

**ARTICLE XIII  
RECREATIONAL FACILITIES AND OPEN SPACE**

**Section 196 Recreation and Open Space Requirements.**

The Town Board declares the purposes and intent of the recreational and open space regulations adopted and prescribed in this Section to be as follows:

- (a) To provide adequate active recreational areas and passive open space;
- (b) To encourage the preservation of existing trees and vegetation;
- (c) To encourage the retention of environmentally fragile areas;
- (d) To encourage the protection of air and water quality;
- (e) To enhance flood control; and
- (f) To provide higher quality development.

**Section 197 Minimum Public Recreational Space Requirements**

(a) The subdivider of land for residential purposes shall be required to dedicate a portion of land or pay a fee in lieu thereof for public recreational development to serve the needs of the residents of the subdivision or development. The decision to accept a land dedication or an in lieu of fee rests solely with the Town Board.

(b) All residential subdivisions of 6 or more lots shall provide, through reservation or dedication, recreational space as required in subsection (c) or pay a fee in lieu thereof in accordance with the provisions of subsection (g). The requirements of Section 197 shall be applicable to each of the following types of residential development:

- (1) Traditional detached single-family, attached single-family, two-family, and manufactured home subdivisions.
- (2) Residential cluster developments.
- (3) Townhouse developments.
- (4) Patio home developments.
- (5) Condominium developments.
- (6) Individual residential components of a Planned Unit Development or a Traditional Neighborhood Development that include the subdivision of property for sale to individual owners.
- (7) Subdivided developments that include live/work combination dwellings.

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(c) At least 1/35 of an acre shall be dedicated or reserved for each dwelling unit proposed in the subdivision plat or development plan, except that any land to be dedicated that lies within a Flood Hazard Area or that has slopes greater than 15 percent shall be dedicated at a rate of at least 1/20 of an acre per dwelling unit.

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The following example illustrates the practical application of this formula for a proposed 25-lot single-family subdivision where the average acreage per lot equals one-third acre:

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<b>Formula</b>	<b>Example</b>
Total number of proposed dwellings	25 dwellings
<i>multiplied by</i>	<i>X</i>
0.0285714 acres per dwelling	1,244.57 square feet
<i>equals</i>	<i>equals</i>
Public recreational area required	31,114.25 square feet or 0.71-acre

*In this example, a proposed 25-lot residential subdivision would be required to provide a minimum 0.71-acre of public recreational space.*

(c) Multifamily and two-family residential developments do not have to comply with the recreational dedication requirements of Section 197 unless the dwelling units are constructed for the purpose of sale to individual owners. Multifamily developments and two-family developments that do not include dwelling units for sale to individual owners shall provide private recreational space in accordance with Sections 198, (c) and (d), respectively.

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(d) Manufactured home parks shall provide private recreational space in accordance with Section 198 (c).

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(e) The criteria for evaluating the suitability of proposed recreational areas shall include, but not be limited to, the following as determined by the Town Board in consultation with the Director of the Wingate Recreation and Parks Department.

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(1) Unity. The dedicated land shall be a single parcel except where it is determined that two or more parcels would be in the public interest. The

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Town Board may require that the parcels be connected and may also require a path at least thirty feet in width in addition to the land requirement.

(2) Location. The dedicated land shall be located so as to serve the recreation needs of the immediate neighborhood within the subdivision.

(3) Physical Characteristics. The shape, topography and subsoils of the dedicated land shall be such as to be suitable for the intended use.

(4) Accessibility. Public access to the dedicated land shall be provided either by an abutting street or public easement. Such public easement shall be at least thirty feet in width.

(f) Fees in lieu of dedication. In lieu of the dedication of land as required in subsection (c) above, a developer may provide funds in the amount of the assessed value of the land required to be dedicated to the Town of Wingate. The assessed value shall be the current value of the land as assessed for property tax purposes. The Town may use the funds to purchase recreational land or areas to serve the subdivision or development in the immediate area. This may be done in lieu of providing the land required in subsection (c) above if so approved by the Town Board. If the Town Board determines that a combination dedication and partial payment in lieu of dedication is in the best interest of the citizens of the area to be served, such an arrangement is authorized.

(g) Fees in lieu of dedication shall be paid by the subdivider prior to final plat approval or as otherwise approved by the Town Board.

(h) The Town of Wingate planning and zoning jurisdictional area shall be divided into recreational districts for the purpose of distributing funds that are collected from the cash-in-lieu-of-land payments. These funds shall be spent only on capital improvements to Town-owned recreational facilities. The expenditure of recreation funds paid by the subdivider to the Town in lieu of the dedication of land shall be determined by the Town Board

(i) The Town Board may, in cases of an unusual or exceptional nature, allow adjustments in the dedication requirements established in this Section. Such adjustments shall be reviewed by the Director of the Wingate Recreation and Parks Department and the Town Board. An unusual or exceptional nature may include, but not be limited to, land within the development set aside for private recreation or proposed expenditures for recreational facilities or equipment.

(j) The dedication of public recreational land shall be reviewed as part of the preliminary plat review process. The subdivider shall designate on the preliminary subdivision plat the area or areas of land proposed to be dedicated. Upon receipt of the preliminary plat, the Director of the Wingate Recreation and Parks Department shall

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review the proposed dedication and shall forward a recommendation as to the acceptance or rejection of the proposed dedication to the Town Board.

(l) The Town Board shall have the authority to accept or reject offers for land dedications made as a requirement of this Section. Land proposed by the developer as public recreational space on a subdivision plat shall be considered to be offered for dedication until such offer is officially accepted by the Town Board. The offer may be accepted by the Town through:

(1) Written acceptance by the Town Board; or

(2) Written acceptance by an administrative officer designated by the Town Board.

(m) If the land required for donation in a particular section of a subdivision exceeds the requirement in subsection (c) above, the difference may be applied to future sections or to any private open space requirements as delineated in Section 199.

(n) At the subdivider's request, the Town Board may accept a land dedication located elsewhere in the town's jurisdiction in lieu of a land dedication at the site of the proposed development.

(o) After offered land dedications are officially accepted by the Town Board, an executed general warranty deed conveying the dedicated land to the Town of Wingate and a reproducible and electronic copy of a boundary survey shall be submitted to the Town Manager no later than two years after the approval of the preliminary subdivision plat or by the time that 50 percent of the certificates of occupancy have been issued, whichever is earlier. The Town Board may grant an extension of time after the initial two years following subdivision plat approval has elapsed.

(p) Recreational space that is accepted by the Town Board for public dedication shall be identified on the recorded subdivision plat.

### **Section 198 Minimum Private Recreational Space Requirements**

(a) The developer of manufactured home parks and two-family and multifamily developments that include the construction of dwelling units not intended for sale to individual owners shall be required to reserve a portion of land for private recreational development to serve the needs of the residents of the development. The purpose of this requirement is to ensure that unsubdivided residential developments provide adequate active recreational facilities to serve the residents of the development.

(b) The following are illustrative of the types of facilities that shall be deemed to serve active recreational needs and therefore count toward compliance with the private recreational space requirements of this Section: tennis courts, racquetball courts,

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swimming pools, sauna and exercise rooms, meeting or activity rooms with clubhouses, swings, slides, and play apparatus. Each development shall install the types of recreational facilities and equipment that are most likely to be suited to and used by the age bracket of persons likely to reside in the development. Facilities and equipment for active recreation shall be indicated on the site plan provided by the developer and shall be reviewed by the Director of the Wingate Recreation and Parks Department. The Recreation Director shall forward a recommendation as to the adequacy of the proposed recreational facilities and equipment to the Town Board.

(c) The developer of each manufactured home park and multifamily residential development that includes dwelling units that are not constructed for the purpose of sale to individual owners shall reserve a minimum of 750 square feet of active recreational space per mobile home space or dwelling unit.

(d) The developer of each two-family residential development that includes dwelling units that are not constructed for the purpose of sale to individual owners shall reserve the amount of active recreational space as indicated in the following table; (Note: coordinate the zoning district column of each table below with the Table of Permitted Uses)

<u>Zoning District</u>	<u>Minimum Amount of Private Active Recreational Space</u>
<u>RA40</u>	<u>1,500 square feet per duplex structure</u>
	<u>1,500 square feet per duplex structure</u>
	<u>1,500 square feet per duplex structure</u>

(e) The owner of the development shall be responsible for the continuing upkeep and proper maintenance of the private, active recreational space required by this Section.

**Section 199 Private Common Open Space Requirements for Residential Developments**

(a) Private, common open space shall be required for residential developments where higher residential densities and/or smaller lot sizes than base zoning for the zoning district in which located are allowed. This requirement shall apply to each of the following types of residential development:

- (1) Multifamily and two-family (duplex) developments that include dwelling units that are not constructed for the purpose of sale to individual owners.
- (2) Manufactured home park parks.
- (3) Condominium and townhouse developments.

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(4) Patio home developments.

(5) Residential cluster developments.

(6) Planned Unit Developments and Traditional Neighborhood Developments.

(7) Live/work combination dwellings.

Private, common open space shall be provided in addition to any public or private recreational space requirements required by Sections 197 and 198.

(b) Common open space may be passive or active and shall be owned and maintained by the property owner, a property owners association, or approved private, non-profit organization as authorized in Section 200 (a).

(c) Multifamily development. The developer of each multifamily residential development that includes dwelling units that are not constructed for the purpose of sale to individual owners shall reserve the amount of open space as indicated in the following table:

<u>Zoning District</u>	<u>Minimum Amount of Required Open Space</u>
<u>RA40</u>	<u>1,000 square feet per dwelling unit</u>
	<u>1,000 square feet per dwelling unit</u>
	<u>1,000 square feet per dwelling unit</u>

(d) Duplex development. The developer of each two family development that includes dwelling units that are not constructed for the purpose of sale to individual owners shall reserve the amount of open space as indicated in the following table:

<u>Zoning District</u>	<u>Minimum Amount of Required Open Space</u>
<u>RA40</u>	<u>2,490 square feet per duplex structure</u>
	<u>2,000 square feet per duplex structure</u>
	<u>1,500 square feet per duplex structure</u>

(e) Manufactured home park. The developer of each manufactured home park shall reserve the amount of open space as indicated in the following table:

<u>Zoning District</u>	<u>Minimum Amount of Required Open Space</u>
<u>R8</u>	<u>1,500 square feet per manufacture home space</u>

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(f) Condominium and townhouse development. The developer of each condominium or townhouse development shall reserve the amount of open space as indicated in the following table:

Zoning District	Minimum Amount of Required Open Space
	500 square feet per dwelling unit
	500 square feet per dwelling unit

(g) Patio home development. The developer of each patio home development shall reserve the amount of open space as indicated in the following table:

Zoning District	Minimum Amount of Required Open Space
RA40	500 square feet per dwelling unit
	500 square feet per dwelling unit

(h) Residential cluster development. The developer of each residential cluster development shall reserve open space as follows:

- (1) The minimum amount of open space shall equal the amount of lot area by which all dwelling unit lots are reduced below the base zoning for single-family detached residential units for the zoning district in which located.
- (2) For example, a proposed residential cluster development in the R-20 zoning district includes minimum lot sizes of 15,000 square feet which is the maximum allowable reduction in individual lot sizes. The base minimum lot size for a single-family unit in R-20 is 20,000 square feet. Consequently, the 5,000 square feet of lot area resulting from the reduced lot size shall be set aside for common open space. The application of this open space requirement for a 10-acre residential cluster development in an R-20 zoning district is illustrated below;

**Example of Minimum Open Space Required for a Residential Cluster Development Located in an R-20 Zoning District**

<u>Development acres</u>	<u>10</u>	<u>acres</u>
<u>Base density for single-family residential units</u>	<u>2.2</u>	<u>du/ac</u>
<u>Base maximum # single-family residential units</u>	<u>22</u>	<u>max. du</u>

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<u>Base minimum lot area per single-family residential unit</u>	<u>20,000</u>	<u>sq. feet</u>
<u>Total base minimum single-family residential lot area</u>	<u>440,000</u>	<u>sq. feet</u>
<u>Residential cluster minimum lot area per unit</u>	<u>15,000</u>	<u>sq. feet</u>
<u>Total residential cluster minimum lot area</u>	<u>330,000</u>	<u>sq. feet</u>
<u>Difference in minimum lot areas</u>	<u>110,000</u>	<u>sq. feet</u>
<u>Common open space acres to be dedicated</u>	<u>2.53</u>	<u>acres</u>

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(i) Live/work development. The developer of each live/work combination dwelling unit which is located within a R-8, R-6, B-3, or B-6 zoning district shall reserve the amount of open space as indicated in the following table:

<u>Zoning District</u>	<u>Minimum Amount of Required Open Space</u>
<u>R-8</u>	<u>500 square feet per dwelling unit</u>
<u>R-6</u>	<u>500 square feet per dwelling unit</u>
<u>B-3</u>	<u>500 square feet per dwelling unit</u>
<u>B-6</u>	<u>500 square feet per dwelling unit</u>

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There is no minimum open space requirement for live/work combination dwelling units located within a B-1, B-2, or HC zoning districts.

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(j) PUD and TND development. The developer of each residential component (i.e., multifamily, condominiums, patio homes, etc.) of a planned unit development or traditional neighborhood development shall reserve open space as required above for that specific type of residential development. The nonresidential components of each planned unit development or traditional neighborhood development shall reserve open space equal to a minimum of 15 percent of the gross land area of the nonresidential portion of the development. Multi-family development in PUDs located in the B-1, B-2, or B-3 zoning districts shall comply with the open space standards for the R-6 zoning district.

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(k) For purposes of Section 199, open space means an area that:

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- (1) Is not encumbered with any structure unless such structure is intended for recreational purposes and is accessible to all residents of the development or general public;
- (2) Is not contained within a street right-of-way or otherwise devoted to use as a roadway or parking area not associated with the use of the open space;
- (3) Is left in its natural or undisturbed state (as of the date development began), if wooded (except for the cutting of trails for walking or jogging) or, if not wooded at the time of development, is landscaped for ballfields, picnic areas, play areas, or similar recreational facilities, or is properly vegetated and landscaped with the objective of creating a wooded area or other area that is consistent with the objective set forth in subsection 4 below;
- (4) Is capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation;
- (5) Is legally and practicably accessible to the residents of the development out of which the required open space is taken, or to the public if dedication of the open space is proposed pursuant to Section 200 (c); and
- (6) Is not encumbered by underground private septic lines, any part of a private sewage disposal system, or any above-ground or below-ground structure.
- (l) All floodplains, wetlands, streams, riparian buffers, ponds, lakes, and other water bodies shall be contained in common open space.
- (m) Open space shall be shown on the site plan with a notation to indicate that the open space shall not be used for future structures except as allowed per subsection (k) (1) above.
- (n) The following shall not be counted towards open space areas:
  - (1) Private yards and building setback areas;
  - (2) Public or private streets or street rights-of-way;
  - (3) Parking areas and driveways for dwellings; and
  - (4) Land covered by structures except as allowed per subsection (k) (1) above.
- (o) Buffer areas required by Article XIX, Screening and Trees may be counted towards private open space areas.

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**Section 200 Ownership and Maintenance of Required Private Open Space**

(a) Common open space required by Section 199 shall not be dedicated to the public except upon the written acceptance of the Town of Wingate pursuant to subsection (c) below but shall remain under the ownership and control of the developer (or successor in title) or a Property Owners' Association or similar organization established pursuant to Section 68, Owners' Associations. As an alternative to a Property Owners' Association, a private non-profit organization, such as a private land trust, whose primary purpose is the preservation or conservation of open space may own and manage the proposed open space.

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

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(c) The Town Board shall have the authority to accept or reject offers for land dedications made as a requirement of Section 199. Land proposed by the developer as public open space on a site plan shall be considered to be offered for dedication until such offer is officially accepted by the Town Board. The offer may be accepted by the Town through:

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(1) Written acceptance by the Town Board; or

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(2) Written acceptance by an administrative officer designated by the Town Board.

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Until such dedication has been accepted, land so offered may be used for open space purposes by the property owner or by a property owners' association. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use. The property owner shall be responsible for the maintenance of all facilities and improvements until an offer of dedication is accepted by the Town of Wingate .

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**Section 201 Flexibility in Administration Authorized**

(a) The requirements set forth in Sections 197 through 199 concerning the amount, size, location and nature of open space and recreational space to be provided in connection with residential developments are established by the Town Board as standards that presumptively will result in the provision of that amount of open space and recreational space that is consistent with generally recognized standards relating to the need for such areas. The Town Board recognizes, however, that due to the particular nature of a tract of land, or the particular type or configuration of development proposed, or other factors, the underlying objectives of the recreational and open space requirements may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit-issuing board is authorized to permit minor deviations from these standards whenever it determines

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that (1) the objectives underlying these standards can be met without strict adherence to them and (2) because of peculiarities in the developer's tract of land or the particular type or configuration of the development 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 Sections 197 through 199 pursuant to subsection (a) above, the official record of action taken on the development application shall contain a detailed statement of the reasons for allowing the deviation.

Section 202-208 Reserved.

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