

<b>Topic:</b>	Open Space Preservation; Clustering & Cluster Development; Affordable Housing Regulations
<b>Resource Type:</b>	
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Malta
<b>Year (adopted, written, etc.):</b>	2005
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Malta Open Space Development & Preservation Ordinance
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### ***Abstract***

This law was created for the purpose of requiring open space development for any subdivision of land 20 acres or greater within the Town of Malta. The goal of the law is to promote the better use of open spaces, recreational development, existing topography and natural features, design, and to provide for economics inherent with open space development. This law empowers the Planning Board of the Town of Malta, acting in a manner which would promote the above goals, to approve, approve with modifications or disapprove open space development proposals.

### ***Resource***

Town of Malta NY Open Space Development and Preservation  
Code of the Town of Malta NY  
Chapter 167: Zoning  
[The Town of Malta Zoning Law was adopted in 1989 and amended in its entirety in 2005]  
General Code

ARTICLE XI Open Space Development and Preservation

§ 167-43. Intent.

- A. It is the intent of this article to require open space development (having the same meaning as "cluster development" under § 278 of NYS Town Law) pursuant to the requirements herein for any subdivision of land 20 acres or greater within the Town. Unless otherwise required by the Planning Board, owners of lands less than 20 acres, and all others not otherwise governed by this article, shall follow the Subdivision Regulations of Chapter 143 of the Town of Malta. This article shall govern any land parcel greater than 20 acres, and other parcels as determined by the Planning Board, as

of the effective date of this legislation.

- B. The intent of this article is to promote variation in conjunction with a proposed subdivision plat in suitable areas in order to encourage the flexibility of design, to enable land to be developed in such a manner as to promote its most appropriate use, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open space, in accordance with § 278 of the Town Law. This purpose is achieved by permitting reduction in and/or flexibility of lot sizes required for the zoning district within which such development occurs, while maintaining the imposed overall density limitations through the provision of open space.
- C. It is the intent of this article to promote better use of conservation of open spaces, recreational development, existing topography and natural features, energy conservation, harmonious architectural design, and solar access and design, and to provide for economics inherent with open space development. It is imperative to incorporate quality of life elements such as linking wildlife corridors, protecting watersheds and old stone walls and barns, identifying and protecting important vistas, expanding active and passive recreational opportunities, providing links to existing and future Town parks, including access to the Kayderosseras, and preserving trees and vegetation.
- D. In designing clusters, the proportions of affordable homes set forth in § 167-26C shall be taken into consideration by the developer and Planning Board.

#### § 167-44. Delegation of authority.

The power to approve, approve with modifications or disapprove open space development in accordance with the intent established in § 167-43 above is granted to the Planning Board in accordance with § 278 of the Town Law. The Planning Board shall require the submission of an open space concept and has the authority to mandate subdivision developers to cluster the units in their developments, pursuant to § 278 of the Town Law.

#### § 167-45. Purposes.

The purposes of open space development are as follows:

- A. Residential amenity.
  - (1) The creation of neighborhoods and community gathering and recreational areas;
  - (2) High quality site design resulting from flexible site and lot standards; and

(3) Creation of open space usable for recreation, either active or passive.

B. Conservation.

(1) Preservation of significant natural and man-made characteristics of the site; and

(2) Preservation of floodplains, slopes subject to erosion and other environmentally sensitive areas.

C. Comprehensive land use planning.

(1) Coordination with the Town of Malta Master Plan and other applicable County, state, federal and regional plans and programs;

(2) Maintenance of the residential character of the Town of Malta, while increasing the variety of housing opportunities available; and

(3) Development or redevelopment of land in a manner appropriate to the special characteristics of each site and present and future needs of the Town.

§ 167-46. Conditions.

A. Open space development shall apply to residential developments within the Town.

B. Density of residential units shall not exceed that permitted in the district in which the subdivision is located. This density shall be computed, using the submissions made by the applicant pursuant to this article, as follows:

(1) Compute the total site area in the development.

(2) Subtract New York State regulated wetlands and one-hundred-foot buffers.

(3) Subtract mapped streams or waterways and fifty-foot buffers.

(4) Subtract ponds, lakes and other areas of standing water.

(5) Subtract slopes in excess of 15% of grade.

(6) Subtract actual utilities and road rights-of-way.

- (7) Subtract one-hundred-year floodplains.
  - (8) Divide the remaining area by the minimum lot area under current zoning (minimum lot area cannot be further reduced due to central water and sewer).
- C. Under normal circumstances, the minimum area requirement to qualify for an open space development shall be 20 contiguous acres of land. Where the characteristics of the site meet the objectives of this article, projects with less acreage may be required by the Planning Board to comply with one or more of the options of open space development.
- D. The Planning Board may grant residential bonus lots in excess of the density calculated in Subsection B in accordance with § 261-b of the Town Law of the State of New York in exchange for modification in the project of comparable value that provides community benefits and amenities not otherwise provided under this legislation. In order to advance the Town of Malta's physical, cultural and social policies in accordance with the Town's Comprehensive Plan, within the meaning of § 272 of the Town Law of the State of New York, bonus lots may be granted for up to 5% additional density of the lot entitlement determined in Subsection B above. The Planning Board may consider an application for bonus lots for projects where there may be community benefits and amenities not normally associated with an open space development and/or otherwise required by this article, including, but not limited to:
- (1) Affordable housing, based on a percentage of the median priced house.
  - (2) Parks, and lands to be annexed to existing parks, which would otherwise not be available to the Town.
  - (3) Pedestrian and trail linkages with trails and parks within and outside the Town.
  - (4) Public access to significant and unique areas of the Town and adjoining towns, e.g., streams and lakes.
  - (5) Off-site infrastructure or other enhancements that benefit more than the applicant's project.
  - (6) Historic preservation.
  - (7) Agricultural preservation.
  - (8) Preservation of unique and/or significant open spaces, streams, lands adjoining existing preserved open spaces, viewsheds, and linkages between open space

areas; e.g., natural resources, forested lands, vistas, and waterways.

- (9) Cash in lieu of amenities to be dedicated to a specific project which provides a unique, community benefit or amenity which would not otherwise be developed.
- E. An application for bonus lots shall be made at the time of the submission for open space development as set forth in § 167-47F of this section and as contained in Chapter 143, Subdivision of Land, of the Code of the Town of Malta. In its discretion, the Planning Board may accept an application for bonus lots at a later point in time if it deems it to be in the best interest of the Town. If an application is considered after the required public hearing provided for by § 167-47F, the Planning Board shall be required to schedule a new public hearing to include the bonus lot application.
- F. The Planning Board shall review an application for bonus lots in conjunction with the open space development application set forth in § 167-47 of this section, and shall make findings as to whether the proposed community amenity and benefit meets one or more of the criteria set forth in § 167-46D(1) through (9). The Planning Board shall determine if the proposed community benefit or amenity is in accordance with the Town's Comprehensive Plan, as well as the Town's other community planning and land use efforts and tools, including, but not limited to, the Town's Agriculture and Open Space Preservation Study, the Town's Linkage Study, and the actions and recommendations of the Town's Zoning Update Committee and Open Space Preservation Advisory Committee.
- G. "Community benefits and amenities" shall mean additional open space, parks, pedestrianways, public access, off-site enhancements to infrastructure, historic preservation or other specific physical, social or cultural amenities or cash in lieu thereof, that provide a unique benefit to the residents of Malta.
- H. If the Planning Board determines that a suitable community benefit or amenity is not immediately feasible, the Planning Board may require, in lieu thereof, a payment to the Town of a sum equivalent to the added value to the applicant and as determined by the Planning Board. If cash is accepted in lieu of other community benefits or amenities, provision shall be made for such sum to be deposited in a trust fund to be used by the Town Board exclusively for the project(s) specified and authorized by the Town Board.
- I. Options for open space development.
- (1) Under this article, applicants may seek subdivision approval for any one of the following options or combination thereof:
- (a) Option 1: greenway development, which provides for residential density

permitted by the zoning district and as defined in § 167-46B with green space set-aside lands being 50% of the parcel ("greenway"). The greenway shall be 50% of the developable lands. Wetlands, steep slopes or other undevelopable areas within the site identified as significant by the Planning Board shall be added to, not included in, the greenway. It is the goal of this section to locate the green space along existing roadways.

(b) Option 2: estate development, which provides for residential density of 1/3 of the residential density permitted by the zoning district and as defined in § 167-46B.

(c) Option 3: a combined development includes a combination of Options 1 and 2 above.

(2) In all cases, lands to remain undeveloped as greenway should be determined by the Planning Board.

#### § 167-47. Application procedures.

A. The approval procedure, fees, submittals, standards, requirements, variances and modifications shall be the same as those specified in the Subdivision Regulations, Chapter 143, Article II, of the Town of Malta for the review and approval of a proposed subdivision of land and § 278 of the Town Law.

B. The applicant shall submit, at successive stages, a concept sketch plan, preliminary submission and final submission in accordance with the requirements of the Subdivision Regulations and in conformance with the current zoning regulations. In addition, the applicant, at each stage, shall provide the following information:

(1) The proposed number, type and arrangements of residential units and computation of overall residential density per gross acre.

(2) A tabulation of the total number of acres in the proposed project and the percentage designated for each use area.

(3) The proposed location and acreage for greenways, multipurpose trails, walkways, parks, playgrounds, natural watercourses and other open spaces.

(4) The computation of open space area.

(5) A draft proposal for maintenance/ownership of open space. In the event that the application of this procedure results in a plat showing lands available for park, recreation, open space or other municipal purposes directly related to the plat, then the Planning Board, as a condition of plat approval, may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to ensure the preservation of such lands for their intended purposes. The ownership options include land conservancy, homeowners' association or other appropriate ownership.

C. Preapplication conference with Planning Board. The applicant shall schedule a meeting with the Board Chairperson or the Planning Department to walk the site and discuss procedures and to obtain advice from the Planning Board on feasibility, layout, location of greenways and open space and any special considerations for the subdivision design. The applicant shall furnish 14 copies of a sketch plan of the proposal pursuant to all requirements in § 143-4 of the Subdivision Regulations 30 days prior to the meeting with the Planning Board. In addition, the applicant shall identify on the sketch the approximate location of the following features on-site and within 200 feet of the site:

- (1) Potential wetland areas, ponds, drainage paths and waterways.
- (2) Geologic formations, such as rock outcroppings, cliffs, sinkholes, and fault lines.
- (3) Floodplains.
- (4) Existing pathways and trail linkages.
- (5) Wildlife habitats.
- (6) Hedgerows.
- (7) Stone walls.
- (8) Significant areas of vegetation such as cultivated land, permanent grassland, meadow, pasture, old fields, hedgerow, groves and trees with a caliper in excess of 15 inches. The actual canopy line of existing trees and woodlands shall be shown. Vegetative types shall be described by plant community, relative size and condition.
- (9) Historical, archaeological and cultural features.
- (10) Views, both on-site and off-site.

- (11) Aquifers and aquifer recharge areas.
- (12) Slopes with a grade of 15% or greater (upon satisfactory demonstration to the Town the Planning Board may consider development on such slopes).
- (13) Ridgelines.
- (14) Man-made features such as streets, driveways, farm roads, woods roads, buildings, foundations, walls, wells, drainage fields, dumps, utilities, fire hydrants, and storm and sanitary sewers, old cellar holes, foundations and graves.
- (15) Any feature identified during the site walk by the Town as significant.
- (16) Such additional information as the Planning Board may reasonably request and deem necessary to make the determinations required by the New York State Environmental Quality Review Act and this chapter.

§ 167-48. Standards for open space development.

Any open space development shall conform to the standards and construction practices set forth in Chapter 143, Articles III and IV, of the Subdivision Regulations for the Town of Malta except as modified below.

- A. This procedure shall apply generally to residential zoned land which shall be a contiguous parcel a minimum of 20 acres in size. In addition, it shall be determined by the Planning Board that such development will not be detrimental to the health, safety or general welfare of persons residing in the vicinity or injurious to property or improvements in close proximity and that the proposed development is in conformity with the objectives of the Town's Master Plan and that the gross density will be no greater than if the tract were developed in accordance with the existing zoning requirements.
- B. When such development is proposed adjacent to any existing residence or residential area, a suitable buffer area, as the Planning Board determines, shall be left between the closest lot line of any lot in an existing residential development area or a conventionally platted residential map that has been filed with the Saratoga County Clerk and the closest structure in the residential cluster development contained on an open space lot.
- C. Rural roadway standards. The developer shall be required to conform to the rural roadway standard as set forth in § 143-13 of the Subdivision Regulations of the Town of Malta for all proposed roadways within the project site. Should the applicant wish to



deviate from this standard, written approval shall be required from the Planning Board.

D. Pathways.

- (1) Pathways within the right-of-way shall be provided in all open space developments. The developer shall meet the following standards:
  - (a) Residential areas with more than four units per acre: a five-foot-wide pathway of material acceptable to the Planning Board on each side of each roadway. The paths shall each be at least five feet from the edge of the roadway.
  - (b) Residential areas with one to four units per acre: a five-foot-wide pathway of material acceptable to the Planning Board on one side of each roadway. The path shall be at least five feet from the edge of the roadway.
  - (c) Residential areas with less than one unit per acre: No pathways will be required except as may be required by the Planning Board in Subsection D(2) below.
- (2) The Planning Board may require additional pathways, walks, multiuse trails or linkages to the Town trail system.
- (3) The developer shall install the pathways, at no additional cost to the Town. The developer shall grant an easement to the Town granting the general public access to and use of these trails.

E. Entrances. The open space development shall be designed such that naturally occurring topography and vegetation at the entrances and within the development shall be maintained to the greatest extent practicable. In open space developments where there is level topography and/or a lack of vegetation at the entrance, berming shall be incorporated into the design of the entrance and at the discretion of the Planning Board. Berms shall be natural in form and harmonize with the surrounding terrain. Additionally, all berms shall be planted with native species or species approved by the Planning Board.

F. Flag lots.

- (1) Flag lots shall be permitted in all open space developments. A maximum of five flag lots shall be permitted per open space development and shall conform to the following standards:

- (a) Minimum frontage: 40 feet, taken at the right-of-way line.
  - (b) Front yard setback: 50 feet, taken at the closest rear yard property line of the abutting parcel(s).
  - (c) Minimum size: 35,000 square feet.
- (2) All flag lots shall be approved by the Planning Board at the sketch plan stage. Flag lots proposed after this stage shall not be permitted unless a benefit is found by the Planning Board.

G. Open space.

- (1) Lands set aside as open space and greenways shall remain as open space pursuant to conditions set forth by the Planning Board.
- (2) The developer is responsible for maintaining open space until such time as it is legally accepted by another entity.
- (3) When feasible, a substantial portion of open space shall be located on the road front, so as to maximize roads with houses on only one side.
- (4) It is the goal of this section to set aside green space along existing roadways.