

ORDINANCE 4-2004

ORDINANCE OF THE BOROUGH OF MADISON CREATING AN OPEN SPACE RECREATION AND HISTORIC PRESERVATION TRUST FUND

WHEREAS, the voters of the Borough of Madison, in the County of Morris, State of New Jersey, approved a referendum which recommended to the Borough Council the establishment of an Open Space, Recreation and Historic Preservation Trust Fund (hereinafter referred to as the "Open Space Trust Fund") to finance the acquisition and preservation of lands and easements for open space; active and passive recreation; preservation of natural resources, including water supplies; and historic preservation.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, in the County of Morris and State of New Jersey as follows:

SECTION 1: Chapter 132: **Open Space Trust Fund.**

132-1. **Establishment and Purpose.** There is hereby established an Open Space Trust Fund, which shall be administered by the Borough Council. The Open Space Trust Fund shall be used to finance the acquisition and preservation of lands and easements for open space; active and passive recreation; preservation of natural resources, including water supplies; and historic preservation.

132-2. **Powers and Duties.**

A. The Borough Council is authorized to use the Open Space Trust Fund to acquire all types of interests in real property including but not limited to fee simple acquisitions, easements, licenses, and/or development rights or any other lesser interest in real estate in the Borough or outside the Borough for the purposes as provided for herein. The Council also is authorized to accept grants, gifts, donations and testamentary bequests of property and/or property rights and to use its power of eminent domain pursuant to N.J.S.A. 20:3-1, et seq. to acquire property or property rights.

B. The Council shall determine the amount of funds to be used for each acquisition of rights or property. The Council shall also determine what use may be made of any real property or property rights acquired by use of the Open Space Trust Fund. In making its decisions, the Council shall take into account the recommendations of the Open Space, Recreation and Historic Preservation Advisory Committee.

C. The Open Space Trust Fund may also be used to acquire real property which has improvements upon it at the time of acquisition, provided that the council determines the principal purpose of the acquisition is to preserve open space, recreation and/or historic preservation. In the event the Council shall find it appropriate to apportion the cost of acquisition between open space and improvements, it may do so and charge the Open Space Trust Fund for the approximate value that it deems appropriate relative to open space and the Borough's capital account for the value that it determines attributable to improvements. The deed of any property or property rights acquired with funds from the Open Space Trust Fund shall contain a specific statement reflecting that the property was acquired with funds from the Open Space Trust Fund.

132-3. **Funding.**

A. The Open Space Trust Fund shall be established and maintained as a separate account in the Borough's general capital fund and shall be known and designated as the "Open Space, Recreation and Historic Preservation Trust Fund." A separate bank and/or investment account shall be opened and maintained for this purpose. The Council may invest funds in the Open Space Trust Fund as provided in the Borough's Cash Management Plan and Investment Policy. Funds in the Open Space Trust Fund shall be used solely for the purposes set forth in this Chapter.

B. The Open Space Trust Fund shall be funded through the collection of an amount of two cents (\$0.02) per One Hundred Dollars (\$100.00) of assessed valuation of each annual Borough property tax levy. The Open Space Trust Fund shall also be permitted to accept grants, gifts, donations and testamentary bequests. The funds accumulated within the Open Space Trust Fund may be utilized to acquire all types of interests in real property, including but not limited to, fee simple acquisitions, easements, licenses, and/or development rights or any other lesser interest in real estate in the Borough or outside the Borough for the purposes as provided in this Chapter or as a down payment for the issuance of bonds for the same purpose at the discretion of the Council. Any and all interest accruing shall remain in the Open Space Trust Fund and may be utilized for the above-described purposes.

132-4. **Disposition of Property or Other Property Rights.** No property or rights acquired with funds from the Open Space Trust Fund shall be sold or otherwise disposed of by the Borough unless the Council has authorized such disposition after and in accordance with a binding public referendum.

132-5. **Review.** In the event that no property or property rights are acquired under this ordinance for a period of five (5) consecutive years, then the Council shall review its activities and issue a report with recommendations and conclusions concerning the future use and disposition of the Open Space Trust Fund. The Open Space Trust Fund may not be closed except in accordance with a binding public referendum.

SECTION 2. All ordinances of the Borough of Madison, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect as provided by law.

ADOPTED AND APPROVED
February 9, 2004

ELLWOOD R. KERKESLAGER, Mayor

Attest:

MARILYN SCHAEFER, Borough Clerk

Introduced and passed: January 26, 2004
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