

Enacted On: April 10, 2007

Effective Date: May 1, 2007

AN ACT concerning

**ORDINANCE #2007-001**

**SUBDIVISION OF LAND**

**REQUIRED RECREATIONAL AND OPEN SPACE  
WITHIN CERTAIN RESIDENTIAL SUBDIVISIONS;  
AND OPTIONAL FEE-IN-LIEU-OF DEDICATION**

*FOR the purpose of amending Section 162-36 of the Code of Public Local Laws of Caroline County, Maryland to require certain residential subdivisions to provide recreational and open space within such residential subdivisions; to allow for a payment to the County Commissioners of Caroline County by developers of certain residential subdivisions in lieu of dedicating certain land in such residential subdivisions for recreational and open space; to provide for a method of determining the amount of such payment; to provide for the application of such payments for the acquisition, equipping, and operation of recreational and open space areas and facilities; providing that the title of this Ordinance shall be deemed a fair summary; and generally relating to the creation and dedication of recreational and open space or payments in lieu thereof by developers of certain residential subdivisions; and providing for an effective date.*

**WHEREAS:**

Section 162-36 of the Code of Public Local Laws of Caroline County (the "Code") provides that certain residential subdivisions shall include accessible land for recreational or open space purposes;

The County Commissioners of Caroline County (the "County Commissioners") have determined that additional residential subdivisions should be subject to the requirement to provide accessible land for recreational or open space purposes;

The County Commissioners have determined that the amount of required recreational and open space should be increased, and that certain specifications with respect to such recreational and open space should be changed to provide for more meaningful recreational and open space opportunities;

The County Commissioners have determined that, in certain circumstances, county residents may be better served by allowing a fee-in-lieu-of the required recreational and open space in certain residential developments;

The County Commissioners have determined that payments in lieu of recreational and open space should be utilized to enhance the recreational and open space opportunities for the residents of certain residential subdivisions and the citizens of Caroline County generally;

The Caroline County Planning Commission, on January 10, 2007, held a duly advertised public hearing on the subject of amending the Code to provide for the increased requirement for recreational and open space, the specifications relating thereto, and an optional fee-in-lieu-of required recreational and open space in certain circumstances;

The Caroline County Planning Commission subsequently recommended to the County Commissioners that such amendments be enacted; and

The County Commissioners have determined that the increases in required recreational and open space, the changes in the specifications therefore, the establishing of an optional fee-in-lieu-of recreational and open space, and the amendment of Section 162-36 of the Code will benefit and enhance the health, safety, and welfare of the citizens of Caroline County, Maryland.

**NOW, THEREFORE, IT IS HEREBY ENACTED by the County Commissioners of Caroline County, Maryland, that:**

**SECTION 1. CHAPTER 162 - SUBDIVISION OF LAND – § 162-36 RECREATION AND OPEN SPACE OF THE CODE OF PUBLIC LOCAL LAWS OF CAROLINE COUNTY, MARYLAND, IS HEREBY AMENDED BY DELETING THE ENTIRE TEXT THEREOF AND SUBSTITUTING THEREFOR THE FOLLOWING:**

**§ 162-36. Recreation and open space.**

**A. Definitions. For purposes of this § 162-36, the following terms shall have the meanings set forth herein:**

**ACTIVE OPEN SPACE - Areas with a less than 4% grade variance and which areas are open, dry, and unencumbered, and are otherwise suitable for building or facility development that supports interactive play or gatherings of 10 or more individuals. “Active Open Space” does not include environmentally constrained areas.**

**ENVIRONMENTALLY CONSTRAINED AREA - Areas that:**

- (1) May not be developed because of existing sensitive areas, which include, but may not be limited to critical area buffers, forest and stream buffers, forest conservation easements, wildlife habitats, flood plains and wetlands; or**
- (2) Contain stormwater management facilities.**

**PASSIVE OPEN SPACE - Gently-sloped open or sparsely wooded areas with a less than 10% grade variance, suitable for non-interactive recreational uses, including, but not limited to, walking, picnicking, or sitting. “Passive Open Space” does not include Environmentally Constrained Areas.**

**PERSON - This term shall have the meaning set forth in § 166-35 of the Code.**

**RECREATIONAL OR OPEN SPACE - An area of land or water set aside, dedicated, designed or reserved on a non-exclusive basis for the use and enjoyment of owners and occupants of land in the subdivision in which such land or water is located, and persons lawfully visiting thereat. For purposes of this § 162-36, the term “subdivision” shall include those lots and subdivisions included in the General Requirement of this § 162-36 by application of § 163-36.B hereof.**

- B. General Requirement. All major subdivisions shall include accessible recreational or open space, as determined in the reasonable discretion of the County, equal to at least five percent (5%) of the gross area of the subdivision, with the minimum area and parcel size being not less than three quarters (3/4) of an acre. At least seventy five percent (75%) of such recreational or open space shall be of a character suitable for Active Open Space, with the balance suitable for Passive Open Space.**
- C. All required recreational and open space shall be offered for public dedication. The subdivider shall make appropriate arrangements for the maintenance of such recreational and open space areas until such time as the dedication, if any, is formally accepted. If the dedication has not been accepted prior to the construction of homes on at least 50% of the lots within the subdivision, title to the required recreational and open space shall be vested in the name of any homeowners' association or similar organization or, if none shall exist with respect to the subdivision, to the lot owners in common, or to the subdivider. Irrespective of how title to such recreational or open space is held, such recreational or open space shall be restricted to recreational and open space purposes, and the subdivider shall insure that appropriate covenants, restrictions, and/or easements, as directed by the County, shall be reflected in deeds and other relevant and appropriate documents and entered into the land records of Caroline County to restrict the use of such recreational or open space accordingly, in perpetuity. Nothing in this § 162-36 shall be construed to require the County to accept any proposed dedication of recreational or open space, or to require the County to maintain any such recreational or open space.**
- D. The Caroline County Planning Commission may require the dedication or reservation of a reasonable recreational and open space area beyond the minimum requirements set forth herein, based on the character of the site, the surrounding area, or the nature of the proposed development, as may be allowed under applicable federal, State, and local law.**
- E. With the concurrence of the subdivider, the County may accept a fee-in-lieu-of the dedication of the required recreational and open space on the following terms and conditions:**
- (1) The "Fee-In-Lieu-Of" price shall be determined by the County by multiplying the total number of lots to be included within the proposed subdivision by an amount equal to the agricultural easement value per acre established by the easement acquisition cycle statistics for the most recent fiscal year for the Maryland Agricultural Land Preservation Easement Acquisition Program.**
  - (2) The required payment shall be paid to the County in cash or certified funds prior to the final subdivision plat approval.**
  - (3) The County shall utilize such funds on projects which may reasonably be expected to benefit the residents, but not necessarily exclusively such residents, of the subdivision for which the fee-in-lieu-of is paid; including regional or area-based recreational and/or open space projects.**

- (4) **If the County and subdivider agree, the subdivider may provide to the County in-kind services and/or products at least equal in dollar value to the required fee established in accordance with this § 162-36.E at a site determined by the County. Any dollar difference in the required fee and the agreed upon value of the in-kind service or products shall be paid to the County forthwith upon such determination, unless otherwise agreed by the County at its discretion.**
- (5) **If the County and subdivider agree, the subdivider may set aside a portion of the land area required hereunder for recreational and open space and pay a fee-in-lieu-of a portion of the required land area.**
- (6) **Nothing in this § 162-36.E shall be construed as requiring the County to accept a fee-in-lieu-of recreational or open space or as permitting the County to demand a fee-in-lieu-of required recreational or open space.**

**SECTION 2. The title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this act for publication and all other purposes.**

**SECTION 3. This Ordinance shall take effect on May 1, 2007.**

**ENACTED THIS TENTH DAY OF APRIL 2007.**

**ATTEST:**

**COUNTY COMMISSIONERS OF  
CAROLINE COUNTY, MARYLAND**