

ORDINANCE NO. 2009-41

ORDINANCE OF THE BOROUGH OF RED BANK,
COUNTY OF MONMOUTH, NEW JERSEY
AMENDING AND SUPPLEMENTING
CHAPTER XXV, "PLANNING AND DEVELOPMENT REGULATIONS,"
REPEALING SECTION 25-8.19(I), "MULTI-FAMILY DWELLINGS – RECREATION"

WHEREAS, Section §25-8.19(I) of the Revised General Ordinances of the Borough of Red Bank had heretofore required developers of multi-family dwellings to set aside an active recreation area at the rate of at least two hundred fifty (250) square feet per dwelling unit, and had further provided a formula for a monetary contribution *in lieu* of such recreation areas when a developer had insufficient space for such recreation areas; and

WHEREAS, the Appellate Division of the Superior Court of the State of New Jersey in the case of New Jersey Shore Builders Association v. Township of Jackson, 401 N.J. Super. 152 (App.Div. 2008) concluded that the Municipal Land Use Law (MLUL) "does not empower municipal governments to require developers to set aside land for common open space or recreational areas and facilities, except with regard to applications for planned developments as defined in the MLUL, ... or to make payments in lieu of those set-asides;" and

WHEREAS, since Section 25-8.19 of the Red Bank Code does not pertain to planned developments as defined in the MLUL, sub-section 25-8.19(I) should therefore be repealed to the extent it is inconsistent with the law;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Red Bank that Chapter XXV of the Revised General Ordinances of the Borough of Red Bank, Monmouth County, "Planning and Development Regulations," Section 25-8.19(I), "Multi-Family Dwellings, Recreation" is hereby amended and supplemented as follows (underlined text denotes additions; strikeouts denote deletions):

SECTION ONE:

25-8.19 Multi-Family Dwellings.

a – k. *[No Change]*

I. Recreation.

1. ~~Passive recreation area, such as pathways, natural woods and fields, seating areas and lawns, shall be provided, suitably arranged, throughout any multi-family site.~~
2. ~~In addition, an active recreation area or areas shall be provided at the rate of at least two hundred fifty (250) square feet per dwelling unit. Outdoor play equipment shall be installed in each recreation area in sufficient amount and variety to service the occupants of the project. If a swimming pool area or areas are to be installed they are to include a pool of a size at least equivalent to fifteen (15) square feet per unit except no pool less than five hundred (500) square feet will be allowed and no pool greater than three thousand (3,000) square feet shall be required. An auxiliary building, or buildings, providing for laboratories and storage shall also be erected in conjunction with pools. Swimming pools shall be subject to the provisions of Subsection 25-8.8 of this Chapter.~~
3. ~~Use of any of the foregoing recreation areas may be restricted to the residents of any such multi-family site of which they are part.~~
4. ~~Contributions *in lieu* of Active Recreation Areas. If the required active recreation area, or any part thereof, is not provided, then a contribution *in lieu* of same shall be made to the Borough's recreation fund in accordance with the following formula.~~
 - (a) ~~Total deficiency of active recreation area, in square feet, multiplied by:~~
 - (1) ~~the sum of \$30.00 per square foot for that portion of the~~

- (2) ~~total development area lying in any residential zone (RA, RB, R-B1, R-B2 and RD zones); and/or~~
the sum of \$50.00 per square foot for that portion of the total development area lying in any Business/Commercial, Mixed Use, Medical Services, Waterfront Development, or Industrial zones (NB, BR-1, BR-2, HB, CCD-1, CCD-2, PO, WD, MS, LI, or I zones).

m. – r. *[No Change]*.

SECTION TWO: Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

SECTION THREE: If any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION FOUR: This Ordinance shall take effect immediately upon its passage and adoption according to law.

First Reading: July 27, 2009

Final Reading: August 24, 2009