

## Sample Provisions for Mandatory Dedication of Recreation Land

From the New Hanover Township, Montgomery County  
Subdivision and Land Development Ordinance

### §835. STANDARDS FOR PARK AND RECREATION AREAS; FEE IN LIEU OF DEDICATION.

#### 1. General Provisions.

- A. All applicants, excepting only those seeking approval of a Minor Subdivision, as defined in §202 of the Township's Subdivision and Land Development Ordinance, shall, concurrent with the submission of a final plan of subdivision or land development, offer for dedication a portion of the land being subdivided or developed, as hereinafter set forth, as public recreation area.

Applicants seeking approval of a Minor Subdivision, as defined in §202 of the Township's Subdivision and Land Development Ordinance, which consists of the division of one lot into two lots units, shall submit and tender to the Township a fixed fee of \$500.00 for the newly created lot in lieu of providing a public recreation area.

- B. All applicants seeking approval of an annexation, as defined in §202 of the Township's Subdivision and Land Development Ordinance, which consists of the act of adding, joining or uniting of one lot to another lot, shall submit and tender to the Township a fixed fee of \$500.00 for the annexation, in lieu of providing a public recreation area, concurrent with the submission of a final plan of annexation.
- C. Such public recreation areas shall provide adequate open space, recreation land, facilities and recreational infrastructure in accordance with the standards herein set forth in subsection (2) accessible to such subdivision or development.
- D. Such recreation area shall not be part of any lot, but it shall be dedicated to the Township in fee simple title or, in the sole discretion of the Board of Supervisors, to the extent that the same is intended to be developed as part of the trail and bikeway system of the Township, it shall be dedicated to the Township as a right-of-way or easement to be perpetually maintained for the purposes intended with full access and used by the general public constituting the residents, constituents and the invitees of the Township, the documentation for which shall be submitted to and subject to the approval of the Board of Supervisors of New Hanover Township and its Solicitor and in the case of a right-of-way or easement for public use and access, the plan shall provide that the said defined right-of-way or easement is to be used and occupied exclusively as park, open space and recreation area, and is not to be subject of further disturbance, subdivision or construction of any building, structure or land development and that the document established and title to the same shall contain

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language that said defined right-of-way or easement is not subject to further disturbance, subdivision or construction of any building, structure or land development as a condition running with title to the land and the same shall be maintained in a manner open to the general public constituting the constituents, residents and invitees of the Township.

- E. All areas dedicated under the provisions of this Section shall be consistent with the specific goals, objectives, plans and recommendation of the Township Comprehensive Plan and the Township Open Space, Parks and/or Recreation Plan and are to be in accordance with the definite principles and standards contained in this Chapter.
- F. In lieu of land dedicated for recreation purposes, a fee may be paid, as hereinafter set forth in §835(3).
- G. The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreation facilities by future residents, occupants, employees or visitors to the subdivision or development.

#### 2. Standards for Land Dedication.

- A. Any land dedicated to the Township in fee simple title shall be used only for park, recreation or open space purposes and shall be available to all residents of the Township, subject to such regulations and rules as may be recommended by the New Hanover Township Parks and Recreation Board and/or adopted by the Board of Supervisors of New Hanover Township.
- B. The land to be dedicated shall have size, dimensions, topography, access and general character suitable for its proposed recreational use, as determined by the Board of Supervisors, in conjunction with the Township Park and Recreation Board and the Township Planning Commission. Any land not suitable for active or passive recreation shall not be accepted as dedicated land; this includes areas within stormwater basins that could not be used for recreation.
- C. Consideration shall be given to preserving natural features, including rocks and rock outcrops, large trees and tree stands, watercourses, margin areas, historic structures and areas and other community assets that would enhance the value and aesthetic qualities of the development.
- D. The land shall be easily and safely accessible from all residential or occupied areas within the development or the general area to be served, and it shall have road

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- frontage or, subject to the sole discretion of the Board of Supervisors, suitable access, ingress and egress from a public roadway for maintenance purposes.
- E. The land shall be contiguous and regular in shape, where possible and practical.
  - F. The Board of Supervisors may, at its discretion, require that land to be dedicated be located along a property boundary so that such land may be combined with dedicated land or other recreation areas that are or will be adjacent to the land to be dedicated.
  - G. The land shall be located on soils suitable for use and development as a recreation area.
  - H. No more than 25% of the land shall have a slope in excess of 7%.
  - I. No more than 25% of the land shall be within floodplain, hydric soil overlay or wetland areas.
  - J. The land shall be accessible to all necessary utilities.
  - K. The land shall be designed and developed for its intended open space, park or recreation use in accordance with the recommendations for such as contained in the National Recreation and Park Association's Recreation Park and Open Space Standards and Guidelines, 1983, as amended.
  - L. Such area or land as is dedicated or intended to be used and developed as and to be incorporated in the trail and bikeway system for the Township, by means of a grant of right-of-way or easement to the Township, shall be consistent in location, design, dimensions, topography and route as is consistent with that approved and recommended by the New Hanover Board of Supervisors and the Township Park and Recreation Board for such uses and purposes and shall include a minimum of .0372 acres of land for each residential lot, dwelling unit or combination thereof, excluding only those subdivisions comprised of two or less tracts or parcels of real estate for single family detached residential development which have not been the subject of prior subdivisions or land development submissions (consisting in total of two or less tracts or parcels of real estate) and a minimum of .03 acres of land shall be offered for dedication for each 1,000 square feet of building, structure or improvement proposed for any nonresidential land development plan.
  - M. Grants of rights-of-way or easements, intended to be used and developed as and to be incorporated in the trail and bikeway system for the Township, shall be not less

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- than 20 feet wide and not more than 30 feet wide at any point along the length of said trail and shall include an additional 20 foot wide construction easement along the length of said trail which shall automatically terminate upon the completion of construction of the same and shall be consistent with the location, topography and route of the Township trail and bikeway system providing for interconnection of the various components throughout the Township.
- N. A minimum of .0124 acres of land shall be offered for dedication in fee simple title for each residential lot, dwelling unit or combination thereof, excluding only those subdivisions comprised of two or less tracts or parcels of real estate for single family detached residential development which have not been the subject of prior subdivisions or land development submissions (consisting in total of two or less tracts or parcels of real estate) and a minimum of .01 acres of land shall be offered for dedication for each 1,000 square feet of building, structure or improvement proposed for any nonresidential land development plan.
- O. Except for rights-of-way or easements as hereinbefore provided in subsection (2)(L) and (M) with reference to the trail and bikeway system, no contiguous area of land shall be considered for dedication in fee simple title if it is less than 0.5 acres, and in no event shall the area proposed for dedication in fee simple title be less than 100 feet in width and the Board of Supervisors shall have the sole discretion not to approve or accept any area of land if it determines that the contiguous area of the same is insufficient to adequately serve as or provide park and recreation area.
- P. When land is dedicated, acceptance by the Township shall be by means of a signed resolution and a signed deed of dedication executed by the property owner transferring title in fee simple to the Township or by grant of a right-of way and easement to the Township, to which a property description of the dedicated area shall be attached in a form acceptable to and approved by the Township Solicitor. Subject to the submission of documentation to the Board of Supervisors for its approval and except as provided with regard to easements or rights-of-way for the trails and bikeway system, a fee simple warranty deed conveying the property shall be delivered to the Township with title free and clear of all liens, encumbrances and conditions, other than nonexclusive public utility easements.
3. Standards for Fee in Lieu of Land Dedication.
- A. Subject to the discretion of the Board of Supervisors, payment of a fee in lieu of land dedication shall be required:
- (1) Where land dedication would result in open space or recreation areas too

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small to be usable.

- (2) If the Township Comprehensive Plan or the Township Open Space, Park and Recreation Plan recommends recreation land to be provided elsewhere.
- (3) If a suitable site for recreation cannot be located within the development.

B. All fees paid in lieu will be determined as follows:

- (1) **Recreational Land Fee-In-Lieu:** The applicant shall tender to the Township prior to or concurrent with final plan approval a fee in lieu of dedication calculated in an amount equal to \$75,000.00 per acre if the plan is situated in the HI - Heavy Industrial, LI - Light Industrial; CB-1 - Commercial Business 1 or CB-2 - Commercial Business 2 Zoning District, \$55,000.00 per acre if the plan is situated in the R-15/Residential 15 or R-25/ Residential 25 Zoning Districts or \$35,000.00 per acre if the plan is situated in the R50 and R2 Zoning Districts or in proportionate rate for any portion thereof, as hereinbefore required to be dedicated in fee simple title or an amount equal to 1/3 the value hereinbefore assigned per acre, or any portion thereof, in each Zoning District, as hereinbefore required to be subject to a grant of right-of-way or easement with regard to each such subdivision or land development.
- (2) **Recreational Infrastructure Fee-in-Lieu:** The applicant shall tender to the Township prior to or concurrent with final plan approval a fee in lieu of recreational infrastructure calculated in the amount of \$500 for each 1,000 square feet of building, structure, or improvement proposed for any nonresidential land development plan. An amount equal to \$500 shall be provided for each proposed residential lot, dwelling unit or combination thereof.

C. All fees paid in lieu of land dedication or recreational infrastructure shall be used for:

- (1) The acquisition of land for parks, recreation areas, facilities, open space and trails or bikeways as component addition, to the New Hanover Township system.
- (2) The construction of improvements and recreational infrastructure.
- (3) Costs incidental to such purposes including, but not limited to, planning, engineering, design, administrative and legal fees, utility relocation or

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installation, construction of sewage or water facilities, vehicular and pedestrian access signage and the purchase of park equipment and maintenance.

- D. All fees paid to the Township shall be deposited in a separate interest bearing account established for such fees, the records for which shall clearly identify the specific subdivision/land development sites for which such fees have been received, interest earned on such fees shall become funds of that account and be subject to distribution or expenditure for any and all costs and expenses hereinbefore identified. Funds from such accounts shall be expended only in properly allocable portions of the costs incurred to acquire, construct or improve such specific, identifiable, and/or proposed recreation facilities for which such funds have or may hereafter be collected.
- E. If the Township fails to use the fees collected from a particular applicant in accordance with this Section within 3 years of the date such fees were paid the specific applicant may submit a written request, on such forms as are established by the Township, for the refund of such fees, plus interest that accumulated thereon from the date of fee payment, which request shall be reviewed and acted upon by the Board of Supervisors of New Hanover Township with 45 days of the date of receipt.

#### 4. Combination of Land Dedication and Fees in Lieu of Land Dedication.

- A. The Township may accept a combination of land dedication in fee simple title, grants of rights-of-way and easements and fees in lieu of land in order to meet the requirements and standards of the New Hanover Township Open Space Park and Recreation Plan or such additional plans and designs as may be approved for the Township trail and bikeway system. Such combination shall be subject to the review and approval of the Board of Supervisors of New Hanover Township at its sole discretion.
- B. The resulting combination of land and fees shall not, except as may be otherwise reduced to recognized rights-of-way granted for the trail and bikeway system, exceed the total acreage to be developed or the acreage which constitutes the basis of calculating the fee in lieu of dedication required by this Part.

#### 5. Decision of Land Dedication vs. Fees in Lieu of Land Dedication.

- A. The Board of Supervisors shall determine whether land dedication, grant of rights-of-way and easements or fees in lieu of land shall be required. Such decision shall be made as early in the plan review process as possible but not later than concurrent

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with the preliminary plan approval.

B. The Board of Supervisors shall, in reaching its decision, consider the following factors, in addition to any other factors that may be applicable to a particular plan:

- (1) If the land in that location serves a valid public purpose.
- (2) If there is a need to make a reasonable addition to an existing park or recreation area.
- (3) If the land meets the objectives and requirements of this Section.
- (4) If the area surrounding the proposed development has sufficient existing parks, recreation areas or facilities or open space and if pedestrians or bicyclists can safely reach these areas.
- (5) Any relevant policies of the Township regarding parks, recreation areas and facilities and open space, including those within the Township Comprehensive Plan and the Township Open Space, Park and Recreation Plan.
- (6) Any recommendations regarding such land that has been received from the Township and/or County Planning Commission, the Township Parks and Recreation Board, the Township Engineer and/or the Boyertown Area School District.