

## **Article 13 - Open Space**

**Section 16-13.1 Usable Open Space.** Except as provided herein, all residential developments shall be developed so that at least five percent of the total area of the development remains permanently as usable open space.

**16-13.1.1** For purposes of this section, usable open space means an area that:

- a) Is not encumbered with any substantial structure;
- b) Is not devoted to use as a roadway, parking area, sidewalk, or above-ground storm water retention/detention area;
- c) Is either:
  - 1) left in its natural or undisturbed state (as of the date development began), if such a state is compatible with use of the area described in subdivision (4), or
  - 2) properly planted and landscaped;
- d) Is capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation, including but not limited to walkways, playing fields, picnic areas, hiking or walking trails; and
- e) Is legally and practicably accessible to the residents of the development from which the required open space is taken, or to the public if dedication of the open space is required pursuant to Section 16-13.3.

**16-13.1.2** With respect to multi-family developments or single family subdivisions, any common open space that meets the criteria established in Section 16-13, may be used to satisfy the five percent requirement of this section.

**16-13.1.3** Residential subdivisions containing fewer than twenty lots are exempt from the requirements of this section unless the Town agrees that it will accept an offer of dedication of such open space, and in that case the offer of dedication shall be made. However, for purposes of determining whether this exemption applies, the entire tract to be subdivided shall be considered, and the requirements of this section cannot be avoided by dividing a project into phases or stages.

**Section 16-13.2 Ownership and Maintenance of Required Open Space.** Except as provided in Section 16-13.1.3 and Section 16-13.3, usable open space required to be provided by the developer in accordance with this article shall not be dedicated to the public but shall remain under the ownership and control of the developer (or his successor) or a homeowners association or similar organization that satisfies the criteria established in Section 16-13.4.

The person or entity identified herein as having the right of ownership and control over such facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

**Section 16-13.3 Dedication of Open Space.** If any portion of any lot proposed for residential development lies within an area designated on an officially adopted Town recreation plan as a neighborhood park or part of a greenway system, the area so designated (not exceeding five percent of the total lot area) shall be included as part of the area set aside to satisfy the requirement of Section 16-13.1. This area shall be dedicated to public use.

If more than five percent of a lot proposed for residential development lies within an area designated as provided in herein, the Town may attempt to acquire the additional land in the following manner:

- a) The developer may be encouraged to dedicate the common space thereby created; or
- b) The Town may purchase or condemn the land.

**Section 16-13.4 Homeowners Associations.** Homeowners associations or similar legal entities that, pursuant to Section 16-13.2, are responsible for the maintenance and control of common areas, including open space, shall be established in such a manner that:

- a) Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- b) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas; and
- c) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas.