

ORDINANCE 2010-17

AN ORDINANCE ENACTING SECTION 13-1-11, CONDOMINIUM PROJECTS, OF TITLE 13, SUBDIVISIONS, OF THE TOOELE COUNTY CODE, ESTABLISHING A PROCEDURE FOR APPROVAL OF CONDOMINIUM PROJECTS - [RESULTS OF THIS CHANGE: (1) CONDOMINIUM PROJECTS ARE CONSIDERED SUBDIVISIONS AND MUST COMPLY WITH ALL PROVISIONS OF THE TOOELE COUNTY LAND USE ORDINANCE; (2) CONDOMINIUM PLATS MUST FOLLOW THE SAME APPROVAL PROCESS AND PROVIDE THE SAME APPLICATION MATERIALS AS STANDARD SUBDIVISIONS; (3) THE PLANNING COMMISSION MUST REVIEW AND APPROVE ALL DECLARATION DOCUMENTS]

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE BODY OF TOOELE COUNTY, UTAH AS FOLLOWS:

SECTION I - PURPOSE. Tooele County does not currently have an ordinance that addresses condominiums and therefore must rely on state statute for its regulation of condo projects. Utah Code allows counties to establish review procedures by ordinance. The County Engineering staff recommends that condominium projects be considered subdivisions and should comply with all provisions of the Tooele County Land Use Ordinance. The Erda and Tooele County Planning Commissions held public hearings on the issue and recommend passage of this ordinance. The Pine Canyon Planning Commission held a public hearing on the issue and recommends this ordinance be denied.

SECTION II - SECTION ENACTED. Section 13-1-11, Condominium Projects, of Title 13, Subdivisions, of the Tooele County Code is hereby enacted to read as follows:

13-1-11. Condominium projects.

- (1) Condominium projects shall be considered a subdivision.
- (2) Condominium projects shall comply with all provisions of the Tooele County Land Use Ordinance.
- (3) Condominium plats shall follow the same approval process and provide the same application materials as a Standard Subdivision as outlined in this Title.

Each additional condominium plat within an identified expandable or contractual condominium shall follow the final plat approval process.

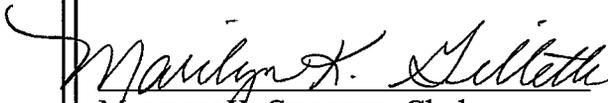
(4) The Planning Commission shall also review and approve all declaration documents.

SECTION III - REPEALER. Ordinances and resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION IV - EFFECTIVE DATE. This ordinance shall become effective 15 days after its passage provided it has been published, or at such publication date if more than 15 days after passage.

IN WITNESS WHEREOF the Tooele County Commission, which is the legislative body of Tooele County, passed, approved and enacted this ordinance this 24th day of August 2010.

ATTEST:


MARILYN K. GILLETTE, Clerk

TOOELE COUNTY COMMISSION:


COLLEEN S. JOHNSON, Chairman



APPROVED AS TO FORM:


DOUG HOGAN
Tooele County Attorney

Commissioner Johnson voted aye
Commissioner Clegg voted aye
Commissioner Hurst voted aye

RECEIVED

JUL 14 2010

Tooele County Attorney

MEMORANDUM

TO: DOUG HOGAN, COUNTY ATTORNEY
FROM: KERRY BEUTLER, COUNTY PLANNER
DATE: WEDNESDAY, JULY 14, 2010
**SUBJECT: LUO-2010-6 Amendment to the Tooele County Code, Title 13,
Subdivisions creating Section 13-1-11, Condominium Projects**

Please note the enclosed Finding of Facts of the planning commissions, staff report, and proposed language regarding the above described amendment to the Tooele County Code.

The Erda Township Planning Commission, recommended approval of the amendment on June 9, 2010 by a unanimous vote of 4-0.

The Pine Canyon Township Planning Commission motion to recommended approval of the amendment on July 1, 2010 failed by a vote of 2-3.

The Tooele County Planning Commission, recommended approval of the amendment on July 7, 2010 by a unanimous vote of 5-0.

Staff recommends approval of the amendment as written.

Please schedule this item on the next available county commission agenda.

Thank you

encl: Finding of Facts
Staff Report
Amendment Language

**IN THE MATTER OF: LUO-2010--6
APPLICATION FOR: Amendment to the
Tooele County Code, Title 13, Subdivisions
creating Section 13-1-11, Condominium
Projects**

FINDING OF FACT

TOOELE COUNTY PLANNING COMMISSION

Facts

1. Title 57, Chapter 8 of the Utah Code constitutes the states Condominium Ownership Act;
2. The county does not currently have an ordinance that addresses condominiums and therefore the county may only rely on state statute for its regulation of condo projects;
3. Utah Code allows a county to more fully avail itself of review authority over condominiums by establishing review procedures by ordinance;
4. Condominiums allow the division and sale of air space into units, while the ground underneath remains undivided. Unless otherwise provided a wall, floor or ceiling is designated as the boundary of the each unit. Individuals purchasing condominium units therefore own the interior space wall to wall and floor to ceiling;
5. Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered;
6. In establishing a condominium project a developer is required by the Condominium Ownership Act to comply with the zoning ordinance, building and sanitary codes and similar development regulations which have been adopted by the county;
7. The condo act also allows that the county may provide by ordinance for the approval of condominium projects proposed within its limits;
8. This ordinance may include and shall be limited to a procedure for approval of condominium projects, the standards and the criteria for the geographical layout of a condominium project, facilities for utility lines and roads which shall be constructed, the percentage of the project which must be devoted to common or recreational use, and the content of the declaration with respect to the standards which must be adhered to concerning maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project; and
9. Staff has recommended the Planning Commissions include Section 13-1-11, Condominium Projects into Title 13, Subdivisions of the County Code providing that condominium projects shall be considered a subdivision and shall comply with all provision of the Tooele County Land Use Ordinances. Additionally, condominium plats shall follow the same approval process and provide the same application materials as a Standard Subdivision as outlined in this Title. Each additional condominium plat within an identified expandable or contractual condominium shall follow the final plat approval process. The Planning Commission shall also review and approve all declaration documents.

Applicable Law

1. Chapter 3, General Plan, Land Use Ordinance, Zoning Maps and Amendments, Tooele County Land Use Ordinance
2. Title 57, Chapter 8, Utah Code, Condominium Ownership Act.

Decision and Recommendation

On July 7, 2010, the Tooele County Planning Commission recommended to the Board of County Commissioners **APPROVAL/DENIAL** of the above described Land Use Ordinance Amendments based upon their findings.



Chair, Tooele County Planning Commission

**IN THE MATTER OF: LUO-2010--6
APPLICATION FOR: Amendment to the
Tooele County Code, Title 13, Subdivisions
creating Section 13-1-11, Condominium
Projects**

FINDING OF FACT

**PINE CANYON TOWNSHIP PLANNING
COMMISSION**

Facts

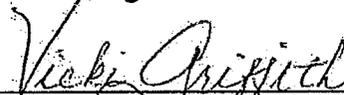
1. Title 57, Chapter 8 of the Utah Code constitutes the states Condominium Ownership Act;
2. The county does not currently have an ordinance that addresses condominiums and therefore the county may only rely on state statute for its regulation of condo projects;
3. Utah Code allows a county to more fully avail itself of review authority over condominiums by establishing review procedures by ordinance;
4. Condominiums allow the division and sale of air space into units, while the ground underneath remains undivided. Unless otherwise provided a wall, floor or ceiling is designated as the boundary of the each unit. Individuals purchasing condominium units therefore own the interior space wall to wall and floor to ceiling;
5. Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered;
6. In establishing a condominium project a developer is required by the Condominium Ownership Act to comply with the zoning ordinance, building and sanitary codes and similar development regulations which have been adopted by the county;
7. The condo act also allows that the county may provide by ordinance for the approval of condominium projects proposed within its limits;
8. This ordinance may include and shall be limited to a procedure for approval of condominium projects, the standards and the criteria for the geographical layout of a condominium project, facilities for utility lines and roads which shall be constructed, the percentage of the project which must be devoted to common or recreational use, and the content of the declaration with respect to the standards which must be adhered to concerning maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project; and
9. Staff has recommended the Planning Commissions include Section 13-1-11, Condominium Projects into Title 13, Subdivisions of the County Code providing that condominium projects shall be considered a subdivision and shall comply with all provision of the Tooele County Land Use Ordinances. Additionally, condominium plats shall follow the same approval process and provide the same application materials as a Standard Subdivision as outlined in this Title. Each additional condominium plat within an identified expandable or contractual condominium shall follow the final plat approval process. The Planning Commission shall also review and approve all declaration documents.

Applicable Law

1. Chapter 3, General Plan, Land Use Ordinance, Zoning Maps and Amendments, Tooele County Land Use Ordinance
2. Title 57, Chapter 8, Utah Code, Condominium Ownership Act.

Decision and Recommendation

On July 1, 2010, the Pine Canyon Township Planning Commission recommended to the Board of County Commissioners **APPROVAL/DENIAL** of the above described Land Use Ordinance Amendments based upon their findings.



Chair, Pine Canyon Township Planning Commission

**IN THE MATTER OF: LUO-2010--6
APPLICATION FOR: Amendment to the
Tooele County Code, Title 13, Subdivisions
creating Section 13-1-11, Condominium
Projects**

FINDING OF FACT

ERDA TOWNSHIP PLANNING COMMISSION

Facts

1. Title 57, Chapter 8 of the Utah Code constitutes the states Condominium Ownership Act;
2. The county does not currently have an ordinance that addresses condominiums and therefore the county may only rely on state statute for its regulation of condo projects;
3. Utah Code allows a county to more fully avail itself of review authority over condominiums by establishing review procedures by ordinance;
4. Condominiums allow the division and sale of air space into units, while the ground underneath remains undivided. Unless otherwise provided a wall, floor or ceiling is designated as the boundary of the each unit. Individuals purchasing condominium units therefore own the interior space wall to wall and floor to ceiling;
5. Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered;
6. In establishing a condominium project a developer is required by the Condominium Ownership Act to comply with the zoning ordinance, building and sanitary codes and similar development regulations which have been adopted by the county;
7. The condo act also allows that the county may provide by ordinance for the approval of condominium projects proposed within its limits;
8. This ordinance may include and shall be limited to a procedure for approval of condominium projects, the standards and the criteria for the geographical layout of a condominium project, facilities for utility lines and roads which shall be constructed, the percentage of the project which must be devoted to common or recreational use, and the content of the declaration with respect to the standards which must be adhered to concerning maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project; and
9. Staff has recommended the Planning Commissions include Section 13-1-11, Condominium Projects into Title 13, Subdivisions of the County Code providing that condominium projects shall be considered a subdivision and shall comply with all provision of the Tooele County Land Use Ordinances. Additionally, condominium plats shall follow the same approval process and provide the same application materials as a Standard Subdivision as outlined in this Title. Each additional condominium plat within an identified expandable or contractual condominium shall follow the final plat approval process. The Planning Commission shall also review and approve all declaration documents.

Applicable Law

1. Chapter 3, General Plan, Land Use Ordinance, Zoning Maps and Amendments, Tooele County Land Use Ordinance
2. Title 57, Chapter 8, Utah Code, Condominium Ownership Act.

Decision and Recommendation

On June 9, 2010, the Erda Township Planning Commission recommended to the Board of County Commissioners **APPROVAL/DENIAL** of the above described Land Use Ordinance Amendments based upon their findings.



Chair, Erda Township Planning Commission



Planning & Zoning Division
Kerry Beutler, Division Head

Staff Report
Summary

**Amendment to the Tooele County Code,
Creating Section 13-1-11, Condominium Projects
LUO-2010-6**

Project Type: Land Use Ordinance Amendment

Planning Commission: Erda Township, Tooele County & Pine Canyon Township

Meeting/ Hearing Date: May 12, 2010, June 2, 2010 & June 3, 2010

Staff Planner: Kerry Beutler

Staff Recommendation: Approval of language as proposed creating Section 13-1-11, Condominium Projects of Title 13, Subdivisions of the Tooele County Code

Staff Report

Amendment to the Tooele County Code,
Creating Section 13-1-11, Condominium Projects
LUO-2010-6

Project Type: Land Use Ordinance Amendment
Planning Commission: Erda Township, Tooele County & Pine Canyon Township
Meeting/ Hearing Date: May 12, 2010, June 2, 2010 & June 3, 2010
Staff Planner: Kerry Beutler

Project Data: Title 57, Chapter 8 of the Utah Code constitutes the states Condominium Ownership Act. The county does not currently have an ordinance that addresses condominiums and therefore the county may only rely on state statute for its regulation of condo projects. Staff is unaware of any provision that would allow a county to disallow condominiums, however, a county may more fully avail itself of review authority over condominiums by establishing review procedures by ordinance.

Project Analysis: Condominiums allow the division and sale of air space into units, while the ground underneath remains undivided. Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered, 57-8-4. Unless otherwise provided a wall, floor or ceiling is designated as the boundary of the unit, Utah Code 57-8-7.2. Individuals purchasing condominium units therefore own the interior space wall to wall and floor to ceiling. The condo act goes further to describe any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other apparatus as common area. Common areas can be identified as "limited" for the use of the individual unit only or open to all within the condominium project. When purchasing a condominium you literally own the interior space and may own specific rights to the outdoor space.

Condominiums can be set up in many different ways. When recording a condominium plat a developer must also record declaration documents. Declaration documents will typically contain covenants, conditions and restrictions relating to the project. It is the declaration documents that describe whether common areas are "limit" for the individual unit or open to the project. In the case of the Spiral Springs Subdivision Phase 2 project the outdoor space around the home is identified as limited common area, for the specific use of that unit. Declaration documents also may describe convertible land, a portion of the project that could be converted into additional units. The declaration will describe if the condo project is expandable or contractible. Contractible areas can be later withdrawn from the project, while expandable areas allow the condominium to be expanded into adjacent parcels. In the case of the Spiral Springs development the boundary of the subdivision has been identified as the expandable area, meaning that the condominium could only expand within the boundaries of the subdivision. With that expandable option the condo act also establishes a time limit, which to take advantage

of the expandable option, not to exceed seven years. The declaration document will also include any limitation or reservations for the project.

In establishing a condominium project a developer is required by the act to comply with the zoning ordinance, building and sanitary codes and similar development regulations which have been adopted by the county, 57-8-35. The Spiral Springs development complies with all current zoning requirements. The condo act also allows that the county may provide by ordinance for the approval of condominium projects proposed within its limits.

“This ordinance may include and shall be limited to a **procedure for approval** of condominium projects, the **standards and the criteria for the geographical layout** of a condominium project, **facilities for utility lines and roads** which shall be constructed, the **percentage of the project** which must be devoted to **common or recreational use**, and the **content of the declaration** with respect to the **standards** which must be adhered to concerning **maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project.**”, Section 57-8-35 of the Utah Code

Additionally, any ordinance adopted by the legislative body of a municipality or county which outlines the procedures for approval of a condominium project shall provide for:

- (a) a preliminary approval, which, among other things, will then authorize the developer of the condominium project to proceed with the project; and
- (b) a final approval which will certify that all of the requirements set forth in the preliminary approval either have been accomplished or have been assured of accomplishment by bond or other appropriate means. No declaration or condominium plat shall be recorded in the office of the county recorder until a final approval has been granted.

Some communities have adopted simple condominium ordinances that state a condo project must follow the same approval steps as a regular subdivision. Other jurisdictions have constructed more elaborate procedures and standards relating to condominiums. In either case whether simple or elaborate a condominium ordinance would be similar to our current subdivision ordinance in that it is an administrative process. The Planning Commission and staff would only have authority to enforce minimum standards established by the county. Denial of a project could only be considered if minimum requirements were not met.

Implementing a condominium ordinance will give additional order and review authority to the condominium process. Following the current subdivision process will provide for other county departments and outside reviewing agencies to be party to review and approval of the condominium plat.

Staff Recommendation: Approval of language as proposed creating Section 13-1-11, Condominium Projects of Title 13, Subdivisions of the Tooele County Code

Cc: File

Encl: Proposed ordinance language

13-1-11. Condominium Projects.

- (1) Condominium projects shall be considered a subdivision.
- (2) Condominium projects shall comply with all provision of the Tooele County Land Use Ordinances.
- (3) Condominium plats shall follow the same approval process and provide the same application materials as a Standard Subdivision as outlined in this Title. Each additional condominium plat within an identified expandable or contractual condominium shall follow the final plat approval process.
- (4) The Planning Commission shall also review and approve all declaration documents.