

PUD Ordinance -Anderson Woods Phase II and III

CASCADE CHARTER TOWNSHIP

Ordinance # 11 of 2006

AN ORDINANCE TO AMEND THE CASCADE CHARTER TOWNSHIP ZONING ORDINANCE AND ZONING MAP TO ESTABLISH THE ANDERSON WOODS PHASE II AND III PLANNED UNIT DEVELOPMENT PROJECT.

Cascade Charter Township (the "Township") Ordains:

Section I. An Amendment to the Cascade Charter Township Zoning Ordinance.

The application received from John Halland of Kirkwood Land Co LLC (hereinafter referred to as the "Developer") for Planned Unit Development designation for the proposed Anderson Woods Phase II and III Planned Unit Development Project (hereinafter referred to as the "Project") was recommended by the Cascade Charter Township Planning Commission for approval at the August 21, 2006 Planning Commission meeting. The Project is recommended for rezoning from ARC, Agriculture Rural Reserve and R1, Residential to PUD, Planned Unit Development, thus permitting a site condominium development. This action requires an amendment to the Cascade Charter Township Zoning Ordinance and Zoning Map to incorporate the Planning Commission's recommendations and the Cascade Charter Township Board of Trustees' action on the 8th day of November, 2006.

Section II. Legal Description.

The legal description of the Project is as follows:

That part of the north $\frac{1}{2}$ of the northwest $\frac{1}{4}$ lying easterly of contour 666 feet on the right bank of the Thornapple River, except the north 440 feet and except the south 440 feet; Also the north 37.5 feet of the east 224 feet of the south $\frac{1}{2}$ of the northeast $\frac{1}{4}$; Also the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$, except the north 672.7 feet and except that part described as: Beginning at a point 90 feet north of the southwest corner of said north $\frac{1}{2}$ of the northeast $\frac{1}{4}$; Thence south 90 feet; Thence east 95 feet; Thence northwesterly to the point of beginning of said excepted part; All in Section 34, Town 6 North, Range 10 West, Cascade Township, Kent County, Michigan.

Section III. General Provisions.

The following provisions shall hereby apply to the Project, in addition to those provisions outlined in Chapter 16 of the Cascade Charter Township Zoning Ordinance (Ordinance No. 11 of 1988, as amended).

Section IV. Purpose.

The Project occupies approximately 59.13 acres of land in the Township. The Project will be a residential site condominium development containing 28 single-family site condominium units. Approximately 33% of the property is to be preserved as permanent open space. This technique has been chosen by the Developer to give it and the eventual owners of each unit more control over the Project's aesthetics and appearance. This development technique provides the Developer with the ability to develop the Project in a manner to meet market expectations where more traditional mechanisms such as creating subdivision plats do not.

The regulations contained herein are established to define the procedures necessary to ensure high quality development in the Project. Additionally, they are designed to achieve integration of this development with adjacent land uses.

Section V. Approval Limitations.

A. The provisions of this Ordinance/Ordinance amendment (“this Ordinance”) are not intended as a substitute for the Cascade Charter Township Zoning Ordinance and the General Development Plan, nor do they in any way relieve the Developer from obtaining all approvals and permits required by the Township, except as otherwise expressly provided herein. In the event that a development issue or site plan element is not expressly addressed by this Ordinance, the specifications and requirements of the Cascade Charter Township Zoning Ordinance shall apply. Furthermore, all other applicable Cascade Charter Township ordinances shall still govern the Project where applicable.

B. Except as expressly otherwise provided herein, the Developer and its assigns must meet all applicable provisions, ordinance requirements, and regulations of Cascade Charter Township, as well as federal and state law, and must obtain all necessary approvals from state and county governmental agencies that are required for construction, operation, or use.

C. This PUD approval is expressly contingent upon all conditions of approval herein remaining fully effective and valid. If any condition imposed herein is determined to be illegal or contrary to law as a result of a successful legal challenge by the Developer or its assigns, or any other party, the Township reserves the right to review the entire Project under the PUD provisions of the Cascade Charter Township Zoning Ordinance, and further, to withdraw its approval of this PUD if the Township finds that, absent the effect of any condition imposed herein, the PUD no longer meets the standards for PUD approval contained in the Zoning Ordinance.

D. All conditions contained herein and in the final approved site plan shall be binding upon the Developer, as well as its successors, tenants and assigns. The conditions may be modified or amended only pursuant to a formal amendment of the PUD approval, approved site plan, and ordinance amendment. The Project must be constructed and operated, and all properties therein used, in strict compliance with the PUD approval (including this Ordinance and the final approved site plan), and no deviations can occur without prior formal written approval by the Township. So-called minor deviations shall not occur unilaterally by the Developer or its successors, tenants, or assigns. Any deviation without prior formal written approval by the Township will constitute a violation of this Ordinance and the Cascade Charter Township Zoning Ordinance.

E. This approval document shall be recorded with the Kent County Register of Deeds by the Developer prior to construction occurring on site and shall run with and bind the lands involved. Copies of this recorded document shall be supplied by the Developer to the Cascade Charter Township Clerk.

F. Failure to comply with the site plan or any condition of approval herein shall be deemed to be both a nuisance per se and a violation of the Cascade Charter Township Zoning Ordinance.

G. Prior to recording a copy of this document as specified in Section V(E) hereof, the Developer shall type the following statement onto the end of this document (or add an additional page to the document) as follows, and shall sign and date the same:

“I, John Halland, have fully read the above PUD ordinance amendment, understand its provisions and fully agree with all requirements and conditions contained in the same, on behalf of myself and my assigns, successors and transferees in and to the property involved.”

Section VI. Site Condominium Documents and Plans.

A. Specific controls relating to architectural elements, common elements of the site condominium project, construction materials, size and space requirements, improvements and out buildings, specific prohibitions and rules of conduct shall be governed by site condominium bylaws and master deed. These restrictions shall become part of this Ordinance by reference.

B. The Project shall be developed exactly in accordance with the site plan approved and signed by the Township. The site plan shall indicate where each building envelope will be located and shall provide appropriate measurements demonstrating compliance with Section 16.11(2) of the Zoning Ordinance. Engineering plans and documents relating to utilities, topography, drainage, and the survey of the Project shall be reviewed and approved by the Township Engineer. Approval of these documents shall be based upon their meeting the requirements of Section 16.11(4) of the Zoning Ordinance and also meeting recognized, acceptable engineering standards and practices. Once it has been determined that the plans have met Township requirements, the Township Engineer shall sign and mark these plan documents as "Approved," and forward them to the Developer. Only approved plan documents shall be recorded with the appropriate county and state agencies.

C. The number of building sites may be reduced or consolidated within the Project only after the review by and written approval of the Township Planning Department. The proposed changes to the site/survey plan to reduce or consolidate building sites shall be reviewed by the Planning Department to ensure compliance with the Cascade Charter Township Zoning Ordinance, this PUD Ordinance, and any other requirements. Once approved by the Planning Department, the amended site/survey shall then be recorded with the Kent County Register of Deeds Office and the appropriate state agencies by the Developer at its cost. A copy of the recorded site/survey plan shall be forwarded to the Planning Department, so that accurate files regarding the development can be maintained.

Section VII. Permitted Uses.

The permitted uses for the Anderson Woods PUD are as follows:

A. Single Family Residences.

B. Accessory buildings customarily incidental to a single family residence, subject to the provisions of Sections 4.08 and 4.09 of the Cascade Charter Township Zoning Ordinance, as it may be amended.

C. Signs. All signs for the Project shall conform with Section 6.02 of the Cascade Charter Township Sign Ordinance (Ordinance 14 of 1997, as amended).

D. Community Swimming Pool (as amended by Ord no 8 of 2007;11/28/07)

Section VIII. Design Guidelines, Requirements and Limitations. (as amended by Ord no.1 of 2011;1/12/11)

The Project shall be developed in exact accordance with the revised site plan approved by the Township dated 12/21/10. No alterations, expansions or additions may occur as to the Project without a formal amendment to this Ordinance, unless expressly otherwise authorized herein.

A. Maximum Number of Residential Units - The maximum number of single-family detached site condominium units within the Project shall be limited to twenty-eight (28) units.

B. Maximum Building or Structure Height - 35 feet or 2½ stories, whichever is less.

C. Setback Requirements

All site condominium buildings and structures shall meet the following minimum setback requirements:

1. Front Yard Setback: 35 feet
2. Side Yard Setback: minimum of 10 feet with both sides totaling at least 25 feet
3. Rear Yard Setback: 20 feet.

D. Minimum Floor Area

Each dwelling on a site condominium unit shall contain a minimum of:

1. One Story & Bi-Level – 1,300 square feet on the main floor, top floor of a bi-level, finished livable area above grade level, exclusive of garages, decks, porches and breezeways.
2. Two Story – 1,600 square feet, with a minimum of 800 square feet on the first floor, finished livable area above grade level, exclusive of garages, decks, porches and breezeways

E. Sports Fields

1. There are two sports fields approved for this development which must be built. The Tennis Court located on the north side of Kirkwood Trail and the Soccer Field located on the south side of Kirkwood Trail shall be installed during Phase II of the Project.

Section IX. Private Street Development.

A. The Developer shall submit to the Township a street construction, maintenance, and pavement plan consistent with Section 16.11(4)(f) of the Zoning Ordinance. The Developer may establish private streets to serve the Project provided the roads are constructed in accordance with the "Cascade Charter Township Engineering Design Requirements and Standards for Private Streets" and the following specifications:

1. The road grades shall not exceed an eight percent (8%) grade. All grades shall be sufficient to allow safe ingress/egress of emergency vehicles.
2. The private streets shall be posted with signs stating the street names. These signs shall be consistent with Kent County Road Commission standards and requirements and shall be installed at the Developer's cost.
3. Any private street shall intersect any public road at a 90 degree angle.
4. Copies of any permits required by the Kent County Road Commission to connect the private street to any public road shall be provided to the Township Planning Department by the Developer.

B. In accordance with Section G of the "Cascade Charter Township Engineering Design Requirements and Standards for Private Streets," the Developer of the Project shall provide a disclosure statement on all property deeds to all owners of the private street, all those who utilize the private street and all persons securing a building permit to construct a building or structure served by the private street,

by applying for and securing a building permit for construction of a building or structure that utilizes the private street, all such persons shall use the private street at their own risk and the Township (and its employees, officials, and agents) shall not be responsible for any aspect of the private street.

C. In accordance with Section I of the "Cascade Charter Township Engineering Design Requirements and Standards for Private Streets," it shall be the responsibility of the Developer and its successors or the individual property owners to fully maintain and keep the private access street in good repair at all times and to ensure that snow and ice is removed in a timely fashion during the winter.

D. No combustible building materials may be erected on the Project until a temporary access road is constructed to within 100 feet of the furthest point of a structure. Such road shall be a minimum 18 feet wide and be able to support 20 tons on a single axle with dual wheels and standard road tires.

Section X. Temporary Buildings.

No structure of a temporary nature, trailer, tent or construction shack shall be constructed, placed or maintained within the Project except accessory to and during construction of any building or infrastructure improvement.

Section XI. Easements

Prior to any construction occurring within this development, the Anderson Woods PUD/Developer shall provide written permanent 66-foot-wide easements for private roads for future connections to the adjoining properties to the north and to the south. These connections have been identified on the approved site plan dated June 30, 2006.

The language for these easements shall effectuate the following:

Beginning at the locations identified as Kirkwood Trail on this September 6, 2006 Basic P.U.D. Plan (the "Plan"), and continuing to the main entry at Buttrick Avenue across the roads depicted on the Plan ("Burdened Property"), the Developer shall provide perpetual, non-exclusive 66-foot-wide easements for the purposes of utilities, pedestrian, and vehicular access to Buttrick Avenue on the conditions set forth below. The easements shall be granted in favor of, and shall serve, the parcels immediately adjacent to the north of the Project, currently identified by tax parcel identification number 41-19-34-126-001, as well as any lots, parcels, or condominium units created therefrom. The Developer shall prepare, execute and record each easement promptly following the request of the Township and with language deemed acceptable to the Township.

The language for these easements shall also effectuate the following:

Developer hereby grants a 66-foot-wide perpetual, non-exclusive easement for utilities and pedestrian and vehicular ingress and egress to Buttrick Avenue over the property described as the Burdened Property in favor of the property described below as the Benefited Property.

Benefited Property

N 440 FT N 1/2 NW 1/4 OF CONTOUR 666 FT ON THE R BANK OF THORNAPPLE RIVER * SEC 34 T6N R102 18.5 A. Parcel No. 41-19-34-126-001

This easement for ingress and egress shall also specify the following:

(a) The Benefited Property shall have the use of the easement only after it is developed as a single-family residential community, with building and use restrictions substantially equal to those contained in The Master Deed and Condominium Bylaws for Anderson Woods, as amended, including, without limitation, restrictions regarding the required size and materials for residences, accessory buildings, and other improvements.

(b) The Benefited Property shall have the use of the easement only after the Developer of Anderson Woods is reimbursed by the developer of the Benefited Property for 1/3 of the reasonable total cost of the Developer of Anderson Woods in building the roadways over which the easement runs. This cost shall be calculated based upon the cost of the roadways in the entire Burdened Property area, not just the cost allocated to portion of the roadway which lies adjacent to the Burdened Property.

(c) The Benefited Property shall have the use of the easement only if it contributes toward the maintenance of the roadways over which the easement runs on an equal proportionate basis to the co-owners of units in the Anderson Woods Condominium Project. The proportionate basis shall be calculated in proportion to the total number of residential building sites located on the Condominium Project plus the residential building sites located in each of the Benefited Property and any other property benefited by a similar easement in roadways over the Condominium Project.

(d) The developer of Anderson Woods and the Anderson Woods Condominium Association shall have the right to establish and enforce rules regarding the use of the roadways, including, without limitation, speed limits and other traffic control measures, including the imposition of fines or other penalties for violation of such rules.

(e) The Township shall interpret the above (and its decision shall be binding) if a dispute arises regarding any of the above.

Section XII. Utilities.

A. Water and Septic – The individual units in the Project will be served by individual private wells and individual private septic systems with the exception of lots 35 to 42, which will have a common septic system. Such systems shall be designed, installed, and maintained pursuant to all applicable requirements of the Kent County Health Department and the state of Michigan.

B. Stormwater Drainage –

In lieu of requiring that an Act 433 agreement or a drainage district be established with the Kent County Drain Commissioner, Cascade Charter Township has agreed to approve the site plan for the Project so long as the Project (and any and all portions thereof) always complies with the Cascade Charter Township Stormwater Ordinance (as that ordinance may be amended from time to time, as well as any successor ordinance or ordinances). Accordingly, the property owner's association (the "Association") and all landowners within the Project ("Co-Owners") are required to ensure the proper installation and permanent maintenance of any and all storm drainage and water retention systems, pipes, ponds, and facilities for the Project (collectively, the "Facilities") shown on the approved site plan or as otherwise required by the Cascade Charter Township Stormwater Ordinance (as that ordinance may be amended from time to time, as well as any successor ordinance or ordinances, all of which shall collectively be referred to hereinafter as the "Stormwater Ordinance"). Such requirements and obligations of the Association and Co-Owners include, but are not necessarily limited to, the following:

1. Maintenance and repair regarding the following items shall be done on a regular basis and in such fashion as to ensure that all components of the Facilities function properly at all times:

- (a) Sediment removal;
- (b) Erosion control;
- (c) Ensuring constant structural integrity of the physical systems; and
- (d) Designate access to the facilities.

2. The Township (including its designated officials, officers, agents, and contractors) shall have the right to physically inspect all aspects of the Facilities at all reasonable times, or any other times if, in the opinion of the Township, there is a threat to the public health, safety, or welfare.

3. Buildings, structures, landscaping, trees, or similar items shall not be installed, planted, or placed over any portion of the Facilities without prior written Township approval.

4. The Association and Co-Owners shall supply the Township with a permanent recordable easement (in a form acceptable to the Township) regarding the following after installation and within 60 days of the date requested by the Township for the following:

- (a) Storm sewer pipes;
- (b) Basins;
- (c) Spillways;
- (d) Waterways; and
- (e) Designated access routes

5. The Township shall be supplied with an engineer's "as-built" certification to certify that the Facilities as constructed and installed matches the approved design. The Township shall also be supplied with a reduced copy of the approved site plan graphically showing the Facilities, together with any and all easements therefor.

6. The Township shall be supplied with a permanent easement or irrevocable license allowing the Township (as well as its designated officials, officers, agents, and contractors) to have access between the public road right-of-way to any and all portions of the Facilities.

7. Should the Facilities not be properly installed, maintained, and/or repaired, in compliance with all of the requirements of this Section XII.B, the approved site plan, and the Stormwater Ordinance (whether due to the fault or neglect of the Developer, the Association, and/or the Co-Owners), and any such noncompliance or deficiency shall not have been fully remedied within 30 days of the date when the Township has given the Association written notice of any such noncompliance or deficiencies, the Township, at its sole option and discretion, shall have the right and authority to perform any and all installations, repairs, and/or maintenance which is reasonably required and charge back the costs thereof to the Association and Co-Owners (together with reasonable administrative costs and legal fees, should any challenge occur regarding the Township's actions) as follows:

(a) Establish a Special Assessment District. The Township may establish a special assessment district for the Project to pay for or reimburse the Township for any and all such costs (as well as to ensure future required repairs and maintenance) pursuant to whichever state statute the Township desires to utilize. In such event, all of the Co-Owners and the Association shall be deemed to have consented to the establishment of such a special assessment district.

(b) Proceeding to Collect Pursuant to the Master Deed and Condominium Documents. Alternately, the Township shall also have the authority to collect or seek reimbursement for any and all such costs from the Association and Co-Owners as if such obligations of the Association and Co-Owners were in the form of a permanent deed restriction or covenant on the Project. Should the Township pursue this remedy, the Township would have any and all rights attributable to the Association when collecting dues or assessments from Co-Owners. Additionally, such costs shall be a lien on each of the Units, which shall be enforceable in accordance with Act No. 94 of the Public Acts of 1933, as amended from time to time. Any such charges which are delinquent for six (6) months or more may be certified annually to the Township Treasurer, who shall enter the lien on the next tax roll against the applicable Unit, and the costs shall be collected in the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll in the enforcement of a lien for taxes. In addition to any other lawful enforcement methods, the Township shall have all remedies authorized by Act No. 94 of the Public Acts of 1933, as amended.

The above alternate remedies (being (a) and (b)) shall be deemed to be in addition to any and all other remedies provided for elsewhere in the Master Deed or condominium documents or at law or equity. The Township shall have the sole authority and discretion to determine whether or not to proceed pursuant to (a) or (b), above.

C. Before construction commences, the Developer shall provide all necessary permanent easements within the Project for telephone, telecommunications, electricity, gas and cable television to the appropriate utility provider without cost. Said easements shall be recorded with the Kent County Register of Deeds and provided to each utility provider for their records.

Section XIII. Soil Erosion Control Requirements.

The Developer shall submit a soil erosion control plan showing all temporary and permanent soil erosion control measures to be taken before, during, and after construction on the Project. This plan shall be reviewed and approved by the Township Engineer prior to commencing any excavation on the site.

Section XIV. Performance Guarantee.

To ensure compliance with this Ordinance and any conditions herein, the Township may require reasonable performance guarantees to ensure completion of improvements such as, but not limited to,

landscaping, drainage, lighting, roads, and utilities. The Township Board, Engineer, or Planning Department may require such guarantees at any time they deem reasonably necessary to ensure completion of the improvements. The form (including the bank or surety involved), language, duration, and amount of the performance guarantee as shall be approved by the Township.

Section XV. Permanent Common Open Space.

The permanent common open space area is to remain in its present undeveloped state in perpetuity. To ensure this occurs, the following regulations shall apply to the permanent common open space area:

A. No buildings, structures, fences, or driveways shall be erected, constructed or placed within the common open space area. The private streets and their associated infrastructure improvements may encroach into this area provided all plans are approved by the Township and are consistent with the development plan for this Project.

B. There shall be no tree or vegetation cutting or removal within the common open space areas except to remove fallen, dead, diseased or dangerous trees or vegetation. The required detention and mitigation areas may also be constructed according to the approved plans.

C. There shall be no draining, filling or any other improvements of the wetlands within this common open space area other than that already permitted by the Michigan Department of Environmental Quality (MDEQ). The project must stay in full compliance with its MDEQ permit.

Section XVI. Landscaping

A. There are to be six (6) Evergreen Trees installed along the west property line of lot 32 as indicated on the site plan dated June 30th, 2006, on or before the first building permit is to be issued.

B. There is to be a ten (10) foot wide no tree cutting easement along the west property line of lot 32 as indicated on the site plan dated June 30th, 2006.

Section XVII. The Gerald R. Ford International Airport.

Within the recorded Master Deed, the Developer shall expressly disclose in writing that the Project is located in the vicinity of the Gerald R. Ford International Airport and that there may be noise, vibration, and property valuation impacts associated with such location.

Section XVIII. Consistency of the Master Deed and/or Deed Restrictions/Covenants with the PUD Approval.

If the Project will be a condominium project (in whole or in part), the master deed (and attachments) shall be reviewed and approved by the Township Attorney prior to final recording to ensure consistency with this Ordinance. If some or all of the Project will be governed by deed restrictions/restrictive covenants apart from a condominium master deed, such deed restrictions/restrictive covenants shall be reviewed and approved by the Township Attorney before recording to ensure consistency with this Ordinance.

Section XIX. Consistency With Planned Unit Development (PUD) Standards.

The rezoning to Planned Unit Development will result in a recognizable benefit to the ultimate users of the Project and to the community. Current and future residents will recognize the benefits of a residential development that offers a low-density land use.

In relation to the underlying zoning/ prior (ARC and R1), the Township finds the Project will not result in a material increase in the need for public services, facilities and utilities and will not place a material burden upon the subject property and the surrounding properties. The Project is not anticipated to cause undo impact to the stormwater drainage of the surrounding area. All stormwater and soil erosion control plans have been approved by the Township Engineer and the appropriate County and State agencies.

The Project has been determined by the Township to be compatible with the 1999 Comprehensive Plan of the Township and with the spirit and intent of the Planned Unit Development Chapter of the Zoning Ordinance. The Project has been determined to be a "Residential" use, which is consistent with the Cascade Township Comprehensive Plan.

The Township finds the Project will not result in an unreasonable negative economic impact upon surrounding properties.

The Township finds the Project to have at least the same amount of green areas and usable open space than would typically be required by the Township Zoning Ordinance.

Finally, the Township recognizes the Project will be under single ownership or control. The Township recognizes that the Developer or its assigns will retain ownership and control of the Premises until a majority of the site condominium units are purchased for single family residential purposes.

Section XX. Effective Date.

This Ordinance shall become effective after publication of the ordinance, or a summary thereof, in *The Grand Rapids Press*, a newspaper of general circulation within Cascade Charter Township.

The foregoing Ordinance was offered for adoption by Board Member Koessel supported by Board Member Goodyke. The roll call vote being as follows:

YEAS: Currier, Parrish, Goodyke, Julien, Carpenter, Koessel, Beahan

NAYS: None

ABSENT: None