Town Meeting 2020 article proposed by the Planning Board

Article: To see if the Town will vote to amend the Zoning Bylaws by deleting Section 4.5 (Open Space Special Permit) in its entirety and replacing it with the following:

Section 4.5 Open Space Subdivision

4.5.1 Purpose and Intent:

The primary purposes of this bylaw are to:

1. Further the goals and recommendations of the Sherborn Master Plan and Open Space and Recreation Plan:
   - Preservation of open space, forests, and wildlife habitat.
   - Preservation of agricultural land use.
   - Protection of clean groundwater resources including aquifers, surface water bodies, streams and wetlands.
   - Reduction of energy consumption and greenhouse gas emissions, and mitigation of the effects of climate change.

2. Encourage construction of Open Space Subdivisions as an alternative to conventional subdivisions, in order to consume less open land and preserve environmental resilience;

3. Enable landowners to realize equity from development of a limited percentage of their land while preserving conservation, agricultural, forestry or recreational uses on the majority of the property;

4. Expedite the permitting of projects that fulfill the objectives and requirements of this bylaw;

5. Facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner while minimizing the total area of disturbance of the site; and

6. Promote the incorporation of Low Impact Development and Green Infrastructure features into development designs.

4.5.2 Definitions:

"Applicant" shall mean an owner, his agent or representative, or his assigns, that are responsible for submission of a subdivision development plan to town officials.

"Board" shall mean the Planning Board.

"Conventional Subdivision" shall mean a division of land into two or more lots in such a manner as to constitute "subdivision" as defined in MGL Ch. 41, Section 81-L, as amended from time to time, and in which minimum lot size is that required for a single family home in the zoning district, as defined in Zoning Bylaw 4.2.

"DPW" shall mean the Department of Public Works.

"Green Infrastructure" shall mean the natural vegetation and forests that provide services to the community such as groundwater filtering and retention, aquifer recharge, carbon sequestration and temperature control.

“Homeowners Association” shall mean the corporation, trust, or association owned by the unit owners within an Open Space Subdivision and used by them to manage and regulate their affairs, including any commonly owned land or facilities.
"Low Impact Development" shall mean land development and building practices that minimize environmental impacts by preserving natural vegetation including trees, and promoting groundwater retention and recharge through design features.

"Low Impact Drainage System" shall mean a stormwater management system that maximizes maintenance of clean groundwater resources through natural filtering, retention and recharge.

"Open Space Subdivision” shall mean a process for the development of land that (a) permanently preserves at least sixty percent of the land in a natural, scenic or open condition or in agricultural, farming or forest use; (b) preserves the significant natural, cultural, and historic features of the land; (c) concentrates development, through design flexibility and reduced dimensional requirements, in order to preserve those features; and (d) calculates the amount of development allowed up-front by formula.

"Owner" shall mean the owner or owners of record of all land included within the subdivision as shown by the records of the Registry of Deeds for the Southern District of Middlesex County or the Middlesex South Registry District of the Land Court.

"Protected Open Space" shall mean land that is permanently preserved in a natural, scenic or open condition or in agricultural, farming or forest use, by conservation restriction or other legal means.

"Uplands" shall mean a land areas that is are NOT under federal, state or local wetland or floodplain jurisdiction (e.g. wetlands and their buffer zones, floodplains and riparian areas).

"Yield Plan" shall mean a calculation of the number of Residential Units allowed in a specific Open Space Subdivision, using one of the methods described in 4.5.4 below.

4.5.3 Applicability:

A. Open Space Subdivisions are allowed by right under zoning and may be proposed anywhere within the R-A, R-B and R-C districts. Open Space Subdivisions shall be subject only to the requirements of this Zoning Bylaw and the Subdivision Rules and Regulations of the Sherborn Planning Board as applicable, and any other generally applicable non-zoning land use regulations.

B. If the proposed Open Space Subdivision involves a special permit(s) for one or more shared driveways, or any other use that requires a special permit, the proceedings for all such special permits and the site plan review shall occur in one consolidated special permit proceeding before the Planning Board.

4.5.4 Yield: Allowable Residential Units

The base maximum number of residential units allowed in an Open Space Subdivision is calculated by a formula based upon the net developable acreage of the property. This formula takes into account site-specific development restrictions and limitations that make some land unsuitable for development, or less suitable for development than other land. This calculation involves two steps, calculating the net acreage and dividing by the minimum conventional lot acreage in the zoning district.

To determine net acreage, subtract the following from the total (gross) acreage of the site:

1. Half of the acreage of land with slopes of 20% or greater;
2. The total acreage of land subject to easements or restrictions prohibiting development, lakes, ponds, vernal pools, 100-year floodplains as most recently delineated by FEMA, Zone I and A around public or private water supplies, and all wetlands as defined in Chapter 131, Section 40 of the General Laws and any state or local regulations adopted thereunder; and
3. Ten percent of the remaining site acreage after the areas of A and B are removed, to account for subdivision roads and infrastructure.
The factors named above are included for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this zoning bylaw.

The maximum number of allowable residential dwelling units in an open space subdivision on the parcel is determined by dividing the net acreage by the required acreage for a lot in the zoning district. Fractional units shall be rounded down to the nearest whole number. The required acreage for each district is:

<table>
<thead>
<tr>
<th>District</th>
<th>Required Acreage per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-A</td>
<td>1</td>
</tr>
<tr>
<td>R-B</td>
<td>2</td>
</tr>
<tr>
<td>R-C</td>
<td>3</td>
</tr>
</tbody>
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Parcels in more than one zoning district. For parcels in more than one district, the allowable residential unit count for each district shall be computed separately first. These unit count totals shall be added together and then rounded as above.

4.5.5 General Requirements:

A. **Open Space Subdivision layout.** The developed areas and protected open space shall be placed within the parcel in a manner that best fits the characteristics of the land and the purposes of this bylaw, in particular the protection of clean groundwater resources and environmental resiliency.

B. **Housing Types.** Subdivision residential units shall be single-family structures. Duplexes may be allowed by special permit. Residential units may be located on individual lots, in condominium arrangements on a shared lot, or a combination of both, whichever best serves the conservation purposes of this bylaw on the specific parcel. *(Need to define some standards for duplexes)*

4.5.6 Dimensional Requirements:

Lot size and shape, residential unit placement, and other dimensional requirements within an Open Space Subdivision are flexible, subject to the following guidelines and limitations:

A. **Objectives:** Residential units shall be located and arranged in a way that advances the open space and resource conservation objectives of this bylaw, i.e. to protect views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops and steep slopes; ponds, wetlands and groundwater resources; and other sensitive environmental resources.

B. **Monumentation:** Industry accepted monumentation of a type consistent with the use of the open space shall clearly delineate the boundaries of the protected open space in manner that facilitates monitoring and enforcement.

C. **Area:** There is no required minimum lot size for zoning purposes. The limiting factors on lot size and placement in an Open Space Subdivision are the need for 1) adequate water supply and sewage disposal for each residential unit, 2) protection of the quality and quantity of current and future groundwater resources on abutting properties, and 3) prevention of negative impacts on wetlands on or near the subdivision.

D. **Infrastructure:** Board of Health regulations regarding water supply protection and the disposal of wastewater, and Conservation Commission regulations regarding wetland protection, shall apply. Clustered or shared septic systems are likely to require setbacks greater than standard
single family systems to prevent negative impacts on wetlands, drinking water wells and groundwater, and therefore may require specific analyses to help determine such setbacks, and subsequent monitoring to determine their effectiveness.

E. **Frontage:** On existing public roads, frontage of any open space subdivision lot shall be as required for a conventional lot in the relevant zoning district. On internal open space subdivision roads, there is no numerical requirement for lot frontage. Each lot must have legally and practically adequate vehicular access to a public road or a subdivision road approved under the Subdivision Rules and Regulations either directly across its own frontage or via a shared driveway approved by special permit.

F. **Setbacks:** The minimum setback of any building from an existing public road shall be 100 feet. The minimum setback of any building from an internal open space subdivision road shall be 30 feet. The minimum setback of any building from the property line of an abutting property shall be 60 feet. The minimum distance between residential buildings within the open space subdivision shall be 30 feet.

### 4.5.7 Open Space Requirements:

A. **Minimum area:** A minimum of 60% of the land area of the Open Space Subdivision shall be set aside as permanently conserved open space. At least half of the open space shall be "uplands" as defined in section 4.5.2.

No more than 10% of the required open space may be utilized for common water supply wells and associated infrastructure, common subsurface leaching fields and other underground components of wastewater systems, rain gardens, constructed wetlands, and other decentralized stormwater management systems consistent with Low Impact Development, that serve the Open Space Subdivision, provided that the land so utilized is contiguous with undisturbed area(s) of protected open space. Treated stormwater may be discharged into the protected open space as part of an approved Low Impact stormwater management plan. All protected land must be shown on approved plans.

B. **Contiguity of Open Space:** Preserved open space shall be contiguous to the greatest extent practicable. Where noncontiguous areas of open space are preferable to protect areas of high conservation value or to provide continuity with open space on adjacent lands, applicants shall attempt to connect these resource areas to the greatest extent practicable through the use of vegetated corridors. Open Space will still be considered contiguous if it is crossed by a shared driveway, roadway, or an accessory amenity such as a paved pathway or trail, as long as a functional wildlife corridor is maintained. If the open space is maintained for agricultural uses, open space areas will be considered contiguous if separated by a barn or storage shed.

C. **Permanent Conservation of the Required Open Space:** Any land required to be set aside as open space, voluntarily preserved in excess of that required, conserved as a condition of site plan approval, shall be permanently protected pursuant to Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts or a perpetual restriction under G.L. Chapter 184 Section 31-33. Unless conveyed to the Conservation Commission, the required open space shall be subject to a permanent Conservation, Watershed, or Agricultural Preservation Restriction conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources in accordance with G.L. Chapter 184 Section 31-33, approved by the Planning Board and Select Board and held by the Town of Sherborn, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under G.L. Chapter 184, Section 31-33. Any proposed open space that does not qualify for inclusion in a Conservation Restriction, Watershed, or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive
Covenant in perpetuity under G.L. Chapter 184, Sections 26-30, which shall be approved by the Planning Board and Select Board and held by or for the benefit of the Town of Sherborn.

The restriction shall specify the prohibited and permitted uses of the restricted land, which would otherwise constitute impermissible development or use of the open space, consistent with the Allowable and Prohibited Uses subsections of this bylaw and any permits. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected land.

D. Timing: Any restriction or other legal document necessary to permanently conserve open space as required herein shall be recorded prior to the release of any lots in a subdivision or prior to the issuance of any building permits in a development that does not require subdivision.

E. Allowable Use of the Open Space: Such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein and in the deed and/or in the restriction, and maintained in a manner which will ensure its suitability for its intended purposes. Proposed use(s) of the open space consistent with this section shall be specified in the application.

a. The open space shall be used for wildlife habitat and conservation and/or the following additional purposes or a combination of these uses, and shall be served by suitable access for such purposes: historic preservation, outdoor education, and passive recreation. Use of the open space for agriculture, horticulture or forestry shall be allowed if the land was in such use at the time of approval of the Definitive Plan. A portion of the open space may be used for new agricultural activities, provided that organic methods are employed.

b. The Planning Board may permit a small portion of the open space, not to exceed 5%, to be paved or built upon (using permeable pavement and other means of retaining natural hydrology) for purposes accessory to the dedicated use or uses of such open space, so long as the conservation values of the open space are not compromised. Examples of such purposes are parking to facilitate public access for passive recreation, informational kiosks, pedestrian walks, ADA access features, and bike paths. Construction of barns or other farm structures will be allowed on 5% of the protected open space that is in agricultural or horticultural use.

c. The open space may be used as the land subject to a restriction for the purpose of an aggregate calculation under Title V.

F. Prohibited Use of the Open Space: The open space within an Open Space Subdivision shall be perpetually kept in an open state, preserved exclusively for the purposes set forth in the Allowed Uses section of this bylaw, and maintained in a manner that will ensure its suitability for its intended purposes. Expressly prohibited uses include but are not limited to the following:

a. Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above, or under the open space that is not in conformance with an authorized use of the open space (e.g. a barn or other structure associated with agriculture);

b. Mining, excavating, dredging, or removing soil, loam, peat, rock, gravel or other mineral resource or natural deposit;

c. Placing, filling, storing, or dumping of soil, refuse, trash, vehicles or parts thereof, rubbish, debris, junk, waste, or other substance or material whatsoever or the installation of underground storage tanks;

d. Cutting, removing, or destroying of trees, grasses or other vegetation unless in conformance with an allowed use such as agriculture, forestry, or recreation;

e. Subdivision; neither further division of the protected open space into lots or the use of the protected open space toward any further building requirements on this or any other lot is permitted;
f. Activities detrimental to drainage, flood control, water conservation, water quality, erosion, soil conservation, or archeological conservation;

g. Purposefully introducing or allowing the introduction of species of plants and animals recognized by the Executive Office of Energy and Environmental Affairs to pose a substantial risk of being invasive or otherwise detrimental to the native plant and animal species and plant communities on the property;

h. The use, parking or storage of motorized vehicles, including all-terrain vehicles (ATVs), snowmobiles, motorcycles, and campers, except in conformance with an authorized use of the open space or as required by the police, firefighters, or other governmental agents in carrying out their duties; and

i. Any other use or activity which would materially impair conservation interests unless necessary in an emergency for the protection of those interests.

4.5.8 Ownership of the Open Space:

At the applicant’s discretion the open space may be owned by:

(1) A private owner for agricultural, horticultural, forestry or any other purpose not inconsistent with the conservation or agricultural restriction;

(2) A non-profit organization or agency of the Commonwealth, with their consent, whose principal purpose is the conservation of open space for any of the purposes set forth herein;

(3) The Town of Sherborn under management of the Conservation Commission; or

(4) A homeowners association (HOA) as defined herein, owned jointly or in common by the owners of lots or units within the project.

If option four is selected the following shall apply:

a. The documents organizing the HOA shall be drafted by the applicant and approved by the Planning Board before final approval of the OSD development, recorded prior to the issuance of building permits, comply with all applicable provisions of state law, and pass with conveyance of the lots or units in perpetuity. Each individual deed, and the deed, trust, or articles of incorporation, shall include language designed to effect these provisions.

b. Membership must be mandatory for each property owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

c. The HOA must be responsible in perpetuity for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways.

d. Property owners must pay their pro rata share of the costs in subsection c above, and the assessment levied by the HOA must be able to become a lien upon individual properties within the OSD.

e. The HOA must be able to adjust the assessment to meet changed needs.

f. The applicant shall make a conditional grant to the Town of Sherborn, Sherborn Conservation Commission, or their designee, binding upon the HOA, of the fee interest to all open space to be conveyed to the HOA. Such offer may be accepted by the Conservation Commission, at the discretion of the Select Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
g. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual property owners in the HOA and the dwelling units they each own.

h. Sherborn Town Counsel must find that the HOA documents presented satisfy the conditions in Subsections a through g above, and such other conditions as the Planning Board shall deem necessary.

Selection of ownership option one, two, or four requires:

a. The conveyance of a conservation restriction as outlined herein; and

b. The granting of an access easement over such land sufficient to ensure access for Sherborn town officials to ensure its perpetual maintenance as agricultural, conservation, or recreation land.

Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, town officials may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by Sherborn shall be assessed against the properties within the development and/or to the owner of the open space. Pursuant to G.L. Chapter 40 Section 58, Sherborn may file a lien against the lot or lots to ensure payment for such maintenance. Pursuant to G.L. Chapter 40 Section 57, Sherborn may also deny any application for, or revoke or suspend a building permit or any local license or permit, due to neglect or refusal by any property owner to pay any maintenance assessments levied.

4.5.9 Maintenance:

The Planning Board shall require the establishment of ongoing maintenance standards as a condition of development approval to ensure that utilities are properly maintained and the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA. If the Select Board finds that the maintenance provisions are being violated to the extent that the condition of the utilities or the open land constitutes a public nuisance, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed proportionally against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.

4.5.10 Submission Requirements:

In order to enable the Planning Board to determine whether or not a proposed open space design satisfies the purposes and standards of the Open Space Subdivision section of the Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board, an applicant must present sufficient information on the environmental and open space resources for the Board to make such a determination.