

<b>Topic:</b>	Ridgeline Protection; Open Space Preservation
<b>Resource Type:</b>	Regulations
<b>State:</b>	Pennsylvania
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Township of Kennett
<b>Year (adopted, written, etc.):</b>	1999
<b>Community Type – applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Kennett Open Space Design Options Ordinance
<b>Document Last Updated in Database:</b>	May 9, 2017

### ***Abstract***

This law is a lengthy and detailed open space ordinance that contains a component emphasizing protection of steep slopes and ridgelines.

### ***Resource***

ORDINANCE NO. 124

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 50, AS AMENDED, REPLACING THE EXISTING ARTICLE XV, OPEN SPACE DESIGN OPTIONS.

The Board of Supervisors of Kennett Township hereby enacts and ordains that the Zoning Ordinance of Kennett Township, Ordinance No. 50, as amended, be amended further as follows:

SECTION 1: Amend Article XV, to delete the present Article XV in its entirety to be replaced with the following Article XV Open Space Design Options:

A. This article is intended to promote the following community resource and planning objectives:

1. To preserve unique and sensitive natural features, including water bodies, floodplains, wetlands, wet soil conditions, steep slope areas, ridge lines, rock outcroppings, and woodland areas of the Township;
2. To protect scenic vistas from encroachment by development;
3. To retain and protect open space areas within residential development;

4. To minimize potential adverse impacts resulting from the location of new residential development adjacent to non-residential uses;

5. To provide a means to attain the aims and objectives of the Comprehensive Plan relative to orderly growth and the enhancement of environmental resources.

B. This article is intended to provide for attainment of the foregoing objectives through the following community development objectives:

1. To provide an opportunity for flexibility in lot design and dwelling types not afforded by conventional lot-by-lot development;

2. To provide for a more varied, innovative and efficient development pattern.

#### SECTION 1501 QUALIFYING CONDITIONS

A. The open space design option shall be permitted in the R1,R-2, R3, R-4 and Specialized Agricultural Districts where applicant obtains alternative design option approval from the Board of Supervisors in accordance with Section 1508 and when all conditions, standards and criteria of this Article are met.

B. The Township may retain such consultants as necessary to review and certify the accuracy of all plans and other documentation submitted in accordance with this Article, reasonable and necessary charges therefor to be borne by the Applicant.

C. A minimum of five (5) lots or dwelling units shall be proposed in order to qualify for the use of the open space design option.

D. Applicant is strongly encouraged to submit a Sketch Plan to the Kennett Township Planning Commission and to discuss community development and open space resource conservation objectives with the Planning Commission prior to formal plan submission.

E. Applicant shall demonstrate to the satisfaction of the Township that adequate water supply can be provided for the intended residential and open space uses and for fire emergency purposes.

F. Applicant shall demonstrate to the satisfaction of the Township that adequate sewage treatment and disposal facilities can be provided, consistent with the Kennett Township Sewage Facilities (Act 537) Plan, and further subject to demonstration of compliance with all applicable regulations of the Chester County Health Department and/or the Pennsylvania Department of Environmental Protection. Individual sewage disposal systems may be located in common or restricted open space outside the bounds of the lots which they serve, subject to determination by the Township that adequate provision is made for the long-term management and maintenance of such systems by the owners of the lots which they serve.

G. The proposed development will be generally consistent with the Kennett Township Comprehensive Plan and with the 1996 Chester County Comprehensive Plan, Landscapes, as applicable.

H. The tract of land to be developed shall be in one ownership or, if in multiple ownership, shall be developed according to a single plan with common authority and responsibility, such common authority and responsibility to be documented in a manner acceptable to the Township.

## SECTION 1502 USE REGULATIONS

Development in accordance with the open space design option may include any of the following uses:

1. Single-family residences
2. Two-family residences
3. Multiple family residences
4. Open space uses as set forth in Section 1504.D.2 of this Article.

## SECTION 1503 AREA AND BULK REGULATIONS

### A. Restricted Open Space.

1. The minimum restricted open space shall not be less than the percentage of gross tract area stipulated for the applicable zoning district as follows:

#### District Minimum Restricted Open Space

R-1 sixty-five (65) percent

R-2 fifty-five (55) percent

R-3 fifty (50) percent

R-4 forty (40) percent

Specialized Agricultural fifty (50) percent

2. Where a single contiguous tract of land falls into more than one zoning district, the minimum restricted open space requirement shall be met separately in each zoning district as stipulated above.

### B. Maximum Density of Development.

#### 1. Establishment of Net Tract Area.

For purposes of establishing the maximum permissible number of lots or dwelling units on any tract where the Open Space Design Option is utilized, the Net Tract Area shall include all areas within the titled lines of a tract, excluding the following:

a. Any existing or proposed area that has been set aside as a permanent right-of-way or easement for a public or private street, or for above-ground or underground utilities other than for local service;

b. An area equivalent to fifty (50) percent of any area comprised of one or more of the following areas and excluding any area already excluded by subparagraph a above:

(1) Any area within the Flood Hazard District;

(2) Any area comprising wetlands under the jurisdiction of the U.S. Army Corps of Engineers and/or the Pennsylvania Department of Environmental Protection; the Township reserves the right to retain a qualified consultant to ascertain the extent of jurisdictional wetlands, reasonable and necessary charges therefor to be borne by the applicant;

(3) Any area of steep slope exceeding 25 percent, where the ratio of the change in elevation over the horizontal distance as measured between consecutive two-foot contour intervals exceeds 25/100.

## 2. Calculation of Maximum Density

The maximum permissible number of lots or dwelling units on any tract utilizing the open space design option shall be calculated by multiplying the Net Tract Area in acres, established as above, by the multiplier stipulated below, rounding to the nearest whole number:

### District Density Multiplier

R-1 0.33

R-2 0.50

R-3 0.67

R-4, where on-site sewer and/or water services are provided 0.9

R-4, where public sewer and water services are provided 2.0

R-4, where multiple family dwellings are to be developed 3.0

and where public sewer and water services are provided

Specialized Agricultural 0.67

## 3. Bonus Density for Open Space Conservation.

In order to promote conservation of open space resources, the base density multiplier(s) established above may be increased as follows, where open space is provided meeting the criteria established in subsections a-d, below:

$$M=B+[B*(1.5*Y)]$$

M is the adjusted density multiplier including any applicable bonus for open space conservation.

B is the base density multiplier established for the applicable district in Section 1503.B.1.

Y is the amount of eligible open space, measured as a percentage of gross tract area (i.e., if 20% of the gross tract area is open space meeting the criteria in subsections a-d below, then  $y=20\%$  or 0.20).

a. In order to be eligible for calculation of bonus density, open space must comprise open space area(s) fully in addition to the minimum required restricted open space area, established in accordance with Section 1503.A, above; and

b. Open space eligible for calculation of bonus density must comprise areas mapped as Visually Significant Landscapes or woodlands on the Kennett Township Visual Resources Map, said map hereby incorporated into this ordinance for the purposes of this Article; and

c. Open space eligible for calculation of bonus density must meet all criteria for restricted open space stipulated in this Article; and

d. Conservation of open space areas used toward calculation of bonus density must be guaranteed through establishment of restrictions and management criteria satisfactory to the Township.

Sample Bonus Density Calculation: As an example, a tract of land in the R-2 District would be offered a base density multiplier of 0.5 ( $B=0.5$ ). The Applicant would be required to provide 55% minimum restricted open space. If he could designate 65% of the gross tract area as open space, the 10% increment would make him eligible for bonus density if he could demonstrate that an area or areas of open space equal to 10% of the gross tract area met the eligibility criteria set forth in subsections a-d above ( $Y=10\%$  or 0.10). Thus:

$$M=B+[B*(1.5*Y)] \text{ or } M=0.5+[0.5*(1.5*0.10)] \text{ or } M=0.575.$$

If, for example, this were an 85-acre tract of land with a Net Tract Area of 70 acres, it would be permitted up to 35 dwelling units under the base multiplier of 0.5, but could now achieve up to 40 dwelling units with the adjusted multiplier set at 0.575, a density bonus of five units.

Where a single contiguous tract of land falls into more than one residential zoning district, the gross density of development permitted, including any bonus density, shall be calculated separately for each zoning district. Where Applicant demonstrates to the satisfaction of the Board of Supervisors that a development more fully in compliance with the objectives of this Article shall result, the gross density of development on the entire tract may be calculated as the sum of the density calculations made for each district separately. In such cases, ultimate placement of dwelling units may reflect a uniform plan for the entire tract without regard to zoning district boundaries within the tract. In all cases, bonus density, if any, shall be calculated separately in each zoning district, based upon the amount of eligible open space in each district.

5. Applicant is advised that the maximum number of units calculated under the provisions herein may not always be achievable while meeting requirements for minimum restricted open space and all other standards, criteria, and regulations herein.

C. Residential Area & Bulk Regulations. The following area and bulk regulations shall apply to all principal and accessory residential structures and to any structures containing any permitted open space use(s) on any tract developed pursuant to this Article. For any structure containing any other permitted use, the applicable area and bulk requirements of the underlying zoning district shall apply.

1. Minimum separation shall not be less than 50 feet between any rear wall of any residential structure and any point on any other building. Minimum separation between any principal and/or accessory structures, at any other point, shall not be less than 40 feet. Where Applicant demonstrates to the satisfaction of the Board of Supervisors that adequate fire protection shall be provided, this minimum separation may be reduced from 40 to 20 feet.

2. Minimum setback from the edge of cartway (or outside edge of curb, if applicable) of any street shall be not less than 25 feet, except as provided in Section 1504.A.2 below.

3. Maximum Impervious Coverage.

a. For apartment dwellings, condominiums, and any other dwelling units not provided with individual lots, maximum impervious coverage shall be limited to forty (40) percent of the gross land area devoted to such dwellings. The gross land area used to satisfy this limitation shall be indicated on submitted plans, shall constitute a single contiguous land area including buildings, parking, access, and yard areas clearly associated with and in the immediate vicinity of the subject residential development, and shall not include any land area that is counted toward meeting minimum restricted open space requirements nor any coverage nor yard area requirements for any other dwelling unit(s) or other permitted uses(s).

For all dwelling units provided with individual lots and any lots or parcels devoted to open space or any other permitted use, maximum impervious coverage limitations shall be established in accordance with the following schedule:

(1) Lots or parcels less than 7,000 square feet in area: 50%

(2) Lots or parcels greater than or equal to 7,000 square feet and less than 12,000 square feet in area: 40%

(3) Lots or parcels greater than or equal to 12,000 square feet and less than 20,000 square feet in area: 30%

(4) Lots or parcels greater than or equal to 20,000 square feet and less than one acre in area: 20%

(5) Lots or parcels greater than or equal to one acre and less than ten acres in area: 15%

(6) Lots or parcels greater than ten acres in area: 10%

4. Maximum building height shall not exceed 35 feet.

5. Maximum building length, measured along any continuous facade in the same linear direction, shall not exceed 150 feet.

6. No individual group or cluster of residential structures shall comprise more than eight residential structures nor more than twenty-four individual dwelling units; each group or cluster of residential structures shall be separated from any other group or cluster by a minimum of 250 feet, measured between any principal residential structures. This provision may be waived or altered by the Board of Supervisors where Applicant has demonstrated to the satisfaction of the Board that variation from these standards results in a pattern of development more fully in compliance with the objectives of this Article.

7. No residential lot shall be created under these provisions where the Board of Supervisors is not satisfied that a principal residential structure may be developed in compliance with the criteria in Sections 1503.C.1 through 1503.C.5 above. The Board may require Applicant to indicate on plan drawings a maximum building envelope for each potential dwelling unit in order to demonstrate feasible compliance with these criteria.

#### SECTION 1504 CONSERVATION AND DEVELOPMENT DESIGN STANDARDS

##### A. General Development Standards.

1. All applicable standards provided in Articles XIII and XIV of this Ordinance shall apply to any development utilizing the open space design option.

2. In order to protect the interests of existing neighboring property owners, all proposed dwelling units in a development utilizing the open space design option shall be situated so as to maintain a minimum setback from any pre-development perimeter boundary of the tract, in accordance with the following:

##### District Minimum Setback from Tract Boundary

R-1 75 feet

R-2 75 feet

R-3 50 feet

R-4 50 feet, except 75 feet where multiple family dwellings are developed

Specialized Agricultural 50 feet

3. Placement of buildings and design of internal circulation systems shall minimize adverse impact to existing Township roads.

4. At its sole discretion the Board of Supervisors may require Applicant to provide architectural renderings generally illustrating the intended exterior design, including principal exterior materials, of any structures to be built on lands developed in accordance with this Article. Such drawings shall effectively present an overall architectural theme which is internally consistent and compatible with surrounding properties and community resource protection objectives. The Board may further require, as a condition of approval, establishment of specific architectural design guidelines and/or a formal design review process, or other appropriate means to guarantee adherence to the intended architectural theme presented by the Applicant.

#### B. Special Provisions for Conservation of Historic Resources.

1. Historic resources and their historic landscape context shall be preserved through incorporation into development plans and design to the greatest degree practicable, including historic structures, ruins or archaeological sites, historic road or other transport traces, paths and trails, and any other historic landscape features.

#### 2. Density Bonus for Historic Resource Conservation.

In addition to the maximum permissible number of lots or dwelling units otherwise permitted on any tract developed under the Open Space Design Option, where approved by the Board of Supervisors as a Conditional Use in accordance with Section 1325, Applicant may provide dwelling units and lots therefor through the renovation or adaptive reuse of eligible historic structures, as defined in Subsection b below, subject to compliance with the standards in Subsection 3 below. For example, an historic farmhouse might be converted into one or more dwelling units, while an historic barn might be adapted for apartments.

b. Eligible historic structures shall be limited to the following:

(1) those included on the Kennett Township Historic Resources Map, as may be amended,

(2) those included in the National Register of Historic Places, and/or

(3) those identified as Contributing Resources in any National Register historic district, as documented in the applicable National Register nomination on file at the Pennsylvania Historical and Museum Commission.

The maximum number of additional dwelling units shall not exceed fifteen (15) percent of the maximum base density calculated per Section 1503.B above, rounded to the next higher whole number. Except where physically infeasible due to existing locational and/or structural attributes, all such dwelling units must comply with applicable area and bulk regulations and design standards. In considering conditional use approval, the Board of Supervisors may request testimony from recognized expert(s) in the area of historic



resource analysis and preservation, reasonable and necessary charges therefor to be borne by the Applicant.

### 3. Standards for Historic Resources.

Applicant shall comply with the following standards where renovation or reuse of any structure included in the Historic Sites Survey of Chester County is proposed in order to develop dwelling units in addition to the maximum otherwise permissible.

a. Construction plans for the rehabilitation, alteration, or enlargement of any such historic structure shall be in substantial compliance with the Secretary of the Interior's currently adopted Standards for Rehabilitation, as revised.

b. Authentic period materials and colors shall be utilized on any portion of any historic structure or enlargement thereof visible from any existing or proposed public right-of-way. Appropriate replication may be substituted where approved by the Board.

c. Applicant shall demonstrate preservation of sufficient landscaped or buffer area surrounding historic structures to retain the integrity of the historical landscape setting. Applicant may demonstrate mitigation of impacts to historical landscape setting through introduction of vegetation or other screening in harmony with such landscape setting and through retention of view lines which visually link historic structures to their landscape setting.

Facilities and equipment for heating/air conditioning, trash collection and compaction, and other structural elements not in keeping with historical architectural themes shall be concealed architecturally or otherwise screened from view.

e. Applicant shall guarantee permanent adherence to these standards through establishment of appropriate easement(s) acceptable to the Township Solicitor, such easement(s) to be conveyed to Kennett Township or to a bona fide conservation organization or agency acceptable to the Board of Supervisors.

### C. Open Space Resource Protection Standards.

1. In utilizing the open space design option, the proposed design shall, to the greatest degree practicable, limit disturbance to significant natural and cultural resources identified in the Site Analyses required in accordance with the Kennett Township Subdivision & Land Development Ordinance.

#### 2. Conservation of Scenic Views

a. Applicant shall demonstrate maximum conservation of scenic views from public roads and neighboring residential properties, including but not limited to lines of view from vista points as shown on the Kennett Township Visual Resources Map, and direct lines of view from adjacent public roads to visual accents included on said map. Applicant may

demonstrate conservation of views either through location of proposed development outside of such views or through retention of existing vegetation, structures, or changes in topography.

b. Every attempt shall be made to situate dwellings and accessory buildings below ridge line elevations and to maintain existing trees and woodland vegetation along ridgelines.

c. Where conservation of scenic views as described above or where siting below ridgeline elevations is not practicable in the context of proposed development plans, Applicant shall demonstrate mitigation of visual impacts through one of the following means:

(1) Provision of introduced landscaping to effectively screen proposed development from view from public roads or neighboring residential properties;

(2) Submission of individual building design plans with sufficient detail to demonstrate, in terms of how such buildings may be viewed from public roads or neighboring residential properties, reasonable replication of proportional relationships of form and massing evident in existing historic resources, including ratios of height to width, length of individual facade segment, roof pitch, relative size and placement of windows, doors, and other facade details.

(3) The distance from point of public or neighboring view also may be considered as a mitigating factor in review of plans for buildings within such view.

3. Applicant shall demonstrate compliance with applicable state and/or federal regulation of streams and wetlands, including compliance with Special Protection Guidelines for designated special protection waters. For any proposed activity requiring the submission of a wetland delineation report, stream or wetland encroachment permit, or mitigation plan to the Pennsylvania Department of Environmental Protection and/or U.S. Army Corps of Engineers, copy of all such documentation shall be submitted to Kennett Township.

4. Where feasible, Applicant shall demonstrate conservation of any site included in the Chester County Natural Areas Inventory and/or any unique natural area inventoried in the Chester County Open Space & Recreation Study, as may be amended from time to time.

5. Applicant shall demonstrate compliance with applicable Flood Hazard District regulations per Article XI and Steep Slope design standards per Section 1412 of this ordinance, and shall comply with the Riparian Buffer and Woodland Conservation standards of Sections 516 and 517 of the Kennett Township Subdivision & Land Development Ordinance.

#### D. Open Space Designation and Use Standards.

1. Areas designated as restricted open space shall be consistent with the Kennett Township Open Space, Recreation, and Environmental Resources Plan. The location and layout of restricted open space shall be configured so as to promote adherence to resource

protection standards in sections 1504.B and 1504.C above, and shall further conform to the following conditions:

a. A portion of the designated restricted open space equal in area to no less than 15% of the gross tract area shall exclude areas comprised of designated flood hazard districts, wetlands, slopes in excess of 25%, and any areas devoted to sewage treatment or disposal.

b. No portion of the designated restricted open space shall be measured as contributing to the minimum required restricted open space area or to any open space utilized in calculation of any density bonus where:

(1) It extends less than 100 feet in the narrowest dimension at any point;

(2) It is located within 35 feet of any structure except structures devoted to permitted open space uses;

(3) It is occupied by impervious surfaces including structures;

(4) It is included within the lot lines of any lot less than 10,000 square feet in size.

(5) It comprises a single parcel less than one (1) acre in area.

(6) It is occupied by stormwater management facilities, excluding stormwater conveyance facilities, except in accordance with the provisions of Section 1504.D.2 below.

## 2. Stormwater Management in Restricted Open Space.

a. At the discretion of the Board of Supervisors, upon recommendation by the Planning Commission, the area devoted to stormwater management facilities may be included within the minimum required open space where the Applicant can demonstrate to the satisfaction of the Board that such facilities are designed in accordance with the provisions of this section and shall achieve the following objectives:

(1) Promote recharge of groundwater systems or

(2) Be available and appropriate for active or passive recreational or scenic enjoyment.

b. Where permitted, the area that may be included within the minimum required open space shall be calculated as follows:

(1) The total stormwater volume to be managed within the tract under application shall be calculated;

(2) For all areas satisfying either objective (1) or (2) above, the volume of stormwater managed within such areas shall be calculated;

(3) The area, which may be included as part of the minimum required open space, shall be calculated as the total Defined Area (established as provided below) times the ratio of calculation (2) above, divided by calculation (1).

(4) The Defined Area shall be calculated by including all areas within the perimeter embankments or berms of all stormwater detention and retention facilities. The measurements shall include all areas within the contour line established by the top elevation of the stormwater retention embankment on the outlet or downhill side of the basin. This contour will be continued around the basin until it closes back on itself. The area thus enclosed is the "Defined Area."

c. The Applicant recognizes that any area considered as applicable for inclusion with the minimum required open space shall be subject to management in accordance with the Open Space Management Plan that will be required by the Township.

d. The stormwater management facility must meet the following minimum requirements to be considered for inclusion in the minimum open space requirements:

(1) Recharge to the groundwater system may be accomplished by either of the following methods: installation of subsurface infiltration methods, such as stone seepage beds, pits or trenches, and perforated pipes or cisterns, or by direct infiltration into the soil where infiltration rates assure that the system shall meet all design requirements.

Infiltration rates shall be established by soils testing. Soils testing shall be conducted to a depth no less than 3 feet below the bottom of the infiltration facility to be considered. In no case shall the bottom of a subsurface infiltration system be less than 4 feet below the finished ground elevation. The tests shall conform to the procedures for infiltration beds established by the Chester

County Health Department. 75% of the tested percolation rate shall be used to determine the storage volume required.

(3) The infiltration system shall be sized to store the net increase in storm water volume from a 2-year frequency rainfall (3.3 inches in 24 hours) event without consideration of infiltration.

(4) The bottom elevation of the infiltration system shall be at least 2 feet above bedrock or the seasonal high water table.

(5) Filtering devices shall be incorporated in piping or structures distributing runoff to the infiltration systems in order to collect and prevent sediment from entering the system.

(6) The stormwater management facility shall be no closer than 50 feet to any sewage bed or water supply well. Also, facilities shall be situated downgrade from structures on adjacent lots or be isolated at least 100 feet from them.

(7) Overflow facilities that direct overflow from infrequent storms exceeding design capability shall be installed. Acceptable points to accept the overflow include inlets or

pipng of downstream storm sewer systems, wetland areas, flood plain fringe areas or other stormwater management facilities.

(8) The stormwater management facility shall be designed to empty the total design storm volume within 24 hours or less following the storm event.

(9) All subsurface infiltration systems shall use a permeable geotextile fabric to separate aggregate within the facility from soil on the sides and top to prevent loss of bed capacity.

(10) The design of the stormwater facility shall, when not storing water runoff, accommodate active or passive recreation and/or improve the scenic quality of the proposed development or Township.

(11) Perimeter embankments or berms shall have side slopes of 4 to 1 and flatter and shall blend into the existing topography.

(12) Above ground detention areas shall be designed as shallow holding areas with a storage depth no greater than 3 ½ feet.

(13) Where designed for active recreational use, the soils of the basin shall be such that they will quickly drain to allow a usable playing surface. If necessary, an underground drain system shall be installed to facilitate the drainage.

(14) Outlet works of stormwater management facilities shall be constructed to prevent entry by children or animals.

(15) Where designed for active recreational use, any fixtures required for the approved type of athletic field or court shall be permanently anchored to prevent floatation.

(16) Any plantings or vegetation placed in the impoundment area must be able to withstand the expected frequency and depth of inundation. Further, the Open Space Management Plan should include specific recommendations of plant species and instructions for the appropriate care and maintenance of the stormwater facilities.

e. The above provisions may be waived or altered by the Board of Supervisors where Applicant has demonstrated to the satisfaction of the Board that variation from these standards results in a pattern of development more fully in compliance with the objectives of this Article.

3. Except where approved by the Board of Supervisors and as established in the required Open Space Management Plan, areas designated for open space purposes may be used only for any of the following:

a. Crop or pasture land;

b. Cultivation of nursery stock or orchard trees;

c. Woodland, meadow, wetland, wildlife habitat, game preserve, or similar conservation-oriented area;

d. Public, common, or private park or outdoor recreation area;

e. Land application of wastewater, where permitted in accordance with the Kennett Township Sewage Facilities Plan, and where the Board of Supervisors is satisfied that adequate provision(s) for the long-term management and maintenance of the wastewater system are guaranteed.

f. Stormwater management facilities in accordance with Section 1504.D.2 above.

4. Subject to the provisions of measurement of minimum required open space stipulated herein, sewage service, stormwater management, and/or water supply facilities may be located entirely or partially within restricted open space areas. Where sewage service and/or water supply facilities are so located, easements satisfactory to the Board of Supervisors shall be established to require and enable maintenance of such facilities by the appropriate parties.

5. Except to provide for permitted open space uses, designated open space shall be restricted from further subdivision or development by deed restriction, conservation easement, or other agreement in a form acceptable to the Township and duly recorded in the office of the Recorder of Deeds of Chester County. Restrictions shall run in favor of the Township and owners of all new lots created by the development under application.

#### SECTION 1505 STANDARDS FOR OWNERSHIP OF RESTRICTED OPEN SPACE

Subject to permanent conservation restrictions, restricted open space land in any subdivision may be owned by a homeowners' association, the Township, a land trust, another conservation organization recognized by the Township, or by a similar entity, or may remain in private ownership.

##### A. Offer of Dedication.

The Township may, but shall not be required to, accept dedication in the form of fee simple ownership of restricted open space land provided:

1. such land is accessible to the residents of the Township;
2. there is no cost of acquisition other than any costs incidental to the transfer of ownership such as title insurance; and
3. the Township agrees to and has access to maintain such lands.

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

#### B. Homeowners' Association.

The restricted open space land and associated facilities may be held in common ownership by a Homeowners' Association. The Homeowners Association shall be formed and operated under the following provisions:

1. The developer shall provide a description of the Homeowners Association including its bylaws and methods for maintaining the open space open space.
2. The Homeowners Association shall be organized by the developer and operating with financial subsidization by the developer, before the sale of any lots within the development.
3. Membership in the Homeowners Association is mandatory for all purchasers of homes therein and their successors. The conditions and timing of transferring control of the Homeowners Association from developer to homeowners shall be identified.
4. The Homeowners Association shall be responsible for maintenance and insurance on common open space land, enforceable by liens placed by the Homeowners' Association. Maintenance obligations may be enforced by the Township which may place liens to recover its costs. Any governmental body with jurisdiction in the area where the development is located may place liens on the owners of the open space to collect unpaid taxes.
5. The members of the Homeowners Association shall share equitably the costs of maintaining and developing such common land. Shares shall be defined within the Homeowners Association bylaws. Homeowners Association dues shall be structured to provide for both annual operating costs and to cover projected long-range costs relating to the repair of any capital facilities (which shall be deposited in a sinking fund reserved for just such purposes).
6. In the event of a proposed transfer, within the methods here permitted, of common open space land by the Homeowners' Association, or of the assumption of maintenance of such land by the Township, notice of such action shall be given to all property owners within the development.
7. The Homeowners Association shall have or hire adequate staff to administer common facilities and properly and continually maintain the common open space land.

8. The Homeowners' Association may lease open space lands to any other qualified person, or corporation, for operation and maintenance of such lands, but such a lease agreement shall provide:

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

b. that the common open space land to be leased shall be maintained for the purposes set forth in this Ordinance; and

c. that the operation of open space facilities may be for the benefit of the residents only, or may be open to the residents of the Township, at the election of the developer and/or Homeowners' Association, as the case may be.

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

#### C. Condominiums.

The restricted open space land and associated facilities may be held in common through the use of condominium agreements, approved by the Board of Supervisors. Such agreement shall be in conformance with the Uniform Condominium Act of 1980. All common open space land shall be held as "common element".

#### D. Dedication or Transfer of Easements.

Subject to approval by the Board of Supervisors, easement(s) providing for conservation management of restricted open space lands and/or for public access to such lands may be dedicated to the Township or transferred to a non-profit conservation organization. Title to such lands shall remain as otherwise approved in accordance with this section 1505.

### SECTION 1506 OPEN SPACE MANAGEMENT PROVISIONS

#### A. Required Open Space Management Plan.

Any application under the Open Space Development Option shall include a plan for the long term management of the restricted open space which is to be created as part of the development, including maintenance and management of any wastewater disposal, water supply, stormwater management or any other common facilities which may be located within areas of restricted open space. Such a plan shall include a narrative discussion of (1) the manner in which the restricted open space and any facilities included therein will be



owned and by whom it will be managed and maintained; (2) the conservation, land management and agricultural techniques and practices which will be used to conserve and perpetually protect the restricted open space, including conservation plan(s) approved by the Chester County Conservation District where applicable; (3) the professional and personnel resources that will be necessary in order to maintain and manage the property; (4) the nature of public or private access that is planned for the restricted open space; and (5) the source of money that will be available for such management, preservation and maintenance on a perpetual basis. Where application for Alternative Design Option review in accordance with Section 1508 is submitted prior to Preliminary Plan submission, such application shall include a conceptual Open Space Management Plan outlining compliance with the issues stated above. A complete Open Space Management Plan shall be submitted with Preliminary Plan submission.

The Board of Supervisors may require that the management plan be recorded, with the Final Subdivision and Land Development Plans, in the Office of the Recorder of Deeds of Chester County. The Board may require as a condition of land development approval that appropriate management contracts be established as evidence of the ability to adhere to the provisions of the approved management plan. In order to allow for the changing needs inherent in the perpetual management of land, the management plan shall contain a provision to the effect that it may be changed by written application to the Board of Supervisors. Approval of such application by the Board shall not be unreasonably withheld or delayed, so long as the proposed change is feasible and consistent with the purposes of preservation of open space set forth in this Article and so long as the plan for such change avoids a likelihood of the obligation for management and maintenance of the land falling upon the Township without the consent of the Board of Supervisors.

#### B. Provisions for Maintenance of Restricted Open Space Held in Common Ownership.

1. In the event that the Homeowners Association or any successor organization shall, at anytime after establishment of a development containing open space land, fail to maintain such land in reasonable order and condition in accordance with the development plan, the Township may serve written notice upon the owner of record, setting forth the manner in which the owner of record has failed to maintain the open space land in reasonable condition.

2. Failure to adequately maintain the open space land in reasonable order and condition constitutes a violation of this ordinance. The Board is hereby authorized to give notice, by personal service or by United States mail, to the owner or occupant, as the case may be, of any violation, directing the owner to remedy the same within twenty (20) days.

3. Should any bill or bills for maintenance of open space land by the Township be unpaid by November 1 of each year, a late fee of fifteen percent (15%) shall be added to such bills and a lien shall be filed against the premises in the same manner as other municipal claims.

#### SECTION 1507 OPEN SPACE PERFORMANCE BOND

All landscape improvements, plantings, accessways, and recreational facilities within designated open space areas shall be provided by the developer as applicable. A performance bond or other securities shall be required to cover costs of all installation of proposed improvements in the open space area. The performance bond or other security shall be in the same form and adhere to the same conditions as otherwise required for proposed improvements in accordance with the Kennett Township Subdivision and Land Development Ordinance. An appropriate portion of the performance bond or other security will be applied by the Township should the developer fail to install the planting or recreational facilities.

#### SECTION 1508 ALTERNATIVE DESIGN OPTION REVIEW PROCESS

A. In granting or denying an alternative design option establishing conditions with reference to such grants, the Board of Supervisors shall use as a guide in evaluating a proposed alternative design option and may determine to be mandatory, those standards established for review of special exception applications by Section 1807 of this Ordinance. The burden of establishing compliance with those enumerated standards shall be upon the applicant by a fair preponderance of the credible evidence. The standards required by this subsection shall be deemed a part of the definitional aspect under which an alternative design option may be granted and the failure of the applicant to establish his compliance with all of the standards shall, in the discretion of the Board, be deemed either a basis for the establishing of conditions or limitations on an approval or the basis for a determination that the applicant has not met the requirements for which an alternative design option may be granted.

B. Nothing in this section shall be construed to relieve the applicant from obtaining other required approvals mandated by the Township, Subdivision and Land Development Ordinance, or other applicable ordinances.

C. Appeals from a determination of the Board pursuant to any application under this Article shall be only as prescribed within such times permitted by the applicable provisions of the Pennsylvania Municipalities Planning Code.

D. In granting an alternative design option, the Board may attach such additional reasonable conditions and safeguards as it deems necessary and appropriate to insure compliance with the provisions of this Ordinance and to protect the health, safety and general welfare of the community.

E. Unless otherwise specified by the Board, an alternative design option approval shall expire within one year from the date of authorization should the applicant fail to obtain final approval of a subdivision plan or building permit as the case may be. Alternative design option approval shall not be transferred from one party to another without the authorization of the Board of Supervisors.

SECTION 2: Amend Section 401.B to read as follows:

B. Development in accordance with the Open Space Design Options as set forth in Article XV.

SECTION 3: Amend Section 501.C to read as follows:

C. Development in accordance with the Open Space Design Options as set forth in Article XV.

SECTION 4: Amend Section 601.C to read as follows:

C. Development in accordance with the Open Space Design Options as set forth in Article XV.

SECTION 5: Add Section 701.D to read as follows:

D. Development in accordance with the Open Space Design Options as set forth in Article XV.

SECTION 6: Delete Section 701.B.3 in its entirety and change the numbering of subsequent subsections 4-13 to 3-12.

SECTION 7: Amend the introduction of Section 702.A to read as follows:

A. All uses, except mobile home park

SECTION 8: Delete Section 702.B in its entirety.

SECTION 9: Amend Section 901.C to read as follows:

C. Development in accordance with the Open Space Design Options as set forth in Article XV.

ENACTED AND ORDAINED this 21st day of June 1999.

KENNETT TOWNSHIP  
BOARD OF SUPERVISORS  
Michael E. Elling

Attest:

James C. Henderson  
Secretary-Treasurer

Charles G. Shoemaker