



Town of Milan



Establishment of the Rural Space Overlay District

Local Law No. _ of the year 2006

A local law amending Chapter 200 of the Code of the Town of Milan entitled
ZONING

Be it enacted by the Town Board of the Town of Milan:

SECTION 1. LEGISLATIVE INTENT

This Local Law shall amend the Town of Milan Zoning Law to establish the Rural Space Overlay District. The 2006 *Milan Comprehensive Plan* identifies priority Town goals of maintaining rural character and protecting open space and environmental resources. These goals were identified through a large number of public outreach efforts and information gathering sessions since 2001 and which are documented in the *Comprehensive Plan* and its appendices. The Rural Space Overlay District (RSO) is identified as the primary land use tool to achieve these goals. The RSO is designed to further the goals of the *Comprehensive Plan* across the entire Town and this will alter the development possibilities for the larger parcels in Town.

Subdivisions developed in traditional suburban zoning districts typical of this region and conforming to the associated bulk and area requirements create neighborhoods that epitomize sprawl. These traditional large lot subdivisions (3-5 acre) are contrary to Milan's goals of rural character and environmental protection. The RSO is an evolutionary departure from the conventional residential neighborhood and seeks to establish a new type of neighborhood that engenders the qualities of rural character and environmental protection wanted by the Town's residents.

The *Comprehensive Plan* examined density in terms of persons per square mile with the goal of keeping future density below 150 persons per square mile – the benchmark for a rural community in New York State. Under existing zoning, the analysis concluded the density would be 260 persons per square mile, which exceeds the number required to meet the desired goal of keeping Milan rural. By utilizing the RSO, the analysis concluded the density would be 160 persons per square mile and thus Milan can accommodate future growth and meet the goals of the *Comprehensive Plan*.

SECTION 2. SEVERABILITY

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law, which can be given effect within such part or parts.

SECTION 3.AMENDMENTS TO THE ZONING LAW

Section 200-5 of the Zoning Law, is hereby amended to delete the following definition:

CLUSTER DEVELOPMENT - A form of development for residential subdivisions that permits a reduction in lot area and bulk requirements, provided that there is no increase in the number of lots permitted under a conventional subdivision and the resultant land area is devoted to open space.

OPEN SPACE:

A. Any parcel or area of land and/or water essentially unimproved and set aside, dedicated or reserved for the public or private use or enjoyment.

B. Land containing improvements in support of agriculture.

Section 200-5 of the Zoning Law, is hereby amended to add the following new definitions:

CLUSTER DEVELOPMENT - A development approach for residential subdivisions in which residential building lots may be reduced in size and buildings sited closer together, usually grouped or clustered, provided that the total development density does not exceed that which could be constructed on the site under conventional zoning and subdivision regulations. Cluster development is intended to encourage flexibility in the design and development of land, as well as more economical installation of roads and utilities. The additional land that remains undeveloped is then permanently preserved as conservation space.

CONSERVATION SPACE - Any unimproved open space parcel of land or area of land and/or water permanently protected by conservation easement from further development, use or subdivision.

CONVENTIONAL YIELD PLAN – is a fully engineered yield subdivision plan that meets all of the requirements of the Zoning Law, Subdivision Regulations, and Street Specifications shall be used to determine lot yield. The yield plan shall be designed so that no waivers or variances from the Town Code shall be necessary. Fully engineered yield subdivision plans shall be realistic and must not show potential house sites or streets in areas that would not ordinarily be legally permitted in a conventional subdivision. Yield plans show lots, streets, rights-of-way, drainage facilities and other pertinent features of conventional subdivision development.

CONVENTIONAL YIELD COUNT: The maximum number of permissible lots which could be subdivided from a parcel using conventional subdivision rules as determined by the conventional yield plan.

HABITAT ASSESSMENT – A habitat assessment is a site specific description of the existing habitats; their quality, conditions and extent. The habitat assessment

identifies species of plants and animals including common, invasive and those of conservation concern including Federal and State listed species. The habitat assessment is prepared in accordance with the Town of Milan Habitat Assessment guidelines.

LOT RECORD BLOCK – information recorded on the final plat of any subdivision noting the zoning district(s), any overlay district(s), the number of future subdivisions remaining and the number of potential lots for Rural Space Subdivisions, along with any restrictions or conditions regarding the current or future subdivision actions.

OPEN SPACE - Any parcel or area of land and/or water essentially unimproved and set aside, dedicated or reserved for the public or private use or enjoyment, which may or may not include land containing improvements in support of agriculture.

OPEN SPACE, IMPROVED – Any parcel of land or area of land and/or water improved for purposes of active community recreation including but not limited to ballfields, playgrounds, golf courses and operated for the public or private use and enjoyment as a noncommercial not-for-profit which is restricted from further development, use, or subdivision.

OPEN SPACE, UNIMPROVED – Any parcel of land or area of land and/or water where the primary purpose is to preserve the area in a natural state which is restricted from further development, use, or subdivision which may be available for the public or private use and enjoyment. Limited passive recreation uses including but not limited to hiking trails, nature preserves, and scenic overlooks may be determined appropriate as part of a land development approval.

OPEN SPACE, PROTECTED - Any parcel of land or area of land and/or water permanently protected by conservation easement from further development, use or subdivision. Protected open space can be either improved or unimproved.

OPEN SPACE, UNPROTECTED - Any unoccupied parcel of land or area of land and/or water unobstructed and open from the ground upward to the sky, including setbacks and lawn areas, which is not prohibited from further development, use or subdivision.

ORIGINAL PARCEL – A rural space parcel before it has undergone a subdivision action.

RURAL SPACE PARCEL – parcels of twenty (20) acres or greater at the effective date of this regulation.

RURAL SPACE PROTECTION PLAN – a subdivision plan for a Rural Space Parcel which depicts the full buildout potential of the parcel based upon the open space subdivision design process.

RURAL SPACE SUBDIVISION – A rural space subdivision means a subdivision plat or plats of a Rural Space Parcel, approved pursuant to the Town of Milan Zoning

Law, § 177-27.1 of the Subdivision Regulations and, as applicable, § 278 of New York State Town Law, in which the area and bulk regulations are modified to provide an alternative design and layout in order to preserve the natural and scenic qualities of open lands.

SUCCESSOR LOT – The lot(s) that results from the subdivision of an Original Parcel. Successor lots shall be allowed one subdivision action.

THEORETICAL YIELD –the theoretical maximum number of lots for a subdivision application based upon a mathematical formula which divides the acreage of the property by the permitted underlying density for the applicable zoning district or overlay district but which does not take into account specific site conditions such as soils, slopes or wetlands.

Section 200-6 of the Zoning Law, is hereby amended to add the following language to the list of districts:

Rural Space Overlay

RSO

Section 200-6.1 of the Zoning Law, is hereby amended to add the following language:

G. RSO. The purpose of the Rural Space Overlay District is to establish rural residential densities on large parcels of 20 acres or more outside of designated hamlet, highway business and land conservation districts, by requiring rural space subdivision development of such parcels in accordance with the cluster development provisions of § 278 of New York State Town Law.

Section 200-10 D(2) of the Zoning Law, is hereby amended by deleting the following language:

In all districts where residential uses are permitted, a lot may only be improved for residential use in accordance with the minimum lot area and related bulk regulations as set forth in this chapter, except as otherwise provided in the aforementioned subsection regarding lots of record or as provided in § 200-22 regarding cluster development.

Section 200-10 D(2) of the Zoning Law, is hereby amended by adding the following language:

In all districts where residential uses are permitted, a lot may only be improved for residential use in accordance with the minimum lot area and related bulk regulations as set forth in this chapter, except as otherwise provided in the aforementioned subsection regarding lots of record or as provided in § 200-13 regarding the Rural Space Overlay District or in § 200-22 regarding cluster development.

Section 200-11 of the Zoning Law, is hereby amended to add the following language:

G. The uses permitted in the Rural Space Overlay (RSO) District are the same uses as permitted in the underlying zoning districts, Very Low Density Agricultural (A5A) Agricultural District (A3A) and Low Density Residential (R2A) and are set forth in Table A, Schedule of Use Regulations. The standards and procedures for the RSO District are set forth in § 200-13 of this chapter.

The Zoning Law is hereby amended to add a new section § 200-13 Rural Space Overlay District as follows:

- A. Purposes. The intent of the Rural Space Overlay District is to protect and promote public health, safety, comfort, convenience, economy, aesthetics and general welfare and to implement the recommendations of the Town of Milan *Comprehensive Plan*. In conformance with the Town's *Comprehensive Plan*, the Rural Space Overlay District establishes rural residential densities on large parcels of 20 acres or more outside of designated hamlet, highway business and land conservation districts, by requiring rural space subdivision development of such parcels in accordance with the cluster development provisions of § 278 of New York State Town Law, and for the following additional purposes.
- (1) To maintain and protect the rural character of the Town;
 - (2) To preserve and enhance the scenic and historic qualities of the Town;
 - (3) To conserve important open lands, including those areas containing unique and sensitive natural features such as steep slopes, floodplains, stream corridors, and wetlands by permanently setting them aside from development;
 - (4) To protect areas of the Town with productive agricultural soils for continued or future agricultural use, by conserving blocks of land large enough to allow for efficient farm operations;
 - (5) To enable habitat protection by furthering the retention of large contiguous natural areas;
 - (6) To allow native plants and wildlife to survive and thrive, especially endangered, threatened and special concern species, by retaining and preserving biodiversity and natural habitats;
 - (7) To promote and support implementation of the Dutchess County Master Plan known as "Directions" and the Greenway Compact program guidelines known as "Greenway Connections."
 - (8) To balance growth by preventing sprawl, which will result in suburban style development providing a poor mix of homes, jobs and services, limited activities centers and limited options for walking and biking.
- B. Authorization. Authorization is hereby granted to the Planning Board to modify applicable provisions of this Zoning Law as to lot size, lot width, lot depth, yards, and other applicable area and bulk requirements of the Zoning Law, the

Subdivision Regulations and Street Specifications (in consultation with the Highway Superintendent), subject to the purposes, standards and procedures contained herein, so as to accommodate residential cluster subdivision development, also known herein as Rural Space Subdivisions.

- C. Applicability. All parcels that are twenty (20) acres and larger and in existence on the effective date of this Zoning Law (Local Law No. ___ of 2006) within the R2A, A3A, and A5A zoning districts shall be known as Rural Space Parcels and are hereby designated within the Rural Space Overlay District (RSO), as shown on the RSO District Map, subject to this section and to the regulations specified for the underlying district in which it is located.
- D. Density. The permitted number of dwelling units shall not exceed the number of units that, in the Planning Board's judgment, would be permitted as determined in the conventional yield plan based on the bulk requirements of the underlying zoning district except that the minimum lot area shall be ten (10) acres.
- E. Conflict. In case of any conflict between the provisions of this section and the requirements of the underlying district, other Sections of the Zoning Law, the Town Road Specifications, or the Subdivision Regulations, this Section shall control.
- F. Standards. All subdivisions of Rural Space Parcels shall comply with the provisions of § 177-27.1 Rural Space Subdivision Requirements.
- G. Open Space Standards. A Rural Space Subdivision within the RSO shall preserve at least sixty percent (60%) of the tract's acreage as conservation space. Such conservation space lands shall not include parking areas or roads. The following standards will be applied to conservation space within a cluster subdivision:
 - (1) The permanent preservation of such conservation space shall be in accordance with the provisions of § 200-39 of the Zoning Law and shall be suitable in form and content to the Planning Board and the Town Board.
 - (2) The conservation space may be placed on a separate lot, may be incorporated into the residential lots or it may be a combination of both. If the subdivision produces a lot containing only conservation space, then it shall not count against the conventional yield count.
 - (3) Conservation space shall be designed so that it is easily accessible and desirable for all residents of the subdivision. To the extent practicable, every homeowner shall have direct access to the conservation space.
 - (4) Wherever possible, especially when the Town Comprehensive Plan or other pertinent plans specify, conservation space resulting from a cluster subdivision shall be connected and integral to existing public parks, recreation areas or trail systems.
 - (5) The Planning Board will determine the area(s) for conservation easement based upon the four-step design process in consultation with the Town

Conservation Advisory Committee, the Town Planner and other environmental specialists as deemed necessary.

- a) The determination will be based upon information collected during a site visit, from data in the Habitat Assessment report, from the identification of primary and secondary conservation areas as part of the four-step design process and other information as deemed necessary to identify the areas with conservation values.
 - b) In evaluating the conservation easement area(s), the Planning Board may require the applicant to restore, improve or otherwise protect conservation easement areas as a condition of subdivision approval.
- (6) Where it exists, prime or active agricultural land shall be preserved.
- (7) Any conservation space land shall be shown on the subdivision plat and appropriately labeled to indicate that such land is not to be further subdivided or built upon, except as provided for in the conservation easement(s). There shall be a note on the subdivision plat that the conservation space is protected by a conservation easement and that a conservation easement agreement shall be filed with the deed for each lot.
- (8) Where the Planning Board finds that compliance with the minimum open standards herein would cause extraordinary difficulties due to exceptional conditions of topography, access, location, shape, or other physical features of the site, the minimum requirements of these regulations may be modified in order to mitigate the difficulty, provided that the public interest is protected, the subdivision plan is in keeping with the general spirit and intent of these regulations and full compliance with SEQR is still provided. Modifications shall be considered upon specific request by an applicant or by motion of a Planning Board member and by resolution of the Planning Board.
- (9) All requests for modification to the open space standards made by the applicant shall be submitted in writing, shall be expressly set forth in the minutes of the Board, shall be noted on the final plat and shall include the following:
- a) Document existing conditions;
 - b) Describe the applicant's intentions;
 - c) Cite the specific sections of the regulations or guidelines for which relief is requested and the proposal for relief;
 - d) Describe how the proposal relates to the purposes of the Rural Space Overlay District as outlined in § 200-13 of the Town's Zoning Law.
- (10) The Planning Board, in reviewing a request for modification to the open space standards, will take into account the proposal against the purposes of the Rural Space Overlay Zone to determine whether granting a modification will result in an outcome which furthers the purposes of the Rural Space Overlay Zone as compared to the outcome which would be achieved if strict

adherence to the Rural Space Overlay requirements was required. In deciding whether to approve a modification, the Planning Board shall determine the minimum modification needed to provide the relief requested.

- (11) No such modification may be granted if it would have the effect of nullifying the intent and purpose of the Zoning Code, the *Comprehensive Plan* or the Subdivision Regulations.
- (12) The Planning Board may, in granting modifications to these open space standards or guidelines herein, incorporate such reasonable conditions as will, in its judgment, substantially secure the objectives of the requirements so modified.

Section 200-15 of the Zoning Law, is hereby amended to add the following language:

H. Rural Space Parcels with Legal Nonconforming Uses. Legal nonconforming uses existing in the RSO District as if the effective date of this Zoning Law (Local Law No. ___ of 2006) shall be subject to § 200-15 of this chapter. The Planning Board reserves the right to eliminate a nonconforming use as a condition of subdivision approval as follows:

- (1) The Planning Board shall consider the following criteria in the review of a subdivision application in order to determine whether the nonconforming use will remain or be eliminated:
 - Whether it is feasible to bring the use into conformance with the requirements of the Zoning Law or minimize the nonconformity.
 - Whether variances are required.
 - If it is not feasible to bring the use into conformance with the requirements of the Zoning Law or to minimize the nonconformity, whether the subdivision plan generally satisfy the goals of the *Comprehensive Plan* and the purposes of the RSO?
- (2) If the nonconforming use is to remain following subdivision approval, the nonconforming use shall be on a separate lot conforming to the minimum area and bulk regulations of the underlying zoning district.
- (3) The density calculation and future subdivision development shall be determined as described in § 177-27.1D(1) for Single-Family dwellings.
- (4) If the legal non-conforming use requires a site plan according to Table A, Schedule of Use Regulations and a site plan has been approved by the Town of Milan Planning Board, then the approved site plan shall be reviewed and any required changes shall become conditions of the final plat. If no site plan approval or site plan exists, then a site plan application shall be filed in accordance with Article IX of the Zoning Law and such site plan shall be reviewed and approved by the Planning Board prior to final plat approval.

Section 200-22 of the Zoning Law, is hereby amended to delete the following language:

B. Authority. Authorization is hereby granted to the Planning Board, Town of Milan, pursuant to § 281 of New York State Town Law, to vary the zoning requirements as to lot size, lot width, yard and other bulk requirements in connection with a proposed subdivision plat, subject to the standards and procedures contained herein. Such variations shall result in a cluster subdivision and may be applied in any residential zoning district. The Planning Board is further authorized under § 281 of New York State Town Law to require the use of the cluster concept when it finds that the intention of this chapter and the Subdivision Regulations²⁵ to preserve significant open space resources and protect important natural resources will be accomplished. The Planning Board may require the use of the cluster concept when one or more of the following conditions exists:

- (1) Important ground or surface waters, wetlands, floodplains, steep slopes and unique or locally important natural or historical areas exist on the parcel.
- (2) The number of new roads or driveways obtaining access from existing roads will be reduced.
- (3) Agricultural soils of regional or local importance exist on the parcel.
- (4) An active agricultural operation or crop land exists on the parcel.
- (5) Preservation of important views or community open space will be ensured.
- (6) The land to be developed is contiguous to a recreational area(s), parkland or permanently protected open space or has the potential to be converted to such uses.
- (7) The specific goals and policy recommendations of the Master Plan will be accomplished.
- (8) Significant environmental impacts identified through the State Environmental Quality Review Act (SEQR) may be mitigated.

Section 200-22 of the Zoning Law, is hereby amended to add the following language:

B. Authority. Authorization is hereby granted to the Planning Board, Town of Milan, pursuant to § 278 of New York State Town Law, to vary the zoning requirements as to lot size, lot width, yard and other bulk requirements in connection with a proposed subdivision plat, subject to the standards and procedures contained herein. Such variations shall result in a cluster subdivision and may be applied in any residential zoning district. The Planning Board is further authorized under § 278 of New York State Town Law to require the use of the cluster concept when it finds that the intention

²⁵Editor's Note: See Ch. 177, Subdivision of Land.

of this chapter and the Subdivision Regulations²⁵ to preserve significant open space resources and protect important natural resources will be accomplished. The Planning Board may require the use of the cluster concept when one or more of the following conditions exists:

- (1) Important ground or surface waters, wetlands, floodplains, steep slopes and unique or locally important natural or historical areas exist on the parcel.
- (2) The number of new roads or driveways obtaining access from existing roads will be reduced.
- (3) Agricultural soils of regional or local importance exist on the parcel.
- (4) An active agricultural operation or crop land exists on the parcel.
- (5) Preservation of important views or community open space will be ensured.
- (6) The land to be developed is contiguous to a recreational area(s), parkland or protected open space or has the potential to be converted to such uses.
- (7) The specific goals and policy recommendations of the Comprehensive Plan will be accomplished.
- (8) Significant environmental impacts identified through the State Environmental Quality Review Act (SEQR) may be mitigated.

Section 200-22 of the Zoning Law, is hereby amended to delete the following language:

C. Lot count. The permitted number of dwelling units may not exceed the number which could be permitted, taking into consideration natural and man-made constraints, if the parcel(s) were subdivided into lots conforming to all the normally applicable requirements of this chapter, the Land Subdivision Regulations³⁵, Dutchess County Department of Health regulations, and all other applicable laws and standards. The basis for this determination will be a conventional subdivision sketch layout for the subject parcel(s) and any other information as may be required by the Planning Board.

Section 200-22 of the Zoning Law, is hereby amended to add the following language:

²⁵ Editor's Note: See Ch. 177, Subdivision of Land.

³⁵ Editor's Note: See Ch. 177, Subdivision of Land.

C. Lot count. The permitted number of dwelling units shall be the conventional yield count based upon acceptance of a conventional yield plan by the Planning Board.

Section 200-22D. of the Zoning Law, is hereby amended to add the following language:

- (1) All cluster subdivision plans shall include documentation of how the four-step design process as described in § 177-27.2 Open space Subdivision Design Process was applied to the project.

Section 200-22 of the Zoning Law, is hereby amended to delete the following language:

F. Additional standards. In addition to the bulk regulations above, the Planning Board shall ensure that:

- (1) All dwelling units shall be owned separately by individual owners and that common property is properly and legally governed through a homeowners' association complying in all ways with the requirements of the New York State Attorney General's Office or other appropriate agreement(s).

- (2) Common driveway access may be provided to the extent practicable and that maintenance is provided through a legally binding agreement. No more than four units may take access from a single common driveway.

- (3) A pedestrian circulation and/or trail system is designed and installed sufficient for the needs of residents and, where appropriate, is made accessible to nonresidents.

- (4) Water supply, sewage disposal and stormwater management facilities shall be designed by a licensed engineer in accordance with the requirements of the Town of Milan and the Dutchess County Health Department, which shall not connect more than four dwelling units to the water supply, sewage disposal and stormwater management facilities. Underground facilities may be located in areas to be set aside as permanent open space.

- (5) At least 40% of the total area being subdivided shall be reserved as permanently protected open space. There shall be no open space land within a cluster subdivision that is not either governed by an easement or part of a parcel held privately by an individual homeowner. The following standards will be applied to open space within a cluster subdivision:

- (a) Any open space shall be integral to the overall design of the project.

- (b) Open space shall be designed so that it is easily accessible and desirable for all residents of the subdivision. To the extent practicable, every homeowner shall have direct access to the open space.
- (c) Wherever possible, especially when the Town Comprehensive Plan or other pertinent plans specify, open space resulting from a cluster subdivision shall be connected and integral to existing public parks, recreation areas or trail systems.
- (d) Areas of natural significance, including floodplains, wetlands, important plant and animal habitats and slopes of 15% and greater, shall be incorporated to the greatest extent practicable in open space parcels.
- (e) Where it exists, prime or active agricultural land shall be preserved.
- (f) When the Planning Board determines that it is appropriate, a portion of open space shall be set aside for active recreation purposes, such as ballfields, equestrian facilities or playgrounds.
- (g) Open space land may be owned in common by a homeowners' association, held in private ownership or dedicated to the Town. Where open space land is to be dedicated to the Town, the Town Board shall decide whether or not to accept such dedication. All open space land must be protected by perpetual conservation easement from future development. The Planning Board shall assure that proper provision has been made for ownership and maintenance of open space land, roadways and other improvements. If owned by a homeowners' association, ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against all individual owners in the association and the dwelling units they each own. Ongoing maintenance standards shall be established, enforceable by the Town or qualified not-for-profit organization, against an owner of open space land, as a condition of subdivision approval, to assure that the open space land does not create a hazard to public health, safety and welfare. The Town shall not be responsible to enforce the maintenance of an easement not held by the Town.
- (h) A perpetual easement limiting use of open space land to agriculture, managed forest, recreation or permanent open space, and prohibiting residential, institutional, industrial or commercial use, shall be granted to the Town, with the approval of the Town Board or to a qualified not-for-profit conservation organization acceptable to the Planning Board. Such conservation easement shall be reviewed and approved by the Planning Board and shall be required as a condition of final plat approval. The conservation easement shall be recorded in the Dutchess County Clerk's Office simultaneously with the filing of the cluster subdivision plat.

- (i) Any open space land shall be shown on the subdivision plat and appropriately labeled to indicate that such land is not to be further subdivided or built upon, except as provided for in the conservation easement(s).

Section 200-22 of the Zoning Law, is hereby amended to add the following language:

F. Additional standards. In addition to the bulk regulations above, the Planning Board shall ensure that:

(1) All dwelling units shall be owned separately by individual owners and that common property is properly and legally governed through a homeowners' association complying in all ways with the requirements of the New York State Attorney General's Office or other appropriate agreement(s).

(2) Common driveway access may be provided to the extent practicable and that maintenance is provided through a legally binding agreement. No more than four units may take access from a single common driveway.

(3) A pedestrian circulation and/or trail system is designed and installed sufficient for the needs of residents and, where appropriate, is made accessible to nonresidents.

(4) Water supply, sewage disposal and stormwater management facilities shall be designed by a licensed engineer in accordance with the requirements of the Town of Milan and the Dutchess County Health Department, which shall not connect more than four dwelling units to the water supply, sewage disposal and stormwater management facilities. Underground facilities may be located in areas to be set aside as conservation space.

(5) Cluster subdivisions outside of the RSO, shall preserve at least forty percent (40%) of the tract's acreage as conservation space. Such conservation space lands shall not include parking areas or roads. The following standards will be applied to conservation space within a cluster subdivision:

(a) The permanent preservation of such conservation space shall be in accordance with the provisions of § 200-39 of the Zoning Law and shall be suitable in form and content to the Planning Board and the Town Board.

(b) The conservation space may be placed on a separate lot, may be incorporated into the residential lots or it may be a combination of both. If the subdivision produces a lot containing only conservation space, then it shall not count against the conventional yield count..

(c) Conservation space shall be designed so that it is easily accessible and desirable for all residents of the subdivision. To the

extent practicable, every homeowner shall have direct access to the conservation space.

(d) Wherever possible, especially when the Town Comprehensive Plan or other pertinent plans specify, conservation space resulting from a cluster subdivision shall be connected and integral to existing public parks, recreation areas or trail systems.

(e) The Planning Board will determine the area(s) for conservation easement based upon the four-step design process in consultation with the Town Conservation Advisory Committee, the Town Planner and other environmental specialists as deemed necessary.

[1] The determination will be based upon information collected during a site visit, from data in the Habitat Assessment report, from the identification of primary and secondary conservation areas as part of the four-step design process and other information as deemed necessary to identify the areas with conservation values.

[2] In evaluating the conservation easement area(s), the Planning Board may require the applicant to restore, improve or otherwise protect conservation easement areas as a condition of subdivision approval.

(f) Where it exists, prime or active agricultural land shall be preserved.

(g) Any conservation space land shall be shown on the subdivision plat and appropriately labeled to indicate that such land is not to be further subdivided or built upon, except as provided for in the conservation easement(s). There shall be a note on the subdivision plat that the conservation space is protected by a conservation easement and that a conservation easement agreement shall be filed with the deed for each lot.

(h) Where the Planning Board finds that compliance with the minimum open standards herein would cause extraordinary difficulties due to exceptional conditions of topography, access, location, shape, or other physical features of the site, the minimum requirements of these regulations may be modified in order to mitigate the difficulty, provided that the public interest is protected, the subdivision plan is in keeping with the general spirit and intent of these regulations and full compliance with SEQR is still provided. Modifications shall be considered upon specific request by an applicant or by motion of a Planning Board member and by resolution of the Planning Board.

(i) All requests for modification to the open space standards made by the applicant shall be submitted in writing, shall be expressly set forth in the minutes of the Board, shall be noted on the final plat and shall include the following:

i. Document existing conditions;

- ii. Describe the applicant's intentions;
 - iii. Cite the specific sections of the regulations or guidelines for which relief is requested and the proposal for relief;
 - iv. Describe how the proposal relates to the purposes of the Rural Space Overlay District as outlined in § 200-13 of the Town's Zoning Law.
- (j) The Planning Board, in reviewing a request for modification to the open space standards, will take into account the proposal against the purposes of the Rural Space Overlay Zone to determine whether granting a modification will result in an outcome which furthers the purposes of the Rural Space Overlay Zone as compared to the outcome which would be achieved if strict adherence to the Rural Space Overlay requirements was required. In deciding whether to approve a modification, the Planning Board shall determine the minimum modification needed to provide the relief requested.
- (k) No such modification may be granted if it would have the effect of nullifying the intent and purpose of the Zoning Code, the *Comprehensive Plan* or the Subdivision Regulations.
- (l) The Planning Board may, in granting modifications to these open space standards or guidelines herein, incorporate such reasonable conditions as will, in its judgment, substantially secure the objectives of the requirements so modified.

Section 200-39 of the Zoning Law, is hereby amended to add the following language:

A.(1)(c) The applicant is responsible for all fees and costs incurred in association with the determination of easement area, establishment, filing and donation of the conservation easement.

SECTION 4.SUPERSESSION

The Town Board hereby declares its legislative intent to supersede any provision of any local law, rule, or regulation or provision of the Town Law inconsistent with this Local Law. The Town Law provisions intended to be superseded include all of Article 16 of Town Law, §§ 261 to 285 inclusive and any other provision of law that the Town may supersede pursuant to the Municipal Home Rule Law and the Constitution of the State of New York. The courts are directed to take notice of this legislative intent and apply it in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this Local Law and superseded such inconsistent provision had it been apparent.

SECTION 5.EFFECTIVE DATE

This local law shall take effect immediately after it is filed with the Secretary of State as provided in section twenty-seven of the Municipal Home Rule Law.