

ARTICLE XIII. OPEN SPACE**Section 185: Usable Open Space**

- (a) Every residential development containing more than 25 dwelling units shall maintain at least five percent of the total area of the development as permanent usable open space.
- (b) Usable open space means an area that:
 - (1) Is not encumbered with any substantial structure;
 - (2) Is not devoted to any roadway, parking area or sidewalk;
 - (3) Is left in its natural or undisturbed state if wooded, except for the development of pedestrian trails;
 - (4) Is developed for ball fields, picnic areas or other similar facilities or is properly landscaped if not wooded at the time of development;
 - (5) Is capable of being used and enjoyed for the purposes of informal and unstructured recreation and relaxation;
 - (6) Is legally and practicably accessible to the residents of the development of which it is a part; and
 - (7) Contains no land which lies in a floodplain or in an area containing slopes 15 percent or greater.

Section 186: Ownership and Maintenance of Recreation Areas and Open Space

- (a) Recreation facilities and open space required in accordance with this ordinance shall remain under the control of the developer (or his successor) or a homeowners association or similar organization that satisfies the criteria contained in Section 188.
- (b) The person or entity identified in subsection (a) as having ownership of the recreation facilities and open space shall be responsible for the continuing preservation and proper maintenance of such facilities and open space.

Section 187: Dedication of Open Space

- (a) Any portion of any lot proposed for residential development which is designated as a neighborhood park in the comprehensive plan (not exceeding five percent of the total lot area) shall be included as part of the area set aside to satisfy the requirements of Section 185. This area may be dedicated to public use.

- (b) If more than five percent of a lot proposed for residential development lies within an area designated as a neighborhood park in the comprehensive plan, the town may attempt to acquire the additional land by:
 - (1) Encouraging the developer to utilize the cluster subdivision option and dedicate the resulting common open space; or
 - (2) Purchasing or condemning the required land.

Section 188: Homeowners Associations

Homeowners associations or similar legal entities responsible for the maintenance and control of common areas, including recreation facilities and open space, pursuant to Section 186 shall be established so that:

- (a) Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- (b) The association or similar entity has clear legal authority to maintain and exercise control over such common areas and facilities; and
- (c) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the preservation and maintenance of such common areas and facilities.

Section 189: Flexibility in Administration

- (a) The requirements of this ordinance concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with residential developments, cluster developments and planned town developments are established by the council as presumptive standards consistent with the comprehensive plan. The council recognizes that the underlying objectives of this ordinance may be achieved differently because of the particular nature of a tract of land or the facilities proposed or other factors. Therefore, minor deviations from these standards may be permitted whenever council determines that the minimum requirements will be equaled or exceeded by the proposed deviation.
- (b) The official record of action taken on a development application shall contain a statement of the reasons for allowing any deviation from the standards of this ordinance.

Sections 190 through 193: Reserved