

SECTION 5.

OPEN SPACE REQUIREMENTS

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- (a) **Definitions.** For the purpose of this Section the term “Open Space” shall be defined as follows:

Open Space: “Open Space” includes, but shall not be limited to: land left in its natural, undisturbed state; protected agricultural land; areas for wildlife habitat protection, active or passive recreation, groundwater recharge, scenic or historic preservation, and similar areas.

- (b) **Basis for Requirement for Open Space.** The Commission shall require dedication of appropriately located and sized Open Space in any proposed subdivision as determined by the Commission. In making such determination the Commission shall consider the particular features of the land and consider:

- areas recommended for Open Space in the Sherman Plan of Conservation and Development (hereinafter the “Town Plan”),
- areas recommended for Open Space to the Planning and Zoning Commission by the Sherman Conservation Commission.

- (c) **Size of Open Space Area.** Where the Commission determines that Open Space in appropriate, the area of the required Open Space shall be 15% of the total land area of the subdivision.

In determining the Open Space area required the Commission may consider not only the land to be immediately subdivided, but also any other adjacent land owned, or controlled by the applicant. Areas to be reserved as Open Space land shall be shown on the subdivision map.

- (d) **Ownership, Use and Method of Protection of Open Space.** Open Space land shall be permanently protected by a conservation easement preventing further development and/or by the transfer of fee interest.

The beneficiary of a conservation easement, or the recipient of a fee interest shall be determined by the Commission and shall be the Town of Sherman, a non-profit land protection organization, an association of all property owners in the subdivision, subdivider, individual, or other entity approved by the Commission.

Open Space proposed to be left in its natural state should preferably be protected by a qualified private, non-profit land trust or by the Town where it has expressed an interest.

In determining the appropriate ownership, use and method of protection of Open Space and/or whether to require Open Space in locations different from the those proposed by a subdivision applicant, the Commission shall consider the following factors:

- Open Space on adjacent properties, the proximity to non-adjacent Open Space which might reasonably interconnect with the proposed Open Space in the future;
 - Whether the Open Space is intended for active or passive recreational uses, and the extent of necessary maintenance, supervision, or management;
 - Potential benefits of the Open Space to residents of the Town;
 - The size, shape, topography and character of the Open Space;
 - Recommendations pursuant to Section (b) above;
 - Reports or recommendations requested by the Commission on the proposed subdivision plan from Town boards or commissions and other agencies, including but not limited to, the Board of Selectmen, the Inland Wetland Commission, the Conservation Commission, the Recreation Commission, the Housatonic Valley Council of Elected Officials and the Northwest Soil and Water Conservation District.
- (e) **Alteration of Open Space.** Any excavation, filling, re-grading or other alteration of Open Space; any construction or expansion of any building, structure or other improvements thereon; or any paving or surfacing of Open Space subsequent to the date of approval of the Subdivision, other than work required by the subdivision plans as approved, shall require an amendment to the subdivision approval granted in accordance with the applicable Section of these Regulations.
- (f) **Evidence of Acceptance.** Either during the application process or prior to endorsement of the subdivision plan, the applicant shall provide written evidence from the entity proposed to protect the Open Space stating it will accept ownership of and responsibility for preservation and maintenance of the Open Space.
- (g) **Required Provisions.** Regardless of the method of ownership of the Open Space, the instrument of conveyance must include provisions satisfactory in form and substance to the Commission to ensure the Open Space is dedicated to its intended purpose in perpetuity.
- (h) **Recording.** At the time the approved Subdivision Plan is filed, the applicant shall record on the Sherman Land Records all legal documents required relating to protection of the Open Space.
- (i) **Boundary Lines.** The boundary lines of all Open Space area shall be set in the field and marked by permanent, surveyor's pins. Such pins shall be set where Open Space boundary lines intersect any lot line, road or perimeter line within the proposed Subdivision and at such other points as may be required by the Commission to ensure identification in the field.
- (j) **Referrals.** The Commission may refer for review any subdivision plan and proposal for Open Space to the Conservation Commission, Recreation Commission, Northwest

Conservation District, or any other appropriate agency. The Commission shall refer to the Board of Selectmen any proposal involving a Town property interest in the Open Space.

- (k) **Condition of Open Space Land.** Where required by the Commission, Open Space areas shall be suitable for construction of an accessway or roadway suitable for the safe pedestrian and/or vehicular traffic.

The Commission need not accept land composed entirely or substantially of inland wetlands or other un-buildable lands in satisfaction of the requirement for Open Space.

Land to be provided as Open Space for the purpose of conservation and protection of wildlife and natural or scenic resources shall be left in its natural state, except for improvement or maintenance as may be expressly permitted by the Commission at the time of approval. Unless expressly permitted by the Commission, Open Space areas shall not be graded or cleared. Open Space shall not be used as a repository for brush, stumps, earth, building materials or debris.

- (l) **Bonding.** To ensure proper construction of any required improvements associated with the Open Space, the Commission shall require the subdivider to post a passbook savings account, an irrevocable letter of credit or other form of security satisfactory to the Commission.

- (m) **Property Owners' Association.** The Commission may approve the ownership and maintenance of Open Space by an association of property owners. Such ownership shall be in accordance with the standards and requirements established by the Commission to include but not be limited to the following:

- Creation of the association prior to the sale of any lot;
- Mandatory membership in the association by all original lot owners and any subsequent owner; Non-amendable bylaws or other restrictions which require the association to maintain land reserved for Open Space and/or recreation purposes, with power to assess all members for all necessary costs.
- Provisions which will be perpetual and binding on all future property owners, and will not be affected by any change in land use.
- The association shall have the power to assess and collect from each lot owner a specified share to provide reserves for the costs associated with maintenance, repair, upkeep and insurance of the Open Space.
- Any deed of conveyance shall contain language providing the association with the right to obtain reimbursement for all costs it reasonably incurs, including attorney's fees in any action to enforce its rights against any lot owner, in which the association is the prevailing party.
- Association documents shall provide that if maintenance or preservation of the Open Space no longer complies with the provisions of the document creating the open space the Town may take all necessary action to assure compliance and assess against the association all costs incurred by the Town for such purpose.

- (n) **Conservation easements or other Open Space covenants or restrictions** shall be subject to the approval of the Commission in form and content. After approval by the Commission’s attorney an the Commission said document shall be filed by the subdivider in the Office of the Town Clerk .
- (o) **Payment of Fee in Lieu of Open Space.** In accordance with Connecticut General Statutes 8-25, as amended by Public Act 90-239, Section 1, the commission may authorize the applicant to pay a fee to the Town in lieu of the requirement for Open Space otherwise required by these Regulations.

Such authorization for payment of a fee in lieu of Open space may be granted by the Commission only after the Town has established a dedicated fund to receive such fees for the purpose of preserving open space or acquiring additional land for open space or for recreational or agricultural purposes.

The Commission has published FEE-IN-LIEU OF OPEN SPACE: Guidelines and Administrative Procedures, available from the Planning and Zoning Office, to assist applicants in preparing subdivision plans.

The Commission may authorize payment of a fee in lieu of Open Space where, pursuant to Section 5b above, it determines that a dedication of Open Space in the subdivision is not appropriate and the proposed subdivision contains ten or more acres.

In the event that a fee in lieu of Open Space is authorized by the Commission, such fee shall be equal to not more than ten (10%) percent 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 subdivider. A fraction of such payment, the numerator of which is one and the denominator of which is the number of approved lots in the subdivision, shall be made at the time of the sale of each approved lot in the subdivision and placed in a fund.

Such fund shall be used solely for the purpose of preserving Open Space, including the acquisition of land or the improvement of land for Open Space or recreational purposes.

The applicant shall prepare and submit to the Commission a lien document suitable for recording at the Town Land Records for each approved lot in the subdivision plan. Each lien document shall state the exact dollar amount to be paid to the Town at the time of sale of the lot as required by the provisions of this regulation. A release of lien for each lot shall be prepared by the Town upon the Town’s receipt of the fee for each lot.

The fee in lieu of Open Space payment obligation shall be clearly noted on the approved record subdivision map for the approved subdivision. The form and content of said statement shall be as provided by the Commission. Nothing herein shall be construed to prevent the Commission from requiring the reservation of open space in any subdivision.