

**BOARD OF SUPERVISORS
LOWER GWYNEDD TOWNSHIP**

MONTGOMERY COUNTY, PENNSYLVANIA

ORDINANCE NO. _____

“Park and Recreation Areas; Fee in Lieu of Dedication”

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF LOWER GWYNEDD TOWNSHIP, CHAPTER 1230 (SUBDIVISION AND LAND DEVELOPMENT), ARTICLE VIII (DESIGN STANDARDS) TO REPEAL EXISTING SECTION 1230.53 (STANDARDS FOR PARK AND RECREATION AREAS; FEE IN LIEU OF DEDICATION) AND REPLACE IT WITH A NEW SECTION 1230.53 ENTITLED “STANDARDS FOR PARK AND RECREATION AREAS; FEE IN LIEU OF DEDICATION” TO REESTABLISH THE TOWNSHIP’S STANDARDS, REGULATIONS AND REQUIREMENTS FOR THE DEDICATION OF AREA AND LAND FOR PARK AND RECREATION PURPOSES AND THE PAYMENT OF FEES-IN-LIEU THEREOF.

The Board of Supervisors of Lower Gwynedd Township does hereby **ENACT and ORDAIN** as follows:

SECTION I - Amendment to Code

The Codified Ordinances of Lower Gwynedd Township, Chapter 1230 (Subdivision and Land Development), Article VIII (Design Standards) is hereby amended to repeal existing Section 1230.53 (Standards for Park and Recreation Areas; Fee in Lieu of Dedication) and replace it with the following new Section 1230.53:

§1230.53. Standards for park and recreation areas; fee in lieu of dedication.

(a) General provisions.

- (1) All applicants for residential subdivision or land development approval for ten or fewer single-family residential units shall, concurrent with the submission of a final plan of subdivision or land development, submit and tender to the Township a fixed fee of \$1,000 for each of the proposed

dwelling units. All applicants for residential subdivision or land development approval of more than ten single-family residential units 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.

- (2) Such public recreation area shall provide adequate open space and recreation land and facilities in accordance with the standards herein set forth in Subsection (b) accessible to such subdivision or development.
 - (3) 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 use 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 Lower Gwynedd 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 to further disturbance, subdivision or construction of any building, structure or land development and that the document established and title to the same shall contain 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.
 - (4) All areas dedicated under the provisions of this section shall be consistent with the specific goals, objectives, plans and recommendations of the Township Comprehensive Plan and the Township Open Space, Parks and/or Recreation Plan (if any) and are to be in accordance with the definite principles and standards contained in this chapter.
 - (5) In lieu of land dedicated for recreation purposes, a fee may be paid, as hereinafter set forth in Subsection (c).
- (b) Standards for land dedication.
- (1) 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 Lower Gwynedd Township Parks and Recreation

Board and/or adopted by the Board of Supervisors of Lower Gwynedd Township.

- (2) 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, which land shall include, but not be limited to, areas within stormwater basins that could not be used for recreation.
- (3) 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.
- (4) 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 frontage or, subject to the sole discretion of the Board of Supervisors, suitable access, ingress and egress from a public roadway for maintenance purposes.
- (5) The land shall be contiguous and regular in shape, where possible and practical.
- (6) 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.
- (7) The land shall be located on soils suitable for use and development as a recreation area.
- (8) No more than 25% of the land shall have a slope in excess of 7%.
- (9) No more than 25% of the land shall be within floodplain, hydric soil overlay or wetland areas.
- (10) The land shall be accessible to all necessary utilities.
- (11) 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 Associations Recreation Park and Open Space Standards and Guidelines, 1983, as amended.
- (12) 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 Lower Gwynedd Board of Supervisors and the Township Park and Recreation Board for such uses and purposes.

- (13) 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 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 twenty-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.
 - (14) Except for rights-of-way or easements as hereinbefore provided in Subsection (b)(12) and (13) 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 acre, 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.
 - (15) 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.
 - (16) Required Amount of Dedicated Land. For all residential subdivisions or land developments consisting of greater than 10 units, the area or land required to be dedicated in accordance with this Section shall be 2,000 square feet (0.0459 acres) for each and every lot or dwelling unit.
- (c) Standards for fee in lieu of land dedication.
- (1) Subject to the discretion of the Board of Supervisors, payment of a fee in lieu of land dedication shall be required:

- A. Where land dedication would result in open space or recreation areas too small to be usable.
 - B. If the Township Comprehensive Plan or the Township Open Space, Parks and Recreation Plan (if any) recommends recreation land to be provided elsewhere.
 - C. If a suitable site for recreation cannot be located within the development.
- (2) If the payment of a fee in lieu is required by the Board of Supervisors, the applicant shall tender to the Township prior to or concurrent with final plan approval a fee in lieu of dedication in an amount equal to \$1,000 per proposed dwelling unit.
- (3) All fees paid in lieu of land dedication shall be used on for:
- A. The acquisition of land for parks, recreation areas, facilities, open space and trails or bikeways as component additions to the Lower Gwynedd Township system.
 - B. The construction of improvements on such land.
 - C. Costs incidental to such purposes, including, but not limited to, planning, engineering, design, administrative and legal fees, utility relocation or installation, construction of sewage or water facilities, vehicular and pedestrian access, signage and the purchase of park equipment and maintenance.
- (4) 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.
- (5) If the Township fails to use the fees collected from a particular applicant in accordance with this section within three 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 Lower Gwynedd Township with 45 days of the date of receipt.

- (d) Combination of land dedication and fees in lieu of land dedication.
 - (1) 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 Lower Gwynedd Township Open Space Park and Recreation Plan (if any) 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 Lower Gwynedd Township at its sole discretion.
 - (2) 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 article.

- (e) Decision of land dedication versus fees in lieu of land dedication.
 - (1) 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 with the preliminary plan approval.
 - (2) 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.
 - A. If the land in that location serves a valid public purpose.
 - B. If there is a need to make a reasonable addition to an existing park or recreation area.
 - C. If the land meets the objectives and requirements of this section.
 - D. 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.
 - E. 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 (if any).
 - F. 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 Wissahickon school district.

SECTION II - Severability

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION III - Failure to Enforce not a Waiver

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION IV - Effective Date

This Ordinance shall take effect and be in force from and after its approval as required by the law.

SECTION V - Repealer

All other ordinances and resolutions or parts thereof insofar as they are inconsistent with this Ordinance are hereby repealed.

ORDAINED AND ENACTED by the Board of Supervisors of Lower Gwynedd Township, Montgomery County, Pennsylvania, this ____ day of _____, 2018.

LOWER GWYNEDD TOWNSHIP

By: _____
Kathleen Hunsicker, Chair
Board of Supervisors

Attest: _____
Craig McAnally, Secretary

NOTICE

NOTICE is hereby given that the Board of Supervisors of Lower Gwynedd, at its public meeting on October 9th, 2018 in the Township Building, 1130 North Bethlehem Pike, Spring House, Pennsylvania, will hold a public hearing on and could vote to adopt an ordinance entitled "Park and Recreation Areas; Fee in Lieu of Dedication" amending the Codified Ordinances of Lower Gwynedd Township, Chapter 1230 (Subdivision and Land Development), Article VIII (Design Standards) to repeal existing Section 1230.53 (Standards for Park and Recreation Areas; Fee In Lieu of Dedication) and replace it with a new Section 1230.53 entitled "Standards for Park and Recreation Areas; Fee In Lieu of Dedication" to reestablish the Township's standards, regulations and requirements for the dedication of area and land for park and recreation purposes and the payment of fees-in-lieu thereof.

Copies of the proposed Ordinance is available for examination during normal business hours without charge at the offices of *The Reporter*, 307 Derstine Avenue, Lansdale, Pennsylvania, 19446, the Montgomery County Law Library, Court House, Norristown, Pennsylvania, 19401, and the Lower Gwynedd Township Building, 1130 North Bethlehem Pike, Spring House, Pennsylvania 19477 where a copy of the proposed Ordinance may be obtained for a charge not greater than the cost thereof.

**JAMES J. GARRITY, ESQUIRE
WISLER PEARLSTINE, LLP**

Solicitor for Lower Gwynedd Township