

MEMORANDUM

**The Shelter Island Town Code's Park Requirement
In Subdivision Review**

To: Shelter Island Town Planning Board

By: Richard E. Whalen

May 22, 2025

This memorandum analyzes the “park” requirements set forth in Chapter 111 (Subdivision of Land) of the Shelter Island Town Code in order to try to understand the underlying purpose of the park requirements and how an applicant for subdivision approval can satisfy them. The requirement for a park dedication is found in § 111-34.1 of the Town Code, the full text of which is appended below within the body of this memorandum.

Shelter Island’s park requirement in residential subdivisions appears designed to establish neighborhood parks, playgrounds, and/or or recreation areas, either for use by the general public or for the use of residents of homes in the subdivision. It appears to this writer to be a somewhat antiquated requirement given Shelter Island’s rural character and demographics. Scattered small playgrounds or recreation areas would probably not see very much use on the island. The park requirement does not seem to have been intended, at least primarily, for the purpose of preserving natural open space. We know this both because of the terminology used in the Town Code to describe park areas and because certain sensitive ecotypes which are often the object of preservation efforts – State or Town-regulated wetlands and wetland buffers or wetland adjacent areas – are specifically *excluded* from incorporation within subdivision park areas.

The phrase “park or recreation area” is used within Chapter 111 so as to suggest that the words “park” and “recreation area” are interchangeable. Obviously, “recreation area” connotes some sort of physical use of the land which is set aside for park purposes. This might also explain the prohibition against including wetlands within subdivision “parks.” The restriction may have been imposed because those who crafted the park requirement in the first place wanted to ensure the land could practicably be used for playgrounds or other traditional recreational activities. Wetlands, understandably, would have been deemed unsuitable for that purpose. Nevertheless, the prohibition against having wetlands and wetland buffers within subdivision park areas does considerably reduce the usefulness of subdivision park land for preserving open space.

The park area requirement stipulates that in most cases 10% of the subdivision acreage be set aside in a “park.” This requirement is a fundamental element in subdivision design: the 10% park set-aside is subtracted from the area of a subdivision for density purposes, meaning that only the remaining 90% of the property can be used to meet the bulk requirements (lot area and lot width) of the Zoning Code. Subsection B (6) of Town Code § 111-10, says:

The standard subdivision design shall exclude the following listed areas from consideration as areas contributing to total lot yield: ...

Areas required for park dedication pursuant to the Planning Board's Subdivision Regulations.

In some cases the Planning Board can find that the creation of a Park area is not appropriate in a particular subdivision because of the nature of the terrain, the configuration of the property, or the small land area involved. In that case, the developer is required to pay the Town of Shelter Island a “park fee” which is equal to 10% of the appraised fair market value of all of the land which is the subject of the subdivision application.

Ironically, considering that wetlands and their adjacent regulated areas must be excluded from subdivision park areas, the Planning Board is not allowed to waive the park requirement and instead accept payment of a park fee if the subdivision is within the Near Shore and Peninsular Overlay District. Also see Town Zoning Code § 133-12 D (2), which states that “each subdivision [within the Near Shore and Peninsular Overlay District] is required to provide park or recreation area pursuant to § 111-34.1 of this Code.”

How Can Subdivision Park Areas Be Used?

Chapter 111 of the Town Code does not explicitly set forth the purpose or goal of the park requirement in subdivisions. However, when the Planning Board allows subdividers to pay a park fee in lieu of creating park land in a subdivision, § 111-34.1 (2) states that park fees must be held by the Town Board in a special trust fund which is to be used exclusively for the acquisition of property which is suitable for “neighborhood park, playground or recreation purposes,” or for the physical improvement of such property. This obviously implies that the objective in creating park areas is to establish neighborhood or community parks or playgrounds.

Clearly, if this is the purpose of the park requirement, it is not really compatible with the grant of conservation easements over parts of lots in a subdivision. While such easements might be beneficial in the broader sense, they do not generally allow for public access (or even access by other residents of the subdivision) and therefore have no value for traditional park or recreation areas.

How Can The Subdivision Park Requirements Be Met?

The writer understands that the Shelter Island Town Planning Board has historically interpreted the park requirement such that it can be satisfied in one of two ways. Either the subdivider can set aside one or more parcels of land aggregating 10% of the subdivision acreage as separate tracts of land to which the fee interest will presumably be conveyed out, or the subdivider can grant to the Town of Shelter Island scenic and conservation easements over 10% or more of the

subdivision acreage. As noted above, the establishment of such easements does not comport very well with the underlying aim of the park requirement, because the park requirement appears to contemplate the creation of parcels of land having a recreational use for the benefit of Town residents or subdivision homeowners. Conservation easements, being restrictive encumbrances over private property, do not serve this recreational purpose.

If one or more separate tracts of land are created as parks during the subdivision process, Chapter 111 does not specify how those park properties are to be owned. This is a serious weakness in the Code. Clearly, park properties can be conveyed to the Town of Shelter Island, if the Town is willing to accept them. While the Planning Board might encourage donations of park lands to the Town, though, it cannot compel a landowner to transfer property to the municipality. An alternative mode of ownership, which would fulfill the Code's evident goal of establishing parks that benefit subdivision residents, is transfer of the park land to a not-for-profit property owner's association in which all lot owners in the subdivision automatically become members. Chapter 111, while it does not preclude it, says nothing about this option.

Thus, the alternatives for meeting the Town Code's subdivision park requirements are: (1) the creation of a separate parcel or parcels which are to be conveyed either to Shelter Island Town or to a property owner's association, or (2) the grant to the Town of a conservation easement or easements over part of the subdivision property. As I have just stated, the latter approach does not really create parks in the sense of community playgrounds or recreation areas. It simply restricts the use of parts of one or more lots within the subdivision to a conservation use, basically keeping the encumbered land in its natural state. Although there is much in Chapter 111 that implies that the purpose of the park requirement is the creation of separate tracts or parcels of land to be owned and managed for playgrounds or recreation areas, I conclude that the Planning Board can allow a subdivider to meet the park requirement by the grant of conservation easements over parts of private lots within the subdivision map.

I reach this outcome for two reasons. The first reason is that the use of conservation easements to satisfy Chapter 111's park requirement has apparently been an accepted practice of the Shelter Island Planning Board for some time, even though it does not further the chapter's apparent purpose of establishing recreation areas. The second reason is the definition of "Park Dedication" in § 111-3 of the Town Code. This is the nearest thing in the chapter to a definition of "park" or "park area." The term "Park Dedication" is defined in Town Code § 111-3 as –

A dedication or reservation of land in a subdivision for park purposes, exclusive of lands to be used for drainage recharge.

In Black's Law Dictionary (7th Edition), the word "dedication" means –

The donation of land or creation of an easement for public use.

This would seem to imply that a Park Dedication could consist of the grant of a scenic or conservation easement and that it does not have to be a conveyance of land in fee simple. That interpretation, as I have noted, does not correspond well with the Town Code's statement that

parks are sites for “neighborhood park, playground or recreation purposes.” Nonetheless, I construe this to be a permissible interpretation of the word “dedication” as used in Chapter 111.

Sincerely,



RICHARD E. WHALEN

/REW

cc: Planning Board file

Town Code full text of § 111-34.1:

§ 111-34.1 Park and recreation area requirements in subdivisions.

1. Unless the Planning Board determines, pursuant to Subsections 2 and 3 below, that a park or recreation area cannot be properly located within a residential subdivision plat, each applicant for residential subdivision shall irrevocably set aside within the subdivision plat a park or recreation area of a size equal to 10% of the total acreage of the entire lands covered by such plat. The irrevocable set aside must be memorialized by an instrument, satisfactory in form to the Planning Board, and recorded with the office of the Suffolk County Clerk. Such park or recreation area shall not include any roadways, rights-of-way, state or Town-regulated wetlands, state or Town-regulated wetland adjacent areas or wetland regulated areas, or buffer areas required pursuant to § [133-12](#) of the Town Code. Such area may include areas that have been set aside or preserved for open space or recreational use, or that have had their development rights transferred. However, such lands must be actually usable for park or recreation purposes, either by owners of lots on the residential subdivision plat or by the public, depending on the nature of ownership of the property.

2. Except for subdivisions wholly or partially lying within the Near Shore and Peninsular Overlay District, the Planning Board may determine that a park or recreation area cannot be properly located within a residential subdivision plat, based upon the terrain, the configuration, or the quantity of lands covered by the subdivision plat. Under those circumstances, the subdivider shall pay to the Town of Shelter Island a park fee. The park fee shall be equal to 10% of the appraised fair market value of the entire lands covered by the subdivision plat at the time of subdivision application. All park fees paid pursuant to this subsection shall be deposited and held by the Town in a special trust fund, to be used exclusively either for the acquisition of sites that are properly located for neighborhood park, playground or recreation purposes or for the physical improvement of such sites. At the discretion of the Planning Board, the subdivider may, in lieu of paying such park fee, give the Town of Shelter Island lands with an appraised value equal to or higher than the amount of such park fee, irrespective of whether such lands are located within or without the subdivision.

3. Subdivisions lying within the Near Shore and Peninsular Overlay District must provide parkland and may not substitute a park fee in lieu of land dedication. However, subject to the discretion of the Planning Board and approval by the Town Board, a parcel outside the subdivision, but within the Near Shore and Peninsular Overlay District, may be substituted for a park dedication within the subdivision so long as it has an appraised value equal to or higher than 10% of the fair market value of the entire lands within the subdivision plat.

4. The Planning Board may require a subdivider to improve a park or recreation area in a manner appropriate for its projected use and compatible with its surroundings.

5. Where a park or recreation area incorporates a unique natural feature or a landmark, the subdivider shall be responsible for the protection of such feature or landmark from any destructive action during the course of the plat development.

6. Notwithstanding the provisions of Subsections 1 and 2 above, the Planning Board may waive the requirements that a subdivider set aside a park or recreation area or pay a park fee in lieu thereof with respect to all or any portion of a subdivision plat:

(a) Where the subdivision meets both of the following conditions:

(1) Where the average area of the lots in the subdivision (excluding roadways, rights-of-way, state or Town-regulated wetlands, state or Town-regulated wetland adjacent areas or wetland regulated areas, or buffer areas required pursuant to § [133-12](#) of the Town Code) is, as of the date of the plat approval:

i. For subdivisions located wholly or partly within the Near Shore and Peninsular Overlay District, more than 200% of the minimum lot area for the most restrictive zoning district that covers any portion of the subdivision lands; or

ii. For subdivisions located outside the Near Shore and Peninsular Overlay District, more than 150% of the minimum lot area for the most restrictive zoning district that covers any portion of the subdivision lands; and

(2) Where the subdivider, by a declaration in a form acceptable to the Planning Board and recorded with the Suffolk County Clerk, covenants for himself, herself, or itself, and for his, her or its successors and assigns, that there shall be no resubdivision or further subdivision of any of the lands or lots covered by the subdivision plat for which a waiver of park area and/or park fee requirements was granted except following (i) a majority-plus-one vote of the full Planning Board, following a duly-noticed public hearing, to allow such resubdivision or further subdivision, and (ii) the provision or payment by the subdivider or his, her or its successors and assigns, of a park

or recreation area or park fee based on the total area of the lands covered by the original subdivision for which the requirements of a park or recreation area, or payment of park fee in lieu thereof, were waived; or

(b) For subdivisions located entirely outside of the Near Shore and Peninsular Overlay District, where the subdivision is a minor subdivision, of three lots or fewer, in which no subdivision lot is capable of further subdivision, and the applicant executes and records with the Suffolk County Clerk a declaration, in form satisfactory to the Planning Board, that the said lands shall not be further subdivided.

(c) For subdivisions located entirely outside of the Near Shore and Peninsular Overlay District, where the subdivision is an affordable housing project developed by the Shelter Island Town Board.

7. Notwithstanding the provisions of Subsections 1 and 2 above, the Planning Board may waive the requirements that a subdivider set aside a park or recreation area or pay a park fee in lieu thereof with respect to all or any portion of a subdivision plat where the subdivision meets the conditions of Subsections (a) and (b):

(a) Where the State of New York, the County of Suffolk, the Town of Shelter Island, and/or any other government agency or nonprofit conservation organization has, as of the date of the final plat approval:

i. Contracted to purchase all or a portion of the lands covered by the subdivision plat for the purpose of open space, parkland, or other similar conservation purposes; or

ii. Acquired or contracted to acquire the development rights to all or a portion of the lands covered by the subdivision tract for the purposes of public access or use or for open space, parkland, or other similar conservation purposes; and

(b) Where the portion of the lands being acquired or the portion of the lands whose development rights are being acquired constitute at least 30% of the total area of lands covered by the subdivision plat, for subdivisions in any zoning district.

8. The requirements of this subsection shall be applicable to all new subdivision or resubdivision applications, including those for which park land and/or recreation area requirements or in-lieu fees have already been met, paid, or waived in whole or in part. However, if any portion of the lands covered by the new subdivision or resubdivision has already been subject to a park land dedication or in-lieu fee, such portion shall not be subject to further parkland dedications or in-lieu fees otherwise due.
