SECTION 17 PLANNED RESIDENTIAL DEVELOPMENT

17.1 Interpretation - The interpretation and application of the provisions of this Section shall be made pursuant to and by authority of the Pennsylvania Municipalities Planning Code, Act 170, as well as pursuant to the Penn Hills Comprehensive Plan, adopted by the Mayor and Council, so that the community may develop in an orderly and well considered manner; it being the intention of the Mayor and Council and they do hereby declare that the Municipality of Penn Hills is, and in the future, shall be developed primarily as a residential community.

17.2 Introduction - The purpose of this Section is to encourage innovation in residential development so that the growing demand for housing may be met by greater variety in type, design, and layout of dwellings and other structures, and by the conservation and more efficient use of open space ancillary to said dwellings and uses; so that greater opportunities for better housing and recreation may extend to all residents of Penn Hills.

17.3 Decision Making Power - The Planning Commission shall have the power to administer the Planned Residential Development provisions pursuant to the provisions of this Section and ordinance.

17.4 Permitted Uses

17.4.A. Permitted Principle Uses

(1) Single-family detached dwellings

(2) Two-family detached dwellings or duplexes

(3) Townhouses

(4) Walk-up garden apartment buildings

(5) High-rise apartments

17.4.B. Permitted Accessory Uses

(1) Private or group garages and parking areas.

(2) Structures or facilities to serve the Planned Residential Development only, but not including any commercial structures or uses, as such uses are not permitted in a Planned Residential Development.

(3) Community assembly hall, recreation center, recreational facilities, and/or membership clubhouse related to the Planned Residential Development. The recreation center and recreational facilities may

consist of any of the recreational uses permitted in residential districts, referenced in Section 3.2 of this ordinance.

17.5 Approval Procedures - It is the intention of this procedure to encourage and assist developers in their design using modern planning practice, as well as to provide the shortest and most flexible procedures and, at the same time, protect the community against undesirable conditions. Another purpose of this procedure is to create an undisputable legal base for property descriptions for both the developer as well as the Municipality and its citizens.

17.5.A. Pre-Application Consultation - Before any design or engineering work and before any formal application, the applicant may consult with the Planning Department concerning the following information relative to the Development:

(1) Type of development on the particular site

(2) Access to and from the site

(3) Public facilities - Such as sanitary and storm sewers, water supply, schools and parks, police and fire protection, etc.

(4) Other agencies involved in obtaining all permits for the development

(5) Sketch Plan - showing the full property, type, size, and location of all buildings included in the development with the proposed street and sewer patterns, and the location and intended use of any common open space for public use.

(6) Location Map - Showing the relation of the proposed development to existing community facilities within and in the area of development influence beyond the property lines. The following features shall be included:

a. Traffic arteries (highways and streets)
b. Public transportation lines
c. Existing schools, parks, playgrounds, or other public sites
d. Shopping centers
e. Other commercial enterprises
f. Natural water courses and drainage areas
g. Topography of site

17.5.B. Application for Tentative Approval

(1) An application for tentative approval shall include a development

plan for a Planned Residential Development and shall be filed by or on behalf of the landowner or, if several adjacent parcels are included in the plan, one application shall be filed by a single development ownership organization formed by all the landowners, which organization shall then be known as the landowner.

(2) Twelve (12) prints of site map showing:

a. Contours of property and one hundred (100) feet beyond, at vertical intervals of two (2) feet of the general slope if the site is less than ten percent (10%), and at intervals of five (5) feet if the general slope is greater than ten percent (10%). The Planning Department may relieve the land owner of providing contours beyond the property if, on prior discussion with the Planning Department, setting forth his reasons, the Planning Department was of the opinion that contours are not necessary in order to administer these regulations properly in connection with the Development.

b. Terrain features, wooded areas, buildings, and other natural or artificial features, which would affect the plan of the Development, as well as structures planned and a statement deemed to be appropriate concerning non-residential uses of buildings.

c. Contours at intervals of two (2) feet of all grades to be altered.

d. Tract boundary lines, showing dimensions, bearings, and corners.

e. Streets and rights-of-way on adjoining site, showing roadway widths, approximate gradients, types and widths of pavements, curbs, sidewalks, and other pertinent data.

f. Easements - Location, widths, and purposes.

g. Utilities, including sanitary and storm sewers, other drainage facilities, water lines, fire hydrants, gas mains, street lighting, electric utilities and other facilities. Size or capacity of each should be shown and the locations of or distance to such existing utility indicated. All utilities, including all types of transmission lines, to be underground except at outdoor meters or other necessary equipment. This includes but is not limited to all electric power feeders and telephone lines.

h. Existing use of adjacent land within two hundred (200) feet of the proposed subdivision and other conditions on the adjacent

land including: approximate direction and gradient of ground slope, including embankments or retaining walls, character and location of buildings, railroads, power lines, gas lines, towers, and other nearby non-residential land uses or adverse influences, owners of adjacent land, and its zoning use classification.

i. Areas of past, present, or anticipated ponding or overflow of flood or storm waters.

j. Other features or conditions which would affect the Development

Favorable or adversely, including previous or new cut and/or fill Areas. (Refer to Ordinance No. 1280)

k. Title, graphic scale, north point, and date.

l. Subsurface conditions or tract including information re-grading past mining activity, remaining mineable material, and future possibility of mine activity, as well as burning mine fires, and whether the mineral rights to the property have been deeded out or leased to other persons or parties. Landowners must provide this information from the State Bureau of Mines records showing subsurface conditions. Evidence shall be required of having requested such information and information showing acceptable conditions must be provided before tentative approval may be granted.

m. Site map shall be drawn to scale of fifty (50) feet to one (1) inch, if practical or, one hundred (100) feet to one (1) inch if necessary. The site map shall be twenty-four (24) by thirty-six (36) inches in size, or made in multiples of this size and cut along

match lines.

(3) Landowner shall request from the Allegheny County Planning Department a report from the United States Conservation Service concerning soil conditions. One (1) copy of this report shall be required for consideration of preliminary plat approval.

(4) Twelve (12) prints of a preliminary plat of the Development shall be drawn to a scale of fifty (50) feet to one (1) inch and may be part of the site map if it is to this scale. Sheet size information for the site map shall apply to the Preliminary Plat which shall show:

a. Proposed name of Development.

b. Names and addresses of landowner, developer, land planning consultant, engineer, surveyor, and/or others who are associated with the Development.

c. Street patterns, showing the names and widths of right-of-way of streets and approximate grades. The street lines shall be one-one hundredth (1/100) of a foot. Curving lines should have the radii, center angles, and the arc distances.

d. Layout of structures, showing dimension numbers, location, height, and use.

e. Parcels of land to be dedicated or reserved for common open space, schools, parks, playgrounds or public, semi-public or community purposes. Sizes are to be specified as well as proposed development and development schedule of each.

f. Key plan, legend, and notes.

g. Building setback or front yard lines.

h. Screening and outdoor lighting plans.

i. Title, graphic scale, north point, and date.

j. Arrangement of parking and loading areas.

k. Boundary of the Plan in heavy line, with courses and distances to the nearest one-one hundredth (1/100) of a foot, based upon an accurate field survey, which must be balanced and closed.

(5) Twelve (12) prints of engineering plans showing profiles, typical cross-sections and specifications for proposed street improvements, and profiles and other explanatory data concerning the installation of utility distribution systems. Cross section of street right-of-ways are also to show all types of transmission line locations. Scale used shall provide for clarity of information displayed. The sewage systems data shall include the first of the following two items:

a. A report on the feasibility of connections to any existing or proposed public sanitary sewage and storm drainage system shall be made. This study shall include the distance from the nearest existing or proposed system intended to handle the additional sewage or storm drainage load.

b. Evidence shall be required of having submitted to the Common-

wealth of Pennsylvania, Department of Environmental Resources,

a formal application for a permit as required by the laws of the Commonwealth.

(6) A Written Report Indicating

a. Density of land use (dwelling-unit density) to be allocated to various parts of the site, such parts to be outlined on the map.

b. The landowner or form of organization proposed to own the development and maintain the common open space.

c. The substance of any covenants, grants, easements, or other restrictions to be imposed upon the use of lands or buildings in the development or required for adjacent properties.

d. A development schedule showing the approximate dates when the developer proposes to make application for final approval of various segments to be outlines on the plan and such schedule to be updated annually on the anniversary of its initial approval.

e. A statement prepared by the landowner setting forth the reasons why, in his opinion, a Planned Residential Development on his site would be in the public interest and would be consistent with the Community Development objectives of Penn Hills.

f. Deviation from zoning and subdivision regulations otherwise applicable to the property.

g. Impact of the Development on the neighborhood as well as on the local and general road network in the Municipality.

h. Impact of sanitary sewage to Municipal sanitary system and of storm water on adjacent properties and continuing stream beds.

17.5.D. Request for Additional Information - when it is determined by the Planning Department or Planning Commission that additional information is needed in order to make a proper decision related to the Planned Residential Development application, the applicant will be informed of such and the information must be provided at the applicant's expense before the application will be considered complete.

17.5.E. Waiver Requirements - Provided the Planned Residential Development application is in conformance with all other applicable ordinances, that the applicant has requested such in writing, and that the Planning Department

has made a recommendation, the Planning Commission may waive, alter or reduce any requirement or standard of this Planned Residential Development section.

17.5.F. Fees, County Review, Completeness of Application, and Approval of Unique Conditions -

(1) Fees - The application shall be accompanied by the appropriate fee as determined from time to time by Council resolution.

(2) County Review - All applications for tentative approval of Planned Residential Developments shall be referred by the Planning Department to the Allegheny County Planning Department for study and recommendation and such planning agency shall be required to report to the Penn Hills Planning Department within thirty (30) days or forfeit the right to review.

(3) Completeness of Application - An application for tentative approval shall not be considered as having been made until all information required by this ordinance for such application is received by the Planning Department.

(4) Approval of Unique Conditions - Upon the recommendation of the Planning Department, the Planning Commission may approve such changes made necessary by unique land conditions when such changes are consistent with the stated intent of this ordinance.

17.5.G. Tentative Approval Proceedings

(1) Within sixty (60) days after the filing of an application for tentative approval of a Planned Residential Development pursuant to this Article, a public hearing pursuant to public notice on said application shall be held by the Planning Commission in the manner prescribed in Section IX of Act 170, the Municipalities Planning Code.

(2) The Planning Commission may continue the hearing from time to time and may refer the matter back to the Planning Department for a report provided, however, that in any event the public hearing or hearings shall be concluded within sixty (60) days after the date of the first public hearing.

(3) The Planning Commission, within sixty (60) days following the conclusion of the public hearing provided for in this Article, shall, by official written communication to the landowner, either:

a. Grant tentative approval of the development plan as submitted.

b. Grant tentative approval subject to specified conditions not includ-
ed in the development plan as submitted, or

c. Deny tentative approval to the development plan.

(4) Failure to so act within said period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, however, that the tentative approval is granted, subject to conditions, the landowner may, within thirty (30) days after receiving a copy of the official written communication of the Planning Commission, notify the Planning Commission of his refusal to accept all said conditions, in which case, the Planning Commission shall be deemed to have denied tentative approval of the development plan. In the event that the landowner does not, within said period, notify the Planning Commission of his refusal to accept all said conditions, tentative approval of the development plan, with all said conditions, shall stand as granted.

(5) The grant or denial of tentative approval by official written communication shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant, with or without conditions, or the denial, and said communication shall set forth with particularity in what respects the development plan would or would not be in public interest including but not limited to findings of fact and conclusions on the following:

a. In those respects in which the development plan is or is not consistent with the Comprehensive Plan for the development of the Municipality.

b. The extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the pubic interest.

c. The purpose, location, and amount of the common open space in the Planned Residential Development, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development. Also details on portions to be conveyed in ownership to the Municipality.

d. The physical design of the development plan and the manner in which said design does or does not make adequate provision for public services, provides adequate control over vehicular traffic and furthers the amenities of light and air, recreation, and visual enjoyment.

e. The relationship, beneficial or adverse, of the proposed Planned Residential Development to the neighborhood in which it is Proposed to be established.

f. In the case of a development plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the Planned Residential Development in the integrity of the development plan.

(6) In the event of a development plan is granted tentative approval, with or without conditions, the Planning Commission may set forth in the official written communication the time within which an application for final approval of the development plan shall be filed, or in the case of a development plan which provides for development over a period of years, the periods of time within which application for final approval of each part thereof shall be filed. Except upon the consent of the landowner, the time so established between grant of tentative approval and application for final approval shall not be less than three (3) months, and, in the case of developments over a period of years, the time between applications for final approval of each part of a plan shall not be less than twelve (12) months.

(7) Status of Plan after Tentative Approval

a. The official written communication provided for in this section shall be certified by the Manager of the Municipality and shall be filed in his office and a certified copy shall be mailed to the landowner. Whereas, tentative approval has been granted, the same shall be noted on the zoning map.

b. Tentative approval of a development plan shall not qualify a plat of the Planned Residential Development for recording nor author-

ize development of the issuance of any building permits. A development plan which has been given tentative approval as submitted, or which has been given tentative approval with conditions which have been accepted by the landowner (and

provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified or revoked nor otherwise impaired by action of Penn Hills municipality pending an application or applications for final approval, without the consent of the landowner, provided an application for final approval is filed or, in the case of development or applications over a period of years, provided

applications

are filed, within the periods of time specified in the official written communications granting tentative approval.

(8) In the event that a development plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon said development plan and shall so notify the Planning Department in writing, or in the event the landowner shall fail to file application or application for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the development plan for which final approval has not been given shall be subject to those local ordinances otherwise applicable thereto as they may be amended from time to time, and the same shall be noted on the zoning map and in the records of the Municipal Deputy Clerk.

17.5.H. <u>Application for Final Approval</u>

(1) An application for final approval may be for all the land included in the development plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the Planning Commission within the time or times specified by the official written communication granting tentative approval. Application for final approval shall be accompanied by:

a. Twelve (12) copies of a final plan, one (1) copy certified by a registered engineer showing the final location and widths of all streets, the location and size of all buildings, parking areas, pedestrian ways, utility easements, lot lines, the location and

size

of all open space not devoted to parking lots, streets, or driveways, the proposed use of all lands and buildings and the mete and bounds of all proposed dedicated areas and lots.

b. The application shall contain, for the area for which final

approval

Is sought, all requirements of the development plan and written reports necessary to obtain tentative approval.

c. Covenants executed by all owners of the premises within the section covered by the final plan which, if approved, shall be recorded in the Recorder's Office of Allegheny County. The restrictive covenants shall be effective for a period of thirty-five (35) years, except reference to parks, recreation, and other open space areas shall provide that the same remain as such perpetually.

d. Construction documents for the building of streets, sidewalks, parking areas, sewer lines, water lines, and recreation areas.

e. A certified performance bond running in favor of Municipality of Penn Hills or other financial security as provided under Section 6.9 of Ordinance #2044 for the amount of construction of streets, sidewalks, parking areas, sewer lines, water lines, and recreation areas, such amount being established by the Municipal Engineer and approved by the Planning Department, and an inspection fee in the amount of one percent (1%) of the bond amount payable to the Municipality of Penn Hills.

f. Rights of easement, in the form in which they will be filed as legal documents, affecting development.

g. Any additional conditions set forth at the time of tentative approval, including the development schedule if only a section of the development is submitted for final approval.

h. Maintenance agreement between the landowner (or development ownership organization) and the Municipality for all areas of development, including but such agreement that the development will be adequately maintained so as not to create a public nuisances or liability to the Municipality.

(2) A public hearing on the application for final approval of the development plan, or part thereof, shall not be required provided the development plan, or the part thereof, submitted for final approval, is in compliance with the development plan theretofore given tentative approval and with any specified conditions attached thereto.

(3) In the event the application for final approval has been filed, together with all drawings, specifications, and other documents in support thereof, and as required by the ordinance and the official written communication of tentative approval, the Planning Commission shall, within forty-five (45) days of such filing, grant such development plan final approval.

(4) In the event the development plan as submitted contains variations from the development plan given tentative approval, the Planning Commission may refuse to grant final approval and shall, within forty-five (45) days from the filing of the application for final approval, so advise the landowner in writing of said refusal setting forth in said notice the reasons why one or more of said variations are not in the public interest. In the event of such refusal, the landowner may either:

a. Re-file his application for final approval without the variations objected, or,

b. File a written request with the Council that is hold a public hearing on his application for final approval. If the landowner wishes to take either such alternate action he may do so at any time with- in Which he shall be entitled to apply for final approval, or within thirty (30) additional days if the time for applying for final approval shall have already passed at the time when the landowner was advised that the development plan was not in substantial compliance. In the event the landowner shall fail to take either of these alternate actions within said time, he shall be deemed to have abandoned the development plan. Any such public notice hearing shall be held pursuant to public notice with- in thirty (30) days after request for the hearing is made by the landowner, and the hearing shall be conducted in the manner prescribed in this Article for public hearings on applications for tentative approval. Within thirty (30) days after the conclusion of the hearing, the Planning Commission shall by official written communication either grant final approval to the development plan or deny final approval. The grant or denial of final approval of the development plan shall, in cases arising under this Article, be in the form and contain the findings required for an application for tentative approval set forth in this Article.

(5) A development plan, or any part thereof, which has been given final approval shall be so certified without delay by the approving body office of the Recorder of Deeds of Allegheny County before any development shall take place in accordance herewith. Upon the filing of record of the development plan the zoning and subdivision regulations applicable to the land included in such plan shall cease to apply thereto.

Pending completion within the time limit set by the Planning Commission of said Planned Residential Development or of that part thereof, as the case may be, that has been finally approved, no modification of the provision of said development plat, or part thereof, as finally approved, shall be made excerpt with the consent of the landowner. Upon approval of a final plat the developer shall record the plat in accordance with the provisions of Section 513(a) of the Municipalities Planning Code, and post financial security in accordance with Section 6.9 of Ordinance 2044.

(6) In the event that a development plan or a section thereof, is given final approval and thereafter the landowner shall abandon such plan or the section thereof that has been finally approved, and shall so notify the approving body in writing, or, in the event the landowner shall fail to commence and carry out the Planned Residential Development in accordance with the time provisions stated in Section 508 of the Municipalities Planning Code, Act 170, 1988 as amended, after final approval has been granted, no development or further development shall take place on the property included in the development plan until after the said property is reclassification by enactment of an amendment to the municipal zoning ordinance in the manner prescribed for such amendments in Section 14.6 of this ordinance.

a. Minor changes in the location, siting, and height of buildings and structures and other similar minor changes may be authorized by the Planning Department if required engineering or other circum-

stances not foreseen at the time the final development plan was approved.

b. All other changes in use, any rearrangement of lots, block, and building tracts, any changes in the provision of common open spaces, and all other changes in the approved final development plan must be made by the Planning Commission, under the procedures authorized for the amendment of the zoning map. No amendments may be made in the approved final development plan unless they are shown to be required by changes in

condition that have occurred since the final development plan was approve or by changes in the development.

17.5.I. Enforcement Remedies - See Section 712.2 of the Municipalities Planning Code, Act 170, 1988, as amended.

17.5.J. Appeals Procedure - Any decision of the Planning Commission granting or denying tentative or final approval of a Planned Residential Development plan can be appealed in accordance with the provisions set forth in the Municipalities Code, Act 170, 1988, as amended.

17.6 Use Requirements

17.6.A. Requirements and Approvals - A Planned Residential Development may be located in any residentially zoned area, or combination of residentially zoned areas. Notwithstanding restrictions as to permitted principal uses and permitted principal uses dwelling unit density shall not exceed approved maximum densities as established by the zoning ordinance for the particular district in which the Planed Residential Development is located in two (2) or more zoning districts, an overall site density may be established on a prorated basis. Each Planned Residential Development shall include the various uses in an aesthetically pleasing proportion of each consistent with restraints specified in this section and as recommended by the Planning Department and approved the Planning Commission. In addition to the principle permitted uses, the Development shall include permitted accessory uses.

17.6.B. Permitted Principle Uses Dwelling Unit Percentages - Of the total dwelling units to be provided in a development, no more than fifty (50) percent shall be high-rise, garden-apartment dwelling units, and no less than fifty (50) percent shall be one of, or a combination of, the following: single-family dwelling units, double-family dwelling units, townhouse dwelling units.

17.6.C. Performance Standards, Codes, and Associated Requirements - Planned Residential Developments must meet the performance standards identified in Section 10 of this ordinance and Section 8.20 and 8.21 as recreational and open accordance with Section 5.6 of this ordinance.

17.6.D. Area, Density, Access, and Ownership

(1) Area - The area of land to be developed as a Planned Residential Development shall not be less than ten (10) acres.

(2) Developments designed solely as single-family and/or two-family

and/or townhouses may not exceed the stated single-family density of the zoning classification in which the Planned Residential Development is located.

(3) Finish - Contoured land in excess of twenty-five (25) percent slope and up to forty (40) percent slope shall be allowed only two-thirds (2/3) density credit (one actual acre equals (2/3 gross acre) and land over forty (40) percent slope shall be allowed only one-third (1/3) density credit when determining gross site area.

(4) The Planning Commission may decline or refuse to allow maximum density normally permitted if they consider that such density would create inconvenient or unsafe access to the Planned Residential Development, create traffic congestion in the streets which adjoins the Planned Residential Development, exhibit poor design or planning, or create other problems as determined by any reviewing boards, including but not limited to the Planning Department, the Allegheny County Conservation District, or an architect, landscape architect, code enforcement officer, or engineer.

(5) The tract or parcel of land must be either in one ownership or the subject of an application filed jointly by the owners of all property included wherein all joint owners signify having formed a single development ownership organization. All portions of the development shall forever remain under single ownership or a single development ownership organization, except for such portions for which ownership is conveyed to Penn Hills Municipality.

17.6.E. Setback, Coverage, Height Restrictions

(1) Setback - A Planned Residential Development may be developed with the utmost flexibility in terms of bulk and area regulations including zero front, side, and rear yard setbacks within the complex. Setbacks for all structures shall be required from peripheral boundaries only, and shall be twenty-five (25) feet for a one story structure and an additional five (5) feet for each additional story.

(2) Maximum Building Coverage - The maximum building coverage shall not exceed twenty-five (25) percent of the gross site area. The gross site area shall be all that area within the metes and bounds description, reduced as necessary by excess slope restrictions.

(3) The Maximum Height for any structure within a Planned Residential Development is one hundred (100) feet.

17.6.F. Area Devoted to Residential Units, and Open Space

(1) A minimum of thirty (30) percent of the gross site area shall be set aside as open space and usable recreational areas, for use by the residents of the Planned Residential Development. However, if the open space is accepted by the Municipality of Penn Hills, the Municipality, at its option, may allow the open space to be available for use by the public.

(2) The location, shape, size, and character of the common open space shall be provided in a manner to meet the needs of the Planned Unit Residential Development and shall be consistent with the Municipalities open space standards.

(3) Common open space shall be used for amenity or recreational purposes. The uses intended for the common open space must be appropriated to the scale and character of the Planned Residential Development, considering its size, density, expected population, topography, and the number and type of dwellings to be provided.

(4) Common open space must be suitably improved for its intended use, but common open space containing natural features, existing trees and ground cover, worthy of preservation may be left unimproved. The buildings, structures, and improvements which are permitted in the common open space shall be appropriate to the uses which are authorized for the common open space and shall conserve and enhance the amenities of the common open space having regard to its topography and unimproved condition.

17.6.G. Required Improvements - All improvements required under Section 7 of Ordinance No. 2044 are also required for Planned Residential Developments.

17.6.H. Utilities -

Water - If water is to be provided by means other than private wells owned and maintained by the individual owners of lots within the Planned Residential Development, applicants shall present evidence to the Planning Department and Planning Commission that the Planned Residential Development is to be supplied by a certified public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority, or utility. A copy of a Certificate of Public Utility Commission or an application for such certificate, a cooperative agreement, or a commitment for agreement to serve the area in question, whichever is appropriate, shall be acceptable evidence.

17.7 Common Open Space

17.7.A. Conveyance of Ownership and Maintenance

The Municipality may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the Municipality need not require, as a condition of a Planned Residential Development, that land proposed to be set aside for common open space be dedicated or made available to public use. The Municipality may also require that the landowner provide for and establish an organization for the ownership and maintenance of the common open space, and that such organization shall not be dissolved nor shall it dispose of the common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space) without first offering to dedicate the same to the public.

17.7.B. Maintenance

(1) In the event that the organization establishment to own and maintain common open space, or any successor organization, shall at any time after establishment of the Planned Residential Development fail to maintain the common open space in reasonable order and condition in accordance with the development plan, the Municipality may serve written notice upon such organization or upon the residents of the Planned Residential Development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be corrected within thirty (30) days thereof, and shall state the date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. At such hearing, the Municipality may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be corrected.

(2) If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within said thirty (30) days or any extension thereof, the Municipality, in order to preserve the taxable values of the properties within the Planned Residential Development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one (1) year. Said maintenance by the Municipality shall not constitute a taking of said common open space, nor vest in the public any rights to use the same.

(3) Before the expiration of said year, the Municipality shall, upon its

initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the Planned Residential Development, to be held by the governing body or its designated agency, at which hearing such organization of the residents of the Planned Residential Development, to be held by the governing body or its designated agency, at which hearing such organization or the residents of the Planned Residential Development shall show cause why such maintenance by the Municipality shall not, at the option of the Municipality, continue for a succeeding year. If the governing body, or its designated agency, shall determine that such organization is ready and able to maintain said common open space in reasonable condition, the Municipality shall cease to maintain said common open space at the end of said year. If the governing body or its designated agency shall determine that such organization is not ready and able to maintain said common open space in a reasonable condition, the Municipality may, it its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

(4) The decision of the governing body or its designated agency shall be subject to appeal to court in the same manner, and within the same time limitation, as is provided for zoning appeals by this act.

(5) The cost of such maintenance by the Municipality shall be assessed ratably against the properties within the Planned Residential Development that have a right of enjoyment of the common open space, and shall become a lien on said properties. The Municipality at the time of entering upon said common open space for the purpose of maintenance shall file a notice of lien in the office of the prothonotary of the county, upon the properties affected by the lien within the Planned Residential Development.