

ARTICLE 14 PARKS, RECREATION, GREENWAYS, AND OPEN SPACE

14.1 PARK, RECREATION, AND OPEN SPACE SITES

14.1.1 Dedication Generally; Fee in Lieu of Dedication Generally; Construction of Public Recreation Facilities with Fee-in-Lieu Monies Generally

- A) Every person who subdivides or develops land for residential purposes shall prior to the time of final approval of the Master Subdivision Plan or Minor or Major Site Plan agree to dedicate a portion of such land, as set forth in this Section, for the purpose of providing park, recreation, or open space sites to serve the future residents of the neighborhood within the Town of Apex corporate limits.
- B) As an alternative to the dedication of a portion of such land by the developer, and where it is recommended by the Parks, Recreation, and Cultural Resources (PRCR) Advisory Commission and determined by the Town Council that a dedication of land is not feasible in a given development or incompatible with the Town's plan, the developer may be allowed to:
 - 1) Make provisions for an equitable amount of land to be dedicated in another location;
 - 2) Pay to the Town a fee-in-lieu of dedication as provided herein;
 - 3) Construct public recreation facilities with fee-in-lieu monies; or
 - 4) Any combination of 14.1.1.B.1, 2, or 3, as approved by the Town Council.

14.1.2 Exemptions

When a development contains 30 units or less in a single-family, detached subdivision; 45 units or less in a single-family, attached subdivision; or 51 units or less in a multi-family development, only the payment of fees-in-lieu shall be required, unless the development abuts an existing or planned park or greenway.

14.1.3 Standards for Dedication

All land dedicated for recreation and park development shall substantially meet the following standards:

- A) **Unity**
The dedicated land shall form a single parcel of land except where the Town Council determines that two (2) or more parcels would be in the public interest and determines that a connecting path or strip of land is in the public interest, and in which case the width of the connecting property shall not be less than 30 feet wide.
- B) **Shape**
The shape of the dedicated parcel of land shall be sufficiently square or round to be usable for recreational activities such as softball, tennis, croquet, etc.
- C) **Location**
The dedicated land shall be located so as to reasonably serve the recreation and open space needs of the development for which the dedication was made and shall bear a reasonable relationship to the use of the area by the future inhabitants of the residential development.

- D) **Access**
Public access to the dedicated land shall be provided either by adjoining street frontage or public access easement at least 20 feet in width.
- E) **Topography**
Generally areas dedicated for recreation shall not exceed slopes of 5%.
- F) **Usability**
The dedicated land shall be usable for recreation; lakes or ponds may not be included in computing dedicated land area. In order to determine usability, a Phase 1 site assessment shall be submitted by the developer for consideration by Town Council.
- G) **Plans**
Municipal and county plans shall be taken into consideration when evaluating land proposals for dedication.

14.1.4 Standards for Town Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof

- A) Whether the Town Council accepts the land dedication, elects to require payment of fee-in-lieu or construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, shall be determined by consideration of the following:
 - 1) Parks, Recreation, Greenways and Open Space Master Plan;
 - 2) The recommendations of the PRCR Advisory Commission;
 - 3) Topography, geology, access and location of land in the development available for dedication; and
 - 4) Size and shape of the development and land available for dedication.
- B) The determination of the Town Council as to whether land shall be dedicated, whether a fee should be exacted, whether construction of public recreation facilities, or a combination thereof shall be final and conclusive.

14.1.5 Procedure for Determination of Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof; Performance Guarantees

The procedure for determining whether the subdivider is to dedicate land, pay a fee-in-lieu, construct public recreation facilities with fee-in-lieu monies, or some combination thereof, shall be as follows:

- A) **Action of Town**
After a proposal by the developer as indicated in Sec. 14.1.5.B below, the PRCR Advisory Commission shall recommend, and the Town Council shall determine as a part of PD Plan approval or prior to TRC approval of a Master Subdivision Plan or Minor or Major Site Plan, whether to require a dedication of land, payment of a fee-in-lieu, construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, pursuant to the standards in Sec. 14.1.4 *Standards for Town Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof.*

The procedure shall be as follows:

- 1) Planned Development (PD) Plans. At the time of the PD plan review, staff shall review and provide comments and a recommendation to the PRCR Advisory Commission. The PRCR Advisory Commission recommendation shall be provided to the Town Council at the time of public hearing for the PD Plan. The per-unit acreage and/or fee-in-lieu will be set as of the Town Council approval date for the PD Plan.
- 2) Master Subdivision and Minor and Major Site Plans. Unless set at the time of PD Plan approval, at the time of Master Subdivision Plan or Minor or Major Site Plan review, staff shall review and provide comments and a recommendation to the PRCR Advisory Commission. The PRCR Advisory Commission recommendation shall be provided to the Town Council prior to approval of such plans. The per-unit acreage and/or fee-in-lieu will be set as of the approval date of the Master Subdivision Plan or Minor or Major Site Plan.

B) ***Developer Proposal***

The developer shall propose land dedication for park and recreational purposes, payment of a fee-in-lieu, construction of public recreation facilities for credit against fees owed, or some combination of thereof on the PD Plan, Master Subdivision Plan, or Minor or Major Site Plan, whichever is submitted first. All land to be dedicated, all easements to be platted, and all greenway trails to be constructed must be shown on the Master Subdivision Plan or Minor or Major Site Plan. Where applicable, detailed drawings for all improvements, including plan and profile for greenway trails, are required for Construction Plan approval. Engineer-sealed cost estimates of construction work shall be submitted and approved by the Parks, Recreation, and Cultural Resources Director and the Water Resources Director, or their designees, prior to Construction Plan approval for credit against fees. The land proposed for dedication shall meet the standards in Sec. 14.1.3 *Standards for Dedication*.

C) ***Prerequisites for Approval of First Final Plat or First Building Permit***

For the purpose of this subsection, first Final Plat shall apply to Master Subdivision Plans and first building permit shall apply to Minor or Major Site Plans.

1) ***Dedication***

- a) Where on-site land dedication approved by the Town Council, such dedication shall be shown upon the first final plat or first building permit submitted for approval.
- b) Where land dedication approved by the Town Council is located outside the project boundaries, a map showing the approved off-site dedication shall be submitted with the first Final Plat or first building permit submitted for approval.

2) ***Fee-in-lieu***

Where fees are approved by the Town Council, the same shall be deposited with the Town for the units included in the phase or portion thereof prior to the recording of the final plat or issuance of the first building permit.

3) ***Easements***

Where easements for public greenways are approved by the Town Council, the same shall be shown on the Final Plat for the phases of the development where the greenway is located.

- 4) *Construction*
In the event that Town Council authorizes the developer to construct required public recreation improvements in lieu of or in combination with the required dedication or fee-in-lieu, then such construction must be completed prior to the first final plat or first building permit approval or such performance must be guaranteed in accordance with subsection 5 herein.
- 5) *Performance Guarantee*
In lieu of prior construction of public recreational facilities required by this Article, the Town may accept a guarantee from the developer that such improvements will be carried out according to the Town's specifications at the developer's expense. Such guarantee shall be required prior to approval of the first final plat or first building permit. Guarantees shall be based on Town approved construction drawings and engineer-sealed cost estimates per Sec. 14.1.5.B. Such guarantee may be in the form of a surety bond enforceable at the sole discretion of the Town and on the form prescribed by the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance*, certified check drawn in favor of the Town, or cash deposited with the Town. Such guarantee shall be in the amount of not less than 125% of the estimated cost of the construction of the required improvements. Such guarantee shall remain in full force and effect until construction of all required public recreational facilities is completed. All public recreational facility requirements shall be completed and accepted by the Town prior to completion of 50% of the building permits being issued for subdivisions; 25% of the building permits being issued for Planned Developments; or 50% of units being issued a building permit for Site Plans. Completed means public recreational facility requirements installed and approved, as-built plans approved by the Town, and plat recorded.

14.1.6 Computation of Size of Area Required for Dedication

- A) The area of land required to be dedicated with respect to a development shall be the sum of the following:
 - 1) The product of the number of single-family detached dwelling units or lots in the development, whichever is greater, times 1/30 of an acre (for land proposed to be dedicated which (a) lies within the 100-year floodplain, (b) has slopes greater than 15% or (c) is within overhead utility easements, "1/20" of an acre per dwelling unit shall be substituted for "1/30" in the formula);
 - 2) The product of the number of single-family attached dwelling units or lots in the development, whichever is greater, times 1/45 of an acre (for land proposed to be dedicated which (a) lies within the 100-year floodplain, (b) has slopes greater than 15% or (c) is within overhead utility easements, "1/30" of an acre per dwelling unit shall be substituted for "1/45" in the formula); and
 - 3) The product of the number of multi-family dwelling units or lots in the development, whichever is greater, times 1/51 of an acre (for land proposed to be dedicated which (a) lies within the 100-year floodplain, (b) has slopes greater than 15% or (c) is within overhead utility easements, "1/34" of an acre per dwelling unit shall be substituted for "1/51" in the formula).

14.1.7 Computation of Fee-In-Lieu of Dedication

- A) **Generally**
Where a fee is to be paid in-lieu of land dedication with respect to a development, the amount of such fee shall follow the published Town of Apex "Fee Schedule."
- B) **Adjustment**
Each January 1 starting on January 1, 2010, the fee amounts per dwelling unit stated in 14.1.7.A shall automatically be adjusted in correlation with the inflation rate in the previous calendar year as reported by the U.S. Department of Commerce Consumer Price Index.
- C) **Fair Market Value**
Notwithstanding any other Town of Apex ordinance provision, the total fee-in-lieu of dedication charged for a development or subdivision shall not exceed the fair market value of the land area that would have otherwise been required to be dedicated by the development or subdivision. For the purpose of this Section, fair market value is to be determined with respect to a development or subdivision, at the time the initial development application submittal is made to the Town. The process for determining fair market value shall be as follows:
- 1) The developer submits an appraisal completed within 12 months of the date of the initial submittal of the development application;
 - 2) The developer's appraisal shall be reviewed by a review appraiser retained by the Town. The review appraiser shall either concur with the developer's appraisal or recommend that a new appraisal be prepared;
 - 3) If a new appraisal is recommended, the Town's appraisal shall be done by an appraiser from a Town approved list at the Town's expense. The decision of the Town's appraiser shall constitute the Town's decision on fair market value; and
 - 4) In the event of a disagreement about fair market value, it shall be determined by the Special Committee procedure provided in Sec. 14.1.9 *Special Committee to Settle Disagreements Between Town and Developer.*

14.1.8 Use of Land by Town; Sale of Land by Town; Use of Funds Received in Lieu of Dedication

- A) **Generally**
The land received by the Town under this Article shall be used only for the purpose of providing neighborhood open space, park and recreational areas, but shall not be so restricted should the Town decide to sell such land as provided by the following paragraph.
- B) **Sale of Land**
The Town shall have the right to sell any land dedicated to the Town for neighborhood park and recreation purposes on finding by the PRCR Advisory Commission that a particular piece of property is not feasible or compatible with the Parks, Recreation, Greenways and Open Space Master Plan.
- C) **Special Fund**
Fees collected in lieu of dedications and any proceeds from such transactions or sales shall be held in a special fund by the Town, and the funds shall be used by

the Town for the purpose of acquiring and developing public recreation areas as shown on the land development plan and for no other purpose. The depository for such funds may be the same as permitted for other funds of the Town and pending their expenditure in accordance with the terms of this Section, such funds may be invested as other funds of the Town. The Town may, at its discretion, add additional monies to the fund for the purposes of purchasing public recreational land to be used for public recreational purposes. On all matters not specifically provided for in this Section, the Local Government Budget and Fiscal Control Act shall be controlling.

D) ***Public Safety Facilities***

Lands acquired pursuant to this Section after July 1, 1994 may be used for public safety facilities, including police, fire, and rescue, notwithstanding any other limitations on such use under this Section.

14.1.9 Special Committee to Settle Disagreements Between Town and Developer

A) ***Generally***

In the event that the Town and the developer of land cannot agree upon the location, terrain, size or shape of the land necessary to be dedicated for a neighborhood recreation area, or cannot agree upon the details of provisions for an equitable amount of land in another location or cannot agree about fair market value, such disagreement shall be determined by a Special Committee.

B) ***Membership and Action***

Where the developer disagrees with the fair market value determination per Sec. 14.1.7.C, the developer may appeal to the Special Committee, comprised of the developer's appraiser, the Town appraiser, and a third appraiser selected by the first two appraisers. An appraisal shall be completed by the third appraiser with the expense borne equally by the Town and the subdivider. The findings of the Committee shall be by majority vote and shall be certified to the Town Council within 45 days of the time of appointment of the third member of the committee.