

**LOCAL LAW NO. 4
Dated: July 13, 2006**

**A LOCAL LAW ADDING A NEW SECTION 232-26
ENTITLED "FLEXIBLE LOT SUBDIVISIONS"
TO THE CODE OF THE TOWN OF COPAKE**

BE IT ENACTED by the Town Board of the Town of Copake as follows:

Section 1. Title of Local Law:

This Local Law shall be entitled: A Local Law Adding a New Section 232-26 entitled "Flexible Lot Subdivisions" to the Code of the Town of Copake.

Section 2. A new Section 232-26 entitled Flexible Lot Subdivisions, is hereby added to the Code of the Town of Copake to read as follows:

§ 232-26. Flexible Lot Subdivisions.

A. Purpose and Applicability:

- (1) Flexible Lot Subdivisions allow design flexibility while preserving important natural attributes of the land. The purpose of Flexible Lot Subdivision development is to ensure that environmental resources are protected and that development occurs on the land that is best suited for development.
- (2) For major subdivisions in the R Zone outside of the Scenic Corridor Overlay Zone (hereinafter "SCOZ") the Planning Board shall require Flexible Lot Subdivisions as outlined herein. Flexible Lot Subdivision requirements may be applied to minor subdivisions if desired by the applicant.

B. Calculation of Unconstrained Acreage and Base Density:

The maximum density allowed for residential units is calculated by a formula based upon the Unconstrained Acreage. Flexible Lot Subdivision developments may occur on any parcel of land containing six acres or more in the R District.

- (1) To determine the Unconstrained Acreage, subtract from the total (gross) acreage of the proposed development parcel the Constrained Acreage.
- (2) Constrained Acreage includes wetlands (NYS Department of Environmental Conservation and US Army Corps of Engineers), watercourses/waterbodies with a 100 foot buffer, 100-year floodplains, and slopes over 25% which are 2,000 square feet or more of contiguous sloped area. Slope determinations shall be based upon 10-foot

contour intervals, unless an applicant elects to submit slope information with smaller contour intervals or another section of the Zoning Law or Subdivision Law requires the use of smaller contour intervals.

- (3) To determine the base number of allowable residential units on the site, divide the Unconstrained Acreage by the allowable number of acres per unit required within the zoning district. Round down fractional units of 0.5 or less and round up fractional units greater than 0.5. The resulting number is the Base Density allowed on the site.
- (4) The Base Density in (3) may be increased by up to 20% at the sole discretion of the Planning Board if permanent public access will be granted to the protected open space land and any associated improvements as delineated in section 232-26.1. Open Space in Flexible Lot Subdivisions.
- (5) The Base Density permitted by this section shall not be reduced as a result of the Conservation Analysis required in section C. Conservation Analysis below.

C. Conservation Analysis.

- (1) As part of any Sketch Plan submission for Flexible Lot Subdivision development for major subdivisions, an applicant shall prepare a Conservation Analysis, consisting of inventory maps, survey and topographic maps, description of the land, and an analysis of the conservation value of various site features.
- (2) The Conservation Analysis shall identify site features with conservation value on the parcel, including but not limited to the following:
 - a. Constrained Acreage as determined in Section B(2) above
 - b. Farmland
 - c. Existing or proposed public trail corridors
 - d. Scenic viewsheds
 - e. Unique geological features
 - f. Documented aquifers and aquifer recharge areas
 - g. Sites identified as historic on any federal, state, or local register of historic places
 - h. Public parks and publicly accessible recreation lands
 - i. Unfragmented forest land
 - j. Buffer areas necessary for screening new development from adjoining parcels and from other publicly accessible areas including roads, parkland, and nature preserves
 - k. Stone walls
 - l. Trees 15” in diameter at breast height (dbh) or larger, except where such trees are part of a larger stand of trees, in which case the entire stand may be identified as a unit
 - m. If requested by the Planning Board after the initial submission of the Conservation Analysis, other land exhibiting present or potential future recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value.

- (3) The Conservation Analysis shall also identify areas that are potentially suitable for development, especially those that have been previously disturbed (e.g. by mining, prior development, or clear-cutting) and their present condition. Such areas, depending on their condition and location might be preferred locations for development.
- (4) The Planning Board shall make a final determination as to which land has the most conservation value and should be protected from development by conservation easement. This determination shall be based upon an analysis that weighs the relative importance of the environmental resources on the site and shall be expressed in a written report supporting its decision (the Conservation Findings). The Planning Board may incorporate information provided by, but not limited to, its own research, site visits, consultants, other qualified experts or agencies or from public comments. If, as a result of the SEQRA review, information arises to cause the Conservation Analysis to change, such change will be made at that time, by the Planning Board, in its sole discretion.
- (5) The outcome of the Conservation Analysis and the Planning Board's Conservation Findings shall be incorporated into the Planning Board's acceptance of the Sketch Plan Review, pursuant to the Town's Subdivision Regulations.
- (6) The Sketch Plan shall show the following:
 - a. Preferred locations for intensive development as well as acceptable locations for less dense development.
 - b. Land to be permanently preserved by a conservation easement, as well as recommended conservation uses, ownership, and management guidelines for such land.
 - c. Land suitable for stormwater management facilities, which may be located within the preserved land area.
- (7) At least 60% of the total acreage shall be preserved by conservation easement and shown as such on the Sketch Plan, based upon the Conservation Findings.
- (8) If, based upon the Conservation Analysis, the Planning Board determines in its Conservation Findings that there is no reasonable basis for requiring a Flexible Lot Subdivision, the Board may proceed to analyze a conventional development of the site. In order for the Planning Board to make such a determination, the applicant must demonstrate at least one of the following:
 - a. The land contains no substantial resources with conservation value;
 - b. The acreage is too small to preserve a substantial amount of land with conservation value (this criterion shall not be evaded by piecemeal subdivision of larger tracts); or
 - c. The lot configuration is unique and precludes preservation of a substantial amount of land with conservation value.

- d. That there are extraordinary circumstances unique to the parcel that demonstrates that conventional subdivision is the most appropriate method of subdivision.

In order to make the required showing under (6)(b) or (6)(c) above, the applicant must also demonstrate that the parcel does not adjoin other land that, when combined with open space on the parcel, would result in the preservation of a substantial amount of land with conservation value (including any portion of a designated trail corridor), regardless of whether or not the adjoining parcels have been protected as open space.

- (9) An approval of a conventional subdivision shall refer to the Conservation Findings and may be conditioned upon the protection by conservation easement of portions of the site identified in the Conservation Analysis and findings as having conservation value.

D. Lot Sizes In Flexible Lot Subdivisions

There shall be no minimum lot size in a Flexible Lot Subdivision except as may be necessary to satisfy the requirements of the County Health Department. The Planning Board shall determine appropriate lot sizes in the course of its review of a Flexible Lot Subdivision based upon the criteria established in this section. In order to permit a clustered lot configuration, wells and septic systems may be located in areas of protected open space, provided that necessary easements are provided for maintenance of these facilities.

E. Other Area And Dimensional Requirements

- (1) There shall be no required area, bulk, or dimensional standards in a Flexible Lot Subdivision, except that where such subdivision abuts an existing residence, a suitable buffer area may be required by the Planning Board in its sole discretion.
- (2) The applicant shall specify dimensional requirements for a proposed Flexible Lot Subdivision by identifying setbacks and other lot dimensions to be incorporated into the Final Plat. The Planning Board may vary bulk requirements to accommodate a Flexible Lot Subdivision.

F. Flexible Lot Subdivision Of A Portion Of Larger Tract

The Planning Board may entertain an application to develop a portion of a parcel if a Conservation Analysis is provided for the entire parcel and the approval to develop a portion of the parcel is not a basis for the applicant or successor in interest to subsequently request an exception under Section C.8. for the remainder of the parcel.

G. Flexible Lot Subdivision Design Guidelines

Lots shall be arranged in a manner that protects land of conservation value and facilitates pedestrian circulation. The lot layout shall, to the extent feasible, comply with the design guidelines in Section 232-26.2 Rural Design Siting Standards. Permitted building locations or areas (“building envelopes”) shall be shown on the Final Plat.

H. Professional Assistance

The Town finds that the volunteer members may need professional assistance to make informed decisions. The Planning Board may engage the services of professional consultants during subdivision review, at the expense of the applicant. The cost is separate and apart from any other fees or costs associated with SEQRA review.

§ 232-26.1 Permanent Open Space in Flexible Lot Subdivisions

Open space set aside in a Flexible Lot Subdivision shall be permanently preserved as required by this Section. Developed lands shall not impact the conservation value of the permanent open space.

A. Conservation Value Of Open Space

The open space protected pursuant to this Section must have conservation value as determined by the Conservation Findings pursuant to Section 232-26.C.(4).

B. Permanent Preservation By Conservation Easement

- (1) A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources, or similar conservation purposes, pursuant to Section 247 of the General Municipal Law and/or Sections 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, and/or to a qualified not-for-profit conservation organization acceptable to the Planning Board. Such conservation easement shall be approved by the Planning Board and shall be required as a condition of Final Plat approval. The Planning Board shall require that the conservation easement be enforceable by the Town if the Town is not the holder of the conservation easement. The conservation easement shall be recorded in the County Clerk's Office prior to or simultaneously with the filing of the Final Plat in the County Clerk's Office.
- (2) The conservation easement shall prohibit residential, industrial, or commercial use of open space land (except in connection with agriculture, forestry, and passive recreation), and shall not be amendable to permit such use. Access roads, driveways, wells, underground sewage disposal facilities, local utility distribution lines, stormwater management facilities, trails, temporary structures for passive outdoor recreation, and agricultural structures shall be permitted on preserved open space land with Planning Board approval, provided that they do not impair the conservation value of the land. Forestry shall be conducted in conformity with applicable best management practices.
- (3) Permanent open space may be preserved under a conservation easement as a portion of one or more large lots or may be contained in a separate open space lot. The conservation easement may allow dwellings to be constructed on portions of lots that

include preserved open space land, provided that the total number of dwellings permitted by the conservation easement in the entire subdivision is consistent with applicable density limitations of this section.

C. Notations On Final Plat

Preserved open space land shall be clearly delineated and labeled on the subdivision Final Plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners of lots in the subdivision and the public to the open space land. The Final Plat shall clearly show that the open space land is permanently preserved for conservation purposes by a conservation easement required by this Section, and shall include deed recording information in the County Clerk's office for the conservation easement.

D. Ownership Of Open Space Land

- (1) Open space land shall under all circumstances be protected by a perpetual conservation easement, but may be owned in common by a homeowner's association (HOA), offered for dedication to Town, County, or State governments, transferred to a non-profit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds appropriate to properly manage the open space land and to protect its conservation value.
- (2) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:
 - a. The HOA must be established before the approved subdivision Final Plat is signed, and must comply with all applicable provisions of the General Business Law.
 - b. Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
 - c. The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads.
 - d. The HOA must be able to adjust the assessment to meet changed needs.
 - e. The applicant shall make an irrevocable, conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may only be accepted upon any one of the following circumstances:
 1. upon the failure of the HOA to take title to the open space from the applicant or other current owner, or,
 2. upon dissolution of the association at any future time, or,

3. upon failure of the HOA to fulfill its maintenance obligations hereunder, or,
 4. upon failure to pay its real property taxes.
- f. Ownership shall be structured in such a manner that real property taxing authorities can satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
- g. The Town's Counsel shall find that the HOA documents presented satisfy the conditions in Subsections (a) through (f) above, and such other conditions as the Planning Board shall deem necessary.

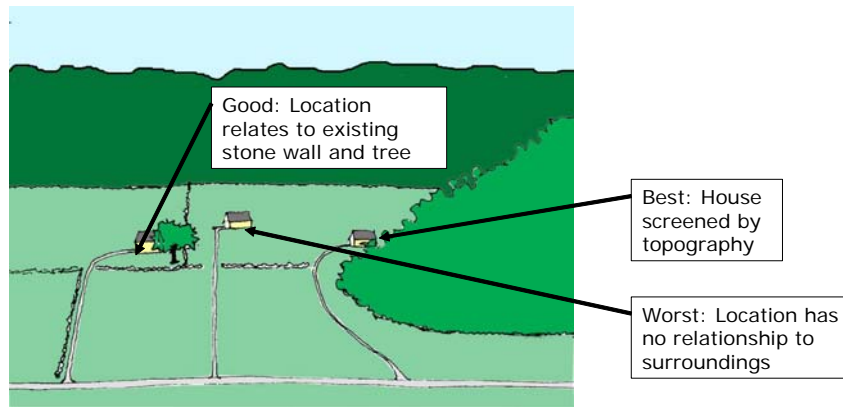
E. Maintenance Standards.

- (1) Ongoing maintenance standards shall be established, enforceable by the town against an owner of open space land as a condition of subdivision approval, to ensure that the open space land is not used for any purpose or structure prohibited by the conservation easement or for the storage or dumping of any matter, including, but not limited to, fill, refuse, junk, or other offensive or hazardous materials.
- (2) If the Town Board finds that the provisions of Subsection E(1) above are being violated, it may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development and shall, if unpaid, become a tax lien on such property or properties.

§ 232-26.2 RURAL DESIGN AND SITING STANDARDS

The following guidelines should be considered and may be required in the process of designing and siting houses in the R District. When locating new houses on the land there are many options in the siting, configuration, size and arrangement of elements in the landscape. These choices define the character of the developed landscape environment. These guidelines are examples of the preferred way to design and site uses but they should not be considered the only acceptable solution.

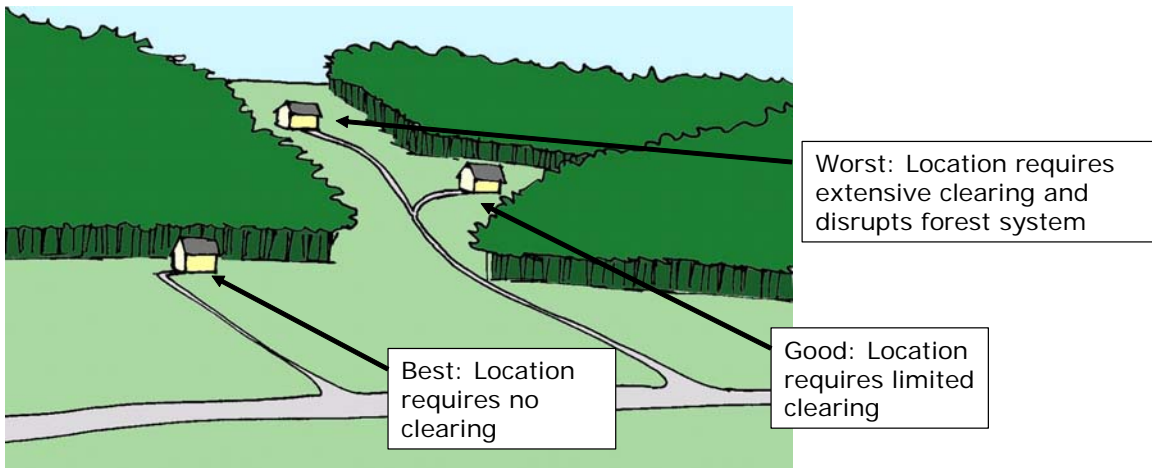
- **Preservation of Scenic Features.** Relate the location of structures to existing scenic features such as individual large trees within open fields, stone walls, hedgerows, historic buildings, and unpaved country roads if they exist on the site. Avoid locating structures in areas which disrupt the relationship of the rural features. Locating structures in the midst of an open field, for example, is discouraged.



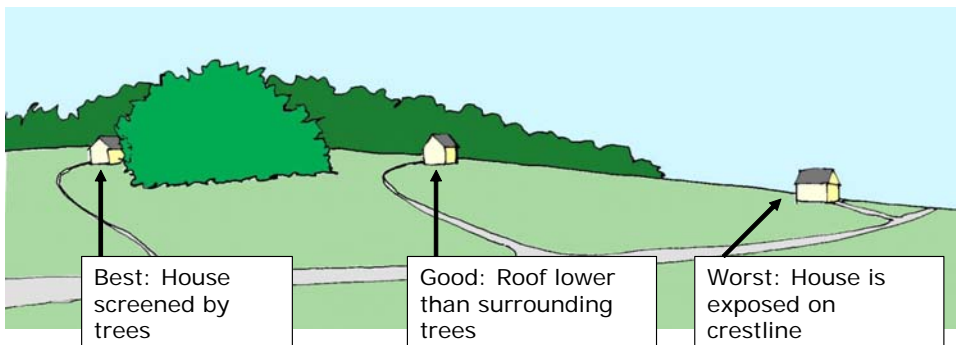
- Placement of Structures.

Wherever practical, structures shall be sited to be as visually inconspicuous as possible, when seen from a distance and from lower elevations, and to minimize impact on open and agricultural lands. Wherever possible, the reviewing Board may require that structures be located at the edge of the agricultural land to minimize the loss of such land, and/or on soils of poor agricultural quality.

- Vegetation. Existing vegetation on-site shall be preserved to the maximum extent practical. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site so as to maintain native vegetation as a screen for structures as seen from public roads or parks or other public views.



- Building Placement. Wherever practical, buildings shall be sited so that they do not protrude above treetops and ridgelines of hills as seen from public places and roads. This shall not be interpreted to mean that a building should not be seen, only that the highest point of the building shall not extend above the summit of the hill.



- Utilities. Wherever practical, all electric, telephone, television, and other communication lines, both main and service connections, servicing new development, shall be provided by underground wiring installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.

§ 232-26.3 FLEXIBLE LOT SUBDIVISION PROCEDURES

A. Review Process

The Flexible Lot Subdivision process involves the following three steps:

- Initial Sketch Plan
- Preliminary Plat Review
- Final Plat Review

B. Initial Sketch Plan

An applicant shall submit a sketch plan pursuant to §197 of the Town Code.

- (1) The sketch shall incorporate the outcome of the Conservation Analysis and the Planning Board's Conservation Findings.
- (2) The Sketch Plan, as tentatively approved, shall show the following:
 - (a) A density calculation, as described in Section 232-26.B.
 - (b) Preferred locations for intensive development as well as acceptable locations for less dense development.
 - (c) Land to be permanently preserved by a Conservation easement, as well as recommended Conservation uses, ownership, and management guidelines for such land.
 - (d) Land suitable for stormwater management facilities, which may be located within the preserved land area.
 - (e) All other requirements pursuant to §197 of the Town Code

C. Preliminary and Final Plat Review

- (1) Review of a Preliminary Plat is mandatory for Flexible Lot Subdivisions containing four or more lots.
- (2) The applicant must follow all processes and requirements pertaining to Preliminary and Final Plat for Major Subdivisions pursuant to §197 Subdivision of Land.

Section 3. Supersession:

Pursuant to the powers granted by the Municipal Home Rule, this Local Law supersedes all provisions of Article 16 of the Town Law pertaining to zoning and planning, in so far as such statutes are inconsistent with this Law and any other laws or regulations of the Town of Copake are superseded to the extent necessary to give this Local Law full force and effect.

Section 4. Severability:

If any section or part of this Local Law is declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section of this Local Law.

Section 5 Effective Date:

This Local Law shall take effect immediately.