

**ARTICLE XXXVIII<sup>1</sup>*****Common Facility and Open Space Requirements and Controls in Planned Residential Developments and in Multi-Family Developments in Zoning Districts R-5, R-6 and R-7 in the Borough of Whitehall [Added 2-19-97 Ord. No. 861; renumbered 7-16-08 Ord. No. 1011]*****§ 180.139. Location of Open Space.**

Open space within a planned residential development or multi-family development in zoning district R-5, R-6 and R-7 shall be located so as to be consistent with the objectives set forth in the development application and, where possible, it shall be designed as a contiguous area easily accessible to owners and residents while preserving natural features.

**§ 180.140. Homeowner Association or Open Space Trust Required.**

In cases where the Borough will not be accepting dedications of streets, sidewalks, utilities, drainage facilities, recreation areas or open spaces or other common facilities, the developer shall provide for continuing maintenance of such common facilities and open spaces through a nonprofit homeowner's association, unless the developer demonstrates that a community open space trust is a more appropriate form of organization.

**§ 180.141. Regulations Governing Homeowners Associations or Trusts.**

When a Homeowners Association or Trust is formed pursuant to this Article, the following regulations shall govern:

180.141.1. The developer shall submit proposed rules and regulations describing the organization, powers, rights, duties and responsibilities of the Homeowners Association or Trust in regard to the ownership and continuing maintenance of common facilities and open space. This submission shall be approved by Borough Council prior to approval of the final application for planned residential redevelopment, subdivision or land development.

180.141.2. The Homeowners Association or Trust shall be fully organized and operating before the sale of any lots within the development shall be permitted.

180.141.3. The Homeowners Association or Trust will be perpetual and it will not have the power to dispose of any common facilities or open space in any matter whatsoever except to another organization or trust established to maintain such common facility or open space. Except, however, that common facilities or open spaces may be

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<sup>1</sup>This Article XXXVIII was previously numbered Article XXXVII; renumbered 7/16/08 by Ord. No. 1011.

dedicated to the Borough at a later date, subject to acceptance by Borough Council.

180.141.4. Membership in the Homeowners Association or Trust shall be mandatory for all owners of land and purchasers of homes within the development and this mandatory requirement shall be endorsed on any recorded deed.

180.141.5. The bylaws of the Homeowners Association or Trust shall provide for the members to share equitably the costs of maintaining and developing common facilities and open spaces including the hiring of adequate staff or the purchase of adequate services to administer the common facilities and open spaces including insurance and taxes thereon. In the event that the Homeowners Association or Trust established to own and maintain facilities in common open spaces, or any successor, shall at any time after establishment of the development fail to maintain the common facilities or open spaces in a reasonable order and condition in accordance with the development plan, the Borough may serve written notice upon such organization and upon the residents and owners of the development setting forth the manner in which the organization has failed to maintain the common facilities or open space in a reasonable condition and said notice shall include a demand that such deficiencies be cured within 30 days thereof. In the event that the deficiencies set forth in the original notice shall not be cured within said 30 days, the Borough may correct such deficiencies and lien the property owned by the Homeowners Association and the properties of each individual land or homeowner within the development on a pro rata basis.