



Key Issues in Open Space

A Plan of Action for New Castle County



“Open space is intended to preserve environmentally sensitive areas and protected resources, provide active and passive recreation facilities, establish greenways, provide wildlife habitats, facilitate stormwater management functions, and landscaped bufferyards.”

Unified Development Code
(Chapter 40)

Open Space: What is it and Who is Responsible?

Summary: When a developer proposes a plan for development to the Department of Land Use, they are required to set aside a prescribed amount of open space within the subdivision and to create adequate controls for stormwater management.

When the developer has fulfilled all Code obligations for turnover, the responsibility of maintaining the open space shifts from the developer to the subdivision’s maintenance organization.

The law currently: Section 40.20.225 of the Unified Development Code (Required Open Space) states the following:

Open space shall be required in all major residential developments. Ownership of open space shall be transferred to a maintenance organization or governmental body pursuant to the provisions contained in Article 27. Open space shall not be further developed and shall serve one (1) or more of the following functional needs:

1. Protection and preservation of natural resources and sensitive site features;
2. Provision of active and passive recreation areas;
3. Greenways and trail corridors;
4. Wildlife habitats and migration corridors;

5. Stormwater management;
6. Preservation of historical and cultural resources;
7. Agricultural uses;
8. Viewshed and vista preservation, and;
9. Bufferyards and landscaped areas.



Turning Open Space Over to the Community

In 2017, the Department of Land Use formed an Open Space Working Group to discuss open space related issues and concerns. In addition to Land Use professional staff, other attendees included local developers, site contractors, engineers, land use attorneys, new home builder representatives, established community leaders, and inspectors. A wide variety of concerns were deliberated and potential solutions offered for each.

The primary issues discussed included:

- Phasing in the turnover of open space
- Landscaping requirements and optimal planting seasons
- Stormwater management infrastructure to be maintained by professionals, not homeowners

1. **Phased in Turnover:** Given the breath and size of open space obligations, the turnover of common areas and amenities may need to be phased such that defined areas are completed and given to the community commensurate with the completion of adjacent homes.



This change would address several key issues, such as:

Finished and available more quickly:

- Completed amenities for homeowners within the open space phase that is turned over would be available for use.

Follows buildout pattern:

- The ultimate completion of final open space turnover would be less daunting, as it will have occurred throughout the years of development versus all at the end. Preparing smaller areas of open space (5-20 acres) is more manageable than that of an entire community (100's of acres).

Engages community closer to purchase of property:

- Homeowners would gradually be introduced into their open space maintenance obligations versus receiving everything at the end.
- Open space areas and common amenities would be completed and become available for homeowner use sooner. If homeowners own and contribute to maintenance, developers will be incentivized to have large amenities available to their community members.



2. Optimal Planting Season: Landscaping standards need adjusting to encourage plant installation during optimal growing seasons.

Codify growing/installation schedule:

- Developers looking to keep their maintenance cost low often do not install landscaping until required to obtain building permits. Unfortunately, due to the amount of landscaping material and their timing for turnover, this work often occurs or extends beyond recommended planting schedules for survivability. The phasing of community open space, would promote the installation of plantings to occur more systematically and within growing seasons.



Focus on functional needs:

- Passive open space areas need more options to be considered, allowing communities to maintain these areas as they desire such as lawns, meadows, forests, a community garden, solar field or even leased as farmland. Changes to community open space should be left to them to govern.

Additional set aside funds for replacement:

- Require developers to provide funding to the maintenance corporation for two-years of landscape maintenance, including replacement costs for X% of the installed material. This would provide a funded account and an incentive for the homeowners to properly care for their landscaping as any replacement monies not spent would stay with the community.

3. Have maintenance done by professionals: Establish a professional agency to oversee and maintain stormwater management related infrastructure. Homeowners generally do not have the technical expertise or time to properly care and maintain stormwater management facilities designed to infiltrate which are sensitive to impacts.

• Opportunities include:

- **A Professional Utility:** Allow HOA's to voluntarily provide their monthly dues collected for stormwater management to a private utility company to administer and oversee routine maintenance contracts for stormwater management related functions.
- **A Government Sponsored Utility:** If all property owners contribute to the maintenance of stormwater infrastructure, then all stormwater related concerns could be addressed (drainage complaints, MS4 WQIP obligations, stormwater management maintenance and reconstruction, etc.).



What is being done?

The Department of Land Use has taken under consideration the concerns raised during the Open Space Working Group session and is currently reviewing the Unified Development Code's Chapter 27 (Maintenance Organizations, Open Space, and Common Facilities) to determine feasibility and to ensure an equitable process for both developer and subdivision homeowners.