

ORDINANCE NO. 135

**AN ORDINANCE AMENDING CITY OF GOSHEN
SUBDIVISION REGULATIONS AS ORIGINALLY
ADOPTED BY ORDINANCE NO. 34 AS AMENDED
THEREAFTER AND CERTAIN PROVISIONS
RELATED TO CONSERVATION SUBDIVISIONS
AS ORIGINALLY ADOPTED BY ORDINANCE NO. 44
AND FOR OTHER PURPOSES**

WHEREAS, the City Council of Goshen, by Ordinance No. 34, did adopt, by reference, the City of Goshen Subdivision Regulations; and

WHEREAS, the City Council of Goshen, by Ordinance Nos. 41, 44, 49, 57, 61, 65, 75, 86, 93, 105, 108, 113, 122 and 123 amended the previously adopted Subdivision Regulations; and

WHEREAS, the City Council of Goshen has concerns about the Regulations pertaining to conservation subdivisions as first established in Ordinance 44; and

WHEREAS, there is a need to address portions of the Regulations pertaining to conservation subdivisions to provide clarification; and

WHEREAS, pursuant to Ark. Code Ann. §14-56-423, the Goshen City Council has the authority to make changes to its subdivision regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF GOSHEN, ARKANSAS:

SECTION 1: That the document entitled: "City of Goshen Subdivision Regulations" adopted by Ordinance 34 on June 2, 2003 and subsequently amended by Ordinances 41, 44, 49, 57, 61, 65, 75, 86, 93, 105, 108, 113, 122 and 123 is hereby amended as reflected in Sections 2 through 10 hereof. All changes to said ordinances and regulations are incorporated in the previously adopted "City of Goshen Subdivision Regulations."

SECTION 2: Delete the language in **Section 4-3, C., Open Space Management Plan Required** and replace it with the following language:

C. Open Space Management Plan Required. An Open Space Management Plan, as described in Section 4-4, shall be prepared and submitted so it can be approved in conjunction with the Preliminary Plat. No land contained within the Conservation Easement may be disturbed prior to approval of both the Preliminary Plat and the Open Space Management Plan.

SECTION 3: Delete the language in **Section 4-3, D., Instrument of Permanent Protection Plan Required** and replace it with the following language:

D. Instrument of Permanent Protection Plan Required. An instrument of permanent protection, such as a conservation easement or permanent restrictive covenant and as described in Section 4-4, shall be submitted for approval by the City Council, after which the document so restricting the Open Space shall be executed by the fee simple owner and filed of record prior to approval of the preliminary plat. The City shall file its acceptance of such instrument as provided by state law. Any reference to ingress and egress in such instrument shall only be for the purpose of allowing the City to effectuate the intent of and otherwise enforce its ordinances, but shall not be construed or interpreted to cause the Open Space to be open to the general public. Use of the Open Space by anyone other than members of the homeowners' association shall not be permitted unless the homeowners' association provides otherwise in the Open Space Management Plan.

SECTION 4: Delete the language in **Section 4-3, E., Restriction on Frontage Property** and replace it with the following language:

E. Restriction on Frontage Property. No more than one-third (1/3) of the land that lies along major road frontage (i.e. primary arterial, minor arterial and collector streets) can be used for commercial or residential lots. The City Council shall be permitted to make exceptions on properties that are positioned at the intersections of major roadways.

SECTION 5: Delete the language in **Section 4-4, C., 1., c.**, and replace it with the following language:

- c. Trails for walking, cycling, or horse back riding;

SECTION 6: Delete the words, "Board of Planning Commissioners" and substitute the words, "City Council" in **Section 4-4, E., 2., c.** so it reads as follows:

- c. provides that any changes to the Plan be approved by the City Council; and

SECTION 7: Add the following language as **Section 4-4, E., 3.**, and renumber existing **Section 4-4, E., 3.**, to be **Section 4-4, E., 4.**:

- 3. If no Plan is on file with the City, the City may request the homeowners' association to prepare a Plan in accordance with these regulations, which Plan will then be considered by the City Council. Any deficiencies in the Plan shall be noted by the Council with an opportunity given to the Plan's submitter to correct such deficiencies. If the party submitting the Plan does not correct such deficiencies, the City Council may approve the Plan with such corrections as it may deem appropriate. If the homeowners' association

does not submit a Plan within the time frame requested, then the City Council may cause such plan, as it deems appropriate, to be presented for approval by the City Council after providing at least thirty (30) days notice to the homeowners' association. The Mayor or the Mayor's designee shall provide notice to the homeowners' association once the Plan is approved. A Plan, once approved, shall be kept by the City Recorder and made available to any party seeking a copy. Any changes to the Plan may be proposed by the homeowners' association, an owner of a lot in the subdivision, the Mayor or by the City Council. The City Council may consider such proposals after providing at least thirty (30) days notice to the homeowners' association. In order to receive any notice contemplated by this subsection, all homeowners' associations for a conservation subdivision shall provide current contact information to the City Recorder. Otherwise, notice shall be sent to the address on file at the County Assessor's office which reflects the owner of the property burdened by the conservation easement.

SECTION 8: The legal instrument referenced in **Section 4-4, F. 1. Legal Instrument for Permanent Protection**, referenced as Attachment "A" is replaced by the document attached at the end of this ordinance which shall be substituted as Attachment "A"

SECTION 9: Delete the language in **Section 4-4, H., Enforcement** and replace it with the following language:

H. Enforcement. The Mayor or the Mayor's designee shall have the authority to enforce compliance of the Open Space use and management plan.

1. If after notice to the homeowners' association and its failure to address the issue within sixty (60) days, the City shall have the authority to repair and maintain any Open Space damaged, in need of repair from use inconsistent with the Plan or unauthorized clearing, which repair or maintenance performed by the City shall be done at the homeowners' association expense.

2. It shall be unlawful to: (a) occupy or encroach upon the Open Space in an unauthorized manner; (b) exercise unauthorized control of the Open Space by doing any of the following acts: clear cutting, mowing, installing fences, storing personal property or other acts only typically done by a person who owns or has the right to possess such property; or (c) do any other unauthorized act which is inconsistent with the Plan. Any person, firm or corporation violating the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 for each offense. Any violation may form the basis of a citation to be issued by the police or may be referred to the City Attorney who shall apply to the appropriate court for relief, seeking either penalties or injunctive relief

as permitted by law.

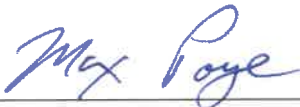
SECTION 10: The following language shall be added as **Section 4-4, I. Notification to Lot Owners**:

I. Notification to Lot Owners. Prior to the issuance of a building permit in a conservation subdivision, the lot owner shall sign a form provided by the City, on which form the owner shall acknowledge having read the Conservation Easement; this Section Four (formerly Appendix A), Conservation Subdivisions Regulations; and the Plan.

SECTION 11: That the City Attorney and Recorder are directed to include the above referenced amendments into the current subdivision regulations and incorporate them into the document known as the "City of Goshen Subdivision Regulations" which shall also reflect the effective date of this Ordinance.

SECTION 12: That all regulations and ordinances adopted and in effect prior to the effective date of this Ordinance, are amended as necessary to give effect to this ordinance.

PASSED AND APPROVED this 11th day of April, 2017.



Max Poye, Mayor

ATTEST:



Sharon Baggett, City Recorder

APPROVED AS TO FORM:



Charles L. Harwell, City Attorney

ROLL CALL VOTE ADOPTING THE ORDINANCE

Names Of Those Voting YEA

Andy Bethell
Brian Buell
Cathy Oliver
Lanny Samuels
Dick Seddon

Names Of Those Voting NAY

Abstained

Paula Anderson

ATTACHMENT "A"

PERMANENT CONSERVATION EASEMENT

STATE OF ARKANSAS)

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WASHINGTON)

That for and in consideration of one dollar and other valuable consideration to the undersigned, _____, Grantor, cash in hand paid, the receipt of which is hereby acknowledged, the said Grantor does hereby grant, bargain, sell and convey unto the City of Goshen, Grantee, its successors and assigns, a permanent conservation easement consistent with Ordinance No. 44 adopted by the City Council of the City of Goshen, Arkansas with the rights of ingress and egress to and from the same, on, over, across and under the following described real estate, to-wit:

Property Description:

Grantee shall have all of the rights and the foregoing property, as well as any person or entity who has ownership of it, shall be burdened with all the restrictions with respect to the foregoing property which is hereby designated as open space, consistent with Ordinance No. 44 adopted by the City Council of the City of Goshen, Arkansas on March 9, 2004 and as amended. The restrictions contemplated by the Ordinance, as amended, as such existed at the time of the grant of this easement, all of which are hereby incorporated into this instrument by reference as though set out word for word. Said restrictions shall be considered perpetual covenants which run with the land. No subsequent amendment of such Ordinance shall have the effect of removing any of the restrictions contemplated by the Ordinance as such existed at the time of the grant of this easement. Grantee cannot, by action of any council, remove these restrictions or release this easement. Neither can these restrictions be removed by subsequent sale or acquisition of the above-described property, even if acquired by Grantee. It is the specific intent of the parties that the doctrine of merger of title shall not apply to any acquisition by Grantee. Similarly, it shall not affect this easement and the restrictions contained herein if the property is removed from the city limits of the City of Goshen by subsequent statutory procedure or Court action. This easement is perpetual and the only manner in which this easement and the restrictions contained herein can be lifted is by court order issued by a court of competent jurisdiction. In such action, the Grantor and the City of Goshen, or their heirs, successors and assigns, shall be necessary parties and notice must be given to all property owners within a one-mile radius of the property, all of whom are intended by the parties herein to have standing to intervene or otherwise be a party to such court action. In such action, the court, before lifting any of the restrictions contained herein, must find, after hearing from all parties, as a matter

of fact and law, consistent with the legal principles found in the case of *Storthz v. Midland Hills Land Company*, 192 Ark. 273, 90 S.W. 2d 772 (1936) that the conditions surrounding the property have so changed as [1] to utterly destroy its value for the purpose for which the restriction was promulgated to prevent, and [2] that this change of conditions is due to no fault on the part of the petitioner and [3] will work no irreparable injury to others.

No buildings, structure, or other improvements shall be constructed on the property, nor shall any other action be taken with respect to the property which is inconsistent with the rights and restrictions created hereby.

It is further understood that this easement shall be exclusive to Grantee and that Grantor shall convey no rights to any person, utility or corporation on, across or under said property inconsistent herewith, without the express written permission of Grantee.

TO HAVE AND TO HOLD the above-described easement and right unto said Grantee, their successors and assigns, forever or until said right of way is finally abandoned.

And Grantor agrees to warrant and forever defend all and singular the above described easement and rights unto said Grantee, their successor and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

And we, _____, for and in consideration of the aforementioned consideration, do hereby release and relinquish unto the said Grantees all our right of curtesy, dower and homestead in and to the said lands.

IN WITNESS WHEREOF, the hand and seal of Grantor is hereunto set, this ____ day of _____, 20__.

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before me a Notary Public within and for said County and State duly commissioned and acting, personally appeared, _____, to me well know as the persons who executed the foregoing permanent conservation easement, and that they had executed the same consideration and purpose herein mentioned and set forth.

WITNESS my hand and seal on this ____ day of _____, 20____.

Notary Public

My commission expires:

ACCEPTANCE

Pursuant to Ark. Code Ann. §15-20-405 and to the Ordinances of the City of Goshen, the Mayor and Recorder of Goshen hereby acknowledge the acceptance by the City of Goshen of the above Permanent Conservation Easements executed in its favor.

IN WITNESS WHEREOF, the hand and seal of City of Goshen is hereunto set, this ____ day of _____, 20____.

CITY OF GOSHEN

By: _____
Mayor

Attest:

By: _____
Recorder

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public within

and for the County aforesaid, duly commissioned and acting, appeared in person the within named _____ and _____ to me personally known, who stated that they were the Mayor and Recorder of City of Goshen, a municipal corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this ____ day of _____, 20____.

Notary Public

My commission expires:
