

Article VI: Special Use Permit and Planned Unit Development

SECTION 6.01 PURPOSE

It is the purpose of this Article to specify the procedure and requirements for the review of special land uses, as specified in this Ordinance. Uses classified as special land uses are recognized as possessing unique characteristics (relative to location, design, size, public infrastructure needs, and other similar characteristics), which require individual review and approval standards in order to safeguard the general health, safety, and welfare of the Township.

SECTION 6.02 USES SUBJECT TO SPECIAL USE PERMIT

Uses requiring special use permit shall be subject to the general provisions and supplemental site development standards of this Ordinance, the provisions of the Zoning District where located in addition to applicable provisions of this Article to prevent conflict with or impairment of the other uses or uses permitted by right of the district. Each use shall be considered an individual case.

1. Application

Application shall be submitted through the office of the Zoning Administrator, to the Planning Commission, on a special form provided for that purpose, and shall include the following:

- A. Site plan prepared under the requirements of **Article V – Site Plan Review**.
- B. Name and address of applicant and owner of the premises.
- C. Anticipated description of proposed use, including parking facilities, if required, and any exceptional traffic situations.
- D. A statement by applicant appraising the effect on the neighborhood.
- E. The application shall be accompanied by the fee established by the Township Board of Trustees.
- F. A detailed written statement, with supporting evidence, demonstrating how the proposed special land use will comply with the applicable general provisions, supplemental site development standards, and the standards for special use permit of this Ordinance.

2. Zoning Administrator's Review

- A. The Zoning Administrator shall review the application and information submitted under **Section 6.02.1** above to determine if all required information was supplied. If the Zoning Administrator determines that all required information was not supplied, he or she shall send written notification to the Applicant of the deficiencies. The application for the special use permit cannot proceed until all required information has been supplied.

- B. Once all required information is submitted, the Zoning Administrator shall forward the application to the Planning Commission for its review under the procedures of this Article.

3. Notice Requirements for Planning Commission Public Hearings

The notices for all public hearings before the Planning Commission concerning requests for special use permits and planned unit developments shall comply with all of the following:

- A. The content of the notice shall include all of the following information:
 - 1) A description of the nature of the proposed special use or planned unit development request.
 - 2) A description of the property on which the proposed special use or planned unit development will be located. The notice shall include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
 - 3) The time, date, and place the proposed special use or planned unit development request will be considered.
 - 4) The address where written comments will be received concerning the proposed special use or planned unit development request and the deadline by which such comments must be received.
- B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
- C. The notice shall be sent by first-class mail or personal delivery to the owners of the property on which the proposed special use or planned unit development will be located not less than 15 days before the scheduled public hearing.
- D. The notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property on which the proposed special use or planned unit development will be located and to the occupants of all structures within 300 feet of the property on which the proposed special use or planned unit development will be located not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
- E. After providing the notice required under this section and without further notice, except that as required under the Open Meetings Act, the Planning Commission may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.

4. Standards for granting Special Use Permit

The Planning Commission shall approve, or approve with conditions an application for a special land use permit only upon finding that the proposed special land use complies with the following standards:

- A. Allowed Special Land Use
The property subject to the application is located in a Zoning District in which the proposed special land use is allowed.
- B. Compatibility with Adjacent Land Uses
- 1) The proposed use subject to a special use permit shall be designed, constructed, operated and maintained so as not to diminish the opportunity for surrounding properties to be used and developed as zoned.
 - 2) The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on other conforming properties in the area by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap material that can be seen from any public road or seen from any adjacent land owned by another person.
 - 3) If deemed necessary by the Planning Commission, the hours of operation that the special use is allowed to operate, be open or otherwise occur, shall be imposed as a condition of approval to ensure compatibility with the surrounding land uses.
- C. Public Services
- 1) The proposed special land use will not place demands on fire, police, or other public resources in excess of current capacity.
 - 2) The proposed special land uses will be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services.
- D. Economic Well-Being of the Community
The proposed special land use shall not be detrimental to the economic well-being of the surrounding residents, businesses, landowners, and the community as a whole.
- E. Compatibility with Natural Environment
The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on the natural resources of the Township or the natural environment as a whole.
- F. Compliance with Specific Standards
The proposed special land use complies with all applicable specific standards required under this Ordinance.
- G. Conditional Approvals
The Planning Commission may impose reasonable conditions with the approval of a special use permit, pursuant to **Section 9.03** of this Ordinance.
- H. Performance Guarantee Required
The Planning Commission may require an applicant to provide a performance guarantee in connection with the approval of a special use permit, pursuant to **Section 9.06** of this Ordinance.

I. Amendment of Approved Special Use Permits

Amendment of an approved special use permit shall be permitted only under the following circumstances:

- 1) The owner of property for which a special use permit has been approved shall notify the Zoning Administrator of any desired change to the approved special use. Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design and character of the special land use, nor any specified conditions imposed as part of the original approval. Minor changes shall include the following:
 - a) Reduction of the size of any building and/or sign.
 - b) Movement of building and/or signs by no more the ten (10) feet.
 - c) Landscaping approved in the special use that is replaced by similar landscaping to an equal or greater extent.
 - d) Changes in floor plans that do not exceed five (5%) percent of the total floor area and which do not alter the character of the use or increase the amount of required parking.
 - e) Internal re-arrangement of parking lots which does not affect the number of parking spaces or alter access locations or design.
 - f) Changes related to item a. through e. above, required or requested by Hayes Township, Charlevoix County, or other state or federal regulatory agencies in order to conform with other laws or regulations; provided the extent of such changes does not alter the basic design and character of the special land use, nor any specified conditions imposed as part of the original approval.
 - g) All amendments to a special land use approved by the Zoning Administrator shall be in writing. After approval by the Zoning Administrator, the applicant shall prepare a revised site plan showing the approved amendment. The revised site plan shall contain a list of all approved amendments and a place for the Zoning Administrator to sign and date all approved amendments.
- 2) An amendment to an approved special use permit that cannot be processed by the Zoning Administrator under subsection I.1 above shall be processed in the same manner as the original special land use application.

J. Expiration of Special Use Permit

- 1) An approved special use permit shall expire one (1) year following approval by the Planning Commission, unless substantial construction has begun pursuant to the permit prior to the expiration, or the property owner applies to the Planning Commission for an extension prior to the expiration of the special use permit. The Planning Commission shall grant the requested extension for an additional one year, if it finds good cause for the extension and that the zoning regulations governing the special use permit approval have not changed since the approval.
- 2) If the special use permit expires pursuant to subsection J.1 above, no work pursuant to the special use permit may be undertaken until a new special use permit is obtained from the Planning Commission following the procedures for a new special use permit.

- K. Reapplication
No application for a special use permit which has been denied, wholly or in part, by the Planning Commission shall be re-submitted for a period of one (1) year from the date of such denial, unless a rehearing is granted pursuant to this Ordinance.
- L. Jurisdiction of the Zoning Board of Appeals
The Zoning Board of Appeals shall have no jurisdiction over decisions of the Planning Commission in regard to matters concerning the granting of special use permits.
- M. Inspection
The Zoning Administrator shall have the right to inspect any special use permit use, to ensure continued compliance with the conditions of the special use permit.

SECTION 6.03 PLANNED UNIT DEVELOPMENT (PUD)

- 1. Intent and Purpose
As used in this section, “planned unit development” (or PUD) means cluster zoning, planned development, community unit plan, planned residential development, and other planned development. The purposes of a PUD are:
 - A. To accomplish the objectives of the Zoning Ordinance through a land development project review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.
 - B. To permit flexibility in the regulation of land development.
 - C. To encourage innovation in land use in variety and design, layout, and type of structures constructed.
 - D. To achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities.
 - E. To encourage usable open space and provide better housing, employment, and shopping opportunities particularly suited to the needs of the residents of the Township.
 - F. To encourage the clustering of development to result in the preservation of larger areas of open space.
- 2. Use and Area Regulations
 - A. *Planned Unit Development Eligibility Requirements.* To be eligible for a planned unit development, a parcel shall meet all of the following:
 - 1) The parcel shall be ten (10) contiguous acres or more in area. Provided, however, if the proposed PUD will contain a mixture of residential and

non-residential uses, the parcel shall be twenty (20) acres or more in area. For purposes of this subsection, recreational amenities, such as health clubs and facilities providing swimming pools or tennis courts, and commercial activities customarily incidental to a residential use shall not be considered non-residential uses.

- 2) The parcel on which the proposed PUD will be located shall be served by public water and sanitary sewer facilities, if available.
- 3) The parcel on which the proposed PUD will be located shall be under single ownership, or the PUD application shall be filed jointly by all property owners.
- 4) The proposed uses within the PUD shall be consistent with the Hayes Township Master Plan for the subject parcel.

B. *Permitted Uses.* Planned unit developments shall be permitted in any Zoning District according to the following:

- 1) **Conservation Reserve or Agricultural (CR, A) and Residential (R-1, R-2, R-3, R-4, R-5, RR) Districts** - Except as noted, PUD uses shall be limited to the range of uses provided for within the underlying Zoning District classification. Such uses may be placed either singularly or in combination. Institutional and commercial uses determined by the Planning Commission to be compatible with the character of the PUD and surrounding neighborhood may also be permitted, provided the total area devoted to institutional and commercial uses shall not exceed twenty (20%) percent of the PUD development area (i.e. the gross land areas less the protected open space).
- 2) **Commercial & Business (C-1, C-2) District** - Except as noted, PUD uses may include any of the range of uses provided for within the underlying Zoning District classification. Such uses may be placed either singularly or in combination. Residential uses determined by the Planning Commission to be compatible with the character of the PUD and surrounding neighborhood may also be permitted provided the total area devoted to residential uses shall not exceed forty (40%) percent of the PUD development area (i.e. the gross land areas less the protected open space).
- 3) **Industrial (I-1) District** - Except as noted, PUD uses shall be limited to the range of uses provided for within the underlying Zoning District classification. Such uses may be placed either singularly or in combination. Commercial uses determined by the Planning Commission to be compatible with the character of the PUD and surrounding area may also be permitted provided the total area devoted to commercial uses shall not exceed twenty (20%) percent of the PUD development area (i.e. the gross land areas less the protected open space).
- 4) In approving a PUD with mixed uses, the Planning Commission may stipulate the sequence in which said uses, or portions thereof, are constructed.

C. *Area Regulations.* Except to the extent that a PUD or a portion of a PUD is subject to area regulations mandated by a state agency, a PUD shall meet the following area regulations.

- 1) *Perimeter Setbacks.* The setback maintained along the perimeter of the PUD shall equal or exceed the required setback of the underlying Zoning District, provided:
 - a) Any portion of a commercial or industrial use shall maintain a perimeter setback of not less than fifty (50) feet from any adjoining or abutting property which is developed residential or is located in a zoning district that permits residential development.
 - b) With the exception of access drives, parking areas, lighting, sidewalks and curbing, the perimeter setback shall be landscaped.
- 2) *Density and Bonus Units:* A PUD project shall be permitted an initial number of units equal to the number of lots possible based on the applicable zoning district and the gross property acreage. For each ten (10) acres of contiguous protected open space within the PUD, excluding state regulated wetlands, other areas characterized with hydric soils and areas with slopes of greater than 25 percent, the PUD project shall be eligible for one (1) additional bonus unit.
- 3) *Open Space.* A PUD project shall have open space totaling no less than fifty (50%) percent of the entire project area. The PUD project required open space is encouraged to be contiguous, and the open space shall have a minimum width of 100 feet and is subject to approval by the Planning Commission. This required open space shall be dedicated to the public or set aside for the common use of the owners and users within the PUD, and shall remain perpetually in an undeveloped state. Dedicated open space does not include parking lots, roads, and public rights-of-way, but may include flood plain areas and wetlands up to a maximum of twenty-five (25%) percent of the required open space and landscape area devoted to perimeter setbacks.

The required open space shall be protected by the developer in a conservation easement, or other legal means acceptable to the township. Said conveyance placed on the property shall specify that the open space is an integral component in the overall development for the use and enjoyment of the public or the residents within the Planned Unit Development.

Such conveyance shall:

- a) Provide for the privately owned open-space to be maintained and the provisions of the conservation easement or deed restriction to be enforced by the private property owners.
- b) Provide maintenance standards and a maintenance schedule.
- c) Grant the Township the right, but not the obligation, to enforce the provisions of the conservation easement or other legal means, if in the Township's opinion such provisions are not adequately enforced by the property owners.
- d) Be held by two entities, one being the Hayes Township and the

other the landowner's association, land conservancy or other entity found acceptable to the Hayes Township Planning Commission.

- 4) *Height Regulations.* The height of all buildings and structures within a PUD project shall not exceed the height limit of the underlying Zoning District.
- 5) *Other Dimensional Regulations.* To promote creativity and flexibility in site design, the Planning Commission may, subject to the following limitations, reduce the other dimensional regulations, as required by the underlying Zoning District, including but not limited to minimum lot size, density, and setbacks within the PUD project, upon a finding that the proposed dimensional regulations will not be detrimental to the public health, safety, or welfare of future occupants of the PUD, the surrounding neighborhood, or the Township as a whole.

Any reductions by the Planning Commission shall be limited as follows:

- a) Underlying Zoning District Setback requirements shall not be reduced by more than fifty (50%) percent. Perimeter setbacks as specifically required by the PUD regulations may not be reduced.
- b) Required parking shall not be reduced by more than sixty (60%) percent of the parking normally required of the proposed use. In no case shall a single-family home, mobile or modular home, or other such detached single-family dwelling have less than two (2) on-site (off-street) parking spaces. In reducing the required parking, the Planning Commission may require the reservation of a portion of the PUD site for future parking.

Prior to approving a reduction in dimensional regulations, the Planning Commission may require the applicant to demonstrate through bonafide documentation, including but not limited to traffic impact studies, environmental impact studies, market needs assessments, and infrastructure impact studies, that the reduction will not result in significant impacts to the PUD project and PUD occupants, the surrounding area, and the Township as a whole.

D. *Pre-application Conference.*

- 1) A pre-application conference shall be held with the Planning Commission or its representative, unless waived by the applicant, for the purpose of determining the eligibility of the proposed PUD application and to review the procedures and standards for PUD approval. The goals of the pre-application conference are to acquaint the Planning Commission, or its representative, with the applicant's proposed development, assist the applicant in understanding new or additional information which the Planning Commission will need to effectively consider the application, confirm that the application and all supporting documentation is ready for a public hearing, and to acquaint the applicant with the Planning Commission's initial, but unofficial reaction to the application. In no case

shall any representations made by the Planning Commission, or its representative, at the pre-application conference be construed as an endorsement or approval of the PUD.

- 2) A request for a pre-application conference shall be made to the Zoning Administrator who shall schedule a date and time for the pre-application conference. As part of the pre-application conference, the applicant shall submit five (5) copies of a conceptual plan which shows the property location, boundaries, significant natural features, vehicular and pedestrian circulation, and land use for the entire site.

E. *PUD Application Requirements.* An applicant seeking approval of a PUD shall submit a complete application to the Zoning Administrator. The Zoning Administrator shall then forward the application to the Planning Commission for its review under the procedures of this section. The application shall include all of the following:

- 1) A completed application form, supplied by the Zoning Administrator.
- 2) Payment of a fee as established by resolution of the Township Board.
- 3) A narrative statement describing:
 - a) The objectives of the proposed PUD and how they relate to the intent of the Zoning Ordinance as described in subsection 1), above.
 - b) The relationship of the proposed PUD to the Hayes Township Master Plan.
 - c) Phases of development, if any, and the approximate time frame for the start and completion of construction of each phase.
 - d) Proposed master deed, deed restrictions, covenants or similar legal instruments to be used within the PUD.
 - e) Anticipated dates for the start and completion of the PUD construction.
 - f) The location, type, and size of areas to be dedicated for common open space.
- 4) The PUD application shall include all information required by **Article V** and **Section 6.02.1**, and the following:
 - a) Required setbacks of the Zoning Districts.
 - b) The area (and square footage) percentage of subject property to be covered by buildings.
 - c) Percentage of the total site devoted to open space and the proposed uses of that open space.
 - d) Such other information regarding the development area that may be required to determine conformance with this Ordinance.

F. *Public Hearing on PUD Request; Notice.*
See **Section 6.02.3**.

G. *Planning Commission Review of PUD.* Following the public hearing the Planning Commission shall review the PUD application and shall approve, deny, or

approve with conditions the PUD application based on the standards for PUD approval contained in subsection H. below. The Planning Commission's decision shall be in writing and shall include findings of fact, based on the evidence presented at the public hearing, on each standard.

H. *Standards for PUD Approval; Conditions; Waiver of PUD Standards.*

- 1) *General Standards.* The Planning Commission shall approve, or approve with conditions, a PUD application if the Planning Commission finds that the proposed PUD meets the standards of **Article V** and **Section 6.02.4** and all of the following:
 - a) The planned unit development shall be consistent with the Hayes Township Master Plan.
 - b) The planned unit development shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area. Landscaping shall ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property and will be consistent with outdoor pedestrian movement. Vegetation proposed by the developer or required by the Planning Commission shall be maintained in a healthy living condition and such vegetation if dead shall be replaced.
 - c) The planned unit development shall not change the essential character of the surrounding area, unless such change is consistent with the Township's current master plan.
 - d) The planned unit development shall be designed to preserve public vistas and existing important natural, historical, and architectural features of significance within the development.
 - e) The planned unit development shall be designed so that its pedestrian, non-motorized and automobile circulation systems are safely and conveniently integrated with those of abutting property and any linear trail or park systems intersecting or abutting such development.
 - f) The planned unit development shall provide that vehicular and pedestrian traffic within the site shall be safe and convenient and that parking layout will not adversely interfere with the flow of traffic within the site or to and from the adjacent streets. Safe and adequate access for emergency vehicles to or within the development and adequate space for turning around at street ends shall be provided.
 - g) The planned unit development shall not result in any greater storm water runoff to adjacent property after development, than before. The open space shall be provided with ground cover suitable to control erosion, and vegetation which no longer provides erosion control shall be replaced.
 - h) The design of the planned unit development shall exhibit a

reasonably harmonious relationship between the location of buildings on the site relative to buildings on lands in the surrounding area; and there shall be a reasonable architectural and functional compatibility between all structures on the site and structures within the surrounding area. It is not intended that contrasts in architectural design and use of facade materials is to be discouraged, but care shall be taken so that any such contrasts will not be so out of character with existing building designs and facade materials so as to create an adverse effect on the stability and value of the surrounding area.

- i) The planned unit development shall be designed such that phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility services, and drainage or erosion control.
 - j) The planned unit development shall provide for underground installation of all utilities.
- 2) *Conditions.* The Planning Commission may impose reasonable conditions with the approval of a final site plan, pursuant to **Section 9.03** of this Ordinance.
- 3) *Waiver of PUD Standards.* The Planning Commission may waive any of the standards for a PUD contained in subsection H. above where all of the following findings are documented along with the rationale for the decision:
- a) No good public purpose will be achieved by requiring conformance with the standards sought by the applicant to be waived.
 - b) The spirit and intent of the PUD provisions will still be achieved.
 - c) No nuisance will be created.
- I. *Planned Unit Development Permit.* Following final approval of a PUD application, a permit shall be obtained from the Zoning Administrator. The issuance of this permit, however, shall not relieve the applicant from complying with applicable county, state, and federal permit requirements. The failure of the applicant to obtain any required county, state, or federal permit shall render the PUD permit issued under this subsection void.
- J. *Continuing Adherence to Approved PUD Application.* Any property owner who fails to develop and maintain an approved PUD according to the approved PUD application and conditions, if any, shall be deemed in violation of the provisions of this Ordinance and shall be subject to the penalties provided in this Ordinance.
- K. *Recording of Action.* The applicant shall record an affidavit acceptable to the Township with the Charlevoix County Register of Deeds that contains the full legal description of the project site, specifies the date of final Township approval, specifies the description or identification number which the Township has assigned to the PUD project, and declares that all improvements will be carried

out in accordance with the approved PUD application. If the Planning Commission approves an amendment to the PUD, the applicant shall record an amended affidavit acceptable to the Township that contains all of the information described above, describes the amendment, specifies the date the Planning Commission approved the amendment, and declares that the improvements will be carried out in accordance with the approved PUD, as amended. Finally, all deed restrictions and easements shall be duly filed with the Charlevoix County Register of Deeds and copies of all recorded documents filed with the Zoning Administrator, prior to issuance of a zoning permit.

L. *Amendment of an Approved Planned Unit Development.* Amendments to an approved PUD shall be permitted only under the following circumstances:

- 1) The owner of property for which a PUD has been approved shall notify the Zoning Administrator of any desired change to the approved PUD. Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design and character of the PUD, nor any specified conditions imposed as part of the original approval. Minor changes shall include the following:
 - a.) Reduction of the size of any building and/or sign.
 - b.) Movement of buildings and/or signs by no more than ten (10) feet.
 - c.) Landscaping approved in the PUD plan that is replaced by similar landscaping to an equal or greater extent.
 - d.) Changes in floor plans that do not exceed five (5%) percent of the total floor area and which do not alter the character of the use or increase the amount of required parking.
 - e.) Internal re-arrangement of a parking lot which does not affect the number of parking spaces or alter access locations or design.
 - f.) Changes related to items (a) through (e) above, required or requested by Hayes Township, Charlevoix County, or other state of federal regulatory agencies in order to conform with other laws or regulations; provided the extent of such changes does not alter the basic design and character of the PUD, nor any specified conditions imposed as part of the original approval.
- 2) All amendments to a PUD approved by the Zoning Administrator shall be in writing. After approval by the Zoning Administrator, the applicant shall prepare a revised development plan showing the approved amendment. The revised development plan shall contain a list of all approved amendments and a place for the Zoning Administrator to sign and date all approved amendments.
- 3) An amendment to an approved PUD that cannot be processed by the Zoning Administrator under subsection 1) above shall be processed in the same manner as the original PUD application.

M. *Expiration of Approved PUD; Extension.*

- 1) An approved PUD shall expire one (1) year following final approval by the Planning Commission, unless substantial construction has begun on the PUD project prior to that time or the property owner applies to the

Planning Commission for an extension prior to the expiration of the PUD. The Planning Commission may grant one (1) extension of an approved PUD for an additional one (1) year period if it finds:

- a) The property owner presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the property owner; and
 - b) The PUD requirements and standards that are reasonably related to the development have not changed.
- 2) If the PUD approval expires pursuant to subsection 1) above, no work pursuant to the PUD plan may be undertaken on the project until a new PUD approval is obtained from the Planning Commission following the procedures for a new PUD application. In addition, if the PUD approval expires, the property shall again be subject to the zoning classification of the property which existed prior to the PUD approval as if no PUD approval had ever been granted.

N. *Performance Guarantee.*

The Planning Commission may require the applicant to obtain and maintain a performance guarantee in connection with the PUD project, pursuant to **Section 9.06** of this Ordinance.