

TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

Sarasota County, FL

Department of Planning

(941) 951-5593

TRANSFER OF DEVELOPMENT RIGHTS

SARASOTA, FLA.

ORDINANCE NO. 82-61

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An ordinance of the county of Sarasota, Florida, amending Sarasota County Ordinance No. 75-38, relating to transfer of development rights; providing findings; providing for establishment of sending and receiving zones; providing circumstances under which development rights may be issued and transferred; providing for issuance of transferable development rights; providing for disqualifying land; providing for change of zoning upon transfer of development rights; providing for imposition of a development limitation on property transferring development rights; providing the procedures for approval of transfer of development rights; providing for initiation of the issuance of transferable development rights by the county; providing for the issuance of a transfer permit; providing for the exercise of rights granted by transfer permits; providing definitions; providing for the RSZ, residential sending zone and the RRZ, residential receiving zone; providing for permitted uses and special exceptions; providing for maximum residential density and other requirements; providing for severability; providing an effective date.

Be it ordained by the Board of County Commissioners of Sarasota County, Florida:

Section 1: *Findings*. The Board of County Commissioners hereby makes the following findings:

1. Zoning as applied to land permits certain right to develop the land for residential and other purposes.
2. Such development rights are identifiable, valuable, and severable from the parcel where initially permitted.
3. It is desirable planning practice to permit the transfer of development rights from certain locations in the County to other locations which can accommodate growth without increasing the overall amount of permitted development in the County.
4. Issuance of development rights for a particular parcel of land and permitting their transfer to other more suitable land can serve to prevent an unconstitutional taking of property rights without just compensation.
5. In the process of permitting the transfer of development rights from one parcel to

another, the public health, safety, and general welfare may be furthered by providing for the prevention of urban sprawl, and the preservation of open space, important agricultural lands, and environmentally sensitive areas, and other purposes which serve to implement the Comprehensive Plan.

Section 2. *Amendment of Ordinance 75-38*. Sarasota County Ordinance No. 75-38 is hereby amended as follows:

1. In Subsection 6.5, after "RTR, Residential, Tourist Resort" add the following:

RSZ Residential Sending Zone

RRZ Residential Receiving Zone

2. In Subsection 6.6.a, after "RTR, Residential, Tourist, Resort" add the following:

RSZ Residential Sending Zone

RRZ Residential Receiving Zone

3. In Section 7, add Subsection 27 to read as follows:

27. Transfer of Development Rights. Transfer of development rights is intended as one method of implementing the Sarasota County Comprehensive Plan, permitting the transfer of development rights from one location to another where the associated development can be more appropriately accommodated. The transferring, or sending, location is designated as an RSZ Residential Sending Zone. The receiving location is designated as an RRZ Residential Receiving Zone. At the same time that the development rights are transferred from property, a Development Limitation is placed on the transferring property to control the nature and extent of its subsequent use and development, and the transferring property will normally be rezoned to reflect the absence of the rights transferred.

a. *Establishment of Sending Zones.* The RSZ district is herewith concurrently established as an overlay sending zone for the transfer of development rights. The RSZ district when applied designates land from which development rights may be transferred upon issuance of a Transfer Permit as provided below; provided, however, the RSZ district shall not be applied unless such zoning is consistent with and serves to implement the Comprehensive Plan and the land involved constitutes:

- (1) A platted subdivision which due to the size of the lots, the lack of paved streets or drainage, or other deficiencies fails substantially to conform to the requirements of the Sarasota County Land Development Regulations, Ordinance No. 81-12, in force at the time such zoning is to be applied;
- (2) An environmentally sensitive area; or
- (3) An area which should be retained in agricultural open space, or other conservation uses.

b. *Establishment of Receiving Zones.* The RRZ district is herewith concurrently established as an overlay receiving zone for the transfer of development rights. Where the RRZ district is applied, land may be used as permitted by the underlying zoning and in addition may be used for single family, two family, townhouse, cluster housing, or multiple family dwellings at a density which combines that permitted by the underlying zoning and that allowed by any development rights transferable to the land in the RRZ district. The RRZ district shall not be applied where such zoning would be inconsistent with the Comprehensive Plan. Further, it is not intended that by designating land in the RRZ district that rezoning to higher density is appropriate for the land generally or its immediate environs.

c. *Circumstances Under Which Transfer of Development Rights May Be Allowed.* After land has been designated under the RSZ district, the Board of County Commissioners may issue transferable development rights for such land and authorize their transfer in accordance with this section where the Board finds that issuance and transfer of the development rights will serve to implement the Comprehensive Plan. Any development rights issued pursuant to this section shall not be used on the property from which they derive, but may be used on any land designated under the RRZ district consistent with the Comprehensive Plan.

(1) *Issuance of Transferable Development Rights.* Transferable development rights shall be issued in dwelling units based upon the amount of dwelling units permitted under the current zoning on the property, taking into consideration any pre-existing plats. A suitable numbering system shall be followed by the County to identify particular development rights issued pursuant to this section.

(2) *Disqualifying Land.* In the computation of any transferable development rights under this section, no transferable development rights shall be computed for any land in a right-of-way or easement which precludes its occupation by dwellings or where, by operation of private restrictions or state or federal law, development of the land is prohibited.

(3) *Change of Zoning.* Upon issuance of development rights in accordance with this section, the zoning on the land from which they derive shall be changed to reflect the absence of the rights to be transferred unless the zoning has already been so changed.

(4) *Development Limitation.* Prior to exercise of the transferable development rights issued pursuant to this section, the property owner shall grant a conservation easement to Sarasota County pursuant to Section 704.06, Florida Statutes. Such easement shall limit use of the transferring property to agricultural or open space uses and shall prohibit, except as reasonably incidental to agricultural use, the activities and uses cited in paragraphs (a)-(g) of section 704.06(1), Florida Statutes. The easement may provide, however, upon Board of County Commissioners approval, for existing uses to continue and for limited development of new uses based upon any residual development rights remaining after the primary development rights have been transferred evidence of title satisfactory to

the County Attorney shall also be provided. Upon the establishment of conservation easements pursuant to this section, the County shall not authorize their release.

d. *Initiation by Property Owner - Approval Procedure.*

(1) *Application.* A property owner desiring to obtain permission to transfer development rights from particular property which has been zoned RSZ shall apply for issuance of a Transfer Permit. Such application shall be filed with the Planning Director on a form requesting information as the Director may reasonably require and approved by the Board of County Commissioners, which shall include the following:

(a) Name, address and telephone number of applicant and the applicant's agent, if any.

(b) Legal description of the property.

(c) Map drawn to scale of not less than 1 inch equals 400 feet showing existing land use on the property and any existing streets, structures, water courses and easements within or adjacent to the property. This map shall include a North directional arrow and shall also show the gross acreage of the property.

(d) Statement identifying the existing zoning on the property.

(e) The proposed grant of easement to Sarasota County creating the Development Limitation for the property, and evidence of title.

(f) Such fee as the Board of County Commissioners may by resolution establish.

(2) *Agency Review.* The Planning Director shall circulate any application for review by appropriate County agencies, and upon completion of such review shall forward the application to the Planning Commission for review.

(3) *Planning Commission Review.* The Planning Commission shall review the application, the comments of County agencies, and, after notice and hearings required by Section 20.2 and 20.3 for special Exceptions, shall make findings of fact and recommend the application to the Board of County Commissioners for approval, approval with modifications or conditions, or denial.

(4) *Board of County Commissioners Action.* The Board of County Commissioners shall review the application and the findings and recommendation of the Planning Commission, and after notice and hearing as required by Section 20.2 and 20.3, shall approve, approve with modifications or conditions, or deny the application for a Transfer Permit. Such approval shall be conditioned upon delivery to the County of an executed grant of easement creating a Development Limitation pursuant to paragraph c (4) above, as approved in the application or as specified by the Board, and recording

copies of same together with a copy of the Transfer Permit in the deed records for Sarasota County, and may include other reasonable conditions including, but not limited to, rezoning related to the transfer and vacation or change to existing plats.

e. Initiation by the County. In addition to the foregoing procedures for initiation of a transfer of development rights by a property owner, the Board of County Commissioners on its own motion may issue transferable development rights to a given parcel of property zoned RSZ. Such rights shall only be issued where the Board finds, after review by the Planning Commission in accordance with Paragraph d(3) above and notice and hearing as required by Sections 20.2 and 20.3, that issuance and transfer of the development rights will serve to implement the Comprehensive Plan.

f. Exercise of Rights Granted by Transfer Permit.

(1) *Who May Exercise Such Rights.* Upon issuance of a Transfer Permit by the Board of County Commissioners, the Clerk to the Board shall register the identifying numbers of such rights together with the name and address of the person to whom they are issued. Such rights may be subsequently exercised by the registrant or they may be assigned. In the event of assignment, the name and address of the assignee must be registered with the clerk to the Board identifying the rights assigned prior to their exercise by assignee. All assignments shall also be recorded in the deed records for the property for which the Transfer Permit was issued.

(2) *Application for Building Permits.* Upon application for a building permit in an RRZ district where the applicant seeks to utilize development rights authorized by a Transfer Permit, the applicant shall also submit a copy of the Transfer Permit, evidence of compliance with the conditions of the Permit's issuance, a copy of any assignment of development rights being relied upon in the application, and a certification by the Clerk to the Board that the applicant is the current registrant for such rights as shown by the Clerk's records. Upon such submission, the applicant shall be authorized to utilize the development rights transferred in addition to rights allowed under existing zoning on the receiving parcel, subject to the requirements of the RRZ district and the underlying zoning.

(3) *Extinguishment of Rights.* Utilization of particular development rights transferred shall extinguish such rights.

(4) In Section 28, add Subsections 135A and 135B as follows: 135A. *Transfer of Development Rights.* Transfer of development rights is a means of transferring residential density authorized pursuant to this ordinance from one parcel in an RSZ Residential Sending Zone district to another parcel in the RRZ Residential Receiving Zone district. (See also Section 7.27, Transfer of Development Rights.)

135B. *Transfer Permit.* Transfer Permit means a permit issued by the Board of County Commissioners authorizing the transfer of rights to develop a specified number of units from one parcel in an RSZ Residential Sending Zone district to another parcel in the RRZ Residential Receiving Zone district.

(5) In the Official Schedule of District Regulations make the following amendments:

(a) Amend sheet S-i adding in the three columns on the line after "RTR - Residential, Tourist Resort" the following:

"RSZ" Residential Sending Zone S-60-f

"RRZ" Residential Receiving Zone S-60-g

(b) Add new pages beginning with S-60-f as follows:

"RSZ" - RESIDENTIAL SENDING ZONE

(See also Section 7.27, Transfer of Development Rights.)

i. INTENT: The RSZ Residential Sending Zone is established to designate areas for the transfer of development rights to other locations in the county. It is further the intent of these regulations that the RSZ district is to operate as an overlay zone in conjunction with the underlying zoning on the land where the RSZ district is applied. It is intended to utilize this district to implement the Comprehensive Plan within locations which meet the requirements of subsection 7.27.a of the regulations for the application of this district.

ii. PERMITTED USES, SPECIAL EXCEPTIONS, AND OTHER REQUIREMENTS: Uses permitted by right and by special exception and other requirements in this district shall be as provided by the underlying zoning where the RSZ district is applied.

(c) Add new pages beginning with S-60-g as follows:

"RRZ" - RESIDENTIAL RECEIVING ZONE

(See also Section 7.27, Transfer of Development Rights.)

i. INTENT: The RRZ Residential Receiving Zone is established to provide areas for the receipt of development rights transferred from other locations in the county. It is further the intent of these regulations that the RRZ district is to operate as an overlay zone in conjunction with the underlying zoning on the land where the RRZ district is applied. It is generally intended to utilize this district to implement the Comprehensive Plan within locations which can reasonable accommodate the increased density associated with this district.

ii. PERMITTED USES AND EXCEPTIONS

1) In addition to the permitted uses and special exceptions allowed by the underlying zoning where the RRZ district is applied the following are allowed as permitted uses with the utilization of development rights transferred in accordance with Section 7.27, Transfer of Development Rights.

a) Single family dwellings.

b) Two family dwellings.

c) Multiple family dwellings.

d) Townhouses (see Section 7.27 and Section 28.131) or cluster housing (see Section 7.26 and Section 28.25).

2) The foregoing uses in addition to being permitted in the RRZ district shall also be deemed to be permitted uses in the underlying district where the RRZ district is applied provided that development rights are utilized as provided above.

3) For multiple family dwellings, townhouses, and cluster housing developments, site plan approval is required (See Section 15.5).

iii. **MAXIMUM RESIDENTIAL DENSITY** The residential density of permitted uses shall not exceed one hundred and twenty-five percent (125%) of the maximum residential density of the underlying zoning nor shall it exceed under any circumstances the applicable density limitations set forth in the Comprehensive Plan. A special exception shall be required to exceed the limit of one hundred and twenty-five percent (125%) provided that in no case shall the residential density exceed eighteen (18) units per acre.

Section 3. *Severability*. If any provision of this ordinance is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

Section 4. *Effective Date*. This ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that his ordinance has been filed with said office.