

9.1 Dedication

The Commission may require dedication of land as open space, parks and playgrounds in a subdivision or resubdivision when it deems that such land will conserve natural or scenic resources; protect natural streams, marshes and groundwater tables; supplements existing open space and recreation areas; meet recreational needs of present and projected population in the area; save historic sites, wildlife sanctuaries, and landmark or asset trees; preserve other unusual physical features; or promote orderly community development.

9.2 Exemption

- a. The open space requirement 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
 - the subdivision is to contain affordable housing, as defined in Section 8-39a of the Connecticut General Statutes as amended, equal to twenty percent or more of the total housing to be constructed in such subdivision.
- b. 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 subdividers parent, child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration. No portion of this subdivision shall be deemed a zoning lot until all of such transfers have been perfected. The Planning and Zoning 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 zoning lot.

9.3. Dedication of Land

- a. The Commission may require that up to ten (10) percent of the total area of a subdivision be set aside for open spaces, parks or playgrounds. Such open spaces, parks or playgrounds shall be shown on the subdivision plan.
- b. In determining the need for such land and reviewing the location and appropriateness of an area reserved for park, playground, open space or other public purposes, the Commission shall consider:
 - the presence, absence, or expansion of any existing open spaces, parks or playgrounds in the neighborhood,
 - the conservation and protection of wildlife and natural or scenic resources;
 - the protection of historic or archaeological sites;

- the meeting of neighborhood and/or community-wide recreational needs.
- the Plan of Conservation & Development,
- any plans adopted by the Parks and Recreation Commission, and
- the size of the subdivision

c. Such land shall be of such location, shape, topography and general character as to meet the purpose of these Regulations, as determined by the Commission. Unless otherwise approved by the Commission, the ratio of wetlands to non-wetlands of the land to be set aside for open spaces, parks and playgrounds shall be no greater than the ratio of wetlands to non-wetlands of the entire tract. The Commission reserves the right to have the final layout of any open space areas to be dedicated to the Town examined by the Town Planner, or a qualified consultant for review and comment.

d. When a subdivision abuts an existing open space, park and playground, the Commission may require the lot lines of such land form a continuation of the existing open space, park or playground to provide a single, unified area.

e. The Commission may defer the requirements for the immediate provision of such land in a subdivision which is a part of a larger tract of land, provided that the subdivider agrees to dedicate an area of land in the undeveloped portion of the tract equal to the requirements of this section in the developed portion and:

- the subdivider grants the Town an option to accept such land when the undeveloped portion of the tract is hereafter subdivided, or
- the subdivider provides the Town with adequate surety (a bond or a subdivided lot) to guarantee the future provision of the open space requirement.

f. If a subdivider desires to transfer land to the Town for other municipal purposes, such transfer:

- may be considered by the Commission as a credit toward any Open Space dedication requirements, and
- shall comply with the provisions of this section and the Plan of Conservation & Development.

g. Any such land shall front on or have direct access to a public street through a right-of-way dedicated to public use. The Commission may require that such land shall:

- have adequate frontage or right-of-way width for the intended purpose, and
- include a graded and improved pedestrian walkway, or

- include a roadway of adequate base, drainage, width (typically 26 feet) and grade (no greater than two percent) for access for possible emergency purposes.

h. Land provided as open space shall be left in a natural state by the subdivider except for improvement or maintenance as may be expressly permitted or required by the Commission. Open Space areas shall not be graded, cleared, or used as a depository for brush, stumps, earth, building materials, or debris.

i. The Commission may require that any land to be dedicated for recreational use be cleared of brush, trees and debris; be graded to properly dispose of surface water, be covered with organic topsoil to a depth of 4 inches (4'); be seeded with low maintenance grass seed; and be otherwise improved so that the land is left in a condition appropriate to the intended use. When site improvements are required, they shall be clearly shown on the final subdivision maps.

j. To ensure proper protection of proposed open space and construction of any required improvements, the Commission may require the subdivider to post a performance bond in an amount and with terms acceptable to the Commission.

k. Where the purposes of open space preservation can be achieved through permanent restrictions upon property, as distinct from fee ownership thereof, the Commission may approve the use of conservation easements. Such easements shall:

- be in a form approved by the Commission,
- apply to locations which meet the requirements of this Section, and
- run with the land in perpetuity.

l. Proper provision for the permanent disposition and management of such land shall be made by the subdivider and approved by the Commission. Suitable options shall include:

- establishment of restrictive covenants,
- conveyance to a land trust or similar non-profit conservation organization, or
- conveyance to the Town, if approved by the Town Council.

m. Unless otherwise approved by the Commission:

- provision for the permanent disposition and management of such land shall be arranged no later than the time of filing of the approved subdivision plan in the office of the Town Clerk,
- all required improvements of the open space land shall be completed prior to the occupancy of fifty (50) percent of the lots within the subdivision, and

- final disposition shall be completed prior to the request for road acceptance by the Town.

n. Where, in the opinion of the Commission, the Town's requirement for open space would best be served by foregoing dedication of all or a portion of open space land within a subdivision, the Commission may require fees in lieu of open space as provided in Section 9.4.

9.4. Fees in Lieu of Open Space

a. The objective of this section of the regulations is to provide for a creation of a source of revenue to be used for the purchase of municipal open space as authorized by Conn. Gen. Stat. 8-25.

b. The applicant shall pay to the Town a fee in combination with or in lieu of any open space dedication.

c. Such payment will be up to ten percent of the fair market value of the land to be subdivided prior to the approval of the subdivision. The per acre fee shall be computed on the total acreage of the land prior to the subdivision approval.

d. The fair market value shall be determined by an appraiser jointly selected by the Commission and the applicant in accordance with CGS Section 8-25.

e. Fee payments

- The fee may be paid in a lump sum by the applicant prior to: (i) the sale of any lots in the subdivision, or (ii) the sale of the subdivision as a whole, or;
- The fee may be paid as the lots are sold in fractional payments, the numerator of which is one and the denominator is the number of approved lots.
- The fees collected in the section shall be deposited in a fund which shall be used for the sole purpose of preserving open space or acquiring additional land for open space or for recreational or agricultural purposes.

When fees are provided in lieu of open space land, the developer shall execute a consensual lien which shall be recorded on the East Hartford Land Records. Partial releases shall be provided upon the tender of each fractional payment.