

CHAPTER 826

ZONING ORDINANCE: CLUSTER SUBDIVISION DESIGN

826-1. Purpose

The purpose of this chapter is to allow developers greater flexibility and variety in the creation of residential subdivisions while preserving significant community and natural resources by allowing developers to cluster the residential units on areas of the project site best suited for development and protecting the remaining land as open space.

Note regarding Cluster Subdivision in the Business and Industrial Overlay: Administrative, Minor, or Major Subdivision of the land are permitted and shall comply with all applicable elements of the Subdivision Control Ordinance and the procedures of this chapter.

826-2. Standards for Design

This chapter acknowledges the right of the property owner to develop land to the gross density indicated on Table 4-1 *Height, Bulk, Area, and Density Requirements for Zoning Districts* in Chapter 804. Residential development may not exceed the gross density of the zoning district except as provided in 826-2 (B). No minimum lot size is required, but all of the other development standards of the residential zoning classification most appropriate to the design density of the cluster subdivision must be met.

(A) **Determining Density or Yield**

- (1) Applicants have the option of estimating the legally permitted density on the basis of mathematical percentages and formulas contained in this ordinance, or on the basis of a yield plan. The yield plan is conceptual in nature and not intended to involve significant engineering costs, but it must be realistic and not show potential house sites or streets in areas that would not be legally permitted in a conventional layout.
- (2) A yield plan consists of conventional lot and street layouts conform to the Subdivision Control Ordinance. A yield plan includes, at minimum, basic topography, location of wetlands, 100-year floodplain, steep slopes, karst areas, and soils subject to slumping, expansion, or erosion as indicated in the Geological Survey for Monroe County prepared by the State of Indiana Department of Natural Resources. The yield plan must be realistic and not show potential house sites or streets in areas that would not be legally permitted in a conventional layout.
- (3) On sites not served by public sewerage or a centralized private sewage treatment facility, soil suitability for individual septic systems shall be documented in a written certified statement by a soil scientist or Monroe County Health Department sanitarian.

(B) **Density Incentives**

(1) To Encourage the Use of Cluster Subdivisions

A density bonus of 15 percent above the permitted gross density for the zoning district is offered to encourage the use of cluster subdivisions. A minimum bonus of one dwelling unit is guaranteed by this provision.

(2) To Endow Maintenance Fund

Monroe County allows a density bonus to generate additional income for the applicant for the express and sole purpose of endowing a permanent fund to offset open space maintenance costs. The amount designated for the Endowment Fund shall be 20 times the amount estimated to be required on a yearly basis to maintain the open space. 75 percent of the net selling price of the density bonus lots shall be donated to the Endowment Fund for the preservation of open space lands within the subdivision. Such estimates shall be prepared by an agency or organization with experience in open space management acceptable to the Plan Commission. This fund shall be transferred by the developer to the designated entity with ownership and maintenance responsibilities (e.g. a homeowners association, a land trust, or the County).

(3) To Encourage Public Access

A density bonus is offered for the dedication of land for public use, including trails, active recreation, municipal spray irrigation fields, etc. The density bonus is calculated on the basis of one dwelling unit per five acres of publicly accessible open space. The decision whether to accept an applicant's offer to dedicate open space for public access shall be at the discretion of the County Commissioners with a recommendation provided by the County Parks and Recreation Board, and shall be guided by the recommendations contained in the County's *Comprehensive Plan for Recreation, Parks, and Green Space*, particularly those sections dealing with trail networks and/or recreation facilities.

(4) To Encourage Low and Moderate Income Housing

A density increase is permitted where the subdivision proposal provides on-site or off-site housing opportunities for low- or moderate-income (LMI) families. For each LMI housing unit provided under this section, one additional building lot or dwelling unit shall be permitted, up to a maximum 15 percent increase in dwelling units. LMI housing is herein defined as units to be sold or rented to families earning 70 to 120 percent of the county median income, adjusted for family size, as determined by the US Department of Housing and Urban Development.

(C) Minimum Percentage of Open Space

The minimum percentage of land that shall be designated as permanent open space, and protected through a conservation easement shall be as specified below:

- (1)** The open space shall comprise a minimum of 50 percent of the buildable area of the tract. The buildable area of the tract is calculated by taking the total tract area and deducting the following kinds of unbuildable land (which

are also required to be deducted when calculating net permitted density for conventional subdivisions as well):

- (a) wetlands and land that is generally inundated (land under ponds, lakes, creeks, etc.).
- (b) all of the floodway and floodway fringe within the 100-year floodplain, as shown on the official FEMA maps.
- (c) land under permanent easement prohibiting future development (including easements).
- (d) land required for street rights-of-way (10 percent of the net tract area).

The above areas shall generally be designated as undivided open space, to facilitate easement monitoring and enforcement, and to promote appropriate management by a single entity according to approved land management standards.

- (2) All undivided open space shall be restricted from further subdivision, except as permitted under Chapter 827, through a permanent conservation easement, in a form acceptable to the County and duly recorded in the County Recorder's Office.
- (3) The required open space may be used for underground drainage fields for individual or community septic systems.
- (4) Stormwater management ponds or basins may be included as part of the minimum required open space, as may land within the rights-of-way for underground pipelines.

(D) Location of Open Space

Two types of land comprise the open space: Primary Conservation Areas and Secondary Conservation Areas. All lands within both Primary and Secondary Conservation Areas are required to be protected by a permanent conservation easement, prohibiting any further development.

- (1) Primary Conservation Areas. This category consists of the unbuildable land described in 826-2 (C)(1).
- (2) Secondary Conservation Areas. Land that would otherwise be buildable under local, state, and federal regulations if not for this ordinance's open space requirement.

Secondary Conservation Areas shall include a 50-foot deep greenway buffer along all waterbodies and watercourses, and wetlands soils classified as "very poorly drained" in the County soil survey prepared by the USDA Soil Conservation Service. A recent soil analysis of the site, prepared by a qualified professional, that offers more accurate information may be used instead of the soil survey.

Secondary Conservation Areas shall be guided by the maps and policies contained in the Plan Strategies and Policies section of the Monroe County Comprehensive Land Use Plan, and shall typically include areas with natural, architectural, or cultural significance.

(3) General Locational Standards

Undivided open space shall be directly accessible to the largest practicable number of lots within a cluster subdivision. Safe and convenient pedestrian access to the open space from all lots not adjoining the open space shall be provided (except in the case of farmland, or other resource areas vulnerable to trampling damage or human disturbance). Where the undivided open space is designated as separate, noncontiguous parcels, no parcel shall consist of less than three (3) acres in area nor have a length-to-width ratio in excess of 4:1, except such areas that are specifically designed as village greens, ballfields, upland buffers to wetlands, waterbodies or watercourses, or trail links.

(4) Interconnected Open Space Network

The protected open spaces that would be open to the public are those lands that have been required to be dedicated to public use, never more than 10 percent of a development parcel's gross acreage, and typically configured in a linear fashion as an element of the County's long-range open space network.

(E) Evaluation Criteria

In evaluating the layout of lots and open space, the following criteria will be considered by the Plan Commission as indicating design appropriate to the site's natural, historic, and cultural features, and meeting the purposes of this ordinance. Diversity and originality in lot layout shall be encouraged to achieve the best possible relationship between development and conservation areas. The Plan Commission shall evaluate proposals to determine whether the proposed Plan:

- (1)** Protects and preserves all floodplains, wetlands, and steep slopes from clearing, grading, filling, or construction (except as may be approved by the County for essential infrastructure or active or passive recreation amenities).
- (2)** Preserves and maintains mature woodlands, existing fields, pastures, meadows, and orchards, and creates sufficient buffer areas to minimize conflicts between residential and agricultural uses.
- (3)** Avoids siting new development on prominent hilltops or ridges by taking advantage of lower topographic features.
- (4)** Protects wildlife habitat areas of species listed as endangered, threatened, or of special concern by the US Environmental Protection Agency, and/or the Indiana Department of Natural Resources.
- (5)** Designs around and preserves sites of historic, archaeological, or cultural value, and their environs, as needed to safeguard the character of the

feature, including but not limited to stone walls, spring houses, barn foundations, cellar holes, earthworks, and burial grounds.

- (6) Protects rural roadside character and improves public safety and vehicular carrying capacity by avoiding development fronting directly onto existing public roads.
- (7) Provides active recreational areas in suitable locations that offer convenient access by residents and adequate screening from nearby zone lots.
- (8) Provides open space that is reasonably contiguous. Fragmentation of open space should be minimized so that resource areas are not divided into numerous small parcels located in various parts of the development, unless the conservation feature is linear or unless such configuration is necessary to connect with other streams or trails. The open space shall generally abut existing or potential open space land on adjacent parcels. Such subdivision open space shall be designed as part of larger, contiguous and integrated greenway systems per the Plan Strategies and Policies section of the Monroe County Comprehensive Land Use Plan.

826-3.

Site Planning Procedures

(A) Elements of the Cluster Subdivision Process

Plans prepared under the Cluster Subdivision Chapter shall meet the provisions, procedures, and design standards of the Monroe County Subdivision Control Ordinance unless otherwise stated.

- (1) Pre-Application Conference. A meeting introducing the applicant and site designer(s) to the County's Zoning and Subdivision Control Ordinances and procedures, to discuss the applicant's objectives in relation to the County's official policies and ordinance requirements.
- (2) Conceptual Plan. As used in this chapter, Conceptual Plan refers to a preliminary sketch plan drawn to scale by a registered land surveyor or registered professional engineer to illustrate a conceptual layout for open space lands, house sites, and street alignments. After receiving the Conceptual Plan, the Planning Staff shall approve it, approve it with conditions, or disapprove it, stating its reasons in writing. Administrative and minor subdivisions prepared with the Business and Industrial Overlay shall be exempt from this requirement.
- (3) Preliminary Plat (or Administrative Subdivision survey drawing for projects within the Business and Industrial Overlay) Submission, in accordance with the procedures and requirements described in the Subdivision Control Ordinance.
- (4) Final Plat Submission, in accordance with the procedures and requirements described in the Subdivision Control Ordinance.

826-4.

Ownership and Maintenance of Open Space

(A) Ownership Standards

Common open space within a development shall be owned, administered, and maintained by any of the following methods, either individually or in combination, and subject to approval by the County. The ultimate owner of the open space shall be responsible for raising all monies required for operations, maintenance, or physical improvements to the open space through annual dues, special assessments, etc.

- (1)** Offer of Dedication. The County shall have the first and last offer of dedication of undivided open space in the event said land is to be conveyed. Dedication shall take the form of a fee simple ownership. The County may, but shall not be required to, accept undivided open space provided: (1) such land is accessible to the residents of the County; (2) there is no cost of acquisition other than any costs incidental to the transfer of ownership such as title insurance; and (3) the County agrees to and has access to maintain such lands. Where the County accepts dedication of common open space that contains improvements, the County may require the posting of financial security to ensure structural integrity of said improvements for a term not to exceed 18 months from the date of acceptance of dedication. The amount of financial security shall not exceed 15 percent of the actual cost of said improvements and installation.
- (2)** Homeowners Association. The undivided open space and associated facilities may be held in common ownership by a homeowners association. The association shall be formed and operated under the following provisions:

 - (a)** The developer shall provide the Plan Commission a description of the association, including its bylaws and methods for maintaining the open space.
 - (b)** Membership in the association is automatic and mandatory for all purchasers of homes therein and their successors.
 - (c)** The association shall be responsible for maintenance of insurance and taxes on undivided open space, enforceable by liens placed by the County on the association.
 - (d)** The homeowners association may lease open space lands to any other qualified person, or corporation, for operation and maintenance of open space lands, but such a lease agreement shall provide:

 - (1)** that the residents of the development shall at all times have access to the open space lands contained therein, except croplands during the growing season;
 - (2)** that the undivided open space to be leased shall be maintained for the purposes set forth in this ordinance; and
 - (3)** 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 County, at the election of the developer and/or homeowners association, as the case may be.

(e) Lease agreements so entered upon shall be recorded with the County Recorder within 30 days of their execution and a copy of the recorded lease shall be filed with the County Planning Department.

(3) Condominiums

The undivided open space and associated facilities may be controlled through the use of a condominium agreement, approved by the County.

(4) Dedication of Easements

The County may accept easements for public use of any portion or portions of undivided open space land, title of which is to remain in ownership by condominium or homeowners association, provided: (1) such land is accessible to County residents; (2) there is no cost of acquisition other than any costs incidental to the transfer of ownership, such as title insurance; and (3) a satisfactory maintenance agreement is reached between the developer, condominium or homeowners association, and the County.

(5) Transfer of Easements to a Private Conservation Organization

An owner may transfer easements to a private, nonprofit organization, among whose purpose it is to conserve open space and/or natural resources, provided that:

- (a) the organization has demonstrated a perpetual existence;
- (b) the conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions; and
- (c) a maintenance agreement acceptable to the homeowners association board is entered into by the developer and the organization.

(B) Maintenance Standards

- (1) In the event that the association or any successor organization shall, at any time after establishment of a development containing undivided open space, fail to maintain the undivided open space in reasonable order and condition in accordance with the development plan, the County may serve written notice upon the owner of record, setting forth the manner in which the owner of record has failed to maintain the undivided open space in reasonable condition.
- (2) Failure to adequately maintain the undivided open space in reasonable order and condition constitutes a violation of this ordinance. The County 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 violation(s) within 20 days.
- (3) Should any bill(s) for maintenance of undivided open space by the County be unpaid by November 1 of each year, a late fee of 15 percent shall be

added to such bills and a lien shall be filed against the premises in the same manner as other municipal claims.

[end of chapter]