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# CONSERVATION DEVELOPMENT

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## **I. Introduction**

Over the past fifty years, residential development has spread across the Texas landscape, transforming Houston, Dallas-Fort Worth, Austin and San Antonio into sprawling megalopolises. New home construction, generally on the outskirts of the metropolitan areas, is concentrated in subdivisions with bucolic names such as Rolling Meadows, Timber Creek, Lake Forest, Arborwood—even though the closest meadow, creek, lake or woodlands often is located miles away from the subdivision. Subdivision development generally has followed a conventional design, which some have described as “checkerboard” or “cookie-cutter” housing development. Indeed, the residential zoning ordinances in most Texas communities have encouraged such conventional designs by requiring minimum lot sizes, uniform road frontage and lot setbacks, specific road construction standards, and other uniform subdivision requirements. In general, the only open space within such developments has been the yards between adjoining lots or “pocket parks” usually located in the middle of the subdivision. Even then, the open space often is manicured and generally includes recently transplanted trees and shrubs with most natural vegetation having been destroyed in the process, with creeks and ponds often filled in with new dirt to level the ground. In many cases, little or no planning went into preserving or improving the quality of the open-space areas or protecting natural features on the developed parcel. Thus, subdivision 1 looks like subdivision 2 which looks like subdivision 3, and so forth.

As concerns over issues such as urban sprawl, open space preservation, environmental protection and farmland loss have increased, some home buyers, developers and community officials have started to question whether the conventional development pattern provides the quality of life that many homeowners and many local governments now desire. To address these issues, a relatively new concept in development, called “cluster development” or “conservation development,” has sprung up in several Texas cities. Although still somewhat new to most Texas communities, such designs have been used for many years in parts of the eastern United States.

## **II. What Is Conservation Development?**

The principle objective of conservation development is to allow residential, or even commercial, development while still protecting an area’s environmental features, allowing for more open space, and protecting farmland/woodland/ranchland and the character of communities.

Conservation developments differ from conventional developments in several ways. Conservation developments usually site homes on smaller lots and there is less emphasis on minimum lot size; however, the total number of homes, or density, on a given amount of acreage does not necessarily increase over that allowed in the conventional subdivision designs. The same number of homes is clustered on a smaller portion of the total available land. The remaining land, which would have been allocated to individual home sites, is converted into protected open space and shared by the residents of the subdivision and occasionally the entire community. In some communities there is flexibility on the “homes per land area” issue: some incentive-based ordinances allow for development of more homes, a “density bonus,” in exchange for providing other non-required features that are desirable to the community.

In most cases, local ordinances and regulations must be updated to facilitate building conservation development subdivisions. Road frontages, road construction materials, lot size, setbacks and other standard regulations must be redefined to permit the preservation of environmentally sensitive areas, rural or ranch architecture, historical sites and other unique characteristics of the parcel of land being developed. Developers often cite local regulations as the primary reason more innovative designs are not used. More flexible regulations, however, do not mean “anything goes.” Traditional codes must be replaced with new design standards that address the goals of conservation development.

### **III. Open Space Preservation and Maintenance**

Generally, open space is designed to protect natural areas. One principle of conservation development is that environmentally sensitive areas must first be identified and designated as non-buildable. Subdivision layout ensures that home lots do not infringe on those sites and environmentally sensitive areas are not calculated into the total area permitted for development of individual lots. The open space may be used for recreational activities and facilities, native habitat for wildlife or plantings, agricultural production or other allowable purposes. The usual scenario is that the landowner and community jointly determine how the open space will be used while the subdivision proposal is in the approval process.

A homeowners’ association or non-profit entity is usually responsible for protecting and/or maintaining the open space. The open space also may be protected permanently by a conservation easement, a legally binding agreement that can restrict any unwanted type of development into perpetuity.

A conservation easement is designed to exclude certain activities on private land, such as commercial development or residential subdivisions. Its primary purpose is to conserve natural or man-made resources on the land. The easement itself is typically described in terms of the resource it is designed to protect (*e.g.*, agricultural, forest, historic, or open-space easements). As noted above, the easement is a legally binding covenant that is publicly recorded and runs with the property deed for a specified time or in perpetuity. It makes the holder responsible for monitoring and enforcing the property restrictions imposed by the easement for as long as it is designed to run. An easement does not grant ownership nor does it absolve the property owner from traditional responsibilities, such as payment of property taxes, upkeep, maintenance or improvements.

Some local governments utilize agricultural easements to preserve farmland and farming-related activities. An agricultural easement is a specific type of conservation easement designed to protect land from development and ensure that the land will remain conducive to agricultural use in the future. Agricultural easements are designed to meet the needs of the property owner. They may include provisions for limited development (such as construction of barns and housing for children and grandchildren who wish to stay on the farm) and they may exclude certain sections of the farm from the easement entirely. As with other types of conservation easements, agricultural easements primarily limit or prohibit the land from being developed for residential or other non-agricultural purposes, regardless of who owns the land in the future.

#### **IV. The Advantages and Disadvantages of Conservation Developments**

Many advantages of conservation development are related to specific uses of the open space and the “feeling” that this space generates for a community. Several of the chief advantages include:

- Open space can provide community members with larger recreation areas and open spaces, creating a sense of openness that many people desire.
- Open space can benefit the environment by providing habitat for wildlife, naturally filtering storm water, reducing storm water runoff from impervious surfaces and protecting the natural features of a site.
- Linking the open space of several conservation design subdivisions can help develop larger and more effective “environmental corridors” within and between communities.
- Developers may benefit because these designs usually reduce the costs of site development and increase the market price of individual plots in comparison with conventional subdivisions.
- These designs can benefit rural areas by reinforcing the policy of maintaining the local rural character that is included in many comprehensive land use plans.

Some contend that there are disadvantages associated with conservation developments. The disadvantages of such development may include:

- Perhaps most important, local officials, developers and the community may be predisposed toward conventional development designs because they are familiar and well understood. An education effort may be necessary to help these groups understand the goals and advantages of cluster development.
- During the planning phases, lot and home layout may take extra work to ensure that while homes are located closer together, they still take advantage of the open-space goals of the design.
- Methods to protect and maintain the open space must be carefully developed, implemented and monitored.
- Although not necessarily a restricting disadvantage, the management of waste water must be carefully designed for smaller lots.

While these disadvantages should be acknowledged and addressed by a local government or a developer, none should preclude the use of conservation development techniques.

#### **V. Making Conservation Development A Reality In Your Community**

There are three components to enacting conservation development ordinances in a community: (1) educating the public on the concept and its advantages, (2) justifying why

conservation development is a viable development option in your community, and (3) enacting the appropriate ordinance(s).

### **A. Educating the Public**

Depending upon the community, this may be the easiest phase or the toughest phase of making conservation development a reality. Most members of the public are not acquainted with this concept and generally tend to view the conventional subdivision layout as the only way to develop property. Thus, any community considering conservation development must explain the concept and its benefits—in this regard, diagrams of subdivision layouts are particularly helpful. When Flower Mound considered this concept, the public became aware of the concept of conservation development and, after viewing diagrams showing conventional (“cookie cutter”) subdivisions, large lot, low density subdivisions and conservation developments, public support for the concept came easily. The development community, however, was not enthusiastic, mostly due to underlying concerns about profitability of such projects. One other concern that was expressed was “is there anything here other than flat land that is worth preserving?” Of course, the answer is yes, even prairie land has unique characteristics that may include native grasses, wildflower areas, ponds and other highly desirable ecological features.

### **B. Justifying the Economics of Conservation Development**

Perhaps the most daunting task facing any community considering the conservation development option is justifying to the residential development community that conservation development is a financially viable land development option. While diagrams of subdivision layouts are helpful in understanding how a development will look “on the ground,” the development community will be extremely skeptical that it is financially feasible—or that it will make as much money off such a development in comparison to the conventional “cookie cutter” development project.

When this concept was first discussed in Flower Mound, the development community wanted “proof” that such a concept would work in North Texas. While models in other parts of the country were helpful in explaining the financial aspects, the underlying question was whether this would work in Denton County. The general perception was that, at least for developers, they would lose lots in such a development project. The loss of salable lots would then translate in lower profits for the development project.

The response in Flower Mound was two-fold. First, the Town believed it was necessary to show the hard data about land sales and conservation development costs—that is, make the case that money could be made on such projects. Second, one way the Town could encourage such development, particularly since public support for conservation development was strong, was to offer incentives to developers who would develop property utilizing such concepts.

The Town of Flower Mound commissioned Clarion Associates of Chicago to provide an economic justification for conservation development in western Flower Mound in the area known as the Cross Timbers Conservation Development District. The economic analysis compared the revenues generated by, and development costs associated with, the following development scenarios on a hypothetical (but “typical”) 100 acre parcel of undeveloped land in the Cross Timbers area.

- Current Agricultural Zoning—gross density of 1 dwelling unit/2 acres.
- Conventional 1 Acre Zoning: No Clustering—gross density of 1 dwelling unit/1 acre.
- One-Acre Zoning: Clustered—Lots clustered on 50 acres with 50 acres dedicated to permanent open space.
- One-Acre Zoning: Clustered with Reduced Internal Road Construction Standards— Lots clustered on 50 acres with 50 acres dedicated to permanent open space. Internal roads: Asphalt 22 ft. ROW (rather than 24 ft. concrete ROW).

The conclusions of the Clarion Associates study were as follows:

Because the indicated present value of a “typical” 100 acre parcel developed for any of the three cluster options is higher than the indicated present value of the same parcel developed at the current agricultural zoning density of 2.0 DU’s per acre, the changes envisioned by the Cross Timbers Conservation District regulations do not result in either a regulatory “taking” or a “downzoning.” In fact, the opportunity to cluster may actually enhance current land values in the Cross Timbers planning area.

The cost to install 22 foot asphalt-paved streets rather than 24 foot concrete streets results in a substantial cost savings – estimated by Alan Plummer Associates to be about \$332,000 in lower street construction costs ( $\pm$  \$3,323/acre) for a 100-acre clustered development. However, this is partly offset by the reduced prices (\$3,000 per lot or \$141,000) that would be paid for lots serviced by asphalt streets.

Proximity to open space is an amenity that increases home prices and therefore lot prices. Well-crafted open space “clustering” programs elsewhere have increased prices by at least 5% and often more.

Although the development scenario involving the “traditional” 1.0 acre non-clustered lots results in the highest land prices per acre, such lots would have to be serviced by sewer. The costs of increasing treatment capacity and extending the sewer mains to the Cross Timbers area [have] not been included as a cost of development. Such service extensions and capacity increases would be greater than the  $\pm$  \$1,000 per acre differential in present value between the clustered present value (\$18,637 per acre) and the traditional 1.0 acre development on all 100 acres.

After showing that conservation development is economically feasible, the Town next “incentivized” the process by reducing certain costs associated with the standard subdivision development process: waiver of permit fees, waiver of inspection fees (water, sanitary system, draining and paving), waiver of up to 50% of park dedication fees, expedited development approval (90-day reduction in development approval time) and agricultural property tax rollback relief by the Town. Flower Mound believed that such concessions would offset any decrease in profitability that could be encountered by utilizing conservation development instead of the standard “cookie cutter” development pattern. At the present time there are several conservation

development projects in Flower Mound and lot prices are at a premium due to the demand for such an option.

### **C. Drafting the Conservation Development Ordinance**

This is perhaps the easiest portion of the process. Initially, the conservation development option was utilized only in agricultural zoning districts (minimum 2-acre lots). Section 98-277 of the Town's Land Development Regulations addressed the conservation development option:

#### **Conservation development option and standards.**

(a) *Purpose and definition.* The provisions of this section implement the goals and policies of the comprehensive plan concerning residential densities in areas zoned A agricultural district. The following standards, and all conditions necessary to ensure compliance therewith, shall apply to any conservation developments in any areas zoned A agricultural district, and to all uses in that district, when approved pursuant to the conservation development procedures set forth in this section. The term "conservation development" means a residential development project in which dwelling units are clustered on smaller lots than otherwise would be allowed within tracts of land zoned A agricultural district, for the purpose of preserving open or natural lands as an integral component of the development. The net density of development shall remain one unit per two acres. Conserved lands shall be placed in a conservation easement. A "conservation easement" is defined as a voluntary and permanent deed restriction which limits the development and/or subdivision of property for the purposes of protecting conservation values in the land. The easement is a recorded restriction, applies to and binds all subsequent owners, and may be held by either a non-profit entity or organization that manages open space, such as a land trust or other qualified entity, pursuant to Section 170(h) of the Internal Revenue Code, as amended, or a governmental entity.

(b) *Project density.* The maximum allowable residential density for a conservation development project, expressed as the number of residential dwelling units permitted per acre of land, is one dwelling unit (du) per two acres exclusive of all rights-of-way or easements for streets and alleys; land dedicated for public use; or open space, floodplain, park land and buffer areas, unless otherwise stated in the regulations of this section.

(c) *Minimum land area per dwelling unit.* Minimum land area per dwelling unit of one acre shall be exclusive of all rights-of-way or easements for streets and alleys; land dedicated for public use; or open space, floodplain, park land and buffer areas, unless otherwise stated in the regulations of this section.

(d) *Open space standards.* This section describes standards for dedication of land for and improvement of public and private open space for conservation development projects:

(1) *Preservation of natural features.*

- a. All significant natural features, as defined in the open lands plan and comprehensive plan, shall be preserved and, where necessary, protected by setbacks from development.
- b. Development shall be designed and sited to preserve and protect the 100-year floodplain, consistent with applicable provisions of this chapter.
- c. Significant stands of native trees and any other areas of substantial vegetation shall be preserved and protected from alteration or destruction, unless a mitigation plan is approved in conjunction with the concept or development plan for the project, which proposes replacement of the trees or vegetation to be removed with equivalent vegetation or vegetation which is better suited to existing natural conditions. The establishment of new vegetative communities is encouraged.
- d. Preservation of such areas shall be counted toward fulfillment of open space requirements subject to the following limitations:
  1. Floodplain areas: Adjacent floodplain land may be included as project open space in conservation developments; however, no credits for open space shall be given for land lying in the floodway.
  2. Other Areas: Significant stands of vegetation must be incorporated in areas to be dedicated to common open space, so as to prevent fragmentation, in order to be counted toward project open space.

(2) *Minimum project open space.* Wherever an applicant requesting approval for a conservation development project elects to provide open space in order to satisfy these conservation development standards, a minimum of 50 percent of the gross land area must be preserved as open space for the project.

(3) *Open space dedication.* In meeting requirements for open space, the developer must dedicate land or convey open space to be held in a conservation easement by a qualified non-profit entity or organization that manages open space, such as a land trust, or other qualified entity, pursuant to

Section 170(h) of the Internal Revenue Code, as amended, and as may be approved and accepted by the town, or a governmental entity.

- (4) *Open space allocation in phased projects.* In a phased conservation development project, all open space shall be conserved in a conservation easement in conjunction with the development of the first phase of the project.
- (5) *Open space design and improvements.* The design and improvements of open space shall be in accordance with the following standards. These standards may be supplemented by administrative guidelines.
  - a. Open space areas in a conservation development shall be linked to existing and planned public open space or conserved areas to provide an overall open space system wherever possible.
  - b. Where feasible, and where compatible with and depending upon the values and uses of the conserved land, open space areas shall be arranged so as to maximize access and utilization by residents of the conservation development project.

(e) *Project Design.*

- (1) It is the intent of these regulations to encourage outstanding project design for conservation development projects in order to implement the policies contained in the town's comprehensive plan. The town recognizes that project design is an important and variable element in implementing comprehensive plan policies relating to conservation developments and overall community objectives. It is the town's intent to promulgate administrative guidelines to illustrate preferred design methods. It is acknowledged that other design alternatives may be superior for a particular project. The following standards will be used to evaluate project design:
  - a. The arrangement of all uses and improvements should reflect the natural capabilities and limitations of the site as well as the characteristics and limitations of adjacent property.
  - b. Development must be compatible with the immediate environment of the site and neighborhood relative to existing adjacent residential densities unless otherwise buffered in an

acceptable manner; scale, bulk and building height; historical character; and disposition and orientation of buildings on the lot.

- c. Buildings, roadways, open space, and landscaping must be designed and arranged to produce an efficient, functionally organized and cohesive development.
- d. Buildings, roadways, open space and landscaping must be in favorable relationship to the existing natural topography, water bodies and water courses, exposure to sunlight and wind, and view corridors and scenic vistas.
- e. Buildings, roadways, open space and landscaping must be designed and arranged to maximize the opportunity for privacy by the residents of the project and surrounding areas.
- f. Building sites must be located to minimize their impact on view corridors and scenic vistas.

- (2) For any conservation development project submitted to the town for approval, a development agreement shall be entered into between the town and the developer of the conservation development project. The development agreement shall set forth specific development standards and other applicable conditions for the conservation development project; however, no development standard or other applicable condition shall be less restrictive than those contained in this section or chapter. Such development agreement shall be subject to town council approval and may be filed in the deed records of the county.

(f) *Alternative proposals and variation from requirements.* The performance standards for conservation development projects contained in this Subsection are considered to be the minimum standards necessary for approval. It is recognized, however, that project size, location and design may necessitate a different arrangement or distribution of open space or buffers than are envisioned in these regulations, and that different amenities than those specified herein may become valuable options. Consequently, an applicant for a conservation development project may submit an alternative proposal with corresponding variations in the standards applicable to such a development, which alternative shall be evaluated and action taken thereon in accordance with the procedures contained in this chapter; provided, however, that the following limitations apply:

- (1) No variations will be granted from the allowed residential densities for conservation development projects.
- (2) The alternative proposal and variations requested shall achieve the same basic objectives as the particular standards which are to be varied.
- (3) Where the proposal seeks to vary project size limitations, the alternative design shall be evaluated in accordance with standards applicable to larger projects.

(g) *Conservation development incentives.* Conservation development will be considered for conservation incentives commensurate with the quality and character of the open or natural lands to be placed within a conservation easement or otherwise conserved and the extent to which the conserved land contributes to the preservation of the Cross Timbers Conservation Development District's country character, including its open, natural, scenic and ecological values. Incentives will be considered on a project-by-project basis and will be approved by the Town Council only after community input and public hearing. Such incentives may include but are not limited to: expedited development review, permit fee waivers, reduced street infrastructure requirements, as reflected in the Town's Thoroughfare Plan, up to and including 50 percent reduction in park land dedication requirements, and reduction of monetary assessments relative to agricultural rollback taxes. The purpose of this criterion is to protect the open lands, natural landscapes and ecological resources that create and define Flower Mound's unique community character and which are essential to the accomplishment of community character, quality of life and economic development objectives.

After adoption of the foregoing regulations, the Town later adopted conservation development standards for one-acre lots (single family estate, or SF-E, zoning districts) and for Rural Development projects where lots are at least 5 acres in size. Both options include a similar incentive package for developers.

## **VI. Conclusion**

Conservation development preserves open space and environmental features that create a sense of place. The "sameness" associated with conventional subdivision development is not an issue and conservation development creates unique development opportunities for developers and or local governments. More importantly, conservation development has been undertaken by communities across the country with a high degree of success, both environmentally and financially.