

Submitted to Council Member Rachael Butler (Chair), City Council Planning and Community Development committee By Lyntha Wesner, Chair, Norman Greenbelt Commission April 9, 2010. All comments in red are those from Lyntha Wesner, Greenbelt Commission Chair.

NORMAN DEVELOPERS COUNCIL CONCERNS WITH SPECIFIC SECTIONS OF PROPOSED GREENBELT ORDINANCE (11-13-2009 draft)

While supporting the concept and desirability of a reasonable ordinance which promotes the preservation of open spaces and green belts, the Norman Developers Council has serious concerns regarding certain sections of the proposed ordinance (*11-13-09 draft*) which has been compiled under the guidance of the Norman Greenbelt Commission's ("**GBC**") subcommittee. The subcommittee is talking like the only thing they are really sending forward is an approval of the Greenbelt Enhancement Statement ("**GES**"), which is being required for all new Plats. Developers have no problem with submitting a GES, but this ordinance goes FAR beyond approving a form for the GES.

The specific sections of concern with the 11-13-09 draft are listed below, with comments. Each specific section and page number are shown underlined in boldface print at the beginning of each paragraph.

All WHEREAS clauses - Pages 1 and 2: Taken together, the WHEREAS clauses do not reflect a completely accurate statement of the status of the Greenbelt Commission and/or the greenbelt system. Since WHEREAS clauses are NOT incorporated into the Code of the City of Norman, it is best to limit WHEREAS clauses to statements of fact that are generally agreed upon by a majority of Norman citizens. If you look at the ordinance (**0-0304-71**) which created the GBC, the six WHEREAS clauses acknowledge that Norman 2020 called for the establishment of a Greenbelt System, and the City Council appointed a task force, and the task force recommended establishing a permanent Greenbelt Commission and the Council wants to dedicate at least \$100,000 a year for Greenbelt acquisition each year, and a survey showed a majority of citizens supported securing and preserving greenways and greenbelts, so a Greenbelt Commission is needed to determine suitability and identify parcels and recommend policies and advocate for greenbelts in the City's planning process, and solicit public opinion in planning for the greenbelt system and facilitate citizen participation in the planning process so that the public's interest in the system is expressed, and develop policies regarding security and safety in the greenbelt system, **THEREFORE** the City Code was amended to add sections 4-2021, 4-2022, 4-2023, 42024, and 4-2025 as Article 21 in Chapter 4 of Norman's Code, as the enabling legislation for the Greenbelt Commission. In analyzing the WHEREAS clauses of the proposed ordinance, we offer these comments as to specific WHEREAS clauses:

In talking with legal staff, the "whereas" clauses show intent and are not formally a part of the ordinance itself. This language was generated primarily from the Greenbelt Task force documentation, Green Dreams, Greenbelt Commission annual reports to City Council and Greenbelt Commission Minutes. Previous citizens work on the 2020 and 2025 Land Use Plans and surveys supporting these efforts were also consulted.

1. One of the bullet points under the 2025 Plan goal of developing a greenbelt system calls for the system to "*serve as a storm water management resource for urban run-off and regional detention needs*". Until the City establishes its Storm Water Master Plan, it is premature for a greenbelt ordinance to get specific about storm water management practices.

Assuming reference is to # 8, this does not get specific about stormwater management practices.

3. If, by "*Greenway Master Plan*" you mean the Trails Master Plan which consultants have recently submitted to the City Council, we point out that the consultants' proposal is a long way from becoming law.

A basic misunderstanding – Plan developed was a Greenway Master Plan (GMP) NOT a Trails Master Plan. Assuming Referencing #3, this does not purport to make the GMP “law”. It’s important for everyone to understand that the GMP has and will include open spaces that don’t include trails. (See Action Plan detail)

4. The enabling legislation **limited** GBC jurisdiction to the consideration of platting and subdivision of land. It does not **(and should not)** involve the GBC in land use plan amendments and/or zoning changes. State statutes and Norman's Charter and its zoning ordinance specifically give the Planning Commission and the City Council jurisdiction and control of land use plan amendments and zoning changes.

(Also see 4-2023 p 2 below) Disagree. In speaking with the author of the original ordinance, intent was to be broad. Section 4-2023 (6) specifically states the following in the enabling ordinance. 6) Provide advocacy for the Greenbelt System in the City's planning process by reviewing Greenbelt Enhancement Statements and advising and making recommendations to the City Council thereon;

5. The fifth WHEREAS fails to acknowledge that **not all** green spaces in Norman are appropriate for inclusion in a Greenbelt System.

Does not say "all"

6. The sixth WHEREAS ignores the fact that "open space" in Norman includes parking lots, drainage structures, etc. Not all of those items "...promote beauty and feed the human spirit..." , but each is essential in its own way.

Parking lots are not open space. Many drainage structures, etc. may or may not be open space.

7. The seventh WHEREAS ignores the fact that **many** green spaces in Norman do **not** promote high water quality and do not protect drinking water, such as heavily fertilized and manicured Bermuda lawns.

Many, not "all" in the language

8. Likewise, as to the eighth WHEREAS, those same manicured heavily fertilized lawns do **not** enhance wildlife habitat, protect riparian zones or improve drainage of storm water.

See # 7 above

9. Likewise, as to the ninth WHEREAS, many of the green spaces in Norman do **not** facilitate pedestrian or other transportation, etc.

See # 7 above

10. We agree with the tenth WHEREAS that there is a need to balance the benefits to the public of open space with the benefits to the public of development of structures, parking and other impervious surfaces.

Our original wording was changed to respond to comments made by Mr. Heiple and others at the GBC monthly meeting regarding the need for "balanced" wording.

11. Rather than saying developments should be accomplished with minimal damage to the environment where possible, we believe saying "*Impact on the environment should be taken into consideration for any development*" would be more appropriate language, under existing law, for the eleventh WHEREAS.

Considered and rejected as acceptable alternative wording.

12. We agree that GBC must be open to public input when considering GES applications.

Sec. 4-2023 - Page 2: We vigorously oppose adding Land Use Plan amendments and/or changes in zoning to the "*platting or any subdivision of land*" applications for which a GES was originally mandated. To include Plan Changes and Rezoning would be to invade the province of the Planning Commission, long established by State law and the Charter of the City of Norman and the ordinances of the City of Norman, and could lead to confusing and/or conflicting recommendations going forward to the City Council.

See note 4 above. A more complete explanation was sent to CC members on March 30 under the heading, "Development Applications clarified" and included in full below. (Part of a document to City Council members sent March 30 by Lyntha Wesner, Chair, Greenbelt Commission.)

Development Applications clarified:

Last year Council members expressed frustration that rezoning applications and Land Use Plan amendments were arriving for decision at the Council level with no consideration for connectivity as envisioned by the Greenbelt ordinance and the 2025 Master Plan. Jane Ingels, Chair, and I met with Council Member Doug Cubberley, principal author of the Greenbelt Ordinance, who concurred with that concern and the intent of the ordinance. He suggested language changes to the ordinance, specifically adding "Land Use Plan Amendment, Zoning Change or Preliminary" platting to the applications that should have a Greenbelt Enhancement Statement reviewed by the Greenbelt Commission. That change is part of our revised ordinance.

This complaint will be found throughout this document. The explanation is the same. In addition, at the March GBC meeting we added "Rural Certificate of Survey" to Sec. 4-2027 a) in the ordinance.

Sec. 4-2023A - Page 2, 3, 4, and 5: We have concerns about the following definitions. The lower case letter in front of each definition correlates to the letter assigned to that definition in the proposed Section of the 11-13-09 draft of the ordinance:

a) Amenity - The word does not appear anywhere else in the ordinance

See page 5 (q) # 5 and Sec 4-2027 b.)

Trails" at (q) (7). Do you really intend that it has to be on the Norman Bikeway Plan in order to qualify as a "Specialized Trail"?

This appears to be a misinterpretation.

c) "Cluster Development" only appears on page 8 under proposed (y). Later, we suggest revising "(y)" so as to eliminate the phrase "Cluster Development" therefrom. If done, it would allow deletion of "Cluster Development" under the definitions section.

Cluster Developments are specifically provided for and recommended in the 2025 Plan and have the potential to provide a great deal of open space.

d) We object to the inclusion of the words "*improvement*" and "*use*" and "*maximizes*". Moreover, the word "conservation" appears only two other times, one in the definition of "Conservation Buffer" and the other in the definition of "Conservation Easement." Since the ordinance itself does not make provisions with respect to either "conservation" or "Conservation Buffer" or "Conservation Easement", we recommend that all three definitions (d, e and f) be deleted.

e) See (d) above.

f) See (d) above.

All of these terms and concepts are consistent with accepted terminology. Conservation easement is a highly relevant type of "open space".

i) For reasons already stated, we **strenuously object** to the inclusion of the words" ... Land Use Plan Amendment, Change in Zoning.... "

See explanation – Section 4-2023 on page 3 of this document.

j) As we have said in every instance, the Greenbelt System should consist only of **public areas**.

jl) andj2) Both need to be modified accordingly andj3) needs to be amended to include **only** "*Lake Thunderbird, the Bureau of Reclamation (BOR) 'take-line' and BOR flowage easements; any other areas of public land which are designated by easement, by deed restriction or otherwise required to remain free of structures.* "

Disagree. "Public" is not the only criteria.

Disagree. Both concepts are much broader than stated here (see k, m).

m) "Open Space" needs to be completely redefined as only "*A green open space, i.e., a greenway.*"

n) It is premature for this ordinance to attempt to define "*Riparian Buffers*" until and unless a storm water master plan ordinance is adopted, wherein the term Riparian Buffers is precisely defined in context with the SWMP.

Riparian Buffers exist regardless of Storm Water Management Plan (SWMP) although future SWMP may expand / refine the definition.

0) For purposes of this ordinance, your definition of "structure" needs to begin with the following phrase: "**Other than streets, driveways, curbs, parking lots and drainage structures,**"

Why would these not be structures?

q) For the definition of "trail", insert the word "public" in front of the word "course." Also, insert the word "public" in front of the word "trails" on the fourth line of the definition.

Not all trails will be public. It doesn't mean they are not trails.

Sec. 4-2026 - Page 5: This is the first draft which has introduced a proposed law that says "A Greenbelt System, as defined herein, is hereby established for the City of Norman." If you go back and analyze the definition of "The Greenbelt System" under 0) on pages 3 and 4 of the proposed ordinance, and combine it with this seemingly innocuous establishment of a Greenbelt System for the City of Norman, it becomes obvious the Greenbelt Commission is trying to force the dedication of trails and non-buildable open spaces upon property which the City does not own and does not control. Go back and read their definition of 0), above. The City of Norman does not own " ... private parks OR three golf courses in town OR cemeteries OR school grounds..." Yet, the GBC wants to regulate and restrict the use of those properties. Further, public comments have been numerous to the effect that "*We don't want trails through our back yards.*" Further, when the ordinance purports to include within the Greenbelt System the parking lots that are required by zoning laws to be "open space", it shows that the GBC, in its zeal, has gone completely overboard in its effort to create powers for itself. If five members of the City Council were to vote this proposal into law, and turn the GBC loose to police it, the financial exposure of the City to a myriad of inverse condemnation lawsuits would be enormous.

When you peel back the veneer, it becomes easy to see why private property owners are so insistent that the City's official Greenbelt System consist of public property. If any Greenbelt Ordinance is to become law, the definition of The Greenbelt System must be confined to public property, as we have suggested in our comments on "0)", above. Doing so will NOT prevent any private property owner who wishes to do so to restrict and/or dedicate private property to trails or to open space. For example, new subdivisions in Norman have taken such action. If we concentrate on building a large loop public trail, as shown on a map recently produced by the Planning Department, it will attract connections by trails from neighborhoods throughout Norman. Let's concentrate on something we can all get behind, rather than continue on this divisive path which will lead to nothing but a lot of legal fees.

Nor does the Ord. say so

?

Disagree.

See Section 4-2028 (b)

The ordinance does not say they will be. See Action Plan.

Sec. 4-2027(a) - Page 5: For reasons previously outlined, eliminate the words " ... *Land Use Plan Amendment, Change in Zoning...*"

See Explanation – Section 4- 2023, page 3 of this document.

Sec. 4-2027(c) - Page 5: Under no circumstances should the Greenbelt Commission's mandate to review a GES be worded to give the GBC the power to delay an applicant's orderly and timely consideration at the next meeting of the Norman Planning Commission. This

subsection must be revised.

The intent is to review and comment without delay. Intent is to work within the existing time frame, assuming complete submission of Enhancement Statement.

Sec. 4-2028 - Pages 6, 7 and 8: We have several concerns regarding the numerous values and standards itemized in this proposed section. The lower case letter at the beginning of each subparagraph, below, correlates to the paragraph to subparagraph of Section 4-2028 of the proposed ordinance:

The wording was changed from “value and standards” to “policies and criteria” before the ordinance dated 11/13/09.

a) This subsection is new. The seven "*principles*" it espouses would apply to private property, as well as to public property. This continuing refusal to incorporate the rights of **private** property owners, while making NO provision for compensation, substantiates the lengthy comments we made about 4-2026, above. The way to get private property contributed is to **show and persuade** the owners of the benefits to be derived from adding to the Greenbelt System. Don't threaten them with what is going to be imposed upon them, without compensation and without their consent. This whole subsection (a) should be deleted.

These principals were added after the City Council accepted them out of the Greenway Master Plan at a November City Council meeting. They are now part of Sec 4-2026.

c) Amend, to read **only** "*Greenways should be encouraged.*"

Disagree.

d) Add "***and the property owner***" to the end of this easement utilization, if you want to comply with existing property law. An easement holder cannot unilaterally grant rights to third parties which are not covered by the original easement.

This wording was already added in the 11/13/09 version of the ordinance.

e) Delete, as being redundant to (c), above.

This is different. It proposes connection to other than the Greenbelt System.

Plan does not contain the words "*where appropriate.*" ore importantly, the very introduction to that Goal Six: Greenbelt Development section says, "***develop and maintain a greenbelt system/or Norman.***" We view the proposed subparagraph as an effort to dictate a mandatory public route be installed and paid for by a developer of a new subdivision. The existing subdivision regulations do not require such expense. Until and unless the City Council affirmatively undertakes the purchase of land and the creation of such trails in existing urbanized areas, the requirement of this proposed subparagraph is a completely unreasonable burden to place on new developments. Delete it.

Needs clarification. Is "residential" correct here?

h) The language infers that there is always an adverse impact on existing topography, drainage patters and natural vegetation by development, and it wants that "***minimized.***" As before, we suggest that language be changed to read "*Development should be encouraged to minimize changes on existing topography, drainage patterns and natural vegetation where appropriate.*"

Verb change is in most recent version.

i) ODOT has already proposed a non-motorized trail along Highway 9 to Lake Thunderbird. This proposed subparagraph would impose mandatory construction of public trails in front of rural developments, which would create a patchwork of trail surfaces that did not accomplish ready non-motorized access to Thunderbird. This subparagraph should be deleted.

“Access” does not mandate construction.

j) This mandatory imposition of local drought-resistant low maintenance plants for landscaping is unreasonable. The subparagraph should be changed to read *“Where landscaping is required by the City, use of local drought-resistant low maintenance plants, shrubs and trees is encouraged.”*

Wording has been changed in most recent version although not this exact wording.

See h), m) & y). Mr. Heiple in his alternative wording recommendations has added the terms “where appropriate” or “where feasible”. We were told in 2009 by Mr. Reiger that these terms were absolutely inappropriate in this ordinance and were subsequently deleted throughout at his request.

1) The requirement that permeable ground surfaces should be "*preserved to the extent possible*" is overkill which stifles property rights and creative designs. The subparagraph should read "*Permeable ground surfaces should be encouraged.*"

Don't see it that way.

m) Your requirement that ingress and egress to and from a development "**must be designed to permit** safe use by non-motorized traffic" completely ignores those developments where traffic load and circulation make non-motorized access unsafe. The subparagraph should be changed to read "*Ingress and egress to and from a development is encouraged to permit safe use by non motorized traffic, where appropriate.*"

Disagree, however "must be" changed to "is" in March ordinance.

n) The proposed language seeks to deprive a developer of the use of **all** developable land. The reference to "... *especially flood prone areas* ..." ignores that specific requirements imposed by Norman's Flood Hazard Ordinance. The subparagraph should be deleted.

This comment does not fit the facts.

o) The subparagraph should be rewritten to simply encourage utilization of "see-through" fences.

"Should be" changed to "are" in most recent version.

p) The soft treatment for water storage facilities should be extended to soft language for the subparagraph to say "encourage" rather than "should."

Wording has been modified in the latest version.

q) Insert the word "**Public**" in front of the word "detention."

Disagree.

r) and s) Delete both of these subparagraphs. To the extent they are not already specifically covered by the Norman Drainage Ordinance, the provisions of these subparagraphs are premature, prior to the City finalizing action on a Storm Water Master Plan.

Important to leave in and make compatible when those issues develop.

t) This subparagraph should be softened to "encourage" rather than "mandate."

Wording changed in most recent version, "the development layout is designed to"

u) This mandatory provision ignores those areas where, for safety and quality of life purposes, wild life movement along a riparian buffer might not be desirable.

Examples?

v) Absolutely not! This is a back door expression that public trails will be mandatory along creeks. We have repeatedly emphasized that is not an acceptable provision in the SWMP and would never be an acceptable provision in the greenbelt ordinance.

Riparian Buffer is not a trail.

w) This mandatory intrusion on commercial developments is unacceptable. There are many commercial developments where, because of traffic load and circulation, pedestrian access should not maximized, and vehicular traffic should not be minimized.

Verb change made in recent version. Intent to make it safe for pedestrians.

x) The concept of shared parking areas is good and desirable. The statement that pavement " *...should be minimized when possible...* " is too draconian. The jury is still out in Norman on permeable parking surfaces. Engineer Tom McCaleb

Verb change in March 2010 version.

can provide details about the success and failure in the few instances where permeable surfaces have been tried.

y) Because we recommended that the definition of "cluster development" be deleted, we recommend that, in this subparagraph, "cluster development" also be deleted, leaving the subparagraph to read *"Smart growth techniques should be encouraged as solutions to drainage and flood plain issues, where feasible."*

No. Cluster development is in 2025 Plan and is a good way to minimize impacts. They are a rural issue, not so much smart growth, as typically used.

z) Again, saying that structures **should** be located to **maximize** greenbelt and trails opportunities is an invasion of private property rights and design flexibility. The subparagraph should be changed to read *"Locating structures so as to encourage greenbelt and trail opportunities is desirable."*

Verb change in most recent version.

aa) Insert the word **"public"** in two different locations in front of the word "trails."

Deleted in most recent version.

Sec. 4-2029 - Page 8: This proposed policy unduly infringes on the inherent power of the City Council, and **refers to a Greenway Master Plan** which has not been adopted, and may never be adopted in its current form. The City Charter and related State statutes and Norman ordinances already make adequate and appropriate provision for acquisitions by a City. The proposed new section should be deleted.



It does not. There is clearly continued confusion over Greenbelt System vs. Greenway Master Plan.