

**AN ORDINANCE PROVIDING FOR REVISION TO THE PLANNING AND ZONING ORDINANCES OF THE CITY OF HEBER SPRINGS, AND FOR OTHER PURPOSES**

**WHEREAS**, the Planning Commission of the City of Heber Springs has recommended the adoption of regulations with regard to Planned Unit Development, and

**WHEREAS**, the City Council of the City of Heber Springs, Arkansas, has reviewed its Ordinances with regard to Planning and Zoning, and

**WHEREAS**, the City Council has determined that it would be in the best interest of the City to revise and update such Ordinances.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEBER SPRINGS, ARKANSAS**, that the regulations of the Planning commission incorporated herein are hereby amended to read as follows:

**Section 1.** Attached hereto as Exhibit "A" and made a part hereof by reference, as if fully set

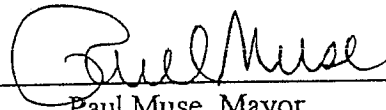
forth herein word for word, is an addition to the planning and zoning ordinances and regulations of the City of Heber Springs, entitled "Planned Unit Development", which consists of a total of nine (9) pages.

**Section 2.** The attachment, "Planned Unit Development", is hereby adopted and shall be incorporated in the regulations of the Heber Springs Planning Commission under Chapter VI, Zoning Districts, as Section 10. Planned Unit Development.

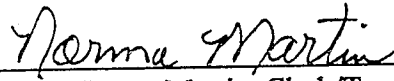
**Section 3.** All Ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4.** In the event that any portion, provision, subsection, section or part of this Ordinance is later ruled to be invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid portion or portions, and to this end, the provisions of this Ordinance are declared to be severable.

**PASSED AND APPROVED** this 9<sup>th</sup> day of December, 2004.

  
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Paul Muse, Mayor

ATTEST:

  
\_\_\_\_\_  
Norma Martin, Clerk/Treasurer

## PLANNED UNIT DEVELOPMENT

### A. GENERAL DESCRIPTION

It is the intent of this Section to encourage developments with superior living environments brought about through unified development and to provide for the application of design ingenuity in such developments while protecting existing and future surrounding areas in achieving the goals of the Comprehensive Plan for Development of the City of Heber Springs, Arkansas. The "PUD" Planned Unit Development District herein established is intended to provide for greater flexibility in the design of buildings, yards, courts, circulation and open space than would otherwise be possible through the strict application of other district regulations, and to produce:

1. A maximum choice in the types of environment and living units available to the public;
  2. Open space and recreation areas;
  3. A pattern of development which preserves natural features and prevents soil erosion;
  4. A creative approach to the use of land and related physical development;
  5. An efficient use of land resulting in smaller networks of utilities and streets and thereby lowering cost; and
  6. An environment of stable character in harmony with the surrounding development.
- The "PUD" Planned Unit Development Regulations are designed to provide for small and large-scale developments incorporating a single type or a variety of residential, commercial, and related uses which are planned and developed as a unit. Such development may consist of individual lots or it may have common building sites. Private or public common land and open space must be an essential and major element of the Plan which is related to and affects the long-term value of the homes and other development. A planned unit shall be a separate entity with a distinct character and harmony with surrounding development.

### B. STANDARDS OF DEVELOPMENT

#### 1. Ownership Control

The land in a Planned Unit Development District shall be owned, leased, or otherwise controlled by a person, firm, group of individuals, partnership, corporation, or trust, provided assurances are given through the procedures contained herein that the project can be successfully completed.

#### 2. Minimum District Area

The minimum area for a "PUD" Planned Unit Development District shall be five (5) acres.

### 3. Uses Permitted

In order to increase creativity and flexibility in the development of areas suitable for a Planned Unit Development, there are no specifically prescribed uses which are permitted within the boundaries of a Planned Unit Development. The developer shall be responsible for preparation of a list of permitted uses within the specific Planned Unit Development requested. The development of the list shall take into account the nature and purpose of the Planned Unit Development area, and such uses and locations shall be appropriate in order to protect and be in harmony with surrounding development. At the time of the Pre-Application plan and conference, the applicant shall generally describe the nature and types of land uses to be located within the boundaries of the PUD District. At the time of zoning application and consideration of the preliminary plat, a specific written list of uses to be "permitted by right" shall be submitted for review by the Planning Commission. Following approval by the Planning Commission and City Council, the list of specific uses permitted by right shall serve as the control list in issuance of building permits and certificates of occupancy.

In addition to the above permitted uses that are established by right, certain other uses may be prescribed by the developer in accordance with the restrictions included herein and said uses are designated as special permit uses. These uses more intensely dominate the area in which they are located than do other uses which might be permitted in the PUD District and, as such, they require special considerations and restrictions. If the developer and/or Planning Commission agree that certain special permit uses should be included within the PUD District, the applicant shall precisely indicate the specific use, its location, area to be included, maximum building square footage, and such other information as required by the Planning Commission or City Council to properly and comprehensively evaluate the nature and impact of such special permit uses. When such special permit uses are approved at the time of rezoning, they shall not be subsequently changed to any other use until and unless they are changed to another use that is permitted by right, or the new proposed use if not permitted by right in a PUD District is resubmitted for rezoning approval.

### 4. Parking and Off-Street Loading

All uses established within a Planned Unit Development District shall comply with the off-street parking and loading requirements as established in the Zoning Ordinances. However, the requirements for individual structures or lots may be met through either provision of adequate parking on the lot on which such structure is so located or upon adjacent property which is under the control of a Property Owners' Association to which said lot is an automatic participant. In no case, however, shall the cumulative requirements for all parking and off-street loading requirements be less than if said uses were individually established and located in any other zoning district within the City.

### 5. Perimeter Requirements

In order to assure compatibility with surrounding development, the developer shall submit specific information as to the setbacks, building height, coverage factors and other elements necessary for all perimeter lots that are adjacent to the boundary of the PUD District or adjacent to any boundary or perimeter street right-of-way. While no specific setback requirements are herein established, the Planning Commission and City Council shall consider the nature, extent and character of the adjacent development and shall take into consideration the types of area regulations applicable to adjacent properties.



## 6. Residential Density Standards

The maximum number of dwelling units permitted within a PUD District is dependent upon both the type and number of each type of residential units intended to be included in the PUD District. Densities within certain areas of the PUD may be beyond the overall limits through a transfer of density. However, overall project densities shall not be exceeded in accordance with the following schedule:

- a. six (6) dwelling units per net residential acre for single-family attached and detached houses and two-family dwellings.
- b. Twelve (12) dwelling units per net residential acre for triplexes, fourplexes, and row or terrace housing.
- c. Eighteen (18) dwelling units per net residential acre for low-rise (three (3) stories or less) apartments
- d. Twenty-four (24) dwelling units per net residential acre for high-rise (four (4) stories or more) apartments.

For purposes of calculating densities, net residential acres are defined as gross acres of the PUD site minus all public rights-of-way, and less the area of all parcels or lots devoted to commercial, industrial, or institutional uses not of a residential nature. Common open space that is owned and maintained by a Property Owners' Association shall be included in calculating the net residential acres available for all dwelling units that automatically belong to such an association. Where more than one (1) Property Owners' Association is to be created, then each common open space can only be attributed to the lot or dwellings which have automatic membership for that specific common open area.

## 7. Open Space Requirements

Common open space constitutes an essential ingredient in a Planned Unit Development and is one of the most basic and important design elements. Open space should be distributed more or less equitably throughout the PUD District in relationship to the dwelling units and other use areas that are intended to be served by the common open space. Adequate guarantees must be provided that the common open space areas as contained in the Plan for the PUD District are preserved and maintained for those purposes only. A minimum of 20% of the total project area shall be devoted to lawn and/or green space exclusive of paved surface. A Property Owners' Association shall be required, if other arrangements satisfactory to the Planning Commission have not been made, for improving, operating and maintaining all such common open space areas. At the time the final plan and plat is submitted, the Articles of Incorporation and Bylaws of the Property Owners' Association shall be reviewed and approved by the Planning Commission. Additionally, the restrictive covenants which run with the land must be submitted and include similar provisions to preserve all open space areas. Nothing in this Section of the Code shall be construed as assigning or assuming any responsibility or liability on the part of the City of Heber Springs, for maintenance of any private open areas, parks, or recreational facilities. A hold harmless clause shall be incorporated in the covenants running with the land to this effect. However, when an owner of a Planned Unit Development desires to dedicate certain land areas to the City for public parks and recreational facilities and the City Council approves the nature and location of such lands and accepts the dedicated areas, the shall be responsible for the operation and maintenance of these lands and properties.

## PROCEDURES FOR OBTAINING PUD ZONING

A three-step review procedure is required for obtaining PUD zoning and final approval of the final plan and plat. The first step involves a Pre-Application Plan and Conference which is designed to provide information to the local government of the developer's intention with respect to the nature and scope of the proposed PUD District and to allow the developer to be informed of the City's regulations and policies concerning development alternatives for the area. The second step involves assessment of fees, submission of a formal application for rezoning of the area to a PUD District and simultaneous submission of a preliminary plat in accordance with the Heber Springs Subdivision Regulations. The last step involves submission of the final development plan and plat for approval and recording prior to commencing building construction. These steps are outlined as follows with respect to the procedure followed and submission requirements at each step.

### 1. Pre-Application Plan and Conference

#### a. Procedure

- 1) A Pre-Application Plan shall be submitted to the Heber Springs Planning Commission for review of the area and proposed uses relative to the compatibility of a Planned Unit Development project with existing development in the surrounding area and the Comprehensive Development Plan of the City.
- 2) Each applicant shall confer with the Planning Commission and other interested department heads in connection with the preparation of the Planned Unit Development Application. It shall be the responsibility of the Planning Commission Chairman to contact and invite interested department heads and other parties to a joint meeting. The general outlines of the proposal, evidenced schematically by the Pre-Application Plan and such other information as may be desired, are to be considered before submission of the Planned Unit Development Application.
- 3) Upon review of the site plan and general area, and following completion of the Pre-Application Conference, the Planning Commission shall furnish the applicant with written comments regarding the conference, including appropriate recommendations to inform and assist the applicant prior to preparing the components of the Planned Unit Development Application.

#### b. Submission Requirements

At the time of requesting a Pre-Application Conference, the applicant shall submit a scaled site plan and such other narrative or graphic information the applicant deems pertinent to the City's initial review and evaluation of the potential of the Planned Unit Development District proposed. The Pre-Application Plan shall include the following:

- 1) Boundaries of the property involved;
- 2) Existing zoning of the area and zoning of adjoining properties;
- 3) Existing roadways, easements, waterways, and identify any FEMA flood plain and flood way property within the 100-year flood elevation;
- 4) Indication of availability of all utilities;

- 5) General plan of development at a level of detail sufficient to indicate to the City the nature and scope of the project as to its magnitude in terms of approximate number and types of dwelling units, location and extent of nonresidential elements, proposed locations of major open space areas, circulation and access.

## 2. Fees, Zoning Application and Preliminary Plat

After receiving written comments following the Pre-Application Conference, the applicant may proceed in preparing a formal Application for a Planned Unit Development to the Planning Commission. The Application shall consist of the appropriate fees, a simultaneous submission of six (6) sets of the preliminary plat and a rezoning application. The preliminary plat shall conform to all requirements contained in the Heber Springs Subdivision Regulations with the exception of certain design requirements regarding lot, setbacks, etc. that are specifically exempted or modified by provisions of this Ordinance. The Application shall be processed following the procedure for a change of zone district boundary as contained the Zoning Ordinance.

### a. Submission Requirements

A fee of \$300.00 + \$5.00 per lot must be paid for preliminary plat review prior to submitting the preliminary plat to the Planning Commission for approval.

A fee of \$75.00 must be paid for the re-zoning application + the cost for the publication of the "Notice of Public Hearing" required to be published in a newspaper of general circulation in the city.

The applicant shall simultaneously submit both a preliminary plats and a rezoning application. The preliminary plat shall be prepared in a manner as prescribed in the Heber Springs Subdivision Regulations.

To form the basis for the rezoning application a preliminary site plan shall be submitted and it shall include at least the following information:

- 1) Proposed title of the project and name of any engineer, architect, land planner, landscape architect or company responsible for various elements of the Plan.
- 2) North point, graphic scale, and date.
- 3) Certified boundaries of the properties involved, all existing easements, section lines and property lines, existing streets, existing buildings, water courses, waterways and lakes, and other existing physical features in and adjoining the project.
- 4) Location and sizes of sanitary and storm sewers, water mains, culverts and other underground utilities/structures in and adjacent to the project. All drainage shall be so designed to serve the entire drainage area and all surface drainage shall be transported to an existing storm sewer or drainage facilities as approved by the Planning Commission.
- 5) Topography of the project area with two (2) foot contour intervals.

- 6) General Land Use Development Plan of the area indicating the location of different land uses, dwellings by types and numbers, areas designated for commercial uses and other nonresidential uses, and areas proposed for open space and recreational use. For all residential areas, the site plan shall clearly indicate the type and number of dwellings to be located per parcel, lot, or block in accordance with the preliminary plat. For all commercial or other nonresidential uses, the areas shall clearly be indicated in accordance with lots, parcels, or blocks and each such parcel shall indicate the type of building proposed, number of stories, and gross square footage to be included on each parcel. The boundaries of all open space areas shall be clearly indicated along with the form of proposed ownership, that is by Property Owners' Association or public park or other legal entity, and in such case where more than one Property Owners' Association is being created, documentation shall be clearly submitted as to which areas will have automatic membership into said associations. This requirement, however, shall not be interpreted as requiring a detailed site development plan which includes the exact boundaries and locations of all structures proposed for construction.
- 7) All building setback lines for all properties shall be shown.
- 8) Curbs and gutters shall be required for all streets unless otherwise specified by the Planning Commission
- 9) If the project is to be developed in more than one phase, the boundaries of each proposed phase shall be clearly indicated on the site plan map.
- 10) Calculations shall be submitted of the total number of gross acres in the project, and the acres and percentages thereof, proposed to be devoted to the several dwelling types, commercial uses, other nonresidential uses, streets, parks, schools, and other reservations.
- 11) Tabulation of the total number of dwelling units by various types in the project and the total number of net residential acres within the project, or if the project is to be developed in phases, by each phase within the project. The tabulations shall so indicate conformance of the proposed project or each phase within the project to the residential density standards for the PUD District.

### 3. Final Plan and Plat

Upon the approval of the rezoning request by the City Council, the applicant may proceed with the preparation of the final plan and plat. The final plat shall meet all applicable requirements of the Heber Springs Subdivision Regulations and shall be processed in accordance with those Regulations. The applicant shall submit a written and graphic description of any modifications made to the final plat from the approved preliminary plan.

If it is determined that no changes have been made from the preliminary plan, or if only minor plan changes have been made in accordance with the definition provided herein below, then the review by the Heber Springs Planning Commission may proceed and the plat may be submitted to the Planning Commission for approval. If approved, the plat shall be filed in the County Recorder's office upon completion of the above

information.

#### D. AMENDMENTS

Amendments may be required either to the preliminary site plan or the final development plan. The procedure governing the disposition of amendments shall be as follows:

##### 1. Amendments to the Preliminary Plan

At the time a final plan is submitted for review, it shall be determined whether or not any amendments have been made to the approved preliminary plan. If amendments have been made, then a determination shall be required as to whether or not said amendments constitute a major or minor plan change. Modifications from the previously approved preliminary plan shall be deemed by the staff to be minor plan changes if any and all modifications by the applicant of the plan do not:

- a. Vary the total number of dwelling units by more than five percent (5%);
- b. Involve a reduction of the area set aside for common open space nor the substantial relocation of such area or areas;
- c. Increase by more than five percent (5%) the total floor area proposed for any nonresidential use; and
- d. Does not substantially change the location of any nonresidential areas as shown on the preliminary plan.

Additionally, modifications in the location or design of minor streets, cul-de-sacs, alleys, or facilities for water and for disposal of storm water and sanitary sewage shall not be considered as major modifications.

All other changes in the Planned Unit, including changes in the site plan and development schedule, must be made under the procedures that are applicable to the initial approval of a Planned Unit Development Project.

##### 2. Amendments to Final Development Plan

The final development plan as submitted and approved may be amended in accordance with the following procedure. Minor changes may be authorized by the Building Official in such cases where changes are required by engineering or other circumstances not foreseen at the time the final development program was approved. No change authorized by the Building Official under this section, however, may either increase the total area devoted to any and all nonresidential uses, or decrease the amount of area devoted to common open space or increase the total number of dwelling units located on any lot, block, or parcel as approved in the final development plan. Notwithstanding any of these conditions, the Building Official may not permit changes beyond the minimum or maximum requirements set forth in this Ordinance. All other changes in the Planned Unit, including changes in the site plan or the development schedule, must be made under the procedures that are applicable to the initial approval of a Planned Unit Development.

## E. ADMINISTRATION AND ENFORCEMENT

### 1. Review Standards

The Planning Commission shall investigate and ascertain that the plans for a Planned Unit Development meet the following conditions:

- a. That the tract of land for the entire project comprises not less than five (5) acres.
- b. That the project is in conformity with the requirements and standards of development of the Planned Unit Development District and is consistent with the intent and purpose of this section.
- c. That the proposed project constitutes an environment of sustained desirability and stability, and that it is in harmony with the character of the surrounding neighborhood.
- d. That the property adjacent to the proposed development will not be adversely affected.

*The City Council shall review the recommendations sent forward by the Planning commission and take one of the following actions:*

- 1. Approve the Planned Unit Development as recommended by the Planning Commission and approve the rezoning request.*
- 2. Approve the Planned Unit Development as amended by the City Council and approve the rezoning request.*
- 3. Deny the Rezoning Request.*

*The City Council shall apply the review standards stipulated in this section in reviewing the Planned Unit Development.*

### 2. Recorded Plat and Plot Plan Required

The proposed development shall follow all applicable procedures, standards, regulations, and laws governing the subdivision of land. No building permit for any structure shall be issued until a final plat of the proposed development or part thereof is approved and recorded and an approved plot plan has been submitted in accordance with this Ordinance.

### 3. Phasing and Development Schedule

The applicant is permitted to construct the Planned Unit Development in more than one phase or stage of construction. In such cases, the applicant shall clearly indicate on the site plan map the boundaries of each proposed phase. If the sequence of construction of various portions of the development is to occur in phases or stages, then the open space and/or recreational facilities should be developed or committed thereto in proportion to the number of dwelling units intended to be developed during any given stage of construction.

Additionally, the applicant shall submit a schedule of construction for the project or for each phase within the project indicating the sequence of development according to residential type and other nonresidential construction within the project. Upon adoption of the schedule of construction, the Building Official shall be responsible for enforcing this schedule. If the Building Official determines that the rate of construction of residential units or nonresidential structures differs from the construction schedule, he/she shall so notify the developer in writing. Thereafter, the Building Official may issue such orders to a developer as necessary to correct said

schedule, and upon continued violation of this subsection may suspend the developer from further construction of dwelling units or nonresidential structures until compliance is achieved.

#### 4. Guarantee of Completion

Before approval of the final development plan, the Planning Commission shall require a contract with safeguards satisfactory to the Commission guaranteeing completion of the development plan for any single phase in a period to be specified by the Commission, but which period shall not exceed five (5) years unless extended by the Commission.

#### 5. Causes for Revocation

The Planning Commission may recommend to the City Council that any previous Planned Unit Development approval be revoked and all building permits be voided under the following circumstances:

- a. If the applicant has not submitted a final development plan to the City within one (1) year of preliminary plan approval. Where an optional staged development plan is utilized, the affected portion of the approved preliminary plan may be revoked in its entirety or to the extent of that portion on which a final development plan/plat has not been submitted and approved.
- b. If no building permit has been issued within two (2) years from the recording date of the final development plan/plat, or initial plan of a staged final development plan/plat and the applicant has not been granted an extension.
- c. If the applicant does not adhere to the phased development schedule as stated in the approved preliminary development plan,
- d. If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final development plan/plat are proceeding at a substantially slower rate than other project components.

From time to time, the Planning Commission shall compare the actual development accomplished with the approved development schedule. If the Commission finds that the rate of construction of dwelling units or other structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final development plan/plats if preceding phases have not been finalized. The City may also issue a stop work order or discontinue issuance of building permits, or revoke those previously issued. If project is revoked, it would revert to previously determined zoning district.