

## OLD BUSINESS

**Application:** Off Lake Conservation Design

**Agenda Item:** 9(b)

**Background Information:** The City of Emily has experienced a number of subdivisions that city officials desired to have developed using conservation design principles. Most recently, one development did attempt to develop using the City's Rural Conservation Subdivision standards, but neither the City Council, Planning Commission or the public were satisfied with the results. Staff has been instructed to reexamine these standards and make suggestions for improvement.

The proposed language in the section would completely replace the RCS standards and would do the following:

- Make conservation design the default method for subdivision of off-lake properties.
- Increase the size and the makeup of the conservation parcel.
- Decrease the overall density from that currently allowed in the RCS.

**Proposed Amendments:** The following amendments to the land use and subdivision regulations are being proposed:

The following definitions would be added to Section 3.2:

1. **Common Open Space.** Undeveloped land within a conservation subdivision that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by the residents of the development. Common Open Space shall not be included as parts of individual residential lots. The Common Open Space shall be substantially free of structures, but may contain historic structures and archaeological sites including Native American mounds and/or such recreational facilities for residents as indicated on the approved development plan.
2. **Conservation Easement.** A Conservation Easement is a legally binding agreement that imposes any limitation or affirmative obligation on any holder's interest in real property. The easement is typically held by a party other than the property owner. The purpose of such an easement can include retaining or protecting natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, or preserving the historical, architectural, archaeological, or cultural aspects of real property.
3. **Conservation Subdivision.** A residential development that is characterized by compact lots and the retention of common open space, where the natural features of the land are maintained to the greatest extent possible.
4. **Conventional Subdivision.** A residential development that contains more than two lots not done by Conservation Design.

5. **Development Envelope.** Designated area in which grading, lawns, pavement, and buildings are planned to be located.
6. **Drainageway.** A watercourse, gully, dry stream, creek or ditch which concentrates and carries storm/rain water runoff from the land in a manner which creates the potential for significant erosion, siltation, flooding or ponding. A drainageway may be fed by natural overland flow or by constructed means, such as culverts, road ditches, outlets of storm water treatment ponds, or other similar facilities.
7. **Gross Acreage.** The total area of a parcel.
8. **Homeowners Association (HOA).** A community association, incorporated or not incorporated, combining individual home ownership with shared use or ownership of common property and/or facilities.
9. **LEED.** Leadership in Energy and Environmental Design of the United States Green Building Council.
10. **Non-profit Conservation Organization.** Any charitable corporation, charitable association, or charitable trust (such as a land trust), the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.
11. **Parent Parcel.** The existing parcel of record, as identified by individual parcel numbers, as of the effective date of this Ordinance, that is proposed to be developed.

The following changes would be made to Section 5.4, Subdivision 3, Forest Residential Zone:

~~Buildable lot area— acres, minimum with metes and bounds ..... 10~~  
~~Maximum Density, Rural Conservation Subdivision (acres/unit) ..... 2~~

The following changes would be made to Section 5.8, Subdivision 3, Rural Preservation Zone:

~~Buildable Lot Area - acres, minimum by metes and bounds ..... 10~~ 5  
~~Buildable Lot Area, acres, minimum by plat only ..... 2~~  
~~Maximum Density, Rural Conservation Subdivision (acres/unit) ..... 1~~

The following changes would be made to Section 5.15, Land Use Matrix:

Conservation Subdivision would be listed as an Allowable Use in the OS, FP, FR and RP zones. It would be an excluded use in all other districts.

Conventional Subdivision would be listed as a Conditional Use in the OS, FR and RP zones and an Allowable Use in all other districts.

The following would replace Section 8.1, Rural Conservation Subdivision:

1. **Development Yield.** All Conservation Subdivisions shall meet or exceed the following standards:

- A. Land Suitability. No land shall be developed which is held to be unsuitable for any proposed use if identified as being environmentally sensitive. Areas determined to be environmentally sensitive may be included as common open space, but shall not be included in the development yield analysis. Areas identified as being environmentally sensitive include, but are not limited to:
    - i. All areas designated as 100-year floodplain by the Federal Emergency Management Agency (FEMA).
    - ii. All wetlands, including a 30-foot buffer.
    - iii. All areas having slopes greater than twelve (12) percent.
    - iv. All areas within 30 feet of the top or toe of a bluff.
    - v. All areas within 30 feet of either edge of a drainageway. If the edges of a drainageway cannot be clearly established, the area defined as environmentally sensitive shall include all areas within 50 feet of the centerline of the drainageway or all areas that have a slope greater than twelve (12) percent extending from the centerline, whichever is more restrictive.
  - B. Development Yield.
    - i. The applicant shall submit a table showing the maximum number of dwelling units that would be permitted in the underlying zoning district where the parent parcel is located. Where the parent parcel encompasses multiple zoning districts, the maximum number of units shall calculate the allowable density for each district separately, consistent with the minimum lot size, lot widths, setbacks, and other provisions of the Zoning Ordinance. Land that is considered undevelopable, as described in 1(A) contained herein, shall be excluded from the development yield analysis.
    - ii. The total number of units provided for within the development shall not exceed the amount calculated in the development yield.
2. **Design Criteria.** The following design criteria shall apply to all Conservation Developments.
- A. Minimum Lot Size and Width. None, subject to compliance with applicable standards for sewage disposal and the provision of water.
  - B. Setbacks. All structures within the development shall maintain, at a minimum, a 50-foot buffer along the perimeter of the development parcel, so as to provide screening and buffering of the residential development on the development parcel.
    - i. Individual dwellings shall be separated by a minimum of twenty (20) feet from other dwelling.
    - ii. Accessory buildings, unless attached as an integral part of the dwelling, shall be separated by a minimum of ten (10) feet from dwellings and other accessory buildings.
    - iii. The Planning Commission may establish setbacks, as necessary to buffer agricultural, forestry, and water-use activities from residential uses.
    - iv. Larger setbacks may be required to provide safe distances between highways and development on the parcel or when otherwise determined necessary by the City to protect public health, safety or welfare.
  - C. Maximum Impervious Coverage. The development shall be configured so as to minimize the amount of impervious surfaces. The maximum impervious coverage allowed, as measured across the whole of the development, shall be

restricted as in the underlying zoning district. When a parent parcel involves multiple zoning districts, allowable impervious coverage in one district may be partially or entirely transferred to another part of the parent parcel, as allowed by the Planning Commission.

- D. Lots shall be configured to minimize the amount of road length required for the development.
  - E. Individual lots and the overall development envelope shall be configured to minimize the loss of woodlands and other natural habitats.
  - F. If agricultural uses are being maintained, lots shall be configured in a manner that maximizes the usable area remaining for such agricultural uses with appropriate buffers between agricultural uses and residential structures.
  - G. All lots within a neighborhood shall abut open space on at least one side. A local street may separate lots from the open space.
  - H. Lots shall be oriented around a key feature, including one or more of the following:
    - i. A central green or square that is landscaped and/or has a functional purpose for the residents living nearby, including, but not limited to, shared mailboxes, a small park, a gazebo, or benches.
    - ii. A physical amenity such as a meadow, a stand of trees, or some other natural or restored feature.
  - I. Development envelopes should not be located on ridges, hilltops, bluffs, along peripheral public roads, or in other visually prominent areas.
  - J. Residential structures shall be oriented, whenever practical and consistent with other requirements of this ordinance, to maximize solar gain in the winter months.
  - K. A 30-foot vegetation buffer shall be maintained around open water areas.
3. **Residential Siting Standards.** All conservation subdivisions shall conform to the following standards for residential siting:
- A. All residential lots and dwellings shall be grouped into clusters. Each cluster shall contain no more than ten (10) dwelling units and no less than four (4) dwelling units, while maintaining at least fifteen (15) feet between clusters.
  - B. Residential clusters shall be located to minimize negative impacts on the natural, scenic, and cultural resources on and adjacent to the site and to avoid or minimize conflicts between incompatible uses.
  - C. Residential clusters shall avoid encroaching on rare plant communities, high quality sites, or endangered species identified by the Department of Natural Resources.
  - D. Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels and local or regional recreational trails.
  - E. Residential clusters should be sited to achieve the following goals, to the extent practicable.
    - i. Minimize impacts to prime farmland soils and large tracts of land in agricultural use, and avoid interference with normal agricultural practices.
    - ii. Minimize disturbance to woodlands, wetlands, grasslands, steep slopes, bluffs, and mature trees.
    - iii. Prevent downstream impacts due to runoff through adequate on-site stormwater management practices.
    - iv. Protect scenic views of open land from adjacent roads. Visual impact should be minimized through use of landscaping or other features.

- v. Protect archaeological sites and existing historic buildings or incorporate them through adaptive reuse.
  - F. The Planning Commission may require landscaping around the cluster to reduce off-site views of residences.
4. **Conservation Parcel Design Standards.** A conservation parcel shall be designated as part of the development. Each development shall contain a contiguous conservation parcel comprising 45% of the land area to be subdivided.
- A. The uses within the open space shall be accessible to the residents of the development. These uses may also be available to the general public providing the proper approvals are received. The required conservation parcel shall be undivided and restricted in perpetuity from future development.
  - B. The following areas or structures may be located within the open space area and shall be counted toward the overall open space percentage required:
    - i. parking areas for access to and use of the open space developed at a scale limited to the potential users of the open space.
    - ii. privately-held buildings or structures provided they are accessory to the use of the open space.
    - iii. Shared septic systems and shared potable water systems.
  - C. Road rights of way shall not be counted towards the required minimum open space.
  - D. No more than 50% of the required conservation parcel size may consist of water bodies, flood plain, or wetlands.
  - E. Any portion of the conservation parcel designed to provide plant and animal habitat shall be kept as intact as possible, and enhanced or restored as appropriate. Trails and roads shall be designed to avoid fragmenting these habitat areas.
  - F. Accessible open space in the upland portion of the conservation parcel may be made available for recreational uses such as trails, play fields, or community gardens, but shall be designed and located so as to avoid impacts on sensitive natural and cultural resources.
  - G. Where appropriate, a pathway system connecting open space areas to neighborhood residents and connecting these areas to neighborhood streets and to planned or developed trails on adjacent parcels shall be required and identified in the development plan.
5. **Ownership and Maintenance of Common Facilities.** The designated common open space and common facilities may be owned and managed by one or a combination of the following described in this Subdivision. The City may require any one, or a combination of the following, to ensure the long-term maintenance of the conservation parcel and any common facilities.
- A. **Homeowner's Association.** A homeowners association shall be established if the common open space is proposed to be owned by a homeowners association. Membership in the association is mandatory for all purchasers of homes in the development and their successors. The homeowners' association bylaws, guaranteeing continuing maintenance of the open space and other common facilities, and the declaration of covenants, conditions and restrictions of the homeowners association shall be submitted for approval as part of the information required for the preliminary plat. The homeowners' association bylaws or the declaration of covenants, conditions, and restrictions of the homeowners association shall contain the following

information:

- i. The legal description of the common land;
  - ii. A description of common facilities;
  - iii. The restrictions placed upon the use and enjoyment of the lands or facilities;
  - iv. Persons or entities entitled to enforce the restrictions;
  - v. A mechanism to assess and enforce the common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes, and insurance premiums;
  - vi. A mechanism for resolving disputes among the owners or association members;
  - vii. The conditions and timing of the transfer of ownership and control of land facilities to the association;
  - viii. Any other matter the developer deems appropriate.
- B. **A Nonprofit Conservation Organization.** If the common open space is to be held by a nonprofit conservation organization, the organization must be approved by the City. The conveyance to the nonprofit conservation organization must contain appropriate provisions for reversion in the event that the organization becomes unwilling or unable to uphold the terms of the conveyance.
- C. **Public Dedication of Open Space and Streets.** The City may accept the dedication of fee title or dedication of a conservation easement to the common open space. The City may accept the common open space provided:
- i. The common open space is accessible to the residents of the Pequot Lakes;
  - ii. The City agrees to and has access to maintain the common open space.
  - iii. Streets or other public ways which have been designated on a duly adopted official map or element of the City's comprehensive plan shall be dedicated or reserved by the subdivider to the appropriate governing body. The street or public way shall be made a part of the plat in the locations and dimensions indicated in the comprehensive plan and as set forth in this ordinance.
- D. **Individual Ownership.** An individual may hold fee title to the land while a nonprofit or other qualified organization holds a conservation easement uses for the common open space.
6. **Maintenance Plan.** Every conservation subdivision must include a plan that provides evidence of a means to properly manage the conservation parcel in perpetuity and evidence of the long-term means to properly manage and maintain all common facilities, including any storm water facilities. The plan shall be submitted and approved prior to final plat approval. The plan shall do the following:
- A. Designate the ownership of the open space and common facilities in accordance with the provisions contained herein.
  - B. Identify a timeframe for adoption and implementation of the maintenance plan by the designated ownership group(s).
  - C. Establish necessary regular and periodic operation and maintenance responsibilities.
  - D. Estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an on-going basis.
  - E. Include a timeline any interim use allowances and timelines for the ending or

- renewal of those uses.
- F. Include a land stewardship plan specifically focusing on the long-term management of common open space lands. The land stewardship plan shall include a narrative, based on the site analysis required in this Article, describing:
    - i. Existing conditions including all natural, cultural, historic, and scenic elements in the landscape.
    - ii. The proposed end state for each common open space area; and the measures proposed for achieving the end state.
    - iii. Proposed restoration measures, including: Measures for correcting increasingly destructive conditions, such as erosion; and measures for restoring historic features and habitats or ecosystems.
    - iv. The operations needed for maintaining the stability of the resources, including: mowing schedules; weed control; planting schedules; clearing and cleanup; at the City's discretion, the applicant may be required to place in escrow sufficient funds for the maintenance and operation costs of common facilities for a maximum of one year. Projected cost estimates for the long-term maintenance operations shall also be included.
    - v. A method for regular review and performance evaluation to ensure the long-term quality of the conservation parcel.
  - G. Management plans can be amended by the owner with the approval of the City.

In Section 11.6, Subdivision 5, Conditional Use Permits, the following text should be added (underlined):

- A. The following must be met:
  - 1. The use or development is an appropriate conditional use in the land use zone.
  - 2. The use or development, with conditions, conforms to the comprehensive land use plan.
  - 3. The use with conditions is compatible with the existing neighborhood.
  - 4. The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City.
  - 5. For Conventional Subdivisions, the property contains physical constraints which make it unable to be developed by the Conservation Subdivision method.

---

**Planning Commission Direction:** The Planning Commission should review and discuss the proposed language. Guidance can be given to staff for modifications to be presented at the next meeting and/or for staff to schedule a public hearing to consider a formal amendment to the ordinance.