- B. Ownership options. The following methods may be used, either individually or in combination, to own common facilities. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this section, and then only when there is no change in the common facilities or in the open space ratio of the overall development. Ownership methods shall conform to the following:
- (1) Fee simple dedication to the municipality. The municipality may, but shall not be required to, accept any portion of the common facilities, provided that:
 - (a) There is no cost of acquisition to the municipality; and
 - (b) The municipality agrees to and has access to maintain such facilities.
 - (2) Condominium association. Common facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with relevant state law. All open land and common facilities shall be held as "common element."
 - (3) Homeowners' association. Common facilities may be held in common ownership by a homeowners' association (hereinafter "association"), subject to all of the provisions for homeowners' associations set forth in state regulations and statutes. In addition, the following regulations shall be met unless the development is exempt from regulations within the Planned Real Estate Development section of the Department of Community Affairs:
 - (a) The applicant shall provide the municipality a description of the organization of the proposed association, including copies of its bylaws, its certificate of formation or incorporation as appropriate and all documents governing ownership, maintenance, and use restrictions for common facilities which shall be reviewed and approved by the Township Solicitor as a condition precedent to plat signing;

- (b) The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development;
 - (c) Membership in the association shall be automatic (mandatory) for all purchasers of dwelling units in the development therein and their successors in title and shall be disclosed to the purchaser by point of sale disclosures prior to or at the time of the purchaser executing a contract for purchase;
 - (d) The association shall be responsible for maintenance and insurance of common facilities;
 - (e) The bylaws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his dues. Such dues shall be paid with the accrued interest before the lien may be lifted;
 - (f) Written notice of any proposed transfer of ownership of common facilities by the association or the assumption of maintenance for common facilities by other than the association must be given to all members of the association and to the municipality no less than 30 days prior to such event; and
 - (g) The Township shall have a properly recorded easement with legal descriptions satisfactory to the Township Engineer permitting but not requiring the Township to enter upon and maintain any common areas owned by the association and to lien the association and the individual homeowners for costs of any repairs or maintenance to said common areas as the Township may see fit from time to time which may be enforced in the nature of a tax lien.
- (4) Private conservation organization. With permission of the municipality, an owner may transfer either fee simple title of the open space or easements on the open space to a private nonprofit conservation organization provided that:
- (a) The conservation organization is acceptable to the municipality and is a bona fide conservation organization intended to exist in perpetuity;
 - (b) The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions;
 - (c) The open space land is permanently restricted from future development through a conservation easement and the municipality is given the ability to enforce these restrictions; and
 - (d) A maintenance agreement acceptable to the municipality is established between the owner and the organization.
- (5) Dedication of easements to the municipality. The municipality may, but shall not be required to, accept easements for public use of any portion of the common land or facilities. In such cases, the facility remains in the ownership of the condominium association, or private conservation organization, while the easements are held by the municipality. In addition, the following regulations shall apply:
- (a) There shall be no cost of acquisition to the municipality;
 - (b) Any such easements for public use shall be accessible to the residents of the municipality; and
 - (c) A satisfactory maintenance agreement shall be reached between the owner and the municipality.
- (6) Noncommon private ownership. The required open space land may be included within one or more large "conservancy lots" of at least 10 acres provided the open space is permanently

restricted from future development through a conservation easement, and that the municipality is given the ability to enforce these restrictions.

C. Maintenance.

- (1) The cost and responsibility of maintaining common facilities and open space land shall be borne by the property owner, condominium association, homeowners' association, or conservation organization.
- (2) The applicant shall, at the time of preliminary plan submission, provide a plan for maintenance of open space lands and operation of common facilities in accordance with the following requirements.
 - (a) The plan shall define ownership;
 - (b) The plan shall establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (i.e., lawns, playing fields, meadow, pasture, cropland, woodlands, etc.);
 - (c) The plan shall estimate staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of the open space land and operation of any common facilities on an ongoing basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs;
 - (d) Any changes to the maintenance plan shall be approved by the Board.
- (3) In the event that the organization established to maintain the open space lands and the common facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, the Township may assume responsibility for maintenance, in which the Township may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action shall be charged to the property owner, condominium association, homeowners' association, conservation organization, or individual property owners who make up a condominium or homeowners' association and may include administrative costs and penalties. Such costs shall become a lien on said properties.

§ 253-112. Severability.

If the provision of any section, subsection, paragraph, sentence, clause or phrase of this article shall be ruled to be invalid or unenforceable by a court of competent jurisdiction, or by proper application of any statute, rule or regulation of any governmental agency having authority therein, then such invalidity or unenforceability shall neither affect or invalidate the remaining portions of any section, subsection, paragraph, sentence, clause or phrase and further, to the extent that any section, subsection, paragraph, sentence, clause or phrase shall be so deemed to be invalid or unenforceable, then the same be and is hereby deemed to be severed from the remainder of this article.