

## 7.6 OPEN SPACE

### 7.6.1 Requirements

- A. Every Subdivider of land for residential purposes shall dedicate a portion of such land, as set forth herein, for the purpose of providing, active and passive recreation areas to serve the residents of the immediate neighborhood within the subdivision.
- B. Open Space Areas Can Be Defined By Active Or Passive Open Space As Follows:
- 1) Active Open Space consists of areas such as park land chosen without regard to natural features for the explicit purposes of enhancing design, such as village commons, or providing space for outdoor recreation activities which may include, but not be limited to, **cluster boxes**, tennis courts, ball fields, swimming pools, and tot lots with play equipment.
  - 2) Passive Open Space areas must consist of undisturbed, unique and sensitive natural features when available, that may include streams, floodplains, wetlands (excluding tidal marsh) conservation resources, and natural heritage areas if identified. These natural spaces will be characterized by undisturbed soils and natural vegetative cover for wildlife habitat. Passive Open space may become part of designated County greenways. Amenities such as walking paths, piers, picnic areas and other passive recreational uses will be allowed with minimal disturbance of the vegetation.
- C. Required Open Space: All new residential subdivisions shall provide open space in the amount of 0.03 acres per dwelling unit within the subdivision. No more than 50% of the required open space shall be designated as passive open space. 50% or more of the required open space shall be designated as active open space.
- D. Exemptions to Open Space
- 1) Density calculations of a development that is one unit per acre or greater in the RP and RA Zoning Districts.
  - 2) Developments consisting of 10 units or less.
- E. Standards for Park, Recreation and Open Space Areas: Except as otherwise approved by the Planning Board, all park, recreation and open space areas shall meet the following criteria:
- 1) Unity: The dedicated land shall form a single parcel of land, whether or not the subdivision is developed in phases or sections, except where it is determined by the appropriate governing body, that 2 or more parcels would be in the best interests of the residents of the subdivision and the public; and in such case, the appropriate governing body, may require that such parcels be connected.
  - 2) Shape: The portion of dedicated land to be used for active recreation shall be of such a shape to be usable for active recreational facilities including but not limited to tennis courts, racquetball courts, swimming pools, exercise rooms, clubhouses, athletic fields, basketball courts, swings, slides and play apparatus.
  - 3) Greenways: If open space is a greenway, the land shall be a continuous linear parcel through the subdivision of at least 30 feet in width.
  - 4) Location: The dedicated land shall be located so as to reasonably serve the recreation and open space needs of residents of the immediate neighborhood within the

subdivision for which the land dedication is made and can be combined with an adjacent park.

- 5) Access: All dwelling units in the subdivision shall have suitable, safe, and convenient ingress and egress to and from the park, recreation and open space areas provided within the development by means of improved streets or dedicated walkways. Rights-of-way for such access shall be shown on the preliminary plans and final plats.
- 6) Required Stormwater Detention/Retention Facilities: Required stormwater detention/retention facilities shall not be accepted to fulfill the requirements set forth by this Section. However, the County may allow significant natural water bodies (SNW's) such as lakes and streams to be counted as qualifying active open space provided that public ancillary features such as docks, piers, launching facilities, or paddle trails, or other aquatic amenities are provided. Such facilities shall be reviewed and approved by appropriate state agencies and the Planning Board at the time of Master Plan approval.
- 7) Landscaping: Park, recreation and open space areas which include amenities such as tennis courts, racquetball courts, swimming pools, exercise rooms, clubhouses, athletic fields, basketball courts, swings, cluster boxes, etc. shall be landscaped and shall be provided with sufficient natural or manmade screening or buffer areas to minimize any negative impacts upon adjacent residences
- 8) Encroachments: The park, recreation and open space areas required by this Article shall exclude roadways, parking areas and other accessory uses except for areas associated with recreational facilities.
- 9) Consistency with Pender County Parks and Recreation Comprehensive Master Plan: If any portion of any subdivision proposed for residential development lies within an area designated on the officially adopted Plan as a park, such area shall be included as part of the area set aside to satisfy the requirements of this Article up to the maximum requirement of open space calculations. This area shall be reserved for public use.
- 10) Procedure for Dedication of Land:
  - a) Designation of Land to Be Dedicated - Subdivider shall designate on the Master Plan, the area or areas to be dedicated pursuant to this Article.
  - i) Review of Land to Be Dedicated - Upon receipt of the Master Plan, the Administrator shall submit a copy thereof to the appropriate governing agency for review. The appropriate governing agency shall submit any and all recommendations concerning the land to be dedicated to the Planning Board at its next scheduled meeting.
  - ii) Ownership - The type of ownership of land dedicated for park, recreation or open space purposes shall be selected by the owner, developer, or Subdivider, subject to the approval of the Planning Board. Provided, however, any of such areas included in the master parks plan shall be dedicated to the county. The type of ownership may include, but is not necessarily limited to, the following:
    - a. The county, subject to the acceptance by the Planning Board;
    - b. Other public jurisdiction or agencies, subject to their acceptance;
    - c. Appropriate non-profit agencies, subject to their acceptance;
    - d. Property owner, condominium or cooperative associations or organizations.

## APPENDIX A    DEFINITIONS

Words and terms set forth below shall have the meanings ascribed to them. Any word, term(s) or phrase used in this Unified Development Ordinance not defined below shall have the meaning ascribed to such word, term or phrase in the most recent editions of Merriam-Webster's Dictionary, Black's Law Dictionary or American Planning Association Planner's Advisory Service, Dictionary of Terms unless, in the opinion of the Administrator, established customs or practices in Pender County justify a different or additional meaning. Furthermore, for the purpose of this Unified Development Ordinance, certain words, terms and phrases are herein defined as follows:

- A. Words used in the present tense shall include the future tense.
- B. Words used in the singular number shall include the plural number and the plural singular.
- C. The word "shall" and "will" are mandatory and not discretionary.
- D. The word "may" is permissive.
- E. The word "lot" shall include the words "parcel", "plot" and "tract".
- F. The word "building" and "structures" are synonymous.
- G. The phrase "used for" shall include the terms "intended to be used", or "intended for" and "designed for" and "occupied for".
- H. Words used here in the masculine gender shall be interpreted to include the feminine gender.
- I. References to Section numbers herein refer to the Pender County Unified Development Ordinance unless specifically stated otherwise.

**60-YEAR Setback** means a distance equal to sixty (60) times the average annual long-term recession rate at a site, measured from the reference feature.

**ACCESS EASEMENT:** An easement that is at least forty five (45') feet wide and is recorded by map or other instrument in the Registry that specifically transfers rights to the adjacent property owners or specific property owners and their assigns, invitees, licensors and permittees for ingress, egress and utilities and for the construction and maintenance of ingress, egress and utility facilities. An access easement by designation on a recorded plat also transfers the right to construct and maintain water, sewer, electric and communication lines within the easement by any public entity or public utility.

**ACCESS:** A way or means of vehicular or pedestrian approach to provide physical entrance to a property.

**ACCESSORY OR SECONDARY USE:** A use of land or of a building or portion thereof customarily associated with and incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use. A secondary use shall be a use not already permitted by right in a zoning district but may be permitted in conjunction with a permitted use. In no instances shall an accessory or secondary use be permitted without the presence of a primary use.

**ACCESSORY STRUCTURE (Appurtenant Structure):** a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

**ACTIVE BUFFER:** A distance buffer which contains no building or principal structure of activity but which may contain an accessory use or activity.

**ACTIVE OPEN SPACE:** Consists of areas such as park land chosen without regard to natural features for the explicit purposes of enhancing design, such as village commons, or providing space for outdoor recreation activities which may include, but not be limited to, tennis courts, ball fields, swimming pools, and tot lots with play equipment

**ADDITION:** A structure added to the original structure at some time after the completion of the original.

**ADDRESSING COORDINATOR:** Individual, including their authorized representatives, charged with the administration of the road naming and addressing guidelines of Pender County along with the coordination of the E-911 Operations Director.

**ADJACENT OR ADJOINING LOT OR LAND:** A lot or parcel of land which shares all or part of a common lot line with another lot or parcel or land or which is immediately across a street or road from said parcel or lot.

**ADULT CARE RESIDENCES:** A public or private establishment operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting. Adult care residences do not include facilities or portions of a facility licensed by the State Board of Health and the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; and a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21.

## **APPENDIX D TYPICAL FORMS AND SURVEYOR NOTES**

### **PERFORMANCE GUARANTEE REQUIREMENTS**

#### **Guarantee Required Prior to Signing Final Plat**

Prior to signing the Final Plat for recordation by the Administrator, items A or B in this Section must be complete. Upon default, meaning failure on the part of the Subdivider to complete the required improvements in a timely manner as spelled out in the performance bond or escrow agreement, then the surety, or the financial institution holding the escrow account shall if requested by Pender County, pay all or any portion of the bond or escrow fund to the County up to the amount needed to complete the improvements based on an engineering estimate. Upon payment, Pender County, in its discretion, may expend such portion of said funds, as it deems necessary to complete all or any portion of the required improvements.

- A. All requirements of this Ordinance are complete including the following:
  - 1) All improvements required by this Ordinance and required as a condition of approval, must be constructed and/or installed.
  - 2) All improvements required by this Ordinance and required as a condition of approval must be certified by a licensed surveyor and/or engineer that their construction and installation is complete in accordance with the standards of this Ordinance.
  - 3) All public streets and related drainage are certified to be complete and in accordance with NCDOT requirements by the NCDOT District Engineer.
  - 4) A Defects Guarantee for the required improvements has been submitted and approved in accordance with this Ordinance.
- B. Documents guaranteeing the completion of all required improvements have been submitted and approved including the following:
  - 1) A Performance Guarantee Agreement for Improvements in favor of Pender County on an approved format in this Ordinance or in a format approved by the Pender County Attorney shall be submitted and approved.
  - 2) An Irrevocable Letter of Credit, Performance Bond, or Escrow Agreement in favor of Pender County or in a format approved by the Pender County Attorney shall be submitted and approved to cover the cost of the incomplete and uncertified improvements. The amount of the Guarantee will be at least equal to the cost of construction of the improvements as shown on a Construction Cost Estimate prepared, signed, and sealed by a licensed engineer.
  - 3) Release of Guarantee Security
  - 4) The County may release a portion of any security posted as the improvements are completed once said improvements are inspected and approved and that their construction and installation is complete in accordance with the standards of this Ordinance.

#### **Type Guarantee Required**

- The Guarantee shall provide for 125% of the estimated cost of completion in one of the following forms:
  - 1) Filing an irrevocable letter of credit from a federally insured lending institution specifying the limit of credit dedicated to the subject subdivision which will be extended to the County upon request.
  - 2) Depositing or placing in escrow, a certified check or cash, conditioned upon satisfactory completion of the final plat requirements and improvements.

- 3) Filing a performance or surety bond from a licensed surety or bonding company assuring completion of the improvements.

### **Release of Guarantee Requirements**

- A. The Administrator shall release the Performance Guarantee when all requirements of this Ordinance have been met, construction and installation of all required and proposed improvements have been completed and certified and a Defects Guarantee has been submitted and approved. Certification must include the following:
  - 1) Certification from a Professional Land Surveyor that all monuments and markers required by this Ordinance and NCGS 39-32.1-4 have been installed.
  - 2) Certification from the District Engineer that public streets have been constructed to NCDOT Secondary Road Standards.
  - 3) Certification from a Registered Engineer that construction of private streets and all other required and proposed improvements have been completed specifically in compliance with the provisions of this Ordinance.
  - 4) Certification of completion and performance of the Drainage System by a Registered Engineer or Land Surveyor.
  - 5) Certification by the Administrator or his designee that the improvements required have been installed and such approval is issued to the Subdivider in writing and entered into the record file.
  - 6) Performance Guarantees shall require construction and installation of improvements within one year after the date of issuance of a permit or approval of construction plans if no permit is required.
  - 7) The applicant may request up to two (2) extensions up to six months of the time limit for compliance if circumstances beyond the control of the applicant warrant an extension. The request for an extension shall be in writing and accompanied by a schedule for completion of remaining work. Approval of such request shall be at the Administrator's sole discretion.

### **Required Improvements**

- A. Monuments and Markers
  - 1) Control monuments shall be set at the points of curvature ("PC" and "PT") or at the "PI" of all street centerline curves (one monument per curve if installed at the "PI" and two if installed at the points of curvature). However, no more than two street centerline curve control monuments will be required within a 1,000 foot lineal section of any street. A standard steel 60 penny nail or a standard "PK" or "MAG" nail shall be placed at these points where control monuments are not located. "PK" and "MAG" nails shall be at least 2.5 inches long.
  - 2) Centerline control monuments will not be required on cul-de-sacs 500 feet or less in length when nails specified above are located at required monument control points.
  - 3) A control monument shall be placed at all street centerline intersections.
  - 4) Monuments set in the street pavement shall have monument access boxes set on top of a brick, block, other masonry, or rock footing.
  - 5) When any portion of the development is in a Special Flood Hazard Area, as defined in this Ordinance, as amended, and set out in the FEMA Flood Insurance Rate Maps (FIRM), one (1) permanent monument in each subdivision is required to have its elevation recorded on the final plat.
  - 6) A steel or iron pipe or the equivalent of not less than one-half (1/2) inch in diameter and at least thirty (30) inches in length, where possible, shall be set at all property and lot corners, except those located by monuments. A property marker

shall also be set in street right-of-way lines at the point of curvature and point of tangency.

7) Control Corners, as described and required in NCGS 39-32.1-4, shall be installed.

**GRANTOR/GRANTEE CERTIFICATE**

The following statement shall appear on the plan and be signed by the Grantor(s) and Grantee(s) prior to approval:

*The Grantor(s) and Grantee(s) certify that the Grantee(s) is within three (3) degrees of collateral kinship to the Grantor(s), and that the purpose of this waiver is not to circumvent the provisions of the Pender County Unified Development Ordinance, and that none of the lots shall be conveyed to non-family members for a period of not less than five (5) years.*

\_\_\_\_\_                      \_\_\_\_\_  
Grantor                      Grantee

***Commentary: "Siblings are related to each other in the second degree and uncle and niece are related to each other in the third degree"***

**CERTIFICATE OF DISCLOSURE: PRIVATE ROADS**

I (we) the developers of \_\_\_\_\_ subdivision located in the unincorporated area of Pender County understand that the roads in said subdivision are designated private. I understand that ownership and maintenance of the roads will be the responsibility of the developer until such time that the developer designates the responsibility to the property owners' association. Responsibilities must be accepted by the homeowners association as specified in the homeowner covenants for said subdivision. The private roads in said subdivision are to be constructed in accordance with this UDO and all applicable County Codes which includes the design, installation, inspection, and approval by a licensed Professional Engineer (PE) recognized in the State of North Carolina prior to final plat approval for all or a portion of the subdivision. If all or a portion of the road infrastructure system within the subdivision is bonded through a surety, performance bond, or cash escrow, no bond shall be released until all road construction improvements are complete and certified by the Professional Engineer.

It shall be disclosed to the prospective buyer of a lot or lots within the subdivision that road maintenance shall run through the property owners association in perpetuity after acceptance from the developer until such time that the roads are re-platted as publically designated roads and taken over for maintenance through the North Carolina Department of Transportation (NCDOT).

**DEVELOPMENT AGREEMENTS**

As authorized by this Ordinance, Development Agreements must comply with all state regulations in NCGS §153A-349.1 et. seq.

**REQUIRED CERTIFICATES (PRELIMINARY PLAT)**

The following certificates shall appear on the preliminary plat signed and sealed prior to approval:

**Certification of Submission**  
 A copy of this plat has been submitted. Approval is subject to review; this does not constitute an approval.

Pender County Utilities: \_\_\_\_\_ Date: \_\_\_\_\_  
 Pender County Environmental Health: \_\_\_\_\_ Date: \_\_\_\_\_  
 Pender County Addressing Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

**Certificate of Preliminary Plat Approval**  
 Preliminary Plat Approved by Pender County for a period of two (2) years subject to the Pender County Unified Development Ordinance requirements and conditions of approval.

Planning Staff: \_\_\_\_\_ Date: \_\_\_\_\_

**REQUIRED CERTIFICATES (FINAL PLAT)**

The following certificates shall appear on the final plat signed and sealed prior to approval:

**Certificate of Ownership, Dedication, and Jurisdiction**  
 I (we) hereby certify that I am (we are) the owner(s) of the property shown and described here on and that I (we) hereby adopt this plan of subdivision with my (our) own free consent and dedicate all streets, alleys, walks, parks, and other areas to public or private use as noted. Further, I (we) certify that the land as shown here on is located within the subdivision jurisdiction of Pender County.

Owner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Owner: \_\_\_\_\_ Date: \_\_\_\_\_

**Surveyor Certificate I**  
 I, \_\_\_\_\_, certify that this plat was (drawn by me or drawn under my supervision) from (an actual survey made by me or made under my supervision) (deed description in Book \_\_\_\_\_, Page \_\_\_\_\_,) or (other); that the boundaries not surveyed are clearly indicated as drawn from the information found in Book\_\_\_\_, Page\_\_\_\_; that the ratio of precision as calculated is 1:\_\_\_\_; that the plat was prepared in accordance with G.S.47-30 as amended.

Witness my original signature, registration number and seal this day of \_\_\_\_\_A.D. \_\_\_\_\_.

Signature: \_\_\_\_\_ (Seal)  
 Registration Number: \_\_\_\_\_

**Surveyor Certificate II**  
 The subdivision shown on this plat (does/does not) contain Special Flood Hazard Areas and (is/is not) located in a Floodway as delineated by the Federal Emergency Management Agency.

The subdivision shown on this plat (does/does not) contain Areas of Environmental Concern as delineated by the North Carolina Coastal Resources Commission.

Witness my original signature, registration number and seal this day of \_\_\_\_\_A.D. \_\_\_\_\_.

Signature: \_\_\_\_\_ (Seal)  
 Registration Number: \_\_\_\_\_

**Surveyor Certificate III**

One of the following must be stated:

1. This plat is of a survey that creates a subdivision of land within the subdivision area of a county or municipality that has an ordinance that regulates parcels of land.
2. This plat is a survey that is located in a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land and is therefore not subject to regulation by a subdivision ordinance.
3. This plat is of an existing parcel or parcels of land and does not create a new street or change in existing streets as defined in the Unified Development Ordinance and is exempt from the definition of subdivision contained in said Unified Development Ordinance.
4. This plat is a survey of an existing building or other structure, or a natural feature and is therefore not subject to regulation by an ordinance.
5. This plat and survey is a control survey and is therefore not subject to regulation by the Pender County Unified Development Ordinance.
6. This plat is a survey of another category, such as the recombination of existing parcels, a court-ordered survey or other exception to the definition of subdivision and is therefore not subject to subdivision regulation.

Witness my original signature, registration number and seal this day of \_\_\_\_ A.D. \_\_\_\_.

Signature: \_\_\_\_\_

(Seal)

Registration Number: \_\_\_\_\_

Note: Surveyor Certificates II & III may be combined into one Certificate.

**Parcel Identifier Certificate**

Parcel Identifiers have been issued for all parcels shown on this plat.

Tax Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

**Certificate of Registration by Register of Deeds**

Pender County, North Carolina

Filed for registration on the \_\_\_\_ day of \_\_\_\_ 20\_\_ at \_\_\_\_ a.m./p.m. and duly recorded in book \_\_\_\_ at page \_\_\_\_, slide \_\_\_\_\_.

Register of Deeds: \_\_\_\_\_

**Private Road Certification**

I (we) hereby certify that all private roads as depicted on subdivision plat \_\_\_\_\_ have been designed, installed, inspected, and approved in accordance with Article 6 of the Pender County Unified Development Ordinance and all applicable Pender County Codes prior to final plat approval for all or a portion of the subdivision.

By certifying the construction of these roads as private, there are no guarantees or assurances of acceptance of said roads by the North Carolina Department of Transportation.

Certified Professional Engineer: \_\_\_\_\_ Date: \_\_\_\_\_

(Seal)

**Reviewed and Approved by the Addressing Coordinator**

Addressing Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

**Engineer/Surveyor Private Street Certification, Major Subdivisions**

*(Example Form)*

(Letterhead)

Date

Pender County  
Planning and Community Development  
PO BOX 1519  
Burgaw, NC 28425

Re: Private Street & Street Drainage Construction Plans for (Name and Section of Subdivision)

**This will provide certification that the construction plans, prepared by me or under my supervision for streets and street drainage in the above referenced development comply with the following requirements:**

1. The plans comply with the requirements for submission to the North Carolina Department of Transportation (NCDOT) for approval of construction plans for secondary roads.
2. The plans for construction of the streets and access comply with Minimum Design and Construction Criteria for Subdivision Roads, contained in the NCDOT Subdivision Roads Minimum Construction Standards.
3. The plans provide for street drainage in compliance with the NCDOT Subdivision Roads Minimum Construction Standards and NCDOT Guidelines for Drainage Studies and Hydraulic Design.
4. The street and street drainage construction plans meet the requirements of the Pender County Unified Development Ordinance.

This certification is provided this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, to comply with the provisions of The Pender County Unified Development Ordinance.

Surveyor Signature \_\_\_\_\_ and/or Engineer Signature \_\_\_\_\_

(Seal)

(Seal)

Surveyor Name \_\_\_\_\_ and/or Engineer Name \_\_\_\_\_