Town of Essex
Planning Commission

PROPOSED AMENDMENTS TO SUBDIVISION REGULATIONS

JULY 2013

Note – The Essex Planning Commission proposes the following amendments to the Essex Subdivision Regulations. The amendments have been discussed at multiple public Planning Commission meetings, the record of which is on file with the Town Clerk. It is anticipated that the Commission will discuss and act upon these proposed amendments at its July 11, 2013 Planning Commission meeting per the authorizations allowed under Connecticut General Statutes § 8-7d(d)

The plain text below represents the existing language of the Subdivision Regulations. Where text is proposed for removal, it is indicated in red with a single-line strikethrough. For example~~: language to be removed~~.

Where new additional language is proposed, it is indicated in bold, underlined green text. For example: **new language to be added.**

3.5 WAIVER OF SUBDIVISION REQUIREMENTS

When the Commission finds that extraordinary hardships or practical difficulties may result from compliance with these Regulations, the Commission may, by a 3/4th vote ~~**of all members**~~, approve waivers to these Regulations. The Commission shall state upon its records the reason for which a waiver is granted in each case.

5.8 OPEN SPACE

Land for parks, playgrounds, recreation areas and open spaces shall be provided and reserved in each subdivision as deemed necessary and in locations deemed proper by the Commission. The land reserved shall be of such suitable area, dimensions, topography and natural character as to satisfy the open space needs determined by the Commission. Such needs may include, but are not limited to the following:

a. Preservation of natural resources such as, but not limited to, unusual topography, wetlands, aquifers, agricultural land, wildlife habitat, visual corridors, **ridgelines** and vistas;

b. Retention of natural drainage ways;

c. Avoidance of undifferentiated sprawl patterns, provision for visual edges, focal points and centers to enable people to relate to their surroundings and to integrate or separate various types of uses and activities;

d. Provision for passive and/or active recreation;

e. Enhancement of historic and cultural activities and locations; and

f. Maintenance of scenic quality.

The reservation of land shall conform, to the greatest extent possible, to any plan of development for parks, playgrounds, recreation land, conservation or open space which has been formally adopted by the Planning Commission or by the Essex Conservation Commission.

5.8.1 Open Space Dedication Requirement:

In determining the need for reservation of open space, the Commission shall be guided but not limited to a standard of 20% of the land area of the subdivision, and a minimum reservation area of one acre. Inland and tidal wetlands shall not be included as meeting of the open space area requirement. ~~The Commission may determine that a lesser area is sufficient to satisfy the need for such open space within the subdivision or that such reservation is not feasible because a) adequate existing parks, playgrounds, recreation areas and open space are available in the neighborhood; or b) there is no land in the subdivision suitable for such reservation.~~

5.8.2 Access and Location:

The area or areas reserved for open space shall be laid out so as to be used in conjunction with similar areas of adjoining subdivisions or of probable future subdivisions. Open spaces shall be easily accessible and shall be situated so as to preclude grouping of lots and open spaces in the extremities of the property. The Commission may require that proper pedestrian and vehicular access be provided for each such reservation.

5.8.3 Coastal Waterfront Sites:

In such cases where the proposed subdivision site abuts coastal waters, the Commission may require such open space in the form of public access to and along the waterfront.

5.8.4 Methods of Open Space Reservation:

Open space areas shall be permanently reserved for the designed use by means acceptable to and approved by the Commission, in accordance with Section 6.12.

5.8.5 Fee-in-lieu of Open Space:

In lieu of the above requirement to provide open space, the Commission may, at its discretion, approve the payment of a fee to the municipality by the applicant, or may approve the payment of a fee to the municipality and transfer land to the municipality by the applicant in accordance with the provisions of *Section 8-25 of the Connecticut General Statutes.* **The procedure for determining if the Commission shall approve the payment of a fee in lieu of open space shall follow the Waiver provisions of Section 3.5 of these Regulations.**

6.12 OPEN SPACE

In addition to the requirements of *Section 5.8,* open space within subdivisions shall comply with the following requirements:

6.12.1 Condition of Land:

Land reserved for open space shall not be used for the storage of equipment or the deposit of debris. The land so reserved shall not be excavated, filled or regraded, and trees shall not be removed except in accordance with a grading plan submitted under *Section 4.4.6.*

6.12.2 Methods of Open Space Reservation:

Open space areas required under *Section 5.8* shall be permanently reserved for the designated use by means acceptable to and approved by the Commission. **Such means and methods shall include** but **are** not limited to **the methods detailed below, in the indicated order of priority**. **The Applicant shall have the burden to prove that the indicated order of priority is not in the best interest of the Town. The methods detailed below are intended to provide guidance to the Commission and Applicants, and Applicants are strongly recommended to consult with Staff and the Commission informally in advance of making a formal proposal.**

a. **Deeded to the Town of Essex:** **Open space parcels may be offered to and accepted by the Town when the parcel is unique, significant, adjacent to existing municipal property, or which offers opportunities for passive or active recreation for Town residents.** Where open space areas are to be conveyed to the Town, the applicant shall convey them at the stage and in the condition agreed upon in connection with the processing and approval of the subdivision.

b. **Deeded to a non-profit organization acceptable to the Commission:** **Open space parcels may be conveyed to a non-profit conservation trust where the parcel contains significant areas of wildlife habitat or is adjacent to other land owned by a non-profit land trust or where the addition of the parcel may enhance existing lands owned by such a trust, or where the Commission determines that such parcel is not appropriate for Town ownership.** Such non-profit organization shall be a private non-profit, non-stock corporation which has as its purpose the preservation of open space land. The deed to such organization shall contain language satisfactory to the Commission requiring that the land be held in perpetuity as open space land for the use of the general public. If open space is to be conveyed to a non-profit organization, the Commission may require that a copy of the organization's Certificate of Incorporation be submitted for its review. The deed to the organization shall contain the provision that in event of the dissolution of the corporation, the property shall be conveyed to the Town of Essex, or subject to the approval of the Commission, to another non-profit corporation. The Commission shall have

the right to reject any proposal for the transfer of open space land to a private non-profit organization if the Commission determines that such conveyance would not be in the best interest of the Town. The organization shall present evidence of liability insurance to the Town.

c. **Held in corporate ownership by owners of lots within the subdivision:** Open space may be conveyed by warranty deed to a **nonstock** homeowner's association within the subdivision upon such terms and conditions as specified by the Commission. When tracts are conveyed in this manner, a copy of the bylaws of the homeowners' association shall be submitted as a part of the application for the subdivision. Membership in such corporation shall be mandatory for all lot owners within the subdivision. Each deed conveyance to lot owners shall include the provisions of the declaration of rights and responsibilities in regard to open space, and shall be recorded in the Essex Land Records. Wording on each deed shall state that such open land is reserved for use only as open space in perpetuity and the homeowners' association must maintain adequate liability insurance for the property.

d. **Perpetual conservation easement:** Where the right of use, interest or privilege, short of fee ownership in the open space owned by another, is obtained by the Town or acceptable non-profit organization, a deed stipulating that the owner transfers development rights to, and open space or scenic easements over, the land shall be required. The fee owner shall retain the fee title to the premises and all incidents of fee ownership therein, except the right to construct any structure, sign, fence, or other improvement thereon, or to alter the contours thereof. ~~Minimum lot requirements cannot be satisfied by use of land dedicated to open space.~~

6.12.3 Conditions of Open Space Conveyance:

Title to the open space land shall be unencumbered and shall be transferred at a time approved by the Commission, and in any case, not later than the time at which title to the streets in said subdivision is accepted by the town.

6.12.4 Deed Guarantees:

Regardless of the method employed, the instrument of the open space conveyance must include provisions suitable to the Commission and the Town Counsel for guaranteeing the following:

a. The continued use of such land for the intended purpose;

b. Continuity of proper maintenance for those portions of the common open space land requiring maintenance;

c. When appropriate, the availability of funds required for such maintenance; and

d. Recovering of loss sustained by casualty, condemnation or otherwise, and sufficient liability insurance.