

CHARTER TOWNSHIP OF LOWELL
COUNTY OF KENT, MICHIGAN

At a regular meeting of the Township Board of the Charter Township of Lowell, Kent County, Michigan, held in the Township Hall, 2910 Alden Nash Avenue, within the Township, on the 22nd day of February, 2005, at 7:00 p.m.

PRESENT: Members: Timpson, Regan, Stougaard, Blough, Bonn, Huver

ABSENT: Members: Den Houter

The following ordinance was offered by Member Bough and supported by Member Regan.

ORDINANCE NO. 01-2005

AN ORDINANCE to amend the Zoning Ordinance of the Charter Township of Lowell

**[Cumberland Ridge Open Space
Planned Unit Development]**

THE CHARTER TOWNSHIP OF LOWELL ORDAINS:

Section 1. *Planned Unit Development.* The Zoning Ordinance of the Charter Township of Lowell is hereby amended by the amendment of Section 3.1 thereof, the Zoning Map, so as to rezone the following described lands from the R-1 Rural Low Density Residential District to the OS-PUD Open Space Planned Unit Development District, in accordance with the Final Development Plan of the Cumberland Ridge Planned Unit Development, subject to all of the terms and conditions of this ordinance:

That part of the Southeast quarter of the Northeast quarter of Section 5, Town 6 North, Range 9 West, described as commencing at the East quarter corner, described as: Beginning at the East one-quarter corner of said Section 5; thence North 89°58'22" West 833.03 feet; thence 00°44'50" West 300.00 feet; thence North 89°58'22" West 500.00 feet; thence North 00°44'40" West 993.45 feet along the East line of Eastgate Woods No. 3; thence South 89°57'07" East 918.70 feet along the North line of the Southeast one-quarter of the Northwest fractional one-quarter; thence South 15°54'15" East 345.06 feet along the centerline of Cumberland Drive; thence Southeasterly 320.56 feet along said centerline on a 100.00 foot radius curve to the left, the chord of which bears South 25°05'15" East 319.19 feet; thence South

34°16'15" East 215.55 feet along said centerline; thence Southeasterly 203.02 feet along said centerline on a 370.00 foot radius curve to the right, the long chord of which bears South 18°33'06" East 200.48 feet; thence South 02°49'58" East 334.48 feet along said centerline to the point of beginning, Lowell Township, Kent County Michigan,

Section 2. ***Conditions on the Planned Unit Development.*** The rezoning of the above-described lands to the OS-PUD Open Space Planned Unit Development District, in accordance with the Final Development Plan of the Cumberland Ridge Planned Unit Development ("the Development") is expressly subject to all of the following terms and conditions:

(1) ***Development Plan.*** The Cumberland Ridge Planned Unit Development shall comply in all respects with the Final Development Plan of the Development (the "Plan") with a last revision date of 01-25-2005, except where the Plan has been changed, revised or modified by this Ordinance. In such cases, the provisions of this ordinance shall control.

(2) ***Land Uses.*** The Development shall be constructed and used only for attached two-family and detached single-family dwellings and permitted residential accessory uses. The dwellings and other elements of the Development will be established, conveyed and owned on a condominium basis, in accordance with the Michigan Condominium Act.

(3) ***Unit Areas; Buildings.*** The Development shall consist of (A) 49 residential buildings that consist of two one-family attached dwellings each and (B) two single-family detached dwellings, together comprising a total of 100 dwelling units in the Development; provided, however, that the applicant may vary the above-stated number of two-family attached dwellings and may vary the above-stated number of one-family detached dwellings, but in no event shall the total number of dwellings in the Development exceed 100. Each two-family residential building and each single-family detached dwelling shall be located approximately as shown on the Plan, with the actual location of each building to be determined so as to preserve natural topography as much as possible, to minimize the cutting and filling of land and the potential for soil erosion.

Buildings 1, 2, 3 and 4, as shown on the Plan, shall be single-story buildings.

The following minimum yard setback requirements shall be complied with: Front yard setback – 20 feet from the edge of the street pavement; rear yard setback – 25 feet; and a minimum of 20 feet of space between buildings. No building shall exceed the height of 35 feet as set forth in the Township building code. All buildings shall be built upon a full basement and foundation. Each dwelling unit located in a building containing two attached dwelling units shall have a minimum of 900 square feet of useable floor area; each single-family detached dwelling shall have a minimum of 900 square feet of useable floor area, but if either or both of such detached dwellings are two-story dwellings, then there shall be at least 600 square feet of useable floor area on the main floor, but the total of usable floor area for the entire two-story dwelling shall be not less than 900 square feet.

(4) **Site Access.** Ingress to and egress from the Development shall be by means of a private streets extending off Cumberland Drive. The intersection of the private street at the entrance to the Development, with Cumberland Drive, shall comply with the Township private street requirements, except as otherwise provided in this ordinance. The location and configuration of the entrance off Cumberland Drive shall be subject to the approval of the Kent County Road Commission.

(5) **Streets, Driveways and Walkways.**

(a) The streets in the Development shall be located as shown on the Plan and shall be constructed in compliance with the Township private street requirements, except as stated in sub-paragraph (c) of this subsection (5). A street profile shall be added to the Plan. The private street, and the construction drawings therefor, shall be subject to the approval of the Township Engineer.

(b) The width of the entrance street, shall be at least 61 feet, consisting of two 18-foot wide driving lanes separated by a boulevard of 25 feet in width.

(c) The street layout, design and locations as shown on the Plan are hereby approved, subject to the terms of this ordinance, and accordingly, the Township Board hereby modifies the private street requirements specified in Section 4.5 of the zoning ordinance, to the extent necessary to authorize the streets as shown on the Plan. Such modification of private street requirements is approved under the terms of Section 4.5.6G and Section 3.4.5D of the zoning ordinance.

(d) The streets in the Development shall have road names approved by the Kent County Road Commission.

(e) Sidewalks shall be constructed and maintained along one side of all of the streets in the Development, as shown on the Plan.

(f) The total length of the streets in the Development, approximately 1,100 feet, is hereby approved. The maximum grade of the private streets shall be 8%.

(g) The fact that the Development has a single entrance, rather than two means of direct access as specified for developments of 20 or more dwelling units under Section 4.5.6F of the zoning ordinance, is hereby approved, inasmuch as the existing topography and limited sight distance along Cumberland Drive would result in a second entrance being very difficult or not reasonably feasible.

(h) The modifications in the private street requirements specified in this subparagraph (5) are approved because the lands comprising the Development have extreme topographic conditions and other limiting physical characteristics that cannot readily be modified by reasonable engineering techniques or processes. The Township Board further determines that

the private street system as shown on the Plan, subject to the terms of this resolution, is the optimal private street system that could reasonably be provided, given the nature and condition of the land.

(i) The streets shall be maintained, repaired, replaced and snowplowed so as to afford continuous access and unimpeded passage for vehicles (including emergency vehicles) under all weather conditions. The Master Deed and Condominium Bylaws shall have provisions requiring maintenance and repair of streets in accordance with the terms of this ordinance.

(j) No individual driveway or shared driveway shall have a grade greater than 10%, unless a steeper driveway is specifically approved by the Township Fire Chief.^

(k) The walking trails shall be provided as shown in the Plan. The trails shall be included within the designated open space and shall be preserved for such purposes in perpetuity. The Plan shall indicate width of the trails and the type of surface materials to be placed on them.

(l) The walking trails shall be laid out, installed and completed not later than the construction of the private streets in the Development. If the streets are constructed in phases, the trails shall be completed not later than completion of the streets for the second phase of the Development.

(6) **Sanitary Sewer System and Water Supply.**

The Development shall be served by the public sanitary sewer system and the public water supply system, in accordance with all applicable Township ordinance provisions. The public water system and the public sanitary sewer system shall be designed and constructed in and for the Development as recommended by the Township Engineer and Infrastructure Alternatives.

(7) **Surface Water Drainage.**

(a) The applicant shall submit a drainage plan for the Development, as required by Section 3.4.13 of the zoning ordinance. The stormwater drainage plan shall be subject to the approval of the Township Engineer.

(b) The surface water drainage system in the Development and the discharge of waters from the storm sewer system and other elements of the surface water drainage system shall be designed, engineered and carried out so as to have no significant adverse effect upon lands in the Development or on adjacent or nearby lands or surface waters, by reason of erosion, pollution or otherwise.

(8) **Landscaping and Buffering.**

(a) Except for areas which have natural cover, the areas to be landscaped shall be graded, covered with four inches of fertile topsoil and sufficiently seeded with perennial grass seed or otherwise landscaped as provided in the Plan or in a separate landscape plan.

(b) Other provisions regarding landscaping, buffering, the preservation of existing vegetation and other matters relating to landscaping and buffering shall be stated in the Plan or in a separate landscape plan.

(c) The open space area shall be landscaped within a distance of at least 50 feet back from and parallel to the existing street rights-of-way; provided, however, that the stormwater detention pond may be located within such 50-foot distance back from the existing street rights-of-way. Such landscaped area shall be planted with native plants. All landscaping materials shall be maintained in good condition. Any dead or diseased plants or other landscaping materials shall be promptly replaced.

(9) **Utilities.** Natural gas service, electrical service and telephone service to each of the units in the Development shall be by means of underground facilities.

(10) **Soil Erosion and Sedimentation Control.**

(a) Soil erosion protection and stabilization techniques and procedures shall be provided continuously during all phases of construction, in accordance with Kent County standards, so as to prevent any adverse effects resulting from erosion of soil.

(b) The applicant shall obtain and comply in all respects with any required soil erosion and sedimentation control permit. A copy thereof shall be promptly submitted to the Township.

(c) The applicant shall submit to the Township a plan of the soil erosion protection measures that shall be taken for those dwelling units which, by reason of steep slopes or otherwise, require such measures. The plan shall be subject to the approval of the Township Zoning Administrator and Engineer as to the proposed erosion control measures. The plan shall be submitted and shall be approved prior to commencement of earth moving or other construction activity for the buildings involved.

(d) A listing or statement of the erosion control measures required by Kent County and the Township may be included as conditions in building permits issued for any construction within the Development.

(e) All buildings shall be equipped with eavestroughs, downspouts or other water dispersion devices, where such devices would help to reduce erosion from water runoff.

(11) **Garbage and Refuse Disposal.** All trash, garbage and other household waste shall be kept only in sanitary containers inside garages or otherwise within fully enclosed areas at all times, except for such short periods of time as may be reasonably necessary for periodic collection of trash and garbage by waste haulers.

(12) **Wetlands.**

(a) Any portions of the Development which have been designated as wetlands under applicable Michigan law shall not be filled, dredged or developed to any extent without (1) the approval of the Department of Environmental Quality, by means of such permits as may be required by law and (2) the approval of the Township by means of an amendment of this ordinance, after the same extent of public notice and public hearing as was required for the adoption of this PUD ordinance.

(b) If there are wetlands in the Development, a wetlands plan, showing the specific location and extent of all wetlands, and indicating the preservation and protection thereof, shall be submitted to the Township and shall be subject to the review and approval of the Township Planner. The design, layout and construction of the Development shall be carried out only in such a manner as to have no serious adverse effect on the quality or extent of the waters of wetland areas.

(13) **Outdoor Lighting.** All outdoor lighting installed in the Development shall comply with Section 4.3.4 of the Township Zoning Ordinance.

(14) **Restrictive Covenants.** The applicant shall prepare and record restrictive covenants pertaining to the use, occupancy and development of the lands comprising the Development, or such provisions shall be included in the condominium documents. Among other matters, the restrictive covenants shall include use and occupancy restrictions at least as strict as specified by the terms of this ordinance. The restrictive covenants or condominium documents shall include provisions establishing and maintaining all open space areas, no-disturb areas and other such areas in perpetuity. Before recording, the restrictive covenants or condominium documents shall be submitted to the Township Attorney for review and approval as to legal matters and as to compliance with the terms of this ordinance.

(15) **Signage**. There may be a sign at the entrance to the Development, indicating the name thereof. The sign shall be subject to the sign requirements for the R-2 Zoning District, as specified in the Zoning Ordinance.

(16) **Construction of Common Elements**. Prior to the issuance of an occupancy permit for a building in any phase, the streets and other common improvements shall be completed and approved within such phase, or a performance guarantee which complies with Township ordinances shall be furnished by the applicant.

(17) **Common Open Space**.

(a) The Development shall include the open, undeveloped space shown in the Plan, and such areas shall be maintained as open space in perpetuity. Documentation to establish and maintain open space areas shall be subject to the approval of the Township Attorney.

(b) The restrictive covenants providing for perpetual maintenance of open space within the Development, or other documents providing for the preservation and limited use of open space shall comply with Section 3.4.6D of the Township Zoning Ordinance.

(18) **Future Trail Easement**. As the applicant has voluntarily agreed, the applicant or its successors or assigns shall grant and convey to the Township or to other public entity an easement to be included as part of the Lowell Area Trailway, non-motorized trail system available for use by the public. The easement shall be executed in recordable form and shall convey good and merchantable title to an easement for trail purposes. The content of the easement document shall be subject to the approval of the Township, or other party acquiring title to the trail easement. The easement document shall contain the following provisions:

(a) The easement shall be at least 16 feet in width and shall be located along or near Cumberland Avenue, as shown in the Lowell Area Trailway Study, and at such

location as will enable the trail within the easement to be conveniently connected to the trail as proposed on the lands adjacent to the PUD lands.

(b) The easement shall be used only for pedestrian travel and non-motorized vehicle travel. The applicant or its successor shall not locate or install any permanent improvements in the easement area shown in the Plan.

(c) The owner of the trail easement may install and replace paving, wood chips or whatever ground surface material is selected for use on the trail.

(d) The owner of the trail easement may in its discretion assign the easement or any part thereof or any interest therein to another public body, or to a non-profit organization or quasi-public body that is undertaking responsibility, operation or ownership of the trail network or system of which the trail on the described lands is or will be a part.

(e) The owner of the trail easement may install landscaping, fencing, signage or other features or components of the trail, subject to the approval of the applicant, but such approval shall not be unreasonably withheld, conditioned or delayed, unless such features would be fundamentally inconsistent with the use of the surrounding land for residential purposes. With respect to signage, if the proposed signage is to be part of an overall, uniform signage design for the entire trail system or network, the applicant's approval shall not be required.

(f) The applicant shall not interfere with or impede the construction, maintenance or use of the trail in any respect.

(g) Promptly upon the adoption of this ordinance, the applicant shall prepare, execute and record a restrictive covenant pertaining to the trail easement and describing the lands that are included in this ordinance. The restrictive covenant shall run with the land and shall burden the land with the trail easement and all of the terms and conditions thereof, as stated in this ordinance. The restrictive covenant shall be in such form and shall have such content as is

satisfactory to the Township, consistent with this ordinance. The restrictive covenant shall be executed and recorded prior to the issuance of any building permit for any building within the Development. The restrictive covenant shall be subject to the approval of the Township attorney, for a determination that it complies with this ordinance and the Township Zoning Ordinance, prior to recording. The restrictive covenant shall run to the benefit of the Township or its successors or assigns as may be undertaking responsibility for the development, operation or ownership of the above-described trail.

(19) **Findings under Section 3.4.8K.**

(a) The Township Board determines that the Development would satisfy the purposes of the OS-PUD District, if the provisions of this ordinance are complied with, including the following matters stated in Section 3.4.8K of the zoning ordinance:

(i) The Development would result in a substantial benefit to the residents of the Development, and such benefit would otherwise be unlikely to be achieved.

(ii) The type of land use in the Development and the building density would not result in an undue burden on the need for public services, facilities or utilities.

(iii) The Development would be compatible with the Township Master Plan, and would be consistent with the intended purpose of the OS-PUD District.

(iv) The Development would not have a substantial negative effect on the character of the surrounding area.

(v) The Development, and the requirements of this Ordinance with respect to thereto, would be protective of flood plains, wetlands and steep slopes, except for such clearing and grading of the land as may be needed to accomplish the approved plan of development.

(vi) The Development would have sufficient buffer areas to minimize conflicts between residential and other uses.

(vii) The Development would have an extent of open space located along the adjacent existing street, and thus would preserve a reasonable extent of scenic view at that location.

(viii) There would be pedestrians trails within the Development designed to insure that residents and others can walk safely and easily throughout the property.

(ix) The individual buildings, streets and open space areas are designed to minimize the alteration of features on the site, except for such alterations as may be needed to implement the approved development plan.

(20) **Other Matters.**

(a) ***Approval of Condominium; Master Deed and Condominium Bylaws.*** The Township Board hereby approves the Cumberland Ridge Condominium and the Plan for such Development, subject to the terms and conditions of this ordinance.

As to any requirements required herein to be included in the Master Deed and/or Condominium Bylaws, such instruments shall specifically list such requirements and shall provide that the same shall not thereafter be amended or deleted without the prior written approval of the Planning Commission and Township Board. Such provisions shall be reviewed by the Township Attorney before recording, so as to verify their compliance with this subparagraph and this ordinance.

There shall be no provisions of the Master Deed or Condominium Bylaws which are contrary to or at variance with the provisions of this ordinance or which would in any way hinder the enforcement of this ordinance. To the extent that any such Master Deed or Condominium Bylaw provisions may be contrary to or at variance with any of the provisions of this ordinance, this

ordinance shall control. The Master Deed and Bylaws shall make express reference to this ordinance and state that use of property within the Development is subject to the ordinance, notwithstanding anything to the contrary in the Master Deed and Bylaws.

(b) The December 1, 2004 site development plan shall be revised to show the water and sanitary sewer mains extending to the north as stated in the Infrastructure Alternatives recommendation of January 5, 2005.

(21) **Additional Findings.**

(a) The Township Board hereby determines that the Plan, as modified by this Ordinance, complies with the provisions of the Township Zoning Ordinance and promotes its intent and purposes.

(b) The Board further finds that the Development, upon construction and use in full compliance with all of the terms and provisions of this ordinance and the Township Zoning Ordinance, will be compatible with adjacent uses of lands, the natural environment and the capacities of public services and facilities affected by the Development. The Township Board further determines that the Development will be consistent with the public health, safety and general welfare.

(c) The conditions set forth herein with regard to the Development are determined to be those conditions which are necessary to insure that public services and facilities affected by the Development will be capable of accommodating increased public service demands caused by the Development, to protect the natural environment and to conserve natural resources and energy, to insure compatibility with adjacent land uses and to promote the use of land in a socially and economically desirable manner.

Section 3. Enforcement.

(a) The Township may enforce the provisions of this ordinance and applicable provisions of the Township Zoning Ordinance, Building Code and other ordinances, laws and regulations to the extent and in any manner provided by law. In the event that the applicant shall fail to carry out, either at all or on a timely basis, any provision or requirement of this ordinance or other applicable law, ordinance or regulation, the Township may through its Building Inspector or other Township agency issue and post a stop work order at the site of any improper or noncomplying part of the Development, directing that all further construction of such part of the Development be ceased forthwith, pending the compliance with any applicable provisions of this ordinance or of Township ordinances, regulations or State laws; provided, however, that at least 72 hours before the issuance and posting of any such stop work order, the Township shall give written notice to the applicant of the alleged violation and the intent of the Township to issue and post a stop work order unless the violation is fully corrected within the time stated in the notice.


(b) Upon the issuance of any stop work order, the applicant shall comply fully therewith without delay. Upon the correction of any matters as to which the stop work order was issued, the Township shall promptly rescind and remove the stop work order, whereupon the applicant may again proceed with construction or other permissible activity as to the Development. The issuance and posting of any stop work order shall not be an exclusive remedy, but may be undertaken by the Township in addition to all other lawful means of enforcement.

Section 4. ***Effective Date.*** This ordinance shall become effective seven days after its publication or seven days after the publication of a summary of its provisions in a local newspaper of general circulation.

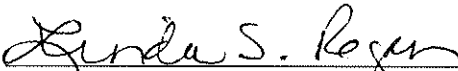
AYES: Members: Blough, Bonn, Stougaard, Timpson, Huver, Regan

NAYS: Members: None

ORDINANCE DECLARED ADOPTED.



John R. Timpson, Township Supervisor



Linda S. Regan, Township Clerk

Ordinance becomes effective: March 16, 2005

STATE OF MICHIGAN)
) ss
COUNTY OF KENT)

I hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the Township Board of the Charter Township of Lowell at a regular meeting held on the date first stated above, and I further certify that public notice of such meeting was given as provided by law.



Linda S. Regan, Township Clerk