

## **PROPOSED AMENDMENTS TO THE SUBDIVISION REGULATIONS**

**NEW:** (?? Serve as placeholders for the renumbering of Sections when a regulation is passed.)

### **~ 213-4. Definitions.**

**CONSERVATION EASEMENT** -- An easement which perpetually prohibits further development or use inconsistent with, or harmful to, the enhancement, preservation, and protection of a defined area for the benefit of fish, wildlife, plants, or other similar ecosystems, or preserves such areas predominantly in their natural scenic or open condition; but which may, in the sole discretion of the Commission, permit recreational and/or agricultural uses which do not involve significant alteration or development of the restricted area in a manner which is inconsistent with, or harmful to, the preservation and protection of the restricted area.

**OPEN SPACE** -- Land that is subject to a Conservation Easement, or other form of development restriction, including that within a Open Space Subdivision.

**PRELIMINARY PLAN** -- An informal submission of general layout of a proposed subdivision or resubdivision for consideration by the Commission.

**RECREATION, ACTIVE** -- Recreational activities that require either (1) the use of a park, playing field or playground; (2) the installation of buildings or other structures; or (3) the substantial modification or grading of a tract of land.

**RECREATION, PASSIVE** -- Recreational activities that do not require either (1) the use of a playing field or playground; (2) the installation of buildings or other structures; or (3) the substantial modification or grading of a tract of land. The installation of a building or structure in connection with a particular recreational activity shall not, in and of itself, cause the activity to be classified as “active” if the building or structure was not necessary to allow the activity to occur. For example, the installation of posts, signs, or water fountains along a hiking trail will not cause hiking to be deemed an active recreational use.

**SUBDIVISION, CONVENTIONAL** -- A subdivision design that is consistent with the provisions of the Somers Zoning and Subdivision Regulations that would be applicable in the absence of Sections ??? and ??? of these Regulations and Section ??? of the Somers Zoning Regulations.

**SUBDIVISION, OPEN SPACE** -- A subdivision approved in accordance with this Section (these subdivision regulations) and with Section ??? of the Zoning Regulations as amended.

ARTICLE ??  
**Open Space Subdivisions**

**~ 21?-??. Purpose.**

The purpose of this section is to provide for a flexible approach for the design and subdivision of land for residential development on areas of a project site best suited for development and to protect the remaining land as open space in accordance with the objectives set forth in the Somers Plan of Conservation and Development. While the intention is not to increase the overall site density, the creation of open space is accomplished by permitting a transfer of density by way of reduction in the minimum lot size and frontage normally required in specific zones for residential development.

The creation of an Open Space Subdivision is intended to (1) protect natural streams, water supplies and watershed areas, soils, wetlands, and other significant natural features and landmarks, (2) maintain and enhance the conservation of wildlife, natural, agricultural, or scenic resources, (3) enhance the value to the public of abutting or neighboring parks and unfragmented forests, wildlife preserves, nature reservations or sanctuaries, or other open spaces, (4) enhance public recreation opportunities, (5) preserve historic sites, (6) promote orderly residential development while providing flexibility that is sensitive to site characteristics, (7) limit the extent of impervious surfaces and control runoff, (8) lower the impact on the natural environment, and (9) encourage more creative and efficient site planning that will result in reduced expenditures for utilities, infrastructure and maintenance costs.

**~ 21?-??. Applicability.**

Open Space Subdivision design standards shall be required in any single-family residential subdivision and be subject to all of these regulations as set forth herein. In cases where, in the opinion of the Commission, the goals of the Open Space Subdivision Regulations as set forth above cannot be attained, the Commission may waive these requirements and permit the applicant to proceed with a Conventional Subdivision plan as otherwise provided in these regulations. Any applicant wishing to utilize the Conventional Subdivision design standards shall submit such a request to the Commission for their review prior to submitting a formal application. The Commission may request any information it deems necessary to evaluate any such request.

**~ 21?-??. Referrals.**

The Commission may refer for review and comment any subdivision plan and proposal for the provision of open spaces and/or recreation land to the Somers Conservation Commission, the Somers Recreation Commission, the Somers Historical Society, or any other agency they deem appropriate.

## **~ 21?-???. Requirements for Submitting an Open Space Subdivision Design.**

A. The Commission shall, if it is determined to be consistent with the objectives of the Plan of Conservation and Development (e.g., connection of wildlife corridors) and Section 21-???. Purpose. of these regulations, require an applicant proposing to subdivide a parcel of land that has been divided, subdivided, or resubdivided for residential use, containing ten acres or more that results in the creation of four (4) or more lots, in any residential zoning district to submit an Open Space Subdivision plan that meets the requirements of this Section and the other relevant provisions of the these Regulations and the Somers Zoning Regulations. For purposes of determining the size of the parcel proposed for subdivision, all land within the parcel, including any land not immediately proposed for use as building lots, shall be included.

B. An application for the approval of an Open Space Subdivision shall be in accordance with Section ??? of these regulations. In addition, the application must be accompanied by copies of the proposed Certificate of Incorporation, if any declaration, by-laws, rules and regulations of any association or corporation of the lot owners within the proposed Open Space Subdivision; copies of the proposed covenants and restrictions to be placed in the deeds of conveyance to the lot owners, and copies of any proposed deeds, agreements, conveyances and restrictions necessary for the creation and maintenance of open space.

C. The Planning Commission shall direct and approve how open space shall be owned in the subdivision. In all cases where the open space is approved to be owned in common by the homeowners within the subdivision or by any other third party excluding the Town, the open space shall be subject to a perpetual restriction running to and enforceable by the Town as a third party beneficiary, which shall be recorded in the Somers Land Records. Such restriction shall be in such form and substance as the Planning Commission shall prescribe and may contain such additional restrictions on development and the use of common open space as the Commission may deem appropriate. Any proposed documents drafted in accordance with the section shall be submitted to the Commission as part of the application and shall be reviewed by the Town Counsel.

D. Except for easements for underground utilities, subdivision of common open land or the use of common open land for other than recreation, conservation, or agriculture, shall be prohibited.

E. If an owners association needs to be established, it shall require membership of each lot or unit owner in the Open Space Subdivision. The association shall be responsible for the permanent maintenance of water, sewage, recreational and infrastructure facilities. An association agreement or covenant shall be submitted with the application guaranteeing the continuing maintenance of such common utilities, land and facilities by assessing each unit a share of maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Commission as part of the application and shall comply with the applicable provisions of Connecticut General Statutes.

**~ 21?-???. Yield Formula.**

The maximum number of lots in an Open Space Subdivision shall be determined in accordance with Section ??? of the Zoning Regulations as amended.

**~ 21?-???. Design Guidelines for Open Space Subdivisions.**

The Commission may modify any application so as to designate open space in locations other than those proposed, if it determines that such modified location(s) will better serve the purposes, satisfy the applicable criteria and standards of these Regulations and the Zoning Regulations and the Plan of Conservation and Development.

A. The dimensional requirements for lots in an Open Space Subdivision shall be as set forth in Section ??? of the Somers Zoning Regulations as amended. In designing an Open Space Subdivision, the applicant shall consider the purposes set forth in Section ??? and Section 213-30 of these Regulations; the provisions and standards set forth in Section ??? of the Zoning regulations, and the following:

(1) Proposed lots and improvements should be designed and situated so as to minimize alteration of natural site features to be preserved.

(2) Proposed open space areas should include natural features located in the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, and significant geological features).

(3) Proposed open space must have reasonable access points for maintenance and to facilitate connection with other dedicated open space, existing or future, to complete trails and wildlife corridors in accordance with the Plan of Conservation and Development and the Planning & Open Space Trails Subcommittee's Open Space Plan Priority List. Access may be provided through abutting existing open space parcels with written permission of the owners of the abutting parcel.

(4) Individual lots should be arranged and situated to relate to surrounding properties, to improve the view from, and the view of, prospective home sites, and to minimize the area devoted to motor access and travel.

B. Dwelling units shall be clustered so as to allow a significant portion of the parcel to remain as open space as set forth in Section ??? herein.

C. The open space in any Open Space Subdivision shall be located entirely within the undivided parcel and shall be in one contiguous piece except where the Commission finds that the purposes of Section ??? would be more effectively served by separated parcels. The open space shall have a suitable shape, dimension, character and location to promote the purposes specified in Section ???.

D. The Planning Commission reserves the right to require the involvement of a licensed landscape architect in the design of an Open Space Subdivision.

E. Lots shall be laid out to the greatest extent possible to achieve the objectives listed below in order of priority:

(1) To place septic systems on the most suitable soils for sub-surface waste water disposal (in unsewered areas only);

(2) Within any woodland contained in the parcel, or along the far edges of the open fields adjacent to any woodland (to reduce impact upon agriculture, to provide summer shade and shelter from winter wind, and to enable new construction to be visually absorbed by natural landscape features);

(3) In locations least likely to block or interrupt scenic vistas, as seen from the public roadway(s);

(4) On the least fertile soils for agricultural uses, and in a manner which maximizes the usable area remaining for such agricultural use;

(5) In locations where the greatest number of units could be designed to take maximum advantage of solar heating opportunities.

F. Wherever possible, ponds, streams, wetlands should be adjacent, contiguous or included in the open space. Shade should be preserved within wetland areas and at least 25 feet from ponds and streams.

G. All utilities in an Open Space Subdivision shall conform with Section 213-46 of these regulations.

H. The visual integrity of hilltops and ridge lines shall be maintained by siting development so that building silhouettes will be below the ridge line or, if the area is heavily wooded, the building silhouettes will be at least ten (10) feet lower than the average canopy height of the trees on the ridge line or hilltop.

**~ 21?-??. Conservation Subdivision Streets.**

All new public streets shall be designed to the standards of the Somers Subdivision Regulations. Final design is site specific and subject to the review and approval of the Town Engineer.

**~ 21?-??. Dedication of Open Space.**

The dedication of open space shall be in accordance with the provisions set forth in Section 213-30 of these Regulations.

## **REVISIONS TO EXISTING REGULATIONS:**

### **~ 213-30. Open space.**

*For any subdivision of land under these Regulations, the Commission shall require the conveyance and official dedication of appropriately located and sized open space or recreation areas. For the purpose of this Section, “Open Space or Recreation Areas” shall be defined to include, but not be limited to, areas left in their natural, undisturbed state; agricultural land for which development rights have been assigned or otherwise alienated in perpetuity; areas and facilities for non-commercial, non-profit recreation; and similar areas for wildlife habitat, passive and active recreation, groundwater recharge, scenic preservation, and the like. In determining the appropriateness of an open space and/or recreation area disposition, the Commission shall consider the Plan of Conservation and Development objectives and map designations and the subject site’s characteristics with respect to the following objectives: the conservation and protection of wildlife, wildlife corridors, and natural or scenic resources including lakes, ponds, rivers, streams, streambelts, inland wetlands, aquifers, significant woodlands, ridges, ravines, boulder trains, ledge outcroppings and other unusual physical features; the protection of productive agricultural soil, the protection of historic or archeological sites; the expansion of existing or planned open space, recreational areas, and greenways and the meeting of neighborhood and/or community-wide recreational needs. The Commission reserves the right to select that portion of the proposed subdivision to be dedicated open space, and it may reject or modify any area proposed by the applicant.*

*Open Space Subdivisions -- The minimum open space to be conveyed within an Open Space Subdivision shall be 40% of the total undivided parcel area. Ponds, streams, wetlands and watercourses should be included in the open space design to the maximum extent possible but excluded from the calculation of the 40%. Settlement basins and transferred rights-of-way shall not be counted towards the minimum area of open space required.*

*Conventional Subdivisions --*Except as exempted by statute or otherwise provided in this section, the Planning Commission shall require the reservation of open space in any subdivision as a condition of approval of the subdivision. The total area to be reserved for open space use shall be computed as (ten percent (10%)) **twenty percent (20%)** of the total area of the property being subdivided. In the event that the reservation of exactly (ten percent (10%)) **twenty percent (20%)** of the area of land to be subdivided would require the dedication of a piece of land that has impractical and irregular boundaries, or that is otherwise undesirable or impractical to be dedicated for public purposes, the Commission may require a minor reasonable adjustment in the (ten-percent) **twenty percent** requirement. The Commission may, in its discretion, permit the developer to pay a fee or to pay a fee and transfer land to the town or dedicate an easement in lieu of land dedication for all or part of the open space, in accordance with the provisions of this section.

#### **A. Choice of land or fee.**

(1) Procedure. The procedure for determining whether the subdivider is to dedicate land, pay a fee, transfer land, or provide a combination of the foregoing, shall be as follows:

(a) Action of subdivider. At the time of presentation of a preliminary or proposed final map to the Planning Commission, the applicant shall, as part of such presentation, indicate whether (s)he desires to dedicate property for open space purposes or whether (s)he desires to pay a fee and/or transfer land in lieu thereof. If (s)he desires to dedicate land for this purpose, (s)he shall recommend the area thereof on the map as submitted. If the applicant wishes to propose a (transfer of land) ***payment of fee***, the applicant and Commission shall first jointly select an appraiser to determine the fair market value of both the total area of land to be subdivided and the land proposed to be transferred. The applicant shall be responsible for all of the appraisal fees and expenses. The fair market value of the land to be transferred, together with any fee to be paid, shall not cumulatively exceed ten percent (10%) of the fair market value of the land to be subdivided.

(b) Action of Commission. At the time of presentation of the preliminary or proposed final map, the Commission shall determine, as part of such presentation, whether to accept the applicant's proposal; to recommend a different combination of dedication, fee and transfer; or to require dedication only. If the dedication of land is required, the Commission shall review the applicant's recommendation and approve, disapprove or modify the proposal.

(c) Prerequisites for approval of final subdivision plan. Where open space transfer of land is required, the proposed area to be transferred shall be approved by the Town Planning Commission, which shall refer the transfer of the land to the Town Board of Selectmen for appropriate action and its subsequent referral, if desired, to Town Meeting for acceptance. If the Board of Selectmen or Town Meeting refuses acceptance of the land, the Planning Commission shall reconsider the application to determine whether another form of compliance with the open space requirements is appropriate. All conditions of approval, including but not limited to covenants for private park and recreational facilities, shall be filed upon the land records of the town in the office of the Town Clerk by notation on the final approved subdivision plans and filing a notice on the land records of conditions applicable to the subdivision. Where fees in lieu of, or in addition to, open space dedication or land transfer are required, the payment of the same shall be bonded and filed with the town at the time of the filing of the subdivision performance bond. Where no performance bond is required as a condition of subdivision approval, such fees must be paid upon the sale of each lot and such open space dedicated or land transferred as provided in the Connecticut General Statutes.

(2) Determination. Whether the Commission accepts the land dedication for open space, modifies and accepts a proposed dedication (e.g., chooses a different location for the open space) or elects to allow payment of a fee, the transfer of land, or a combination of the foregoing, shall be determined by consideration of all of the following:

(a) Existing ***or planned*** recreational and other open space facilities of the town in the geographical area in which the land to be subdivided is located.

(b) Recommendations of the Conservation Commission, ***the Planning & Open Space Trails Subcommittee, the Recreation Commission, or any other Commission the Planning Commission deems appropriate.***

(c) Topography, geology, access, location and other natural features of, and existing improvements on, the land in the proposed subdivision available for transfer or dedication for open space.

(d) Size and shape of the subdivision and land available for transfer or dedication for open space.

(e) The protection or enhancement of the Shenipsit Trail (“Blue Trail”) or other trails.

(f) The conservation and protection of wildlife and natural or scenic resources.

(g) The Plan of Conservation and Development.

(h) ***The Planning & Open Space Trails Subcommittee’s Open Space Priority list***

(3) The determination of the Commission as to whether land shall be dedicated, a fee shall be charged, land shall be transferred, or a combination thereof, shall be final and conclusive.

**B. Open space requirements.**

(1) No more than fifty percent (50%) of any land reserved for surface water runoff detention or retention may be considered for dedication as open space. In most instances, the Commission shall require open space to be dedicated in contiguous tracts containing one (1) acre or more land. However, for small subdivisions [less than ten (10) acres], or in instances in which a desirable public benefit may be gained by the preservation of a portion of the subdivision containing less than one (1) acre, the Commission may require and accept smaller open space areas.

(2) Any land dedicated to the town for public playgrounds or other open spaces shall be graded as necessary to properly dispose of surface water, and areas lacking a vegetative cover shall be seeded with perennial field grass. All brush and debris shall be removed and the land left in condition for the purpose intended.

(3) If in the opinion of the Commission the needs of the town will best be served thereby, the Commission may allow an applicant to designate land for open space dedication in a future phase or section of the subdivision or on a nearby tract of land owned or under the control of the applicant. The Commission may grant a developer an open space credit of up to five percent (5%) in the event that the property owner has previously donated, to the Town, the full portion of the Shenipsit or “Blue Trail” running through his/her property. At the time of said donation of trail property, the property owner and the Commission may enter into a written agreement regarding the future open space dedication which will be required at the time that the remaining property is subdivided. In such cases, the applicant or owner shall provide



appropriate written deeds, easements or covenants for the land to be dedicated upon approval of the subdivision or when dedicated.

C.      Limitation on use of land and fees. The land and fees received under this section shall be used for the purpose of providing conservation, park, recreational or other appropriate municipal facilities. The disbursement of such fees must be approved by the Commission and must be consistent with the Plan of Conservation and Development. Any required fees shall be paid to the town prior to the release of any subdivision performance bond.

D.      Exemption.

(1)      The open space requirement shall not apply if:

(a)      The subdivision is exempt from open space dedication as provided in CGS Section 8-25 or 8-39a.

(2)      When a subdivision is to be exempted from any open space requirements because the land is to be transferred to a family member as per Section 8-25 of the Connecticut General Statutes, then the following notice is to be added to the final subdivision map as part of the approval:

Notice: This subdivision has been exempted from the open space requirements and the requirements for fees in lieu of open space upon the express condition that all lots in the subdivision will be transferred by the subdivider to persons who are the subdivider's parent, child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration. No portion of this subdivision shall be deemed a lot until all of such transfers have been perfected. The Planning Commission and the Zoning Enforcement Officer may require reasonable evidence of the relationship of the transferee to the transferor and the fact that the transfer was made for no consideration before any portion of this subdivision will be treated as a lot.

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