

ORDINANCE NO. 2020-__

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

**AN ORDINANCE AMENDING SECTION 153.087
PLANNED UNIT DEVELOPMENT (PUD) DISTRICT, OF
CHAPTER 153 ZONING REGULATIONS, OF THE
TONTITOWN MUNICIPAL CODE AND DECLARING AN
EMERGENCY**

WHEREAS, the City Council of Tontitown has adopted regulations pertaining to Planned Unit Development codified in Section 153.087 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT of Chapter 153: ZONING REGULATIONS of the Tontitown Municipal Code; and

WHEREAS, the City Council of the City of Tontitown now finds it to be in the best interest of the citizens of the City of Tontitown to amend Section 153.087 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT of Chapter 153: ZONING REGULATIONS of the Tontitown Municipal Code; and

WHEREAS, the Tontitown Planning Commission has reviewed the amendment, and following a public hearing regarding the same, voted to recommend its approval; and

WHEREAS, having fully reviewed the proposed amendment, the Tontitown City Council has determined that Section 153.087 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT of Chapter 153: ZONING REGULATIONS, of the Tontitown Municipal Code should be revised and restated in its entirety as incorporated herein below.

NOW THEREFORE, BE IT ENACTED, by the Tontitown City Council (the “City Council”) of the City of Tontitown, as follows:

Section 1. Section 153.087 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT of Chapter 153: ZONING REGULATIONS of the Tontitown Municipal Code is hereby revised to read, in its entirety, and as attached hereto as Exhibit “A”.

Section 2. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 4. Declaration of Emergency. It is hereby found and determined that Section 153.087 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT of Chapter 153: ZONING REGULATIONS of the Tontitown Municipal Code should be immediately amended in its entirety within the City of Tontitown. Therefore, an emergency is declared to exist, and this act, being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

PASSED AND APPROVED this ____ day of _____, 2020.

APPROVED:

Paul Colvin, Jr., Mayor

ATTEST:

Rhonda Ardemagni, City Clerk-Treasurer
(SEAL)

Exhibit "A"

§ 153.087 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT.

(A) *General description.* It is the intent of this section to encourage development 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. The PUD provisions herein established, are 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 type of environment and living units available to the public;
- (2) Open space and recreation areas;
- (3) A pattern of development which preserves natural features, prevents soil erosion, and protects water quality;
- (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 costs; and
- (6) An environment of stable character in harmony with surrounding development.

(B) The PUD regulations are designed to provide for small- and large-scale developments incorporating a single type or a variety of residential, commercial, and related uses that 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 should be an essential and major element of the plan that 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 be in harmony with surrounding development.

(C) *Standards of development.*

(1) *Ownership control.* The land in a planned unit development district (PUD) 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 district shall be two acres. In calculating the minimum area for a PUD district, the measurements shall include the area of all dedicated streets entirely within the boundary of the proposed PUD, and one-half of the area of all boundary or perimeter streets.

(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 that 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 list shall take into

account the nature and purpose of the PUD area, and such uses and locations shall be appropriate in order to protect and be in harmony with surrounding development.

(4) 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. If approved 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.

(5) 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 conditional 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 conditional 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 to properly and comprehensively evaluate the nature and impact of such conditional uses. When such conditional 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.

(6) *Parking and off-street loading.* All uses established with a planned unit development district shall comply with the off-street parking and loading requirements as established in the city's zoning regulations and street section requirements within the City's Adopted Future Land Use Plan and Master Street Plan. 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 of 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.

(7) *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 Board Commission 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.

(8) *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) Eight dwelling units per net residential acre for single-family attached and detached houses and duplexes.

(b) Fifteen dwelling units per net residential acre for triplexes, fourplexes, and row or terrace housing.

(c) Eighteen dwelling units per net residential acre for two story, and 27 units per net residential acre for three-story apartments.

(d) Forty dwelling units per net residential acre for high-rise (four stories or more) apartments.

(e) For purposes of calculating densities, net residential acres are defined as gross acres of the PUD site minus all public rights-of-ways, and less the area of all parcels or lots devoted to commercial, industrial, or institutional uses not of a residential nature.

(f) 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 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.

~~—(9) *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 surfaces. 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.~~

(9) Greenspace & Lawn Space:

Greenspace and Lawn Space constitutes an essential ingredient in a planned unit development and is one of the most basic and important design elements. Greenspace and Lawn 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 Greenspace and Lawn Space. Adequate guarantees must be provided that the Greenspace and Lawn 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 Greenspace and Lawn Space. The percentage of the required Greenspace and Lawn Space shall be calculated from the total acreage of the development.

At least 3% of the project total shall be designated common space. Common space may be included as part of the 20% required greenspace and lawnspace. Example: 80 acre raw tract of land 20% greenspace and lawnspace = 16 acres greenspace and lawnspace, at least 2.4 acres must be common space.

Common Space may include the following:

- a) Public Plazas and hard surfaced recreation areas including, but not limited to, pools, basketball courts, tennis courts, bocce courts, soccer fields, weight rooms, clubhouses, baseball fields or similar outdoor recreation facilities, and associated parking, that are open to the residents and users of the PUD.
- b) Pedestrian paths, trails, and covered walkways, excluding those required in rights of ways and along private drives.
- c) Wetlands and water bodies, including the normal water surface area of retention ponds that hold water, if assessable by property owners within the PUD. Dry detention ponds shall not be included.
- d) Vegetated/landscaped areas

A property owners' association shall be required, if other arrangements satisfactory to the Planning Board ~~Commission~~ have not been made, for improving, operating and maintaining all such common open space areas. At the time the plan and plat

are submitted, the articles of incorporation and bylaws of the property owners' association shall be reviewed and approved by the Planning Board Commission.

Additionally, the restrictive covenants which run with the land must be submitted and include similar provisions to preserve all Green Space and Lawn Space areas.

(D) *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 city 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 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 city's 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 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 zoning official and interested Department heads in connection with the preparation of the planned unit development application. It shall be the responsibility of the zoning official 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 zoning official 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 PUD 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, and waterways;
4. Indication of availability of all utilities; and
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; and circulation and access.

(2) *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 a simultaneous submission of a preliminary plat and a rezoning application. The preliminary plat shall conform to all requirements contained in the subdivision regulations with the exception of certain design requirements regarding lots, setbacks, etc., that are specifically exempted or modified by provisions of this chapter. The rezoning application shall be processed following the procedure for map amendments.

(a) *Submission requirements.* The applicant shall simultaneously submit both a preliminary plat and a rezoning application. To form the basis for the rezoning application, a preliminary ~~plat site plan~~ shall be submitted and it shall include all requirements for preliminary plat and include at least the following information:

1. Proposed title of the project and name of any engineer, architect, land planner, land surveyor, landscape architect, or company responsible for various elements of the plan;
2. North point, graphic scale, and date;
3. Boundaries of the properties involved, all existing easements, section lines and property lines, existing streets, existing buildings, watercourses, waterways or lakes, and other existing physical features in and adjoining the property;
4. Location and sizes of sanitary and storm sewers, water mains, culverts and other underground structures in and adjacent to the project;
5. Topography of the project area with appropriate 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 that includes the exact boundaries and locations of all structures proposed for construction;~~

6. General land use development plan of the area, indicate:

- a. The location of different land uses,
- b. Dwellings by types and numbers,
- c. Areas designated for commercial uses and other nonresidential uses, and
- d. Areas proposed for open space and recreational use.
- e. 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,
- f. 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 stores, and gross square footage to be included on each parcel,
- g. 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,
- h. This requirement, however, shall not be interpreted as requiring a detailed site development plan that includes the exact boundaries and locations of all structures proposed for construction.
- i. 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 that includes the exact boundaries and locations of all structures proposed for construction;

7. All setback lines for all properties shall be shown;

8. 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;

9. Calculations shall be submitted of the total number of gross acres in the project, and the acres and percentage thereof, proposed to be devoted to the several

dwelling types, commercial uses, other nonresidential uses, streets, parks, schools, and other reservations; and

10. 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.

~~(b)~~ 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 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 city's 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 plan 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 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 office of the Washington County Circuit Clerk.

(E) *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 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 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 5%;
- (b) Involve a reduction of the area set aside for common open space or the substantial relocation of such area or areas;
- (c) Increase by more than 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.

(2) 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 development, 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.

(3) *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 zoning official, in such cases where changes are required by engineering or other circumstances not foreseen at the time the final development plan was approved. No change authorized by the zoning 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 zoning official may not permit changes beyond the minimum or maximum requirements set forth in these regulations. All other changes in the planned unit development, 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.

(4) *Administration and enforcement.*

(a) *Review standards.* The Planning Commission shall investigate and ascertain that the plans for a planned unit development meet the following conditions:

1. That the tract of land for the entire project comprises not less than two acres.
2. 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.
3. 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, and is not inconsistent with the city's comprehensive plan.
4. That the property adjacent to the proposed development will not be adversely affected.

(b) *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 is submitted in accordance with these regulations.

(c) 1. *Phasing and development schedule.* 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.

2. 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 inspector shall be responsible for enforcing this schedule. If the building inspector determines that the rate of construction of residential units or nonresidential structures differs from the construction schedule, he shall so notify the developer in writing. Thereafter, the building inspector 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.

(d) *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 years unless extended by the commission.

(e) *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:

1. If the applicant has not submitted a final development plan to the city within one year of preliminary plat 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 plat has not been submitted and approved.

2. If no building permit has been issued within one year from the recording date of the final development plan map, or initial plan of a staged, final development plan and the applicant has not been granted an extension.

3. If the applicant does not adhere to the phased development schedule as stated in the approved preliminary development plan. If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final development plan map 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 plans/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.