

Appendix E

MODEL ORDINANCE PROVISIONS FOR THE DEDICATION OF LAND FOR PARKS, OPEN SPACE, AND/OR GREENWAYS OR CASH IN LIEU OF LAND

Local ordinances for mandatory recreation dedication or environmental protection, like all other legal documents, can be simple or complex to administer; strict or loose in definition, appropriate for one municipality and not another. An acceptable approach for a municipality considers the time, effort, and required training necessary to administer the ordinance and the prevalence of the feature being preserved (e.g., steep slopes, streamside buffers). For instance, a small, rural township with only a part-time zoning administrator may wish to adopt a simpler approach to land preservation than a thriving city with a full-time staff of zoning and code enforcement officials. Also, a municipality with very flat land may not need steep slope regulations. The following ordinances illustrate several approaches which Adams County municipalities may take in helping to develop the local and county open space system.

COMPLEX MODEL ORDINANCE FOR MANDATORY RECREATION DEDICATION

AN ORDINANCE OF _____, ADAMS COUNTY, PENNSYLVANIA, AMENDING _____ SUBDIVISION AND LAND DEVELOPMENT ORDINANCE TO REQUIRE PUBLIC DEDICATION OF LAND, THE PAYMENT OF FEES IN LIEU THEREOF, THE PRIVATE PRESERVATION OF LAND, OR A COMBINATION, FOR PARK OR RECREATION PURPOSES AS A CONDITION PRECEDENT TO FINAL PLAN APPROVAL.

IT IS HEREBY ENACTED AND ORDAINED by the _____, of _____, Adams County, Pennsylvania that the Subdivision and Land Development Ordinance, Ordinance No. _____, enacted _____, as amended, is hereby amended as follows:

SECTION

610 PARK, OPEN SPACE AND GREENWAY PROVISION

Comment: The section numbering system may differ for each municipality. The 600 series was chosen here solely to illustrate the division of subsections.

610.01 GENERAL

This Section applies to proposals that would create new residential and non-residential development. The purpose of this Section is to implement Section 503(11) of the Pennsylvania Municipalities Planning Code and thereby provide needed parks, open space and greenways.

This Section 610 is based on the conclusions and recommendations in the _____ Parks and Open Space Plan dated _____ which the Municipal governing body has officially adopted as the _____ official Recreation Plan.

610.02 MANDATORY DEDICATION OF LAND

- A. Land shall either be dedicated to the Municipality for parks, open space and/or greenways or an alternative action shall be taken from among the choices in Section 610.03 under either one of the following two situations:
1. A proposed land development or submission that creates one or more new dwelling units shall dedicate a minimum of _____ acres of land per dwelling unit to the Municipality.
 2. A proposed land development or subdivision that creates one or more commercial, industrial or other non-residential principal uses and that involves a total area of 2 acres or more, excluding public and private schools, shall dedicate a minimum of ____ % of the proposed development's total area to the Municipality.
- B. The required park, open space and/or greenways associated with a proposed residential or non-residential development shall be distributed as follows:
1. PRIMARY RECREATION SPACE shall consist of a minimum of 70% of the total required mandatory dedicated acres for the proposed project. Primary Recreation Space shall not include any of the natural features that comprise "Greenway or Natural Resources Space" (see Paragraph 2. below).

Since the primary purpose of the Primary Recreation Space is for active recreational pursuits, this land should be relatively flat. Therefore, the following guidelines shall be used:

A minimum of 1/2 of the Primary Recreation Space shall have slopes of 5% and under and the remaining 1/2 of the space shall have slopes of 10% or under.

2. GREENWAY OR NATURAL RESOURCE SPACE may consist of a minimum of 30% of the total required mandatory dedicated acres for the proposed project. Greenway or Natural Resource Space may include floodplains, wetlands, steep slopes greater than 10%, storm water detention areas that are unusable for recreation as well as Primary Recreation Space.

610.03 MANDATORY DEDICATION ALTERNATIVES

The applicant may use one of the following alternatives to mandatory dedication, provided the Municipality's governing body approves:

- A. Construct new and/or improve existing recreation facilities;
- B. Pay a fee-in-lieu of land dedication;
- C. Guarantee the private reservation and maintenance of parkland, open space and/or greenway; or,
- D. Provide a combination of the above.

610.04 TOTAL OR PARTIAL FEE IN LIEU OF DEDICATION

Any of the alternatives in Section 610.03 must be at least equal to the pre-development fair market value of the two types of space (primary recreation and greenway or natural resource) which would have been otherwise required for dedication, including:

- A. Primary Recreation Space (required acreage x value = \$ _____) which should equal the value of the tract of land of the proposed development project or similar land within the zoning district in which the tract is located.
- B. Greenway or Natural Resource Space (required acreage x value = \$ _____) which should equal the value of the tract of land of the proposed development project or similar land within the zoning district in which the tract is located.

As an alternative, the Municipality may establish an annually updated fair market value for land associated with A.) Primary Recreation Space and for the B.) Greenway or Natural Resource Space within the Municipality or within each zoning district.

The determination of the fair market value of the two types of space (primary recreation and greenway or natural resource) shall be the responsibility of the applicant and shall be acceptable to the governing body of the Municipality. If the Municipality should dispute the applicant's fair market value, it may either retain a certified appraiser at the applicant's cost to verify and/or adjust the applicant's fair market value to the appraiser's value, or it may require mandatory dedication of the required acreage and/or a portion thereof and the remaining portion amount in fee-in-lieu of dedication.

610.05 PARKLAND CAPITAL RESERVE AND ACQUISITION FUND

The applicant shall pay all fees in lieu of land dedication to the Municipality. Upon receipt of the fees, the Municipality shall deposit said fees in an interest-bearing account. This account shall be separate from other municipal accounts and shall be clearly identified for the purpose of funding parkland acquisition and/or development of recreation facilities. Interest earned on all monies deposited in such accounts shall become funds of that account. Funds from such accounts be expended at the discretion of the Municipality's elected officials in properly allocable portions of the cost incurred to acquire land and/or design, construct or acquire the specific recreation facilities that will benefit the subdivision or and land development for which they were collected. Fees deposited to this account shall be administered as required by the Pennsylvania Municipalities Planning Code.

610.06 CASH FEE PAYMENTS IN LIEU OF DEDICATION AND EXPENDITURE

The fees shall be paid prior to recording of the Final Plan, unless the applicant agrees, as part of a legally binding development agreement, to pay the required fees prior to the issuance of each building permit for development. If requested by any person who paid any fee under this section, the municipality shall refund such fee, plus interest accumulated thereon from the date of payment, if the municipality has failed to utilize the fee paid for the purposes set forth in this section within three years from the date such fee was paid. If a developer chooses to pay such fees in phases, then such fees shall not have been considered to be fully paid for purposes of this time limit until three years after the last payment is made.

610.07 MUNICIPAL FUND REIMBURSEMENT OR MUNICIPAL PARKS AND OPEN SPACE IMPROVEMENTS OR ACQUISITION

From time-to-time a Municipality may purchase land for parks, greenways, open space and/or improve existing parks and greenways in or near the area of actual or potential subdivisions and/or

developments. If a Municipality does undertake such action within a distance of 1 and ½ miles, subsequent park, greenway and open space land dedications within that area may be a cash fee in-lieu-of land dedication and be used to reimburse the Municipality's actual cost of acquiring and/or developing such land for parks, greenways or open space. Once the Municipality has been reimbursed for all such park, greenway and open space actions within this area, this subsection shall cease to apply and the other subsections of this section shall remain applicable.

610.08 PRIMARY RECREATION SPACE DESIGN REQUIREMENTS

In general, Primary Recreation Space and related open spaces to be set aside and provided for in this section shall include areas for active recreational pursuits. Accordingly, the following design requirements shall apply:

- A. The Primary Recreation Space shall be reasonably located so as to serve all of the residents or users of the subdivision or land development;
- B. The site(s) shall be located and designed so that safe and convenient access shall be provided to all existing and proposed users. Additionally, each site shall have at least one vehicular access area that is a minimum of ____ feet in width;
- C. The site(s) shall be sized and configured so as to accommodate its intended uses. Sufficient lot width/depth dimensions shall be provided so as to accommodate, where practical, ballfields, courts and other open play areas. Furthermore, should a development be proposed at a location contiguous to existing parkland, dedicated parklands should be provided, where practical, as an expansion of the existing park;
- D. The site(s) shall have suitable topography and soil conditions for use and development as active play areas. A minimum of ½ of the primary recreation space shall have slopes of 5% or under and the remaining ½ of the space shall have slopes of 10% or under. The area of the site considered as the Primary Recreation Space shall be free from floodplains, wetlands, slopes of over 10% and storm water detention facilities that are not usable for recreation;
- E. The site(s) shall be located and designed to conveniently access public utilities, which may be extended by the developer, including sanitary sewer, water and electric service. However, no part of an overhead utility easement or any above ground protrusion of an underground utility shall be permitted within the area proposed for active play areas on the site;
- F. No part of the site(s) shall be a part of any other required setback, yard, buffer and/or open space required for any adjoining lots or uses as regulated by the Municipality's Zoning Ordinance;
- G. The site shall comply with any applicable design, orientation, size and location guidelines in the Municipality's Recreation, Parks and Open Space Plan and/or Official Comprehensive Plan.

610.09 GREENWAY AND NATURAL RESOURCE SPACE DESIGN REQUIREMENTS

In general, Greenway and Natural Resource Space and related open spaces to be set aside and provided for in this section shall include areas for lineal greenways. These corridors of open space provide ways for people to gain access to residential and non-residential areas, parks, schools, historic sites, town centers,

neighborhoods, rural areas and related human settlement points as well as access to water, forests, meadows and other unique natural features and related open space for recreational pursuits.

Some greenways will be for walking, hiking, jogging, biking, horseback riding and even canoeing. Others will be simple and untouched as a stretch of stream bank left wild. Whether developed or not, greenways are exceptional for recreation, education, environmental preservation and important open space corridors that people may use to reach community resources. Accordingly, the following design principles shall apply:

A. GREENWAY AND NATURAL RESOURCE PLANNING AND DESIGN PRINCIPLES - The developer and Municipality shall use the following principles to plan for greenways and natural resource areas:

- Provide greenways along natural areas such as creeks, wetlands, floodplains and edges of waterbodies,
- Provide greenways along ridgelines with dramatic views,
- Provide greenways along utility easements, rights-of-way and other man-made linear corridors, such as abandoned railroad beds and underground pipelines,
- Provide greenways along highway and street rights-of-way,
- Provide greenways which incorporate parks, schools, urban pedestrian ways and plazas, especially in urban centers with limited parking, traffic congestion and more dense development,
- Provide greenways which incorporate existing pathways, bike routes, trails and sidewalks,
- Provide greenways within expanded buffer areas between different types of land uses,
- Provide greenways which interconnect and loop, giving interest for walkers, bikers and other users,
- Provide greenways which minimize road crossings, especially along major highways with high traffic volumes and fast-moving traffic. When necessary, consider using streets with limited traffic.

- B. The Greenway and Natural Resource Space shall be reasonably located so as to serve all of the residents or users of the subdivision or land development.
- C. The site(s) shall be located and designed so that safe and convenient access shall be provided to all existing and proposed users. Additionally, each site shall have at least one vehicular access area that is a minimum of twenty-four (24) feet in width.
- D. Actual dedications of greenways and natural resource areas shall have a minimum width of fifty (50') unless circumstances prohibit this width) and, if dedicated to a Municipality, must be approved by the elected officials.
- E. Any Greenway and Natural Resource Space shall conform to the goals of the municipal recreation, parks and open space plan and official comprehensive plan.

- F. The minimum right-of-way width of an easement containing a trail which crosses private land shall be twenty (20') feet. Easements may be dedicated to the Municipality, the County or to another organization(s) which, in the judgement of the Municipality's elected officials, is/are appropriate. In all cases, however, such easements must provide for public use.
- G. All walkways, bikeways or other accessways must have a minimum vertical clearance of not less than ten (10) feet. Walkways should have a minimum width of not less than five (5) feet. Bikeways should have minimum width of not less than 10', with 5' fall away zones.
- H. Greenway and Natural Resource Space may include floodplains, wetlands, steep slopes greater than 10% and storm water detention areas that are not usable for recreation purposes, as well as Primary Recreation Space. Any walkway, bikeway, trail or other man-made features or use areas may be located in a wetlands area only after Municipal and State approvals.

SIMPLE MODEL ORDINANCE FOR MANDATORY RECREATION DEDICATION

607. OPEN SPACE AND RECREATION AREAS AND FEES

A. Intent.

1. To provide adequate open spaces, recreational lands and recreational facilities to serve new residents of new developments, for both active and passive recreation.
2. To recognize and work to carry out the officially adopted _____ *Parks, Recreation and Open Space Plan*.

B. Applicability. This section shall apply to any subdivision or land development for which a preliminary plan or a combined preliminary/ final plan is submitted after the enactment date of this amendment.

1. This section shall not apply to plans that the Governing Body determines only involve clearly minor adjustments or corrections to an approved preliminary plan or clearly minor adjustments or corrections to a preliminary plan that was before the Governing Body for consideration at the date of the adoption of this amendment.

C. Limitations on Use of Fees.

1. Any fees collected under this section shall be placed within an interest-bearing account and shall be accounted for separately from other Municipal funds.
2. To ensure that the lands and facilities are accessible to the residents and employees of the developments that paid fees towards their cost, the attached "Recreation Fee District Map" designates "Recreation Fee Districts." Any fees collected under this section shall only be expended within the same Recreation Fee District as the subdivision or land development that contributed the fees.
3. Such fees shall only be used for the following: acquisition of public open space, development of public recreational facilities, landscaping of public open space and closely related engineering and design work.