

ARTICLE XII: OPEN SPACE REQUIREMENTS

DIVISION 115: OPEN SPACE REQUIREMENTS

Sec. 115-010. General Requirements.

- A. All major residential subdivisions shall meet the open space requirements of this Chapter. The amount of required open space shall be determined in accordance with the site capacity calculations as set forth in this Chapter. All subdivision and/or land development plans shall contain or be supplemented by such material as required to establish the method by which the open space shall be perpetuated, maintained and administered. The approval of the final plan of subdivision and/or land development and other materials submitted therewith, shall be construed as a contract between the land owner(s) and the Township, and shall be noted on all applicable deeds.
- B. Required open space shall be subject to permanent conservation easements prohibiting future development and defining the range of permitted activities.
- C. Land occupied by non-recreational buildings or structures, roads or road right-of-way, parking areas for non-recreational uses, land reserved for future parking areas for non-recreational uses, individual or community sanitary sewage treatment facilities, storm water detention or retention basins, or the yards or lots of dwelling units may not be counted towards meeting open space requirements.
- D. Delineation of Open Space. A method of physically delineating private lots from common open space areas shall be provided. Such method may include shrubbery, trees, markers or other method acceptable to the Municipality.

Sec. 115-020. Ownership of Open Space.

- A. Generally. Open space shall be permanently restricted from future subdivision and/or development. Under no circumstances shall any development be permitted on such lands at any time, except for the following:
 - (1). Conservation of open land in its natural state (for example, woodland, fallow field, or managed meadow.
 - (2). Recreation Area. An area designated for recreational use including, but not limited to tennis courts, basketball courts, swimming pools, dog parks, playfields, tot lots, community centers, museums and accessory day care centers. Such areas shall be maintained so as to avoid creating a hazard or nuisance, and shall perpetuate the proposed use.
 - (3). Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Board.
 - (4). Golf courses may comprise up to half of the minimum required Open Space, but shall not include driving ranges or miniature golf. Their parking areas and any associated structures shall not be included within any required open space; their parking and access ways may be paved and lighted.

B. Legal documents providing for ownership and/or maintenance of open space shall be reviewed by the Township Solicitor and be subject to approval by the Board of Supervisors prior to recording of the final plan.

C. Ownership Options. The Municipality requires open space to be initially offered for dedication to the Municipality, which shall have the right of first refusal. The following methods may be used, either individually or in combination for the ownership of Open Space and common facilities. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this section, and then only when there is no change in the common facilities or in the open space ratio of the overall development. Ownership methods shall conform to the following:

(1). Fee Simple Dedication to the Municipality. The Municipality may, but shall not be required to, accept any portion of the open space and common facilities, provided that:

- (a). There are no acquisition or maintenance costs to the Municipality; and
- (b). The Municipality agrees to and has access to maintain such open space and facilities.

(2). Condominium Association. Open Space and common facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with the Pennsylvania Uniform Condominium Act of 1980, as amended. All open land and common facilities shall be held as "common element."

(3). Homeowners' Association. Open Space and common facilities may be held in common ownership by a homeowners' association, subject to all of the provisions for homeowners' associations set forth in state regulations and statutes (such as the Uniform Planned Community Act of 1977). In addition, the following regulations shall be met:

- (a). The applicant shall provide the Municipality, for its approval, a description of the organization of the proposed association, including its by-laws, and all documents governing ownership, maintenance, and use restrictions for the Open Space and common facilities.
- (b). The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development.
- (c). Membership in the association shall be automatic (mandatory) for all purchasers of dwelling units therein and their successors in title.
- (d). The association shall be responsible for maintenance and insurance of common facilities.
- (e). The by-laws shall confer legal authority on the association to place a lien on the real property of any member(s) falling delinquent in their dues. Such dues shall be paid with the accrued interest before the lien may be lifted.
- (f). Written notice of any proposed ownership transfer, by the association, of open space or common facilities, to another entity as permitted herein, or the assumption of maintenance of such lands of such common facilities must be given to all members of the association and to the Municipality no less than thirty days prior to such event.
- (g). The association shall have adequate staff to administer, maintain, and operate such lands and common facilities.

- (4). Private Conservation Organization or the County. With permission of the municipality, an owner may transfer either fee simple title of the open space or easements on the open space to a private non-profit conservation organization or to the County provided that:
- (a). The conservation organization is acceptable to the Municipality and is a bona fide conservation organization intended to exist indefinitely;
 - (b). The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization or Monroe County becomes unwilling or unable to continue carrying out its functions;
 - (c). The Open Space is permanently restricted from future development through a conservation easement and the municipality is given the ability to enforce these restrictions; and
 - (d). A maintenance agreement acceptable to the Municipality is established between the owner and the organization or Monroe County.
- (5). Dedication of Easements to the Municipality. The Municipality may, but shall not be required to, accept easements for public use of any portion of the common land or facilities. In such cases, the facility remains in the ownership of the condominium association, homeowners' association, or private conservation organization while the easements are held by the municipality. In addition, the following regulations shall apply:
- (a). There shall be no cost of acquisition to the Municipality.
 - (b). Any such easements for public use shall be accessible to the residents of the Municipality.
 - (c). A satisfactory maintenance agreement shall be reached between the owner and the Municipality

C. Community Association Documents.

- (1). A Community Association Document, also known as a Homeowner's Association Document or a Condominium Association Document, shall be provided for all subdivision and land development applications which propose lands or facilities to be used or owned in common by all the residents of that subdivision or land development and not deeded to the municipality.
- (2). The elements of the Community Association Document shall include, but shall not necessarily be limited to the following:
- (a). A description of all lands and facilities to be owned by the Community Association. This description shall include a map of the proposal highlighting the precise location of those lands and facilities.
 - (b). Statements setting forth the powers, duties, and responsibilities of the Community Association, including the services to be provided.
 - (c). A Declaration of Covenants, Conditions, and Restrictions, giving perpetual easement to the lands and facilities owned by the Community Association. The Declaration shall be a legal document that also provides for automatic Association membership for all owners in the subdivision or land development and shall describe the mechanism by which owners participate in the Association, including voting, elections, and meetings. Furthermore, it shall give power to the Association to own and maintain the common property and to make and enforce rules.

- (d). Statements prescribing the process by which the Community Association reach decisions and setting forth the authority to act.
- (e). Statements requiring each owner within the subdivision or land development to become a member of the Community Association.
- (f). Statements setting cross covenants or contractual terms binding each owner to all other owners for mutual benefit and enforcement.
- (g). Requirements for all owners to provide a pro rata share of the cost of the operations of the Community Association.
- (h). Provisions giving the Association the legal right to place a lien on the real property of any Member who fails to pay his/her dues. A process of collection and enforcement to obtain funds from owners who fail to comply.
- (i). A process for transition of control of the Community Association from the developer to the unit owners.
- (j). Statements describing how the lands and facilities of the Community Association will be insured, including limit of liability.
- (k). Provisions for the dissolution of the Community Association, in the event the Association should become unviable.

D. Maintenance. Unless otherwise agreed to by the Municipality, the cost and responsibility of maintaining common facilities and open space shall be borne by the property owner, condominium association, homeowners' association, or conservation organization.

- (1). The applicant shall, at the time of preliminary plan submission, provide a Plan for Maintenance of Open Space and Operation of Common Facilities in a form acceptable to the Municipality.
- (2). In the event that the organization established to maintain the open space and the common facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, the Municipality may assume responsibility for maintenance, in which case any assets and general funds of the organization may be forfeited and any permits may be revoked or suspended.
- (3). The Municipality may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner, condominium association, homeowners association, conservation organization, or individual property owners who make up a condominium or homeowners' association and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the Municipality in the office of the Prothonotary of the County.

Sec. 115-030. Financial Guarantee for Open Space Maintenance.

A. The Municipality may require that the applicant establish and contribute to an Open Space Endowment Fund to cover the continuing costs of maintaining the land (involving activities such as mowing meadows, removing invasive vines, paying insurance premiums and local taxes, etc.), including costs associated with active or passive recreation facilities. Spending from this fund should be restricted to expenditure of interest so that the principal may be preserved. Assuming an annual average interest rate of five percent (5%), the amount designated for the Endowment Fund shall be at least twenty (20) times the estimated annual maintenance costs. Such estimate

shall be prepared by an agency, firm, or organization acceptable to the Municipality, and with experience in managing conservation land and recreational facilities, and subject to review by the Municipal Solicitor and approved by the Municipality.

- B. This fund shall be transferred by the developer to the designated entity with ownership and maintenance responsibilities (such as the Municipality, a homeowners' association, or a land trust) at the time this designated entity is created.
- C. When estimating the projected maintenance costs of the open space, it is not necessary to include land that will be inaccessible by the subdivision residents for their common enjoyment.

