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# Chapter 1109

# Overlay Districts

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## **1109.01 Telecommunications Overlay District**

- (a) Intent: Increasing competition in the telecommunications industry, especially in the market for wireless telecommunications services, is increasing the demand for antenna sites on Towers and other Antenna Support Structures necessary for providing wireless service. The Telecommunications Act of 1996 preserves the authority of the City to regulate the placement, construction, and modification of Towers, Support Structures and/or Wireless Telecommunications Facilities to protect the health, safety and welfare of the public consistent with the Telecommunications Act of 1996. This Section creates a Telecommunication Overlay District, and places certain prohibitions upon the placement of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities in the City of Franklin in order to protect the health, safety and welfare of the citizens, without prohibiting any person from providing wireless telecommunications services. The regulations for the Telecommunication Overlay District, as outlined in this section, are intended to maintain a high character of community development, to protect and preserve property, to promote the stability of property values, and to protect real estate from impairment or destruction of value for the general community welfare by regulating the location of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities within the City.
- (b) Purpose: The purpose of this Overlay District is to regulate the placement, construction and modification of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.

- (c) Objectives: The following are the objectives of the Telecommunications Overlay District:
- (1) To comply with the Telecommunications Act of 1996 to include any of the follow-on rule making and/or rule interpretations by the appropriate state and federal agencies and/or courts.
  - (2) To work pro-actively with the various wireless telecommunications service providers to ensure rapid and reliable deployment of their services/technologies, while minimizing negative impacts on the City.
  - (3) To direct the location of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities in the City.
  - (4) To make available appropriate City owned property and structures for wireless telecommunications facilities.
  - (5) To minimize adverse visual impacts of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques.
  - (6) To promote and encourage shared use/co-location of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities as a primary option rather than construction of additional single-use Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities.
  - (7) To avoid potential damage to adjacent properties caused by Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed.
  - (8) To the greatest extent feasible, ensure that Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities are compatible with surrounding land uses.
  - (9) To the greatest extent feasible, ensure that proposed Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities are designed in harmony with natural settings and in a manner consistent with current development patterns.
  - (10) To protect the community from inappropriately placed Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities and the general proliferation of such structures.
- (d) Applicability: All Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities, any portion of which are located within the City, are subject to this section. (The boundaries of the Telecommunications Overlay District are outlined on Map attached at the end of this Chapter.) Except as provided in this section, any use being made of a pre-existing Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities on the effective date of this Section (herein "Nonconforming Structures") shall be allowed to continue, even if in conflict with the terms of this section; however, all re-construction or modifications to a Nonconforming Structure shall comply with paragraph (q) hereof.

**Requirements:**

- (e) **General Requirements:** Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities shall be treated as permitted uses subject to administrative approval, special permit uses, or conditional uses in a variety of zoning districts, contingent upon a number of requirements being met. These criteria are in place in an attempt to minimize adverse health, safety, public welfare or visual impacts through co-location, siting, design and construction.
  - (1) The City's intent is to provide incentives for Wireless Telecommunications Service Providers that seek to further the City's following priorities:
    - A. Co-locate on/with other existing towers, structures and/or facilities or locate on existing structures, whether public or private.
    - B. Design new towers for multiple users, wherever possible.
    - C. Locate towers in the least obtrusive manner given present and evolving technology.
  - (2) **Table 1** summarizes the City's zones and prioritizes the required process:

**TABLE 1: Zoning Districts**

District	Co-location on Existing Antenna Support Structures on Towers (Public or Private)	New Multi-User Tower (Public or Private Property)	New Tower Single User	Alternative Tower Structure** (Public or Private)
All Residential Districts	Prohibited			
Commercial Districts	Administrative	Special Permit		
Industrial Districts	Administrative	Special Permit		
Planned Non-Residential Districts	Administrative	Special Permit		
Office Districts	Administrative	Special Permit		
Exceptional Use Non-Conforming and Special Districts	Administrative	Special Permit		
Historic Overlay District	Special Permit and HDRB Approval			

*\*\* The goal of Alternative Tower Structures is to camouflage the tower/antenna installation. If it is the determination of the Planning Commission that this essential criterion has not been met, a Special Permit shall be denied.*

- (f) **Specific Requirements:** The following requirements apply to all Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities regardless of the zoning district in which they are to be located. These general standards are to be supplemented with the specific regulations for nonresidential and residential districts as set forth herein:
- (1) **Inventory of Existing Sites:** Each applicant for a Tower, Antenna Support Structure and/or Wireless Telecommunications Facility shall provide to the City an inventory of its existing Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities or sites planned and/or approved for Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities, that are either within the jurisdiction of Franklin or within two miles of the border thereof, including specific information about the location, height, and design of each Tower. The City may share such information with other applicants applying for administrative approvals or special use permits under this UDO or other organizations seeking to locate Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities within the jurisdiction of Franklin, provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
  - (2) **Multiple Antenna/Tower Plan:** Franklin encourages the owners of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities to submit a single application for approval of multiple Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities sites.
  - (3) **Multiple Users/Accommodation:** The City encourages all towers to be constructed or re-constructed to accommodate multiple users.
  - (4) **Historic Register/Overlay District:** Any application to locate a Tower, Antenna Support Structure and/or Wireless Telecommunications Facility on or in a building or structure that is listed on a historic register, or is in a historic district, shall be subject to review by the Historic District Review Board in addition to any other required review processes.
  - (5) **Public Notice:** Public notices shall be given in accordance with this UDO, as outlined in Chapter 1115.09.
  - (6) **Tower Color and Finish:** Towers shall either maintain a non-contrasting gray or similar color or have a galvanized steel finish unless otherwise required by the City or any applicable standards of the FAA and ODOT.
  - (7) **Antenna Color:** If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible, as determined by the City.
  - (8) **Compatible Design:** At a tower site, the design of the buildings and related structures shall use materials, colors, textures, and screening so as to be aesthetically and architecturally compatible with the surrounding environment, as approved by the City.
  - (9) **Lot Size and Setback:** For purposes of determining whether the installation of a Tower, Antenna Support Structure and/or Wireless Telecommunications Facility complies with district development regulations, the setback from all property lines shall be determined by the height of the tower, at a one-to-one ratio. The dimensions

of the entire lot shall control, even though the antennas or towers may be located on lease parcels within such lot.

- (10) **Maximum Height:** No Tower, including antenna, shall exceed three-hundred-twenty-five feet (325'), as measured from grade at the base of the tower.
- (11) **Fencing:** Any fencing shall comply with the City's accessory use regulations, as outlined in section 1113.05.
- (12) **Landscaping:** Buffer plantings shall be located on the site as deemed appropriate by the City and in accordance with the City's landscape regulations, as outlined in section 1111.06.
- (13) **Underground Equipment Shelters:** Underground equipment shelters will be required where appropriate screening of shelter cannot be accomplished.
- (14) **Lighting:** Towers and antennas shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- (15) **Signs:** No signs shall be allowed on a Tower, Antenna Support Structure and/or Wireless Telecommunications Facility, except that a sign shall be posted indicating an emergency contact phone number. Identification signage may be permitted in accordance with the City's sign regulations, as outlined in section 1111.08.
- (16) **Building Code: Safety Standards:** To ensure the structural integrity of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities, the owner thereof shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities that are published by the Electronics Industries Association, as amended from time to time. If, upon inspection, the City concludes that a Tower, Antenna Support Structure and/or Wireless Telecommunications Facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the Tower, Antenna Support Structure and/or Wireless Telecommunications Facility, the owner shall have thirty (30) days to bring such Tower, Antenna Support Structure and/or Wireless Telecommunications Facility into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the Tower, Antenna Support Structure and/or Wireless Telecommunications Facility at the owner's expense.
- (17) **Building Permits:** The installation of any Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities shall require the compliance with all local building regulations. No installation shall be allowed, without securing all applicable building permits.
- (18) **State or Federal Requirements:** All Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities. If such standards and regulations are changed, then the owners of the Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities governed by this UDO shall bring such Towers, Antenna

Support Structures and/or Wireless Telecommunications Facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring such Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- (19) **License to Operate:** Owners and or operators of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities shall submit copies of all franchises, certifications, licenses, and permits required by law for the design, construction, location and operation of Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities in Franklin. Owners and/or operators shall be required to maintain same and to provide evidence of renewal or extension thereof when granted.
- (20) **Non-Essential Services:** Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities shall be regulated and permitted pursuant to this Section and shall not be regulated or permitted as essential services, public utilities, or private utilities.

#### **Administrative:**

- (g) Administrative Review: The following provisions shall govern the issuance of administrative approvals for towers and antennas:
- (1) All Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities will require a Certificate of Zoning Compliance and applicable building permits prior to installation.
  - (2) Each applicant for administrative approval shall apply for a Certificate of Zoning Compliance and provide the information to address this Section of the UDO. The applicant shall pay a non-refundable fee, as outlined in section 1105.09, to reimburse the City for the costs of reviewing the application.
  - (3) The application shall be reviewed by the Zoning Official for administrative approval to determine if the proposed use complies with this Section as well as all applicable requirements of the underlying zoning district. It is understood that any underlying height restrictions shall not apply.
  - (4) In connection with any application for Certificate of Zoning Compliance, in order to encourage co-location, the Zoning Official may allow the reconstruction of an existing Tower, Antenna Support Structure and/or Wireless Telecommunications Facility, not to exceed the maximum allowable height.
  - (5) If a Certificate of Zoning Compliance in connection with an administrative review is denied, the applicant shall be entitled to file an appeal within twenty (20) days after the Zoning Official's decision. The appeal shall be filed with the Appeals Board, shall specify the grounds for such appeal, and shall follow the procedures outlined in section 1115.10.

- (h) **Administrative Approval:** The following uses may be approved by the Zoning Official after an administrative review has been conducted. Approval following the administrative review shall be evidenced by the issuance of a Certificate of Zoning Compliance.
- (1) **Locating antenna on existing building or other antenna support structure, public or private.** Any antenna intended to be attached to a structure other than a tower may be approved as an accessory use to any commercial, industrial, professional, office, institutional, or similar structure, provided:
- A. The antenna is designed to be as unobtrusive as possible.
  - B. The antenna does not extend more than twenty (20) feet above the highest point of the supporting structure;
  - C. The antenna complies with all applicable FCC and FAA regulations;
  - D. The antenna complies with all applicable building ordinances; and
  - E. Any additional equipment is fully screened and located in compliance with the underlying zoning district requirements.
- (2) **Co-locating antennas on an existing or reconstructed towers, public or private:** The City may approve an antenna which is to be located on an existing or reconstructed tower. This furthers the goal of minimizing the adverse visual impacts associated with the proliferation of towers. Co-location of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such co-location is accomplished in a manner consistent with the following:
- A. A tower that is modified or reconstructed to accommodate the co- location of an additional antenna shall be designed to be consistent with the existing tower and to be as unobtrusive as possible.
  - B. An existing tower may be modified or rebuilt to a taller height, not to exceed an additional two hundred (200) feet, to accommodate the co-location of additional antennae or in accordance as follows:
    - (i) Co-location of several carriers may be required.
    - (ii) New towers and antennae shall not exceed three hundred twenty-five feet (325') in height. For towers with less than four (4) users, Planning Commission may limit the height of the tower as it deems appropriate.
    - (iii) Towers must be set back a minimum distance of one-to-one, based upon the height of the tower, from any adjoining lot line. Guys and accessory buildings must satisfy the minimum zoning district setback requirements; the antenna complies with all applicable FCC and FAA regulations; the antenna complies with all applicable building ordinances; and any additional equipment is fully screened and located in compliance with the underlying zoning district requirements.
  - C. The additional height shall not require an additional setback from the property lines, provided the tower meets the minimum setback requirements of one-to-one, based upon the height of the tower. A tower that is being rebuilt to accommodate the co-location of additional antennae may be relocated on site as long as it meets the minimum setback requirement. After the tower is built to accommodate co-location, only one tower may remain on site if:

- (i) The antenna complies with all applicable FCC and FAA regulations;
  - (ii) The antenna complies with all applicable building ordinances; and
  - (iii) Any additional equipment is fully screened and located in compliance with the underlying zoning district requirements.
  - (iv) If a new tower is built, the old tower must be removed within thirty (30) days of commencement of operation of the new tower.
- (3) Installing a cable microcell network through the use of multiple low- powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, outdoor early warning sirens, or similar technologies/mechanisms that do not require the use of towers.

### **Special Permits:**

- (i) **Special Permit Applications:** The following provisions shall govern the issuance of special permits for Towers, Antenna Support Structures and/or Wireless Telecommunications Facilities by the Planning Commission:
- (1) In granting a special permit, the Planning Commission may impose conditions to the extent the body concludes that such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
  - (2) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
  - (3) An applicant shall submit the information described in the following paragraph and shall pay a non-refundable fee, as outlined in section 1105.09, to reimburse the City for the costs of reviewing the application.
- (j) **Information Required:** In addition to any information required under paragraph (e) and (f), above, applicants for a special permit for a Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility shall submit the following information:
- (1) A scaled and dimensioned site plan (not less than one inch equals 50 feet) clearly indicating the location, type and height of the proposed Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking and other information necessary to assess compliance with this UDO.
  - (2) Legal description of the parent tract and/or leased parcel.
  - (3) The setback distance between the proposed Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility and the nearest residential property.
  - (4) The separation distance from other Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities, described in the inventory of existing sites (paragraph (f) above) shall be shown on a map. The applicant shall also identify the type of construction of the existing Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility and the

- owner/operator of the existing Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility, if known.
- (5) A landscape plan showing specific landscape materials, location and installation sizes.
  - (6) Method of fencing, if any, including height, material, style, and color and, if applicable, the method of camouflage and illumination.
  - (7) A description of compliance with all applicable federal, state or local laws.
  - (8) A notarized statement by the applicant as to whether construction of the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility will accommodate co-location of additional antennas for future users.
  - (9) Identification of the entities providing the backhaul network for the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility described in the application, and other Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility sites owned or operated by the applicant in the municipality.
  - (10) A description of the suitability of the use of existing Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities, other structures or alternative technology not requiring the use of Towers or structures to provide the services to be provided through the use of the proposed new Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility.
- (k) Standards Considered in Granting Special Permits: In addition to any standards for consideration of special permit applications pursuant to this UDO, the Planning Commission shall consider the following factors in determining whether the application should be approved:
- (1) Height of the proposed Tower or Antenna Support Structure;
  - (2) Proximity of the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility to residential structures and residential district boundaries;
  - (3) Nature of uses on adjacent and nearby properties;
  - (4) Surrounding topography;
  - (5) Surrounding tree coverage and foliage;
  - (6) Design of the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - (7) Proposed ingress and egress; and
  - (8) Availability of existing Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities, other structures or alternative technology not requiring the use of Towers or structures to provide the services to be provided through the use of the proposed new Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility.

The Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria, if it determines that the goals of this Section are better served thereby.

- (l) Special Permit Approval: The following uses may be approved by the Planning Commission after a review has been conducted. Approval shall constitute issuance of a Special Permit.
- (1) **Locating a new multi-user or single user tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna**: The Planning Commission may approve a new tower or antenna where other less obtrusive measures are not feasible. With a goal toward minimizing the adverse visual impacts associated with the proliferation of towers, the following shall apply:
- A. Co-location of several carriers may be required.
  - B. New towers and antennae shall not exceed three hundred twenty-five feet (325') in height. For towers with less than four (4) users, Planning Commission may limit the height of the tower as it deems appropriate.
  - C. Towers must be set back a minimum distance of one-to-one, based upon the height of the tower, from any adjoining lot line. Guys and accessory buildings must satisfy the minimum zoning district setback requirements; the antenna complies with all applicable FCC and FAA regulations; the antenna complies with all applicable building ordinances; and any additional equipment is fully screened and located in compliance with the underlying zoning district requirements.
- (2) **New towers shall be approved only when other preferable alternatives are not available**: No new Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission that no existing Tower, structure or alternative technology is available to fill the communication requirements. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing Towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing Tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- A. No existing Towers or structures are located within the specific geographic limits that met applicant's engineering requirements.
  - B. Existing Towers or structures do not have sufficient height to meet applicant's engineering requirements, and have insufficient structural strength to support applicant's proposed antenna and related equipment.
  - C. The applicant's proposed antenna would cause frequency interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
  - D. The fees, costs, or contractual provisions required by the owner in order to share an existing Tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new Tower development are presumed to be unreasonable.
  - E. The applicant demonstrates that there are other limiting factors that render existing Towers and structures unsuitable.
  - F. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered

transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

G. The applicant provides documentation that other tower owners were contacted in writing in pursuit of the above.

(3) **Locating any alternative tower structure:** The Planning Commission may approve the location of an alternative tower structure on private property, provided the site is in conformity with the objectives set forth in section 1109.01(c) of this UDO. Approval by the City Council shall also be required for such structures to be located on City property. The objective here is to encourage ingenuity and the use of innovative methods to camouflage such facilities. If it is the determination of the Planning Commission that the proposed facilities have not been reasonably disguised or camouflaged, a Special Permit shall be denied. If a Special Permit is denied, the applicant shall be entitled to file an appeal within twenty (20) days after the decision. The appeal shall be filed with the Appeals Board and shall specify the grounds for such appeal.

(4) **Co-location on existing Antenna Support Structures or Towers (public or private) within the Historical Overlay District:** In addition to review by the Historic District Review Board, such a use shall require a Special Use Permit. Any antenna intended to be attached to a structure other than a tower may be approved as an accessory use to any commercial, industrial, professional, office, institutional, or similar structure, provided:

- A. The antenna is designed to be as unobtrusive as possible.
- B. The antenna does not extend more than twenty (20) feet above the highest point of the supporting structure;
- C. The antenna complies with all applicable FCC and FAA regulations;
- D. The antenna complies with all applicable building ordinances; and
- E. Any additional equipment is fully screened and located in compliance with the underlying zoning district requirements.

(m) Setback Requirements for Special Permits: The following setback requirements shall apply to all towers for which a special use permit is required:

- (1) Towers must be set back at a ratio of one-to-one (1:1), based upon the height of the tower, from any adjoining lot line.
- (2) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
- (3) Board may reduce the standard setback requirements if the objectives of this section, as outlined in 1109.01(c), would be better served thereby.

- (n) Fencing Requirements for Special Permits. Fencing shall be required and shall comply with the City's UDO. However, that the Planning Commission or Appeals Board may waive such requirements, as it deems appropriate. The following requirements shall govern the landscaping surrounding towers from which a special use permit is required:
- (1) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound as determined by the Planning Commission.
  - (2) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
  - (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
  - (4) Planning Commission may waive such requirements if requirements if the objectives of this section, as outlined in 1109.01(c), would be better served thereby.
- (o) Buildings or Other Equipment Storage.
- (1) **Antennas Mounted on Structures or Rooftops:** The equipment cabinet or structure used in association with antennas shall comply with all applicable building ordinances. Additionally, such equipment shall be sited and designed to minimize its visual impact and be screened to its full height.
  - (2) **Antennas Mounted on Utility Poles or Light Poles:** In commercial or industrial districts the equipment cabinet or structure shall be located at least fifteen feet (15') from all lot lines. The structure or cabinet shall be screened by an evergreen material with an ultimate height of eight feet (8') and a planted height of at least three feet (3').
  - (3) **Antennas Located on Towers:** The related unmanned equipment structure shall not exceed the maximum height allowed in the district, and shall be located and screened in accordance with the zoning district requirements in which located.
- (p) Abandonment of Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility:
- (1) All providers utilizing Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities shall notify the City in writing of any Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility located in the City whose use will be discontinued and of the date this use will cease. If the use of the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility is discontinued for one hundred eighty (180) days, the Zoning Official may declare the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility to be abandoned. (This excludes any dormancy period between construction and the initial use of the facility.)
  - (2) The Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility's owner/operator will receive written notice from the City and be instructed to either reactivate the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility's use within one hundred (180) days, or dismantle and remove the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility. If reactivation or

dismantling does not occur within that period, the City may remove that Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility or cause it to be removed and assess the costs to the owner/operator. In the case of a multi-use tower, this provision does not become effective until all users cease use of the tower; however, the City may cause the abandoned portions of systems on the multi-use tower to be removed in accordance with this provision.

- (3) The City must provide the owner three (3) months notice and an opportunity to be heard before the Planning Commission before initiating action to remove the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility. The public hearing shall follow the required three (3) month notice, and all interested parties shall be allowed an opportunity to be heard at the public hearing.
  - (4) After such notice and hearing has been provided, the Planning Commission may order either the acquisition or demolition of the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility. The City shall then have the authority to initiate proceedings either to acquire the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility, and any appurtenances attached thereto at the then fair market value, or in the alternative, to order the demolition of the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility and all appurtenances. The City may require Licensee to pay for all expenses necessary to acquire or demolish the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility.
- (q) Nonconforming Uses:
- (1) **Conforming Uses:** Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities that are constructed or installed in accordance with the provisions of this Section shall be deemed to constitute conforming uses or structures. This shall be the case even when such new facilities are being added to a non-conforming installation.
  - (2) **Lawful Pre-existing Uses:** Lawful, pre-existing Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new Tower or Antenna Support Structure of like construction and height serving the same purpose) shall be permitted on such pre-existing Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities. A replacement Tower or Antenna Support Structure must be constructed within one hundred eighty (180) days of removal of the initial Tower or Structure. New construction other than routine maintenance on a pre-existing Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities shall comply with the requirements of this Section.
  - (3) **Rebuilding Damaged or Destroyed Nonconforming Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities:** Lawful, pre-existing, nonconforming Towers, Antenna Support Structures, and/or Wireless Telecommunications Facilities that are damaged or destroyed may be rebuilt with administrative approval by the Zoning Official. The type, height, and location of the on-site

Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility shall be of the same type and intensity as the original. Building permits to rebuild the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility shall comply with all applicable building codes and shall be obtained within one hundred eighty (180) days from the date the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility is damaged or destroyed. If no permit is obtained or if said permit expires before reconstruction is complete, the Tower, Antenna Support Structure, and/or Wireless Telecommunications Facility shall be deemed abandoned and/or shall lose its lawful non-conforming status.

- (r) Non-Waiver: Nothing in this Section shall preclude the City from exercising any right or remedy it may have in law or equity to enforce the terms and conditions of this Section.
- (s) Severability: If any provision of this Section or the application of any provision of this Section to any person is, to any extent, held invalid or unenforceable by a tribunal of competent jurisdiction, the remainder of this Section and the application of such provision to other persons or circumstances shall not be affected by such holding. In case of such an event, this Section and all if its remaining provisions shall, in all other respects, continue to be effective. In the event the law invalidating such section or provision is subsequently repealed, rescinded, amended or is otherwise changed so that the section or provision which had previously been held invalid or unenforceable, no longer conflicts with the laws, rules or regulations then in effect, the previously invalid or unenforceable section or provision shall return to full force and effect.

## 1109.02 Floodplain Overlay District

(a) General Provisions:

- (1) **Statutory Authorization:** This Section of the UDO is adopted pursuant to authorization contained in ORC section 1521.18, and ARTICLE XVIII, Section 3, of the Ohio Constitution which grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. This Section adopts regulations for areas of special flood hazard that are necessary for participation in the National Flood Insurance Program.
- (2) **Intent:** The City of Franklin has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, flood proofed, or otherwise protected from flood damage also contribute to the flood loss. The regulations contained in this Section are intended to minimize the threat of such damages and to achieve the purposes hereinafter set forth.
- (3) **Purpose:** It is the purpose of these regulations to promote the public health, safety and general welfare, and to:
  - A. Protect human life and health;
  - B. Minimize expenditure of public money for costly flood control projects;
  - C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - D. Minimize prolonged business interruptions;
  - E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
  - F. Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
  - G. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
  - H. Minimize the impact of development on adjacent properties within and near flood prone areas;
  - I. Ensure that the flood storage and conveyance functions of the floodplain are maintained;
  - J. Minimize the impact of development on the natural, beneficial values of the floodplain;
  - K. Prevent floodplain uses that are either hazardous or environmentally incompatible; and
  - L. Meet community participation requirements of the National Flood Insurance Program.
- (4) **Methods of Reducing Flood Loss:** In order to accomplish its purposes, these regulations include methods and provisions for:
  - A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;

- B. Requiring that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
  - C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
  - D. Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and,
  - E. Preventing or regulating the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards in other areas.
- (5) **Lands to Which These Regulations Apply:** These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Franklin, including any additional areas of special flood hazard annexed by City of Franklin, as identified on the Floodplain Overlay District Map attached at the end of this Chapter.
- (6) **Basis for Establishing the Areas of Special Flood Hazard:** For the purposes of these regulations, the following studies and/or maps are adopted, and may be referred to herein as the City's Floodplain Map:
- A. *Flood Insurance Study City of Franklin, Ohio, Warren County; Flood Insurance Rate Map City of Franklin, Ohio, Warren County; and Flood Boundary and Floodway Map City of Franklin, Ohio, Warren County*, all effective March 4, 1987.
  - B. Other studies and/or maps that may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard, as indicated by the Floodplain Administrator.
  - C. Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio that has been approved by the City of Franklin, as required in Chapter 1111 for Subdivisions, PUDs, PRCDs and/or Large Scale Developments, or in Section 1109.02(c)(3). Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the City Zoning Office and/or the County Building and Zoning Office.
- (7) **Abrogation and Greater Restrictions:** These regulations are not intended to repeal any existing building codes. In the event of a conflict between these regulations and any other ordinance, resolution, or building code, the more restrictive shall be followed. These regulations shall not intend to impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by the regulations.
- (8) **Interpretation:** In the interpretation and application of these regulations, all provisions shall be:
- A. Considered as minimum requirements;
  - B. Liberally construed in favor of the City; and,
  - C. Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.

- (9) **Warning and Disclaimer of Liability:** The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Franklin, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.
- (10) **Severability:** Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.
- (b) Administration:
- (1) **Designation of the Floodplain Administrator:** The City Engineer, or his designee, is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.
- (2) **Duties and Responsibilities of the Floodplain Administrator:** The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:
- A. Evaluate applications for permits to develop in special flood hazard areas;
  - B. Interpret floodplain boundaries and provide flood hazard and flood protection elevation information;
  - C. Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance;
  - D. Inspect buildings and lands to determine whether any violations of these regulations have been committed;
  - E. Make and permanently keep all records for public inspection necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, variances, and records of enforcement actions taken for violations of these regulations;
  - F. Enforce the provisions of these regulations;
  - G. Provide information, testimony, or other evidence as needed during variance hearings;
  - H. Coordinate map maintenance activities and FEMA follow-up; and
  - I. Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.

- (3) **Floodplain Development Permits:** It shall be unlawful for any person to begin construction or other development activity including, but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established by the City's Floodplain Map, until a Floodplain Development Permit is obtained from the Floodplain Administrator. Such Floodplain Development Permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such Permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.
- (4) **Application Required:** An application for a Floodplain Development Permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a Floodplain Development Permit to determine the development's location. Such applications shall include, but not be limited to:
- A. Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing;
  - B. Elevation of the existing, natural ground where structures are proposed;
  - C. Elevation of the lowest floor, including basement, of all proposed structures;
  - D. Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations;
  - E. Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a Floodplain Development Permit when applicable:
    - (i) Flood-proofing certification for non-residential flood proofed structure as required in section 1109.02(c)(5);
    - (ii) Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of section 1109.02(c)(4) or 1109.02(c)(5) are designed to automatically equalize hydrostatic flood forces;
    - (iii) Description of any watercourse alteration or relocation that the flood carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in section 1109.02(c)(9);
    - (iv) A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations, but no floodway as required by section 1109.02(c)(9);

- (v) A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by section 1109.02(c)(9);
  - (vi) Generation of base flood elevation(s) for Subdivisions, PUDs, PRCDs and/or Large Scale Developments, as required by Chapter 1111, by section 1109.02(a)(6), or by section 1109.02(c)(3); and
- F. The applicant shall pay a non-refundable fee, as outlined in section 1105.09, to reimburse the City for the costs of reviewing the application.
- (5) **Review and Approval of a Floodplain Development Permit Application:**
- A. Review: After receipt of a complete application, the Floodplain Administrator shall review the application to ensure that these regulations have been met. No Floodplain Development Permit application shall be reviewed until all information required in section 1109.02(b)(4) has been received by the Floodplain Administrator.
  - B. The Floodplain Administrator shall review all Floodplain Development Permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required, including permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.
  - C. Approval: Within sixty (60) days after the receipt of a complete application, the Floodplain Administrator shall either approve or disapprove the application. If an application is approved, a Floodplain Development Permit shall be issued. All Floodplain Development Permits shall be conditional upon the commencement of work beginning within six (6) months of issuance. A Floodplain Development Permit shall expire one (1) year after issuance, unless the permitted activity has been substantially begun and is thereafter pursued to completion, as determined by the Zoning Official.
- (6) **Inspections:** The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.
- (7) **Post-Construction Certifications Required:** The following “as-built” certifications are required after a Floodplain Development Permit has been issued:
- A. For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a *Federal Emergency Management Agency Elevation Certificate* completed by a registered surveyor to record as-built elevation data. For elevated structures in Zone R-1, R-2, R-3 and A-1 areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner’s representative.
  - B. For all development activities subject to the standards of section 1109.02(c), a Letter of Map Revision.

- (8) **Revoking a Floodplain Development Permit:** A Floodplain Development Permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, the applicant shall be entitled to file an appeal within twenty (20) days after the decision. The appeal shall be filed with the Appeals Board and shall specify the grounds for such appeal.
- (9) **Exemption from Filing a Development Permit:** An application for a Floodplain Development Permit shall not be required for:
- A. Maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than five thousand dollars (\$5,000).
  - B. Development activities in an existing or proposed manufactured home park. Such activities are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of the Ohio Administrative Code Chapter 3701.
  - C. Major utility facilities permitted by the Ohio Power Siting Board under ORC Chapter 4906.
  - D. Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under ORC Chapter 3734.
  - E. Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 – Floodplain Management.
- Any proposed action exempt from filing for a floodplain development permit is also exempt from the standards of these regulations.
- (10) **Map Maintenance Activities:** To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Franklin flood maps, studies and other data identified in this Section accurately represent flooding conditions (so appropriate floodplain management criteria are based on current data) the following map maintenance activities are identified and shall be carried out by the Floodplain Administrator:
- A. *Requirement to Submit New Technical Data:* For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
    - (i) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
    - (ii) Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
    - (iii) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
    - (iv) Subdivision or large scale development proposals requiring the establishment of base flood elevations in accordance with section 1109.02(a)(6).

- B. *Right to Submit New Technical Data:* The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or plan metric details. Such a submission shall include appropriate supporting documentation made in writing by the City Manager of the City of Franklin, and may be submitted at any time.
  - C. *Annexation / Detachment:* Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Franklin have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the City of Franklin Flood Insurance Rate Map accurately represent the City of Franklin boundaries, include within such notification a copy of a map of the City of Franklin suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Franklin has assumed or relinquished floodplain management regulatory authority.
- (11) **Letter of Map Revision or Conditional Letter of Map Revision:**
- A. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a Floodplain Development Permit for:
    - (i) Proposed floodway encroachments that increase the base flood elevation; and
    - (ii) Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.
  - B. It is the responsibility of the applicant to have technical data, required in accordance with this Section, prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
  - C. Floodplain Development Permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to section 1109.02(c)(10).
- (12) **Data Use and Flood Map Interpretation:** The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:
- A. In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.
  - B. Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown

- on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.
- C. When Preliminary Flood Insurance Rate Maps and/or Flood Insurance Study have been provided by FEMA:
- (i) Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations; or
  - (ii) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and /or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and /or appeal to FEMA.
- (13) **Substantial Damage Determinations:** Damages to structures may result from a variety of causes including tornado, wind, heavy snow, flood, fire, etc. After such a damage event, the Floodplain Administrator shall:
- A. Determine whether damaged structures are located in special flood hazard areas;
  - B. Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
  - C. Make reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.
  - D. Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with Increased Cost of Compliance insurance claims.

- (c) Use and Development Requirements for Flood Hazard Reduction: The following use and development requirements apply to development wholly within, partially within, or in contact with any special flood hazard area as established in section 1109.02 (a)(5).
- (1) **Use Regulations:**
- A. Permitted Uses: All uses not otherwise prohibited in this Section or any other applicable land use regulation adopted by the City of Franklin are allowed provided they meet the provisions of these regulations.
  - B. Prohibited Uses:
    - (i) Private water supply systems in all special flood hazard areas identified by FEMA, permitted under ORC Chapter 3701.
    - (ii) Infectious waste treatment facilities in all special flood hazard areas, permitted under ORC Chapter 3734.
- (2) **Water and Wastewater Systems:** The following requirements apply to all water supply, sanitary sewerage and waste disposal systems not otherwise regulated by the Ohio Revised Code:
- A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
  - B. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
  - C. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.
- (3) **Subdivisions and Large Developments:**
- A. All subdivision proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations;
  - B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
  - C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
  - D. In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least fifty (50) lots or five (5) acres, whichever is less.
  - E. The applicant shall meet the requirement to submit technical data to FEMA of section 1109.02(b)(11) when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by section 1109.02(c)(9).
- (4) **Residential Structures:**
- A. New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring and construction materials resistant to flood damage are satisfied.

- B. New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.
- C. New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- D. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. Where flood protection data are not available the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.
- E. New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings sufficient to allow unimpeded movement of flood waters may have an enclosure below the lowest floor provided the enclosure meets the following standards:
  - (i) Be used only for the parking of vehicles, building access, or storage; and
  - (ii) Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or
  - (iii) Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- F. Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- G. Repair or rehabilitation of historic structures, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of this paragraph.
- H. In Residential Zones, new construction and substantial improvement shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.
- I. Each new residential site shall have direct access to a walkway, driveway, or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.

- (5) **Nonresidential Structures:**
- A. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of this Section and section 1109.02(c)(9).
  - B. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation. Where flood protection data are not available the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade or, together with attendant utility and sanitary facilities, shall meet all of the following standards:
    - (i) Be dry flood proofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
    - (ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
    - (iii) Be certified by a registered professional engineer or architect, through the use of a *Federal Emergency Management Agency Elevation*, that the design and methods of construction are in accordance with this Section and section 1109.02(c)(9).
  - C. In non- residential zone areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.
- (6) **Accessory Structures:** Relief to the elevation or dry flood proofing standards may be granted for accessory structures containing no more than six hundred square feet (600 sq. ft.). Such structures must meet the following standards:
- A. They shall not be used for human habitation;
  - B. They shall be constructed of flood resistant materials;
  - C. They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
  - D. They shall be firmly anchored to prevent flotation;
  - E. Service facilities such as electrical and heating equipment shall be elevated or flood proofed to or above the level of the flood protection elevation; and
  - F. They shall meet the opening requirements of section 1109.02(c)(4).
- (7) **Recreational Vehicles:** Recreational vehicles must meet at least one of the following standards:
- A. They shall not be located on sites in special flood hazard areas for more than one hundred eighty (180) days, or
  - B. They must be fully licensed and ready for highway use, or
  - C. They must meet all standards of section 1109.02(c)(4).
- (8) **Above Ground Gas or Liquid Storage Tanks:** All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

- (9) **Assurance of Flood Carrying Capacity:** Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood carrying capacity of watercourses is minimized:
- A. Development in Floodways:
- (i) In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or
  - (ii) Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:
    - Meet the requirements to submit technical data in section 1109.02(b)(4);
    - An evaluation of alternatives that would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
    - Certification that no structures are located in areas which would be impacted by the increased base flood elevation;
    - Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
    - Concurrence of the City Manager of the City of Franklin.
- B. Development in Riparian Areas with Base Flood Elevations but No Floodways:
- (i) In riparian special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than one (1) foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,
  - (ii) Development in riparian special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot (1') increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:
    - An evaluation of alternatives which would result in an increase of one foot (1') or less of the base flood elevation and an explanation why these alternatives are not feasible;
    - All other applicable requirements of this Section.

- C. Alterations of a Watercourse: For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bank-full stage." The field determination of "bank-full stage" shall be based on methods presented in Chapter 7 of the *USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique* or other applicable publication available from a Federal, State, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:
- (i) The bank-full flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bank-full flood carrying capacity of the watercourse will not be diminished.
  - (ii) Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.
  - (iii) The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with the City of Franklin specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
  - (iv) The applicant shall meet the requirements to submit technical data in section 1109.02(b)(4) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.
- (10) **Fill Activities:** The following standards apply to all fill activities in special flood hazard areas:
- A. Fill sites, upon which structures will be constructed or placed, must be compacted to ninety-five percent (95%) of the maximum density obtainable with the Standard Proctor Test method or an acceptable equivalent method;
  - B. Fill slopes shall not be steeper than one foot vertical to two feet horizontal (1:2);
  - C. Adequate protection against erosion and scour is provided for fill slopes. When expected velocities during the occurrence of the base flood of more than five feet per second armoring with stone or rock protection shall be provided. When expected velocities during the base flood are five feet per second or less protection shall be provided by covering them with vegetative cover.

- (d) Appeals and Variances:
- (1) **Powers and Duties of Appeals Board:**
    - A. The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.
    - B. The Appeals Board may authorize variances in accordance with section 1115.10 of this UDO.
  - (2) **Appeals:** Any person affected by any notice, order or other official action of the Floodplain Administrator may submit an appeal of the Floodplain Administrator's decision to the Appeals Board, provided that such person shall file such appeal within twenty (20) days of the date of such notice, order or other official action. Such appeal shall include a brief statement of the grounds for an appeal of the Floodplain Administrator's decision or for the mitigation of any item appearing on any order by the Floodplain Administrator. Such appeal shall be in writing, signed by the applicant, and shall be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board. Upon receipt of the notice of appeal, the Appeals Board shall proceed in accordance with the appeal process outlined in section 1115.10.
  - (3) **Variances:** Any person believing that the use and development standards of these regulations would result in undue hardship may file an application for a variance with the Appeals Board. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, and not due to the actions of the owner, a literal enforcement of the provisions of these regulations would result in an undue hardship.
    - A. *Application for a Variance:*
      - (i) Any owner or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.
      - (ii) Such application at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.
    - B. *Public Hearing:* At such hearing the applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, and standards specified in other sections of these regulations and the following factors:
      - (i) The danger that materials may be swept onto other lands to the injury of others;

- (ii) The danger to life and property due to flooding or erosion damage;
  - (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (iv) The importance of the services provided by the proposed facility to the community;
  - (v) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;
  - (vi) The necessity to the facility of a waterfront location, where applicable;
  - (vii) The compatibility of the proposed use with existing and anticipated development;
  - (viii) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - (xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- C. *Variances shall only be issued upon:*
- (i) A showing of good and sufficient cause;
  - (ii) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property (Increased cost or inconvenience of meeting the requirements of these regulations do not constitute an exceptional hardship to the applicant);
  - (iii) A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws;
  - (iv) A determination that the structure or other development is protected by methods to minimize flood damages.;
  - (v) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and
  - (vi) Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.
- D. *Other Conditions for Variances:*
- (i) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
  - (ii) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base

flood level, providing the applicable standards in section 1109.02(c) have been substantially met. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

- (iii) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(e) **Enforcement:**

(1) **Compliance Required:**

- A. No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in section 1109.02(b)(9).
- B. Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with section 1105.12.
- C. Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with section 1105.12.

(2) **Notice of Violation:** Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, he shall give notice of such violation to the person responsible therefore and order compliance with these regulations as hereinafter provided. Such notice and order shall:

- A. Be put in writing on an appropriate form;
- B. Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action that, if taken, will effect compliance with the provisions of these regulations;
- C. Specify a reasonable time for performance;
- D. Advise the owner, operator, or occupant of the right to appeal; and
- E. Be served on the owner, occupant, or agent in person; however, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy thereof is sent by registered or certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.

(3) **Violations and Penalties:** Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall be punishable in accordance with section 1105.12.

### 1109.03 Well Field Protection Overlay District

- (a) Statement of Intent: It is the intent of the Well Field Protection Overlay District to safeguard the health, safety and welfare of the customers of protected public water supplies and to protect the community's potable water supply against contamination by regulating land use and the storage, handling, use and/or production of regulated substances as defined below. The land within this Overlay District is that land in the City of Franklin that lies within a one (1) year travel time contour adjacent to existing and proposed public wells of a protected public water supply.
- (b) Determination of Applicability:
- (1) Within the Well Field Protection Overlay District, as shown on the Map attached at the end of this Chapter, the provisions of this chapter shall apply to:
    - A. New construction;
    - B. Building expansions and/or additions;
    - C. Alteration in use, storage, handling or processing of regulated substances; and
    - D. Conversion or use changes resulting in a new use involving the storage, handling, or processing of regulated substances.
  - (2) It is the responsibility of any person owning real property and/or operating a business within the City to make a determination of the applicability of this Section.
- (c) Permitted and Conditional Uses: The requirements of this paragraph shall be in addition to any applicable regulations found elsewhere within this UDO.
- (1) Permitted uses within the WFP Overlay District shall be those of the underlying zoning district, except as those uses may be otherwise restricted by this section.
  - (2) Conditional uses within the WFP Overlay District shall be those of the underlying zoning district, except as those uses may be otherwise restricted by this Section.
- (d) Prohibited Uses: Sanitary landfills; dry well; self storage facilities; excavation, extraction, mining or processing of sand, gravel, clay, shale, dolomite and limestone; landfills comprised of demolition debris or other non-approved matter; and junkyards are prohibited in the WFP Overlay District.
- (e) Design Requirements: The following design requirements shall apply to all new and expanded uses in the WFP Overlay District:
- (1) Underground storage tank (UST) system installation, use, operation closure and record keeping shall be in accordance with requirements for UST's located in sensitive areas as set forth in Bureau of Underground Storage Tank Regulations, 1301:7-9-10.
  - (2) Dry wells or floor drains to dry wells are not permitted in the WFP Overlay District.
  - (3) Secondary containment for above ground areas where regulated substances are stored or used shall be provided. Secondary containment shall be sufficient to store the substance for the maximum anticipated period of time necessary for the recovery of any released material.

- (4) General purpose floor drains located in building areas where regulated substances may be used, stored or generated shall only be allowed upon pre-approval by the City for connection to a public sewer system or an onsite closed holding tank.
  - (5) Building floor drains are prohibited in any areas of a structure where regulated substances or wastes are present including but not limited to storage, process, assembly or service areas.
  - (6) Local, state and federal agency requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of hazardous and/or regulated substances shall be met. No discharges to groundwater, including direct or indirect discharges, shall be allowed without required permits and approvals.
  - (7) Connection to public sanitary sewers, if reasonably available, is required. A connection shall be considered reasonably available if a sanitary sewer lies within an easement that abuts the property.
  - (8) All parking, driveway and loading areas shall be paved and designed to prevent storm runoff onto adjacent lands.
- (f) Plan Review: No new or expanded use shall be permitted within the WFP Overlay District without a site plan being submitted to the City Engineer and approved by the Planning Commission. The application for any new or expanded use, other than residential or agricultural, shall include the following:
- (1) A general description of the proposed use identifying the products produced, the materials used in the production process and the types of wastes generated along with the wastes handling and disposal methods for solid and hazardous wastes and sewage and non-sewage waste water discharges;
  - (2) A site and building plan showing all regulated substance loading, storage, handling and process areas that identifies floor drains, process vents, sewage disposal and waste storage or disposal areas;
  - (3) A complete list of the types and volumes of all regulated substances and/or hazardous materials and fuels used, stored, processed, handled, or disposed of as required to be supplied to the Warren County Emergency Management Agency;
  - (4) A storm water management plan for the site to assure that water infiltrating into the aquifer is not contaminated; and
  - (5) The applicant shall pay a non-refundable fee, as outlined in section 1105.09, to reimburse the City for the costs of reviewing the application.
- (g) Regulated Substance Management Plan:
- (1) The operator of any new or expanded commercial or industrial facility involving the use, handling storage, processing or storage of regulated substances or waste shall prepare a Regulated Substances Management Plan for review by the City Engineer and the City of Franklin. The plan must demonstrate that Best Management Practices shall be used by the applicant to minimize any potential threat to groundwater quality. The plan will also be submitted to the Warren County Local Emergency Planning Committee for review and comment and shall contain the following information:
    - A. A facility layout and description;
    - B. Procedures for safe handling;
    - C. A description of disposal methods for process wastes; and

- D. Procedures to be employed to prevent leaks and spills of hazardous or regulated substances.
- (2) The Regulated Substance Management Plan must include an Emergency Spill Plan that covers the following:
  - A. Emergency procedures;
  - B. Notification of officials;
  - C. Spill containment procedures;
  - D. Cleanup;
  - E. Disposal; and
  - F. Reporting.
- (3) The Management Plan and Emergency Spill Plan must be reviewed by the City of Franklin every five (5) years from date of approval and whenever there is a change in procedures, technology or materials used, stored, processed or waste generated.

## 1109.04 Historic Overlay District

- (a) Purpose: The purpose of the Historic Overlay District is to maintain and enhance the distinctive character of the Downtown area by safeguarding the architectural integrity of the various period structures within it, and to prevent intrusions and alterations within the district that would be incompatible with this established character.
- (b) Boundaries: The boundaries of the Historic Overlay District are outlined on Map attached at the end of this Chapter.
- (c) Applicability:
- (1) The regulations contained in this Section shall apply to all buildings and structures within the Historic Overlay District that are at least one hundred (100) years old, as dated from the then current year, and as determined by the inventories kept by the City, or the records of the Warren County and/or Franklin Historical Societies, or other public records. A Certificate of Appropriateness shall be required for any proposed changes to the exterior surface of the building or structure, any proposed changes in signage, or any other proposed changes to any unique environmental features of the lot upon which the building or structure is located.
  - (2) For any buildings and structures within the Historic Overlay District, the Historic District Review Board may recommend and/or Council may waive any of the design requirements or standards contained in this Section if it finds the proposed changes or new construction meets the general intent of this Section.
- (d) Certificate of Appropriateness Required:
- (1) A Certificate of Appropriateness is required from the Historic District Review Board prior to any new construction, remodeling, reconstruction or demolition. A Certificate of Appropriateness is required from the Zoning Official prior to the onset of maintenance or repair such as set forth in subparagraph (3), below.
  - (2) A Certificate of Appropriateness is required from the Historic District Review Board prior to the erection of any sign that requires a permit pursuant the City's sign regulations, as outlined in section 1111.08.
  - (3) Nothing in this Section shall be construed to prevent the ordinary maintenance or repair of any property within the Historic Overlay District, provided such work involves no change in material, design, texture, color or outer appearance; nor shall anything in this Section be construed to prevent any change, including the construction, reconstruction, alteration or demolition of any feature which in the view of the Zoning Official is required for the public safety because of an unsafe, insecure or dangerous condition.
- (e) Process:
- (1) Applications for a Certificate of Appropriateness shall be filed with the Zoning Official by the deadline established by the Zoning Official. The applicant shall submit with his application drawings, material and color samples, sketches and other information that indicates or identifies the proposed exterior or other proposed changes.

- (2) The Historic District Review Board shall review and approve, approve with modifications or disapprove such applications within thirty (30) days, unless the application is tabled at the request of the applicant or is tabled by the Board to gather additional information.
  - (3) Upon approval with modifications or disapproval of an application, the applicant may appeal the decision of the Historic District Review Board to City Council. Such appeal shall be made within twenty (20) days from the date of the Board's decision by filing a notice of appeal with the Clerk of Council.
  - (4) Upon approval of an application by the Historic District Review Board, upon approval by Council upon appeal, the Zoning Official shall issue a Certificate of Appropriateness within thirty (30) days.
- (f) Design Requirements:
- (1) Reconstruction or rehabilitation within the Historic Overlay District shall conform to the distinguishing, original exterior qualities or character of the structure, its site, and its environment.
  - (2) The design of new structures and of additions to existing structures, including new site improvements, shall take into account the architectural style, general design, arrangement, texture, material and color of other structures and premises within the Historic Overlay District.
  - (3) Materials:
    - A. The use of natural traditional exterior materials such as brick, stone, masonry and wood is encouraged on all new structures and all reconstruction or remodeling of existing structures within the Historic Overlay District.
    - B. The use of contemporary materials, such as metals, fiberglass and plastics for exterior surfaces is permissible provided these materials duplicate the design, texture and other visual qualities of the building's original materials. Each application proposing the use of contemporary materials shall provide detailed plans to the Board, to allow the Board to understand the proposed method of installation and the impact on specific architectural elements of the building.
  - (4) Traditional colors and combinations of those colors that reflect the character of the Downtown area, and which have approved by the Board, shall be used for building exteriors for all new construction to be built, and reconstruction, remodeling and exterior maintenance of existing structures within the Historic Overlay District.
  - (5) All signs within the Historic Overlay District shall conform to color and material standards of this section, be of such a style or design that reflects the character of the Downtown area and shall conform to the sign requirements contained in section 1111.08. Sign size and shape shall also respond to the existing proportions of period structures, and signs shall not be permitted to cover, blank out or close existing window and doorway openings or otherwise hide important architectural features.
  - (6) Guidelines, policies and general information pertaining to the use of materials, colors, signage, landscaping, renovation techniques and other design considerations which would be helpful to the public in preparing plans for review shall be kept and made available to the public by the secretary of the Historic District Review Board.

- (g) Standards for Evaluating Applications for Certificate of Appropriateness: In considering the appropriateness of any proposed change to the exterior surface of structures or to the other environmental features of the district, including landscaping, vegetation and exterior signage, the Historic District Review Board and Council shall consider the following:
- (1) The distinguishing original qualities or character of a period building, structure or site and their environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
  - (2) All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance inconsistent or inappropriate to the original integrity of the building shall be discouraged.
  - (3) Whereas changes that may have taken place in the course of the time are evidence of the history and development of a building, structure or site and its environment, if these changes are deemed to have acquired significance, then this significance (if any) shall be recognized and respected.
  - (4) Distinctive stylistic features or examples of skilled craftsmanship that characterize that a building, structure or site shall be treated with sensitivity.
  - (5) Significant architectural features that have deteriorated shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of architectural features should be based on accurate duplications of features, and if possible, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
  - (6) The surface cleaning of structures shall be undertaken with methods designed to minimize damage to historic building materials. Sandblasting and other cleaning methods that will damage the historic building materials should be avoided.
  - (7) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.
  - (8) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
  - (9) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the original structure would be unimpaired.

## 1109.05 Planned Unit Development Overlay District

- (a) Purpose:
- (1) The Planned Unit Development (PUD) Overlay District is intended to permit development that will, over a period of time, be enhanced by coordinated area site planning, diversified location of structures, diversified building heights and types, and/or mixing of compatible uses. Such developments are intended to provide a safe and efficient system for pedestrian and vehicle traffic; to provide attractive recreation and open spaces as integral parts of the developments; to enable economic design in the location of public and private utilities and community facilities; and to ensure adequate standards of construction and planning. The PUD Overlay District under this Section will allow for flexibility of overall development design with benefits to the developer and the community, while at the same time maintaining the standards or use requirements set forth in the underlying basic zoning district.
  - (2) The PUD Overlay District may also be used to accommodate the development or redevelopment of parcels consistent with the design principles of traditional neighborhoods and conservation subdivisions. Traditional neighborhood development means a consolidated, mixed-use neighborhood where residential, commercial and civic buildings are within close proximity or walking distance to each other. A conservation subdivision means a housing development in a rural setting that is characterized by reduced size lots and common open space and where natural features of land are maintained. Such proposed developments may be considered for approval at locations and with conditions that the City determines to be appropriate for the development and the surrounding area.
- (b) Permitted Uses: Uses permitted in the underlying basic use district are permitted uses in the PUD district. Individual structures shall comply with specific building area requirements of the underlying basic use district, and shall meet setbacks as required by the Planning Commission.
- (c) Minimum Requirements: Areas designated as PUD Overlay Districts shall be subject to the following minimum development areas:

<u>Principal Uses</u>	<u>Minimum Area of PUD</u>
Residential PUD	1 acre
Commercial PUD	1 acre
Industrial PUD	5 acres*
Mixed Compatible Uses	5 acres*

\*May be reduced on approval of the Planning Commission

- (d) **Preliminary Procedural Requirements:** An owner (or agent of) of land proposing the creation of a PUD Overlay District shall file an application and General Development Plan with the Zoning Official seeking approval of such district, and the application and plan shall be accompanied by a non-refundable fee, as outlined in section 1105.09.
- (1) **Application:** The application shall contain a statement indicating the following:
- A. The relationship of the proposed PUD Overlay District to the City's adopted master plan, or any adopted component thereof;
  - B. The general character of, and the uses to be included in, the proposed PUD Overlay District;
  - C. Total area to be included in the PUD Overlay District, including area for open space; residential density computations; proposed number of dwelling units; population analysis; availability of or requirements for municipal services; and any other similar data relevant to a comprehensive evaluation of the proposed development;
  - D. A general summary of the estimated value of structures and site improvement costs, including landscaping and special features;
  - E. A general outline of the organizational structure of any property owner's or management's association proposed to be established for the purposes of providing any necessary private services; and
  - F. Any proposed departure from the standards of development as set forth in this section.
- (2) **Preliminary Development Plan:** A Preliminary General Development Plan including:
- A. A legal description of the boundaries of the proposed district and its relationship to surrounding properties;
  - B. The location of public and private roads, driveways, sidewalks, curbs and parking facilities;
  - C. The size, arrangement, and location of any individual building sites and proposed building groups on each individual site;
  - D. The location of institutional, recreational, and open space areas and areas reserved or dedicated for public uses, including schools, parks, and drainage ways;
  - E. The type, size, and location of all structures including rooftop mechanics;
  - F. Landscape and screening plans;
  - G. Lighting plans for parking lots, security, private drives and product display;
  - H. Architectural plans, elevation, and perspective drawings and sketches illustrating the design and character of proposed structures;
  - I. The existing and proposed location of public sanitary sewer and water supply facilities;
  - J. The existing and proposed location of all private utilities or other easements;
  - K. Characteristics of soils related to contemplated specific uses;
  - L. Existing topography on the site with contours at no greater than two foot (2') intervals;
  - M. Anticipated uses of adjoining lands in regard to roads, surface water drainage, and compatibility with existing adjacent land uses; and

- N. The expected date of the commencement of physical development within the district.
- (e) Procedures for Review of Application and Preliminary Plan: (For a further description of the procedures to be followed and the submittals required, see section 1115.05)
- (1) **Review for Completeness:** The TRC shall review the application and Preliminary Development Plan to determine that they include all the items required. If the application and Plan are deemed complete, and the application fee paid, the TRC shall recommend to the City Engineer that the City officially accept the application.
  - (2) **Review of Preliminary Development Plan by Others:** The City Engineer shall distribute the preliminary development plan and application to the following for review and comment:
    - (i) Regulatory agencies which have statutory authority to subsequently review and approve any aspect of the development, including but not limited to the Army Corps of Engineers, the Warren County Health Department, and the Ohio Environmental Protection Agency.
    - (ii) Other agencies that, at the discretion of the City, may have appropriate technical expertise.
    - (iii) Appropriate local City administrative officials, including the Law Director.
    - (iv) Consultants retained by the City.
  - (3) **Site Visit:** The Planning Commission or Council may, together with the applicant and the applicant's consultant(s), visit the site to gain a thorough understanding of the characteristics of the site.
  - (4) **Review by Planning Commission:** Planning Commission shall review the application and Preliminary Development Plan and the recommendations of the TRC and the City Engineer. The Planning Commission shall take action on the submitted application and Preliminary Development Plan by either:
    - A. Approving the application and Preliminary Plan as submitted; or
    - B. Approving the Preliminary Plan and application subject to specific conditions not included in the Plan as submitted, such as, but not limited to, improvements to the general building layout or open space arrangement, or
    - C. Denying approval of the application and Preliminary Development Plan.
  - (5) **Referral to Council:** The application and Preliminary Development Plan for a PRCD shall be referred to the Council by Planning Commission after the Planning Commission has taken action on it, along with the Planning Commission's recommendations. The City Council, after due consideration in applying the standards of review set forth in paragraph (i) and paragraph (j), below, may deny the application and Preliminary Plan, approve the application and Preliminary Plan as submitted, or approve the application and Preliminary Plan subject to additional conditions and restrictions to which the owner has agreed.

- (f) Significance of Approved Application and Preliminary Development Plan. Approval of the Preliminary Development Plan shall:
- A. Establish the development framework for the project, including the general location of open space, development areas, densities, unit types, recreational facilities, and street alignments.
  - B. Be the basis for the application to proceed with detailed planning and engineering in reliance on the approved Preliminary General Development Plan.
  - C. Provide the benchmark for the Planning Commission to consider and approve amendments to the Final General Development Plan where the Planning Commission determines that the amended plan is equal to or better than the approved Preliminary Development Plan.
  - D. Authorize the applicant to apply for all other required regulatory approvals for the project or subsequent phases thereof.
- (g) Final General Development Plan. After a Preliminary Development Plan has been approved, an applicant shall submit for review and approval a Final Development Plan. The Final Development Plan may be submitted either for the entire project or for each construction phase.
- (1) The Final Development Plan shall include a Site Plan drawn at a scale not less than 1" = 100' indicating:
    - A. Boundaries of the area proposed for development, accurate dimensions, and total acreage;
    - B. The exact location and dimension of private streets, common drives and public street rights-of-way;
    - C. Exact location of building footprints or envelopes within which dwelling units are to be constructed, and lot lines with dimensions for all residential units for which individual ownership is proposed;
    - D. Dimensions of building/unit space;
    - E. The extent of environmental conservation or change and the exact location of all no cut/no disturb zones; and
    - F. Designated restricted open space areas and a description of proposed open space improvements.
  - (2) A Grading Plan drawn at a scale of 1" = 100', showing all information pertaining to surface drainage.
  - (3) A detailed Landscaping Plan for new landscaping, including entry features and designs.
  - (4) If applicable, the Declaration, Articles of Incorporation and either Bylaws (for a Condominium Association) or Code of Regulations (for a Homeowners' Association) and any other final covenants and restrictions and maintenance agreements to be imposed upon all the use of land and pertaining to the ownership, use, and maintenance of all common areas, including restricted open space as required by the Subdivision regulations.
  - (5) Conditions imposed by other regulatory agencies.
- (h) Procedures for Review of Final Development Plan: (For a further description of the procedures to be followed and the submittals required, see section 1115.05.)
- (1) **Review for Completeness:** The TRC shall review the Final Development Plan to determine that that it includes all the items required. If the Plan is deemed complete and the application fee has been paid, the TRC shall recommend to the City Engineer that the City officially accept the application.

- (2) **Distribution of Final Development Plan:** The City Engineer shall distribute the Final Development Plan to the Planning Commission, the Law Director, and other appropriate administrative departments or professional consultants for review and comment. Any reports, comments, or expert opinions shall be compiled by the City Engineer and transmitted to the Planning Commission prior to the time of the Board's review.
- (3) **Review by the Law Director:** The Law Director shall review the Declaration, Articles of Incorporation and either Bylaws (for a Condominium Association) or UDO of Regulations (for a Homeowner's Association) and any other final covenants and restrictions and maintenance agreements to be imposed upon the conservation development. He/she shall provide a written opinion to the Planning Commission documenting that the above demonstrates full compliance with the requirements of this section.
- (4) **Review by Planning Commission:** Planning Commission shall review the Final Development Plan and the recommendations of the TRC and the City Engineer. The Planning Commission shall assure that the Final Development Plan is in accordance/compliance with the Preliminary Development Plan. The Planning Commission shall take action on the submitted Final Development Plan by either:
- A. Approving the Final Development Plan as submitted; or
  - B. Approving the Final Development Plan subject to specific conditions not included in the plan as submitted, such as, but not limited to, improvements to the general building layout or open space arrangement, or
  - C. Denying approval of the Final Development Plan.
- (5) **Referral to Council:** The Final Development Plan for a PRCD shall be referred to the Council by Planning Commission after the Planning Commission has taken action on it, along with the Planning Commission's recommendations. The City Council, after due consideration, may deny the Final Development Plan, approve the Plan as submitted, or approve the Plan subject to additional conditions and restrictions to which the owner has agreed.
- (i) **General Standards of Review:** The Planning Commission and Council shall apply the following standards in reviewing a PUD application and Development Plans:
- (1) Whether the application and plan indicate that the physical development of the PUD will commence within nine (9) months following the approval, and that the development will be carried out according to a reasonable construction schedule satisfactory to the City;
  - (2) Whether the proposed PUD is consistent in all respects with the purpose and intent of this section;
  - (3) Whether the proposed PUD is in conformity with the Comprehensive Plan or any adopted component thereof, and that the development would not be contrary to the general welfare and economic prosperity of the community;
  - (4) Whether the proposed development shall be provided with adequate drainage facilities for surface and storm water flow;
  - (5) Whether the proposed development will be accessible from public roads that are adequate to carry the traffic generated by the proposed development;

- (6) Whether there will be an undue constraint or burden imposed on public services and facilities, such as fire and police protection, street maintenance, and maintenance of public areas by the proposed development;
  - (7) Whether the streets and driveways on the site of the proposed development will be adequate to serve the residents of the proposed development and will meet the minimum standards of all applicable ordinances or administrative regulations of the City;
  - (8) Whether centralized water and sewer facilities will be provided; and
  - (9) Whether the use of the land surrounding the proposed development can be planned in coordination with the proposed development.
- (j) Specific Standards, Based on Proposed Use:
- (1) *Residential PUD Overlay District:* Planning Commission shall find the following in recommending approval of a Residential PUD, and Council shall find the following in approving a Residential PUD:
    - A. Such development will create an attractive residential environment of sustained desirability and economic stability, including structures in relation to terrain, consideration of safe pedestrian flow, ready access to recreation and open space, and coordination with overall plans for the community;
    - B. Provision has been made for the installation of adequate public facilities and the continuing maintenance and operation of such facilities;
    - C. Adequate, continuing fire and police protection is available;
    - D. The population composition of the PUD will not have an adverse effect upon the community's capacity to provide needed school or other municipal service facilities; and
    - E. Adequate guarantee is provided for permanent preservation of open space areas as shown on the approved site plan either by private reservation and maintenance, by dedication to the public, or payment in lieu of dedication, in accordance with section 1111.04.
  - (2) *Commercial PUD Overlay District:* Planning Commission shall find the following in recommending approval of a Commercial PUD, and Council shall find the following in approving a Commercial PUD:
    - A. The proposed PUD will be adequately served by off street parking and truck service facilities;
    - B. The proposed PUD will be adequately provided with and will not impose any undue burden on public services and facilities such as fire and police protection, street maintenance, and maintenance of public areas;
    - C. The locations for entrances and exits have been designated to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets, and that the development will not create an adverse effect upon the general traffic pattern of the surrounding neighborhood; and
    - D. The architectural design, landscaping, control of lighting, and general site development will result in an attractive and harmonious service area compatible with and not adversely affecting the property values of the surrounding neighborhood.

- (3) *Industrial PUD Overlay District:* Planning Commission shall find the following in recommending approval of a Industrial PUD, and Council shall find the following in approving a Industrial PUD:
- A. The operational character, physical plant arrangement, and architectural design of buildings will be compatible with the latest in performance standards and industrial development design and will not result in adverse effect upon the property values of the surrounding neighborhood;
  - B. The proposed PUD will be adequately provided with and will not impose any undue burden on public services and facilities, such as fire and police protection, street maintenance, and maintenance of public areas;
  - C. The proposed PUD will include adequate provisions for off-street parking and truck service areas and will be adequately served by rail and/or arterial highway facilities; and
  - D. The proposed PUD will properly relate to the total transportation system of the community and will not result in an adverse effect on the safety and efficiency of the public streets.
- (4) *Mixed Use PUD Overlay District:* Planning Commission shall find the following in recommending approval of a Mixed Use PUD, and Council shall find the following in approving a Mixed Use PUD:
- A. The proposed mixture of uses produces a unified composite that is compatible within the underlying districts and which as a total development entity is compatible with the surrounding neighborhood;
  - B. The various types of uses conform to the general requirements as herein before set forth, applicable to projects of such use and character; and
  - C. The proposed PUD will be adequately provided with and will not impose any undue burden on public services and facilities, such as fire and police protection, street maintenance, and maintenance of public areas.
- (k) Developer's Agreement: Before any improvements are made within a PUD Overlay District, a Developer's Agreement shall be required incorporating all improvements, requirements and conditions of the development of the district, which requirements and conditions shall run with the land. The agreement shall be drafted in recordable form and recorded by the Developer with the County Recorder for Warren County.
- (l) Major Changes and Additions: Any subsequent major changes or additions to the Developer's Agreement, Development Plans (exceeding 25 percent of the floor area, or 10,000 square feet) or uses for the PUD Overlay District shall first be submitted for approval to the Planning Commission. If the Planning Commission determines that such changes or additions constitute a substantial alteration of the original developer's agreement, development plan, or uses of the district, a public hearing before the City Council shall be required prior to the Council determining whether to accept the subsequent changes or additions. The City Council reserves the right to require changes if it determines, applying the standards of paragraph (i) and paragraph (j), above, that such changes are required to comply with the purpose of this Section.

- (m) Use and Maintenance: Each PUD Overlay District shall at all times be maintained and used in accordance with the standards set forth above, and in a manner not to create a health and safety hazard to adjacent residents or businesses.
  
- (n) Land Division: The division of any land(s) within a PUD Overlay District shall be in accordance with the platting provisions of the City's preliminary plan and final plat regulations, as set forth in the City's Development Standards, as outlined in Chapter 1111. When such a division is contemplated, a preliminary plat or certified survey map of the lands to be divided shall accompany the petition for a PUD Overlay District approval.

## 1109.06 Planned Residential Conservation Overlay District

- (a) Policies Underlying Use of Zone: The primary objective of the Planned Residential Conservation Overlay District (PRCD) is to promote the health and safety of the community through the application of flexible land development techniques in the arrangement and construction of dwelling units and roads. Such flexibility is intended to maximize the conservation of open space while accepting development and retaining for the property owner the development rights (the number of residential dwelling units) that are permitted under the existing conventional zoning.
- (b) Objectives: The regulations contained in this Section are intended to achieve the following objectives:
- (1) Maximize protection of the community's natural resources by:
    - A. Avoiding development on, and destruction of, sensitive natural resource areas;
    - B. Reducing the quantity and improving the quality of storm water runoff from expected development;
    - C. Maintaining natural characteristics (such as woods, hedgerows, natural vegetation, meadows, slopes and streams);
    - D. Reducing the amount of disturbed land, the conversion of natural areas to landscaped areas for lawns, and the use of invasive vegetation; and
    - E. Conserving areas of prime agricultural soils, to the extent possible.
  - (2) Conserve (within the framework of natural resource conservation) the rural quality in a community, which is characterized by:
    - A. Large, aggregated, undeveloped land areas;
    - B. Natural features such as woodlands, steep slopes, floodplains, wetlands, stream and river corridors, and hedgerows;
    - C. Scenic vistas and rural views;
    - D. Significant historic features such as old barns, heritage trees, etc.
    - E. Traditional rural settlement patterns characterized by clusters of compact groupings of development in otherwise wide open spaces; and/or
    - F. Appropriate topographic or vegetative screening.
  - (3) Encourage more efficient use of land and public services through unified development.
  - (4) Establish development review criteria which promote creative design solutions in a manner which best conserve the area's resources.
  - (5) Establish a review process that maintains local review and approval of the overall development plan and which results in the timely consideration of an application.
  - (6) Ensure that the proposed PRCD complies with the objectives of The City of Franklin, as expressed in the Comprehensive Land Use Plan for The City of Franklin.

- (c) Permitted Uses: The following uses are permitted within the PRC D:
- (1) Detached single-family dwellings;
  - (2) Single-family cluster dwellings;
  - (3) Recreation facilities for use by residents;
  - (4) Restricted open space;
  - (5) Agriculture.
- (d) Minimum Project Area for Conservation Development: The gross area of a tract of land proposed for development, according to the PRC D option, shall be a minimum of twenty-five (25) acres, but shall not include area within any existing public street rights-of-way. The area proposed shall be in single ownership or, if in multiple ownerships, all the owners of the properties included in the conservation development shall file the PRC D application jointly.
- (e) Permitted Density/Restricted Open Space: The minimum restricted open space shall be thirty percent (30%) of the total project area. The maximum density shall be limited to the same dwelling-unit density as the underlying district, which shall be one of the Residential Districts or the Agricultural District. The maximum number of dwelling units permitted in a conservation development shall be calculated by deducting the following from the total project area:
- (1) Any public right-of-way within the project boundary existing at the time of the development plan is submitted; and
  - (2) The area of land within a floodway, designated wetland, or existing body of water that exceeds the minimum acreage required for restricted open space. Where floodways and wetlands overlap, they shall be counted only once.
- (f) Regulations for Restricted Open Space: The restricted open space shall comply with the following:
- (1) Restricted open space shall be designed and located to conserve significant natural features and historical and cultural elements located on the site.
  - (2) Areas designated for restricted open space purposes may be:
    - A. Preserved in its natural state,
    - B. Designed and intended for the use and/or enjoyment of residents of the proposed development; and
    - C. Utilized for farming when authorized in a conservation easement or in the Association.
  - (3) Restricted open space shall be interconnected with open space areas on abutting parcels.
  - (4) Sewage service, stormwater management, and/or water supply facilities may be located partially or entirely within restricted open space areas. Where such facilities are so located, the appropriate parties shall establish easements satisfactory to the City Engineer to require and enable maintenance of such facilities.
  - (5) In order to encourage the creation of large areas of contiguous open space, areas that shall not be considered restricted open space are:
    - A. Private roads and public road rights-of-way;
    - B. Parking areas, accessways, and driveways;
    - C. Required setbacks between buildings, parking areas, and project boundaries.
    - D. Required setbacks between buildings and streets.

- E. Minimum spacing between buildings and between buildings and parking areas;
  - F. Private yards;
  - G. A minimum of fifteen feet (15') between buildings and restricted open space; and
  - H. Other small fragmented or isolated open space areas that have a dimension less than fifty feet (50') in any direction.
- (6) Any restricted open space intended to be devoted to recreational activities shall be of a usable size and shape for intended purposes. The maximum percentage of required restricted open space that may be developed for active recreation areas, including a community center, shall be ten percent.
- (7) Any area within the restricted open space that is disturbed during construction or otherwise not preserved in its natural state, other common areas such as required setback areas, and both sides of new streets shall be landscaped with vegetation that is compatible with the natural characteristics of the site.
- (8) The restricted open space, including any recreational facilities proposed to be constructed in such space, shall be clearly shown in the general development plan.
- (9) Restricted open space in a conservation development shall be prohibited from further subdivision or development by deed restriction, conservation easement, or other agreement in a form acceptable to the Law Director and duly recorded in the office of the Recorder of Deeds of Warren County.
- (10) Subject to such permanent restriction as set forth above, restricted open space in a PRCD may be owned by an association, the City, a land trust or other conservation organization recognized by the City, or by a similar entity, or may remain in private ownership.
- A. Offer of Dedication: The City may, but shall not be required to, accept dedication in the form of fee simple ownership of the restricted open space.
  - B. Associations: Restricted open space may be held by the individual members of a Condominium Association as tenants-in-common or may be held in common ownership by a Homeowners' Association, Community Association, or other legal entity. The Law Director shall determine that, based on documents submitted with the development plan, the association's bylaws or regulations specify that Membership in the Association shall be mandatory for all purchasers of lots in the development, or units in the condominium, and the Association shall be responsible for maintenance, control, and insurance of common areas, including the required open space.
- (11) *Transfer of Conservation Easements*: With the permission of the City Engineer, the owner(s) of the common open space may, in accordance with the provisions of ORC section 5301.67 et seq., grant a conservation easement to any of the entities listed in ORC section 5301.68, provided that:
- A. The entity is acceptable to the City Engineer;
  - B. The provisions of the conservation easement are acceptable to the City Engineer and the Law Director; and
  - C. The conveyance contains appropriate provision for assignment of the conservation easement to another entity authorized to hold conservation easements under ORC section 5301.68 in the event that the original grantee becomes unwilling or

unable to ensure compliance with the provisions of the conservation easement.

- (12) Private Ownership of Restricted Space: Restricted open space may be retained in ownership by the applicant or may be transferred to other private parties subject to compliance with all standards and criteria for restricted open space herein.
- (g) Development and Site Planning Requirements: Buildings, structures, pavement, and streets in the PRCD shall be located in compliance with the following development and site planning requirements.
- (1) **Ownership**: Any ownership arrangement, including, but not limited to, fee simple lots and condominiums, is permitted in a PRCD. Regardless of the ownership of the land, the arrangement of the dwelling units shall comply with the spacing requirements of this Section.
  - (2) **Lot Requirements**:
    - A. Units are not required to be on lots; however, when lots for standard detached single-family dwellings, or sublots for single-family cluster or attached dwelling units are included as part of a PRCD, such lots or sublots shall be of sufficient size and shape to accommodate dwelling units in compliance with the spacing requirements of this section.
    - B. The applicant shall depict on the development plan the maximum parameters, or building envelopes, to indicate where buildings shall be located, and shall demonstrate that such building locations will be in compliance with the spacing requirements of this section.
  - (3) **Perimeter Building Regulations**:
    - A. The minimum setback from an existing public street shall be thirty feet (30').
    - B. The minimum setback from the project boundary shall be thirty-five feet (35').
  - (4) **Interior Building Setback/Spacing Regulations**:
    - A. The minimum setback from a proposed local public right-of-way shall be twenty feet (20').
    - B. The minimum setback from the edge of the pavement of a private street shall be thirty feet (30').
    - C. The minimum separation between dwellings shall be fifteen (15) feet.
  - (5) **Height**: The maximum building height shall be thirty-five feet (35').
  - (6) **Floodway Protection**: All buildings, structures or land within a floodway shall be used, and buildings or structures hereafter shall be erected, altered, enlarged, repaired or rebuilt, moved, or designed to be used, in whole or in part, only for a use listed below:
    - A. Agriculture;
    - B. Public or private parks and outdoor recreational facilities including swimming pools, riding academies, playfields, ball fields, courts, trails, etc.
    - C. Fencing that allow the passage of water; and
    - D. Off-street parking areas accessory to the above uses provided that such areas are improved with pervious pavement materials, such as pervious asphalt or pervious concrete or combinations of geo-textiles with sand, gravel and sod.

- (7) **Wetlands Protection:** Wetlands required by the Army Corp of Engineers or the Ohio EPA to be retained shall be protected by the following:
- A. A buffer area having a width not less than twenty (20) feet, measured from the edge of the designated wetland. The area within this buffer shall not be disturbed and shall be retained in its natural state; and
  - B. A minimum building and pavement setback of thirty-five (35) feet, measured from the edge of the designated wetland.
- (8) **Conservation of Riparian Zones:**
- A. A riparian buffer shall be provided along the entire length and on both sides of a river or perennial stream channel. The buffer area shall have a width not less than fifty (50) feet, measured from the river or stream bank; and
  - B. Walkways may be permitted to be located within riparian buffers when the Planning Commission determines that such will create minimal change to the riparian buffer.
- (9) **General Street Design Criteria:**
- A. Street alignments should follow natural contours and be designed to conserve natural features.
  - B. Locations of streets should be planned to avoid excessive stormwater runoff and the need for storm sewers; and
  - C. The area of development devoted to streets and related pavement should be the minimum necessary to provide adequate and safe movement through the development.
- (10) **Pedestrian Circulation Systems:**
- A. A pedestrian circulation system shall be included in the PRCD and shall be designed to ensure that pedestrians can walk safely and easily throughout the development. The pedestrian system shall provide connections between properties and activities or special features within the common open space system and need not always be located along streets.
  - B. Trails for which public right of passage has been established should be incorporated in the pedestrian circulation system.
- (11) **Sewage Disposal:** All development shall be served by individual or public sewage disposal structures consistent with the City systems. Individual sewage disposal systems shall comply with all applicable regulations of the Warren County Health Department and may be located within common open space areas when approved by the City and the Warren County Health Department.
- (12) **Waivers:** In the event the Planning Commission determines that certain standards set forth in this Section do not or should not apply specifically to the circumstances of a particular PRCD and an alternative method of achieving the objectives of the numerical standard is equal to or better than the strict application of the specified standard, the Planning Commission may relax such standard to an extent deemed just and proper, provided that the granting of such relief shall be without detriment to the health and safety of the community and without detriment to or impairment of the intent of this Section.

- (h) Development Design Criteria: In addition to the development and site planning requirements set forth above, all elements of a Planned Residential Conservation Overlay District, particularly the restricted open space areas, shall be designed in accordance with the following criteria to ensure that the project is appropriate for the site's natural, historic and cultural features and meets the objectives of this District.
- (1) *Conservation of Sloping Land*: The road system and buildings should be located to minimize changes to the topography and the need for cutting and filling.
  - (2) *Conservation of Woodlands, Vegetation, and other Natural Areas*: The design and layout of the development should conserve, maintain, and incorporate existing wooded areas, meadows, hedgerows and treelines between fields or meadows, especially those containing significant wildlife habitats.
  - (3) *Conservation of Wildlife Habitats*: Wildlife habitat areas of species listed as endangered, threatened, or of special concern by the U.S. Environmental Protection Agency and/or by the Ohio Department of Natural Resources should be protected.
  - (4) *Conservation of Prime Farmland*: Farmland that satisfies the USDA definition of "prime" or "locally unique" farmland should be conserved.
  - (5) *Conservation of Existing Scenic Resources*: Vistas and Visual Quality of the Environment. Buildings should be located to ensure that scenic views and vistas are unblocked or uninterrupted.
  - (6) *Conservation of Cultural Resources*: Sites of historic, archaeological, or cultural value and their environs should be protected insofar as needed to safeguard the character of the feature, including stone walls, spring houses, barn foundations, underground fruit cellars, earth mounds and burial grounds.
- (i) Preliminary Procedural Requirements: An owner (or agent of) of land proposing the creation of a Planned Residential Conservation Overlay District shall file an application and a preliminary development plan with the Zoning Official seeking approval of such district, and the application and plan shall be accompanied by a non-refundable fee, as outlined in section 1105.09.
- (1) **Application**: The application shall contain a statement indicating the following:
    - A. The relationship of the proposed PRCD to the City's adopted master plan, or any adopted component thereof;
    - B. The general character of and the uses to be included in the proposed PRCD;
    - C. Total area to be included in the PRCD, including area for open space; residential density computations; proposed number of dwelling units; population analysis; availability of or requirements for municipal services; and any other similar data relevant to a comprehensive evaluation of the proposed development;
    - D. A general summary of the estimated value of structures and site improvement costs, including landscaping and special features;
    - E. A general outline of the organizational structure of any property owner's or management's association proposed to be established for the purposes of providing any necessary private services; and

- F. Any proposed departure from the standards of development as set forth in this Section.
- (2) **Preliminary Development Plan:** A Preliminary General Development Plan including:
- A. Identification of existing site characteristics, including a general depiction of:
- (i) Boundaries of the area proposed for development, dimensions and total acreage;
  - (ii) Contour lines at vertical intervals of not more than 5 feet, highlighting ridges, rock outcroppings and other significant topographical features;
  - (iii) Location of wetlands (and potential wetlands), the floodway boundary and floodway elevation as delineated by the Federal Emergency Management Agency, rivers and streams and their related river or stream bank, ponds, and water courses;
  - (iv) Existing soil classifications;
  - (v) Locations of all wooded areas, tree lines, hedgerows, and specimen trees;
  - (vi) Delineation of existing drainage patterns on the property; existing wells and well sites;
  - (vii) Description of significant existing vegetation by type of species, health, quality, etc.
  - (viii) Existing buildings, structures and other significant man-made features on the site and within two hundred feet (200') of the project boundary;
  - (ix) Description of all structures and areas of known or potential historical significance; and
  - (x) Existing views and identification of unique vistas.
- B. The Preliminary Development Plan shall be drawn at a scale not less than 1"=100', except that projects over two hundred (200) acres may be drawn at a scale of 1"=200', and shall include:
- (i) A summary of the proposed development including the total acreage, number of residential units, type of dwellings, density by type of dwelling, and acreage of restricted open space to be conserved;
  - (ii) A sketch layout of standard single-family lots, if any;
  - (iii) The location of the restricted open space and any proposed recreational facilities;
  - (iv) Natural features to be conserved and any required buffer areas;
  - (v) Natural features to be altered or impacted by the development and areas where new landscaping will be installed, etc.
  - (vi) General location of public street rights-of-way; and
  - (vii) Proposed utility easement locations.
- (3) **Conservation of Open Space:** An outline of the method/structure to perpetually preserve the required restricted open space, which indicates:
- A. The structure of the Association as required in the Subdivision Regulations;
  - B. Membership requirements;
  - C. Financial responsibilities; and
  - D. The relationship of the entity to public agencies having responsibilities related to the project.

- (4) A description of the project phasing including the based construction of open space improvements.
  - (5) The applicant shall pay a non-refundable fee, as outlined in section 1105.09, to reimburse the City for the costs of reviewing the application.
- (j) Procedures for Review of Application and Preliminary Plan: (For a further description of the procedures to be followed and the submittals required, see section 1115.05.)
- (1) **Review For Completeness:** The TRC shall review the application and Preliminary Development Plan to determine that they include all the items required. If the application and Plan are deemed complete, and the application fee paid, the TRC shall recommend to the City Engineer that the City officially accept the application.
  - (2) **Review of Preliminary Development Plan by Others:** The City Engineer shall distribute the preliminary development plan and application to the following for review and comment:
    - (i) Regulatory agencies which have statutory authority to subsequently review and approve any aspect of the development, including but not limited to the Army Corps of Engineers, the Warren County Health Department, and the Ohio Environmental Protection Agency.
    - (ii) Other agencies that, at the discretion of the City, may have appropriate technical expertise.
    - (iii) Appropriate local City administrative officials, including the Law Director.
    - (iv) Consultants retained by the City.
  - (3) **Site Visit:** The Planning Commission or Council may, together with the applicant and the applicant's consultant(s), visit the site to gain a thorough understanding of the characteristics of the site.
  - (4) **Review by Planning Commission:** Planning Commission shall review the application and Preliminary Development Plan and the recommendations of the TRC and the City Engineer. The Planning Commission shall take action on the submitted application and Preliminary Development Plan by either:
    - A. Approving the application and Preliminary Plan as submitted; or
    - B. Approving the Preliminary Plan and application subject to specific conditions not included in the Plan as submitted, such as, but not limited to, improvements to the general building layout or open space arrangement, or
    - C. Denying approval of the application and Preliminary Development Plan.
  - (5) **Referral to Council:** The application and Preliminary Development Plan for a PRCD shall be referred to the Council by Planning Commission after the Planning Commission has taken action on it, along with the Planning Commission's recommendations. The City Council, after due consideration in applying the standards of review set forth in paragraph (n), below, may deny the application and Preliminary Plan, approve the application and Preliminary Plan as submitted, or approve the application and Preliminary Plan subject to additional conditions and restrictions to which the owner has agreed.

- (k) Significance of Approved Application and Preliminary Development Plan. Approval of the Preliminary Development Plan shall:
- A. Establish the development framework for the project, including the general location of open space, development areas, densities, unit types, recreational facilities, and street alignments.
  - B. Be the basis for the application to proceed with detailed planning and engineering in reliance on the approved Preliminary General Development Plan.
  - C. Provide the benchmark for the Planning Commission to consider and approve amendments to the Final General Development Plan where the Planning Commission determines that the amended plan is equal to or better than the approved Preliminary Development Plan.
  - D. Authorize the applicant to apply for all other required regulatory approvals for the project or subsequent phases thereof.
- (l) Final General Development Plan. After a Preliminary Development Plan has been approved, an applicant shall submit for review and approval a Final Development Plan. The Final Development Plan may be submitted either for the entire project or for each construction phase.
- (1) The Final Development Plan shall include a Site Plan drawn at a scale not less than 1" = 100' indicating:
    - A. Boundaries of the area proposed for development, accurate dimensions, and total acreage;
    - B. The exact location and dimension of private streets, common drives and public street rights-of-way;
    - C. Exact location of building footprints or envelopes within which dwelling units are to be constructed, and lot lines with dimensions for all residential units for which individual ownership is proposed;
    - D. Dimensions of building / unit space;
    - E. The extent of environmental conservation an change and the exact location of all no cut / no disturb zones; and
    - F. Designated restricted open space areas and a description of proposed open space improvements.
  - (2) A Grading Plan drawn at a scale of 1" = 100', showing all information pertaining to surface drainage.
  - (3) A detailed Landscaping Plan for new landscaping, including entry features and designs.
  - (4) The Declaration, Articles of Incorporation and either Bylaws (for a Condominium Association) or Code of Regulations (for a Homeowners' Association) and any other final covenants and restrictions and maintenance agreements to be imposed upon all the use of land and pertaining to the ownership, use, and maintenance of all common areas, including restricted open space as required by the Subdivision regulations.
  - (5) Conditions imposed by other regulatory agencies.
- (m) Procedures for Review of Final Development Plan: (For a further description of the procedures to be followed and the submittals required, see section 1115.05.)
- (1) **Review For Completeness:** The TRC shall review the Final Development Plan to determine that that it includes all the items required. If the Plan is deemed complete and the application fee has been paid, the TRC shall recommend to the City Engineer that the City officially accept the application.

- (2) **Distribution of Final Development Plan:** The City Engineer shall distribute the Final Development Plan to the Planning Commission, the Law Director, and other appropriate administrative departments or professional consultants for review and comment. Any reports, comments, or expert opinions shall be compiled by the City Engineer and transmitted to the Planning Commission prior to the time of the Board's review.
- (3) **Review by the Law Director:** The Law Director shall review the Declaration, Articles of Incorporation and either Bylaws (for a Condominium Association) or UDO of Regulations (for a Homeowner's Association) and any other final covenants and restrictions and maintenance agreements to be imposed upon the conservation development. He/she shall provide a written opinion to the Planning Commission documenting that the above demonstrates full compliance with the requirements of this section.
- (4) **Review by Planning Commission:** Planning Commission shall review the Final Development Plan and the recommendations of the TRC and the City Engineer. The Planning Commission shall assure that the Final Development Plan is in accordance/compliance with the Preliminary Development Plan. The Planning Commission shall take action on the submitted Final Development Plan by either:
- A. Approving the Final Development Plan as submitted; or
  - B. Approving the Final Development Plan subject to specific conditions not included in the plan as submitted, such as, but not limited to, improvements to the general building layout or open space arrangement, or
  - C. Denying approval of the Final Development Plan.
- (5) **Referral to Council:** The Final Development Plan for a PRCD shall be referred to the Council by Planning Commission after the Planning Commission has taken action on it, along with the Planning Commission's recommendations. The City Council, after due consideration, may deny the Final Development Plan, approve the Plan as submitted, or approve the Plan subject to additional conditions and restrictions to which the owner has agreed.
- (n) General Standards for Review: In addition to the specific standards contained in this Section (specifically paragraphs (d) through (g)), the Planning Commission and Council shall apply the following standards in reviewing a PRCD application and Development Plans:
- (1) Whether the application and plan indicate that the physical development of the PRCD will commence within nine months following the approval, and that the development will be carried out according to a reasonable construction schedule satisfactory to the City;
  - (2) Whether the proposed PRCD is consistent in all respects with the purpose and intent of this section;
  - (3) Whether the proposed PRCD is in conformity with the Comprehensive Plan or any adopted component thereof, and that the development would not be contrary to the general welfare and economic prosperity of the community;
  - (4) Whether the proposed development shall be provided with adequate drainage facilities for surface and storm water flow;
  - (5) Whether the proposed development will be accessible from public roads that are adequate to carry the traffic generated by the proposed development;

- (6) Whether there will be an undue constraint or burden imposed on public services and facilities, such as fire and police protection, street maintenance, and maintenance of public areas by the proposed development;
  - (7) Whether the streets and driveways on the site of the proposed development will be adequate to serve the residents of the proposed development and will meet the minimum standards of all applicable ordinances or administrative regulations of the City;
  - (8) Whether centralized water and sewer facilities will be provided; and
  - (9) Whether the use of the land surrounding the proposed development can be planned in coordination with the proposed development.
- (o) Developer's Agreement: Before any improvements are made within a PRCD Overlay District, a Developer's Agreement shall be required incorporating all improvements, requirements and conditions of the development of the district, which requirements and conditions shall run with the land. The agreement shall be drafted in recordable form and recorded with the County Recorder for Warren County.
- (p) Major Changes and Additions: Any subsequent major changes or additions to the Developer's Agreement, Development Plans (exceeding twenty-five percent (25%) of the floor area, or ten thousand square feet (10,000 sq. ft.) or uses for the PRCD Overlay District shall first be submitted for approval to the Planning Commission. If the Planning Commission determines that such changes or additions constitute a substantial alteration of the original developer's agreement, development plan, or uses of the district, a public hearing before the City Council shall be required prior to the Council determining whether to accept the subsequent changes or additions. The City Council reserves the right to require changes if it determines, applying the standards of paragraph (n), above, that such changes are required to comply with the purpose of this Section.
- (q) Use and Maintenance: Each PRCD Overlay District shall at all times be maintained and used in accordance with the standards set forth above, and in a manner not to create a health and safety hazard to adjacent residents or businesses.
- (r) Land Division: The division of any land(s) within a PRCD Overlay District shall be in accordance with the platting provisions of the City's preliminary plan and final plat regulations, as set forth in the City's Development Standards, as outlined in Chapter 1111. When such a division is contemplated, a preliminary plat or certified survey map of the lands to be divided shall accompany the petition for a PRCD Overlay District approval.