

December 3, 2007

City
Book
#14

Commissioner
Clerk's Office
Hundredth Street



ORDINANCE
NUMBER 2007 - 083

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA, PROVIDING THAT THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, BE AMENDED BY AMENDING ARTICLE XX, CHAPTER 3-5, TRANSFER OF DENSITY UNITS; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, on December 13, 2004, the Board of County Commissioners of Charlotte County, Florida ("Board") adopted Ordinance Number 2004-067 which provided for a new Article XX, Chapter 3-5 ("Transfer of Density Units Code" or "TDU Code"); and

WHEREAS, the TDU Code is intended to create a transfer of density units process which will direct future growth in a logical, economical, and efficient manner away from those areas of the County less suited for such growth, and toward those areas of the County better suited to provide the public services and facilities necessary for such growth, and for the protection of environmentally sensitive, historic and archeological resources and bona fide agricultural uses, and the health, safety and welfare of the general public; and

WHEREAS, the TDU Code further intends to create a transfer of density units process which will assist and encourage private and public interests in removing old, outdated platted lots and subdivisions throughout the County as is contemplated by the 1997-2010 Charlotte County Comprehensive Plan ("Comprehensive Plan"); and

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1 WHEREAS, the Board desires to provide a record of the transfer of density units
2 and impose appropriate restrictions on the properties involved in such transfers; and

3 WHEREAS, the Board finds it desirable to amend Article XX, Chapter 3-5, to
4 more effectively and efficiently provide for the transfers of density units and further the
5 Goals, Objectives and Policies of the Comprehensive Plan.

6 NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners
7 of Charlotte County, Florida:

8 **SECTION 1.** Article XX. Chapter 3-5, of the Code of Laws and
9 Ordinances of Charlotte County, Florida, containing Sec. 3-5-431 through Sec. 3-5-457
10 of such Code, shall be deleted in its entirety and replaced with the following:

11 **ARTICLE XX. TRANSFER OF DENSITY UNITS**

12 **Sec. 3-5-425. SHORT TITLE.**

13
14 This article shall be known and may be cited as the Charlotte County "Transfer of
15 Density Units Code."
16
17

18 **Sec. 3-5-426. DECLARATION OF INTENT AND PURPOSE.**

19 (a) It is the intent of this article to provide a mechanism, consistent with
20 protection of the health, safety and welfare of the public, by which the following may be
21 accomplished:
22
23

24 (1) Residential development rights associated with real property with
25 Environmentally sensitive resources, Historic or archeological resources, or which
26 contains a Bona fide Agricultural Use, or real property otherwise deemed less suitable
27 for development, may be properly transferred to property better suited for higher density
28 residential development upon satisfaction of the requirements of this article;
29

30 (2) Future growth will be directed in a logical, economical, and efficient
31 manner away from those areas of the County less suited for such growth, and toward
32 those areas of the County best suited to provide the public services and facilities
33 necessary for such growth;
34
35

1 (3) The County can provide a record of transfers of density units and
2 impose appropriate restrictions on the properties involved in such transfers.

3
4 (b) The adoption of this article shall not affect the existing FLUM or Zoning
5 designation of any property. It shall provide a mechanism for increasing or creating
6 density on a property. This article does not allow a petitioner to increase density
7 beyond that allowed by the Charlotte County Code of Laws and Ordinances and/or the
8 Comprehensive Plan.

9
10 **Sec. 3-5-427. DEFINITIONS.**

11
12 Unless specifically defined below, all words, terms or phrases used in this article
13 shall be ascribed the meaning which they have in common usage and which give this
14 article the most reasonable application. The following words, terms and phrases, when
15 used in this article, have the meanings ascribed to them in this section, except where
16 the context clearly indicates a different meaning:

17
18 *Agreement to Purchase Density Credits:* an agreement between a purchaser
19 and seller that binds the purchaser to buy and the seller to sell a specified number of
20 density units from the seller contingent on the adoption by the Board of County
21 Commissioners of the purchaser's Use Amendment.

22
23 *Agriculture:* The business of cultivating the soil, producing crops and raising
24 horses, production of horticultural, aqua cultural, and silvicultural products; and raising
25 livestock to provide food or fiber for society.

26
27 *Barrier Island:* a broadened barrier beach entirely surrounded by water,
28 habitable in places, and providing a measure of protection for the mainland, as during
29 hurricanes and tidal waves.

30
31 *Base Density:* Density calculated utilizing the Zoning District of the parcel and
32 the method of calculation described according to Article 1, Section 3-9-2, Rules of
33 Construction; definitions, Charlotte County Code. If there is an inconsistency between
34 the Future Land Use Map designation and the Zoning District, the least intensive Zoning
35 Districts that implements the Future Land Use Map designation shall be utilized.

36
37 *Board:* The Board of County Commissioners of Charlotte County, the elected
38 governing body of unincorporated Charlotte County, Florida.

39
40 *Bona fide Agricultural Use:* Use of a property for agriculture, which property has
41 been classified as agricultural by the Charlotte County Property Appraiser pursuant to
42 Section 193.461, Florida Statutes.

43
44 *Certificate of Transferable Density Credits (Certificate):* The certificate issued by
45 the County which indicates the amount of density available to be used or sold by the
46 certificate holder, as well as any specifications for use of the density.

1
2 *Certification of Transferable Density Units (Certification):* The process whereby
3 density is severed from real property and a certificate is issued by the County signifying
4 that the certificate holder has ownership of the indicated number of density units.

5
6 *Coastal High Hazard Area:* The Coastal High Hazard Area includes all areas
7 located within a landfalling Tropical Storm or Category 1 Hurricane Storm Surge zone
8 as illustrated on Map 3.26 of the Natural Resources and Coastal Planning Element of
9 the Comprehensive Plan.

10
11 *Community Development Director:* The chief administrative officer of the
12 Community Development Department or any successor entity performing similar
13 functions or duties.

14
15 *Comprehensive Plan:* The document, and its amendments, adopted by the
16 Board, which meets the requirements of Section 163.3177 and Section 163.3178,
17 Florida Statutes.

18
19 *County Code:* The Code of Laws and Ordinances, Charlotte County, Florida, as
20 the same may be amended.

21
22 *Covenant:* A perpetual conservation easement and/or other perpetual restrictive
23 covenant that encumbers the property that constitutes an SZ, granted by the owner (s)
24 thereof to the County or to some other entity acceptable to the Community Development
25 Director.

26
27 *Density:* The number of Density Units permissible within a given property.

28
29 *Density Credit:* A Density Unit that has been severed from a property through
30 the processes identified in this article and recognized by a Certificate of Transferable
31 Density Credits.

32
33 *Density Unit:* A Development Right which equals one increment of housing
34 designed and intended for residential use by one (1) family, whether a single family
35 residence, mobile home, or as part of a duplex, apartment, or condominium project.

36
37 *Development:* The construction, reconstruction, conversion, structural alteration,
38 relocation, or enlargement of any structure; any mining, excavation, landfill or land
39 disturbance including, but not limited to, clearing, cutting, burning, excavating, filling, or
40 grading of land or any other activity that alters land topography or vegetation. This
41 definition shall not include the removal of invasive, nonindigenous plant species listed
42 as Prohibited Trees in Subsection 3-2-186(r) of the County Code, as may be amended,
43 or any activities undertaken pursuant to a land management plan approved by the
44 USDA Natural Resources Conservation Service or similar agencies, or activities
45 associated with Bona fide Agricultural Uses.

1 *Development Right:* A right that entitles an owner of real property to develop
2 said property as may be recognized by the common law, statutory law, the United
3 States or Florida constitution, the County Code, the Comprehensive Plan or other
4 applicable federal or state regulations.

5
6 *Encumbrances:* Restrictions, liens, easements, equitable servitudes, special
7 exceptions, existing Development, land development regulations, or other matters which
8 affect the SZ.

9
10 *Environmentally sensitive resource:* An environmentally sensitive resource can
11 be any wetland, any natural community ranked G1, G2, S1, S2, or S3 in the most recent
12 edition of the Guide to Natural Communities of Florida, or any land area wherein a
13 wildlife or plant species listed by the State of Florida or the United States as
14 endangered or threatened is living; this also includes that area of the County considered
15 a groundwater recharge area as identified in Map 4.17 of the Infrastructure Element of
16 the 1997-2010 Comprehensive Plan.

17
18 *FLUCCS:* The Florida Land Use Cover and Forms Classification System.

19
20 *FLUM:* The Future Land Use Map contained in the Comprehensive Plan, as the
21 same may be amended.

22
23 *Historic or archeological resource:* Any prehistoric, historic, or archeological district,
24 site, building, structure, or object included in the National Register of Public Places, Florida
25 Master Site File or Local Register or which may be deemed to be a prehistoric, historic, or
26 archeological district, site, building, structure, or object by an archeologist registered with
27 the Society of Professional Archaeologists; such term includes mounds, artifacts, records,
28 and remains which are related to such a district, site, building, structure, object, or culture.

29
30 *Land Acquisition Trust Fund or LATF:* The fund established by the Board
31 pursuant to Sec. 3-5-435 below.

32
33 *Plan Amendment:* Any change to the Comprehensive Plan including any change
34 to any map of the Future Land Use Map series of the Comprehensive Plan.

35
36 *Preliminary Plat:* A preliminary map or delineated representation of the
37 subdivision of lands, being a complete exact representation of the subdivision and other
38 information in compliance with the requirement of all applicable sections of Chapter 3-7,
39 Subdivision Regulations, and of any other local ordinances, and may include the terms
40 "replat, or revised plat," as defined in F.S. section 177.031(14), as amended.

41
42 *Receiving Zone or RZ:* The area of property into which Density Credits may be
43 transferred.

44
45 *Rezoning:* An amendment to the Zoning Atlas pursuant to the procedures and
46 requirements of the County Code for such amendments.

1
2 *Sending Zone or SZ:* The area of property from which Density Credits may be
3 severed and transferred.

4
5 *Substandard lot or parcel:* Property which does not meet the minimum
6 dimension or area requirements established pursuant to the Zoning Atlas, County
7 Zoning Regulations, County Land Development Regulations, County Subdivision
8 Regulations, or the Comprehensive Plan.

9
10 *TDU:* A transfer of Density Units to an RZ, as governed by this article.

11
12 *Title Document:* An Ownership and Encumbrance Report (O&E) or other
13 document of title issued by an attorney or a title insurance company acceptable to the
14 County Attorney.

15
16 *Unacceptable Encumbrances:* Encumbrances that, in the judgment of the County
17 Attorney, would impair or otherwise adversely affect the recorded Covenant, whether in
18 whole or in part, in the event of their enforcement or foreclosure.

19
20 *Use Amendment:* Plan Amendments, except those initiated by Charlotte County,
21 Rezoning, changes to the County Code, Developments of Regional Impact approvals
22 or amendments, plat vacations, street vacations, variances, special exceptions or any
23 other official action by the County having the effect of permitting the development of
24 land, which results in an increase or transfer of density units.

25
26 *Urban Service Area Overlay District or USA:* Locations within a jurisdiction that
27 are planned to receive publicly funded infrastructure and services within a planning
28 timeframe, as depicted on Map #2 of the Future Land Use Map series of the
29 Comprehensive Plan, as may be amended.

30
31 *Zoning District:* An area assigned a specific classification of uses and structures
32 pursuant to Sec. 3-9 of the County Code.

33
34 *Zoning Atlas:* An atlas containing half-section maps depicting the boundaries of
35 the various Zoning Districts, as the same may be amended.

36
37 **Sec. 3-5-428. APPLICATION OF ARTICLE.**

38
39 (a) This article shall apply within the unincorporated areas of Charlotte
40 County.

41
42 (b) This article shall not apply within the City of Punta Gorda boundaries as it
43 existed as of July 15, 2004. This article shall apply to areas annexed within the City of
44 Punta Gorda or any new municipal area created after July 15, 2004 within Charlotte
45 County.

1 (c) Any owner of property governed by Subsections 3-5-428(a) and (b) above
2 may petition the Board for a Certification in accordance with the provisions of this
3 article.

4
5 (d) Any owner of property governed by Subsections 3-5-428(a) and (b) above
6 who proposes a Use Amendment which acts to increase the Base Density on a
7 parcel(s) of land shall petition the Board for a TDU in accordance with the provisions of
8 this article, except as provided in Subsection 3-5-429(a)(4).

9
10 **Sec. 3-5-429. PROCESS AND PROCEDURES.**

11
12 (a) Transfer of Density

13
14 (1) A TDU petition, if approved, will serve to transfer the number of
15 Density Units that will be increased by a Use Amendment to that parcel of land upon
16 which the increase occurs. The TDU process is the Board's acknowledgement that the
17 density has been shifted from an SZ to an RZ.

18
19 (2) Use Amendment not involving a Planned Development Rezoning

20
21 (i) A petitioner who submits a Use Amendment which does not
22 involve a Planned Development Rezoning shall simultaneously submit either:

23
24 A. A TDU petition utilizing Certificates of Transferable
25 Density Credit; or

26
27 B. A TDU petition requesting the Land Acquisition Trust
28 Fund option; or

29
30 C. A Certification petition to sever density from an SZ
31 and a TDU petition requesting transfer of that density to the proposed RZ; or

32
33 D. An Agreement to Purchase Density Credits and TDU
34 petition requesting transfer of the credits to the proposed RZ. The transfer of ownership
35 related to the density referred to in the Agreement must occur within 10 working days of
36 the approval of the Use Amendment.

37
38 (ii) The TDU petition, and Certification petition as applicable,
39 shall be held in abeyance until the approval of the Use Amendment and will be
40 submitted to the Board of County Commissioners for approval at the next convenient
41 Board hearing after adoption of the Use Amendment.

42
43 (iii) Any owner of property petitioning the Board for a street or
44 plat vacation which acts to increase the property's Base Density may, instead of
45 submitting a TDU petition, choose to submit a restrictive covenant with the street or plat
46 vacation that limits the Density of the property to that existing at the time of application.

1
2 (3) Use Amendment involving a Planned Development Rezoning. A
3 petitioner who submits a Use Amendment which involves a Planned Development
4 Rezoning may submit the TDU petition subsequent to the adoption of the Planned
5 Development Rezoning. The TDU must be approved by the Board, and the density
6 transferred to the RZ, prior to submittal by the applicant for Preliminary Plat approval,
7 or, if platting will not be requested, prior to submittal for any permits to develop. A
8 project which proposes to phase development in over time may submit individual TDU
9 petitions to transfer density equivalent to that necessary for development of that phase.

10
11 (b) Certification of a Sending Zone

12
13 (1) Any owner of real property to which this article applies may request
14 a determination of the Community Development Director, or his/her designee, on
15 whether their property meets the criteria of an SZ. If such determination is positive, the
16 owner may petition the Board to have their property approved as an SZ. The process of
17 approval shall be known as a Certification of Transferable Density Units (Certification).
18 The property owner shall petition the Board for a Certification in accordance with the
19 provisions of this article. If such determination is negative, the property owner may
20 petition the Board in accordance with Section 3-5-433, Variances.

21
22 (i) Pre-petition Meeting

23
24 A. A petitioner for a Certification shall meet with the
25 Community Development Director, or his/her designee, prior to submitting a petition.

26
27 B. The purpose of the pre-petition meeting shall be to
28 discuss the requirements of the TDU ordinance and determine whether a proposed SZ
29 is acceptable.

30
31 (2) Determination of density for an SZ

32
33 (i) Within the Urban Service Area, the Density will be the Base
34 Density.

35
36 (ii) Outside the Urban Service Area, the Density for platted
37 lands that existed as of February 1, 1992 which are divided into individual lots of size
38 less than that allowed by existing Zoning shall be one (1) Density Unit per each lot or
39 parcel. In all other instances, the Density shall be Base Density.

40
41 (iii) Density Units shall only be certified and transferred in whole
42 units. A fractional unit shall not entitle the petitioner to an additional Density Unit.

43
44 (iv) A Certification of Transferable Density Units may not be
45 derived from Density which has been already sold, transferred, or limited by easements,

1 deed restrictions, equitable servitudes, restrictive covenants, special exceptions,
2 existing Development, land development regulations, or similar measures.

3
4 (3) No subsequent transfer to an RZ shall take place without approval
5 of a TDU pursuant to the requirements of this article.

6
7 (4) Once a Certification is approved and effective, Density Units shall
8 not be restored to an SZ unless the area in which the SZ is located becomes
9 designated as an Infill Area of the Urban Service Area, as defined in the
10 Comprehensive Plan. In such situations, the property may become an RZ if it meets all
11 other requirements for an RZ under this article and the property has not been used for
12 mitigation purposes for other developments.

13
14 (5) Contents of Petition. A petition for Certification of Transferable
15 Density Units shall include the following items:

16
17 (i) Notarized affidavits from all owners of the proposed SZ
18 authorizing the petition. The affidavit from the owners of the proposed SZ shall also
19 provide consent to the modification of the FLUM and/or Zoning District of the proposed
20 SZ to conform with the revised and reduced density applicable to the proposed SZ upon
21 the approval of the Certification, at the County's discretion; consent to a future plat
22 vacation may also be necessary.

23
24 (ii) A copy of the most current deed or title to the SZ property.

25
26 (iii) Legal descriptions (with acreages) of the proposed SZ.

27
28 (iv) Signed and sealed surveys of the proposed SZ that illustrate
29 boundaries and all existing easements. The survey of the proposed SZ is not required if
30 the proposed SZ consists of platted lots and the lots are included in their entirety. In
31 such a case, a copy of the most recent plat with the proposed SZ outlined will suffice;
32 the petitioner must also indicate whether any easements or land encumbrances exist on
33 the property. If a plat exists, the property owner(s) may be required to submit a plat
34 vacation along with the Certification petition. The need for the plat vacation
35 submittal will be determined at the pre-application meeting. If it is determined that it isn't
36 appropriate to pursue a plat vacation along with the Certification, the petitioner remains
37 obligated to supply a boundary survey and utility easements if it becomes appropriate to
38 pursue the vacation at a future time

39
40 (v) Maps illustrating the location of the proposed SZ.

41
42 (vi) Title Document: This document shall be dated no later than
43 two months prior to the petition submittal date and shall show that the signatories who
44 will execute the Covenant constitute the owners of all interests in the proposed SZ. The
45 document shall further indicate that there are no Unacceptable Encumbrances against
46 the proposed SZ. If Unacceptable Encumbrances exist, they shall be fulfilled, removed,

1 satisfied, released, subordinated or limited to the satisfaction of the County Attorney
2 such that the enforcement of the encumbrances will not impair or otherwise adversely
3 affect the Covenant, whether in whole or in part, or that the Covenant will be prior in
4 dignity to the encumbrances.

5
6 (vii) A draft Covenant pursuant Sec. 3-5-432, including a
7 management plan, as required, in Subsection 3-5-432(c).

8
9 (viii) A narrative indicating the Base Density of the SZ and
10 describing how the calculation was derived, including an indication of how any
11 Encumbrances as identified per Subsection 3-5-429(b)(3)(iv) affect this Base Density; a
12 statement of the number Density Units requested to be transferred from the property
13 and the number of Density Units requested to be retained.

14
15 (ix) If the property is located in the Coastal High Hazard Area, a
16 boundary map of the property with the storm surge zones illustrated upon the map
17 along with an indication of the acreage of each associated storm surge. If there are VE
18 and AE flood zones, these shall also be illustrated on the map. Any Encumbrances
19 must be subtracted from the whole. The Community Development Director, or his/her
20 designee, may agree to delineate these areas for the petitioner; this must be agreed
21 upon at the Pre-Petition Meeting.

22
23 (x) Maps and surveys of the proposed SZ illustrating the
24 existing land cover according to Level 3 of the FLUCCS, locations of heritage trees, and
25 listed flora and fauna species. This requirement may be eliminated by the Community
26 Development Director, or his/her designee, at the Pre-Petition Meeting under the
27 following circumstances: property on which no density shall be retained; property that
28 clearly does not contain any Environmentally sensitive, Historic or archeological
29 resources; property which contains a Bona fide Agricultural Use; property of which the
30 County already has detailed knowledge as relates to Environmentally sensitive, Historic
31 and archeological resources; and other circumstances that will be determined on a case
32 by case basis.

33
34 (xi) An application fee, to be established by resolution of the
35 Board.

36
37 (c) Use Amendments. In addition to the application requirements of Use
38 Amendments, a petitioner for a Use Amendment for any proposed RZ which is located
39 in the Coastal High Hazard Area shall provide a map related to storm surge and flood
40 zones for the RZ; the petitioner is required to detail the amount of Density which will be
41 increased in each associated storm surge, and also the flood zones if VE and AE are
42 both present.

43
44 (1) Notification. A Use Amendment shall have notice of the transfer of
45 density included in the advertisements and agenda notices for the Use Amendment.
46 Discussion and decision by the Board regarding the TDU requirements shall be

1 conducted concurrently with the discussion and decision regarding the Use
2 Amendment.

3
4 (d) A petition for a TDU that proposes to transfer density that has not yet been
5 certified shall include the information required for a Certification. Further, the
6 application shall include information related to the RZ, such as property owner
7 information and the Use Amendment number that established or is establishing the
8 requirement for the TDU.

9
10 (e) A petition for a TDU that utilizes a Certificate or the Land Acquisition Trust
11 Fund (LATF) option shall include information related to the RZ, such as property owner
12 information and the Use Amendment number that established or is establishing the
13 requirement for the TDU.

14
15 (1) If utilizing a Certificate, the original Certificate shall be submitted
16 with the application for appropriate modification or extinguishment and held in escrow
17 by the County Attorney.

18
19 (2) If the LATF option is being utilized, a Certificate shall be issued that
20 reflects the Density Units actually paid for by the petitioner to the County in accordance
21 with the process described in Section 3-5-435 and Resolutions 2004-248 and 2004-249.

22
23 (f) Hearing requirements. A petition for Certification or TDU will be placed on
24 Consent Agenda for approval by the Board of County Commissioners. The Use
25 Amendment will follow the hearing requirement for that amendment process.

26
27 (g) Standards for Approval

28
29 (1) The Board may not grant a Certification unless it finds that:

30
31 (i) The Certification meets the intent, purpose and provisions of
32 this article, and that the property meets the criteria of an SZ set within Subsection 3-5-
33 430(a).

34
35 (ii) The petitioner has signed and notarized the Covenant.

36
37 (iii) The petitioner has submitted a Plat Vacation, if necessary.

38
39 (2) The Board may not grant a Use Amendment that is governed by
40 this article unless it finds:

41
42 (i) That the proposed increase in density complies with the
43 intent, purpose, and provisions of this article.

44
45 (h) Effective Date of the Certification or TDU

46

1 (1) A Certification shall not become effective until the Covenant and
2 management plan, as applicable, has been recorded by the petitioner in the Public
3 Records of Charlotte County with the Clerk of the Circuit Court of Charlotte County.

4
5 (i) Upon the effective date of a Certification approved pursuant
6 to this article, the Community Development Director, or his/her designee, shall issue a
7 Certificate to the property owner(s) of the SZ. The issuance of the Certificate shall
8 establish the quantity of Density Units for the property at the time the Certificate is
9 issued and shall be considered a final determination. Once a Certificate has been
10 issued for the SZ, the property owner shall maintain the property in accordance with the
11 requirements of the Covenant.

12
13 A. Density Credits approved by the Board pursuant to
14 this article may be transferred to an eligible RZ.

15
16 B. Density Credits transferred to an eligible RZ pursuant
17 to this article, which are not used for the intended RZ development, may be re-
18 transferred to another eligible RZ. The RZ owner shall simultaneously petition to revise
19 the zoning district and/or FLUM, whichever is applicable, of the original RZ from which
20 these credits were transferred to reflect the decrease in density.

21
22 C. Upon the sale of Density Credits to another owner,
23 the seller of the Density Credits shall surrender the Certificate to the County for
24 appropriate modification or extinguishment.

25
26 D. In the event an SZ property owner has not found a
27 willing RZ to which it can transfer its Density Credits, Density Credits from the SZ may
28 be transferred to the County.

29
30 (2) A TDU shall not become effective and no permits to develop shall
31 be issued for the RZ, until:

32
33 (i) The TDU has been approved by the Board.

34
35 (ii) The Land Acquisition Trust Fund fee required by Sec. 3-5-
36 435, if applicable, has been paid to the County, or

37
38 (iii) The Certification of the SZ has been approved and all
39 documents necessary have been recorded in the Clerk of the Circuit Courts, and

40
41 (iv) The Certificate, if applicable, has been surrendered to the
42 County for appropriate modification or extinguishment.

43
44 **Sec. 3-5-430. REQUIREMENTS.**

45
46 (a) Sending Zone.

1
2 (1) In order for property to qualify as an SZ, the proposed SZ must
3 contain at least one (1) Density Unit and it must comply with *one* of the following criteria:

4
5 (i) The proposed SZ contains an Environmentally sensitive
6 resource; or

7
8 (ii) The proposed SZ contains a Historic or archeological
9 resource; or

10
11 (iii) The proposed SZ is located within the Coastal High Hazard
12 Area; or

13
14 (iv) The proposed SZ is a Substandard lot or parcel; or

15
16 (v) The proposed SZ is located outside the USA and contains a
17 Bona fide Agricultural use. It must be the intention of the property owner/petitioner to
18 continue agricultural use of the subject property, which shall be written into the
19 Covenant per Subsection 3-5-432(b)(2). This may be accomplished in conjunction with
20 farmland conservation efforts of agencies such as, but not limited to, the Natural
21 Resource Conservation Service, the water management districts, or the American
22 Farmlands Trust; or

23
24 (vi) The proposed SZ is located within the Suburban area of the
25 USA and the property owner has obtained a building permit to develop a residential use
26 at a density below the Base Density, or a school, house of worship, park, cemetery or
27 mausoleum, and the property is not currently served by water or sewer or within any
28 utility's 5 year Capital Improvements Program for extension of water and sewer. Or, if
29 the property owner is choosing to sever all density, a building permit is not required.
30 This density may only be transferred to an RZ in the Infill Area of the USA; or

31
32 (vii) The proposed SZ is located in the Infill area of the USA and
33 the property owner has obtained a building permit to develop a residential use at a
34 density below the Base Density, or a school, house of worship, park, cemetery or
35 mausoleum. This density may only be transferred to an RZ in the Infill Area of the
36 Urban Service Area.

37
38 (2) Density on those portions of a proposed SZ that contain an
39 Environmentally sensitive resource or which contain an Historic or archeological
40 resource must be totally removed. Density can be retained on other areas of the SZ if
41 such retention is deemed consistent with the provisions of this article and the Covenant.

42
43 (3) An SZ may be used for mitigation or for relocation of protected
44 plant or animal species, as such use or relocation may be allowed by federal and state
45 regulations, provided the terms of the Covenant are satisfied.
46

1 (b) Receiving Zone

2
3 (1) In order for property to qualify as an RZ, the proposed RZ must
4 comply with *all* of the following criteria:

5
6 (i) It must be located within the USA or, if outside the Urban
7 Service Area, be developed as a New Community or Rural Community (as those terms
8 are defined and described in the Comprehensive Plan and Chapter 163, Florida
9 Statutes).

10
11 (ii) It must be either currently designated on the FLUM or
12 proposed to be designated as Low Density Residential, Medium Density Residential,
13 High Density Residential, Mixed Use, Rural Estate Residential, Neighborhood Business
14 Residential, Commercial Tourist, New Community, or Rural Community; In the event
15 that a petitioner submits a plan amendment to extend the Urban Service Area but does
16 not request an accompanying amendment to change the FLUM designation of the lands
17 to be placed Inside the USA, the existing FLUM designation will be accepted as an RZ.

18
19 (iii) It must not contain Historic or archeological resources unless
20 such areas can be designated as a preserve through a conservation easement.

21
22 (iv) It must not be located within the Coastal High Hazard Area.

23
24 A. Property that is located within the Coastal High
25 Hazard Area may be eligible to become an RZ. In order to make use of this exception,
26 the petitioner must transfer Coastal High Hazard Area Density Credits to the property.
27 Density Credits from Category 1 Hurricane Storm Surge zone cannot be transferred into
28 a Tropical Storm Surge zone of an RZ nor can Density Credits from an AE flood zone
29 be transferred into a VE flood zone of an RZ or be used for density in a building which
30 touches a VE flood zone. Notwithstanding this exception, no transfers of density from a
31 less to a more restrictive flood zone may take place in the West County Planning District
32 or on property west of Burnt Store Road. Also notwithstanding this exception, in no
33 case shall an increase of density be allowed on property located on a Barrier Island.

34
35 B. As a further exception, any property located
36 within the Charlotte Harbor Community Redevelopment Area (CHCRA), other than land
37 zoned CR-3.5, shall qualify as an RZ. Such properties are permitted to receive density
38 from any property located within the CHCRA or from any property located in any
39 Coastal High Hazard Area throughout the county with no limitations based on storm
40 surge or flood zone transfers. Nothing in this article shall prevent the CHCRA from
41 codifying a specific process for properties within the CHCRA.

42
43 (c) Density on property within the West County Planning District, which
44 constitutes all property west of the Myakka River, may only be increased by a transfer of
45 density from other property located within the West County Planning District. There
46 shall be no transfer of Density Credits into the West County Planning District from other

1 areas of the County. This transfer of Density Credits between properties within the
2 West County Planning District shall comply with the provisions of this article. In order to
3 ensure that density is not inadvertently increased in West County, a petitioner can not
4 purchase density from the County's Land Acquisition Trust Fund.

5
6 **Sec. 3-5-431. COUNTY OWNERSHIP OF SZ.**

7
8 (a) A petitioner may request that the County purchase or assume ownership,
9 through donation, of a proposed SZ. The request must be expressed during the pre-
10 application meeting. The request will be reviewed, as deemed applicable, by the Real
11 Estate Services Department, the Parks, Recreation and Cultural Services Department,
12 the Community Development Department, and other committees or departments which
13 are necessary to the review. The review will consider the costs and benefits associated
14 with the acquisition.

15
16 (b) If the County agrees to assume ownership the petitioner is not required to
17 supply a Covenant or surveys.

18
19 **Sec. 3-5-432. COVENANT.**

20
21 (a) The Covenant shall be prepared by the petitioner and executed in
22 accordance with the requirements of this article. Once the draft is approved, the
23 Covenant shall be signed by the petitioner and held in escrow pending the approval of
24 the Certification.

25
26 (b) The form of each Covenant shall be reviewed by the County Attorney. The
27 Covenant shall contain such provisions that are reasonably required by the County
28 Attorney proscribing the use of the proposed SZ following the approval of the
29 Certification, including the following:

30
31 (1) If the property contains Environmentally sensitive resources or
32 Historic or archeological resources, the Covenant shall limit or preclude uses of the
33 proposed SZ such that the resources, whichever may be applicable, will be maintained
34 in perpetuity following the completion of the Certification.

35
36 (2) If the property is submitted as a Bona fide agricultural Use, the
37 Covenant shall restrict the uses of the property to Bona fide agricultural uses and the
38 use of any retained density to family members of the property owner or employees, and
39 their families, engaged in the agricultural operation.

40
41 (3) Limit or preclude activities which are determined through the
42 processes of this article to be detrimental to the appropriate maintenance of the
43 proposed SZ.

44
45 (4) Indicate the property or portions thereof that is restricted from future
46 development and/or subject to limitations on future development. If the SZ consists of

1 only a portion of the property, the Covenant shall not contain provisions over the use of
2 the remainder of the property unless such provisions are deemed necessary to ensure
3 the viability of the SZ. The Covenant may provide for spreading the remaining density
4 onto the portion of the property used as an SZ. Environmentally sensitive resources or
5 Historic or archeological resources shall be protected.

6
7 (5) Bind all owners of the proposed SZ and their respective heirs,
8 successors and assigns.

9
10 (c) The Covenant shall be accompanied by a management plan if required
11 herein.

12
13 (1) A management plan shall be required if the applicant proposes to
14 qualify the property as an SZ because it contains an Environmentally sensitive
15 resource, or Historic or archeological resource, or a Bona fide Agricultural use. The
16 management plan shall describe how the proposed SZ will be maintained in perpetuity,
17 how the resource shall be protected, and shall contain any other information reasonably
18 requested or required by the Community Development Director regarding the use,
19 maintenance and the protection of the resources of the proposed SZ following the
20 approval of the Certification.

21
22 (2) Substandard lots and property located within the Coastal High
23 Hazard Area shall not require a management plan.

24
25 **Sec. 3-5-433. VARIANCES.**

26
27 (a) Upon determination that the petition does not meet the substantive
28 requirements of this article, the petitioner may appeal to the Board to seek limited relief
29 from those requirements. The relief would be from the strict application of the
30 requirements which have either prohibited the Certification or Transfer of Density and
31 created an unnecessary hardship, as distinguished from a mere inconvenience, for the
32 owner of the affected real property. Additionally, the petitioner must establish the
33 following prerequisites to the satisfaction of the Board, if applicable:

34
35 (1) The conditions giving rise to the prohibition or hardship were not
36 created by any person presently having an interest in the affected properties; and

37
38 (2) The variance requested is the minimum modification of the
39 regulation at issue to effectuate the relief necessary; and

40
41 (3) The granting of the variance would not be injurious to or
42 incompatible with the surrounding neighborhood or otherwise detrimental to the public
43 welfare; and
44

1 (4) Owing to the specific circumstances which gave rise to the
2 prohibition or hardship, the spirit and intent of this article would be preserved by
3 granting the variance; and

4
5 (5) The requested variance is consistent with the Charlotte County
6 Comprehensive Plan.

7
8 (b) The request for variance shall be in writing and shall contain, at a
9 minimum, the following information:

10
11 (1) The section(s) from which relief is sought;

12
13 (2) The nature of the relief; and

14
15 (3) A response to Subsection 3-5-433(a)(1) through (5).

16
17 (c) The Board may add such conditions and restrictions as deemed
18 necessary in connection with the granting of any variance under this section to allow for
19 a positive finding to be made on any of the foregoing factors or minimize any
20 detrimental effects as a result of the granting of said variance.

21
22 (d) All variance requests under this section will require a quasi-judicial public
23 hearing before the Board.

24
25 (e) The Board shall not grant any Certifications or Use Amendments
26 governed by this article which would require the granting of a variance, pursuant to this
27 section, at the same hearing upon which the granting of the variance is made.

28
29 (f) A denial of any variance request under this section which, given strict
30 adherence to the provisions of this article, would not permit the petitioner to proceed
31 with a Certification, Transfer of Density, or a Use Amendment under this article shall
32 constitute a final decision.

33
34 **Sec. 3-5-434. WAIVER PROHIBITION**

35
36 There shall be no waiver from the requirement of complying with this article
37 except through the adoption of a comprehensive plan text amendment and
38 accompanying map amendment.

39
40 **Sec. 3-5-435. LAND ACQUISITION TRUST FUND.**

41
42 The Board has established the LATF and any procedures governing the LATF by
43 resolution. The purpose of the LATF is to create a mechanism by which a petitioner for
44 a proposed RZ may purchase density from the County. Funds contributed to the LATF
45 shall be used to acquire and manage properties that qualify as SZs.

1 (a) If a petitioner does not choose to include a proposed SZ or an approved
2 Certificate with a proposed TDU, the petitioner shall pay a contribution fee to be
3 deposited in the County's Land Acquisition Trust Fund.
4

5 (b) Once a petitioner submits a TDU application indicating their desire to use
6 the LATF option, the Community Development Department in conjunction with the Real
7 Estate Services Department will provide the petitioner with the current unit price
8 equivalent for a unit of density within seven days. The unit price will be current to
9 market conditions, directly related to the county's current acquisition costs of acquiring
10 lands under the LATF, and reflective of land values within the general area of the
11 proposed RZ.
12

13 (c) The unit price shall be formally established by the resolution at the time of
14 approval of the TDU petition. In the event that the petitioner chooses to not contribute
15 to the LATF at the time of adoption of the TDU, or chooses to submit the development
16 in phases, a process for payment shall be established in the resolution with the
17 understanding that the amount of the fee required upon payment shall be the unit price
18 equivalent for a Density Unit at the time of payment, which may not be the same price
19 as would have been paid by the petitioner at the time of approval of the TDU by the
20 Board.
21

22 (d) The payment of the contribution fee is required prior to Preliminary Plat
23 approval, or, in the event a Preliminary Plat will not be requested by the applicant, prior
24 to request for any permits to develop. The petitioner shall not be issued any permits for
25 development on the RZ, or the applicable phase of the RZ, until such time as the
26 payment of the fee has been received by the County.
27

28 (e) The amount of the fee shall be equal to the number of Density Units
29 approved for the RZ multiplied by the unit price for a Density Unit, included as part of
30 the Resolution adopting the TDU.
31

32 (f) A petitioner who is proposing to transfer density onto property located in a
33 Tropical Storm Surge or Category 1 Hurricane Storm Surge zone can not utilize the
34 Land Acquisition Trust Fund option.
35

36 (g) A petitioner who is proposing to increase density on property within the
37 West County Planning District, which constitutes all property west of the Myakka River,
38 can not utilize the Land Acquisition Trust Fund option.
39

40 **SECTION 2. CONFLICT WITH OTHER ORDINANCES.** The provisions of

41 this article shall supersede any provisions of existing ordinances or resolutions in
42 conflict herewith to the extent of said conflict.

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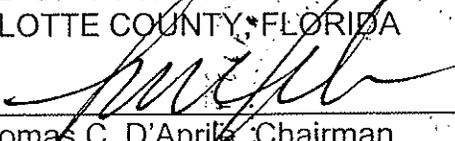
SECTION 3. SEVERABILITY. In the event this ordinance conflicts with any other provision of the Charlotte County Code or other applicable law, the more restrictive shall apply. If any subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remainder of the ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect upon filing in the Office of the Secretary of State, State of Florida.

[SIGNATURE PAGE FOLLOWS]

1 PASSED AND DULY ADOPTED this 27th day of NOVEMBER, 2007.

2
3 BOARD OF COUNTY COMMISSIONERS OF
4 CHARLOTTE COUNTY, FLORIDA

5
6 By: 
7 Thomas C. D'Aprile, Chairman

8
9 ATTEST:

10 Barbara T. Scott, Clerk of
11 Circuit Court and Ex-Officio
12 Clerk to the Board of County
13 Commissioners

14
15 By: 
16 Deputy Clerk

17
18 APPROVED AS TO FORM
19 AND LEGAL SUFFICIENCY:

20
21 By: 
22 Janette S. Knowlton, County Attorney

23 RB
24 LR2007-376