

COUNCIL POLICY ON AN OPEN SPACE PRESERVATION PROGRAM AND THE MANAGEMENT OF NATURAL RESOURCES

I. PURPOSE

The purpose of this policy is to establish an Open Space Preservation Program in Minnetonka in order to:

1. Retain open space;
2. Improve the quality of open space; and
3. Foster and encourage voluntary preservation of open space by the community.

II. DEFINITION

Open space is land that is unbuilt. It is characterized by natural areas that are generally areas containing vegetation distributed in naturally occurring patterns. It is valued by the community for the sense and feel of nature which it provides.

III. STATEMENT OF POLICY

A. Applicability

This policy requires action by both the City of Minnetonka and by Minnetonka residents.

B. General Policy Goals

1. Preserve open space where appropriate. Doing so is appropriate where the City believes specified preservation criteria are met and where an appropriate method to protect and maintain open space has been identified.
2. Create opportunities for the Minnetonka community to voluntarily participate in open space preservation. The City will foster and encourage this by making information available to residents about methods to protect open space, facilitating the preservation of open space by residents, and informing residents about management techniques that can preserve the quality of open space.
3. Develop and implement resource management plans to maintain or enhance the quality of Minnetonka's open space.

C. Preservation Criteria

The following criteria will be considered when the City is contemplating preserving open space. These criteria are not ranked; a decision to preserve open space can only be arrived at by balancing all of the relevant criteria. In general, however, properties that meet more than one criterion should be more strongly considered for preservation than properties meeting only one criterion.

Properties that are already protected from development will not be considered for preservation unless there is reason to believe that their protected status may disappear. Similarly, properties which are already developed generally should not be considered, although some parcels that are largely undeveloped and contain structures may be taken into account.

- **Sensitive environmental features** - Properties that contain or are near sensitive environmental features should be strongly considered for protection. Sensitive environmental features particularly include wetlands but may also include unique stands of trees, water bodies such as creeks, significant geological features, high quality natural resources, and unusual habitats. In deciding about preservation, the City should consider more than just whether development of the property is likely to have a negative impact on the sensitive environmental feature.

Even where no negative impact is likely, it may be appropriate to preserve the property because of the value that the community assigns to the feature and the community's belief that development near this feature would be inappropriate.

- **Provision of a buffer** - Properties that buffer a neighborhood from the noise or light of competing land uses should be considered for preservation. These competing land uses include, but are not limited to, commercial/industrial development and roadway systems. Properties that buffer the trail system from development may also be important because they maintain the aesthetics of the trail system.
- **Visibility** - Properties that are highly visible should be considered for preservation, where the property in question meets one or more of the other preservation criteria such as the presence of sensitive environmental features.
- **Size and linkage to other areas** - Priority should be given to the preservation of larger parcels. Properties which provide a link to other open areas should also be considered for preservation. Where the property in question is adjacent to, and would function as part of, existing open space or would create a corridor linking open spaces, then preservation of smaller rather than larger parcels may be appropriate.

D. Protection Methods

1) General Protection Methods

Preservation of open space generally requires ownership since only the property owner can put in place the legal tools that will protect his/her land from development. The following approaches provide the most permanent protection of open space.

- a. **Conservation easements** - A conservation easement restricts development of land while permitting the landowner to retain ownership of the property. It is filed in the public records of the property and binds current and future property owners. The landowner may sell or donate the easement to a conservation organization but does not have to. Where the easement is donated to a qualified charitable organization, a tax benefit may occur to the property owner.
- b. **Donation** - The property owner may donate land to a conservation organization that agrees to preserve it. The property owner may receive a tax benefit for doing so.

Where permanent protection is not sought, a number of other options are available:

- a. **Deed restrictions** - Deed restrictions establish specific limits on the use of a property. They are put in place by the property owner and do not last for more than 30 years unless they are renewed.
- b. **Mutual covenants** - Mutual covenants are deed restrictions that are agreed to by two or more property owners and apply to two or more properties. They also do not endure for more than 30 years unless they are renewed.
- c. **Stewardship** - Land management practices may be voluntarily undertaken by a landowner to preserve open space. In some instances, a landowner may "register" his/her property with a conservation organization, thereby entering into a non-binding agreement to follow good land management practices. A landowner may also enter into a management agreement with a conservation organization, specifying how land will be managed. Or the property owner may follow "best management practices" at his/her own initiative.

2) City Protection Methods

The City will pursue methods that allow permanent protection of open space. In some instances, permanent protection may require the City to become the property owner. This is likely to occur through property purchase or donation. In other cases, ownership by the City may not be appropriate, and the City should encourage open space preservation through other tools such as conservation easements. Decisions about purchasing property, accepting donations of land, or encouraging conservation easements, should be guided by the following:

- a. **Purchase** - Purchase by the City is appropriate when it is clear that the parcel meets the preservation criteria, particularly the criteria for sensitive environmental features. Priority should be given to parcels or groups of contiguous parcels at least three acres in size. Because of the expense of purchasing parcels of land and maintaining them, purchase by the City should be considered only after other protection methods have been rejected and after the quality of the natural resources has been analyzed.
- b. **Donations** - Sometimes the City may be asked to accept gifts of land or to take tax forfeited parcels and to preserve them for open space. Accepting such donations is appropriate where preservation of the land as open space meets the preservation criteria, where the parcel is at least one-half acre in size, where maintaining the land will not be overly burdensome, where the quality of the natural resources has been analyzed, and where, after reasonable investigation, the City has no reason to believe that any hazardous substances or other items are present that might cause the City to have any liability.
- c. **Conservation easements** - The decision about whether a portion of the land should be preserved by a conservation easement should be guided by the preservation criteria. Conservation easements usually will be obtained by the City as part of negotiation over a development proposal. While the City is not responsible for maintaining property protected by a conservation easement, it may enforce the conservation easement's terms. Accordingly, in deciding whether a conservation easement is appropriate, issues related to enforcement and notice should also be considered.

The City should be proactive in encouraging developers to protect open space, using conservation development and tools such as conservation easements and deeding. It should pursue new development approaches, such as cluster housing and consider whether transfer of development rights may be appropriate. Where

open space results from development negotiations, it should generally be protected with a conservation easement.

3) **Community Protection Methods**

In some instances, preservation of open space can best be accomplished by the Minnetonka community and not by the City. That is the case in instances where the preservation criteria are not met or a protection method is not appropriate for the City.

- a. **Neighborhood acquisition** - While the City may decline to purchase a parcel of land, a neighborhood, or an individual, may feel strongly that preservation is appropriate and decide to acquire the property. In purchasing property collectively, a neighborhood needs to resolve several issues: what amount should each property owner pay, how will responsibility for the maintenance of the property be carried out, what happens when neighbors/owners move, and how will the neighborhood legally ensure that the property is maintained as open space?
- b. **Easements** - In some instances, individuals may want to place conservation easements upon their land, or upon a portion of their land, in order to protect it from development. These easements are private, which means that the City will not get involved in any issues relating to them.
- c. **Participation in land trust programs** - Property owners may want to donate their property or a conservation easement to a conservation program. A number of these programs exist; however, because of their requirements for participation (particularly with regards to the size of parcels which will be accepted) they may be of limited use to Minnetonka residents.

The City will facilitate the voluntary preservation of qualifying open space by the community. In order to do this, the City will assist the community by specifying what protection methods are available, what the issues are surrounding the use of any of these options, facilitating agreements when practical, and providing sample legal documents where appropriate. The City will also set up a special assessment program, similar to that for fire sprinkler retrofits, to assist community members to preserve open space.

E. **Protected Open Space**

The City should recognize open space that is permanently protected from development by designating it as such on the Comprehensive Guide Plan. Doing so will increase awareness among residents as to where development is likely to occur in the community. When coupled with tax incentives, such a designation will also create an incentive for residents to participate in open space preservation.

Guiding land as Protected Open Space would mean that development could not occur under that designation. Natural resource management could take place, however, as could recreation and trails.

The following criteria will be used for determining whether land is “Protected Open Space”:

1. The property owner must request the designation of “Protected Open Space”;
2. The property must be at least one-half acre in size; and
3. Satisfactory evidence must be submitted to the City Attorney that the property is permanently protected from development either by a conservation easement granted to the City or by donation to a qualified conservation organization or the City.

The City Assessor should value “Protected Open Space” at the level authorized by State Law.

F. Natural Resources Stewardship Program

The Natural Resources Stewardship Program applies to the five major parks (Big Willow, Civic Center, Lone Lake, Meadow, and Purgatory) and three creek corridors (Minnehaha, Purgatory, and Nine Mile). When remedial efforts are nearing completion and maintenance programs are sustaining these areas, then the program should move into other areas of the park system and open space.

When it becomes appropriate to expand the Stewardship Program beyond the major parks and creek corridors, based on funding availability, then the following priority list will apply:

1. Public open space within existing parks;
2. Public space abutting trails;
3. Public space adjacent to parks;
4. Public space which does not require extensive remedial action.

As part of the City's protection of open space, parcels should be analyzed for the quality of the resources they contain, with an eye towards the burden that expanding the Stewardship Program to them might entail. Smaller parcels with deteriorated resources may be more likely candidates for neighborhood acquisition than for City acquisition.

The City should consider low-cost maintenance methods that will control invasive species in areas where the Stewardship Program does not apply. Mowing, for example, may be an inexpensive maintenance method for certain areas of open space.

G. Funding Mechanisms

A variety of sources should be used to begin to build a fund which would be available for open space preservation. These include budget surpluses; the general tax levy; individual, corporate, and foundation gifts; and government grants.

Using these options will not provide a quick source of funds or a large source of funds. If the City decides that the Open Space Preservation Program requires a large amount of funds in the near future, then only two real funding sources are apparent: a bond referendum or the Community Investment Fund.

A bond referendum has certain specific requirements. First, its success may depend upon the ability to identify specific parcels located throughout the city for purchase. Second, it may be appropriate to purchase larger parcels not just for open space but also for active parkland, so participation by the Park Board may be necessary. Finally, it should not be undertaken without a community survey, and perhaps multiple surveys, to assess the community reaction to a bond referendum, likelihood of passage, and the identification of specific issues. It should not be attempted without a large commitment of time and effort.

Using the Community Investment Fund also requires careful planning. If use of the Community Investment Fund is desired, the City Council should modify the Community Investment Fund policy to specifically include open space preservation as a permitted use. The Community Investment Fund could be used to purchase several large parcels of land or as a source of annual funds for the Open Space Preservation Program.

IV. MODIFICATION

This policy is intended as a general guide for the City Council regarding open space preservation and natural resources management. It is not binding and may be modified when, in the sole discretion of the Council, such modification is deemed necessary or appropriate in the interest of the City.

Adopted by Resolution No. 99-166
Council meeting of 9-13-1999

Effective date: 9-13-1999

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