

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO: 4486

ORDINANCE COUNCIL SERIES NO: _____

COUNCIL SPONSOR: GOULD/DAVIS

PROVIDED BY: COUNCIL ATTORNEY

INTRODUCED BY: MR. HAMAUEI

SECONDED BY: MR. FALCONER

ON THE 7 DAY OF APRIL, 2011

ORDINANCE TO AMEND THE ST. TAMMANY PARISH UNIFIED DEVELOPMENT CODE, VOLUME 1 (ZONING) BY AMENDING ARTICLE 2, DEFINITIONS AND CREATE A SECTION 6.07 TRANSFER OF DEVELOPMENT RIGHTS OVERLAY.

Whereas, the St. Tammany Parish Council respects and safeguards a desirable and sustainable quality of life; and

Whereas, the Parish Council wishes to conserve and respect the natural splendor of our environment while planning for the economic opportunity and housing of the residents of the parish; and

Whereas, to achieve this result requires the wise management, conservation and stewardship of lands such as timberlands, agricultural lands, wetlands, flood plains, watersheds, wildlife habitat areas and historical areas while providing for orderly growth; and

Whereas, the Parish Council finds that the adoption of a transferable development rights ordinance will provide a viable means of helping achieve its vision and goals of land conservation and preservation while providing the owners of the aforementioned lands with the ability to capture the potential development value of said lands by transferring the development rights to owners of land that will be designated for residential growth.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS that the St. Tammany Parish Unified Development Code, Volume I, (Zoning) be amended:

Amend Article 2 DEFINITIONS, by adding new paragraphs (maintaining alphabetical order) as follows:

Development Rights - mean the rights of the owner of a parcel of land, under land development regulations in effect in the Parish, to place that parcel and the structures thereon to a particular use or to develop that land and the structures thereon to a particular density.

Receiving Overlay - an overlay designated by the Parish Council and recorded on the Parish zoning map as TDR-RO in which the development rights of parcels from the sending overlay may be used.

Receiving Parcel - means a parcel of land which, in accordance with the terms of this Section, is receiving development rights from a sending parcel, and on which increased density and/or intensity of use or development is allowed by reason of the transfer of development rights. (TDR-RP)

Sending Overlay - an overlay designated by the Parish Council and recorded on the parish zoning map as TDR-SO from which the development rights of parcels in the overlay may be designated and transferred for use in one or more receiving overlays.

Sending Parcel - a parcel of land from which, in accordance with the terms of this Section, the owner of the parcel is conveying development rights of the parcel, through which act those rights so conveyed are extinguished forever and future development on the sending parcel is thereby limited. (TDR-SP)

Transfer of Developments Rights - the procedure prescribed by this Section through which the owner of a parcel in the sending overlay may convey development rights to the owner of a parcel in the receiving overlay whereby the development rights so conveyed are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing regarding

that parcel. The acronym "TDR" is also used to refer to such a transfer; where in this Section the term "transfer" is used without further modification, it shall be presumed to refer to a Transfer of Development Rights unless the context clearly otherwise suggests. Transfers of development rights shall only be permitted between sending parcels and receiving parcels located within a five mile radius of one another.

Add new Section, as follows:

Section 6.07 TDR Transfer of Development Rights Overlay

6.0701 Transfer of Development Rights Overlay

6.0702 Purpose

The purpose of this Transfer of Development Rights Overlay (TDR) is to create a viable means of helping achieve its vision and goals of land conservation and preservation while providing the owners of the aforementioned lands with the ability to capture the potential development value of said lands by transferring the development rights to owners of land that will be designated for residential growth.

6.0703 Designation of Overlay

Upon application as outlined in these regulations, the St. Tammany Parish Council may designate the appropriate TDR overlay in accordance with Section 3.02 - Amendment of Regulations.

For the purposes of Transfer of Development Rights this section, these properties are defined as follows:

Timberlands and Forest Lands - Any land devoted to the growing of trees or the commercial production of timber, wood, or forest products or land containing trees which, if cut, would produce lumber for building, manufacturing purpose, or for economic gain. Land which is assessed for use value under the provisions of the applicable laws of Louisiana shall be presumed to be timberland/forest land;

Agricultural Lands -Any land used for farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities [breeding, boarding or raising, or training of animals] the raising or livestock, bees, furbearing animals or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carries for transportation to market. Land which is assessed for a use value under the provisions of the applicable laws of Louisiana shall be presumed to be agricultural;

Wetlands, Watersheds and Flood Plains - Any lands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions generally including swamps, marshes, bogs, tidal estuaries and similar areas. Land which is assessed for a use value under the provisions of the applicable laws of Louisiana shall be presumed as wetland;

Wildlife Habitat Areas -Any lands which contain sufficient characteristics to sustain the active habitation of wildlife as defined by the provisions of applicable Louisiana law or federal regulations;

Historical Areas - Any lands containing structure of historical significance or areas which have archaeological significance. Any structure(s) or area which has received a historical or archaeological designation from any state, federal, educational or scientific entity shall be presumed to be historical;

Recreational Lands - Any lands which are or may be used for recreational purposes including but not limited to any of the following, or any combination thereof: hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding, motorized or non-motorized vehicle operation for recreation purpose, nature study, water skiing, ice skating, roller skating, roller blading, skate boarding, summer and winter sports, or viewing or enjoying historical, archaeological, scenic, or scientific sites.

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A. DESIGNATION OF SENDING OVERLAY

The St. Tammany Parish Council designate sending overlay that meet the land area to provide for protection and preservation of the following land uses:

1. Timberlands and Forestlands
2. Agricultural lands
3. Wetlands, Watersheds and Flood Plains
4. Wildlife Habitat
5. Historical Properties
6. Recreational Properties

B. DESIGNATION OF RECEIVING OVERLAY

The St. Tammany Parish Council may designate receiving overlay that meet the criteria as identified herein:

1. The resulting increase in density is appropriate within the overall context of development within the area of the receiving overlay.
2. The overlay consist of property with the following zoning designations:
 - a. A-2 Suburban District
 - b. A-3 Suburban District
 - c. A-4 Single Family Residential District

6.0704 CERTIFICATION OF SENDING AND/OR RECEIVING PARCELS

A. All application for certification as sending and/or receiving parcel shall be made to the Planning Department and shall include:

1. a certificate of title for the relevant parcel, prepared by an attorney licensed to practice law in the State of Louisiana;
2. five (5) copies of a plat of the proposed sending parcel and a legal description of the sending parcel prepared by a licensed or registered land surveyor;
3. a statement of the number of development rights in terms of density being transferred from the sending parcel, and calculations showing their determinations;
4. applicable fees;
5. a copy of the proposed deed restriction and any required mortgage subordinations agreements on the sending parcel; and
6. such additional information required by the Parish Planning Director as necessary to determine the number of development rights that qualify for transfer.

B. The Planning Director (or designee) shall review said application and may require the submission of additional documentation as needed.

C. Upon the processing of the application and approval by the Planning Director the applicant will receive the appropriate certificate designating the parcel as a TDR Sending Parcel or a TDR Receiving Parcel. This certification shall be designated on the official zoning map of the Parish.

D. If necessary to confirm or document qualification of a site under Section 6.0703 the Planning Director may consult with the Parish Environmental Service Director, the Parish Engineering Director or any other qualified individual.

E. The Parish Planning Director shall render a decision within thirty (30) days of receipt of said application approving or denying said application.

6.0705 STANDARDS FOR CERTIFICATION AS A SENDING PARCEL

Standards for certification by the Planning Director as a TDR-SP are as follows:

A. The parcel must be a minimum of (20) acres in size.

B. Sending parcels that are zoned A-2 will receive one (1) TDR credit unit per acre and shall receive a bonus of ten percent (10%) of the total credits.

EXAMPLE: As an example a one hundred (100) acre site zoned A-2 will have on hundred (100) TDR credit units plus a bonus ten (10) TDR credit units for a total of one hundred ten (110) TDR credit units to send.

C. Sending parcels that are zoned A-3 will receive two (2) TDR credit unit per acre and shall receive a bonus of ten percent (10%) of the total credits.

EXAMPLE: A one hundred (100) acre site zoned A-3 will have two hundred (200) TDR credit units plus a bonus twenty (20) TDR credit units for a total of two hundred twenty (220) TDR credit units to send. After a sending parcel has obtained the Parish Planning Director approval, said designation as a TDR-SP shall be recorded on the official zoning map of the Parish.

D. Sending parcels with any other zoning classification will receive one half (1/2) TDR credit unit per acre and shall receive a bonus of ten percent (10%) of the total credits.

E. Upon donation of land to, and acceptance of donation by, the St. Tammany Parish Government for a use designated in Section 6.0703.A, the donor(s) will receive one TDR credit per acre or the underlining zoning density plus a twenty percent (20%) bonus, whichever is greater.

F. All sending parcels shall be maintained according to the accepted best management practices that are applicable to the restricted use.

G. Transfers of development rights shall only be permitted between sending parcels and receiving parcels located within a five mile radius of one another at their closest boundary line.

6.0706 STANDARDS FOR CERTIFICATION AS A RECEIVING PARCEL

A. Only properties zoned A-2 or A-3 or A-4 are eligible to be designated as receiving parcels.

B. The applicant will have the right to increase the density of residential properties by acquiring and applying the applicable number of transferable development credits to the receiving parcel. Under no circumstances shall a receiving parcel's density increase by greater than 25%.

C. Transfers of development rights shall only be permitted between sending parcels and receiving parcels located within a five mile radius of one another at their closest boundary line.

6.0707 DETERMINATION OF DEVELOPMENT RIGHTS; ISSUANCE OF CERTIFICATE

A. The Parish Planning Director shall:

1. certify, upon request by the property owner, eligibility of a property to either send or receive TDR credits in accordance with the requirements of this section;

2. maintaining a map designating all sending overlay districts, receiving overlay districts, sending parcels and receiving parcels;

3. maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and

4. making available forms on which to apply for transfer of development rights certificates after said transfer has been approved.

B. A TDR-SP certificate shall include:

1. the property owner of the sending parcel;
2. a legal description of the sending parcel on which the calculation of development rights is based;
3. a statement of the number of development rights in dwelling units per net acre eligible for transfer;
4. the date of issuance;
5. the signature of the Parish Planning Director; and
6. a serial number assigned by the Parish Planning Director.

C. A TDR-RP certificate shall include:

1. the property owner requesting certification;
2. legal description of the sending/receiving parcel on which the calculation of development rights is based;
3. a statement of the maximum number of development rights in dwelling units per net acre that the parcel is eligible to receive;
4. the date of issuance;
5. the signature of the Parish Planning Director; and
6. a serial number assigned by the Parish Planning Director

6.0708 INSTRUMENTS OF TRANSFER

An instrument of transfer shall conform to the requirements of this Section.

A. Any instrument of transfer shall contain:

1. the names of the transferor and the transferee;
2. a certificate of title for the rights to be transferred prepared by an attorney licensed to practice law in the State of Louisiana;
3. a covenant and title restriction whereby the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors, and assigns a specific number of development rights from the sending parcel to the receiving parcel;
4. a covenant and title restriction by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred;
5. a legal description and plat of the sending parcel prepared by a licensed surveyor named in the instrument;
6. the transfer of development rights certificates described in Section __;
7. a covenant and title restriction excluding the sending parcel from any further development and stating the sending parcel may not be subdivided or developed to a greater density or intensity than permitted by its current use;
8. an act of subordination of any outstanding mortgages on the sending parcel; and

9. a covenant and title restriction that all provisions of the instruments of transfer shall run with and bind the sending parcel and may be enforced by the Parish of St. Tammany and present or future adjoining property owners.

B. No transfer of development rights under this ordinance shall be recognized by the Parish of St. Tammany as valid unless the instrument of transfer contains the Planning Director's certification.

C. The Planning Director and Legal Counsel shall review and approve as to the form and legal sufficiency of all the instruments required herein, in order to affect a transfer of development rights to a receiving parcel.

D. Upon such approval, the Planning Director or designee, shall notify the transferor or his or her agent, who shall record the instruments with the St. Tammany Parish Clerk of Court and shall provide a copy to the Parish Assessor and the Parish Planning Director. Such instruments shall be recorded prior to release of development permits, including building permits, for the receiving parcel.

6.0709 ADMINISTRATION AND ENFORCEMENT

A. The Parish Planning Director shall be responsible for:

1. Determining, upon application by a transferor, the development rights that have been approved and that may be transferred from a property designated as a sending parcel to a property in a receiving overlay and issuing a transfer of development rights certificate upon application by the transferor;

2. Maintaining a map designating all sending overlay, receiving overlay, sending parcels and receiving parcels;

3. Maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and

4. Making available forms on which to apply for transfer of development rights certificates after said transfer has been approved.

6.0710 APPEAL

Any party aggrieved by a decision of the Planning Director shall have the right to appeal said decision to the Board of Adjustments in accordance with Section 3.0104 - Board of Adjustments within 30 days of the written issuance or denial of the certificate.

REPEAL: All ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective fifteen (15) days after adoption.

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MOVED FOR ADOPTION BY: _____ SECONDED BY: _____

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

THIS ORDINANCE WAS DECLARED DULY ADOPTED AT A REGULAR MEETING OF THE PARISH COUNCIL ON THE 5 DAY OF May, 2011; AND BECOMES ORDINANCE COUNCIL SERIES NO _____.

MARTIN W. GOULD, JR., COUNCIL CHAIRMAN

ATTEST:

THERESA L. FORD, COUNCIL CLERK

KEVIN DAVIS, PARISH PRESIDENT

Published Introduction: December 30, 2010

Published Adoption: _____, 2011

Delivered to Parish President: _____, 2011 at _____

Returned to Council Clerk: _____, 2011 at _____