

**TOWNSHIP OF LOWER MAKEFIELD  
BUCKS COUNTY, PENNSYLVANIA**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWNSHIP OF LOWER MAKEFIELD, BUCKS COUNTY,  
PENNSYLVANIA, AMENDING CHAPTER 178, “SUBDIVISION AND LAND  
DEVELOPMENT,” TO CLARIFY AND TO ESTABLISH MANDATORY OPEN SPACE  
REQUIREMENTS, FOR ALL SUBDIVISION AND LAND DEVELOPMENT PLANS  
CONSISTENT WITH CURRENT ZONING REGULATIONS, TO REPEAL  
INCONSISTENT PROVISIONS, AND TO ESTABLISH SEVERABILITY AND  
EFFECTIVE DATE**

**WHEREAS**, the Township of Lower Makefield, Bucks County, is a township of the second class, organized and existing in accordance with the laws of the Commonwealth of Pennsylvania; and

**WHEREAS**, the Township, in the exercise of its corporate powers, has the authority to enact, amend, repeal and establish ordinances and regulations governing subdivision and land development projects and plans within the Township’s territorial boundaries; and

**WHEREAS**, the Township, after due consideration and review, finds it would be in the best interest of the Township to amend its regulations for subdivision and land development applications to clarify and to provide for mandatory open space of projects within the Township; and

**WHEREAS**, the Township wishes to amend Chapter 178 , entitled “Subdivision and Land Development” of its Code of Ordinances to provide for and clarify open space regulations and preservation consistent with the Zoning Code of the Township; and

**WHEREAS**, the amendments to the Township’s Subdivision and Land Development Chapter will accomplish the Township’s goals and objectives by:

- (1) Providing flexible development options to preserve existing natural features including wooded slopes, quality stands of trees, stream valley corridors, wetlands, wildlife habitats, and other natural features;
- (2) Permitting the construction of housing on small parcels with large common open space areas to maintain the rural-like atmosphere which exists in the Township;
- (3) Providing flexible development options in those areas where standard rectilinear development patterns are not suitable due to physical conditions;
- (4) Providing open space areas which will provide the residents with active and passive recreational opportunities;
- (5) Allowing for reasonable amount of development while providing maximum design and planning flexibility to accomplish the above-listed objectives, for development of residential housing while encouraging the preservation of open space and creation of passive and active recreational amenities by permitting cluster development as an alternative to conventional, single family lot development; and
- (6) Allowing for a decrease in maintenance costs due to sprawl and shorter roads and utility lines by decreasing energy consumption in a community oriented development.

**NOW, THEREFORE, be it ORDAINED and ENACTED** as follows:

**I. Article III: Word Usage and Definitions, Chapter 178, Section 11 “Definitions” shall be amended to:**

§178-11 Definitions, shall be amended, to delete the definition of open lands and replace it with the following:

**Open Lands** – Resource-protected lands, including farmland which is part of a farmland preservation conditional use development

To delete the definition of ‘**OPEN SPACE, COMMON**’ and in its place, insert:

**OPEN SPACE**

An area of land or of water, or a combination of land and water, within a development site designed and intended for the use or enjoyment of residents, not including streets, parking areas, areas set aside for facilities (such as detention and retention basins). Open space can include resource-protected land. Open space shall not include land occupied by commercial, industrial, residential, or other nonrecreational uses, land reserved for future parking areas for nonrecreational uses, stormwater management facilities, wastewater management facilities, and/or the yards or lots of dwelling units. Open space shall not include leftover areas, remnants of land remaining after lotting out, or other unusable areas (such as environmentally damaged land that has not been remediated or has not been reclaimed, or landfills).”

**II. Article V: Sketch Plan, Chapter 178, Section 17 “Information Required” shall be amended to read:**

§178-17: Information Required

Sketch Plan Submission. Any applicant for use of the open space cluster option is encouraged to submit a sketch plan to the Lower Makefield Township Community Development Director and to discuss open space resource conservation objectives with the Planning Commission/Community Development office prior to a formal subdivision and land development application. It is recommended that sketch plans show the following information:

- A. Clearly and legibly drawn at a scale not less than one-inch equals 100 feet indicating date, scale and north point.
- B. The proposed name or identifying title of the subdivision or land development.
- C. The name and address of the owner/applicant/developer.
- D. The name and address of the engineer, surveyor, landscape architect or architect who prepared the plan.
- E. Existing tract boundaries indicating the area of the original tract in acres or square feet.
- F. Existing and proposed lot lines.
- G. All existing and proposed structures and uses indicating all setback lines as well as the shortest distances between buildings.
- H. Existing and proposed street layout, including all streets adjacent to the tract and all proposed access points and parking areas.
- I. Existing and proposed easements and rights-of-way within and adjoining tract.
- J. The applicable zoning requirements.
- K. Contours and the basis for topography and vertical datum base.
- L. Lands with natural resources, as defined by the Township Zoning Ordinance.[1]  
[1] Editor's Note: See Ch. 200, Zoning.
- M. Site capacity calculations, as defined by the Township Zoning Ordinance.[2]  
[2] Editor's Note: See Ch. 200, Zoning.
- N. The Tax Map parcel number for the tract and all adjacent lots; zoning classifications for the tract and all adjacent lots.

O. A key map with a north arrow showing the entire development and its relation to surrounding areas.

P. The names of the owners of all abutting properties.

**III. Article XI, Chapter 178, Section 80: “Landscape Plan required” shall be amended and titled as “Landscape and Open Space Requirements” and shall be amended to read:**

§178-80 Landscape and Open Space Requirements

A. All major subdivisions and land development plans shall contain a landscape plan, prepared by a certified landscape architect, which is approved before construction and as part of the subdivision/land development approval process which shall address the conservation of the natural landscape to enhance the development, to protect surrounding areas, provide for harmonious landscapes and preserve community character. The proposed plan shall limit disturbance of all open space/resource protected land identified in the existing features plan. All required plants shall be native plants. The basic goal is to preserve the native flora by mimicking the localized native plant community. The landscape plan shall address all areas of a site that are preserved from development and all site development exclusive of building areas. The landscape plan must address the following requirements: minimization of site disturbance, street trees, buffers, parking area landscaping, preservation of trees in the right-of-way, tree protection during grading and construction and planting in conjunction with stormwater management. The plan shall also indicate the proposed location, quantities and types of plantings and such plants shall be selected from the Township Plant List[1] (Ref. Ex.-1). Since locally grown plants are acclimated to the area, they tend to perform best; therefore, it is desirable, whenever possible, to purchase plants from local sources. The plan shall be prepared by, signed and sealed by the Developer's RLA or PCH and approved by the Township's Plant Expert. The plan shall be prepared at a scale of one-inch equals 50 feet. All proposed plant materials shall meet the standards of the American Standard for Nursery Stock (ASNS) and shall be planted, fertilized, and watered in accordance with ASNS standards.

B. Required Open Space Management Plan

1. Any application for land development approval of the open space design option, under this Part, shall contain a conceptual plan for the long-term management of the restricted open space which is to be created as part of the development. Such a plan shall include a discussion of:

(a) the manner in which the restricted open space and any facilities within the open space, will be owned and by whom it will be managed and maintained;

(b) 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 Bucks County Conservation District, where applicable;

(c) if applicable, a listing of private or public utilities (water, sewer, stormwater) that are proposed within open space areas, how they will be integrated into the landscape to protect

the natural and cultural resource values, and how they will be maintained or replaced over time;

(d) the professional and personnel resources that will be necessary in order to maintain and manage the property;

(e) the nature of public or private access that is planned for the restricted open space; and

(f) the source of money that will be available for such management, preservation and maintenance on a perpetual basis. The adequacy and feasibility of this conceptual management plan as well as its compatibility should be a factor in the approval or denial of the conditional use application by the Board of Supervisors.

2. The conceptual management plan shall be transformed into a more detailed open space management plan and presented to the Township for review and approval with the preliminary subdivision and land development plan application. 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 Bucks County. 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. The approval of the Board of Supervisors in such regard 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 Part 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.

C. Open Space Performance Guarantees.

1. All landscape improvements, plantings, accessways, and recreational facilities within designated open space areas shall be provided by the developer as applicable. A performance guarantee shall be required to cover costs of all installation of proposed improvements in the open space area. The financial security shall be in the same form and adhere to the same conditions as otherwise required for proposed improvements under Article XV: Completion of Required Improvements, Dedication, Contracts and Security of the Lower Makefield Township Subdivision and Land Development Ordinance [Chapter 178].

2. An appropriate portion of the financial security will be applied by the Township should the developer fail to install landscape improvements, plantings, accessways, and recreational facilities within designated open space areas as required by this Chapter.

**IV. Article XI, Chapter 178, Section 86: “Open Lands” shall be amended to read:**

178-86: Open lands

A. Open lands include the following:

(1) Resource protected lands, including farmland which is part of the a farmland preservation conditional use development.

(2) Open Space as defined in 178-11.

B. Open lands shall be owned and/or maintained by any one of the following entities, provided that there shall be no building, development or use of open lands, except as is consistent with the recorded plans and with the purposes of providing for open lands for recreation, conservation and the aesthetic satisfaction of the residents and/or general public:

(1) The Township of Lower Makefield;

(2) A property owners' association;

(3) The Farmland Preservation Corporation of Lower Makefield;

(4) A conservancy or land trust;

(5) The owner of a nonresidential development or multifamily development created pursuant to an approved subdivision or land development plan;

(6) An individual property owner with preserved open space subject to a recorded declaration of restrictions and/or conservation easement as approved by the Township.

C. Preliminary plan. The applicant of any proposed development in which open lands are required or proposed shall, at the time of submission of the preliminary plan, delineate on the plan those open land areas proposed for any of the uses indicating the usage of each area; what areas, if any, are proposed for public dedication; and what type of ownership and management are planned. The Board of Supervisors, at the time of approval of the preliminary plan, shall indicate those areas it is willing to dedicate to the Township. The Township shall have the option to take title to the open lands, unless it is farmland protected as part of a farmland preservation development, in which case the Farmland Preservation Corporation shall own the land. If the Township does not accept dedication, only one of the ownership methods listed in this section will be approved.

D. Final plan. The applicant of any proposed development in which open lands are proposed and in which any organization other than an individual lot owner is proposed for ownership shall, at the time of submission of the final plan, present documents creating and governing a property owners' organization and containing the declaration of covenants, restrictions, easements, changes and liens deemed necessary to own, manage and maintain the open lands and any associated recreational facilities. All documents pertaining to the conveyance and maintenance of the open lands shall meet the approval of the Township Solicitor as to legal form and effect with recommendations from the Planning Commission and the Park and Recreation Board as to suitability for the proposed use of the lands and be approved by the Board of Supervisors as part of the final plan approval.

E. Recorded plan and deed requirements. The recorded plan and the deeds must indicate that there shall be no additional building, development or use except as is consistent with the purposes of providing for open lands for recreation, conservation and the aesthetic satisfaction of the residents and/or general public. Any building, development or use shall be permitted only upon approval by the Board of Supervisors. The open lands shall be restricted against any future building, development or use except as is consistent with the purpose of the open lands. Such

restriction shall be placed on the linen copy of the plan and restrictive covenants filed and recorded which are satisfactory in form and content to the Township Solicitor.

F. Dedication in fee simple to the Township of Lower Makefield. The municipality may, at the discretion of the Board of Supervisors, accept any portion or portions of the open lands, provided that:

(1) Upon the recommendation of the Lower Makefield Township Park and Recreation Board and Planning Commission it is determined that such land is suitable regarding size, shape, location and access, the Board of Supervisors may determine that such lands will benefit the general public of Lower Makefield Township.

(2) The Township agrees to and has access to maintain such lands.

(3) The titles be conveyed to the Township without cost and without restrictions.

(4) The Board of Supervisors shall adopt a resolution accepting a deed of dedication from the landowner.

G. Dedication in fee simple to any agency deemed appropriate by the Board of Supervisors which shall maintain the property for open land or recreation purposes in perpetuity.

H. By conveying an interest through fee simple or easement to a conservancy, land trust or property owners' association.

(1) The terms of such instrument of conveyance must include provisions suitable to the Township assuming such organization shall guarantee:

(a) The continued use of such land for the intended purpose in perpetuity;

(b) Continuity of proper maintenance for those portions of the open lands requiring maintenance;

(c) Available funds required for such maintenance;

(d) Adequate insurance protection;

(e) Provision for payment of applicable taxes;

(f) Recovery for loss sustained by casualty, condemnation or otherwise;

(g) The right of the Township to enter upon and maintain such property at the expense of the organization or the individual property owners in the event the organization fails to maintain the property; and

(h) Such other covenants and/or easements to fulfill the purposes and intent of this chapter.

(2) The following are prerequisites for such a corporation or association:

(a) It must be established and approved by the Township prior to final plan approval and the liens recorded before any homes or dwelling units are sold or leased or otherwise conveyed.

(b) Membership shall be mandatory for each buyer and/or lessee and any successive buyer and/or lessee. The organization papers shall specify the voting rights per unit. The organizational papers shall set forth the manner and time of transference of the organization and its assets from developer to homeowners.

(c) It shall be responsible for liability insurance, taxes, recovery for loss sustained by casualty, condemnation or otherwise and the maintenance of recreation and other facilities.

(d) Members or beneficiaries shall pay their pro rata share of the costs, and the assessment levied can become a lien on the property, including any maintenance and associated administrative costs incurred by the Township.

(e) It shall be able to adjust the assessment to meet conditions by a stated margin of votes.

(f) Such corporation or association shall not be dissolved nor shall it dispose of the open lands, by sale or otherwise, except to an organization conceived and established and approved by the Township to own and maintain the open lands. The corporation or association must first offer to dedicate the open land to the Township at no cost before any such sale or disposition of the open land.

(3) The dedication of open lands, streets or other lands in common ownership of the corporation, association or other legal entity or the Township shall be absolute and not subject to reversion for possible future use for further development.

I. Inclusion of resource-protected lands in fee-simple lots. Resource-protected open lands may be made part of fee-simple lots if the Township has been offered dedication of these lands and has refused a fee-simple dedication. By conveying the restrictive covenants, conservation easements or other legal device to the Township of Lower Makefield or to a conservancy or land trust, resource-protected land may remain as part of fee-simple lots provided that:

(1) The terms of such instrument of conveyance must include provisions to the Township for guaranteeing:

(a) The continued use of such land for the protection of resources.



(b) Such other conveyance and/or easement that the Township shall deem desirable to fulfill the purposes and intent of this chapter.

(2) The following are prerequisites for the conveyance of easements and deed restrictions:

(a) Such conveyance of the total open lands must transpire prior to any lots or dwelling units being sold, leased or otherwise conveyed.

(b) Each lot owner shall be responsible for liability insurance, taxes, recovery of loss sustained by casualty, condemnation or otherwise and the general maintenance

**V. Article XI, Chapter 178, Section 87: “Open Space Standards” shall be amended to read:**

178-87: Open space standards

**A. General**

(1) Open space shall not include land occupied by commercial, industrial, residential or other nonrecreational uses, land reserved for future parking areas for nonrecreational uses, stormwater management facilities, wastewater management facilities, and/or the yards or lots of dwelling units. Open space shall not include leftover areas, remnants of land remaining after lotting out, or other unusable areas (such as environmentally damaged or unremediated land or landfills).

(2) The location and layout of open space shall be configured to benefit residents adequately and to promote adherence to resource protection standards.

(3) Open space is applicable to tracts of land consisting of ten acres or more land

(a) Not less than twenty-five (25) percent of the total land area shall be designated as open space.

(b) No area designated as open space shall be smaller than twenty thousand (20,000) square feet.

(c) The open space shall be contiguous to lots within the cluster-designed development in conformity with Section 200-75 of the Ordinance.

(d) Consideration shall be given to the arrangement, location and landscaping of the open space so as to address its aesthetic and spatial relationship with the development clusters, the individual lots and the adjacent land uses.

(e) Open space should be arranged in such a manner so as to be within easy access and view of the dwelling units while preserving and enhancing the natural features and renewable resource potential of the site.

(f) Ownership of open space as required by this Chapter shall be held in such form in conformance with Section 200-74.B of the Ordinance.

(g) All open space designated under the Ordinance shall be identified by the installation of a freestanding sign in accordance with Section 200-83.E(12) of the Code.

(4) The applicant shall provide a method of physically delineating private lots from open space areas. Such method shall include shrubbery, trees, markers or other methods acceptable to the Township. All plants shall be native in origin. Evergreens or shrubbery shall be a minimum height of two feet at the time of planting. Deciduous trees shall have a minimum trunk diameter of 2 1/2 inches at a height of six inches above the finished grade at the time of planting.

(5) Open space shall not include parcels with a length-to-width ratio of less than 4:1, or less than 75 feet in width, except for such lands specifically designed as neighborhood greens, playing fields, or trail links.

(6) Open space, except for land set aside for farmland, shall be directly accessible to the largest practicable number of lots within the subdivision. Nonadjoining lots shall be provided with safe and convenient pedestrian access to open space.

(7) Open space shall not include required buffer areas.

(8) Open space shall be linked with trails that are accessible to the residents of the subdivision. Consideration shall also be given to providing for public access on such trails if they are linked to other publicly accessible walkway systems within the Township. Provisions should be made for access to the open space, as required for land management and emergency purposes.

## **VI. General Provisions**

A. All other ordinances, portions of ordinances, or any section of the Code inconsistent with this Ordinance, are hereby repealed.

B. The provisions of this Ordinance are severable. If any section, clause, sentence part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Township of Lower Makefield that this Ordinance would have

been adopted if such illegal, invalid or unconstitutional section, clause, sentence or part of a provision had not been included herein.

C. This Ordinance shall be effective five (5) days after enactment by the Board of Supervisors of Lower Makefield Township, Bucks County, Pennsylvania.

**ENACTED AND ORDAINED BY THE TOWNSHIP OF LOWER MAKEFIELD**

**THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

**BOARD OF SUPERVISORS  
TOWNSHIP OF LOWER MAKEFIELD**

**BY: \_\_\_\_\_  
Chairperson**

**ATTESTED TO:**

\_\_\_\_\_  
**Township Manager**