

whichever is less.

**Part 6, Recreation Land; Fees in Lieu of Dedication [Adopted 9-6-2001 by
Ord. No. 459]**

ARTICLE XIX, Recreation Land and Fees

§ 123-140. Purpose; applicability; limitations; dedication; fees.

- A. Purposes: to provide adequate open spaces, recreational lands and recreational facilities to serve residents and occupants/employees of new developments, for both active and passive recreation; to recognize and work to carry out the Recreation Plan, Open Space Preservation Plan and Comprehensive Plan for Lower Providence Township.
- B. Applicability. This Part 6 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. This Part 6 shall apply to any subdivision or land development that will eventually result in one or more new dwelling units or new principal commercial, office or industrial building floor area.
- (1) In conformance with the Municipalities Planning Code, Act of 1968, P.L. 805, No, 247, as reenacted and amended, 53 P.S. § 10101, et seq. (hereinafter referred to as "MPC"), this Part 6 requires the public dedication of land suitable for parkland and noncommercial recreational uses. Upon agreement of the Board of Supervisors, any of the following alternatives may be approved by the Board of Supervisors in lieu of public dedication of land, as specified in this Part 6:
- (a) The payment of recreation fees;
 - (b) The construction of recreation facilities;
 - (c) The dedication of recreation land to a property owner association or other responsible entity preapproved by the Township; or
 - (d) A combination of these alternatives.
- (2) The applicant shall submit the following with their initial subdivision or land development plan submittal:

- (a) A description of the anticipated population characteristics of the future occupants of the development, such as likely age groups.
 - (b) The method by which the applicant wishes to comply with the requirements of this Part 6, such as payment of recreation fees, dedication of public recreation land, dedication of land to a homeowners' association, or another method.
- (3) This § 123-140 shall not apply to plans that the Board of Supervisors determines only involve adjustments or corrections to an approved preliminary plan or a preliminary plan that was actively before the Township for consideration as of the date of the adoption of this Part 6, provided the adjustments do not increase the number of proposed dwelling units nor result in an increase in principal commercial, office or industrial building floor area.

C. Limitations on use of fees.

- (1) Any fees collected under this section shall be placed within an interest-bearing account controlled by the Township and shall be accounted for separately from other Township funds.
- (2) To make sure that the lands and facilities are accessible to the residents/occupants/employees of the developments that paid fees towards their cost, such fees should only be used within a five-mile radius of the boundaries of the subdivision or land development that paid the fees, unless the fees are used within a recreation area open to the public that the Township intends to serve the entire Township. In addition, the Township may commit fees towards a recreation area open to the public in an adjacent Township that would be intended to serve inhabitants of the development that paid the fees.
- (3) Such fees shall only be used for the following: acquisition of public recreation land and related debt payments, development of public recreational facilities, landscaping of public recreation land and closely related engineering and design work.
- (4) Unless the Township identifies fees for a different set of facilities or recreation area, then the fees shall be used for the further development of the Eagleville Park as a generally centrally located recreation area providing programs and facilities for all inhabitants of the entire Township.

- D. Land dedication. An owner or developer of any subdivision or land development regulated under this § 123-140 shall be required to dedicate the specified amount of recreation land, unless there is agreement between the Board of Supervisors and the applicant that recreation fees shall be required in lieu of dedicated land.

- (1) It is the intent of this Part 6 that where an owner or developer would be required to dedicate less than 0.5 acres of recreation land, not including land that is adjacent to existing publicly owned land, the owner or developer shall be required to pay a recreation fee in lieu of dedicating land. However, if an owner or developer refuses to pay recreation fees, then suitable recreation land shall be required to be dedicated.
- (2) The land and fee requirements of this section shall be based upon the number of new dwelling units or maximum building floor area that would be allowed on the lots of a subdivision or land development after approval. See provisions in Subsection J below if the building floor area is not known at the time of subdivision approval.
- (3) Amount of recreation land for residential development. If a subdivision or land development is required to dedicate recreation land, the following amounts for each permitted new dwelling unit shall be required:

| Percentage of the Total Required Recreation Land that Would be "Prime Recreation Land (as defined in § 123-97, above) | Minimum Required Recreation land Per Permitted Dwelling Unit (square feet) |
|--|---|
| 0% to 25.0% | 5,200 |
| 25.1% to 75.0% | 2,600 |
| 75.1% to 100% | 1,300 |

- (4) Amount of recreation land for commercial development. If a subdivision or land development is required to dedicate recreation land, the following amounts shall be required for the following commercial development (other than offices):

| Percentage of the Total Required Recreation Land that Would be Prime Recreation Land (as defined in § 123-97, above) | Minimum Required Recreation Land Per Each 100 Square Feet of New Building Floor Area (square feet) |
|---|---|
|---|---|

| Percentage of the Total Required Recreation Land that Would be Prime Recreation Land (as defined in § 123-97, above) | Minimum Required Recreation Land Per Each 100 Square Feet of New Building Floor Area (square feet) |
|---|---|
| 0% to 25.0% | 154 |
| 25.1% to 75.0% | 77 |
| 75.1% to 100% | 38 |

- (5) Amount of recreation land for office development. If a subdivision or land development is required to dedicate recreation land, the following amounts shall be required for the following office development:

| Percentage of the Total Required Recreation Land that Would be Prime Recreation Land (as defined in § 123-97, above) | Minimum Required Recreation Land Per Each 100 Square Feet of New Building Floor Area (square feet) |
|---|---|
| 0% to 25.0% | 247 |
| 25.1% to 75.0% | 123 |
| 75.1% to 100% | 62 |

- (6) Amount of recreation land for industrial development. If a subdivision or land development is required to dedicate recreation land, the following amounts shall be required for the following industrial development (other than offices):

| Percentage of the Total Required Recreation Land that Would be Prime Recreation Land (as defined in § 123-97, above) | Minimum Required Recreation Land Per Each 100 Square Feet of New Building Floor Area (square feet) |
|---|---|
| 0% to 25.0% | 106 |

| Percentage of the Total Required Recreation Land that Would be Prime Recreation Land (as defined in § 123-97, above) | Minimum Required Recreation Land Per Each 100 Square Feet of New Building Floor Area (square feet) |
|---|---|
| 25.1% to 75.0% | 53 |
| 75.1% to 100% | 27 |

E. Fees.

- (1) If the Board of Supervisors determines that a proposed subdivision or land development is required to pay fees in lieu of dedicating recreation land, this fee shall be as established by Township resolution. [Amended 6-16-2005 by Ord. No. 526]
- (2) No fee shall apply for a new or expanded building of less than 1,000 square feet of floor area, nor for agricultural, livestock or poultry buildings, nor for building space or lots that are not required to be approved as either subdivisions or land developments.
- (3) If a building is intended to have multiple uses, the fees shall be based upon a reasonable estimate provided by the applicant of the percentages expected to be occupied by commercial, industrial and office uses. Such estimate is subject to acceptance by the Board of Supervisors. The Township may require an applicant to provide evidence to support the estimate, such as the occupancy of similar buildings.

F. Decision on land vs. fees. If the Board of Supervisors and applicant agree, recreation fees shall be required in lieu of dedication of recreation land. It is desirable to reach a tentative agreement on whether land or fees shall be required at the sketch plan stage, although the formal decision shall be made during the review of the first official plan submittal. The Township should, at a minimum, consider the following in this decision:

- (1) Whether the land in that location would serve a valid public purpose.
- (2) Whether there is potential to make a desirable addition to an existing public or school district recreation area or to create a greenway along a creek.
- (3) Whether the proposed land would meet the objectives and requirements of this section and any relevant policies of the Township Comprehensive Plan, Recreation Plan or Open Space Preservation Plan.
- (4) Whether the area surrounding the proposed development has sufficient existing

recreation and recreation land, and whether it is possible for pedestrians and bicyclists to safely reach those lands.

- (5) Any recommendations, that may be received from the Planning Commission, the Township Engineer, the local School Board or school district staff and the Township Parks and Recreation Board.
- (6) Whether it would be possible to eventually join recreation land on one tract with future recreation land on an adjacent tract when it is developed in the future.

G. Recreation land to be dedicated.

- (1) Suitability. Land required to be dedicated shall be suitable for its intended purpose, in the determination of the Board of Supervisors. The applicant shall state in writing what improvements, if any, he/she will commit to make to the land to make it suitable for its intended purpose, such as grading, landscaping, or development of trails. Such land shall be free of construction debris at the time of dedication.
- (2) Ownership. Required recreation land shall be dedicated to the Township, unless the Board of Supervisors agrees to accept a dedication to any of the following; the school district, Montgomery County, the PA Bureau of State Parks, the PA Fish and Boat Commission, the PA Game Commission, an incorporated homeowner/condominium/property owner association or an established conservation organization acceptable to the Board of Supervisors. In the ease of a rental development, the Township may permit the recreation land to be retained by the owner of the adjacent principal buildings.
 - (a) If required recreation land is to be owned by a property owner association, the developer shall be required to establish such association in a form that requires all property owners within the development to annually contribute to the maintenance of the recreation land.
 - (b) Any property owner association agreements regarding required recreation land shall be subject to acceptance by the Board of Supervisors, based upon review by the Township Solicitor. Such agreement shall include proper legal mechanisms to ensure proper funding over time.
 - (c) The Township may require a reversion clause as part of a dedication if the recreation land is not properly maintained or is not used for Township authorized purposes.
- (3) Easements/deed restrictions. Any required recreation land dedication shall include deed restrictions or conservation easements to permanently prevent its subdivision or development of buildings, except buildings for noncommercial recreation or that are

necessary to support maintenance of the land. The Supervisors may also require that the restrictions/easement limit forestry and earth disturbance. Such deed restrictions or conservation easements shall, at a minimum, be enforceable by the Board of Supervisors. The Supervisors may require that the ability to enforce the easements also be provided to a suitable third party, such as a conservancy.

- (4) **Priorities.** Priority shall be given to dedication of land that would be suitable for the following three matters:
 - (a) Additions to existing public schools and public parks; or
 - (b) Preservation of woods, steep slopes or other important natural features or land along a creek; or
 - (c) For active recreation.
- (5) **Suitability.** Land that is not suitable for active or passive recreation shall not be permitted to meet the requirements of this section. Any land area used to meet the requirements of this § 123-140 shall at a minimum, meet the definition of "recreation land" that is stated in § 123-97. Portions intended for active recreation shall be well-drained, of less than six-percent average slope and not require filling in of a wetland for use.
- (6) **Access and contiguousness.** Recreation land within a subdivision or land development shall be contiguous, except as may be specifically exempted by the Board of Supervisors, and shall have adequate access for maintenance and by pedestrians. If recreation land is limited to residents or employees of a development, the Township may still require that a defined trail easement be open to all pedestrians to provide for a needed link.
- (7) **Other ordinances.** Any required land dedication or fees under this Part 6 shall be in addition to any land dedication or improvement requirements of any other Township ordinance.
- (8) **Residual lands.** If only a portion of a larger tract of land is currently proposed to be subdivided, or the applicant owns one or more adjacent tracts that are not currently proposed to be subdivided, the applicant shall provide a sketch of a possible future land dedication on these adjacent lands. The intent is to coordinate current plans with any future development, even in the long-term.
- (9) **Coordination with future adjacent dedication.** The Board of Supervisors may require that a required land dedication within a property currently being subdivided be placed along an edge of the property so that it may, in the future, be combined with a recreation land

or common open space dedication on the edge of an adjoining property when that adjoining property is subdivided or developed.

- (10) Landscaping. On areas that are not intended for active recreation, where existing attractive natural vegetation does not exist and/or will not be retained, the applicant shall plant trees and shrubs on the recreation land according to a landscaping plan submitted with the final plan.
- H. Combination of land and fees. Upon mutual agreement of the Board of Supervisors and the applicant, the Township may accept a combination of recreation land and fees in lieu of land to meet the requirements of this section for a subdivision or land development. This combination shall be based upon the recreation land requirement applying for a certain number of dwelling units or business floor area and the fee in lieu of land requirement applying for the remaining development. For example, if a development included 25 dwelling units, recreation land could be required for 15 dwelling units and fees could be required for 10 dwelling units.
- I. Timing of residential fees. Fees required by this Part 6 for all of the dwelling units shall be paid prior to the recording of the final plan, except as follows:
- (1) If the required fee would be greater than \$2,000, and the applicant and the Township mutually agree to provisions in a binding development agreement to require the payment of all applicable recreation fees prior to the issuance of any building permits within each clearly defined phase or subphase of the development, then fees are not required to be paid prior to recording of the final plan but may instead be paid within the requirements of that development agreement.
 - (2) If the applicant agrees to pay such fees in installments, then all such fees shall not be considered to be paid for the purposes of any applicable time limitations for utilization under the MPC until all such fees are paid in full, including all installments and phases.
- J. Timing of nonresidential fees. Fees required by this Part 6 for any commercial, office or industrial subdivision or land development shall be paid prior to the recording of the final plan of a subdivision or final approval of a land development, whichever occurs first, except as follows. If the applicant establishes a legally binding mechanism acceptable to the Township Solicitor, the fees may be paid prior to the time a land development plan is approved for each lot/building, as opposed to at the time an entire subdivision is approved. This method specifically shall be used if the amount of building floor area is not known at the time of subdivision approval.
- K. Facilities in place of land or fees.
- (1) An applicant may submit a written request for a modification of the requirements of this

section by offering to construct substantial permanent recreation facilities within the proposed subdivision or land development or on preexisting public parkland. Such modification shall only be approved if the applicant clearly proves to the satisfaction of the Board of Supervisors that the facilities will serve a valid public purpose, will be designed following modern standards in a durable manner and will have a higher market value than the land or fees that would otherwise be required.

- (2) A modification of these requirements may also be approved by the Board of Supervisors if the applicant donates or sells appropriate public recreation land to the Township or the school district. In such case, the applicant shall provide a written appraisal from a qualified professional that the market value of the donation or price reduction is greater than the value of the fee or land requirement that is waived. Such modification shall only be allowed if the land is determined to be suitable for public recreation by the Board of Supervisors.