

CHAPTER 1222  
Open Space Program

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CROSS REFERENCES

- Conservation of natural areas and preserves - see Ohio R.C. 1517.01 et seq.
- Conservation of wildlife - see Ohio R.C. 1531.01 et seq.
- Conservation easements - see Ohio R.C. 5301.67 et seq.
- Land reutilization program - see Ohio R.C. 5722.01 et seq.
- Conservancy districts - see Ohio R.C. 6101.01 et seq.
- Conservation District - see P. & Z. Ch. 1248
- Common open space in planned unit development - see P. & Z. 1264.11

**1222.01 IMPLEMENTATION OF THE OPEN SPACE PROGRAM.**

The Village of Yellow Springs Open Space Land Program, established by Ordinance 77-42, exists for the purpose of acquiring properties to be protected by appropriate conservation easements, after which they will become a permanent part of such Program. Such properties may have value in one or more of the following categories, although they are not required to do so:

- (a) Lands that contain scenic, natural, geological, historical, agricultural or recreational importance;
- (b) Lands that contain, or have the potential to contain, ecosystems of educational or scientific value;
- (c) Wetlands, flood plains or other lands necessary for the protection of water quality;
- (d) Lands of historical value, or which lie adjacent to lands of historical value, that are necessary for the protection of their qualities of historical interest;

- (e) Lands that have potential to be a part of community, County, regional, State or national parks or greenway systems;
- (f) Lands that are valuable to the community as open space due to their proximity to developing areas or their value in creating visual and geographic separation between the community and surrounding activities;
- (g) Lands that are within the designated Open Space Program Map, or as outlined in the Comprehensive Development Plan (Ordinance 77-42). (Ord. 92-8. Passed 5-4-92.)

#### **1222.02 ACQUISITION OF OPEN SPACE LANDS.**

The Village Manager is hereby designated as the Village's agent to search out and negotiate the purchase of lands or other real estate rights, including, but not limited to, conservation easements, options, rights of first refusal or land contracts for the Open Space Program. The terms of any such transaction negotiated must be approved by Village Council at a legal meeting. (Ord. 92-8. Passed 5-4-92.)

#### **1222.03 CONSERVATION EASEMENTS; DESIGNATION OF HOLDERS AND ENFORCERS THEREOF.**

The Village may elect to hold and enforce the terms of any conservation easement or other property right created or acquired in accordance with the provisions of this chapter. Alternatively, the Village may elect to assign the rights, duties and obligations of any conservation easement or other real estate right intended to carry out the goals of the Open Space Program to the Tecumseh Land Preservation Association (Tecumseh Land Trust), a charitable corporation exempt from Federal taxation under section 501(e) of the Internal Revenue Code and qualified under section 501(c)(3) of the same, organized for the purpose of preserving scenic and historic lands and natural environmental systems, or to another qualified corporation or agency, to hold and enforce. The holder of any such rights shall enforce its terms through appropriate legal actions, including, but not limited to, injunction or civil suit. Any such legal action shall be brought by the holder and enforcer of the easement or other property right in its own name on behalf of the Village and residents of the Village. (Ord. 92-8. Passed 5-4-92.)

#### **1222.04 PREPARATION AND PURPOSE OF CONSERVATION EASEMENTS.**

After acquisition of title or other property right to any land as a part of the Open Space Program, the Village Manager shall cause a suitable conservation easement, modeled on that cited in Resolution 92-12, for application to the land in question, to be prepared by the entity which is to become the holder and enforcer of it. Matters to be considered in the preparation of such easement include, but are not limited to, the various features of the land, its location, current and historic uses, topography,

environmental characteristics and its propensities for providing ecological value to the community. Such easement shall have for its purpose the protection of the acquired land for permanent inclusion in the Open Space Program as cited in Section 1222.02. (Ord. 92-8. Passed 5-4-92.)

**1222.05 CONVEYANCE AND RECORDING OF CONSERVATION EASEMENTS.**

The completed conservation easement shall be conveyed to the Village, the Tecumseh Land Trust or such other agent designated by Village Council, and recorded in the official records of the County Recorder's Office. In the event that the Village elects to be the holder and enforcer of the easement, the deed whereby that easement is placed of record shall contain language that clearly sets forth the intent that the easement shall not be merged with the fee simple title to the property and shall remain a separate and distinct charge upon the property. The easement shall be recorded at a time selected by Village Council, but in every case the easement shall be recorded before the fee simple title is sold, conveyed or transferred to any other party. (Ord. 92-8. Passed 5-4-92.)

**1222.06 DISPOSITION OF LANDS SUBJECT TO CONSERVATION EASEMENTS.**

Following Council approval of a suitable conservation easement, property acquired to be part of the Open Space Program may be resold. Such sale shall be subject to the following terms and conditions:

- (a) Public notice shall be given in the official publication instrument used by the Village of Yellow Springs for its other legal advertising, at least once a week for three weeks, and at least one time a week for three weeks on different days of the week in at least one other newspaper.
- (b) No offer shall be formally accepted by Village Council, nor shall any other sale commitment be made until a minimum of thirty days have passed from the first date of publication.
- (c) All advertisements and offers for sale shall stipulate that the proffered land is subject to the above cited conservation easement, and any person who makes an offer to buy the subject land must acknowledge in writing its existence and his or her familiarity with it.
- (d) Prior to offering any land for sale, Council shall establish a minimum acceptable price.
- (e) Subject to the above limitations, Village Council may elect to sell the property by means of:
  - (1) The services of an agent (realtor, broker or other) whose method of selection and terms of engagement shall be determined by Council, in which case the effective date of the listing shall follow the period prescribed for public advance notice of sale;
  - (2) A sealed bid; or
  - (3) Public auction.

- (f) Village Council may, in determining the best bid, consider, in addition to any cash offer, any offer of other land or real estate rights (e.g. a conservation easement) on land having value as a constituent of the Village's Open Space Program.
- (g) If no acceptable bids or offers are received, Village Council may decide to hold the land, attempt to sell it later or try selling it by another method.
- (h) The Village shall require that the buyer obtain a title examination at the buyer's expense prior to closing.  
(Ord. 92-8. Passed 5-4-92; Ord. 93-6. Passed 5-17-93.)

**1222.07 COOPERATION WITH TECUMSEH LAND TRUST.**

In those instances when the Village will be cooperating with the Tecumseh Land Trust or other entity in the acquisition, protection and sale of property, the Village shall first negotiate and approve a memorandum of understanding with such entity stipulating the roles and responsibilities of each party in this particular transaction. This memorandum of understanding shall be based upon the model memorandum attached to original Ordinance 92-8 as exhibit B and incorporated herein by reference.  
(Ord. 92-8. Passed 5-4-92.)