THE CITY OF DORAVILLE
AGENDA ITEM SHEET

Subject: Re-adoption as Building Code the existing Conservation Subdivision Code

Date of Meeting: _____

Budget Impact: ☐ Yes ☒ No

Budget Impact Amount: $ _____

Funding Source:

- ☐ Annual
- ☐ Capital
- ☒ N/A

Regular Meeting ☒
Work Session ☐
Recommendation ☐
Policy/Discussion ☐
Report ☐
Other ☐

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Action Requested: Re-adopt conservation subdivision code into Building Code and remove it from the Zoning Code.

History, Facts, Issues: The existing zoning code includes a conservation subdivision ordinance. The same, in the determination of the Planner and the Planning Commission, should not be in zoning but is better covered under the Building Code.

Options: Re-adopt the conservation subdivision code into the Building Code or not.

Recommended Action: Re-adopt conservation subdivision code into Building Code.

Department: Planning and Zoning **Department Head:** Scott Haeberlin

Administrative Comments and Recommendation: _____

Action Taken By Board: _____

STATE OF GEORGIA

CITY OF DORAVILLE

ORDINANCE NO. 2010-____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF DORAVILLE, GEORGIA AS AMENDED TO ADOPT A SECTION, CHAPTER 5 BUILDING AND BUILDING REGULATIONS, ARTICLE XI CONSERVATION SUBDIVISION, SECTION 5-290 THROUGH 5-294; TO PROVIDE SEVERABILITY; TO PROVIDE PENALTIES; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; TO PROVIDE FOR CODIFICATION; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the City staff makes regular reviews of City Codes for effectiveness, legal sufficiency and ease of use;

WHEREAS, the City Planner has determined that the City's conservation subdivision regulations would be most effective and properly located in the Building Code;

WHEREAS, a zoning ordinance deleting these regulations has been adopted by the Mayor and council to avoid duplication; and

WHEREAS, the health, safety, welfare and aesthetics of the citizens of the City of Doraville shall be improved and protected by adoption and implementation of this Ordinance.

THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE, GEORGIA HEREBY ORDAIN:

Section 1.

That the Code of Ordinances, City of Doraville, Georgia, is hereby amended by adding a section to be numbered Article XI Conservation Subdivision, Chapter 5 Building and Building Regulations, Sections 5-290 through 5-294, which said section reads as follows:

"Chapter 5. Building and Building Regulations.

. . .

Article XI. Conservation Subdivision.

Sec. 5-290. Purposes.

(a) To provide for the preservation of green space as a nonstructural stormwater runoff and watershed protection measure.

(b) To provide a building regulation 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 a 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 preserve important historic and archaeological sites.

Sec. 5-291. General regulations.

(a) Applicability of regulations. This conservation subdivision building option is available in R-1, R-2 and mixed use (exclusive of CT) districts. However, nothing in this article shall be construed to make this regulation a zoning ordinance. Applicant shall comply with all other provisions of the subdivision regulations, zoning code, building codes and all other applicable laws, except those that are incompatible with the provisions contained herein.

(b) Ownership of development site. The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, however, the site shall be developed according to a single plan with common authority and common responsibility.

(c) Housing density determination. The maximum number of lots in the conservation subdivision shall be determined by either of the following two (2) methods at the determination of the City building staff based on a finding that the method selected will preserve more area for the subdivision.

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: One hundred eight (108):

A. Slopes over twenty-five percent (25%) of at least five thousand (5,000) square feet contiguous area;

B. The 100-year floodplain;

C. Bodies of open water over five thousand (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 needs for 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. 5-293. 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. Property boundaries;

2. All streams, rivers, lakes, wetlands and other hydrologic features;

3. Topographic contours of no less than ten-foot intervals;

4. All primary and secondary conservation areas labeled by type, as described in section 5-294 of this article;

5. General vegetation characteristics;

6. General soil types;

7. The planned location of protected open space;

8. Existing roads and structures; and

9. Potential connections with existing green space and trails.

(b) Open space management plan required. An open space management plan, as described in section 5-294, 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 and as described in section 5-294, 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 any relevant subdivision regulation, zoning or building code.

Sec. 5-294. 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 forty percent (40%) of the gross tract area.

2. The following are considered primary conservation areas and are required to be included within the open space, unless the applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purpose of this article:

A. The regulatory 100- year floodplain;

B. Buffer zones of at least seventy-five feet (75') wide along all perennial and intermittent streams;

C. Slopes above twenty-five percent (25%) of at least five thousand (5,000) square feet contiguous area;

D. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act;

E. Populations of endangered or threatened species, or habitat for such species; and

F. Archaeological sites, cemeteries and burial grounds.

3. The following are considered secondary conservation areas and should be included with the open space to the maximum extent feasible:

A. Important historic sites;

B. Existing healthy, native forests of at least one (1) acre contiguous area;

C. Individual existing healthy trees greater than eight inches (8") caliper, as measured from their outermost drip line;

D. Other significant natural features and scenic view sheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads; One hundred ten (110);

E. Prime agricultural lands of at least five (5) acres contiguous area; and

F. Existing trails that connect the tract to neighboring areas.

4. 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 percent (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.

5. At least seventy-five percent (75%) of the open space shall be in a contiguous tract. The open space should 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.

6. 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. *Walking or bicycle trails, provided they are constructed of porous paving materials;*

4. *Passive recreation areas;*

5. *Active recreation areas provided that they are limited to no more than ten percent (10%) 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 not conducted within primary conservation areas;*

7. *Non-structural stormwater management practices;*

8. *Easements for drainage, access and underground utility lines; or*

9. *Other conservation-oriented uses compatible with the purpose of this article.*

(d) *Prohibited uses of open space.*

1. *Golf courses;*

2. *Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;*

3. *Agricultural and forestry activities are 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. If a homeowners' association is the owner, membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. If a homeowners' association is the owner, the homeowners' association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintaining the open space and any facilities thereon shall be borne by the owner.*

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. *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 building official; 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 may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision for extended maintenance. The costs of such corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the owner, homeowners' 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 shall be one (1) of the following:*

   A. *A permanent conservation easement in favor of either:*

      (1) *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*

      (2) *A willing governmental entity with an interest in pursuing goals compatible with the purposes of this article.*

   B. *If the entity accepting the easement is not the City, then a right of enforcement favoring the City shall be included in the easement;*

C. A permanent restrictive covenant for conservation purposes in favor of a governmental entity; or

D. An equivalent legal tool that provides permanent protection, if approved by the City.

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 the applicant chooses to place on the use of the open space.

. . ."

Section 2.

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or

sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 3.

Penalties provided for violations of this Ordinance are set out herein and in Section 1-12, as amended, of the Code of Ordinances, City of Doraville, Georgia and are hereby incorporated as if set out fully.

Section 4.

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

Section 5.

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 6.

The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Doraville.

Section 7.

It is in the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the code Ordinances, City of Doraville, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 8.

This Ordinance shall become effective upon its adoption by the Mayor and Council.

SO ORDAINED, this _____ day of _____, 2010.

CITY OF DORAVILLE

_____
Ray Jenkins, Mayor

_____
First Reading

_____
Second Reading

ATTEST:

_____ (SEAL)
Rhonda Blackmon, City Clerk

APPROVED AS TO FORM:

_____
Murray J. Weed, City Attorney

	Yea	Nay
Maria Alexander	☐	☐
Brian Bates	☐	☐
Pam Fleming	☐	☐
Karen Pachuta	☐	☐
Donna Pittman	☐	☐
Bob Roche	☐	☐