ORDINANCE NO. 2007-19

TOWN OF BLUFFTON, SOUTH CAROLINA
ORDINANCE FOR THE TRANSFER OF DEVELOPMENT RIGHTS
AND CREATION OF THE TOWN OF BLUFFTON
DEVELOPMENT RIGHTS BANK

WHEREAS, the Town of Bluffton, South Carolina, is experiencing substantial growth, change, and development; and

WHEREAS, the Town Planning Staff and Town Planning Commission have undertaken to revise and update the Town's Comprehensive Plan and the updated Comprehensive Plan was approved on First Reading by Town Council on May 15, 2007and was approved for final Second Reading approval and adoption on or before September 4, 2007; and

WHEREAS, the Southern Beaufort County Regional Plan encourages local governments, where appropriate, to adopt land use policies and regulations to encourage Mixed Used Development at higher intensity nodes which will result in reduced traffic and reduced vehicle miles traveled; and

WHEREAS, the Town finds this Ordinance will assist in the creation of affordable and workforce housing developed by the Town or privately; and

WHEREAS, the Town finds this Ordinance will assist, where appropriate, in promoting economic development; and

WHEREAS, the Town desires 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 Town less suited for such growth, and toward those areas of the Town better suited to provide the public services and facilities necessary for such growth, and for the protection of

environmentally sensitive, historic and natural resources, and the health, safety and welfare of the general public; and

WHEREAS, the Town further desires to create a process to transfer Development Right Units which will assist and encourage private and public interests in reducing Development Right Units and reallocating development rights throughout the Town as is contemplated by the Comprehensive Plan; and

WHEREAS, the Town desires to provide a record of the transfers of Development Right Units and impose appropriate restrictions on the properties involved in such transfers; and

WHEREAS, on July 25, 2007, the Town Planning Commission recommended the adoption of this Ordinance; and

WHEREAS, the Town believes that the same will better ensure the health, safety and welfare of its citizens; and

NOW, in accordance with the foregoing, the Town hereby adopts this Transfer of Development Rights Ordinance and creates the Town of Bluffton Development Rights Bank.

Section I: Findings. The Town hereby makes the following findings:

1. Zoning classifications and/or Development Agreements allow land to be developed for residential, commercial, and other purposes.

2. Such development rights are identifiable, valuable, and severable from the parcel where initially permitted.

3. It is a desirable planning practice to permit the transfer of development rights from certain locations in the Town to other locations which can accommodate growth without increasing the overall amount of permitted development in the Town.

4. Issuance of development rights for a particular parcel of land and permitting their transfer to other more suitable land can serve to prevent further overburdening of public infrastructure and facilities.

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, protection of important waters and environmentally sensitive areas, and other purposes which serve to implement the Comprehensive Plan.

6. Future growth will be directed by the Town of Bluffton Future Land Use Map, the Town of Bluffton Comprehensive Plan, and the Official Map, once adopted.

7. The Town desires to lower the overall number of Development Right Units and/or the intensity of development to ease the burden on infrastructure, schools, parks, open space, waters, and other necessary public services and facilities.

Section II: Definitions. Unless specifically defined below, all words, terms or phrases used in this article shall be ascribed the meaning which they have in the Town of Bluffton Zoning Ordinance and/or Development Standards Ordinance. The following words, terms and phrases when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Affordable Housing: Affordable housing is affordable to households whose members collectively earn 60% to 80% of the area median family income, adjusted for household size as defined by HUD.

Certificate: A certificate of transferable Development Right Credits calculated and issued pursuant to this article.

Comprehensive Plan: The document, and its amendments, adopted by the Town Council which meets the requirements of South Carolina Law.

Density: The number of Development Right Units permissible within a given property.

Development Right: A right that entitles an owner of real property to develop said property as may be recognized by the common law, statutory law, the United States or South Carolina constitution, the Town Code, the Comprehensive Plan or other applicable federal or state regulations.

Development Right Credit: A Development Right Unit that has been severed from a property through the processes identified in this article and recognized by a Certificate of Transferable Development Right Credits.

Development Right Unit: A Development Right Unit can be either residential or commercial. A residential unit equals one increment of housing designed and intended for residential use by one (1) family, whether a single-family residence, mobile home, or as part of a duplex, apartment, or condominium project. A commercial unit can be either per square foot or by acreage, depending on the Zoning District and/or Development Agreement.

Economic Development: Development that meets Economic Development Goals of the Town of Bluffton Comprehensive Plan and features the following attributes:

- Wireless capacity that supports the designated project
- Mixed uses including commercial, retail, office and residential components
- Accessibility to and creation of public space and amenities

- Public infrastructure integrated to accommodate a dense environment
- Supports the business clusters identified by the Lowcountry Economic Network

Mixed Use Development: An area of property where residential and commercial uses are grouped and mixed together in order to promote a live/work/shop/pray/play mixed use village concept to be patronized by the residents and general public.

Receiving Zone or RZ: The area of property into which Development Right Credits may be transferred and/or Development Right Units may be increased. A Receiving Zone must be a specific Initial Master Plan or parcel of land.

Rezoning: An amendment to the Zoning Map pursuant to the procedures and requirements of the Town Code for such amendments.

Sending Zone or SZ: The area of property from which Development Right Credits may be severed and transferred.

Town Code: The Code of Laws and Ordinances, Town of Bluffton, South Carolina, as the same may be amended.

Transfer of Development Right Unit or TDU: A transfer of Development Right Units from an SZ to a RZ, an increase in Development Right Units to a RZ, or a deposit/withdrawal of Development Right Units into or from the Development Rights Bank, as governed by this article.

Workforce Housing: Workforce housing is affordable to households whose members collectively earn 80% to 120% of the area median family income, adjusted for household size as defined by HUD.

Section III: Establishment of Receiving Zones and Sending Zones. Transfer of Development Rights is intended as one method of implementing the Town 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 SZ. The receiving location is designated as a RZ.

Section IV: Circumstances Under Which Transfer of Development Rights May Be Allowed. After proper application, the Town may issue transferable Development Rights for such land and authorize their transfer in accordance with the section where the Town finds that issuance and transfer of the Development Rights will serve to implement the Comprehensive Plan. Factors and circumstances to be considered by the Town include, but are not limited to, moving Development Right Units or their or impacts away from waterways, alleviating crowded road conditions, decreasing impacts on schools, decreasing overall Town density, whether affordable housing will be promoted, the extent of the Mixed Use Development, and whether the Development Right Units are, in fact, usable where originally located. The Future Land Use Map and Official Map, when adopted, will be guiding/reference tools during the review process. If the application is premised on a Mixed Use Development, the Applicant must include public spaces, general and/or professional offices, retail, restaurant, hospitality, technology uses, residential units if integrated properly, government and/or civic uses, and similar uses. A Mixed Use Development must demonstrate a minimum of a Ten (10%) percent trip generation reduction on both peak hour and total daily trips as compared to the Maximum Commercial 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 as a RZ consistent with the Comprehensive Plan. Nothing in this Ordinance would guarantee a one-to-one ratio of Transferred Density Units from Sending Zone to Receiving Zone.

Any Density Units that are transferred pursuant to this Ordinance are specifically excluded and are not entitled to utilize any by-right transfer or conversion or divisions into fractional shares provisions that may be found in the Development Agreement applicable to the Receiving Zone. Residential Units transferred to pursuant to this Ordinance may not be transferred from the specific receiving zone to other areas within the receiving PUD or converted to commercial, or visa versa, without express approval of the Town Council, after going through the process set out in this Ordinance.

Section V: Approval Procedure.

(1) ***Donations***. A property owner desiring to donate Development Right Units to the Town shall notify the Town and fill out the required forms to complete the donated deposit into the Town Development Rights Bank.

(2) ***Application***. A property owner desiring to obtain permission to transfer Development Right Units shall apply for issuance of a Transfer Permit. Such application shall be filed with the Town on a form requesting information as the Town may reasonably require, 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 Sending Zone and/or Receiving Zone;

(c) Map drawn to scale as determined by the Town showing existing land use on the Sending Zone and Receiving Zone and any existing streets, structures, water courses and easements within or adjacent to the property and/or other information as may be reasonably required by the Town;

(d) Statement identifying the existing zoning and/or development agreements on the Sending Zone and Receiving Zone;

(e) The number of Development Right Units requested to be transferred;

(f) Applicants ability and right to transfer;

(g) A narrative describing the reason for the transfer, the intended use of the Development Right Units, and how the transfer accomplishes the goals of the Town Comprehensive Plan, the Southern Beaufort County Regional Plan, and the intent of this Ordinance; and

(h) Such fee as the Town Council may by resolution establish.

(3) ***Staff Review.*** The Director shall circulate any application for review by appropriate Town Departments, and upon completion of such review shall forward the application to the Planning Commission for review.

(4) ***Planning Commission Review.*** The Planning Commission shall review the application, the comments of Town Staff, and, after public notice and hearings, shall make findings of fact and recommend the application to the Town Council for approval, approval with modifications or conditions, or denial.

(5) ***Amendments of Development Agreements.*** If Amendments of Development Agreements are involved, the application shall be reviewed by the Development Agreement Negotiating Committee prior to review by the Planning Commission.

(6) ***Town Council Review.*** The Town Council shall review the application and the findings and recommendation of the Planning Commission, and after notice and public hearing, shall approve, approve with modifications or conditions, or deny the application for a Transfer

Permit. Such approval shall be conditioned upon delivery to the Town of an executed grant of a Transfer Permit, as approved in the application or as specified by Town Council, and recording copies of the Transfer Permit in the deed records for Beaufort County, and may include other reasonable conditions including, but not limited to, rezoning related to the transfer and vacation or change to existing plats.

(7) ***Initiation by the Town.*** In addition to the foregoing procedures for initiation of a transfer of Development Rights by a property owner, the Town Council on its own motion may issue transferable Development Right Units to a given Receiving Zone. Such rights shall only be issued where the Town Council finds, after review by the Planning Commission and notice and hearing as required, that issuance and transfer of the Development Right Units will serve to implement the findings expressed herein and Comprehensive Plan.

Section VI: <u>Development Rights Bank</u>. There is herewith established the Town of Bluffton Development Rights Bank. Any Development Right Units that are transferred pursuant to this Ordinance shall be deposited into and subsequently transferred from the Development Rights Bank. The Town has the right to receive donations of Density Units from any person or entity. The Town has the right to transfer Development Rights to a RZ upon proper application filed pursuant to this Ordinance. The Town has the right to hold indefinitely any Development Rights it possesses. The Town may, but is not obligated to, utilize the Development Right Units it holds in the Development Rights Bank for conservation, affordable housing, economic development, or any other lawful valid governmental purpose. A Development Right Unit deposited into the Development Rights Bank shall only be counted on a unit basis and no dollar value shall be assigned by the Town. Withdrawals from the Development Rights Bank shall be

on any reasonable basis or value set by the Town. All deposits into and withdrawals from the Development Rights Bank shall be duly noted and recorded by the Town.

IT IS SO ORDAINED.

First reading by title only held on August 21, 2007.

Henry "Hank" Johnston, Mayor
Town of Bluffton, South Carolina

Attest:

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

A public hearing was held on this Ordinance on November 6, 2007.

Henry "Hank" Johnston, Mayor
Town of Bluffton, South Carolina

Attest:

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at final and second reading on November 6, 2007.

Henry "Hank" Johnston, Mayor
Town of Bluffton, South Carolina

Attest:

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina