

**Subject Matter:** Conservation Subdivision /  
Open Space Development Ordinance  
**Date First Presented to Council at Public  
Meeting:** June 19, 2006  
**Date of Second Reading and Adoption  
Before Town Council:** July 10, 2006

**TOWN OF SHARPSBURG  
COUNTY OF COWETA  
STATE OF GEORGIA**

**ORDINANCE NUMBER** 06-05  
**(as enacted)**  
**TOWN OF SHARPSBURG, GEORGIA**

**PREAMBLE AND FINDINGS**

**WHEREAS**, the Town of Sharpsburg (the “Town”) desires to enact and enforce a Conservation Subdivision/Open Space Development Ordinance (the “Ordinance”) which will provide for conservation subdivisions in residential zones. This type of development can provide for the preservation of open space and green space for watershed protection and the nonstructural management of stormwater runoff.

**WHEREAS**, the Mayor and Town Council desire to enact the following ordinance at Chapter 25 of the Town of Sharpsburg Code of Ordinances which will comply with the State of Georgia’s new model conservation subdivision/open space development ordinance which establishes new procedures for the Town to utilize when governing new developments and preservation of open space within its boundaries.

**AN ORDINANCE OF THE TOWN OF SHARPSBURG**

**WHEREFORE THE TOWN OF SHARPSBURG HEREBY ADOPTS AND  
ORDAINS THE FOLLOWING ORDINANCE:**

**ARTICLE ONE**

The Town hereby enacts and ordains the following ordinance which provides for conservation subdivisions in residential zones of the Town of Sharpsburg:

## **General Provisions**

### **Sec. 25-100 Title.**

This ordinance shall be known as the “Town of Sharpsburg Conservation Subdivision / Open Space Development Ordinance.”

### **Sec. 25-101 Purposes.**

#### **Purposes**

- A. To provide for the preservation of green space as a nonstructural stormwater runoff and watershed protection measure.
- B. To provide a residential zoning district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
- C. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
- 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 green space 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 preserve important historic and archaeological sites.

### **Sec. 25-102 General Regulations**

- A. **Applicability of Regulations.** This Conservation Subdivision and Open Space Ordinance is an overlay residential district to be used with the R1 and R2 zoning

districts as a use by right. Applicant shall comply will all other provisions of the Town of Sharpsburg zoning ordinance and all other applicable laws, except those that are incompatible with the provisions contained herein.

- B. Ownership of Development Site. All of the land in a Conservation Subdivision shall be owned or controlled by a single responsible entity. Individual properties in a Conservation Subdivision may be sold after a plat has been recorded, with the properties subject to private deed covenants that ensure the continuance of the Conservation Subdivision as originally approved and developed.
- C. Housing Density Determination. The maximum number of lots in the Conservation Subdivision shall be determined by either of the following two methods, at the discretion of the Town of Sharpsburg Town Administrator or his designee:
  - 1. Calculation: The maximum number of lots is determined by dividing the area of the tract of land by the minimum lot size specified in the underlying zoning. In making this calculation, the following shall not be included in the total area of the parcel:
    - a. slopes over 25 percent of at least 5,000 square feet contiguous area;
    - b. the 100-year floodplain;
    - c. bodies of open water over 5,000 square feet contiguous area;
    - d. wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act; or,
    - e. anticipated right-of-way or existing roads and utilities.
  - 2. Yield Plan: The maximum number of lots is based on a conventional subdivision design plan, prepared by the applicant, in which the tract of land is subdivided in a manner intended to yield the highest number of lots possible. The plan does not have to meet formal requirements for a site design plan, but the design must be capable of being constructed given site features and all applicable regulations.

**Sec. 25-103 Application Requirements**

- A. Site Analysis Map Required. Concurrent with the submission of a site concept plan, 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 Article. The preliminary site plan shall include the following features:

1. The location, dimensions, descriptions, and flow of existing wetlands, watercourses and drainage structures within the tract or on contiguous tracts; and
  2. Location of municipal limits or county lines, and district boundaries, if they traverse the tract, form part of the boundary of the tract, or are contiguous to such boundary; and
  3. Vicinity map or sketch showing the general relationship of the proposed development to the surrounding areas with access roads referenced to the intersection of the nearest state primary or secondary paved roads. Reference distances shall be shown in feet if less than 1,000 feet and in miles or tenths of a mile if greater than 1,000 feet; and
  4. Topographic survey (at least five (5) foot contour intervals); and
  5. The location, dimensions, name and description of all existing or recorded streets, alleys, reservations, easements or other public rights-of-way within the tract, intersecting or contiguous with its boundaries or forming such boundaries; and
  6. The location, dimensions, description, and names of all existing or recorded residential lots, parks, public areas, permanent structures and other sites within or contiguous with the tract; and
  7. Zoning district(s) of adjacent properties; and
  8. Proposed amenity areas, playgrounds and other passive and active recreation areas. Plan should also show where multi-use trails are proposed and where trails will interconnect with other existing trails of the Town's system.
- B. Open Space Management Plan Required. An open space management plan, as described in Sec. 25-104(E), shall be prepared and submitted prior to the issuance of a land disturbance permit.
- C. Instrument of Permanent Protection Required. An instrument of permanent protection, such as a conservation easement or permanent restrictive covenant, as determined and approved by the Town, and as described in Section 25-104(F), shall be placed on the Open Space concurrent with the issuance of a land disturbance permit.
- D. Other Requirements. The Applicant shall adhere to all other applicable requirements of the underlying zoning and any adopted subdivision regulations.

### **Sec. 25-104 Open Space**

- A. Definition. Open Space shall be set aside for permanent protection. Activities within Open Spaces are restricted in perpetuity by the Town through the use of covenants, easements and/or legal instrument(s) drawn in favor and approved by the Town prior to the recording of any plan or final plat. Open Space shall be required to be provided in TND, TMF, PCD, R1 and R2 Districts.

B. Standards to Determine Open Space.

1. The minimum restricted Open Space shall comprise at least 40 percent of the gross tract area, unless otherwise stated herein.
2. Above-ground utility rights-of-way, slopes over 25 percent of at least 5,000 square feet contiguous area, bodies of open water over 5,000 square feet contiguous area, anticipated right-of-way or existing roads and utilities and areas of impervious surface (unless part of the multi-use trails) may not be counted towards the 40 percent minimum area requirement.
3. Seventy-five (75%) percent of the Open Space shall be in contiguous tracts. Open Space should adjoin any neighboring areas of Open Space and natural areas that would be candidates for inclusion as part of a future area of protected Open Space.
4. The Open Space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the Open Space.

C. Permitted Uses of Open Space. Uses of Open Space may include the following:

1. Conservation of natural, archeological or historical resources;
2. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
3. Multi-use trails according to the requirements and design standards in Article 9 of the Town of Sharpsburg Zoning Ordinance.
4. Passive recreation areas;
5. Active recreation areas, provided that they are limited to no more than 10 percent of the total Open Space and are not located within Primary Conservation Areas. Active recreation areas may include impervious surfaces. Active recreation areas in excess of this limit must be located outside of the protected Open Space;
6. Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts, and such activities are not conducted within Primary Conservation Areas;
7. Nonstructural stormwater management practices (Note: Detention/Retention ponds are considered structural management practices and will be excluded from open space requirements);
8. Other conservation-oriented uses compatible with the purposes of this ordinance.

D. Prohibited uses of Open Space.

1. No more than 10 percent of open space requirement may be used for golf courses;
2. Roads, sidewalks, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
3. Agricultural and forestry activities not conducted according to accepted Best Management Practices; and,
4. 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. The applicant must identify the owner of the Open Space who is responsible for maintaining the Open Space and facilities located thereon. Ownership must be in the Homeowners' Association unless otherwise agreed to by the Town. Membership in the Homeowners' Association shall be mandatory and automatic for all homeowners of the subdivision and their successors. All property owners in the subdivision must be members of the Homeowners' Association. The Homeowners' Association shall have lien authority to ensure the collection of dues from all members. The Homeowners' Association's articles of incorporation and bylaws must be approved by the Town prior to their recording or the sale of any lot. The Homeowners Association bylaws must provide that the Town may enforce against the Homeowners' Association's members, the Homeowners' Association's responsibility to maintain the Open Space, including the Town's right to assess and collect the Homeowners' Association's dues and place liens on the subject property. The responsibility for maintaining the Open Space and any facilities located thereon shall be borne by the owners of the properties and homeowners in the subdivision. If the Homeowners' Association becomes inactive or fails to properly and adequately maintain the Open Space and facilities, in the sole discrepancy of the Town, the Town may assess and collect from the property owners and homeowners within the subdivision (and lien the property within the subdivision of owner failing to timely pay assessments), money sufficient to operate the Homeowners' Association and to properly maintain the Open Space and facilities of the subdivision.
2. Management Plan. 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. Governance of the association by the Georgia Property Owner's Association Act (OCGA Section 44- 3-220 et seq.) or a successor to that Act that grants lien rights to the association for maintenance expenses and tax obligations.
  - c. Responsibility for maintenance of common areas.
  - d. Responsibility for insurance and taxes.
  - e. Automatic compulsory membership of all property owners and subsequent lot purchasers and their successors; and compulsory assessments.
  - f. Conditions and timing of transferring control of the association from the developer to the property owners.
  - g. Guarantee that the association will not be dissolved without the advance approval of the Town of Sharpsburg.
  - h. Restrict the time of deliveries to commercial businesses and dumpster pick-up to between 7:00am and 9:00 pm.
  - i. Provides that any changes to the Plan be approved by the Mayor and Town Council; and,
  - j. Provides for enforcement of the Plan, including assessment of cost of maintenance on individual owners within the Homeowner's Association or the other owner of the Open Space and the placement of liens on lots of owners who fail to pay assessments.
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 Town of Sharpsburg 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 owner, Homeowner's Association, or to the individual property owners that make up 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 with the deed. The instrument must be approved by the Town and shall be one of the following at the option of the Town:
  - a. A permanent conservation easement in favor of either:
    - i. a land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements.

The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or

- ii. a governmental entity with an interest in pursuing goals compatible with the purposes of this ordinance. If the entity accepting the easement is not the Town of Sharpsburg, then a third right of enforcement favoring the Town of Sharpsburg shall be included in the easement;
  - b. A permanent restrictive covenant for conservation purposes in favor of the Town; or,
  - c. An equivalent legal tool that provides permanent protection, if approved by the Town of Sharpsburg.
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 Article, as well as any further restrictions approved by the Town the Applicant or the Town chooses to place on the use of the Open Space.

**Sec. 25-105 Penalties**

- A. Any person, firm, or corporation violating a provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction, may be punished for each violation, up to the extent allowed by the Town Charter. Each day such a violation continues shall be deemed separate offense.
- B. In case any building is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, lot, or acreage is used in violation of this Ordinance, the Town Council, or any other appropriate authority, or any person who would be damaged by such violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action in proceeding to prevent said violation in the case of each such building or use.

**ARTICLE TWO**

This Ordinance shall become immediately effective upon its second reading and adoption by the Mayor and Town Council.



**ARTICLE THREE**

This Ordinance shall be codified within the Code of Ordinances of the Town of Sharpsburg, Georgia at Chapter 25 in a manner consistent with the laws of the State of Georgia and of the Town of Sharpsburg.

**ARTICLE FOUR**

The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, sentence, paragraph, or section of this Ordinance shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such an illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

**APPROVED BY THE MAYOR AND COUNCIL OF THE TOWN OF SHARPSBURG** at a regular meeting of the Mayor and Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following voting for adoption:

\_\_\_\_\_  
Wendell L. Staley, Mayor

\_\_\_\_\_  
J. Clay Cole, Council Member

\_\_\_\_\_  
Larry W. Hyde, Council Member

\_\_\_\_\_  
Derrick McElwaney, Council Member

\_\_\_\_\_  
Standly D. Parten, Council Member

Attest:

\_\_\_\_\_  
Donna M. Camp, Town Clerk

\_\_\_\_\_  
Robin L. Spradlin, Town Administrator