ARTICLE XIII

RECREATIONAL FACILITIES AND OPEN SPACE

Section 15-196 Active Recreational Areas and Facilities Required (AMENDED 5/10/83; 4/24/84; 12/10/85; 10/22/13)

(a) Subject to subsection (d) and Sections 15-197 and 15-203, all residential developments shall provide active recreational areas and facilities to such an extent that the sum total of recreation points assigned to each recreational area and facility [under subsection (b)] equals or exceeds the number of recreation points required of that development in accordance with the remaining provisions of this section.

(b) For purposes of this section, a recreation point is a unit of measurement that allows various types of recreational areas and facilities to be compared to one another. As set forth more fully in Appendix G to this chapter, the principal criterion upon which recreation points are assigned to various facilities is the cost associated with the development of such facilities. The following table establishes the recreation points assignable to the facilities listed. Points for facilities not included in the table below shall be determined by the permit issuing authority by applying the methodology set forth in Appendix G.

TYPE FACILITY	POINTS/SQUARE FOOT	TYPICAL POINTS	SQUARE FEET
Swimming Pool	.463	356	(768)
Swimming Pool Patio	.020	6	(2820)
Tennis Court (1)	.034	245	(7200)
Tennis Court (2)	.028	403	(14400)
Tennis Court (4)	.025	720	(28800)
Basketball Court	.058	139	(2400)
Volleyball Court	.014	25	(1800)
Hiking/Biking Trail	.016	64	(4000)
Fitness Station	.022	9	(400)
Picnic Shelter	.148	37	(250)
Gazebo	.326	102	(314)
Clubhouse	.508	609	(1200)
Play Equipment	.107	136	(1275)
Slide	.514	8	(16)
Swing	.176	8	(48)
Climber	.160	8	(50)
Ladder	.108	5	(48)
Balance Beams	.075	3	(40)
Pullup Bars	.330	3	(8)
Seesaw	.076	6	(80)
Whirl	.333	9	(28)
Sandbox	.097	6	(64)
Baseball Field	.010	675	(67500)
Football/Soccer Field	.011	396	(36000)
Indoor Fitness Center	.81	810	(1000)

(c) The minimum total of recreation points required of any development shall equal the sum of the recreation points assigned to each type of dwelling unit or lot proposed for that development in accordance with the following (The methodology for determining the assignment of recreation points to residential type is set forth in Appendix G.):

TYPE OF RESIDENCE (By Use Classification)	POINTS PER DWELLING UNIT
1.100 Single Family detached	10.39
1.120 Includes mobile home parks	11.25
1.200 Two-family residences	10.39
1.300 Multi-family residences	
One Bedroom	5.94
Two Bedroom	9.47
Three or more Bedroom	11.81
1.34 Single-Room Occupancy	2.97

With respect to residential subdivisions other than architecturally integrated subdivisions, each lot that is large enough for only a single dwelling unit or that is limited by restrictive covenants to development only with a single dwelling unit shall be deemed to house one single-family detached dwelling unit. Subject to Section 15-197, lots that are large enough to accommodate more than one dwelling unit and are not so limited by restrictive covenants shall be deemed to house the largest number of two-bedroom multi-family units that could be approved under this chapter. **(AMENDED 10/10/00)**

(d) The Board recognizes that some developments will contain such a small number of dwelling units that the active recreational areas and facilities required pursuant to this section would be of minimal practical value and that maintenance of such areas for so small a development would likely prove problematic. Therefore, the following types of residential developments shall not be required to provide active recreational areas and facilities under this section but shall be required to pay to the town's open space and recreational facilities fund a fee in lieu thereof in accordance with Section 15-203 if the town determines that it will be feasible to provide active recreational areas and facilities on land that can reasonably be expected to serve the residents of such developments:

(1) Unsubdivided developments that are small enough so that the minimum amount of recreation points required of such developments is not more than 80. **(AMENDED 2/24/87)**

(2) Subdivided residential developments of less than fifteen dwelling units. (**AMENDED 06/27/95)**

(3) For purposes of this subsection, the term "development" refers to the entire project developed on a single tract or contiguous multiple tracts under common ownership or control, regardless of whether the development is constructed in phases or stages. **(AMENDED 2/24/87)**

(e) If the proposed development contains land subject to the provisions of 15-198(e), then a bike and pedestrian path that has the potential of connecting with similar type facilities on adjoining tracts that also have lands subject to the provisions of 15-198(e) shall be provided within this area, unless the permit issuing authority concludes that such a bike and pedestrian path would be environmentally undesirable or economically unfeasible. **(AMENDED 06/27/95)**

(f) Play equipment suitable for children under 12 should comprise at least 10% of the total required recreation points of single-family units and 5% of the points required of multi-family units in a development. Residential developments consisting of solely single-room occupancy units shall be exempt from the requirement to provide play equipment suitable for children. **(AMENDED ON 10/10/00)**

(g) Active recreational facilities and areas should be located throughout the development so that they can be reached safely and easily by their anticipated users. Such facilities and areas should be on land that is suitable for the intended use, have a minimum of 1200 square feet per area, and be sufficiently screened to minimize the impacts on adjacent residences.

(h) When the cost of the land associated with recreational facilities is included in calculating the recreational points for such facilities under this section, then such land may generally not also be credited toward the fulfillment of the mandatory open space requirements set forth under Section 15-198. Exceptions to this policy are as follows:

(1) Play fields, including without limitation baseball fields, soccer fields, and football fields;

(2) Bike and pedestrian paths constructed pursuant to subsection (e) of this section. (Only the area that is within the width of the dedicated easement for the bike and pedestrian area is subject to the double counting provision.)
(AMENDED 06/27/95)

(i) **(AMENDED 4/8/03; REPEALED 6/12/07)**

Section 15-197 Exception to Recreational Facilities and Open Space Requirements.

(a) If an application is submitted for a subdivision and the application does not also seek approval for the development of improvements to the subdivision (such as the extension of water and sewer facilities or the creation of public streets or private roads) or the construction of buildings or other substantial improvements on any lot so subdivided, then the Board (for a major subdivision) or the planning director (for a minor subdivision) may approve the subdivision without requiring the provision of active recreational areas and facilities (Section 15-196) or the provision of usable open space (Section 15-198) if the subdivision approval authority finds that the property is being subdivided for purposes other than the desire to accommodate a present plan to develop any of the lots so created in any manner other than the use as a single-family detached residence. **(AMENDED 10/08/96)**

(b) The requirements of this article shall not apply to the reconstruction or enlargement of pre-existing single-family residential dwelling units or to the reconstruction or renovation of pre-existing multi-family units, except to the extent that such reconstruction or renovation of multi-family residences increases the number of dwelling units or bedrooms within any such residential development. **(AMENDED 10/08/96)**

Section 15-198 Open Space (AMENDED 04/24/84; 03/26/85; 12/10/85; 11/11/86; REWRITTEN 06/27/95; 06/20/06; AMENDED 3/24/09; 3/23/10)

(a) The Board finds that when land is developed for residential purposes, the public health, safety, and welfare are best served when substantial portions of the tracts so developed remain as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:

(1) Preservation of open vistas, providing relief from an urban landscape;

(2) Preservation of environmentally sensitive lands;

(3) Preservation of habitat for wildlife;

(4) Preservation of historically or archaeologically significant areas;

(5) Provision of areas for passive recreation, such as walking or jogging.

(b) For purposes of this section:

(1) Open space refers to an area that:

a. Is not encumbered with any substantial structure;

b. Is not devoted to use as a roadway, parking area, or sidewalk;

c. Is not part of any privately owned lot that is used or intended for use for residential purposes.

d. Is legally and practicably accessible to the general public or to the residents of the development where the open space is located.

(2) Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:

a. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or

b. Are configured and/or improved (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.

(3) The following areas shall be regarded as open space if such areas satisfy at least the criteria set forth in Subdivision (1) a, b, and c of subsection (b) of this section:

a. Utility easements located outside of street rights of way;

b. Cemeteries located on a tract prior to its development.

c. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and such uses are approved by the homeowners association. **(AMENDED 05/25/99)**

(4) The term "primary conservation areas" shall mean: **(AMENDED 05/25/99; 6/20/99)**

a. Areas containing slopes greater than 25%

b. Hardwood areas as designated in the Geographic Information System (GIS) of the Town of Carrboro. **(AMENDED 3/24/09)**

c. Wetlands as defined pursuant to Section 404 of the Clean Water Act

d. Floodplains

e. Water quality buffers on perennial and intermittent streams. **(AMENDED 3/24/09)**

f. Lakes and ponds;

g. Road buffers as required by Section 15-312 of this Chapter, except for those portions of the buffers that must be included in road or utility crossings.

(5) The term "secondary conservation areas" shall mean: **(AMENDED 05/25/99)**

a. Areas containing slopes greater than 15% but not more than 25%;

b. Wooded areas other than hardwood areas as designated in the Geographic Information System (GIS) of the Town of Carrboro. **(AMENDED 3/23/10)**

c. Vistas along entranceways to the town;

d. Other areas containing unusual natural features (such as major rock formations);

e. With respect to streams designated on the adopted Stream Classification Map of the Town of Carrboro, those areas within an average perpendicular distance of sixty feet from the edge of the floodway of the stream, if the floodway is designated on the "Flood Boundary and Flood Map" prepared by the U.S. Department of Housing and Urban Development or sixty feet from the centerline of the stream where the floodway is not designated on the map.

f. Other environmentally, historically, or archaeologically significant or unique areas, including water quality buffers on ephemeral streams. **(AMENDED 3/24/09)**

(c) Except as otherwise provided in subsection (j) and Section 15-203, every residential development in zoning districts other than the R-2, ORMU, B-1(c), B-1(G), B-2, and CT zoning districts shall be developed so that at least forty percent (40 percent) of the total area of the development remains permanently in open space. Every residential development in the R-2 and ORMU district shall be developed so that at least twenty percent (20 percent) of the total area of the development remains permanently as open space. **(AMENDED 09/05/95; 06/20/06; 6/12/07)**

(d) Subject to subsection (g), every residential development containing at least 25 lots or dwelling units shall contain, as part of its required open space, one or more areas that are relatively flat, well drained, grassed, and otherwise well suited for use as a play field:

(1) Each such area shall contain a minimum of 20,000 square feet configured in such a manner as to be useful as a play field.

(2) Every development covered by this subsection shall set aside in one or more play fields meeting the criteria of this subsection a minimum of 400 square feet of area per lot or dwelling unit within the development.

(3) Play fields provided under this section shall be located with due regard for the safety and convenience of those using such facilities as well as the welfare of residents living nearby. The play fields required by this subsection shall be located such that 90% of the lots or dwelling units within any development that is required to install such play field are within 1,500 feet of a play field installed to meet the requirements of this

subsection, unless the developer demonstrates by clear and convincing evidence that adherence to this requirement would not be feasible.

(4) Play fields constructed to meet the requirements of this subsection may be used by the developer to satisfy the active recreational requirements set forth in Section 15-196 as well as the open space requirements of this section. However, the recreation points assigned to such play fields shall be based upon the actual cost of constructing such play fields, exclusive of land costs. **(AMENDED 05/25/99)**

(5) Notwithstanding the foregoing, the playfield requirement will not apply to residential mixed use developments located within the OR-MU zoning district. **(AMENDED 6/20/06)**

(e) Subject to subsection (g), if a tract where a residential development is proposed contains any areas defined above as primary conservation areas, then such areas shall be designated as open space. **(AMENDED 05/25/99)**

(f) **RESERVED (AMENDED 05/25/99)**

(g) A developer shall not be required to set aside as open space under the provisions of subsections (d) and (e) more than the minimum required percentage of open space set forth in subsection (c). If the sum total of open space otherwise required under the provisions of subsections (d) and (e) exceeds forty percent of the development tract (twenty percent in the R-2 district), then the permit issuing authority shall allow the developer to set aside a smaller area of open space under subsections (d) and (e), individually or collectively, so that the developer is not required to preserve as open space more than forty percent of the development tract (twenty percent in the R-2 district). However, if areas that constitute primary conservation areas have not been set aside as open space, then the development plans shall otherwise provide for the preservation of such areas even though they may be located within privately owned lots (e.g. by specifying buildable areas within individual lots). Notwithstanding the foregoing, hardwood areas identified in the Geographic Information System (GIS) of the Town of Carrboro that are not set aside as common open space shall be preserved except to the extent that removal of such hardwood trees is necessary to accommodate the permitted uses created out of land not set aside as common open space. ((**AMENDED 09/05/95; 05/25/99; 3/23/10)**

(h) If the area of open space required to be preserved under subsections (d) and (e) does not exceed forty percent (40%) of the area of the development tract (20% in the R-2 district), then the permit issuing authority may require that the developer set aside from among the areas that constitute secondary conservation areas as defined above an amount of open space equal to the difference between the amount of open space preserved under subsections (d) and (e) and forty percent (40%) of the development tract (20% in the R-2 district). **(AMENDED 09/05/95; 05/25/99)**

(i) Except as otherwise set forth in this section, the choice as to the areas to be set aside as open space shall remain with the developer.

(j) Subdivided residential developments of less than fifteen dwelling units are exempt from the requirements of this section unless the town agrees that it will accept an offer of dedication of such open space, and in that case the offer of dedication shall be made. Subdivided residential developments exempted by this subsection from the requirement of providing usable open space shall be required to make a payment in lieu thereof to the town's open space and recreational facilities fund in accordance with Section 15-203 if the town determines that it will be possible to provide usable open space areas that are reasonably expected to benefit or serve the residents of such developments. For purposes of this subsection, the term "developments" shall have the same meaning as is set forth in subsection 15-196(d)(3).

(k) Residential developments consisting solely of multi-family, single-room occupancy units (1.340) shall be exempt from the requirements of this section. **(AMENDED 01/11/00)**

Section 15-199 Ownership and Maintenance of Recreational Facilities and Open Space Not Dedicated to the Town (REWRITTEN 06/27/95)

(a) Unless the town requires that recreational facilities or open space be dedicated to the town or agrees to accept an offer of dedication voluntarily made by the developer, such recreational facilities and open space shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization that satisfies the criteria established in Section 15-201. If such recreational facilities and open space are not publicly dedicated, they shall be made available to all residents of the development under reasonable rules and regulations established to encourage and govern the use of such facilities and open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowners' association. Such facilities and open space may be made available to a limited extent on a fee basis to persons who are not residents of the development where such facilities or open space are located, so long as such use does not become so extensive as to remove the facilities and open space from the category of an accessory use to a residential development and transform the use to a separate principal use classification (see use classification 6.000) under the Table of Permissible Uses.

(b) The person or entity identified in subsection (a) as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

Section 15-200 Dedication of Open Space (AMENDED 11/26/85; REWRITTEN 06/27/95; REPEALED 09/05/95)

Section 15-201 Homeowners' Association (AMENDED 11/26/85)

Homeowners' associations or similar legal entities that, pursuant to Section 15-199, are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

(1) Provisions for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;

(2) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;

(3) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities; and

(4) The association will establish a capital fund for the maintenance and upkeep of common areas and facilities and a method of contributing to that fund which will spread the costs of said maintenance and upkeep to the residents over a number of years. **(AMENDED 11/26/85)**

Section 15-202 Flexibility in Administration Authorized.

(a) The requirements set forth in this article concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with residential developments are established by the Board as standards that presumptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted town plans. The Board recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit issuing body is authorized to permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

(b) Whenever the permit issuing board authorizes some deviation from the standards set forth in this article pursuant to subsection (a), the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

Section 15-203 Fees in Lieu of Active Recreational Areas and Facilities or Usable Open Space.

(a) When the permit-issuing authority determines (upon the recommendation of the recreation director) that the recreational needs of a development required by Section 15-196 to construct active recreational areas and facilities could also be adequately met by facilities constructed on town property that is located close enough to such development to reasonably serve its residents, the town may authorize the developer to pay a fee to the town's open space and recreational facilities fund in lieu of providing on-site facilities. For purposes of this subsection, "town property" means property that is owned by the town or that the town has made plans to acquire within a reasonable time. **(AMENDED 2/20/90)**

(b) With respect to residential developments that are exempt from the requirement of providing on-site active recreational areas and facilities under Subsection 15-196(d) or exempt from the requirement of providing usable open space under Subsection 15-198(j) and that choose not to provide such facilities or open space, the town shall accept and the developer shall pay a fee to the town's open space and recreational facilities fund if the permit-issuing authority determines that the town has acquired or has made plans to acquire within a reasonable time the necessary land to provide usable open space or a site for recreational facilities that can be expected to benefit or serve such developments.

(c) The minimum amount of the fee paid under this section in lieu of active recreational areas and facilities shall be determined by multiplying the amount of recreation points that would otherwise be required of the development under Section 15-196 by the dollar value per point established in the town's miscellaneous fees and charges schedule. However, nothing herein shall prevent a developer from paying a fee that exceeds the minimum fee established pursuant to this subsection, and the town's willingness to allow a payment of fees in lieu of on-site provisions of facilities or open space under subsection (a) may depend upon the developer's agreement to pay fees in excess of the minimum.

(d) The minimum amount of the fee paid under this section in lieu of usable open space shall be determined by multiplying the square footage of open space that would otherwise be required of the development under Subsection 15-198(c) by the dollar value per square foot established in the town's miscellaneous fees and charges schedule.

(e) With respect to any development that is authorized or required by this section to pay a fee in lieu of providing recreational facilities or usable open space, no use may be commenced, lot sold, or building occupied unless the fee has been paid. If a development is intended to be sold or occupied on a phase-by-phase basis, payment of the fee relating to each phase must first be made.

Section 15-204 Downtown Livability Area and Urban Amenities Provisions

(a) The Board concludes that when land is developed substantially for residential purposes in the downtown, defined for purposes of this section as those areas zoned B-1(G), B-1(c), B-2, or CT, the public health, safety, and welfare are best served when portions of such properties are developed as "downtown livability areas" and improved with "urban amenities" as those terms are used in this section. The development of such properties in this way may serve some or all of the following important objectives, to the benefit of downtown business owners, shoppers, workers, pedestrians, and residents, as well as the general public:

(1) provide relief from the high-density built environment (for example by mitigating urban temperature, pollution, glare);

(2) enhance the pedestrian experience;

(3) promote walking and biking in the downtown area;

(4) decrease stormwater runoff;

(5) provide food or habitat for wildlife;

(6) provide opportunities for artistic expression or the enjoyment of the same;

(7) provide opportunities for social gathering.

(b) For purposes of this section, "downtown livability area" (DLA) refers to an outdoor area that (i) is not devoted to use as a roadway, parking area, required sidewalk, or required shade tree islands in parking lots; (ii) is legally and practically accessible to all of the residents, occupants, tenants, and owners of the property to which the DLA appertains (except that balconies and roof areas developed as DLA with or without urban amenities need not be so accessible); (iii) is not encumbered with any substantial structure other than an urban amenity; and (iv) with or without the improvement of an urban amenity, achieves one or more of the objectives set forth in subsection (a) of this section. An "outdoor area" means an area that is either not under roof or, if under roof, is permanently open to the outdoors on at least 50 percent of the circumference of such area. A "green roof" means a roof of a building or structure (or portion thereof) that is covered with vegetation and soil, or a growing medium, planted over a waterproofing membrane.

(c) For purposes of this section, "urban amenities" refers to improvements that (i) are located or constructed within downtown livability areas, and (ii) are designed, installed, and maintained to achieve one or more of the objectives set forth in subsection (a) of this section, together with any improvements necessary to support the function or safety of or provide access to such amenities. Urban amenities include but shall not be limited to the following: water features (reflecting pools, fountains); special visual or environmental exterior features incorporated into building architecture, public art; historic markers, features, or places; shade-producing street trees; outdoor furniture for seating, playing games, or picnicking; arbors, trellises, or pergolas with live plants; balcony plantings; birdfeeders, birdhouses, and birdbaths; widened sidewalks; covered bike racks; garden perimeter walls low and wide enough to accommodate sitting and lounging; green roofs.

(d) For downtown developments in which 25 percent or more of the gross floor area is for residential use only, the downtown livability area and urban amenities requirements are as follows:

(1) The site shall be developed so that an area (measured in square feet) equal to at least 12 percent of the total land area remains permanently as downtown livability area, provided that:

a. DLA can be reduced to 10 percent of the land area if the DLA is substantially landscaped with grass, vegetative ground cover, plants, shrubs, bushes, or other vegetative landscaping and that is shaded to the extent of at least 35 percent of such area at noon on June 21st by building, awnings, pergolas, other structures, or shade trees, constructed or planted within or adjacent to such DLA.

For purposes of this subsection a "shade tree" means a tree whose height at maturity can be expected to exceed 20 feet, and of a species, according to its shape, size, and leaf size, that can be expected to provide shade during the growing season. (Please refer to LUO Appendix E, page E-13, "Trees for Shading" for examples of appropriate tree species for provision of shade.)

b. DLA can be reduced to 10 percent of the land area if it is legally, practically, and visually accessible to the general public.

c. The DLA can be reduced to 7 percent of the land area if it meets both the criteria set forth in (d)(1)b and (d)(1)c.

(2) The dollar value of the urban amenities to be installed within the downtown livability area shall equal an amount to **7** percent of the assessed value of the land that constitutes the development site, determined as of the date the development permit is approved**.**

When a development that is subject to this requirement contains a residential component, and the developer either provides recreation facilities or makes a payment in lieu to satisfy the requirements of this article, then such developer shall receive a credit toward the fulfillment of such developer's urban amenities obligation, if the amenities are publicly accessible**,** in the amount of 50 percent of the dollar value of the recreational facilities installed (determined by multiplying the recreational points associated with the facilities installed by the dollar value of such points as set forth in the town's miscellaneous fees and charges schedule) or the dollars paid in lieu of installing facilities.

(e) Notwithstanding the foregoing, when property is developed pursuant to Section 15-160.1(b) the dollar value of urban amenities, required by Subsection 15-204(d)(2) may be reduced to 3.5 percent of the assessed value of the land that constitutes the development site. **(Amended 06/02/20)**

(f) The dollar value of the urban amenities shall be determined in the permit review process. The developer shall submit sufficiently detailed information as to the particular amenities to be installed and the cost of such amenities to allow the permit issuing authority to determine whether the requirements of this section will be satisfied.

(g) The requirements of this section shall not apply to permits issued for single-family or two-family dwellings or to those developments described in Section 15-197 of this article.

(h) The requirements of this section shall not apply to previously developed lots if the developer demonstrates to the reasonable satisfaction of the permit issuing authority that the cost of the work proposed under the new permit is less than 50 percent of the assessed value of the improvements already on the lot when the applications for the new permit is filed.

(i) For the purposes of this section, the term "development site" shall mean the lot where the development occurs, except that if less than 50 percent of such lot is proposed to be the subject of improvements authorized under the requested permit (including the construction of buildings, parking, landscaping, and/or significant improvements), then the term "development site" shall refer just to the portion of such lot where the improvements authorized by the permit are to be constructed.

Section 15-205_Fees in Lieu of Downtown Livability Area and Urban Amenities

(a) When the permit-issuing authority determines that it is physically impossible or impracticable for a development to satisfy the downtown livability area and urban amenities requirements of Section 15-204, then the permit-issuing authority may authorize the developer to pay a fee to the town's downtown livability area and urban amenities fund in lieu of complying with such requirements. The permit authority may allow such a payment in lieu only if it concludes that the objectives set forth in Subsection 15-204(a) could also be adequately met by having the town construct urban amenities on town property that is located within the downtown area. For purposes of this subsection, "town property" means property that is owned by the town or that the town has made plans to acquire within a reasonable time.

(b) The amount of the fee paid under this section in lieu of downtown livability area shall be equal to the product of the number of normally required square footage of DLA that is not being provided times the per square foot assessed value of the lot on which such development is proposed. The amount of the fee paid under this section in lieu of urban amenities shall be determined as follows: the dollar amount of urban amenities that would otherwise be required to be constructed on the development site in accordance with the provisions of Section 15-204 shall be calculated, and from this amount shall be subtracted the dollar amount of urban amenities (if any) that are placed on the development site within any downtown livability areas that are provided.

(c) With respect to any development that is authorized to pay a fee in lieu of providing downtown livability area or urban amenities, no use may be commenced, lot sold, or building occupied unless the fee has been paid. If a development is intended to be sold or occupied on a phase-by-phase basis, payment of the fee relating to each phase must first be made.

Section 15-206 Ownership and Maintenance of Downtown Livability Areas and Urban Amenities

(a) Downtown livability areas and urban amenities provided in accordance with Section 15-204 shall remain under the ownership and control of the developer (or his successor) or a property owners' association or similar organization that satisfies the criteria established in Section 15-201. Such downtown livability areas and urban amenities shall be made available to all owners, residents, occupants, and tenants of the development under reasonable rules and regulations established to encourage and govern the use of such downtown livability areas and urban amenities by the users without payment of separate optional fees or charges other than membership fees in a property owners' association.

(b) The person or entity identified in subsection (a) as having the right of ownership and control over such downtown livability areas and urban amenities shall be responsible for the continuing upkeep and proper maintenance of the same.

Sections 15-207 through 15-209 Reserved.