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Chapter 99

Subdivision of Land and Open Development Area

[HISTORY: Adopted by the Town Board of the Town of Aurora 3-13-2017 by L.L. No. 5-2017. Amendments noted where applicable.]

GENERAL REFERENCES

Conservation Advisory Council — See Ch. 5.

Planning Board — See Ch. 23.

Building permits — See Ch. 44.

Fire prevention and building construction — See Ch. 65.

Flood damage prevention — See Ch. 68.

Parks — See Ch. 84.

Ponds — See Ch. 87.

Sewers — See Ch. 93.

Site plan review — See Ch. 95.

Stormwater management — See Ch. 96.

Streets and sidewalks — See Ch. 97.

Zoning — See Ch. 116.

Article I

General Provisions

§ 99-1 Title.

This chapter shall be known as "Subdivision of Land and Open Development Area" within the Town of Aurora, County of Erie and State of New York.

§ 99-2 Authority to act.

By authority of the resolution adopted by the Town Board on the first day of March 1955, the Town Board of the Town of Aurora is empowered and authorized to approve plats for land subdivision within the Town outside the limits of the incorporated Village of East Aurora. By the same authority, the Town Board does hereby exercise the power and authority to pass and approve the development of plats already filed in the office of the Clerk of Erie County, if such plats are entirely or partially undeveloped.

§ 99-3 Purposes.

These regulations are adopted for the following purposes:

- A. To protect and provide for the public health, safety and general welfare of the Town.
- B. To guide the future growth and development of the municipality, in accordance with the development

plan of the Town.

- C. To protect the character of all parts of the Town, and to encourage the orderly and beneficial development of its parts.
- D. To protect and conserve the value of land throughout the municipality and the value of buildings and improvements upon the land, and to minimize conflicts among the uses of land and buildings.
- E. To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, parks, playgrounds, recreation and other public requirements and facilities.
- F. To provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and highways, and the pedestrian traffic movements appropriate to the various uses of land and buildings, and to provide for the proper location of streets.
- G. To establish reasonable standards of design and procedures for subdivisions in order to further the orderly layout and use of land, and to ensure proper legal descriptions and monumenting of subdivided land.
- H. To utilize public facilities, if available, for a proposed subdivision.
- I. To prevent the pollution of air, streams and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and management of natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community.
- J. To preserve the natural beauty and topography of the Town, and to ensure appropriate development with regard to these natural features.
- K. To provide for the preservation of open spaces through the most efficient design and layout of the land, including the use of cluster development, while preserving the density of land as established in Chapter **116**, Zoning.
- L. To encourage all interested parties to participate in the planning and approval process through public hearings.

§ 99-4 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT

The owner of land proposed to be subdivided or developed, or any other party in interest who shall submit the written consent of the owner.

AS-OF-RIGHT USE

A use which requires compliance with the Open Development Area provisions.

BOARD

The duly established Town Board of the Town of Aurora.

COMPREHENSIVE PLAN

The Aurora Open Space Plan in conjunction with the Codes of the Town of Aurora and any Comprehensive Plan adopted by the Town Board.

DEVELOPMENT

Any project that may include but is not limited to:

- A. On an Open Development lot, erection of a dwelling or principal building of any size; erection of an accessory building 400 sf or greater or an accessory structure 400 sf or greater.

DEVELOPMENT PLAN

The survey or plot plan, drawn to scale, showing the layout of an ODA parcel with sufficient detail of the acreage, measurements, and existing and proposed development.

DRIVEWAY

- A. A private road for local access to one or more structures and owned and maintained by an individual or group.
- B. A private road giving access from a public way to a building on abutting grounds.

EASEMENT

A nonpossessory interest to use real property in possession of another person for a stated purpose.

ENGINEER

The duly designated engineer of the Town of Aurora.

FINAL PLAT

The final maps, drawings and charts on which the subdivider's plan of subdivision, containing all information or detail required by law and by these regulations, is presented to the Town Board for approval and which, if approved, will be submitted to the Erie County Clerk for filing or recording.

FRONTAGE

The full length of a plot of land measured alongside the public road on to which the plot fronts or abuts.

LOT

A legally described parcel of land conforming to Town zoning codes at the date of adoption of said codes.

OFFICIAL MAP

The map which may be established by the Town Board under the Town Law, showing streets, highways and parks and drainage therefor laid out, adopted and established by law, and any amendments thereto adopted by the Town Board or additions thereto resulting from the approval of subdivision plats by the Town Board and the subsequent filing of such approved plats.

OPEN DEVELOPMENT AREA (ODA)

A parcel of land which does not have required immediate frontage on an existing state, county or Town highway or a street shown upon a plat approved by the Town as provided in § 277 of the Town Law shall require Open Development Area approval as provided herein.

- A. **SINGLE- LOT ODA** - One lot lacking adequate road frontage. Additional development on a shared driveway or right-of-way will initiate a multiple-lot ODA review and approval.
- B. **MULTIPLE- LOT ODA** - More than one lot, but no more than three lots, lacking adequate road frontage, developed along a private driveway or right-of-way on lots of record existing as of the date of adoption of this amended code.

PLANNING BOARD

The Planning Board of the Town of Aurora, Erie County, New York.

PRELIMINARY PLAT

The maps, drawings and charts showing the layout of a proposed subdivision, submitted to the Town Board for approval prior to submission of the plat in final form and of sufficient detail to apprise the Town and Planning Boards of the layout and improvements of such proposed subdivision.

RIGHT-OF-WAY

- A. A situation in which a parcel of land has a specific owner and some other party or the public at large has a legal right to traverse that land in some specific manner.
- B. A strip of land that is granted through an easement or other mechanism for transportation (ingress/egress) purposes.

SKETCH PLAN

The preliminary drawings indicating the proposed layout of the subdivision, to be submitted to the Town Board for its consideration.

STREET

A vehicular way which is one of the following: an existing Town, village, county or state highway or road; a public road shown on a filed subdivision plat; or a road shown on the Official Map of the Town.

SUBDIVISION

The division or re-division of any parcel of land during any consecutive three-year period, commencing on the initial effective date of this chapter, as amended, into five or more lots, plots, sites or other divisions of land which are, except as hereinafter provided, less than five acres in size for immediate or

future sale or for building development, with or without the creation of one or more new streets. Lots, plots, sites or other divisions of land which are five acres or more in size shall not be considered in determining whether or not a parcel of land has been divided as a subdivision, provided that any such lot has a minimum frontage on a public roadway or highway of at least 200 linear feet.

ZONING CODE

Chapter **116**, Zoning, of the Town Code.

Article II Approval Procedures

§ 99-5 Public/private improvement permit.

- A. Commencing with the effective date of this section, all applications for permission to construct subdivisions in the Town of Aurora will be subject to the public/private improvement permit application procedure adopted and approved by resolution of the Town Board from time to time. The text of that procedure, as amended, shall be filed with the Town Clerk and be delivered to each applicant for a subdivision approval at the time of application.
- B. Notwithstanding the effective date of this section, the Town Board may, in its sole discretion, condition the approval of any pending application for subdivision approval on the applicant's compliance with the Town's public/private improvement permit application procedure.
- C. The Town Board may, by resolution, modify the Town's public/private improvement permit application procedure from time to time without a further public hearing.
- D. Notwithstanding any other provision contained in this section, the Town Board reserves the right to subject any development, public or private, within the Town to the public/private improvement permit application procedure described herein and to assess the fees set forth therein to the owner or developer of such development.

§ 99-6 Subdivision review phases.

- A. Whenever any subdivision of land is proposed, and before any contract for the sale of or any offer to sell any lots in such subdivision or any part thereof is made, and before any permit for the erection of any structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply, in writing, for approval of such proposed subdivision in accordance with the following procedures.
- B. The sequence of procedures for development within the Town of Aurora is fundamentally a three-phase procedure. The three phases are referred to as follows:
 - (1) Sketch plan (concept) approval.
 - (2) Preliminary plat approval.
 - (3) Final plat approval.

C. Phases of approval.

- (1) Sketch plan (concept) approval is the initial presentation by the developer of the general overall information and data showing how he intends to develop the property and the effect such development may have upon the adjoining property. The availability of utilities, the effect on natural watercourses and other environmental concerns, as well as drainage problems shall be answered at this time.
- (2) At preliminary plat approval, a formal public hearing will be held, at which time the developer will make a public presentation of his intentions and plans regarding the property.
- (3) At final plat approval, the developer submits all the remaining specific data and information as required by the Planning Board, the Town Board and the local laws and regulations. Upon completion of this last phase, the developer shall submit his final plat map for execution by the Town Board prior to recording the map in the Erie County Clerk's office.

§ 99-7 **Sketch plan.**

- A. Submission of sketch plan. Any owner of land or authorized agent shall, prior to subdividing land, submit to the Town Board, at least 10 days prior to the regular meeting of the Town Board, a minimum of 20 copies of a sketch plan of the proposed subdivision for purposes of preliminary discussion. The Town Board shall consider and either submit the sketch plan to the Planning Board within 31 calendar days of the Town Board meeting or reject the same.
- B. Sketch plan specifications. The concept layout shall be drawn on paper or other suitable material at a standard scale of not more than 50 feet to one inch. It shall show the following information:
 - (1) Title of the concept layout, including the name and address of the subdivider.
 - (2) North arrow, scale and date.
 - (3) Boundaries of the tract to be subdivided, plotted to scale. If the subdivider intends to develop the tract in phases, the entire tract shall nevertheless be included in the concept layout and the phases identified.
 - (4) A preliminary topographic survey, showing ground contours adjacent to and within the tract to be subdivided, at intervals of not more than 10 feet of elevation, and all pertinent topographic and planimetric features within and adjoining the tract, including existing streets, existing buildings, watercourses and their one-hundred-year flood limits, water bodies, existing gas wells, wetlands, wooded areas, known sensitive archaeological areas and known landfill and hazardous disposal areas, based upon known public information. Features to be retained in the subdivision should be so indicated.
 - (5) The approximate lines of proposed streets, sidewalks, lots and neighborhood recreation areas or other permanent open space.

- (6) Schematic indication of the proposed system for stormwater drainage.
- (7) Statement as to proposed source of water supply and method of sewage disposal.
- (8) Indication of the zoning of the tract and any other legal restrictions of use.
- (9) The name or names of the landscape architect and/or licensed professional engineer and licensed land surveyor responsible for the preparation of the concept layout and preliminary information.
- (10) Payment of a fee per the Standard Schedule of Fees.
- (11) The application shall include all land, which the applicant proposes to subdivide, and all land immediately adjacent extending 500 feet from the street frontage of such opposite land, with the names of owners as shown in the Town Assessor's files. This information may be shown on a separate current Tax Map reproduction from the Assessor's office showing the subdivision superimposed thereon. An affidavit shall be submitted by the applicant declaring that the names and addresses of the adjacent or opposite property owners are correct as within the knowledge of the applicant.

C. Discussion of requirements.

- (1) The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the requirements of these subdivision regulations.
- (2) Upon receipt of a sketch plan, the Planning Board will hold an informational meeting to which the public and developer will be invited. Said meeting to be at the next regular meeting of the Planning Board. Each owner of property within 500 feet or three property parcels (whichever is greater) of any boundary of the subdivision shall be notified by the applicant via USPS mail of the informational hearing. At the time of the informational hearing, the applicant shall submit an affidavit stating the names and addresses of property owners that were notified. At least five days prior to the informational hearing, a list of those notified is to be furnished to the Town Clerk.

D. Field trip. After the regular Planning Board meeting at which the subdivision is first discussed, the Board may schedule a field trip to the site of the proposed subdivision.

E. Recommendations of sketch plan. The Planning Board shall, within 31 days after the first regular meeting after receipt, determine whether the sketch plan meets the objectives of these subdivision regulations and determine the compatibility with existing and proposed land use regulations, including any Comprehensive and/or Open Space Plan. The Planning Board shall make recommendations to the Town Board at this time. The Town Board will respond to the applicant within 31 days and accept, modify or deny the Planning Board's recommendations.

F. Upon receipt of the sketch plan by the Town Board, no alterations or improvements to the property may be made, e.g., excavation, topsoil stripping, etc., without final plat approval or by special permission from the Town Board. Complete supervision by the Town's Engineer must also be provided.

§ 99-8 **Preliminary plat.**

- A. Application procedure and requirements. Based upon the action of the Town Board, the applicant shall file an application for approval of a preliminary plat.
- (1) Environmental review. All subdivision applications will be processed in accordance with all the applicable requirements.
 - (2) The application shall be made on forms available at the office of the Town, together with a submission fee as specified in the Standard Schedule of Fees.
 - (3) The application shall include all land which the applicant proposes to subdivide and all land immediately adjacent extending 500 feet or three parcels (whichever is greater) from the street frontage of such opposite land, with the names of owners as shown in the Town Assessor's files. This information may be shown on a separate current Tax Map reproduction from the Assessor's office showing the subdivision superimposed thereon. An affidavit shall be submitted by the applicant declaring that the names and addresses of the adjacent or opposite property owners are correct as within the knowledge of the applicant.
 - (4) The application shall be accompanied by a minimum number of 20 copies of the preliminary plat as described in these regulations.
 - (5) The application shall comply in all respects with the sketch plan as approved.
 - (6) The application shall be presented to the Town Board at least 10 days prior to a regular meeting of the Board. The Town Board shall consider and either submit the preliminary plat to the Planning Board within 31 days or reject same.
 - (7) The application shall be accompanied by a stormwater pollution prevention plan (SWPPP), if required for the proposed subdivision under Chapter **96**, Stormwater Management, of the Code, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § **96-4B** of the Code.
- B. Preliminary approval.
- (1) The Planning Board shall report its recommendations in writing to the Town Board within 31 days after receipt from the Town Board, unless the applicant and Planning Board mutually agree to an extended time.
 - (2) The report shall recommend approval as submitted, recommend approval with stated modifications, or recommend disapproval with stated reasons.
- C. Public hearing on preliminary plat.
- (1) The Town Board shall hold a public hearing on the preliminary plat within 60 days after receipt of comments and recommendations from the Planning Board on the preliminary plat. Within

60 days after such hearing, the Town Board shall render its decision approving, disapproving or modifying such preliminary plat.

(2) At the time of the public hearing, the applicant shall submit an affidavit stating the names and addresses that he has notified by certified mail, return receipt requested, of each owner of property within 500 feet or three property parcels (whichever is greater) of any boundary of the subdivision, as indicated on the application for subdivision approval. At least five days prior to the public hearing, a list of those notified is to be furnished to the Town Clerk.

- D. Public improvements. The Town Board shall require the applicant to indicate on the preliminary plat all roads and public improvements to be dedicated and all districts for water, sewer, fire or utility improvements, if any, which shall be required to be established or extended upon petition.
- E. Tenure of Town Board approval. Within six months of the approval of the preliminary plat, the applicant shall submit the plat in final form. The approval of a preliminary plat shall be effective for a period of one year, at the end of which time final approval on the subdivision must have been obtained from the Town Board, although the plat need not be signed and filed with the County Clerk. Any plat not receiving final approval within the period of time set forth herein shall be null and void, and the applicant shall be required to resubmit a new plat for preliminary approval, subject to all new requirements and subdivision regulations.
- F. Zoning requirements. Every plat shall conform to existing zoning requirements and subdivision regulations applicable at the time of proposed final approval, except that any plat which has received preliminary approval shall be exempt from any subsequent amendments to Chapter **116**, Zoning, rendering the plat nonconforming as to bulk or use, provided that final approval is obtained within a one-year period.
- G. Stormwater management requirements. If a stormwater pollution prevention plan (SWPPP) was submitted pursuant to § **99-8A(7)** of this chapter, the preliminary subdivision plat application shall not be approved unless the plat and SWPPP comply with the performance and design criteria and standards in Chapter **96**, Stormwater Management, of the Code.

§ 99-9 **Final plat.**

- A. Application procedure and requirements. Following the approval of the preliminary plat, the applicant, if he wishes to proceed with the subdivision, shall file with the Town Board an application for final approval of a final plat. The application shall:
 - (1) Be made on forms available at the Town Clerk's Office, together with a submission fee as specified in the Standard Schedule of Fees. Subsequent submissions, if necessary, shall be accompanied by an additional submission fee as specified therein.
 - (2) Include the entire subdivision, or a phase thereof, which derives access from an existing state, county or Town highway.
 - (3) Be accompanied by a minimum number of 20 copies of the subdivision plat and the

construction plans, as required by the Town Board.

- (4) Comply in all respects with the preliminary plat, as approved.
- (5) Be presented to the Town Board at least 10 days prior to a regular meeting of the Board. The Town Board will submit the final subdivision plat to the Planning Board at its next regularly scheduled meeting. The Planning Board will report its recommendations to the Town Board within 31 days after receipt of the final plat from the Town Board. A final subdivision plat which does not fully comply with the requirements of these regulations, or which is accompanied by construction plans that do not fully comply with these requirements, shall not be deemed to be complete and officially submitted for purposes of these regulations. The Town Board shall reject such application which does not fully comply.
- (6) Be accompanied by all formal irrevocable offers of dedication to the public of all roads, municipal uses, utilities, parks and easements in a form approved by the Town Attorney.
- (7) Be accompanied by written statements from the public utility companies that necessary utilities will be installed.
- (8) Be accompanied by a stormwater pollution prevention plan (SWPPP), if required for the proposed subdivision under Chapter **96**, Stormwater Management, of the Code, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § **96-4B** of the Code. If a SWPPP is submitted pursuant to this section, the final subdivision plat application shall not be approved unless the plat and SWPPP comply with the performance and design criteria and standards in Chapter **96**, Stormwater Management, of the Code.

B. Endorsement of County Health Department. Subdivision plats shall be properly endorsed by the County Health Department.

C. Final subdivision plat approval.

- (1) The Planning Board shall report its recommendations, in writing, to the Town Board within 31 days after receipt from the Town Board, unless the applicant and Planning Board mutually agree to an extended time.
- (2) The report shall recommend approval as submitted, or recommend approval with stated modifications, or recommend disapproval with stated reasons.

D. Public hearing on final plat.

- (1) The Town Board shall hold a public hearing on the final plat within 60 days of receipt of the final plat. Within 60 days after such hearing, the Town Board shall render its decision approving, disapproving or modifying the final plat.

- (2) At the time of the public hearing, the applicant shall submit an affidavit stating the names and addresses that he has notified by certified mail, return receipt requested, of each owner of property within 500 feet or three property parcels (whichever is greater) of any boundary of the subdivision, as indicated on the application for subdivision approval. At least five days prior to the public hearing, a list of those notified is to be furnished to the Town Clerk.
- E. Tenure of Town Board approval. Conditional approval of a final subdivision plat shall expire two years after the date of the resolution granting conditional approval, unless such requirements have been completed. The Town Board, upon written request of the applicant, shall extend the time of conditional approval if, in its opinion, such extensions are warranted by the particular circumstances thereof. Final approval shall be deemed to have been granted for purposes of the sixty-day requirement for filing the plat as of the date of approval of the plat by the Town Board.
- F. Submission and review of final subdivision plat. Subsequent to the resolution of the Town Board, sufficient copies of the infrastructure construction plans and final subdivision plat, and the original of the subdivision plat, shall be submitted to the said Board for final review. No final approval shall be endorsed on the plat until a review has indicated that all requirements of the resolution have been met.
- G. Vested rights. No vested rights shall accrue to any plat by reason of preliminary or final approval until the actual acceptance of the plat by the Town Board and all requirements or conditions adopted by the Town Board applicable to the subdivision have been met.
- H. Final acceptance of plat. The Town Board shall endorse approval on the plat after all conditions of the resolution have been satisfied and all improvements satisfactorily completed or bonded.
- I. Filing of plat. It shall be the responsibility of the applicant to file the plat with the Erie County Clerk's office within 60 days of the date of signature.

Article III Design Standards

§ 99-10 General requirements.

- A. Conformance with Official Map and Comprehensive Plan and Open Space Plan, if any. Subdivision plats, open development areas and improvements, provided either thereon or as a consideration to the approval thereof, shall conform to the Official Map, if any, and Chapter **116**, Zoning, of the Town of Aurora and shall be in harmony with any Town Comprehensive and Open Space Plan now existing or hereafter adopted.
- B. Plats with access through other municipalities. Whenever access to a subdivision is by crossing land in another municipality, the Planning Board may require certificates from authorities having appropriate jurisdiction that such access is adequately improved or that a legally adequate performance bond has been duly posted and is sufficient in amount to assure the construction of the necessary road or roads.
- C. Frontage on improved road. The area to be subdivided shall have frontage on, or access from, an existing street on the Town Official Map, which shall have been improved to comply with the Town

Highway Codes.

- D. The design standards for subdivisions shall be in accordance with the Standard Specifications and Details for Materials and Construction of the Town of Aurora.
- E. The design standards for subdivisions shall comply with any stormwater pollution prevention plan submitted pursuant to this chapter.

§ 99-11 Streets.

- A. The arrangements, character, extent, width, grade and location of all streets shall conform to the Comprehensive and Open Space Plan, if any, and to the Official Map, if any, and shall be considered in their relation to other existing and planned streets, to topographical conditions, to public convenience and safety, to stormwater runoff, and in their appropriate relation to the proposed uses of land to be served and/or abutted by such streets.
- B. Where such is not shown on any Comprehensive Plan and Open Space Plan, the arrangements of streets in a subdivision shall either:
 - (1) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
 - (2) Conform to a plan for the neighborhood approved or adopted by the Board to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impracticable.
- C. Specifications for the construction and laying out of streets and Town highways are outlined in the Standard Specification and Details for Materials and Construction of the Town of Aurora.
- D. Streets shall be so laid out that their use by through traffic will be discouraged.
- E. Street jogs with center-line offsets of less than 125 feet shall be avoided.
- F. No street names should be used which will duplicate or be confused with the names of existing streets. Street names shall be subject to the approval of the Town Board.
- G. Sidewalks and curbs may be required.

§ 99-12 Easements. A. Where the subdivision or open development area is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially to the lines of such watercourse and such further width or construction, or both, as will be adequate for the purpose. Parallel streets or parkways may be required in connection therewith. Adequate retention areas shall be developed and maintained.

- B. Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary and shall be as required.

- C. The applicant may be required to provide either drainage easements or conservation districts along both sides of existing watercourses, as shown on the Official Map, to a distance to be determined by the Town Board upon the recommendation of the Town Engineer.

§ 99-13 **Blocks.**

- A. The lengths, widths and shapes of blocks shall be determined with regard to:
 - (1) Provisions of adequate building sites suitable to the special needs of the type of use contemplated.
 - (2) Zoning requirements as to lot sizes and dimensions.
 - (3) Needs for convenient access, circulation, control and safety of street traffic.
 - (4) Limitations and opportunities of topography.
- B. Block lengths generally shall not exceed 1,250 feet or be less than 400 feet.

§ 99-14 **Lots.**

- A. The lot size, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated and shall be subject to the applicable provisions of Chapter **116**, Zoning.
- B. Lot dimensions shall conform to the requirements of Chapter **116**, Zoning, unless the Town Board has approved options provided in Town Law § 281.
- C. Land subject to flooding shall not be platted for residential occupancy nor for such other uses as may increase danger to life or property or aggravate the flood hazard.
- D. Corner lots for residential use shall have extra width to permit appropriate building setback from and orientation to both streets.
- E. Turnaround driveways may be mandatory on certain roads in the Town of Aurora.

§ 99-15 **Public sites and open spaces.**

- A. Parks and public open spaces. Adequate land for parks and other public open space purposes shall be provided.
 - (1) Amount of land dedicated. In general, the Town Board may require that not less than one acre of park and public open space land per 20 dwelling units be shown on the plat. However, in no case shall the amount required be more than 10% of the total area of the subdivision.
 - (2) The minimum area of contiguous public open space acceptable for this use may be one acre. A smaller open space may be approved by the Town Board if the difference in area between the space offered and the one-acre minimum may be provided by future subdivision of adjacent land. All lands designated on the plat as park or open space area shall be subject to such conditions as the Town

Board may establish on the subdivision concerning access, use and maintenance of such lands as deemed necessary to assure the preservation of the land, in perpetuity, for its intended purposes. Such conditions shall be clearly noted on the plat.

- B. Payment in lieu of dedication. In cases where, because of size, topography or location of the subdivision, the requirement for land dedication or reservation for parks and public open spaces would be unreasonable or undesirable, the Town Board shall alternately require, under § 277 of the Town Law, that a payment be made into a special fund for Town recreation site acquisition or improvements to existing recreation facilities in lieu of such land dedication. Such payment requirements shall be a condition of approval of the plat and shall be per the Standard Schedule of Fees per proposed dwelling unit in the project or such sum as may be set by resolution of the Town Board from time to time.

§ 99-16 Drainage improvements.

- A. The applicant shall be required by the Town Board to carry away, by pipe, open ditch or other drainage facility, any spring- or surface water that may exist either previous to or as a result of the subdivision. Such drainage facilities shall be located in the road rights-of-way where feasible, or in perpetual unobstructed easements of appropriate width, and shall be constructed in accordance with the Standard Specifications and Details for Materials and Construction of the Town of Aurora, the New York Stormwater Management Design Manual, and the New York Standards and Specifications for Erosion and Sediment Control.
- B. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The applicant's engineer shall determine the necessary size of the drainage facility based on the provisions of the Town construction standards and specifications, assuming conditions of maximum potential watershed development permitted by Chapter **116**, Zoning. Accommodations for proper drainage shall also be determined by the New York Standards and Specifications for Erosion and Sediment Control.
- C. The applicant's engineer shall also study the effect of the subdivision on existing downstream drainage facilities outside the area of the subdivision. No subdivision shall be approved unless adequate drainage will be provided to an adequate drainage watercourse or facility.

**Article IV
Required Improvements**

§ 99-17 Monuments and lot corner markers.

- A. Monuments shall be placed at all block corners, angle points and points of curves in streets and at intermediate points as required by the Engineer. The monuments shall be of such material, size and length as may be approved by the Engineer.
- B. Markers shall be located in the ground to final grade at all lot corners.
- C. Monuments and markers shall be noted on the preliminary plat.

§ 99-18 Utility and street improvements.

- A. Road name and traffic control signs. The applicant shall deposit with the Town at the time of final subdivision approval a sum established in the Town Standard Schedule of Fees for each road name and traffic control sign required within the subdivision by the Superintendent of Highways and Town Engineer. The Town shall install all such signs.
- B. Shade trees. The Town Board may require trees and other landscaping to be installed prior to a certificate of occupancy being issued. The subdivider may be required to deposit with the Town at the time of final subdivision approval a sum established in the Town Standard Schedule of Fees for each tree required by the Town Board.
 - (1) Placement of shade trees shall be noted on the preliminary plat.
- C. Sanitary sewer facilities and sanitary sewer districts. The applicant shall install sanitary sewer facilities in a manner prescribed in the Standard Specifications and Details for Materials and Construction for the Town of Aurora. All plans shall be designed in accordance with the rules, regulations and standards of the Town Engineer and County Health Department.
 - (1) Location of sanitary sewer facilities shall be noted on the preliminary plat.
- D. Fire hydrants and water districts. Necessary action shall be taken by the developer to enable the Town Board to extend or create a water supply district for the purpose of providing an adequate water supply and fire flow to fire hydrants in the subdivision.
 - (1) Water main and fire hydrant locations shall be noted on the preliminary plat.
- E. Utilities. All utility facilities, including gas, electricity, telephone, cable television, etc., shall be located underground throughout the subdivision. Wherever existing utility facilities are located aboveground, except where existing on public roads and rights-of-way, they shall be removed and placed underground. All utility facilities, existing and proposed, throughout the subdivision shall be shown on the preliminary plat and/or construction plans. Underground service connections to the road property line of each platted lot shall be installed at the applicant's expense. At the discretion of the Town Board, the requirement for service connections to each lot may be waived in the case of adjoining lots to be retained in single ownership and intended to be developed for the same primary use.
 - (1) All utilities shall be noted on the preliminary plat.
- F. School bus pickup areas. Whenever a proposed new subdivision road intersects with a major or secondary road, the applicant may be required by the Town Board to reserve, clear, grade and pave an area safe, suitable and adequate for the use of children awaiting school buses. The size of such area shall generally be equal to at least 10 square feet for each lot within the proposed subdivision, but in no case less than 100 square feet nor more than 200 square feet in total area nor less than 10 feet in any dimension. Such area shall be continued within the right-of-way or proposed subdivision.
- G. Preservation of existing features. Existing features which would add value to residential development or

to the Town as a whole, such as trees, watercourses and falls, beaches, historic sites and similar irreplaceable assets, shall be preserved in the design of the subdivision. No trees shall be removed from any subdivision nor any change of grade of the land effected until approval of the preliminary plat has been granted. All trees on the plat required to be retained shall be preserved, and all trees, where required, shall be welled and protected against change of grade.

§ 99-19 Extension of time; abandonment.

Notwithstanding any other provisions contained herein to the contrary:

- A. Should an applicant for subdivision approval and the Town Board agree, time frames for responding to and/or providing review or approval, disapproval or modification of a subdivision application may be extended in a manner acceptable to the applicant and Town Board.
- B. Should an applicant file an application for subdivision approval before or after the effective date of this section and thereafter fail to take any significant action in connection with, or as a condition of, such an application for a period of one or more years, said application may, in the sole discretion of the Town Board, be deemed to be abandoned and withdrawn by the applicant, and all fees previously paid in connection with such a filing shall be deemed earned by the Town.

Article V
Cluster Development

§ 99-20 Cluster development as open space design development overlay.

Cluster development shall mean a subdivision plat or plats, approved pursuant to this chapter, in which the subdivision of land is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping, in order to enhance the natural and scenic qualities of open lands. Private roads to service clustered lots may be approved as part of the final plat, and lots along such private roads may be platted as legal lots. Such private roads must provide adequate access to existing public roads.

§ 99-21 Application.

The applicant shall comply with the provisions of this chapter for the proposed subdivision of land involving cluster development. Cluster development in the Town of Aurora shall require the final approval of the Town Board in accordance with this chapter. Approval will be granted when the Town Board has determined that it will achieve the intent of these regulations. The Town Board, at its discretion, may direct an applicant to pursue cluster development if, in the judgment of the Town, its application will benefit the Town.

§ 99-22 Permitted number of building lots or dwelling units.

- A. A cluster development in the subdivision of land shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted if the land were subdivided into two acre lots.
- B. However, prior to determining the number of dwelling units and/or building lots, the parcel to be developed shall be adjusted as follows:
 - (1) Lands utilized by public utilities or structures or recorded easements of right-of-way shall be subtracted from the total gross area.

(2) Water bodies, marsh areas, designated wetlands, woodlands, gorges, rock outcroppings, caverns, poorly drained, unstable soils and floodplains shall be subtracted from the total gross area.

- C. The adjusted gross area of the parcel shall then be used to compute maximum number of dwelling units and/or building lots permitted.
- D. Overall, the minimum amount of open space preservation shall be no less than 50% of the gross acreage of the parcel or parcels to be developed.

§ 99-23 Plat plan.

The plat plan showing such cluster development shall include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required of the codes of the Town. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the Town Board, detached, semidetached, attached or multistory structures.

§ 99-24 Approval procedure.

The approval of subdivision plats with cluster development shall be in accordance with all applicable provisions of this chapter.

§ 99-25 Minimum development area.

The minimum parcel size to be considered for cluster development shall be 15 acres.

§ 99-26 Service by utilities.

All cluster development shall be served by a system of public utilities, including the water supply systems and central sewage systems, within an existing or planned municipal system.

§ 99-27 Supplementary regulations.

A. **Minimum lot size.** The minimum lot size may be reduced to no less than 7,200 square feet, provided that any and all such area that is not designated to serve as residential areas, roads or other public purposes be set aside and restricted on the subdivision plat for use by inhabitants as common open space, parkland or recreational purposes of an active or passive nature. When the required minimum lot area has been reduced in accordance with this article, the following yard requirements will be a minimum:

- (1) Front yard setback: 40 feet from the boundary of the right-of-way.
- (2) The minimum width of any side yard shall be five feet.
- (3) The total width of both side yards shall not be less than 13 feet.
- (4) Rear yard setback: 20 feet.
- (5) Minimum lot width: 60 feet.

B. **Minimum habitable floor area.** The required minimum habitable floor area shall be the minimum floor area of dwellings determined by Chapter **116**, Zoning. The maximum mean height of buildings shall not exceed two stories or 35 feet.

C. Maintenance of common area.

(1) Nothing herein shall prevent the Town Board from requiring that 10% or more of the entire subdivision be set aside for park and recreational purposes as common area, which area shall be separate and distinct from any lots within the subdivision intended for dwellings. Such areas shall not include the area or areas which are set aside for detention ponds.

(2) Provisions, satisfactory in the sole discretion of the Town Board, shall be made to assure the proper maintenance of all nonpublic areas and facilities for the common use of occupants of any cluster housing development of any type without expense to the general taxpayers of the Town of Aurora. The instrument incorporating provisions for the proper maintenance of all nonpublic areas and facilities for the common use of occupants of any cluster development shall be approved by the Town Attorney of the Town of Aurora as to form and legal sufficiency before any approval action is taken by the Town Board.

D. Parking, roads, yards, screening and buffering. In consideration of the site plan for cluster development, the Town Board shall consider the following criteria:

(1) Yard requirements and proposed screening of parking and active recreation areas from adjacent property lines.

(2) Sufficient off-street parking: a minimum of two car spaces per unit, not including garage space. Community parking areas may be required by the Town Board during subdivision review.

(3) Buffer and screening areas, which shall be landscaped, left in their natural state, or provided with additional evergreen foliage. Natural features such as streams, rock outcrops, marshlands, trees and shrubs shall be preserved and incorporated into the landscaping of the development. In addition, open vistas visible from existing public roads shall be preserved.

(4) Surface water retention facilities shall be developed where required in order that the rate of stormwater runoff after construction is no greater than the rate of runoff prior to construction.

(5) On-site lighting shall be directed downward and shall not reflect on adjacent properties.

(6) Private roads shall be built to minimum standards approved by the Town Board and provided by the Town Engineer.

(7) Nothing herein shall prevent the Town Board from requiring walkways, sidewalks and/or trails to be developed in the cluster development or for connectivity to surrounding areas.

(8) Other conditions that the Town Board in its sole discretion determines to be appropriate for the specific development.

E. Variances and modifications.

(1) Where the Town Board finds that, because of unusual circumstances of shape, topography or other physical features of the land or because of the nature of the adjacent developments, extraordinary hardships may result from the strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that no such variation shall be granted that will have the effect of nullifying the intent and the purpose of any Comprehensive Plan; Chapter **116**, Zoning; or any other law or ordinance of the Town of Aurora.

(2) In granting variances and modifications, the Town Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

Article VI Open Development Area

§ 99-28 **Purpose:**

- A. To insure access for fire and emergency vehicles.
- B. To provide standards to landowners who wish to develop or subdivide land that lacks required public road frontage for standard lot development, the Town Board may, by resolution, establish open development area guidelines within the Town pursuant to New York State Town Law § 280-a. An open development area is not an as-of-right use and must be designed to maintain the rural character of the Town as well as to meet the conditions as herein established.

§ 99-29 **Submission of development plan.**

- A. Application procedure. The applicant shall file with the Town Clerk's office the following documents:
 - (1) A current property survey of the open development area. The survey shall be prepared in accordance with the most current minimum standard detail requirements for ALTA/ACSM land title surveys as adopted by American Land Title Association and National Society of Professional Surveyors.
 - (a) Single-lot ODA applications: a minimum of 10 copies.
 - (b) Multiple-lot ODA applications (for lots of record existing as of the date of adoption of this amended code): a minimum of 20 copies
 - (2) A copy of the recorded deed describing the subject premises.
 - (3) A minimum of 20 copies of a development plan (minimum of 10 copies for a one-lot application), at a scale of not less than one inch equals 20 feet, that, at a minimum, shall include:
 - (a) The name and address of the owner(s) of the land to be developed; the name and address of the developer(s), if other than the owner.

- (b) All pertinent features, such as existing structures, streets, USGA topography and other information that may influence the design of the plan.
 - (c) The location, width and approximate grade of all proposed access roadways.
 - (d) The location, dimensions and area of all proposed or existing lots, drainage plans, public utilities and sewage disposal.
 - (e) The names of all property owners of record within a five-hundred-foot radius of all property lines of the proposed open development area.
 - (f) The acreage of the tract to be developed to the nearest 1/10 of an acre.
 - (g) The five-hundred- and one-hundred-year floodplains, as appropriate.
 - (h) National Wetland Inventory and New York State Department of Environmental Conservation mapped wetlands.
 - (i) The location and approximate watershed size of all drainageways.
 - (j) Any other information deemed appropriate or requested by the Town Board and/or Planning Board.
- (4) Narrative description of the planned private right-of-way, including:
- (a) Specifications for the private right-of-way, including driveway and utilities.
 - (b) Ownership of the right-of-way.
 - (c) A maintenance plan for the right-of-way.
- (5) A statement as to the proposed water supply and similar utilities service capabilities.
- (6) Fee payable to the Town of Aurora, as determined by a sum established in the Town Standard Schedule of for each proposed lot within the open development area.

B. New York State Environmental Quality Review Act. All requirements of the State Environmental Quality Review Act shall be complied with prior to consideration by the Town Board.

- (1) Part I of the short-form SEQR must be submitted at this time for a single-lot ODA.
- (2) Part I of the full SEQR must be submitted at this time for a multiple-lot ODA.

C. Submission date.

- (1) Single-lot ODA. The date of submission of a completed application and attachments shall be

the date filed with the Town Clerk.

(2) Multiple-lot ODA. The date of submission of a completed application and attachments shall be the date filed with the Town Clerk.

§ 99-30 **Review and approval of development plan.**

A. Referral.

(1) Single-lot ODA.

(a) Upon receipt and preliminary review of the open development plan containing applications, supporting documents and receipt of fee payment, the Town Clerk shall refer the open development plan to the Town Engineer, Code Enforcement Officer and Town Attorney for review, advice and recommendations, including all the terms and provisions of § **99-29** of this chapter.

(b) The Town Engineer, Code Enforcement Officer and Town Attorney shall, review said application and supporting documents and:

[1] Refer said application back to the Town Clerk with comments and recommendations.

(c) Upon receipt of recommendations from the Town Engineer, Code Enforcement Officer and Town Attorney, the Town Clerk shall:

[1] Refer a completed and reviewed application to the Town Board; or

[2] Refer the application back to the petitioner for additional information.

(d) After initial review, the Town Board shall send the single-lot ODA to the Planning Board for review and recommendation(s).

(2) Multiple-lot ODA. – (for lots of record existing as of the date of adoption of this code).

(a) Upon receipt and preliminary review of the open development plan containing applications, supporting documents and receipt of fee payment, the Town Clerk shall refer the open development plan to the Town Engineer, Code Enforcement Officer and Town Attorney for review, advice and recommendations, including all the terms and provisions of § **99-29** of this chapter.

(b) The Town Engineer, Code Enforcement Officer, and Town Attorney shall , review said application and supporting documents and refer said application back to the Town Clerk with comments and recommendations.

(c) Upon receipt of recommendations from the Town Engineer, Code Enforcement Officer and

Town Attorney, the Town Clerk shall:

- [1] Refer a completed and reviewed application to the Town Board; or
- [2] Refer the application back to the petitioner for additional information.

(d) The Town Board shall send all multiple-lot ODA applications to the Planning Board for review and recommendation(s).

- (3) A copy of the application and attachments will be forwarded to the Erie County Department of Environment and Planning for review.
- B. Planning Board meeting. The applicant shall be prepared to attend the next regular meeting of the Planning Board after the official submission date of the completed application and attachments and any subsequent meetings deemed necessary by the Planning Board to discuss the preliminary open development area plan.
- C. Planning Board action. Within 45 days after submission to the Planning Board, said Planning Board shall take action to recommend to the Town Board a conditional approval, with or without modification, or disapproval of such open development plan, with the grounds for disapproval stated upon the records of the Planning Board. Failure of the Planning Board to act within such forty-five-day period shall constitute a "no recommendation" of the plan.
- D. Town Board action. Before the Town Board acts on the plan, it shall schedule a public hearing to be determined at the first meeting subsequent to receiving the recommendation of the Planning Board. Upon mutual consent of both the Town Board and the applicant, the public hearing may be delayed.
- E. Public hearing. The Town Clerk shall have notice of public hearing published in the official newspaper of the Town. The notice shall be mailed to all property owners within a five-hundred-foot radius of all property lines. The public hearing shall be held at a regular meeting of the Town Board.
- F. The Town Board shall, within 45 days from the date of the public hearing, approve, modify or disapprove such plan. The grounds for such action shall be stated in the minutes of the Town Board. The Town Board may require additional information prior to acting on the plan. The approval of such development plan may include additional requirements.
- G. Any time limits set forth herein may be extended by mutual consent of the Planning Board and/or Town Board and the applicant to allow interested parties to comment upon or modify any pending proposal. Notwithstanding the above, if the Town Board determines that it is in the best interest of the Town to expedite the review and approval or disapproval of a pending application, subject to the provisions of this chapter, the Town Board may notify the Planning Board of this determination, in which event the Planning Board will make a written recommendation to the Town Board to either accept a pending application without change, to accept a pending application subject to certain changes, conditions or modifications or to reject a pending application within 60 days of the date of the Town Board's written request.

§ 99-31 **Supplementary regulations/minimum standards.**

A. . The creation of an Open Development Area will not create a nonconforming lot. The following requirements will be a minimum:

(1) Minimum lot size will be three acres exclusive of the “flagpole” portion of the property.

(2) The flag pole portion of the lot must have a minimum of 75 feet of frontage on an existing state, county, or Town road and maintain a minimum 75 feet wide right of way retained by the property owner.

(3) All access roadways will be located on a private right-of-way at least 75 feet wide.

(4) All access roadways will be a minimum of 20 feet wide from the street right-of-way to the residence, with required apron at the street, and constructed of gravel, asphalt or other hard surface. In all cases, access roadways will be sufficient to support the weight of fire apparatus and safety vehicles. Such design will be approved and inspected by the Town Engineer.

(a) At every increment of 150 feet of access roadway length, there will be an additional vehicle pass-by bump-out measuring a minimum 6 feet wide and 25 feet long.

(b) At a point between the interior termination of the 75 feet wide private right-of-way and the residence, a fire apparatus hammerhead, "Y," or cul-de-sac turnaround must be created as approved by the Building Inspector.

(c) Access roadways will not exceed 10% in grade.

(d) The minimum turning radius in an access roadway will be 28 feet.

(5) Front yard setback: 200 feet from the boundary line parallel to the street right-of-way.

(6) Side yard setback: 50 feet.

(7) Rear yard setback: 50 feet.

(8) Minimum lot width: 200 feet for boundary line parallel to the street right-of-way.

(9) Minimum distance between ingress/egress right of ways : 100 feet.

(10) The flag pole portion of the Open Development area shall not be an easement, but shall be owned in fee title by the owner of the Open Development area.

(a) The flag pole portion of ODA lots in existence as of the date of adoption of this amended code must have benefit of an existing easement on an existing road if not owned in fee.

(11) Other conditions that the Town Board in its sole discretion determines to be appropriate for the

specific development.

- B. Minimum habitable floor area. The required minimum habitable floor area shall be the minimum floor area of dwellings determined by Chapter **116, Zoning**. The maximum mean height for a principal building shall not exceed 2 1/2 stories or 35 feet.

§ 99-32 Required improvements and agreements; inspection.

The Code Enforcement Officer and/or the Town Engineer shall act as agent for the Town Board and Planning Board for the purpose of overseeing the satisfactory completion of improvements as required by the Town Board and shall determine an amount, if any, to defray costs of inspection. The applicant shall pay the Town the costs of inspection before the open development area plan is signed for filing. This cost shall be in addition to the fees required. If the Town Board or its agent finds, upon inspection, that any of the required improvements have not been constructed in accordance with the Town Board recommendations or the approved construction detail sheet, the applicant and/or property owner will be liable for the costs of completing said improvements according to specifications.

§ 99-33 Filing of approved plan.

- A. Upon completion of all requirements set forth in the action approving the open development area plan and the approval by the Town Board, the plan shall have the certification of the Town Clerk as follows:

"Approved by resolution of the Town Board of the Town of Aurora, New York, on the ____ day of _____, 20____, subject to all requirements and conditions of said attached resolution. Any change, erasure, modification or revision of this plan, as approved, shall void this approval. Signed this ____ day of _____, 20 _____, by _____."

- B. With notation to that effect upon said plan, it shall be deemed to have final approval and shall be properly signed by the appropriate officer of the Town Board and shall be filed in the office of the Town Clerk and the Town Building Department.

§ 99-34 Development standards.

The Town Board, in considering an application for an open development area plan, shall be guided by the following considerations and standards:

- A. General.

- (1) Minimum ODA lot requirements in Section 99-31.

- (2) Character of land. Land to be developed will be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.

- (3) Conformity to Official Map and Zoning Code regulations. The open development area will shall conform to the Official Map and Zoning Code as adopted by the Town Board.

- B. State Environmental Quality Review Act requirements.

NOTE: Deleted entire 99-35 from 2017 code

§ 99-35 **Deed restrictions.**

All deeds and easements of all or part of the real property subject to the requirements and conditions of the open development law approved herein shall contain the following provision:

"This conveyance is made and accepted subject to the open development area plan approved by the Town Board of the Town of Aurora on the _____ day of _____, 20____."

**Article VII
Modifications**

§ 99-36 **Modifications of standards.**

- A. Where the Town Board finds that extraordinary and unnecessary hardships may result from strict compliance with these regulations, it may **modify** the requirements so that substantial justice may be done and the public interest secured, provided that such **modification from** this chapter will not have the effect of nullifying the intent and purpose of this open development area plan.
- B. Where the Town Board finds that due to special circumstances of a particular plan the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities and adjacent to or in proximity to the proposed plan, it may waive such requirements subject to appropriate conditions.
 - 1) For nonconforming ODA lots in existence at the time of adoption of this code, the Town Board may grant area, width and setback modifications.
 - 2) For ODA lots created after the time of adoption of this code, the Town Board shall not grant area or width modifications, but may grant setback modifications.

Article VIII

Enforcement

§ 99-37 **Penalties for offenses.**

- A. Any person or persons, association or corporation committing an offense against this chapter or any section or provision thereof is guilty of a violation punishable by a fine not exceeding \$250 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.
- B. This chapter may also be enforced by civil action or by proceedings by the Town of Aurora.
- C. Each week that a violation is permitted to exist shall constitute a separate offense.