

## **ARTICLE 13. RECREATIONAL FACILITIES AND OPEN SPACE**

### **Section 13.1 Miniparks Required.**

(a) Subject to subsection (c), all residential developments shall provide (through dedication or reservation, see Sections 13.4 and 13.5) recreational areas in the form of miniparks (as described in Section 13.2) in an amount equal to .0025 acres (108.9 square feet) per person expected to reside in that development (as determined in accordance with subsection (b)). Such recreational areas shall be provided in addition to the open space areas required by Section 13.3.

(b) For purposes of this section, one-bedroom dwelling units shall be deemed to house an average of 1.4 persons, two-bedroom units 2.2 persons, three-bedroom units 3.2 persons, and units with four or more bedrooms 4.0 persons. In residential subdivisions that are not approved as architecturally integrated subdivisions, each lot that is large enough for only a single dwelling unit shall be deemed to house an average of 3.2 persons. Each lot that is large enough to accommodate more than one dwelling unit shall be deemed to house 2.2 persons for each dwelling unit that can be accommodated.

(c) The Council recognizes that miniparks must be of a certain minimum size to be usable and that such miniparks will not serve the intended purpose unless properly maintained. Therefore, residential developments that are small enough so that the amount of required minipark space does not exceed 2,000 square feet are exempt from the provisions of this section. However, as used in the foregoing sentence, the term "development" refers to the entire project developed on a single tract or contiguous multiple tracts under common ownership, regardless of whether the development is constructed in phases or stages. In addition, subdivided residential developments of less than twenty-five dwelling units shall also be exempt from the provisions of this section.

### **Section 13.2 Miniparks: Purpose and Standards.**

(a) The purpose of the minipark is to provide adequate active recreational facilities to serve the residents of the immediately surrounding neighborhood within the development. The following are illustrative of the types of facilities that shall be deemed to serve active recreational needs and therefore to count toward satisfaction of the minipark requirements of this article: tennis courts, racquetball courts, swimming pools, sauna and exercise rooms, meeting or activity rooms within clubhouses, basketball courts, swings, slides, and play apparatus.

(b) Each development shall satisfy its minipark requirement by installing the types of recreational facilities that are most likely to be suited to and used by the age bracket of persons likely to reside in that development. However, unless it appears that less than five percent of the residents of any development are likely to be children under twelve, then at least fifteen percent of the minipark must be satisfied by the construction of "tot lots" (i.e., areas equipped with imaginative play apparatus oriented to younger children as well as seating accommodations for parents).

(c) The total acreage of miniparks required by Section 13.1 shall be divided into miniparks of not less than 2,000 square feet nor more than 30,000 square feet.

(d) Miniparks shall be attractively landscaped and shall be provided with sufficient natural or manmade screening or buffer areas to minimize any negative impacts upon adjacent residences.

(e) Each minipark shall be centrally located and easily accessible so that it can be conveniently and safely reached and used by those persons in the surrounding neighborhood it is designed to serve.

(f) Each minipark shall be constructed on land that is relatively flat, dry, and capable of serving the purposes intended by this article.

### **Section 13.3 Usable Open Space.**

(a) Except as provided in subsection (c), every residential development shall be developed so that at least fifteen percent of the total area of the development remains permanently as usable open space. *(Amended 3/99)*

(b) For purposes of this section, usable open space means an area that:

- (1) Is not encumbered with any substantial structure;
- (2) Is not devoted to use as a roadway, parking area, or sidewalk but may include buffer areas, building setback areas, and retention ponds; *(Amendment 3/99)*
- (3) Is left in its natural or undisturbed state (as of the date development began), if wooded, except for the cutting of trails for walking or jogging, or, if not wooded at the time of development, is landscaped for ballfields, picnic areas, or similar facilities, or is properly vegetated and landscaped with the objective of creating a wooded area or other area that is consistent with the objective set forth in subdivision (4);
- (4) Is capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation; and
- (5) Is legally and practicably accessible to the residents of the development out of which the required open space is taken, or to the public if dedication of the open space is required pursuant to Section 13.5.
- (6) Consists of land no more than twenty-five percent of which lies within an area of special flood hazard or a floodway as those terms are defined in Section 16.2.

(c) Subdivided residential developments of less than twenty-five dwelling units are exempt from the requirements of this section unless the town agrees that it will accept an offer of dedication of such open space, and in that case the offer of dedication shall be made.

### **Section 13.4 Ownership and Maintenance of Recreational Areas and Required Open Space.**

(a) Except as provided in Section 13.5, recreation facilities and usable open space required to be provided by the developer in accordance with this article shall not be dedicated to the public but shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization that satisfies the criteria established in Section 13.8.

(b) The person or entity identified in subsection (a) as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

### **Section 13.5 Dedication of Open Space.**

(a) If any portion of any lot proposed for residential development lies within an area designated on the officially adopted recreation master plan as a neighborhood park or part of the greenway system or bikeway system, the area so designated (not exceeding five percent of the total lot area) shall be included as part of the area set aside to satisfy the requirement of Section 13.3. This area shall be dedicated to public use.

(b) If more than five percent of a lot proposed for residential development lies within an area designated as provided in subsection (a), the town may attempt to acquire the additional land in the following manner:

- (1) The developer may be encouraged to resort to the procedures authorized in Sections 12.7 or 12.8 and to dedicate the common open space thereby created; or
- (2) The town may purchase or condemn the land.

(c) An executed general warranty deed conveying the dedicated land to the Town of Edenton shall be submitted to the Town within 30 working days of the approval by the Town Council of a subdivision plat or development plan.

### **Section 13.6 Payments in Lieu of Dedication.**

(a) Any developer required to dedicate land pursuant to this article, **with the approval of the Town Council**, may make a payment in lieu of such dedication, or may make combination dedication and partial payment in lieu of dedication, whichever, in the opinion of the Town Council, shall be in the best interest of the citizens of the area to be served.

(b) Any such payment in lieu of dedication shall be the product of the number of acres to be dedicated multiplied by the average fair market value of the land being subdivided at the time of the submission of the final subdivision plat or final development plan.

(c) In case of a disagreement between the town and the developer as to the fair market value, such determination shall be made by a special appraisal committee made up of one (1) professional appraiser appointed by the Town Manager, one (1) professional appraiser appointed by the developer, and one (1) professional appraiser appointed by the initial two (2) committee appointees. The Committee shall view the land and hear the contentions of both the Town and the developer. The findings of the Committee shall be by a majority vote and shall be certified to the Town Council in writing within thirty (30) days of the time of appointment of the third member of the Committee. The costs of all professional land appraisers shall be borne entirely by the developer. (A professional appraiser is an individual who can show by legal credentials and experience that he or she has a knowledge of land appraisals of a similar type.)

(d) All monies received by the town pursuant to this section shall be used only for the acquisition or development of recreational and park sites benefitting the new development and the residents in the vicinity of the development.

### **Section 13.7 Procedure for Requesting Payment in Lieu of Dedication of Land.**

(a) The developer shall attach to the subdivision plat, or in the case of a planned development, the preliminary development plan, a letter requesting approval to make payment in lieu of dedication of land pursuant to this article. In this letter, the developer shall state the proposed per acre value and include, in writing, the basis for determination of this value.

(b) Upon receipt of the subdivision plat, or in the case of a planned development, the preliminary development plan, the administrator shall submit a copy thereof with attached letter requesting approval to make payment in lieu of dedication to the Town Manager at least twenty (20) working days prior to the Town Council's next scheduled meeting. The Town Manager shall submit any and all recommendations concerning payment in lieu of dedication to the Town Council at its next scheduled meeting following review by the Town Manager.

(c) Upon approval by the Town Council, payment in lieu of dedication shall be made at the time of final plat submittal or within one (1) year of the approval of the final development plan, except as otherwise approved by the Town Council.

### **Section 13.8 Homeowners' Associations.**

Homeowners' associations or similar legal entities that, pursuant to Section 13.4, are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

- (1) Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- (2) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;
- (3) 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 maintenance and upkeep of such common areas and facilities.

### **Section 13.9 Flexibility in Administration Authorized.**

(a) The requirements set forth in this article concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with residential developments are established by the Council as standards that presumptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted town plans. The Council recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit issuing body is authorized to permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of

land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

(b) Whenever the permit issuing board authorizes some deviation from the standards set forth in this article pursuant to subsection (a), the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

**Section 13.10 Authority to Sell.**

The Town Council shall have the authority to sell land dedicated pursuant to this article with the proceeds of any such sale used solely for the acquisition and/or development of other recreation, park, or open space sites.

**Section 13.11 Land Acceptance.**

The Town Council shall have the authority to accept or reject land dedications made as a requirement of this article. At the developer's request, the Town Council may accept a land dedication located elsewhere in the town's jurisdiction in lieu of a land dedication at the site of the proposed development.