

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, WASHINGTON

Ordinance No. TLS 17-05-16

Interim Official Controls)
Open Space Standards)

WHEREAS, this Board enacted Ordinance TLS 15-07-09B on March 24, 2015 adopting amendments to the Greater East Wenatchee Area Comprehensive Plan that serves to guide growth, development and the provision of supporting infrastructure in the East Wenatchee Urban Growth Area; and

WHEREAS, this Board also adopted on March 24, 2015 Ordinance TLS 15-08-09C amending development regulations effective in the East Wenatchee Urban Growth Area, including East Wenatchee Municipal Code Chapter 17.73 Open Space Standards; and

WHEREAS, the actions by the Board of Commissioners were coordinated with the City of East Wenatchee City Council, which adopted ordinances with the same content as the ordinances adopted by the Board of Commissioners; and

WHEREAS, the collaborative actions by the Board of Commissioners and the City Council were consistent with the Douglas County Regional Policy Plan (countywide planning policy) Chapter C. Policies on Joint Planning in Urban Growth Areas; and

WHEREAS, the City of East Wenatchee is currently proposing amendments to EWMC 17.73 Open Space Standards; and

WHEREAS, EWMC 17.73 Open Space Standards requires certain residential developments to provide internal open space/recreation area or a contribution toward park development off-site yet in the vicinity of the development; and

WHEREAS, the Eastmont Metropolitan Parks District, while allowed to by EWMC 17.73 Open Space Standards, has declined to accept private funds intended for park development in lieu of providing open space/recreation area within a development; and

WHEREAS, the City of East Wenatchee process to amend EWMC 17.73 Open Space Standards has created uncertainty for persons desiring to submit applications for residential development in the unincorporated portion of the East Wenatchee Urban Growth Area; and

WHEREAS, an interim official control will provide a greater measure of certainty for persons desiring to apply for residential development review while still

addressing the open space/recreation demands created by new development;
and

WHEREAS, RCW 36.70.795 authorizes the adoption of interim official controls.

NOW THEREFORE IT IS RESOLVED AND ORDAINED that:

1. The above are entered as findings supporting the adoption of this ordinance;
2. The Douglas County Board of Commissioners adopts the attached Exhibit A, amending Ordinance TLS 15-08-09C;
3. This interim official control is effective immediately and will be in effect for six months following its adoption unless extended.

Dated at Waterville, Washington this 18th day of April 2017.

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, WASHINGTON

Steven D. Jenkins, Chair

Dan Sutton, Vice Chair

Kyle Steinburg, Commissioner

ATTEST:

Dayna Prewitt, Clerk of the Board

Exhibit A

Chapter 17.73 OPEN SPACE STANDARDS

Sections:

17.73.010 Purposes.

17.73.020 Applicability.

17.73.030 Exemptions.

17.73.040 Standards for On-Site Open Space.

17.73.050 Implementation.

17.73.060 Improvements.

17.73.070 Stormwater detention facilities.

17.73.080 Rights and duties.

17.73.090 Payment in lieu of on-site open space/recreation area.

17.73.010 Purposes.

The purposes of this chapter are:

- A. To ensure the general health, safety and welfare of the citizens of the City East Wenatchee and the residents of Douglas County, living within the East Wenatchee Urban Growth Area;
- B. To establish a means of setting aside areas of land for basic recreation, parks and open space needs created by new subdivisions, short plats, and binding site plans;
- C. To equitably distribute the cost of providing parks and open space;
- D. To mitigate any adverse impacts on neighborhoods without adequate parks, open space and recreational facilities when approving new development;
- E. To ensure compliance with the purposes of chapters 16.16 and 16.18 of the East Wenatchee Municipal Code and RCW 58.17.110, as amended, which require that local governments make appropriate provision for the establishment of parks, open space and recreational areas at the time it considers approval of a proposed subdivision;
- F. To implement the goals and policies regarding open space and recreation in the Greater East Wenatchee Area Comprehensive Plan.

17.73.020 Applicability.

This chapter applies to every subdivision, short plat or binding site plan of contiguous land where any one of the following conditions is met:

- A. The land to be divided equals 10 acres or more and is located wholly or in part within the East Wenatchee Urban Growth Area;
- B. Within the East Wenatchee Urban Growth Area, residential or mixed-use subdivision or binding site plan creating 10 or more lots.
- C. Projects meeting the standards provided in this chapter are not required to comply with EWMC 17.72.230, as amended.

- D. Open space created to comply with this chapter may be incorporated with the requirements in the Greater East Wenatchee Urban Growth Area Design Standards & Guidelines, as amended.

17.73.030 Exemptions.

Re-division of lots created after the adoption of the standards in this chapter are exempt from any additional requirement to create an on-site open space/recreation area; provided that future lots have access, as required by this chapter, to the open space/recreation areas established in the original project.

17.73.040 Standards for On-Site Open Space.

The minimum usable open space/recreation area for all divisions of land for residential purposes must be at least 5 percent of the total gross site area.

Required open space/recreation area must meet the following standards:

- A. For the purpose of calculating the open space/recreation requirement, the open space/recreation area must be separate and distinct from required yards and setbacks. Up to 50 percent of the required open space may consist of areas of native vegetation that are also allowed to fulfill the critical areas buffer requirements in chapters 18.12 and 18.12A-F EWMC or stormwater facilities that are designed for active and/or passive recreation opportunities in accordance with this chapter and chapter 13.30 EWMC, as amended.
- B. All open space/recreation areas must include 2 or more facilities for active and/or passive recreation, selected from the lists below. At least 1 of the required recreation facilities must be from the list of active recreation facilities. This area may include stormwater facilities that are designed for active and/or passive recreation opportunities in accordance with chapter 13.30 EWMC, as amended.
 - 1. Active Recreation Facilities.
 - a. Children's play equipment, such as slides, swings and play structures;
 - b. A paved hard court for activities such as basketball, tennis, pickleball, etc.;
 - c. A flat, open lawn area that may serve as a ball field for active play;
 - d. Other active recreation facility if approved by approval authority.
 - 2. Passive Recreation Facilities.
 - a. Facilities for walking, such as trails, benches, etc.;
 - b. Picnicking facilities, such as picnic tables, shelters, etc.;
 - c. Public plazas;
 - d. Year-round water features such as a fountain, pond, stream, etc.;
 - e. Other passive recreation facility if approved by the approval authority.
- C. Access to the open space/recreation area must be available to all residents of the development through a designed and constructed accessible route throughout the facility.
- D. The open space/recreation area may be designed and located in consideration of existing open space/recreation areas on adjacent parcels.

17.73.050 Implementation.

The required open space/recreation area must comply with the requirements of EWMC 17.72.250, as amended.

17.73.060 Improvements.

All improvements to the open space and recreation area must be completed or bonded for prior to final approval of the plat, short plat or binding site plan unless the developer elects to utilize the provisions in EWMC 17.73.090.

17.73.070 Stormwater detention facilities.

Stormwater detention/retention facilities may be allowed as open space subject to the provisions of this chapter and the criteria contained in chapter 13.30 EWMC. The design of such facilities must minimize adverse impacts on the function (e.g., tree preservation, play area, etc.) and quality of the open space.

17.73.080 Rights and duties.

The owners of open space have the following rights and duties subject to restrictive covenants or other restrictions:

- A. The right to locate recreational facilities, such as tennis courts, swimming pools, picnic tables and fireplaces accessory to picnic tables designed to be used exclusively for the use of residents of the development and their guests;
- B. The right to locate pedestrian paths, bicycle paths and bridle paths;
- C. The right to cover up to 25 percent of the land designated for the open space/recreation facility with impervious surfaces reasonably necessary to exercise the rights provided in subsections (A) and (B) of this section. An increase in the 25 percent limit may be granted by the administrator if the developer provides justification that the additional impervious surface is needed to create a useable recreation area;
- D. The right to take whatever measures are reasonably necessary to protect and maintain such land, or land or property adjacent thereto, or to correct a hazardous condition posing a threat to life or limb;
- E. The right to regulate access to or entry on the open space land; and
- F. The duty to maintain the open space and recreation area in good useable condition in compliance with the provisions of EWMC 17.72.250 (as enacted or as amended).

17.73.090 Payment in lieu of an on-site open space/recreation area.

In lieu of providing the on-site open space/recreation facility required by this chapter, the developer may elect to provide a payment to the Eastmont Metropolitan Park District, Douglas County Treasurer's Office or the City of East Wenatchee to fulfill the requirements of this chapter.

- A. The request must be made in writing by the developer at the time of submittal of a development application.
- B. The payment provisions must be formalized in an agreement that will be recorded with the Douglas County Auditor.

1. All applicants and/or legal owners of the property upon which the development activity is to occur must sign an agreement in a form acceptable to the entity or jurisdiction that will be receiving the optional payment.
2. The agreement shall require the applicant to grant and record a lien as surety for payment. The agreement shall stipulate the amount and the timing of payment in accordance with EWMC 17.73.090(F).
3. The agreement shall also set forth the refund options in EWMC 17.73.090(I)(1) in the event the funds are not used or encumbered.
4. The rights and the covenants set forth in the agreement must run with the land.
5. The agreement shall be binding on all successors in title after being recorded until released by the entity or jurisdiction receiving the funds.

C. Payment amount. The amount of the payment will be based upon the estimated cost that the developer would incur by creating the open space/recreational facility required by this chapter using the following guidelines:

1. The estimated cost must include the value of the land that would be required for the on-site open space/recreation facility pursuant to EWMC 17.73.040.
 - a. The land value shall be based upon the Fair Market Value of the project site as determined by a qualified real estate appraiser. The date of the appraisal shall be within 90 days of the execution of a payment agreement. The cost of the appraisal, up to a maximum of \$2,500, may be subtracted from the payment made under this provision. The applicant must provide verification of the appraisal cost.
 - b. The value of the land that would be required for the on-site open space/recreation area shall be determined by the per acre value of the entire parcel multiplied by the acreage amount of the required on-site open space/recreation area.

Example for residential subdivision:

- *Site Area: 20 acres*
- *5% of site required for open space/recreation $20 \times .05 = 1$ Acre*
- *Fair Market Value of Site: \$840,000*
- *$\$840,000/20 = \$42,000$ per acre value*
- *$\$42,000 \times 1 = \$42,000$ for open space/recreation area land value*

2. The estimated cost of the open space/recreation facilities and access requirements specified in EWMC 17.73.040. Documentation of the estimated costs must be provided by the developer.
3. A one-time administrative fee of \$300 must be paid by the applicant to the entity or jurisdiction accepting the funds.

D. Use of funds. The funds must be used for a park and recreation facility meeting the following criteria:

1. The facility must be a public facility accessible to the residents of the new development.

2. The location of the facility must bear a reasonable relationship to the use of the facility by future inhabitants of the development or a the regional park or recreation facility such as the Apple Capital Loop Trail.
 3. The park facility must satisfy the adopted level of service standards and planned improvements described in the Eastmont Metropolitan Park District *Parks and Recreation Comprehensive Plan*, as amended.
 4. The funds shall be used solely for the acquisition, development, and expansion or upgrading of park and recreation facilities including the costs of engineering, architectural plans, permitting, and financing.
 5. The funds shall not be used for general maintenance or operation.
 6. If bonds or similar debt instruments are or have been issued for the provisions of park and recreation improvements, the funds may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section.
- E. Timing of payment. Any payment of funds under this section shall be made in accordance with the following provisions:
1. The developer has the following two options for payment of the funds. The agreement must stipulate which option has been selected by the developer:
 - a. Full payment must be made prior to recording the final plat, short plat, or binding site plan with the Douglas County Auditor; or
 - b. A request to defer the full payment in lieu of open space for a period not to exceed 12 months from the date the subdivision, short plat, or binding site plan is recorded with the Douglas County Auditor. A request for deferral must be submitted prior to final recording of the development approval and must be made on a form provided by and acceptable to the entity or jurisdiction accepting the payment.
 2. Upon receipt of the payment, the entity or jurisdiction must execute a release of the lien for the property. The property owner at the time of the release, at his or her expense, is responsible for the cost of recording the lien release.
- F. Accounting. The payment provided under this section shall be deposited in an interest-bearing account, clearly identified as reserved for acquisition, development, and expansion or upgrading of park and recreation facilities. All interest earned on such funds shall be retained in the fund. All payments accepted by Douglas County will be managed by the Douglas County Auditor.
- G. Deadline for expending funds. The funds shall be expended or encumbered for a permissible use within 5 years after receipt, unless there exists an extraordinary or compelling reason for the funds to be held longer than 5 years. In cases where extraordinary or compelling reasons exist, such reasons shall be identified in written findings approved by the governing board of the entity or jurisdiction holding the funds. In determining whether the funds have been encumbered, they shall be considered encumbered on a first in, first out basis.
- H. Refunds.

1. If development approval expires without commencement of construction for the project, the developer shall be entitled to a refund including the actual interest earned on the payment. The developer must request a refund to the administrator within 30 days of the expiration of the project approvals.
2. If the entity or jurisdiction receiving the funds fails to expend or encumber the funds within 5 years of the date the funds were received, the funds shall be returned including the actual interest earned on the payment.
 - a. The agreement referenced in subsection B above shall specify whether the funds are to be refunded to the developer or to be refunded to the current owner(s) of record of the property within the development that provided the payment. Unless the agreement states otherwise any funds to be refunded to the current owner(s) shall be equally divided by the number of lots within the project without regard to lot size or value.
 - b. The entity or jurisdiction receiving the payment shall provide notice to all potential claimants, identified in the agreement, that the funds may be refunded. The notice to potential claimants must be sent by first class mail, deposited with the U.S. Postal Service at the last known address of claimants as noted in the records of the Douglas County Assessor or as specified in the agreement.
 - c. The request for a refund must be submitted by the claimant in writing within one year of the date the right to claim the refund arises or the date notice is given, whichever is later.
 - d. Any payments that are not expended within these time limitations and for which no application for refund has been made within the one-year period, shall be retained and expended on eligible capital facilities.