

*For Final Public Hearing 1/27/2010*

*The following is a proposed amendment to the Town of Mason Planning Ordinance of 1967.*

## **Article XXII: Open Space Design Ordinance**

### **A. Purpose and Intent**

The purpose and intent of the Open Space Design (OSD) Ordinance is to create an Overlay District:

1. To provide the opportunity for workforce housing by allowing more closely spaced dwellings, reducing the cost of housing development.
2. To create permanently protected Open Space without decreasing the allowable density of the site.
3. To promote preservation and minimize negative impacts on environmental resources such as streams, ponds, floodplains, wetlands, steep slopes, scenic views, open fields, farmland, wildlife habitat, and historic sites and features.
4. To enhance the quality of life with the provision of space for walking, passive recreation, and aesthetic enjoyment.
5. To provide for low impact active recreational opportunities, where appropriate.
6. To provide greater flexibility and efficiency in the siting and design of roads and services.
7. To provide an alternative to sprawling, land-consuming forms of development.

### **B. Authority**

The Open Space Design (OSD) Ordinance defines an overlay district upon the General Residential, Agriculture and Forestry (GRAF) district. An overlay district imposes additional permitted uses, requirements and restrictions to those of the underlying base district. The Open Space Design Ordinance is established under the powers granted under NH RSA 674:21, Innovative Land Use Controls and RSA 674:58-674:61, Workforce Housing.

If any provision of this Ordinance is in conflict with other provisions of the Town of Mason Planning Ordinance or other Town ordinances or regulations, the provisions of this Ordinance shall apply.

### **C. General Regulations**

1. Workforce Housing
  - a) At least 25% of the housing units created within an OSD shall be developed as **Workforce Housing** units according to the definition in RSA 674:58, paragraph IV. (See Definitions below).
  - b) Workforce Housing units shall be single family dwellings designed to blend harmoniously with the standard housing developed within the OSD and in keeping with the general character of the Town.
  - c) Workforce housing units shall not exceed a specific size, with the intent that the market value of these units will remain lower than the market value of standard housing.

- d) The initial sale price of workforce housing units shall not exceed the Workforce Housing Purchase and Rent Limits current at the time of sale. Subsequent sales are allowed to float with market value and are not restricted to the workforce housing purchase limits.

## 2. Designated Open Space

- a) Every OSD shall avoid or minimize adverse impacts to the town's natural, cultural and historic resources by incorporating permanently protected **Designated Open Space** into the design (See Definitions below).
- b) All designated open space shall be permanently preserved from future development.
- c) The minimum required designated open space for all OSDs is fifty (50) percent of the gross tract area.
- d) The land areas identified as designated open space shall contain a significant percentage of non-wetland soils. Because the design of each site depends on the characteristics of the land, the percentage and location of non-wetland soils shall be determined by agreement between the Mason Planning Board and the applicant; preferably through the Site Layout Design.
- e) Designated open spaces preserved through the authority of this ordinance are ineligible to be used as contributing land area in any subsequent subdivision or development.

## 3. Minimum Lot Size, Density and Uses

- a) The minimum lot size for a parcel being subdivided under the authority of this ordinance is 12 acres.
- b) The overall density of residential dwellings per acre shall not exceed that which would be allowed in the underlying district.
- c) Permitted uses are the same as those allowed in the underlying district.
- d) When a subdivision or development is proposed which includes a lot or lots which may be capable of further subdivision or development, the Planning Board may require that a conceptual, long range plan for the entire parent parcel be presented so that the Board may consider the entirety of a parcel and its impacts. This long-range plan is non-binding. Any future development of the lot or lots will be reviewed by the Planning Board with reference to this long-range plan.
- e) No further subdivision or development of a lot or lots within the OSD may occur for a period of 5 (five) years from the date of approval of the OSD.

## 4. Review Process

- a) A subdivision application under this section shall comply with the application and review process specified in the subdivision regulations, except that sections of the subdivision regulations that are clearly not applicable to an OSD shall not be imposed on the applicant by the planning board.
- b) If a Site Layout Design Process has been incorporated into the Town of Mason Subdivision Regulations, the site must be designed cooperatively with the Town of Mason Planning Board.

- c) Applicants proposing OSDs that include workforce housing units shall file a written statement of such intent as part of the application submissions, in accordance with RSA 674:60.
- d) Prior to final approval by the planning board, the applicant shall submit for review by town counsel any restrictive covenants, condominium or cooperative agreements, conservation easements, deed restrictions, or other legal agreements proposed for use in the OSD. The town counsel shall advise the planning board of the adequacy of such legal provisions. The applicant shall pay all associated costs of the legal review.

## **D. Definitions**

For the purpose of this ordinance, the terms used herein are defined as follows:

**Applicant:** The owner of land proposed to be subdivided or his representative.

**Buffer:** Land area within which adequate vegetation is maintained or provided to visibly separate or screen one use from another and / or to minimize potentially negative impacts on surrounding areas, e.g., shield or block noise, light or other nuisances, reduce water pollution. Also known as a “vegetated buffer.”

**Building Envelope:** Area of a building lot identified on a subdivision plan indicating the allowed limits of clearing and grading, and within which all structures, and, when applicable, the well and septic systems, including the tank and leach field, shall be located.

**Conservation Easement:** A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership.

**Deed Restriction:** A restriction on the use of land usually set forth in the deed for the property. Also known as a “restrictive covenant.”

**Designated Open Space:** Reserved land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the planning board under this ordinance as part of an OSD.

**Easement:** The right or privilege that a person may have in another person’s property, often for the purposes of installing and maintaining utilities and drainage ways or allowing a right of passage.

**Homeowners Association:** A private corporation, association, or other legal entity organized in accordance with state law and established by the applicant or the member individuals for the benefit and enjoyment of its members, including oversight and management of common open space, designated open space, and / or shared facilities.

**Open Space Common:** Land within or related to a development, exclusive of land dedicated as designated open space, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and / or the town and may

include such complementary structures and improvements as are necessary, appropriate and approved by the planning board.

**Open Space Design:** An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space. Also referred to as “open space subdivision.”

**Restrictive Covenant:** A restriction on the use of land usually set forth in the deed for the property.

**Workforce Housing:** As defined in RSA 674:58, “housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Workforce housing also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household” for the same area as defined above. “Housing development that exclude minor children from more than 20% of the units, or in which more than 50% of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing” for the purposes of NH RSA 674:58 or this Ordinance.

## **E. List of Resources to Consider for Preservation**

Following is a list of features that are characteristic of land areas desirable for preservation as designated open space:

1. Open water, waterways, stream channels, floodplains and very poorly drained soils, including adjacent buffer areas as defined in Wetland Conservation District (Article XVI of the Town of Mason Planning Ordinance).
2. The habitat of species listed as endangered, threatened, or of special concern by the NH Natural Heritage Inventory and/or by the NH Fish & Game Department's Non-game & Endangered Wildlife Program.
3. Moderate slopes, fifteen to twenty-five (15-25) percent, and steep slopes twenty-five (25) percent or greater, particularly those adjoining water courses and ponds.
4. Agricultural soils.
5. Historic sites and features.
6. Existing or planned trails connecting the tract to other locations.
7. Scenic views.

## **F. Design and Use of Designated Open Spaces**

1. The designated open space shall include as many of the resources listed in the List of Resources to Consider for Preservation as practical.
2. The designated open space shall be free of all structures except historic sites, features, and structures related to permitted open space uses.

3. Subsurface disposal systems may not be placed in the designated open space.
4. Water supplies may be placed in the designated open space.
5. Stormwater management systems may, at the discretion of the Planning Board, be placed in the designated open space.
6. Designated open space shall be accessible to the lots or units within the development.
7. Designated open space shall be open to the general public if the open space was designated as public use space in the Open Space Design, and so noted on the subdivision plat. Specific uses may be allowed or disallowed by agreement with the Planning Board.
8. Public access, regardless of ownership, shall be provided to trails if they are linked to other publicly accessible pathway systems.
9. Narrow open space strips shall not be permitted unless the incorporation of the open space strips provides a logical and practical link to, or expansion of, existing or planned adjacent preserved open space.
10. Designated open spaces shall be interconnected wherever possible to provide a continuous network of open space lands within and adjoining the development.
11. Any use of the designated open space is subject to approval of the planning board, and shall demonstrate that such use shall not negatively impact the natural and/or cultural amenities preserved through the OSD. In its evaluation of the proposed use, the planning board shall take into account advice and recommendations from the Conservation Commission, including recommendations to impose specific criteria or restrictions on the proposed use.
12. The following uses generally are permitted in the designated open space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:
  - a) Forest management.
  - b) Agricultural cultivation and pastures.
  - c) Passive (non-motorized) trails and recreational uses.
  - d) Snowmobile trails.
13. The following uses may be permitted by special permit in the designated open space. The planning board may impose specific criteria or restrictions on such uses as deemed necessary to support the goals of this section:
  - a) Agriculture involving animal husbandry and/or boarding.
  - b) Active outdoor recreation uses, including formal playgrounds and fields.
  - c) Hunting.
  - d) Parking areas for access to the designated open space.

- e) Individual or community wells provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the planning board for the maintenance and operation of these facilities.
- 14. The removal of soil, trees and other natural features from the designated open space is prohibited, except as consistent with conservation objectives or permitted uses as provided above.
- 15. The designated open space shall be retained in a natural, undisturbed state, except for those activities permitted and approved as provided above, or as required for active management according to a conservation agreement and management plan written by a qualified natural resource professional.

## **G. Protection and Ownership**

- 1. All designated open space shall be permanently protected by a conservation easement, approved by the Planning Board after review by the Conservation Commission. The Planning Board may require further legal review of any documents submitted, the cost of which shall be borne by the applicant. Ownership of the Designated Open Space may be held by:
  - a) A homeowners association or other legal entity under New Hampshire State Statutes, or
  - b) Private ownership, protected by a conservation easement and limited to not-for-profit parks, not-for-profit recreation areas, or commercial agriculture and forestry, or
  - c) The Town of Mason if agreed to by the Board of Selectmen, the Conservation Commission and the Planning Board.
- 2. All designated open space is subject to property taxation by the Town of Mason, unless owned by the Town. All Open Space Common areas are subject to property taxation by the Town of Mason. Payment of the assessed property taxes is the responsibility of the homeowners association or other ownership entity.
- 3. The location, layout, and management of the designated open space shall conform to the standards and process set forth in the Subdivision Regulations.
- 4. The Planning Board may require site plans for open space common areas and individual lots containing slopes greater than fifteen (15) percent, soils rated as having "severe" limitations for septic systems, and / or very poorly drained soils.

## **H. Density and Dimensional Standards**

- 1. Density
  - a) The density of the proposed development shall be equal to or less than the density allowed in a conventional development in the underlying district.
  - b) If the subdivision involves only part of a parcel, the density shall be calculated for that portion of the parcel proposed to be included in the subdivision.
- 2. Effects on Density Due to Soils, Terrain or Protected Resources

- a) The density of development on the site may be reduced by the presence of wetland soils, steep slopes greater than 25%, rock outcroppings or protected resources listed in Section E where these are not part of the designated open space.
- b) The need for and amount of reduction of the density of development will be determined during the Site Layout Design Process.

### 3. Dimensional Standards

- a) The minimum lot size in an OSD shall be 1 (one) acre for a single dwelling unit.
- b) Each lot in an OSD that uses frontage on a town road along the perimeter of the OSD to meet its frontage requirement shall have a minimum of 250' of frontage along the town road. [The intent of this provision is to maintain the rural appearance of town roads; most existing development along town roads in the underlying district is on lots with 250' frontage.]
- c) Each lot in an OSD that uses frontage on a road within the OSD to meet its frontage requirement shall have a minimum of 50' of frontage along the interior road. Portions of the lot back from the road are permitted to be wider than the road frontage.
- d) All structures built or existing within the OSD shall be setback at least seventy-five (75) feet from the perimeter boundary of the OSD.
- e) All structures built or existing within the OSD shall be setback at least thirty (35) feet from all boundaries of properties within the OSD.
- f) Layout of all lots, streets and structures shall comply with the Wetlands Conservation District Ordinance and with the Site Layout Design Process, if such exists in the Town of Mason Subdivision Regulations.

### 4. Workforce Housing

- a) Single family dwelling units designated as workforce housing shall not exceed 1350 square feet of gross living area above ground (GLAAG).
- b) No additions to a unit's GLAAG are permitted for a period of 10 (ten) years from the date the Certificate of Occupancy was granted.