

ORDINANCE NO. 44

**AN ORDINANCE AMENDING ORDINANCES NO. 21 AND 34,
ADOPTING, BY REFERENCE, CERTAIN SUBDIVISION REGULATIONS
ENTITLED: "APPENDIX A: CONSERVATION SUBDIVISIONS
TO THE CITY OF GOSHEN SUBDIVISION REGULATIONS";
AND TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES**

WHEREAS, the City Council of Goshen, by Ordinance No. 21, did declare it to be public policy that no tract of land shall have a minimum area less than two acres; and

WHEREAS, the City Council of Goshen, by Ordinance No. 34, did adopt by reference subdivision regulations, and

WHEREAS, after due notice as required by law, the Goshen Planning Commission has heard all persons desiring to be heard regarding certain subdivision regulations entitled: "Appendix A: Conservation Subdivisions to the City of Goshen Subdivision Regulations"; and

WHEREAS, all comments, views, suggestions and recommendations have been considered and addressed, and minor changes made as deemed appropriate; and

WHEREAS, after conducting its public hearing in accordance with law, the Goshen Planning Commission has adopted the attached "Appendix A: Conservation Subdivisions to the City of Goshen Subdivision Regulations" and recommended them to the City Council; and

WHEREAS, pursuant to A.C.A. 14-55-207, public notice was given of the City's intent to adopt said subdivision regulations by reference, and advised that three (3) copies of each document were on file and available for public review and examination in the Office of the Recorder-Treasurer.

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

SECTION 1. That the document entitled: "Appendix A: Conservation Subdivisions to the City of Goshen Subdivision Regulations" be and is hereby adopted by reference; and as such, the Zoning Regulations adopted by Ordinance 34 are amended to include this Appendix A, to be read as consistent therewith whenever possible and if not possible, then any conflicts in the language of each to be resolved by giving effect to the more recent enactment and the earlier provision to be amended in conformity with the later.

SECTION 2. 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.

SECTION 3. EMERGENCY CLAUSE: It is hereby declared that based on the conditions

set forth herein, an emergency exists and this Ordinance, being necessary for the immediate protection of the health, safety, and welfare of the citizens of Goshen, Arkansas, shall be in effect immediately upon its passage, approval, and publication.

PASSED AND APPROVED this 9th day of March, 2004.




Andy Bethell, Mayor

ATTEST:



Sharon Baggett, City Recorder

APPROVED AS TO FORM:



Charles Harwell, City Attorney

ROLL CALL

Names Of Those Voting YEA

Joe Benson
Chuck Huskey
John Kauffman
Albert Skiles
Dick Seddon

Names Of Those Voting NAY

Appendix A: Conservation Subdivisions

Sec. 1-1 Purposes

- A. To provide a residential district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
- B. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
- C. To preserve important historic and archaeological sites.
- D. To permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.
- E. To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.
- F. To promote interconnected greenways and corridors throughout the community.
- G. To promote contiguous greenspace with adjacent jurisdictions.
- H. To encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood.
- I. To encourage street designs that reduce traffic speeds and reliance on main arteries.
- J. To promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
- K. To conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of Open Space.
- L. To protect prime agricultural land and preserve farming as an economic activity.

Sec. 1-2 General Regulations

- A. Applicability of Regulations. This Conservation Subdivision option is available as a use by right in all residential zoning districts, including the NR district. The applicant shall comply with all other provisions of the zoning regulations and all other applicable laws, except those that are incompatible with the provisions contained herein.

Sec. 1-3 Application Requirements

- A. Minimum Site Size. The site must contain at least forty (40) acres.
- B. Site Analysis Map Required. Concurrent with the submission of a site concept plan, the applicant shall prepare and submit a site analysis map. The purpose of the site analysis map is to ensure that the important site features have been adequately identified prior to the creation of the site design, and that the proposed Open Space will meet the requirements of this appendix. The preliminary site plan shall include the following features:
 - 1. Property boundaries;

2. All streams, rivers, lakes, wetlands and other hydrologic features;
3. Topographic contours of no more than 2-foot intervals;
4. General vegetation characteristics;
5. The planned location of protected Open Space;
6. Existing roads and structures;
7. Potential connections with existing greenspace and trails; and
8. For property adjacent to navigable waters, all U.S. Army Corp. of Engineer "take" lines and flowage easements.

C. Open Space Management Plan Required. An Open Space management plan, as described in Section 1-4, shall be prepared and submitted prior to the issuance of the notice to proceed. No land may be disturbed prior to issuance of the notice to proceed.

D. Instrument of Permanent Protection Required. An instrument of permanent protection, such as a conservation easement or permanent restrictive covenant and as described in Section 1-4, shall be placed on the Open Space concurrent with issuance of the notice to proceed.

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 Planning Commission of Goshen shall be permitted to make exceptions on properties that are positioned at the intersections of major roadways.

F. Calculation of Lot Density. The number of lots permitted within a subdivision developed pursuant to this ordinance shall be determined by multiplying the total area by 0.45. This number shall be rounded to the lower whole number.

G. Minimum Lot Size. Seventy Five percent (75%) of all lots must be one (1) acre or more, with the remaining percentage of lots required to be at least three quarters (3/4) acre.

H. Other Requirements. The applicant shall adhere to all other applicable requirements of the underlying zoning district, and the subdivision regulations.

Sec. 1-4 Open Space

A. Definition. Open Space is the portion of the conservation subdivision that has been set aside for permanent protection. Activities within the Open Space are restricted in perpetuity through the use of an approved legal instrument.

B. Standards to Determine Open Space.

1. The minimum restricted Open Space shall comprise at least 40% of the gross tract area.

2. Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected Open Space but cannot be counted towards the 40% minimum area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface shall be excluded from the Open Space.

3. At least 25% of the Open Space shall consist of land that is suitable for building.

4. At least 75% of the Open Space shall be in a contiguous tract and not divided up into multiple small areas. The Open Space shall adjoin any neighboring areas of Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space.

5. The Open Space shall be placed to have the optimal scenic impact, especially along primary arterial, minor arterial and collector streets.

6. The Open Space shall be directly accessible to the largest practicable number of lots with the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the Open Space.

C. Permitted Uses of Open Space.

1. Uses of Open Space may include the following:

- a. Conservation of natural, archeological or historical resources;
- b. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
- c. Walking or bicycle trails;
- d. Passive recreation areas, such as open fields;
- e. Active recreation areas, provided that they are limited to no more than 10% of the total Open Space. Active recreation areas may include impervious surfaces. Active recreation areas in excess of this limit must be located outside of the protected Open Space;
- f. Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;
- g. Landscaped stormwater management facilities, community wastewater disposal systems and individual wastewater disposal systems located on soils particularly suited to such uses;
- h. Easements for drainage, access, and underground utility lines; and
- i. Other conservation-oriented uses compatible with the purposes of this appendix.

D. Prohibited Uses of Open Spaces.

1. Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
2. Agricultural and forestry activities not conducted according to accepted best management practices; and
3. Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection.

E. Ownership and Management of Open Space.

1. Ownership of Open Space. A homeowners association representing residents of the conservation subdivision shall own the Open Space. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. The homeowners' association shall have lien authority to ensure the collection of dues from all members. The homeowners' association shall have the responsibility for maintaining the Open Space and any facilities.

2. Management Plan. The applicant shall submit a Plan for Management of Open Space and Common Facilities ("Plan") that:

- a. allocates responsibility and guidelines for the maintenance and operation of the Open Space and any facilities located thereon, including provisions

for ongoing maintenance and for long-term capital improvements;

b. estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Open Space and outlines the means by which such funding will be obtained or provided;

c. provides that any changes to the Plan be approved by the Board of Commissioners; and

d. provides for enforcement of the Plan.

3. In the event the party responsible for maintenance of the Open Space fails to maintain all or any portion in reasonable order and condition, the City of Goshen may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the homeowner's association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

F. Legal Instrument for Permanent Protection.

1. The Open Space shall be protected in perpetuity by a binding legal instrument that is recorded. The instrument shall be a permanent conservation easement in favor of the City of Goshen in the form attached to these regulations as Attachment "A".

2. The instrument for permanent protection shall include clear restrictions on the use of the Open Space. These restrictions shall include all restrictions contained in this appendix, as well as any further restrictions the applicant chooses to place on the use of the Open Space.

G. Tax Assessment of Open Space. Once a legal instrument for permanent protection has been placed upon the Open Space, the City of Goshen shall notify the Washington County Assessor's Office of the City's recommendation that the Open Space be reassessed at a lower value to reflect its more limited use. If the Open Space is used purely for passive recreational purposes and the terms of the instrument for permanent protection effectively prohibit any type of significant economic activity, then the lowest possible assessment value shall be recommended.

H. Enforcement. The zoning official will have the authority to enforce compliance of the Open Space use and management plan. Upon recommendation of the zoning official to the Goshen mayor, the city would have authority to repair and maintain any neglected Open Space at the POA/owners expense. Appropriate liens would be placed on all or any properties of the subdivision if the city is not reimbursed for such repair and maintenance.

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. _____ 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. _____ adopted by the City Council of the City of Goshen, Arkansas on _____, 2004. The restrictions contemplated by the Ordinance, as such existed at the time of the grant of this easement, are all 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.

