

**PROPOSED**  
**LOCAL LAW # \_\_\_\_\_ OF THE YEAR 2002**

**A Local Law to Amend the Town Code of the Town of Carmel,  
Chapter 63, thereof, entitled "Zoning."**

**BE IT ENACTED** by the Town Board of the Town of Carmel, County of Putnam,  
**State of New York** as follows:

**SECTION 1.** The Zoning Board of Appeals of the Town of Carmel has advised the Town Board that, in the Zoning Board's opinion, there is some ambiguity in the existing language of Section 63-11E(6) and 63-11E(7) of the Zoning Code of the Town of Carmel. Section 63-11E(6) refers to "Open Space." Section 63-11E(7) refers to "Common Open Space." In order to clarify these Sections, the Town Board has determined to amend Sections 63-11 E (6) and (7) as follows:

**SECTION 2.** Chapter 63 of the Town Code of the Town of Carmel, Section 63-11 E (6) is hereby amended to read as follows:

- (6) **Open Space.** All acreage used in calculating overall residential density and not used for the siting of dwelling units or as common open space shall be preserved as open space. No less than thirty-five (35%) percent of the gross area of a residential cluster development, exclusive of streets and other paved areas, shall be preserved as open space. In determining which land is to be preserved as open space, the natural and scenic qualities of the site shall be taken into consideration, as well as the ecological significance of the site and its utility as an open space. If the Planning Board finds that part of such open space is of such size, location, shape, topography and general character as to be useful to satisfy the recreational purposes of the Town, the Planning Board may require the applicant to provide five thousand (5,000) square feet of recreational area within such open space for each detached dwelling unit and three hundred (300) square feet of recreational area within such open space for each semidetached or attached dwelling unit. The applicant shall pay to the Town a fee for each unit shown on the site plan which fee shall be established annually by the Town Board and shall be on file in the Office of the Town Clerk. Said amount shall constitute a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property. All open space not deeded to the Town for recreational purposes, pursuant to a Planning Board finding described herein above, shall be restricted in perpetuity from any further development or from being used for any purpose other than as

open space by written instrument recorded in the Putnam County Clerk's office. Said written instrument shall be recorded prior to the filing of the site plan/subdivision plat in the Putnam County Clerk's office. All open space not deeded to the Town for recreational purposes, pursuant to a Planning Board finding described herein above, shall be deeded to and managed by a homeowners association or, if the Town is willing to accept it, deeded to the Town of Carmel or a land trust or may be retained by the owner on the condition that if it is subsequently resold by the landowner, it may only be used for Planning Board approved passive recreational uses and/or Planning Board approved non-motorized active recreational uses. In reference to the previous sentence, the words "non motorized" do not include golf carts. In addition, the words "active recreational purposes" shall not include amusement parks.

**SECTION 3.** Chapter 63 of the Town Code of the Town of Carmel, Section 63-11 E (7) is hereby amended to read as follows:

- (7) (a) **Common Open Space.** Common open space is hereby defined as land area within a residential cluster development, not individually owned or dedicated for public use, which is designed and intended for the exclusive common use or enjoyment of the residents of the residential cluster development. Common open space may be improved or unimproved and may include streets and other paved areas.
- (b) **Deed restriction.** The applicant shall deliver to the Planning Board for its approval appropriate documents establishing deed restrictions prohibiting in perpetuity any land designated as common open space from being used for any other purpose.
- (c) **Organization for common ownership required.** The applicant shall establish a legally constituted organization for the ownership and maintenance of all common open space and any undedicated streets in accordance with § 63-11E(7)(d) below. This organization shall not be dissolved, nor shall it dispose of any common open space, by sale or otherwise.
- (d) **Rules for organization.** Any organization established in accordance with § 63-11E(7)(c) above shall:
- [1] Be established before a building permit is issued for any dwelling unit in the residential cluster development.
  - [2] Make membership mandatory for each owner of a dwelling unit and any succeeding owner.
  - [3] Guarantee access to all the common open space to all persons legally residing in the development and limit that access to the legal residents and their guests only unless otherwise provided by the Planning Board in its Final Approval Resolution.
  - [4] Be responsible for obtaining liability insurance and paying the taxes on the common open space as well as

maintaining the common open space.

[5] Require owners of dwelling units to pay their pro rata share of the costs listed in Subsection E(6)(d)[4] above by levying assessments and/or charges on the dwelling units and provide that all such assessments or charges levied by the organization shall have the same force and effect as a debt or ground rent or lien against the real property.

[6] Be able to adjust assessments and/or charges to meet changing needs.

(e) Common open space maintenance; maintenance plan required. The documents establishing or creating such organization shall provide for a plan for the maintenance of all common open space and undedicated streets in the residential cluster development.

SECTION 4.  
law.

This Local Law shall take effect immediately in accordance with