

New Laws Offer Method for Coordinated Open Space Preservation

On December 17, 2003, Governor Granholm signed Public Acts 227, 228 and 229 of 2003 into law. These new laws, which amend the zoning enabling legislation for cities and villages, townships and counties, respectively, allow the approval of Planned Unit Developments (PUD) in which the required open space is not contiguous with the development itself. In a sense, the enactment of these Acts may offer communities an avenue to utilize development activity to implement better-coordinated open space preservation programs. Of course, the approval of developments with non-contiguous open space is only possible as part of a PUD development, but it's a start.

- Beyond stating that "a [city or village/township/county] may approve a planned unit development with open space that is not contiguous with the rest of the planned unit development," these Acts are silent on the details of how Townships may implement this new provision.
- We believe that it would be in the best interest of the communities to proactively address the details governing the approval of such non-contiguous open space in its Master Plan and PUD Ordinance.

In order to fully capitalize on the potential these new Acts possess, communities should embark upon the following:

- Revision of community Master Plan by first identifying lands that are eligible for preservation as non-contiguous open space. Such areas might include sensitive natural features (such as riparian corridors), valuable farmland, or scenic resources.
- Revision of the community's PUD standards, establishing the terms under which non-contiguous open space will be considered. The Acts specify that such non-contiguous open space must be voluntary ("requested by the landowner"). Therefore an absolute requirement for the preservation of non-contiguous open space in specific locations of the community would not be considered legal. However, the preservation of non-contiguous open space in designated areas could be made a criterion in determining a project's eligibility for density bonuses or the like.

In terms of Michigan land use law, these new Acts should be considered truly remarkable. We believe that they offer a great opportunity for communities to harness development activity in order to fuel coordinated open space preservation programs. Carlisle/Wortman looks forward to assisting communities interested in coordinated land preservation explore this new avenue.