

ATTACHMENT A

**A RESOLUTION CALLING A PUBLIC HEARING ON A LAND USE ORDINANCE TEXT
AMENDMENT THAT AMEND VARIOUS SECTIONS RELATING TO THE PROVISION OF
OPEN SPACE AND RECREATIONAL FACILITIES**

Resolution No. 133/2001-02

WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to comment on existing policies and regulations; and

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen call a public hearing on June 11, 2002 to consider adopting "An Ordinance Amending Various Land Use Ordinance Sections Relating to the Provision of Open Space and Recreational Facilities."

BE IT FURTHER RESOLVED that the draft ordinance be referred to Orange County for review per the Joint Planning Agreement and to the Planning Board for comment and recommendations to the Board.

This is the 16th day of April in the year 2002.

ATTACHMENT B

(Excerpt from January 22, 2002 minutes)

**REQUEST FOR REVIEW OF OPEN SPACE REQUIREMENTS IN THE
WATERSHED ZONE**

Sammy Martin asked for a review of whether the 40% open space requirement is needed in the watershed zoning district in light of other restraints.

It was the consensus of the Board to refer this matter to the town staff for analysis.

Alderman Gist requested that OWASA have input in this matter.

ATTACHMENT C

AN ORDINANCE AMENDING VARIOUS LAND USE ORDINANCE SECTIONS RELATING TO THE PROVISION OF OPEN SPACE AND RECREATIONAL FACILITIES

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Subsection 15-197(a) of the Carrboro Land Use Ordinance is repealed and the designation "(b)" is removed from the remainder of the text of this section.

Section 2. Subsection 15-198(c) is amended to read as follows:

(c) Except as otherwise provided in subsection (j) and Section 15-203, every residential development in zoning districts other than the R-2 and W-R districts shall be developed so that at least forty percent (40%) of the total area of the development remains permanently as open space. Every residential development in the R-2 and W-R districts shall be developed so that at least twenty percent (20%) of the total area of the development remains permanently as open space.

Section 3. The phrase "(twenty percent in the R-2 district)" as the same appears in Subsections 15-198(g) and (h) is amended to read "(twenty percent in the R-2 and W-R districts)".

Section 4. Subsection 15-198(j) is amended to read as follows:

(j) Subdivided residential developments of less than fifteen dwelling units are exempt from the requirements of this section, but may be required to pay a fee in lieu of providing open space in accordance with the provisions of Subsection 15-203(b) if the development chooses not to provide such open space. For purposes of this subsection, the term "developments" shall have the same meaning as is set forth in subsection 15-196(d)(3).

Section 5. Subsection 15-238(b) is amended by adding the following new sentence at the end thereof: "For purposes of this subsection, the term "on site" shall be deemed to include any common open space created in accordance with the provisions of Section 15-198 as part of the development that creates the lot served by such a septic system or alternative disposal system."

Section 6. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 7. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this ____ day of _____, 2002.

Ayes:

Noes:

Absent or Excused:

ATTACHMENT D

Section 15-198 Open Space. (AMENDED 04/24/84; 03/26/85; 12/10/85; 11/11/86; REWRITTEN 06/27/95)

(a) The Board finds that when land is developed for residential purposes, the public health, safety, and welfare are best served when substantial portions of the tracts so developed remain as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:

- (1) Preservation of open vistas, providing relief from an urban landscape;
- (2) Preservation of environmentally sensitive lands;
- (3) Preservation of habitat for wildlife;
- (4) Preservation of historically or archaeologically significant areas;
- (5) Provision of areas for passive recreation, such as walking or jogging.

(b) For purposes of this section:

- (1) Open space refers to an area that:
 - a. Is not encumbered with any substantial structure;
 - b. Is not devoted to use as a roadway, parking area, or sidewalk;
 - c. Is not part of any privately owned lot that is used or intended for use for residential purposes.
 - d. Is legally and practicably accessible to the general public or to the residents of the development where the open space is located.
- (2) Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:
 - a. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or

- b. Are configured and/or improved (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.
- (3) The following areas shall be regarded as open space if such areas satisfy at least the criteria set forth in Subdivision (1) a, b, and c of subsection (b) of this section:
- a. Utility easements located outside of street rights of way;
 - b. Cemeteries located on a tract prior to its development.
 - c. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and such uses are approved by the homeowners association. **(AMENDED 05/25/99)**
- (4) The term "primary conservation areas" shall mean: **(AMENDED 05/25/99)**
- a. Areas containing slopes greater than 25%
 - b. Hardwood areas identified on the Carrboro Natural Constraints Map
 - c. Wetlands as defined pursuant to Section 404 of the Clean Water Act
 - d. Floodplains
 - e. With respect to streams designated on the adopted Stream Classification Map of Carrboro, those areas within an average perpendicular distance of sixty feet from the edge of the floodway of the stream, if the floodway is designated on the "Flood Boundary and Flood Map" prepared by the U.S. Department of Housing and Urban Development, or sixty feet from the centerline of the stream where the floodway is not designated on this map.
 - f. Lakes and ponds;
 - g. Road buffers as required by Section 15-312 of this Chapter, except for those portions of the buffers that must be included in road or utility crossings.

(5) The term "secondary conservation areas" shall mean: **(AMENDED 05/25/99)**

- a. Areas containing slopes greater than 15% but not more than 25%;
- b. Wooded areas other than hardwood areas identified on the Carrboro Natural Constraints Map;
- c. Vistas along entranceways to the town;
- d. Other areas containing unusual natural features (such as major rock formations);
- f. Other environmentally, historically or archaeologically significant or unique areas.

(c) Except as otherwise provided in subsection (j) and Section 15-203, every residential development in zoning districts other than the R-2 district shall be developed so that at least forty percent (40%) of the total area of the development remains permanently as open space. Every residential development in the R-2 district shall be developed so that at least twenty percent (20%) of the total area of the development remains permanently as open space. **(AMENDED 09/05/95)**

(d) Subject to subsection (g), every residential development containing at least 25 lots or dwelling units shall contain, as part of its required open space, one or more areas that are relatively flat, well drained, grassed, and otherwise well suited for use as a play field:

- (1) Each such area shall contain a minimum of 20,000 square feet configured in such a manner as to be useful as a play field.
- (2) Every development covered by this subsection shall set aside in one or more play fields meeting the criteria of this subsection a minimum of 400 square feet of area per lot or dwelling unit within the development.
- (3) Play fields provided under this section shall be located with due regard for the safety and convenience of those using such facilities as well as the welfare of residents living nearby. The play fields required by this subsection shall be located such that 90% of the lots or dwelling units within any development that is required to install such play field are within 1,500 feet of a play field installed to meet the requirements of this subsection, unless the developer

demonstrates by clear and convincing evidence that adherence to this requirement would not be feasible.

- (4) Play fields constructed to meet the requirements of this subsection may be used by the developer to satisfy the active recreational requirements set forth in Section 15-196 as well as the open space requirements of this section. However, the recreation points assigned to such play fields shall be based upon the actual cost of constructing such play fields, exclusive of land costs.

(AMENDED 05/25/99)

(e) Subject to subsection (g), if a tract where a residential development is proposed contains any areas defined above as primary conservation areas, then such areas shall be designated as open space. **(AMENDED 05/25/99)**

(f) **RESERVED (AMENDED 05/25/99)**

(g) A developer shall not be required to set aside as open space under the provisions of subsections (d) and (e) more than the minimum required percentage of open space set forth in subsection (c). If the sum total of open space otherwise required under the provisions of subsections (d) and (e) exceeds forty percent of the development tract (twenty percent in the R-2 district), then the permit issuing authority shall allow the developer to set aside a smaller area of open space under subsections (d) and (e), individually or collectively, so that the developer is not required to preserve as open space more than forty percent of the development tract (twenty percent in the R-2 district). However, if areas that constitute primary conservation areas have not been set aside as open space, then the development plans shall otherwise provide for the preservation of such areas even though they may be located within privately owned lots (e.g. by specifying buildable areas within individual lots). Notwithstanding the foregoing, hardwood areas identified on the Carrboro Natural Constraints Map that are not set aside as common open space shall be preserved except to the extent that removal of such hardwood trees is necessary to accommodate the permitted uses created out of land not set aside as common open space. **(AMENDED 09/05/95; 05/25/99)**

(h) If the area of open space required to be preserved under subsections (d) and (e) does not exceed forty percent (40%) of the area of the development tract (20% in the R-2 district), then the permit issuing authority may require that the developer set aside from among the areas that constitute secondary conservation areas as defined above an amount of open space equal to the difference between the amount of open space preserved under subsections (d) and (e) and forty percent (40%) of the development tract (20% in the R-2 district). **(AMENDED 09/05/95; 05/25/99)**

(i) Except as otherwise set forth in this section, the choice as to the areas to be set aside as open space shall remain with the developer.

(j) Subdivided residential developments of less than fifteen dwelling units 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. Subdivided residential developments exempted by this subsection from the requirement of providing usable open space shall be required to make a payment in lieu thereof to the town's open space and recreational facilities fund in accordance with Section 15-203 if the town determines that it will be possible to provide usable open space areas that are reasonably expected to benefit or serve the residents of such developments. For purposes of this subsection, the term "developments" shall have the same meaning as is set forth in subsection 15-196(d)(3).

(k) Residential developments consisting solely of multi-family, single-room occupancy units (1/340) shall be exempt from the requirements of this section.
(AMENDED 01/11/00)

Section 15-199 Ownership and Maintenance of Recreational Facilities and Open Space Not Dedicated to the Town. (REWRITTEN 06/27/95)

(a) Unless the town requires that recreational facilities or open space be dedicated to the town or agrees to accept an offer of dedication voluntarily made by the developer, such recreational facilities and open space 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 15-201. If such recreational facilities and open space are not publicly dedicated, they shall be made available to all residents of the development under reasonable rules and regulations established to encourage and govern the use of such facilities and open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowners' association. Such facilities and open space may be made available to a limited extent on a fee basis to persons who are not residents of the development where such facilities or open space are located, so long as such use does not become so extensive as to remove the facilities and open space from the category of an accessory use to a residential development and transform the use to a separate principal use classification (see use classification 6.000) under the Table of Permissible Uses.

(b) The person or entity identified in subsection (a) as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

Section 15-200 Dedication of Open Space. (AMENDED 11/26/85; REWRITTEN 06/27/95; REPEALED 09/05/95)

Section 15-201 Homeowners' Association. (AMENDED 11/26/85)

Homeowners' associations or similar legal entities that, pursuant to Section 15-199, are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

- (1) Provisions for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- (2) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;
- (3) 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 and facilities; and
- (4) The association will establish a capital fund for the maintenance and upkeep of common areas and facilities and a method of contributing to that fund which will spread the costs of said maintenance and upkeep to the residents over a number of years. (AMENDED 11/26/85)

Section 15-202 Flexibility in Administration Authorized.

(a) The requirements set forth in this article concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with residential developments are established by the Board as standards that presumptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted town plans. The Board recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit issuing body is authorized to permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

(b) Whenever the permit issuing board authorizes some deviation from the standards set forth in this article pursuant to subsection (a), the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

Section 15-203 Fees in Lieu of Active Recreational Areas and Facilities or Usable Open Space.

(a) When the permit-issuing authority determines (upon the recommendation of the recreation director) that the recreational needs of a development required by Section 15-196 to construct active recreational areas and facilities could also be adequately met by facilities constructed on town property that is located close enough to such development to reasonably serve its residents, the town may authorize the developer to pay a fee to the town's open space and recreational facilities fund in lieu of providing on-site facilities. For purposes of this subsection, "town property" means property that is owned by the town or that the town has made plans to acquire within a reasonable time. (AMENDED 2/20/90)

(b) With respect to residential developments that are exempt from the requirement of providing on-site active recreational areas and facilities under Subsection 15-196(d) or exempt from the requirement of providing usable open space under Subsection 15-198(j) and that choose not to provide such facilities or open space, the town shall accept and the developer shall pay a fee to the town's open space and recreational facilities fund if the permit-issuing authority determines that the town has acquired or has made plans to acquire within a reasonable time the necessary land to provide usable open space or a site for recreational facilities that can be expected to benefit or serve such developments.

(c) The minimum amount of the fee paid under this section in lieu of active recreational areas and facilities shall be determined by multiplying the amount of recreation points that would otherwise be required of the development under Section 15-196 by the dollar value per point established in the town's miscellaneous fees and charges schedule. However, nothing herein shall prevent a developer from paying a fee that exceeds the minimum fee established pursuant to this subsection, and the town's willingness to allow a payment of fees in lieu of on-site provisions of facilities or open space under subsection (a) may depend upon the developer's agreement to pay fees in excess of the minimum.

(d) The minimum amount of the fee paid under this section in lieu of usable open space shall be determined by multiplying the square footage of open space that would otherwise be required of the development under Subsection 15-198(c) by the dollar value per square foot established in the town's miscellaneous fees and charges schedule.

(e) With respect to any development that is authorized or required by this section to pay a fee in lieu of providing recreational facilities or usable open space, no use may be commenced, lot sold, or building occupied unless the fee has been paid. If a development is intended to be sold or occupied on a phase-by-phase basis, payment of the fee relating to each phase must first be made.

Sections 15-204 through 15-209 Reserved.

Section 15-238 Sewage Disposal Facilities Required.

(a) Every principal use and every lot within a subdivision shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of such use or subdivision lot, and that complies with all applicable health regulations.

(b) Notwithstanding any other provisions of this article, no sewage treatment system other than individual on site septic systems or individual on site alternative disposal systems approved by the Orange County Health Department or the appropriate state or federal agency and serving a single unit shall be allowed within the WR, C, B-5, and WM-3 zoning districts, except that any lots in the Rangewood Subdivision that were benefited by OWASA's previous water and sewer extension project and which appear on OWASA's final assessment role for that project may be connected to OWASA's water and/or sewer lines as long as all assessments, fees, and charges have been paid or are up-to-date.
(AMENDED 09/01/92)

(c) Notwithstanding any other provisions of this article, no sewage collection system shall be allowed within the WR, C, B-5, and WM-3 zoning districts except to remedy a public health emergency not otherwise correctable such as (but not limited to) a failing septic system or failing package treatment plant as determined by the Orange County Health Department or appropriate state or federal agency. **(AMENDED 5/3/88; 6/23/88; 5/15/90)**