

PROPOSED AMENDMENTS

TO THE CORNWALL SUBDIVISION REGULATIONS

Revised to 1.15.08, 2.20.08

1. Delete existing section 5.7 Open Space on page V-3 and substitute the following.

Retain that portion of 5.7 on page V-4 as subsection 5.7.11.

5.7 Open Space - Statement of Purpose

The Commission's objective is to ensure that to the extent possible as subdivision development occurs suitable areas are protected for the purpose of natural resource preservation, passive recreational use (including walking or biking path or trails), scenic views or vistas, scenic roadside buffers, historic preservation or farm use. These objectives may be accomplished with the requirement to set aside open space land in a subdivision or by payment of a fee in lieu of the open space as provided herein. The Commission considers the protection of open space or provision for a fee in lieu of open space as an essential element of subdivision plans and may request professional review and assessment of the open space element of subdivision plans.

.1 Open Space Shall Be Required. Where three or more lots are proposed the Commission shall require either the reservation of up to 15% of the land to be subdivided for the specific purposes herein, or may accept a fee in lieu of open space.

.2 Open Space May Be Required. Where less than three lots are proposed the Commission may require either the reservation of up to 15% of the land to be subdivided for the specific purposes herein, or may accept a fee in lieu of open space.

.3 The land to be reserved as open space shall be a percentage of the total area of the land proposed for subdivision approval. This shall not include land owned by the applicant but not proposed or approved for subdivision approval or a lot created for an existing residence which is part of the subdivision. (see illustration in Appendix)

.4 Exceptions to Open Space Requirement.

a. Where a proposed subdivision includes land that is subject to a conservation easement held by a qualified land trust and the Commission determines the land subject to the easement satisfies the requirements of this section the Commission may determine that no additional open space shall be required.

b. Where the applicant submits both a proposed subdivision plan and a subdivision feasibility plan showing that more lots are possible on the property than are proposed *and* the applicant proposes to place a conservation easement or other permanent restriction preventing re-subdivision of all lots in the subdivision, the Commission at the request of the applicant may determine that no dedicated open space

or fee in lieu shall be required provided such easement:

- shall be subject to the approval of the Commission's attorney, and
- shall be enforceable by all lots in the subdivision, a Homeowner's Association and/or the Town.

c. In accord with the requirements of the Connecticut General Statutes the open space requirements of this section shall not apply where:

- the subdivision involves the transfer of all land in a subdivision of less than five lots to a parent, child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration; or
- the subdivision is to contain housing units sufficient in type and number to meet the requirements of the Connecticut Affordable Housing Appeals Procedure (Connecticut General Statutes section 8-30a).

.5 Open Space Requirement May be Deferred. At the request of an applicant the Commission may agree to defer the immediate requirement for open space where the Commission determines that all of the following conditions exist:

- a. The subdivision is part of a larger parcel of land under single ownership and is for residential use, and
- b. The subdivision includes significant "reserved" land not proposed for subdivision but with the potential to be divided into additional subdivision lots, and
- c. The Commission determines that the location of open space is more properly and advantageously located in the "reserved" land, and
- d. The applicant agrees to enter into an agreement with the Town and acceptable to the Town Attorney providing that the required amount of open space for the entire subdivision shall be deferred until the "reserved" land is proposed for subdivision.

.6 Open Space Selection Criteria.

Open space is an integral element of a subdivision plan and in all cases the Commission shall make the final determination of the area designated as open space. Applicants are strongly urged to submit a Preliminary Subdivision Plan (see Section 3.1) at which time the Commission and/or its authorized representative shall provide guidance on selection of suitable open space areas for the final subdivision plan.

Criteria. The Commission shall determine the area selected for open space to serve the purposes stated above and in consideration of the following selection criteria:

- a. Linkage to other protected land *, passive recreational values (e.g. trails), water access (river, stream, pond or lake), protection of prime natural features (e.g. major ridgeline), scenic or aesthetic values, farm and/or forestry values, wildlife habitat or other wildlife values, rare plant or animal species, value for protecting public water supply, value for protection of scenic roadways.

(* Subdivision applications shall provide documentation of existing protected land on adjacent property within 2,500 feet of the subdivision boundaries.)

b. In addition to the criteria listed above the Commission shall consider land to be protected as open space in reference to the open space and conservation recommendations in the Cornwall Town Plan of Conservation and Development, Northwestern Connecticut Regional Plan, State Plan of Conservation of Development, Greenprint Plan and similar applicable conservation planning plans and reports.

.7 Public Access. The Commission shall require that open space has a suitable access from a public street where it determines such is needed for public access or for maintenance access. In such cases the Subdivision Plan shall show an access corridor from a street into the open space of not less than 40 feet in width and with a suitable grade for the purpose intended. Such access shall be directly from a street or may be through an adjoining property to a street.

.8 Method of Protection

It is intended that open space in a subdivision shall be permanently protected. The Commission may require permanent protection by fee simple deeding the property, granting a conservation easement or any other method of conveyance which accomplishes permanent preservation in accord with the requirements set forth in this Section.

Proposed conservation easements or other legal instruments for land conservation purposes shall be drafted and presented to the Commission as part of the subdivision application and shall follow the form approved by the Commission for this purpose.

Regardless of the manner of ownership of the Open Space, the instrument of conveyance must include provisions satisfactory in form and substance to the Commission to ensure:

- The continued use of such land for the intended purposes, and
- The continuity of proper maintenance for those portions of the Open Space requiring maintenance.

.9 Open Space Protection Entities.

Land protected in fee simple by deed or by conveyance of a conservation easement shall be held by one or more of the following entities:

The Town of Cornwall;

The State of Connecticut;

The Cornwall Conservation Trust or similar qualified local, area or state non profit land conservation organization;

An approved Home Owners Association.

The applicant shall provide evidence that the selected entity is willing to accept such property deed or easement for open space protection. Any such dedication, regardless of the method used, shall be completed prior to the endorsement and filing of the final subdivision plan in the office of the Town Clerk.

.10 Homeowners Association

When an association is established to own Open Space or other common interests, the association must be legally established to fulfill the following requirements prior to the endorsement of the final plans. Where the common interests require a common interest community it shall be established according to the procedures and requirements specified in the Connecticut Common Interest Ownership Act (C.G.S. 47-200, as amended.).

a. The homeowners association must be established as a legally recognized entity.

The association must be responsible for liability insurance, local taxes, and the maintenance of any recreational and other facilities.

b. There shall be mandatory membership in the association or corporation by all the original lot owners and any subsequent owners.

c. Each lot owner shall have an equal vote in determining the affairs of the organization, costs shall be assessed equally to each lot; and the organization shall remain under the control of the developer until a majority of the lots are conveyed to permanent owners.

d. The association or corporation must have the power to assess and collect from each lot owner a specified share of the costs associated with maintenance, repair, upkeep and insurance of the Open Space.

e. The association must have the authority to adjust the assessment to meet changed needs.

f. The method or organization, by-laws and rules of procedure of the homeowners' association shall be in a form acceptable to the Commission and are subject to a review by the Town Attorney. The Commission may require that a sinking fund be established and used to maintain common areas. The sinking fund shall be transferred to the homeowners' association when

the assets are transferred to the association upon completion of a requisite portion of the development.

.11 Fee In Lieu of Open Space. (Note: This section exists and no changes are proposed.)

In lieu of such reservation of open space, the applicant, with the approval of the Commission, may pay a fee to the Town of Cornwall (hereinafter the "Town") or may pay a fee and transfer land to the Town.

Any fee paid to the Town or any fee and the fair market value of any land transferred to the Town shall be equal to no more than ten percent (10%) of the fair market value of the land to be subdivided prior to the approval of the subdivision.

The fair market value shall be determined by an appraiser jointly selected by the Commission and the applicant. The appraisal shall be completed prior to the filing of the approved subdivision map in the office of the Town Clerk. The cost of such appraisal shall be the responsibility of the applicant.

A fraction of such payment the numerator of which is one and the denominator of which is the number of approved parcels in the subdivision shall be made at the time of the sale of each approved parcel of land in the subdivision. In the event of any future subdivision, increasing the number of approved lots, the remaining balance of the payments due hereunder shall be equally apportioned among the total number of lots remaining to be sold.

The payment of any fee hereunder to the Town shall be placed or deposited in a fund which shall be used for the purpose of preserving open space or acquiring additional land for open space or recreation purposes.

Each approved lot on the subdivision or resubdivision shall have a note placed thereon stating the exact dollar amount to be paid to the Town at the time of the sale of the lot as required by the provisions of this regulation

The open space requirement of this fee in lieu of open space section shall not apply if the transfer of all land in a subdivision of less than five parcels is to a parent, child, brother, sister, grandparent, grandchild, aunt, uncle, or first cousin for no consideration, or if the subdivision is to contain affordable housing, as defined in Section 8-39a of the Connecticut General Statutes, equal to twenty percent (20%) or more of the total housing to be constructed in such subdivision.

2. Amend Article III, Section 3.1 Informal Preliminary Plan Review as follows:

a. Change title to "Preliminary Plan Review" and delete the word "informal" wherever it appears in this section 3.1.

b. Substitute the following for para. #3

"Preliminary subdivision plans provide potential applicants with an opportunity to review the layout and design of the subdivision with the Commission to:

- Better understand the requirements for compliance with the Subdivision Regulations before

- incurring final engineering, application, and legal costs in conjunction with a formal application,
- Identify areas deemed by the Commission to be suitable for open space prior to final layout of subdivision lots,
 - Identify potential areas of conflict with the requirements of these Regulations so these can be addressed through redesign at an early stage,
- Avoid an otherwise potentially more difficult and extended process of final subdivision plan review with the Commission.”