

SECTION VIID. DEVELOPMENT TRANSFER PROVISIONS [ADOPTED 06/20/2007]

[Note: A Transfer of Development Rights program should be part of the town's overall growth management plan and result from a town's comprehensive or open space planning process. Recommendations from Scarborough's 2006 Comprehensive Plan focus on directing growth to designated growth areas and away from designated limited and very low density growth areas. This Development Transfer Provision was developed as a result of these recommendations and is included as a section in the Town of Scarborough Zoning Ordinance, February 21, 2008, available at

www.scarborough.me.us/townhall/manager/ord/code_enforce/zoning/zoning02202008.pdf.]

A. PURPOSE

To provide a mechanism that will enable the transfer of residential development from the Town's limited and very low density growth areas to the Town's growth areas in order to maintain the rural character and development pattern of the limited and very low density growth areas, while directing growth to the higher density, more urban growth areas of Town. Development transfer may be accomplished by the payment of fees for additional residential density within developments located in the growth areas of Town, with the fee revenue to be used to conserve potentially developable land within the Town's limited and very low density growth areas. Alternatively, development transfer may be achieved by the transfer of development rights from the limited and very low density growth areas to the growth areas of Town. These provisions are allowed pursuant to 30-A M.R.S.A. Section 4328 and are in accordance with the Future Land Use Plan of the 2006 Update of the Comprehensive Plan.

[Note: As identified in the Scarborough Comprehensive Plan, in this development transfer provision "growth areas" include those areas in town that are or can be conveniently served by public facilities and services, are physically suited for development, and promote a compact rather than sprawling pattern of development. "Limited growth areas" include areas with significant natural resource value or constraints to development or use, areas with various types of agricultural or commercial forestry activities, areas that lack public utilities, and areas that are distant from public services. The Plan also identifies "very low density growth areas" which are areas within the growth area that do not have and are not likely to have public sewerage and are designated as reflecting the very low density of development in these parts of the community. Growth areas qualify as potential receiving zones for the density bonus and limited and very low density growth areas qualify as potential sending zones.]

B. APPLICABILITY

Development transfer provisions may be applied to residential or mixed use developments located within zoning districts designated as growth areas in the Future Land Use Plan of the 2006 Update of the Comprehensive Plan if the zoning district's space and bulk regulations specifically allow for development transfer. Within zoning districts that allow for development transfer, these provisions may only be applied to new residential and mixed use developments that require subdivision

SECTION VIID. DEVELOPMENT TRANSFER PROVISIONS

and/or site plan review by the Planning Board. Further, these provisions may not be applied to a lot(s) in a residential subdivision that was approved prior to the enactment of this subsection. The planning Board may allow these provisions to be applied to a lot(s) within a commercial or mixed use subdivision that was approved prior to the enactment of this subsection.

[Note: This approach does not address single lot development.]

C. PERIODIC REVIEW BY THE TOWN COUNCIL

The Town Council must review the development transfer mechanism at least once every three years to evaluate if the program is working as intended and if any changes need to be made to the provisions of this section or to other Town ordinances, programs, or activities. As part of its periodic review, the Town Council must review the fee per dwelling unit credit to evaluate whether an adjustment to this fee is warranted based on changes in the value of raw, undeveloped land within the limited growth and very low density growth areas. If the balance of unencumbered development transfer fees that have been collected but not spent exceeds one million five hundred thousand dollars (\$1,500,000) at any point, the Town Council must conduct a review of the program within ninety (90) days to determine if the intended transfer of development is likely to occur, if modifications need to be made to the mechanism, and if the provision for the payment of development transfer fees should be suspended until land or conservation easements are acquired. In its review of the mechanism, the Council must consider pending commitments to acquire land or conservation easements and work in progress toward this objective.

D. DEVELOPMENT TRANSFER MECHANISMS

1. Development transfer can occur through the use of development transfer fees or the transfer of development rights.
2. The use of development transfer fees enables greater residential density (or an increase in the number of dwelling units) to be established in a development located within a growth area zoning district that allows development transfer through the payment of development transfer fees to the Town of Scarborough. The funds collected through this mechanism must be used for acquiring the ownership of, or conservation easements on, potentially developable land located in an area designated as a limited growth area or a very low density growth area in the Future Land Use Plan of the 2006 Update of the Comprehensive Plan, in accordance with Section VIID(G). The provisions for this mechanism are outlined in Section VIID (E) and (H).
3. Greater residential density (or an increase in the number of dwelling units) may be established within an applicable growth area zoning district through the transfer of development rights. The transfer of development rights mechanism enables residential density (or dwelling units) that could be created in an area designated as a limited growth area or a very low density growth area in the Future Land Use Plan of the 2006 Update of the Comprehensive Plan, to be applied to a development located within an applicable growth area zoning district. The provisions for this mechanism are outlined in Section VIID (E) and (H).

SECTION VIID. DEVELOPMENT TRANSFER PROVISIONS

[Note: The Town of Scarborough's approach combines a traditional transfer of development rights approach where a landowner in the rural zone transfers their right to develop a certain number of units to a pre-determined growth area, with a development transfer fee approach where the developer can pay a fee for additional residential density within the growth areas with the funds then used to conserve open space lands in the rural areas.

Both approaches offer towns the ability to accomplish two complimentary goals: strategic open space preservation to protect habitat, recreational opportunities and rural industries, and development directed to traditional town centers and identified growth areas, in one transaction.]

E. DWELLING UNIT CREDITS

Dwelling unit credits shall be used in determining the additional number of dwelling units and the dwelling unit types that can be established within a development in a growth area zoning district that permits development transfer based either on the transfer fees to be paid to the Town of Scarborough or the number of development rights to be transferred. The number of dwelling unit credits to be applied, the overall residential density, and the dwelling unit types must also be in accordance with the specific space and bulk regulations of the growth area zoning district in which the development is proposed.

1. Acquisition of dwelling unit credits. Dwelling unit credits may be acquired using one of the following two approaches:
 - a. One (1) dwelling unit credit shall be issued for each payment of the fee per dwelling unit credit, in accordance with the Town of Scarborough Schedule of License, Permit, and Application Fees (Chapter 311).

[Note: The fee for a dwelling unit credits is \$15,000 (2007-2008) and will be \$17,500 (2009-2010) and \$20,000 (2011-2012).]

- b. One and a half (1.5) dwelling unit credits shall be issued for each potential dwelling unit that could have been developed in the limited and very low density growth area zoning districts based upon Section VIID(H) that is proposed to be transferred to a development in a growth area.
2. Utilization of dwelling unit credits. A residential or mixed-use development in a growth area zoning district that allows development transfer may be built at a greater density or have more dwelling units than would otherwise be permitted through the use of dwelling unit credits. One (1) dwelling unit credit shall be required for each additional unit permitted through development transfer unless the zoning district in which the project is located allows for density to be determined on a bedroom basis in accordance with Section VIIC (A) Residential Density. In this case, a fractional credit shall be required for each unit in the same proportion as the density requirement for the type and size of unit proposed (For example, a unit that is counted as half a dwelling unit for density purposes requires half a dwelling unit credit).

F. DEVELOPMENT TRANSFER FEE

The use of the development transfer fee mechanism requires Planning Board review and approval in accordance with the following provisions:

1. An application for use of development transfer fees for a development located within a growth area zoning district allowing development transfer shall be submitted by the applicant as an element of their overall submission for subdivision and/or site plan review and approval. The development transfer fee submission shall include:
 - a. The number of dwelling unit credits proposed to be applied to the development and the total transfer of development fee based on Section VIID (E). The number of dwelling unit credits to be applied, the overall residential density, and the dwelling unit types must be in accordance with the specific space and bulk regulations of the growth area zoning district in which the development is proposed.
 - b. The total amount of the development transfer fee shall be apportioned to each dwelling unit or residential building lot within the development and shall be paid prior to the issuance of a building permit for each unit or lot. The apportionment of the total fee amount to each dwelling unit or residential building lot shall be based on, and in accordance with, the dwelling unit credit value for the various dwelling types and living area and bedroom limitations outlined under Section VIID(E)(2).
 - c. This fee shall be paid to the Town of Scarborough.

[Notes: The Development Transfer Fee approach is often simpler for the developer. The developer simply pays a fee for the additional density bonus units and doesn't have to have a conservation parcel and willing landowner identified prior to submitting the project. Conservation decisions are then left in the hands of the municipality.]

G. USE OF DEVELOPMENT TRANSFER FEES

Development transfer fees collected by the Town in accordance with Section VIID (F) shall be deposited into a specific account, segregated from the Town's general revenue, created for this purpose or into the Town's Land Acquisition Reserve Fund as directed by the Town Council. These funds shall be used in accordance with the following:

1. These funds shall be used for acquiring ownership of, or conservation easements on, potentially developable land located within the areas designated as limited growth areas or very low density growth areas in the Future Land Use Plan of the 2006 Update of the Comprehensive Plan.
2. Land acquired in fee shall be permanently restricted from future development. Likewise, conservation easements on land to remain privately owned shall permanently restrict future development. When development is restricted on private land through the establishment of

SECTION VIID. DEVELOPMENT TRANSFER PROVISIONS

a conservation easement, public access to that land may be, but is not required to be provided.

3. Land acquired in fee may be used for conservation, open space, farming, forestry, passive recreation, active recreation, or any combination thereof. For the purposes of this subsection, recreation facilities such as ball fields, parking areas, bleacher seating, bathroom facilities, and the like shall not be considered development under Section VII.D.G.2. Similarly, agricultural facilities such as a barn, farmhouse, corral, and the like shall not be considered development under Section VIID (G) (2).
4. These funds may be used in combination with the Town of Scarborough's Land Acquisition Reserve Funds, recreation fee revenue, and other private, non-profit and government funding for acquiring ownership of, or conservation easements on, potentially developable land located in areas designated as limited growth areas or very low density growth areas in the Future Land Use Plan of the 2006 Update of the Comprehensive Plan.

[Note: To ensure that the conservation priorities of the community are met with the land or easements that are acquired, the ordinance should clearly identify the town's open space conservation priorities. The list of open space priorities should be linked to community priorities as identified in the town's comprehensive or open space plan. The Town of Scarborough has developed an Acquisition Evaluation Process, the basis for which the town evaluates land for acquisition. Scarborough's open space priorities, as identified in the town's comprehensive plan, are clearly outlined there.]

5. A portion of these funds may be used for administrative, legal, and other costs related to the execution of land acquisitions of, or conservation easements on, potentially developable land outlined under Section VIID(G)(1) and to work with the owners of land to determine the number of dwelling unit credits available on their property in accordance with Section VIID(H).
6. In acquiring land or conservation easements, priority should be given, where possible, to parcels that are located in areas that if developed would have traffic impacts on the same roads and intersections as those impacted by the developments using the dwelling unit credits. This determination should be guided by the traffic studies conducted for the developments and the traffic impact fee areas associated with the impacted roads and intersections.

H. TRANSFER OF DEVELOPMENT RIGHTS

1. In order for land within areas designated as a limited growth area or a very low density growth area in the Future Land Use Plan of the 2006 Update of the Comprehensive Plan to be eligible to transfer development rights under this mechanism, the property shall meet the following criteria:
 - a. The contiguous acreage in common ownership must be a minimum of ten (10) acres;

SECTION VIID. DEVELOPMENT TRANSFER PROVISIONS

- b. A minimum of one (1) dwelling unit credit can be created on the property in accordance with Section VIID(H)(2)(b).
2. The establishment of dwelling unit credits under the transfer of development rights program requires Planning Board review and approval. An application for establishing the number of dwelling unit credits available on a parcel or portion thereof may be submitted by: a developer proposing to transfer the development rights to a development within the applicable zoning districts; a landowner seeking to establish development rights to be sold/transferred; or a non-profit conservation organization or land trust seeking to conserve land through the establishment and sale/transfer of development rights. The submission to the Planning Board shall include:
 - a. A Boundary Survey that indicates the boundary lines, dimensions and water bodies of the parcel of land or portion under consideration for development transfer. This survey shall be sealed by a professional land surveyor licensed by the State of Maine.
 - b. A net residential acreage calculation demonstrating the maximum number of dwelling units that could be created on the parcel of land or portion thereof in accordance with *Section VI DEFINITIONS, Net Residential Acreage* and the applicable net residential density as per the *SPACE AND BULK REGULATIONS* of the zoning district in which the land is located and the other development and subdivision standards of the Town including limits on the length of dead-end streets. This calculation may use published or publicly available information for some features if the Planning Board determines that this information will provide a reasonably accurate assessment of the development potential of the property.
 - c. Documentation that indicates the owner of the land is willing to convey some or all of the development rights; a copy of the deed; and evidence of a clear title on the property.
 - d. The Planning Board or Town staff may also require a sketch plan depicting an approvable subdivision of the parcel of land should there be questions about, or discrepancies with, the calculation of the net residential acreage.

Based on the information submitted in accordance with Section VIID(H)(2)(a) through (d) above, the Planning Board shall determine the reasonable development potential of the parcel or portion thereof and therefore the number of dwelling unit credits eligible for transfer. In making this determination, the Planning Board shall be guided by the Town's desire to see development transferred to growth areas and therefore, shall apply these requirements reasonably and to the benefit of the landowner when there are questions as to the number of credits to be allowed.

SECTION VIID. DEVELOPMENT TRANSFER PROVISIONS

3. When a development proposes to utilize dwelling unit credits through this mechanism the applicant shall submit the following as part of the overall submission for subdivision and/or site plan review and approval:
 - a. The number of dwelling unit credits that are proposed to be applied to the development using the transfer of development rights.
 - b. The origin of the dwelling unit credits to be established as per Section VIID(H)(2) If a developer proposes to establish the development rights, then Section VIID(H)(2) can be reviewed concurrently with the overall development review by the Planning Board.
 - c. The dwelling units to be established using dwelling unit credits shall be identified as such on the final subdivision plan and/or site plan to be approved by the Planning Board and to be recorded at the Cumberland County Registry of Deeds.
 - d. A draft conservation easement to govern the parcel of land that is proposed to be restricted from development. The easement shall limit the land use of the parcel to agriculture, forestry, undisturbed open space, passive recreation or a combination thereof.
 - e. A letter of commitment as the holder of the conservation easement from the Town of Scarborough, the State of Maine, a non-profit conservation organization, or a land trust.
4. The content and conditions of the conservation easement shall be reviewed and approved by the Planning Board, in collaboration with the Town Council, Town Staff, and the Town Attorney, as part of final approval for the development.
5. Evidence that the approved conservation easement has been recorded in the Cumberland County Registry of Deeds shall be provided to the Town Planner prior to the issuance of the first building permit for any dwelling unit identified as per Section VIID(F)(3)(c) above.

I. REGISTRY AND LANDOWNER ASSISTANCE

The Planning Department in conjunction with the Conservation Commission may provide assistance to landowners in limited growth and low density growth areas to evaluate the potential for development transfer and to facilitate the actual transfer of development. This assistance can be provided in conjunction with the Parks and Conservation Land Board or land trusts or other conservation organizations.

1. The Conservation Commission with assistance from the Planning Department shall maintain a registry that lists the owners of land in the limited growth or very low density growth areas that are interested in transferring their development rights by selling the dwelling unit credits from their property. The registry shall include information about the

SECTION VIID. DEVELOPMENT TRANSFER PROVISIONS

owner and the property and the potential number of dwelling unit credits available for transfer (if known). Listing in the registry shall be voluntary, shall be without charge, and shall include only the information desired by the landowner. The registry shall be available to the public and shall be posted on the Town's website. The registry shall be updated at least every three (3) months or whenever there is a change in the information provided by landowners.

[Note: To be successful, the Transfer of Development Rights approach requires the readiness of a willing landowner who is interested in voluntarily transferring their right to develop a certain number of housing units. Once transferred the rural landowner does not surrender ownership or all uses of their property, only the ability to build or subdivide a certain number of units transferred.]

2. The Conservation Commission shall establish a landowner assistance program for owners of land in limited growth or very low density growth areas that are interested in selling the dwelling unit credits from their property. This program is intended to help the property owner determine the number of dwelling unit credits they have available to be transferred. The provision of assistance through this program is voluntary and shall only occur at the written request of the landowner. The land owner assistance program shall focus on helping landowners to assemble/develop the information necessary to complete the net residential acreage calculation provided for in VIID(H)(2). As part of the program the Conservation Commission shall make published or otherwise available information including aerial photos, wetland mapping, medium intensity soil survey mapping, and maps of other natural resources and habitats available to a landowner at no cost to the landowner.

[Note: Beginning with Habitat data can be used as a starting point for mapping the natural resources and habitats as landowners are assembling information for development transfer.]

3. The Conservation Commission with assistance from the Planning Department shall prepare sample conservation easements and other documents that will be acceptable to the Town for the transfer of dwelling unit credits and make them available to interested landowners.