

Topic:	Open Space Preservation
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Gardiner
Year (adopted, written, etc.):	Unknown
Community Type - applicable to:	Suburban; Rural
Title:	Town of Gardiner Permanent Open Space Ordinance
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Abstract

The Permanent Open Space ordinance regulates the development, ownership, and maintenance of space/ land that has been set aside permanently for nonuse. The code ensures that permanent open space will comport with township rules and guidelines. The regulation provides for ownership of permanent open space by state and private owners. Open space protection provides for preservation of easements, roads, highways, and developments.

Resource

Town of Gardiner NY Permanent Open Space
Code of the Town of Gardiner NY
Chapter 220: Zoning

§ 220-12.1. Permanent open space.

Open space set aside in an open space development shall be permanently preserved as required by this section. Land set aside as permanent open space may be, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings and other structures are permitted, provided that it forms one or more coherent blocks of contiguous land with conservation value, that a conservation easement is placed on such land pursuant to Subsection C below, and that the Planning Board approves such configuration of the open space as part of its approval. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land.

A. Conservation value of open space. The open space protected pursuant to this section shall have conservation value, based upon the conservation findings of the Planning Board, made pursuant to § 220-12A(8).

B. Notations on plat or site plan.

(1) Preserved open space land shall be clearly delineated and labeled on the final subdivision plat or site plan as to its use, ownership, management, method of preservation and the rights, if any, of the owners of other lots in the subdivision to such land.

(2) The plat or site plan shall clearly show that the open space land is permanently reserved for open space purposes and shall contain a note referencing deed recording information of any conservation easements or other title restrictions required to be filed to implement such restrictions.

C. Permanent preservation by conservation easement.

(1) A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, recreation, protection of natural resources, or similar conservation purposes, pursuant to § 247 of the General Municipal Law and/or §§ 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, or to a qualified not-for-profit conservation organization acceptable to the Planning Board.

(2) Such conservation easement shall be approved by the Planning Board and shall be required as a condition of subdivision plat approval.

(3) The Planning Board shall require that the conservation easement be enforceable by the Town of Gardiner if the Town is not the holder of the conservation easement.

(4) The conservation easement shall be recorded in the County Clerk's office prior to or simultaneously with the filing of the final subdivision plat in the County Clerk's office.

(5) The conservation easement shall prohibit residential, industrial, or commercial use of preserved open space land (except in connection with agriculture, forestry, and recreation) and shall not be amendable to permit such use.

(6) Access roads, driveways, local utility distribution lines, low-impact recreation (as defined herein), wells, septic systems and other subsurface sewage treatment facilities, and agricultural structures shall be permitted on preserved open space land, provided that the Planning Board determines that they do not impair the conservation value of the land.

(7) Forestry shall be permitted on preserved open space land only if conducted under a plan prepared by a certified professional forester and approved by the Planning Board.

(8) Dwellings and other allowable structures may be constructed on portions of parcels that include preserved open space land, but not within the area protected by the conservation easement.

D. Ownership of open space land.

(1) Open space land may be owned in common by a homeowners' association (HOA), dedicated to Town, county, or state government, transferred to a nonprofit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds adequate to properly manage the open space land and to protect its conservation value. The ownership entity and structure shall be selected based upon the conservation analysis and management objectives established by the Planning Board for the protected open space.

(2) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

(a) The HOA shall be set up before the final subdivision plat is approved and shall comply with all applicable provisions of the General Business Law.

(b) Membership shall be mandatory for each lot owner, who shall be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

(c) The open space restrictions shall be in perpetuity.

(d) The HOA shall be responsible for liability insurance, property taxes, stewardship of the land, and the maintenance of recreational and other facilities and private roads.

(e) Property owners shall pay their pro rata share of the costs in Subsection D(2)(d) above, and the assessment levied by the HOA shall be able to become a lien on the property.

(f) The HOA shall be able to adjust the assessment as needs change.

(g) The applicant shall be required to make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer shall be irrevocable and may be accepted by the Town, at the discretion of the Town Board, only upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes. This subsection shall not prevent the applicant or HOA from voluntarily offering the open space for dedication to the Town at any time.

(h) Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

(i) The attorney for the reviewing board shall find that the HOA documents satisfy the conditions in Subsection D(2)(a) through (h) above and such other conditions as the Planning Board deems necessary.

E. Maintenance standards.

(1) Ongoing maintenance standards shall be established, enforceable by the Town against an owner of open space land as a condition of subdivision approval, to ensure that the open space land is not used for any purpose or structure prohibited by the conservation easement or for the storage or dumping of refuse, junk, or other offensive or hazardous materials.

(2) If the Town Board finds that the provisions of Subsection E(1) above are being violated, it may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development and shall, if unpaid, become a tax lien on such property or properties.

F. Easement donations prior to land development. A landowner who grants a conservation easement voluntarily prior to submitting an application for development may count the unconstrained land preserved by such conservation easement toward the permissible number of dwelling units using the formula in § 220-12B(1), applying the development loss factor of 0.85. Such conservation easement shall then be counted toward the requirement for permanent open space preservation required by §§ 220-12 and 220-12.1, provided that the following conditions are satisfied:

(1) The applicant submits a conservation analysis demonstrating to the Planning Board that the land preserved by conservation easement has conservation value, and the Planning Board makes conservation findings to that effect.

(2) The conservation easement satisfies all of the criteria for conservation easements contained in § 220-12.1C.

(3) The conservation easement explicitly provides that the protected land may be counted for purposes of calculating the allowable number of dwelling units on land not covered by the conservation easement.