

## Planning Board Workshop– February 13, 2020

### Cluster Development discussion guide

Please use this discussion guide by following the numbers in bold red parentheses within the accompanying ordinance that match the numbers below.

Cluster subdivisions are allowed in the R-RL, R-U, R-RC, R-S and R-KPV zones currently.

1. If one of the main objectives of this ordinance is to encourage conservation of open space, should the ordinance title reflect that? An example might be: Open Space Conservation Subdivision or Open Space Cluster Subdivision.
2. Staff recommends that the Mixed-Use Cluster use be dropped. It is not currently allowed in any zone since the old Business Park zone was replaced by the Neighborhood Mixed-Use zone.
3. Does the purpose statement accurately describe the intent of this ordinance? Are the objectives accurate and sufficient? Do they support the goals of the Town when granting approval for these subdivisions?
4. The Biddeford Cluster Development ordinance example limits cluster developments to parcels of 5 acres or more. Does the size of the parcel influence the quality as well as the quantity of the open space conserved? Does the zoning district in which a parcel is located matter? Other factors that influence cluster subdivisions include less impervious surface, the preference for underground utilities and less water and sewer piping needed.
5. As laid out in the Town Attorney's letter dated September 25<sup>th</sup> 2019 in regards to the proposed development on Old Post Road for 11 dwelling units when only 6 were allowable per the ordinance requirements, this proposed change lays out the dimensionality standards that may be modified by the Board per Title 16 and State statute.
6. Are there any additional submission requirements that the Board might want to see (the submission requirements in the cluster subdivision ordinance are in addition to the general submission requirements for a conventional subdivision)? Any other changes/deletions/additions to the submission requirements in general?
7. Changes are proposed to make it clearer that the number of dwelling units allowable must be shown, along with the appropriate supporting calculations on the plan. The Biddeford Cluster Development ordinance example specifies that both a standard/conventional subdivision plan and a cluster plan be submitted at sketch plan. Kittery allows cluster subdivisions as a permitted use in the appropriate zones with conventional subdivisions allowable as special exceptions. Is this still satisfactory?

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8. Are these open space percentages required working in Kittery? Should there be more performance standards regarding what natural resources should be conserved? Is enough upland being preserved? Does a “green edge” around a cluster subdivision meet the intent of the open space requirement? Would/does such a feature serve the Town well as green buffering around a new development in an established neighborhood? The Biddeford Cluster Development ordinance specifies that a green perimeter strip at least 20 feet wide be established around the lot or rear lot lines of the cluster development. It appears that this may be in addition to Biddeford’s open space requirements.
9. Does having the three types of open space (common, public and reserved), work for Kittery?
10. Are the open space standards adequate – are changes needed? Do they align with the objectives of the ordinance?
11. Are these cluster application considerations in need of updating? The Biddeford Cluster Development ordinance example has standards that guide shoreline access, siting and buffering standards.
12. Any other changes needed? The Biddeford Cluster Development ordinance has a section on “Dedication and maintenance of open space and facilities” which includes requirements regarding modifications to open space, ownership and preservation in perpetuity among others.

**DRAFT Article XI**

**(1) Cluster Residential and ~~Cluster Mixed-Use Development~~(2)**

**[Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-09]**

**(3) §16.8.11.1 Purpose.**

To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this article is intended to encourage and allow new concepts and innovative approaches to housing/~~commercial development~~ and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:

- A. Efficient use of the land and water, with small networks of utilities and streets;
- B. Preservation of open space and creation of recreation areas;
- C. Maintenance of rural character, preserving farmland, forests and rural viewscales;
- D. Preservation of areas with the highest ecological value;
- E. Location of buildings and structures on those portions of the site most appropriate for development;
- F. Creation of a network of contiguous open spaces or "greenways" by linking the common open spaces within the site and to open space on adjoining lands wherever possible;
- G. Reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;
- H. Preservation of historic, archaeological, and cultural features; and
- I. Minimization of residential development impact on the municipality, neighboring properties and the natural environment.

**(4) §16.8.11.2 Permitted zones.**

- A. Cluster residential development is permitted in various zones as indicated in Chapter 16.3.

**(5) §16.8.11.3 Dimension standards modifications.**

Notwithstanding other provisions of this title relating to dimensional standards, the Planning Board, in reviewing and approving proposed residential ~~or mixed-use development~~ under this article, may modify ~~said~~ the following dimensional standards to permit flexibility in approaches to site design in accordance with the standards of this title: lot area, lot coverage, street frontage and front/rear/side setbacks. The Board may allow subdivision ~~or site~~ development with modified dimensional standards where the Board determines the benefit of a cluster development is consistent with this title. Such modifications may not be construed as granting variances to relieve hardship.

§ 16.8.11.4 **Property ownership.**

Tracts or parcels of land involved in a development proposed under this article must be in single ownership; or must be the subject of an application filed jointly by the owners of all properties included; or must have an applicant with vested interest in all property included. Pursuant to the requirements of this article, mobile home parks or mobile homes on individual lots are not eligible for cluster residential development.

**(6)§16.8.11.5 Application procedure.**

All development reviewed under this article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

- A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the sketch plan:
- (1) Calculations and maps to illustrate:
    - (a) Proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;
    - (b) All land area identified in Chapter 16.7, Article **VIII**, Net Residential Acreage; [**Amended 9-28-2015 by Ord. No. 15-05**]
    - (7)** (c) Net residential density calculations demonstrating how many dwelling units allowable which may not exceed the number of lots allowable under a conventional major or minor subdivision; and [**Amended 9-28-2015 by Ord. No. 15-05**]
    - (d) Open space as defined in § 16.8.11.6E(2) of this article.
  - (2) A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of 33%, easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.
  - (3) A written statement describing the ways the proposed development furthers the purpose and objectives of this article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high-value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high-yield aquifers and important natural or historic sites worthy of preservation.
  - (4) The location of each of the proposed building envelopes. Only developments having a total subdivision ~~or site~~ plan with building envelopes will be considered.
- B. An applicant with a project that includes proposed public open space must obtain Town Council acceptance for the public land or easement following preliminary plan approval. Town Council acceptance is contingent upon receipt of final plan approval by the Planning Board.

§16.8.11.6 **Standards.**

- A. The purpose and intent of this title must be upheld for any reviews conducted under this article.
- B. A ~~cluster mixed use and~~ cluster residential development must meet all requirements for a subdivision (~~and site plan where applicable~~) and all other applicable federal, state and local ordinances, except as modified by action of the Planning Board, where authorized.
- C. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning Board's satisfaction that alternative methods used result in a development that is compatible with this Article **XI**.
- D. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller than 20,000 square feet per single-family residence and 8,000 square feet per bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, 12 M.R.S. § 4807-A.
- E. Open space requirements.
  - (8)(1) Open space must contain at least 50% of the total area of the property and no less than 30% of the total net residential acreage, as defined.
  - (9)(2) Total calculated open space must be designated as follows (see open space definitions in Chapter 16.2):
    - (a) Open space, reserved;
    - (b) Open space, common; and/or
    - (c) Open space, public.
  - (3) The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.
  - (4) Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.
  - (10)(5) Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in the applicant's written statement. In the Mixed Use – Neighborhood Zone, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the built and natural environments. **[Amended 11-26-2018 by Ord. No. 10-18]**
  - (6) Open space should be in a contiguous form of unfragmented land to protect natural resources,

including plant and wildlife habitats.

- (7) A portion of the open space should be in close proximity to other open spaces used for recreation (e.g., a common green, multipurpose athletic field, gardens, and playgrounds).

F. (Reserved)

G. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.

H. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland, must be a part of the commonly held land.

(11)I. The developer must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any other features determined by the Planning Board to be a part of the proposed development.

- (1) Orientation. Buildings, view corridors and other improvements are to be designed so scenic vistas and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation.
- (2) Utility installation. All utilities are to be installed underground, wherever possible. The Planning Board must require the developer to adopt a prudent avoidance approach when permitting aboveground electrical service installations. Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.
- (3) Recreation. Facilities must be provided consistent with the development proposal. Active recreation requiring permanent equipment and/or modification of the site may not be located within the wetland setback areas or contiguous reserved open space areas.
- (4) Buffering. Planting, landscaping, form and siting of buildings and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development.
- (5) Development setbacks. Setbacks from wetlands and water bodies must demonstrate compliance to Table 16.9 of Chapter 16.9. These setbacks must be permanently maintained as "no cut, no disturb" buffer areas. If the setback areas are not of substantial vegetation to provide a sufficient buffer, the Planning Board may require additional plantings.

J. The location of subsurface wastewater disposal systems and a reserve area, if required, must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator, licensed by the State of Maine, must accompany the plan. If the subsurface disposal system is an engineered system, approval from the Maine Department of Human Services, Division of Health Engineering, and the Municipal Plumbing Inspector must be obtained prior to Planning Board approval.

**(12) §16.8.11.7 Open space dedication and maintenance.**

- A. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.
- B. The open space(s) must be shown on the development plan with appropriate notation on the face thereof to indicate that:
  - (1) The open space must not be used for future building lots; and
  - (2) A part or all of the open space may be dedicated for acceptance by the Town.
- C. If any, or all, of the open space is to be reserved for ownership by the residents ~~and/or by commercial entities~~, the bylaws of the proposed homeowners' ~~or similar governing association for commercial owners~~ and/or the recorded covenants must specify maintenance responsibilities and be submitted to the Planning Board prior to approval. See Subsection A above. **[Amended 11-26-2018 by Ord. No. 10-18]**
- D. Association responsibilities.
  - (1) Maintenance. The homeowners' association ~~or similar association for commercial owners~~ is responsible for the maintenance of open space(s) and other common facilities unless and until accepted by the Town. The stormwater management system must be maintained in accordance with § 16.8.8.2, Post-construction stormwater management. Associations must maintain adequate funds to defray these expenses. The Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these expenses.
  - (2) Inspection. Annually, by June 30, the developer or association must complete and submit to the Code Enforcement Officer a maintenance compliance report, on a form prepared by the Code Enforcement Officer, certifying compliance with any open space use and protection requirements. Said report must be completed by a Maine licensed civil engineer or certified soil scientist.
- E. Transition of responsibility. The developer must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so the transition of responsibilities is seamless.

**§16.8.11.8 Predevelopment requirements.**

Prior to the beginning of site work, the applicant must file with the Town Planning Department all required performance guarantees and inspection escrows in forms acceptable to the Town Manager in accordance with § 16.10.8.2B.

## Article VI. Performance Standards

### Section 16. Cluster developments.

[Ord. No. 2000.70, 8-1-2000]

#### A. Purpose.

1.

- (a) The purpose of these provisions is to allow for new concepts of residential, commercial and industrial development where variations of design and dimensional requirements may be allowed, provided that the new net density shall be no greater than that normally permitted in the zoning district in which the development is proposed;
- (b) These provisions may be used when considering affordable housing projects; and shall be used when parcels of land sustain significant wildlife habitats or other significant natural features that would be destroyed if ordinary development approaches were used.
- (c) Clustered development shall be encouraged as a means of preserving open space and land of value due to the natural resources found on it, limiting the costs and impacts of development, lowering maintenance costs, and reducing impervious surfaces.

2. Notwithstanding other provisions of this and other ordinances relating to dimensional requirements, the Planning Board, in reviewing and approving proposed developments located in the City, may modify said provisions related to dimensional requirements to permit innovative approaches to site design in order to achieve the stated purpose of this section, and in accordance with the following standards.



3. The use of this section shall not be construed as granting variances to relieve hardship because of the nature of the land or other conditions or situations.

B. Application procedure.

1. The Planning Board may allow subdivided development on reduced lot sizes with reduced frontage and setback requirements in return for open space where the Board determines that the cluster approach will prevent the loss of natural features without increasing the net density of the development.
2. The developer shall submit a written application to the Board for a cluster development which shall include all plans and materials required for a conventional subdivision under Chapter **66** of the Revised Code of the City of Biddeford.
3. Two sketch plans shall be submitted: one layout as a standard subdivision meeting the standards of the particular zone; the second as a cluster development indicating open space and significant natural features. Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements. The number of lots in the cluster development shall in no case exceed the number of lots in the standard subdivision.
4. If the cluster option is elected for use by the applicant, the applicant shall provide a written justification or statement. The written statement shall describe the natural features which will be preserved or enhanced by the cluster approach. Natural features include, but are not limited to moderate-to-high value wildlife and waterfowl habitats, moderate-to-high yield aquifers, important natural or historic sites, and soils that are identified as being of statewide significance, prime agricultural, or unique. The statement shall also compare the impacts upon the City from each plan. Examples of impacts are municipal cost for roads, school busing, solid waste removal, utility efficiencies, recreational opportunities, protection of floodwater storage areas, and environmental impacts on sensitive lands.

C. Requirements for cluster developments.

1.
  - a. Cluster developments shall be a minimum of five acres in area.
  - b. The Planning Board shall determine whether to allow the subdivision to be developed in accordance with the cluster

standards of this section based upon findings that:

- (1) The site contains natural features of the type described in Subsection B4 above which are worthy of preservation; and
  - (2) The site includes critical natural resources identified in the City of Biddeford 1999 Comprehensive Plan; and
  - (3) Those natural features could not adequately be preserved in a standard subdivision layout; and
  - (4) A clustered development will permit more efficient creation and utilization of infrastructure and provision of municipal and quasimunicipal services than would a standard subdivision layout; and
  - (5) The clustered development achieves maximum preservation of agricultural and forested land, in particular those soils identified by the soils conservation service as being of statewide significance, as prime agricultural soils, and as unique soils. These soils are identified on a map prepared by the Southern Maine Regional Planning Commission based on Soil Conservation Service data and available in the City Planner's office; and
  - (6) The open space that is preserved as described herein shall be considered for agriculture and natural resource-based uses where appropriate.
2. Each building shall be an element of an overall plan for site development. The site plan shall illustrate the placement of buildings, open space, paths, roads, service areas, and parking areas, and in so doing shall take into consideration all requirements of this section and of other relevant sections of this ordinance.
  3. The maximum net density allowable in cluster developments shall be calculated on the basis of the net density calculations standards found in Article VI of this ordinance. In order to determine the maximum number of units permitted on a tract of land, the total net acreage shall be divided by the minimum lot size required in the district.
  4. A copy of that portion of the York County Soil Survey covering the proposed development shall be submitted.
    - a. In addition, the Board shall require a high intensity soils survey

or a report by a registered soil scientist or a registered professional engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses.

- b. If the proposed development is in an area featuring soils identified by the natural resources conservation service as being of statewide significance, as prime agricultural soils, and as unique soils, the Planning Board shall require a high-intensity soils survey or a report by a registered soil scientist or a registered professional engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses.
5. Minimum lot area.
  - a. No lot serviced by a subsurface septic disposal system shall be smaller in area than 20,000 square feet.
  - b. If a cluster development will be serviced by public sewer, no lot shall be smaller in area than 75% of the minimum lot size requirements established in Article V of this ordinance, except in the Rural Farm Zone where no lot shall be smaller than 20,000 square feet.
  - c. If a cluster development will be serviced by public water, no lot shall be smaller in area than 75% of the minimum lot size requirements established in Article V of this ordinance, except in the Rural Farm Zone where no lot shall be smaller than 20,000 square feet.
  - d. If a cluster development will be serviced by both public sewer service and public water, no lot shall be smaller in area than 75% of the minimum lot size requirements established in Article V of this ordinance, except in the Rural Farm Zone where no lot shall be smaller than 20,000 square feet.
6. The total area of open space within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the district.
7. The Planning Board shall consider the purpose of said open space, and shall require the developer to provide access or to restrict access based on the stated purpose of the open space land.
8. Distance between buildings shall not be less than 30 feet.

9. No individual lots shall have frontage on an existing road at the time of development. There shall be a setback of 40 feet from the main public access road and 25 feet from interior roads that are constructed as part of the clustered development.
10. In no case shall shore frontage and setback be reduced below the minimum shore frontage normally required in the district.
11. Where a clustered development abuts a body of water, a usable portion of the shoreline frontage shall be a part of the open space. Said shoreline frontage shall be no less than 100 feet. Deeded access to said frontage shall be conveyed to each lot owner in the clustered development.
12. When individual wells are to be utilized, a drilled well, with casing, shall be provided on each lot by the developer/builder. The applicant shall demonstrate the availability of water adequate for domestic purposes as well as for fire safety. The Planning Board may require the construction of storage ponds and dry hydrants.
13. Utilities shall be installed underground wherever possible. Transformer boxes, pumping stations, and meters shall be located so as not to be unsightly or hazardous to the public.

D. Siting and buffering standards.

1. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes (where possible) and natural drainage areas, in accordance with an overall plan for site development and landscaping. A site inspection shall be conducted by the Planning Board prior to approval. Once approved, the plan shall not be altered without prior approval of the Planning Board.
2. Residential buildings shall be designed and laid out to protect bedroom windows from light invasions by vehicle headlights or glare from existing outdoor lighting or illuminated signs where allowed, insofar as practicable.
3. Where parking spaces or storage areas are located in areas abutting existing residential properties, a permanent wood or masonry screen at least four feet high shall be erected along the property line in addition to the green perimeter strip described below.
4. Other than in the resource protection district, a green perimeter strip

not less than 20 feet wide shall be maintained with grass, bushes, flowers, or trees all alongside lot or rear lot lines of the property as a whole, and (except for entrance and exit driveways) along the entire front of such lot. Such green strip shall not be built on or paved or used for parking or storage. There shall be no removal of trees over four inches in diameter within this buffer. The Planning Board may require a green strip of up to 50 feet in width if, in the judgment of the Board, the preservation of natural features or of the character of the area in which the clustered development is proposed would be enhanced by a green strip greater than 20 feet in width. In the resource protection district, vegetation shall be retained in its natural state.

5. Except for removal of dying or diseased trees, existing vegetation shall be left intact to prevent soil erosion.

E. Dedication and maintenance of open space and facilities.

1. In Planning Board review and approval of a clustered development, the following requirements shall apply and shall supersede any inconsistent or more restrictive provisions of this Zoning Ordinance or Chapter **66** of the Revised Code of the City of Biddeford.

Open space set aside in a cluster development shall be permanently preserved as required by this performance standard. Land set aside as permanent open space may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings are permitted, provided that a conservation easement or a declaration of covenants and restrictions is placed on such land pursuant to this section, and provided that the Planning Board approves such configuration of the open space.

2. Open space uses. On all parcels, open space uses shall be appropriate to the site. Open space shall include natural features located on the parcel(s) such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, agricultural land, soils as identified in Subsection C1b(5) above, forested acreage, wildlife habitat, rock outcroppings and historic features and sites. Open space shall be preserved and maintained subject to the following, as applicable:
  - a. On parcels that contain significant portions of land suited to agricultural production, open space shall be conserved for agriculture or other consistent open space uses such as forestry,

recreation (active or passive), and resource conservation.

- b. When the principal purposes of conserving portions of the open space is the protection of natural resources such as wetlands, aquifers, steep slopes, wildlife and plant habitats, and stream corridors, open space uses in those portions may be limited to those which are no more intensive than passive recreation.
  - c. Open space areas shall be contiguous, where possible, to allow linking of open space areas throughout the town.
  - d. If the open space is to be devoted at least in part to a productive land use such as agriculture or forestry, the developer shall submit to the Planning Board a plan of how such use is to be fostered in the future. Such plan may include, for example, a long term timber management plan.
  - e. The use of any open space may be limited by the Planning Board at the time of final plan approval where the board deems it necessary to protect adjacent properties or uses, or to protect sensitive natural features or resources. A proposed change in use of open space land, other than that specified at the time of plan approval, shall be reviewed by the Planning Board as an amendment to the approved plan.
  - f. Further subdivision of open space or its use for other than agriculture, forestry, recreation or conservation, except for easements for underground utilities, shall be prohibited and shall be so stated by deed restrictions. Structures and buildings accessory to agriculture, recreation or conservation uses may be erected on open space, subject to Planning Board approval under the site plan review provisions of this Zoning Ordinance and this performance standard.
3. Notations on plan. Open space must be clearly labeled on the final plan as to its use or uses with respect to the portions of the open space to which such use or uses apply, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof. The plan shall clearly show that the open space land is permanently reserved for open space purposes, and shall contain a notation indicating the book and page of any conservation easements or deed restrictions required to be recorded to implement such reservations or restrictions.
  4. Preservation in perpetuity. The owner of a parcel of land proposed

for cluster development shall designate all or a portion of the parcel for open space use in perpetuity. All requirements of this performance standard are subject to the following conditions:

- a. A perpetual conservation easement, or declaration of covenants and restrictions, restricting development of the open space land shall be incorporated in the open space plan.
- b. The conservation easement may be granted to or the declarations may be for the benefit of a private party, third party or other entity; the City, with the approval of the City Council; or to a qualified not-for-profit conservation organization, such as a land trust, acceptable to the Planning Board.
- c. Such conservation easement or declaration of covenants and restrictions shall be reviewed and approved by the Planning Board and be required as a condition of plan approval hereunder.
- d. The Planning Board may require that such conservation easement, or declaration of covenants and restrictions, be enforceable by the City of Biddeford if the City is not the holder of the conservation easement or beneficiary of the declarations, or by a third party as specified and/or approved by the Board.
- e. The conservation easement or declarations shall prohibit residential, industrial, or commercial use of such open space land (except in connection with agriculture, forestry, and recreation), and shall not be amendable to permit such use.
- f. The conservation easement or declarations shall be recorded in the York County Registry of Deeds prior to or simultaneously with the filing of the final, approved plan in the York County Registry of Deeds. If the final plan is not required to be recorded, the conservation easement or declarations shall be recorded in the York County Registry of Deeds prior to development of the parcel approved for cluster development, and/or prior to issuance of a building permit for any portion of the cluster development. A copy of the conservation easement or declarations shall be submitted to the planning office with a copy of the receipt from the Registry of Deeds.

5. Ownership of open space land.

Open space land may be held in private ownership (which is to be

preferred) including an appropriate third party not the applicant; or owned in common by a homeowner's association (HOA); dedicated to the town, county or state governments or agencies; transferred to a nonprofit organization such as a land trust acceptable to the Planning Board; or held in such other form of ownership as the Planning Board finds adequate to achieve the purposes set forth in this section and the requirements of this Zoning Ordinance.

The appropriate form of ownership shall be determined based upon the purpose of the open space. Unless so determined, or unless deeded to the City of Biddeford and accepted by the City Council, open space shall be owned in common by the owners of the lots or units in the development. Covenants for mandatory membership in the association setting forth the owners' rights and interest and privileges in the association and the common land, shall be approved by the Planning Board and included in the deed for each lot.

The developer or subdivider shall maintain control of and responsibility for such open space(s) and be responsible for its/their maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Planning Board upon request of the neighborhood/tenants association or the developer.