

**ORDINANCE NO. 030518-05**

**AN ORDINANCE REPEALING AND RECREATING SECTION 17-7(c)(9) AND  
RENUMBERING SECTION 17-7(c)(9)f. TO SECTION 17-7(c)(9)i. OF THE MUNICIPAL  
CODE OF THE VILLAGE OF FONTANA-ON-GENEVA LAKE**

The Village Board of the Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin do ordain as follows:

**SECTION 1.**

Section 17-7 (c)(9) is hereby repealed and recreated to read as follows:

*(9) Dedication and Improvement of Public Parks and Other Public Sites.*

- a. *Purpose.* The requirements of this subsection are established to ensure that adequate parks, open spaces, and sites for other public uses are properly located and preserved as the Village grows. It has also been established to ensure that the cost of providing the park and recreation sites and facilities necessary to serve the additional people brought into the community by land development may be equitably apportioned on the bases on the additional needs created by the development. The requirements shall apply to all lands proposed for all residential development. Reconfiguration of existing lots and redevelopment which does not create new, additional lots shall not be subject to the provisions of this action.
- b. *Applicable Planning Documents.* The location, size, standards, and recommendations related to the parkland dedication and fee in lieu of parkland dedication shall be guided by the following adopted Village documents: Official Map, Comprehensive Plan, and Parks and Open Space Plan.
- c. *Applicable Development Projects for Parkland Dedications and Fees in Lieu of Parkland Dedication.* Any development approval which enables the creation of additional dwelling units shall require compliance with the parkland dedication and fee in lieu of parkland dedication requirements included in this section. This includes any subdivision, plat, certified survey map, condominium plat, planned development, or site plan that creates additional dwelling units, or any building permit for a vacant lot that has not already been subject to these requirements.
- d. *Parkland Dedication.* The subdivider or developer shall dedicate to the public sufficient developable land area for the park, recreation and open space needs of the development, that is suitable and readily developable to provide adequate park, playground, recreation and open space to meet the needs to be created by and to be provided for a development project in accordance with standards outlined in the applicable planning documents described in subsection (2), above.

1. *Minimum Park Area.* All parkland accepted shall be a minimum of two (2) acres in size.
2. *Minimum Street Frontage.* The minimum street frontage for public parkland provided for any development project shall meet one of the following requirements:
  - (i) Each park shall have at least two frontages on public streets, with at least two hundred (200) feet in width on a public street and the other entrance a minimum of seventy-five (75) feet in width on a public street. No perimeter dimension of the park shall be less than two hundred (200) feet.
  - (ii) The minimum required public street frontage length shall be the square root of the park area (in square feet).
  - (iii) The Parks Commission shall have the authority to recommend alternative dimensions for frontages and the park if it can be found that the objectives of access and visibility can be fulfilled.
3. *Required Dedication on per Dwelling Unit.* The amount of parkland dedication area per dwelling unit imposed shall be determined as follows: For each proposed development, the parkland dedication area per dwelling unit shall be the current rate as established by the Village Board for each dwelling unit. Any adjustment or changes in the number of dwelling units before final plat acceptance will be subject to this section.
4. *Design.* In the design of an applicable development project, provision shall be made for suitable sites of adequate area for schools, parks, playgrounds, open spaces, drainageways, and other public purposes, including those recommended in the applicable planning documents described in subsection (2), above. Consideration shall be given to the preservation of scenic and historic sites, stands of trees, marshes, lakes, ponds, streams, watercourses, watersheds and ravines and woodland, prairie and wetland plant and animal communities. The park shall be improved with the necessary public improvements required in Section 17-7 of this code.
5. *Location.* Any land to be dedicated as a requirement of this section shall be reasonably adaptable for the intended park and recreation uses and shall be at a location convenient to the people to be served. Factors used in evaluating the adequacy of a proposed park and recreation area shall include, but not be limited to, size, shape, topography, geography, tree cover, access and location.



6. *Land Suitability.* The subdivider or developer shall dedicate suitable land for the park, recreation and open space needs of the development in accordance with standards and recommendations contained in the applicable planning documents described in subsection (2), above. The determination of land suitability will be at the sole discretion of the Plan Commission acting on the recommendation of the Parks Commission. Surface waters, 100-year floodplains, federal and state wetlands, drainageways, stormwater facilities, and steep slopes, as defined in the Zoning Ordinance, do not qualify as fulfilling the park land dedication requirements. When usable land is dedicated for passive recreation use, the balance of the land should be restored to a natural state to the extent practicable and necessary.
7. *Pedestrian and Bikeway Linkages.* This shall include the provision of pedestrian and bikeway linkages necessary to provide access to park, trail, recreation and open space areas as recommended in applicable planning documents described in subsection (2), above. Where, in the opinion of the Plan Commission, such linkages are required outside the public street right-of-way, they shall be reserved by public easement or dedicated as public right-of-way and developed as an obligation of the subdivider or developer. The dedication of area for such linkages shall be counted toward the parkland dedication requirements in subsection (4)c., above.
8. *Other Dedications Required by the Village.* All required land dedications under this subsection shall be provided in addition to any other dedications or reservations required by the Village.
9. *Multi-Family Development.* Any multi-family development involving three or more dwelling units shall be required to provide adequate on-site recreation area to address the recreational needs of anticipated residents. Said recreation area shall be considered as the equivalent to "backyard" area that is found on single-family and two-family lots. Specifically, the residential development shall provide a minimum of two hundred (200) square feet per dwelling unit of usable recreation area in a location and configuration deemed appropriate by the Plan Commission, upon recommendation from the Parks Commission. This requirement shall not apply to single-family detached dwelling units nor to duplex unit, two-flat units, or twin-home dwelling units located on separate lots. The Plan Commission may waive this requirement for redevelopment projects or if sufficient park and recreation facilities are located in close proximity.
10. *Planned Parks Larger than Required Dedications.* Whenever a park site, recreation site, or other public site that is designated in applicable planning documents is of a larger area than the required dedication established herein, the required dedication shall occur at the same time as final plat approval.

The remaining designated parkland areas on the subject property may be reserved by the Village Board for a period not to exceed three (3) years, unless extended by mutual agreement. During such period, the Village may, in its discretion, agree to purchase the reserved lands at the fair market value established at the time of the final plat approval, plus any real estate taxes accrued from the date of reservation.

11. *Site Preparation and Reimbursement.* All dedicated parklands shall be graded, cleared, grubbed, topsoiled, seeded and prepared by the subdivider or developer per the direction and satisfaction of the Parks Commission or its designee. The costs for this work shall be reimbursed to the subdivider or developer at the time of inspection and acceptance by the Village. The reimbursement shall be at a rate established by the Village Board or as otherwise agreed to by the Village Board.

12. *Public Street Improvement and Reimbursement.* All dedicated parklands shall front a public street and shall be sited per the direction and satisfaction of the Parks Commission or its designee. The Village shall reimburse the subdivider or developer for costs associated with public improvements such as streets, curb, gutter, storm sewer, sanitary sewer, public water, and sidewalks located within public rights-of-way directly adjacent to dedicated parkland. This reimbursement shall be intended to cover 1/2 of said costs on a linear-foot basis. The costs for this work shall be reimbursed to the subdivider or developer at the time of inspection and acceptance by the Village. The reimbursement shall be at a rate established by the Village Board or as otherwise agreed to by the Village Board.

e. *Fee in Lieu of Parkland Dedication.*

1. At the discretion of the Plan Commission, acting on the recommendation of the Parks Commission, the Plan Commission may require the developer to pay a fee in lieu of the required parkland dedication, as the parties may agree by mutual consent, which has been reduced to writing in a developer's agreement, when the following findings have been made by the Plan Commission:

- (i) There is no land suitable for parks within the proposed subdivision or planned development project;
- (ii) The dedication of land would not be compatible with the Village's Official Map, Comprehensive Plan, Park and Open Space Plan, or other applicable planning documents; or
- (iii) The Plan Commission determines that a cash contribution or combination of land and fees will better serve the interest.



2. The amount of any fee in lieu of parkland dedication imposed shall be determined as follows: For each proposed development, the fee in lieu of parkland dedication shall be the current rate as established by the Village Board for each dwelling unit. Any adjustment or changes in the number of dwelling units before final plat acceptance will be subject to this section.
3. The Plan Commission and the Parks Commission may recommend the subdivider or developer satisfy the requirements by combining parkland dedication with fee in lieu of parkland dedication payments. In such cases, the resulting fee in lieu of parkland dedication shall be determined by subtracting the credited value of the dedicated land, from the total fee in lieu of parkland dedication which would have been imposed had no land been dedicated by the subdivider or developer.
4. Payment may be made by one of the following methods:
  - (i) Option A—Lump Sum. The subdivider or developer shall pay the Village a lump sum amount prior to the issuance of any building permit for the development; or
  - (ii) Option B—Payment of One-Third of All Fee in Lieu of Parkland Dedication Payments. The subdivider or developer shall pay the Village thirty-three and four-tenths percent (33.4%) of the total fee by the date the first building permit is issued. At such time that thirty-three and four-tenths percent (33.4%) of the building permits are issued for the approved development or after one year from the date that the Village issued the first building permit, whichever occurs first, the subdivider or developer shall pay the second installment of thirty-three and three-tenths percent (33.3%) of the total fee. At such time that sixty-six and seven-tenths percent (66.7%) of the building permits are issued for the approved development or after two years from the date that the Village issued the first building permit, whichever occurs first, the subdivider or developer shall pay the final installment of thirty-three and three-tenths percent (33.3%) of the total fee. If this method of payment is used, the outstanding balance after the first payment is made shall be charged the interest rate earned by the park trust fund for the period of time that the second and third installments are outstanding.
5. Subdividers or developers shall make the lump sum payment identified in Option A above when the development is less than twenty-five (25) dwelling units.

6. Failure to make the proper payments as defined above shall result in the immediate withholding of all building and occupancy permits until all delinquent payments are made to the Village.
7. Use of Fees Paid. The Village shall place the fees collected pursuant to the provisions of this section in the fund for parkland acquisition and park development.
8. Annual Fee Adjustment. The fee in lieu of parkland dedication shall be adjusted during the first quarter of each year by a percentage equal to that of the rate of consumer inflation based on the percent of yearly change for the previous year for the Milwaukee metropolitan area as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

f. *Recreation Facilities Improvement Fee.*

1. This fee shall be additional to the requirement for parkland dedication and/or for the fee in lieu of parkland dedication.
2. At the time a building permit is issued for new construction of a residential dwelling unit, the subdivider or developer shall pay a recreation facilities improvement fee as established by the Village Board. Said fee shall be a one-time fee per dwelling unit for park development.
3. "Recreation facilities" are determined at the discretion of the Village and may include improvement of land for public parks, including grading, seeding and landscaping, installation of utilities, construction of sidewalks, purchase and installation of playground and other recreational equipment, and construction or installation of restroom facilities on land intended for public park purposes.
4. The amount of recreation facilities improvement fee imposed shall be determined as follows: For each proposed development, the fee in lieu of parkland dedication shall be the current rate as established by the Village Board for each dwelling unit. Any adjustment or changes in the number of dwelling units before final plat acceptance will be subject to this section.
5. Annual Fee Adjustment. The recreation facilities improvement fee shall be adjusted during the first quarter of each year by a percentage equal to that of the rate of consumer inflation based on the percent of yearly change for the previous year for the Milwaukee metropolitan area as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

g. *Fee Revenue Administration for Recreation Facilities Improvement Fees and Fees in Lieu of Parkland Dedication.* All monies collected from fee revenues and interest



earned thereon imposed under subsection (5) or (6), above, shall be placed in the park fund for park development and administered in accordance with Wis. Stat. § 66.0617.

1. All monies collected from fee revenues and interest earned thereon imposed under Subsection (1) or (2) above shall be used solely for the purpose of paying the proportionate costs of providing public parks, playgrounds, open spaces and athletic fields, together with the supporting recreation facilities to expand or improve them, that may become necessary due to increased land development within the Village. These capital costs may include the cost of land acquisition, debt service on bonds or similar debt instruments when the debt has been incurred for the purpose of proceeding with designated public projects prior to the collection of all anticipated fees for that project, legal, engineering and design costs to reimburse the Village for advances of other funds or reserves as from time to time approved by the Village Board.
2. The Village Board shall place any fee collected pursuant to the provisions of Subsection (5) in a separate interest-bearing, segregated fund to be used for land acquisition of adequate park, playground, recreation, athletic fields and open space. The Village Board shall place any fee collected pursuant to the provisions of Subsection (6) in a separate, interest-bearing, segregated fund to be used for recreation facilities improvements. Monies spent may be expended in other neighborhoods or community facilities in reasonable proximity to the subdivision, as determined by the Village Board, upon recommendation by the Park Commission.
3. Revenues derived from funds collected from fees imposed and collected but not used within a period of 10 years after the time of collection, for a use for which the fees were imposed, shall be refunded on a prorated, proportional basis, as determined by the Village Board, to the then-current owner of record of the property with respect to which the fee was imposed.
4. Any funds subject to a refund may be obtained upon application of the then-current owner of record, who shall be entitled to return of the original fee paid, together with interest at the rate of 1.0% per year from the date of said payment to the date of said refund. The owner of record must submit a written application for a refund to the Village Clerk/Treasurer of the Village of Fontana within 180 days after the expiration of the ten-year time period outlined in this section.
5. The payment of a fee imposed under this section as a condition of a permit for new construction or issuance of a zoning permit, conditional use permit or land division may be contested as to the amount, collection, refund or use of the fee to the Fontana Public Works Committee, provided that the

applicant files a written notice of appeal in the office of the Village Clerk/Treasurer within 15 days of the approval of the full building permit by the office of the Building Inspector for new construction or issuance of any other permit or land division permit upon which the fee is imposed. Such notice of appeal shall be titled "Notice of Appeal of Fee" and shall state the applicant's name, address, telephone number, address (if available) and legal description of the land development upon which the fee is imposed, and a statement of the nature of and reasons for the appeal. Said notice of appeal of fee shall be immediately forwarded by the Clerk/Treasurer of the Village to the Fontana Public Works Committee Chairperson. The Chairperson shall schedule the appeal for consideration by the Fontana Public Works Committee at a regular meeting as soon as reasonably practicable under the circumstances and shall notify the applicant of the time, date and place of such meeting in writing by regular mail, deposited in the mail no later than at least three days before the date of such meeting. Upon review of such appeal, the Fontana Public Works Committee may adjust the amount, collection, refund or use of the fee upon just and reasonable cause shown.

6. The fees imposed under Subsection (1) and (2) above shall be paid in full by the subdivider, developer or owner of record of the land development, unless expressly excepted under this section, at the time of the issuance of a full building permit by the office of the Building Inspector for any new construction.
7. If the subdivider, developer or owner of record fails to make the entire payment when due, the Building Inspector of the Village shall issue a stop order, pursuant to § 18-229.12 of the Village of Fontana Building Code, as from time to time amended, and shall refuse to approve any plans or to perform any further inspections until the fees are paid in full. The Building Inspector may also revoke the entire building permit, pursuant to § 70-36 of the Village of Fontana Building Code, if such fees remain unpaid for longer than three months after the due date. The unpaid balance of fees shall bear interest at the rate of 1.0% per month from the date of the full building permit issuance by the office of the Building Inspector through the date of payment. No certificate of occupancy may be issued for buildings on any parcel for which there are unpaid fees. Unpaid fees shall be billed as special charges to the property owner at the time of permit issuance and, if not so paid, shall become a lien as provided in § 66.0627(4), Wis. Stats., and Section 2-462, of the Code as of the date of such delinquency and shall be automatically extended upon the current or next tax roll as a delinquent tax against that real property parcel. Alternatively, developers or landowners may, at their own option, elect to either pay any or all of the imposed fees at the time of recording or pay any or all of the imposed fees or special charges at any other time prior to the issuance of the zoning, conditional use



or building permit.

8. For all unplatted lands requiring a plat and for all land divisions, rezonings or conditional use permits requiring a certified survey map, no final plat or certified survey map shall be certified as approved for recording unless the parkland dedication fee is calculated and noticed on the face of the instrument to be recorded for collection under this section. A notation shall be placed upon the face of the plat, map, survey or other document to be recorded, advising of the fees to be imposed on all buildable lots or developments containing institutional residential housing units. For all land divisions not requiring a plat or certified survey map, no rezoning permit, conditional use permit or building permit shall be issued for a land development unless the fees imposed under this section are calculated and invoiced for collection.
9. No subdivider, developer or owner of record of a vacant parcel, single-family residence, condominium, duplex or multifamily housing development may transfer, sell or convey such property interest to any person or entity without first providing to such person or entity actual written notice of the amount of the unpaid fees imposed under this section and time schedule for payment of such fees, pursuant to this Subsection (7), unless the subdivider, developer or owner of record has previously paid the parkland dedication fees and recreation facilities improvement fees. Inclusion of the notice under this subsection in the real estate condition report furnished to a prospective purchaser of a vacant parcel, single-family residence, condominium, duplex or multifamily housing development shall be sufficient compliance with this requirement.
10. The timing of parkland acquisition and recreation facilities development shall be at the discretion of the Village, as recommended by the Park Commission. However, where parkland improvement fees and recreation facility improvement fees have been acquired to enable the substantial development of planned park and recreation facilities, the Village shall make said improvements within 10 years of the date of fee collection.

h. *Credit for Private Park and Recreation Areas.*

1. Where private park and recreation areas are provided in a proposed development, and such space is to be privately owned and maintained by the future residents of the development, such areas may be credited toward, but not to exceed twenty-five percent (25%) of, the requirements for parkland dedication and fees in lieu of parkland dedication, as set forth in subsections (5) and (6), above. Such credits may be granted provided that the Plan Commission, acting upon the recommendation of the Parks Commission, finds it is in the public interest to do so, and that the following

standards are met:

- (i) Required building and pavement setback areas, required landscape bufferyards, natural resource areas protected by overlay zoning districts, and other open areas required by the Zoning Ordinance or Subdivision Ordinance shall not be included in the computation of such private open spaces;
  - (ii) That the private ownership and maintenance of the open space is adequately provided for by written agreement;
  - (iii) That the use of the private open space is restricted for park and recreational purposes by recorded covenants which run with the land in favor of the future owners of property within the tract and which cannot be defeated or eliminated without the consent of the Village Board;
  - (iv) That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location of the private open space land; and
  - (v) That facilities proposed for the open space are in substantial accordance with the recommendations of the applicable planning documents. If the proposed private park is in the service area of a park site designated in the park plan or a site dedicated and/or developed as a public park, then no credits will be given for private facilities.
2. In making the evaluation of the credit for private recreation facilities, the Plan Commission may retain independent professional services (agreed upon by both parties) to determine the amount of credit, if any, that should be allowed. The fees for such independent evaluations shall be paid by the developer.

## **SECTION 2.**

Section 17-7(c)(9)f. is hereby renumbered to Section 17-7(c)(9)i. as follows:

i. *Access to waterways.*

- 1. A subdivision or condominium development abutting a navigable waterway shall, according to the provisions of Wis. Stats. § 236.16(3), provide access at least 60 feet wide to the low-water mark so that there will be public access, connected to public roads, at one-half mile intervals as measured



along the lake or stream shore, except where greater intervals or different access is agreed upon by the State of Wisconsin, and excluding shore areas where public parks or open space, streets or roads on either side of a stream are provided. A public hearing with notice of such hearing by publication of a class 2 notice and mailing by registered mail of such notice to adjoining landowners shall be held prior to plan commission approval of any land division required to include public access to a waterway.

2. The village may require a public access easement along all navigable waterways. Where natural waterways traverse the subdivision or condominium development containing sufficient waterway area to contain the design discharge and where such natural waterways are endowed with significant natural beauty and have proven themselves reasonably stable, the subdivider or condominium developer shall leave such channels in their natural state and shall dedicate, or provide access easements along, such waterways, together with a sufficient access, along the periphery of the swale as a separate parcel or parcels, unless otherwise allowed by the village. Such dedication shall not be credited against the parkland dedication requirements specified in this section. Such easements shall require a public hearing with notice of such hearing by publication of a class 2 notice and mailing by registered mail of such notice to adjoining landowners prior to plan commission approval.

### **SECTION 3. EFFECTIVE DATE**

This Ordinance shall be in full force and effect upon and from its passage, approval, and publication as required by law.

**PASSED AND ADOPTED** by the Village Board of the Village of Fontana-on-Lake Geneva, Walworth County, Wisconsin, this 5<sup>th</sup> day of March, 2018.

VILLAGE BOARD OF THE VILLAGE OF  
FONTANA-ON-GENEVA LAKE

By: \_\_\_\_\_

Pat Kenny, Village President

Attest: \_\_\_\_\_

Theresa Loomer, Village Administrator/ Clerk

