

## **2.9 OPEN SPACE –**

Open spaces, parks or playgrounds shall be provided and reserved in each subdivision for residential purposes and may be required in commercial-industrial subdivisions as appropriate to accomplish objectives such as:

To preserve and provide recreation areas, farm land, tree cover, greenbelts, wildlife habitat and corridors, unusual terrain, land forms or other natural features, and scenic and historic resources; to supplement existing open space and recreational areas; to promote the development of land in a way that is sensitive to the environment; to promote development compatible with surrounding areas; to preserve and protect inland wetlands, watercourses, and aquifers and to avoid the potential for flooding, erosion and water pollution; to control the extent to which steep slopes and problem soils are used for roadways, sewage disposal systems and other aspects of development; and to preserve the Town's rural character by providing and preserving compatible streetscapes and other visual amenities along roadways.

### **2.9.1 Type and Amount of Open Space –**

The land reserved shall be of such size, location, shape, topography and general character as to be useful to accomplish the Commission objectives. The reservation of land also shall conform to the New Milford Plan of Conservation and Development pertaining to parks, playgrounds, recreation areas and open spaces. Not less than 15% of the total area of the subdivision shall be so reserved.

#### **2.9.1a Size Exception –**

The open space reservation requirement shall not apply if the parcel to be subdivided is less than twice the required minimum lot size plus ten percent (10%) of the lot size required in the zone.

#### **2.9.1b Family Sale Exception –**

The open space reservation requirements 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.

### **2.9.2 Access and Improvement of Open Space–**

The Commission may require the open space to have direct access to a public street through an access area which is at least [15] 10 feet wide. Improvements to the accessway may be required by the Commission. In cases where the open space is intended as a link in a trail system, the Commission may require such trail to be marked, cleared and improved in a manner appropriate to the intended form of use.

### **2.9.3 Fees in Lieu of Open Space–**

When conditions such as subdivision size, population density, existing municipal facilities, topography, or other site- or development-specific characteristics are such that on-site open space is not desirable, the Commission may require the applicant to provide a fee in lieu of open space or a combination of land and fee.

#### **2.9.3a Amount –**

Such payment or combination of payment and the fair market value of land transferred shall equal no more than 10 percent of the fair market value of the land to be subdivided before subdivision approval. The fair market value shall be determined by an appraiser jointly selected by the Commission and the applicant, with the cost to be borne by the applicant.

#### **2.9.3b Method of Payment –**

A fraction of such payment the numerator of which is one and the denominator of which is the number of approved parcels in the subdivision shall be made at the time of the sale of each approved parcel of land in the subdivision and placed in a fund which shall be used for the purpose of preserving open space or acquiring additional land for open space or for recreational or agricultural purposes. Each approved lot on the subdivision plan shall have a note placed thereon stating the exact dollar amount to be paid to the Town at the time of sale of the lot as required by these regulations.

### **2.9.4 Open Space Ownership and Preservation–**

The type ownership and method of preservation for land dedicated to open space purposes shall be selected by the applicant subject to Commission approval. Ownership may include, but is not limited to: The Town of New Milford, pursuant to the Town Charter; a non-profit land preservation organization, also subject to their acceptance; or a neighborhood lot owners' association. The method of preservation conveyance may be a fee interest or a permanent conservation easement.

#### **2.9.4a Owners Association –**

If the open space is owned and maintained by an owners association, the developer shall file a declaration of covenants and restrictions that will govern the association, to be submitted with the application. The provisions shall include, but are not necessarily limited to, the following:

- 1) The association must be established before any lot is sold.
- 2) Membership must be mandatory for each buyer and any successive buyer.
- 3) The open space restrictions must be permanent.

- 4) The association must be responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities.
- 5) Lot owners must pay their pro rata share of the cost of maintenance, and the assessment levied by the association can become a lien on the property if allowed in the master deed establishing the homeowners association.
- 6) The association must be able to adjust the assessment to meet changed needs.
- 7) The association shall not be dissolved.

**2.9.4b Deed Restrictions –**

Any land dedicated for open space purposes shall contain appropriate covenants and deed restrictions (approved by the Town Attorney for Town-dedicated property) ensuring that:

- 1) The open space area will not be further subdivided in the future.
- 2) The use of open space will continue in perpetuity for the purpose specified.
- 3) Appropriate provisions will be made for the maintenance of the open space.
- 4) Open space shall not be converted into a commercial for-profit enterprise.
- 5) Rights of public access to the open space are provided when appropriate.

**2.9.4c Maintenance of Open Space Areas -**

The person or entity identified in Section 2.9.5a of these regulations as having the right of ownership or control over the open space shall be responsible for its continuing upkeep and proper maintenance.