



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Administrative Division

m e m o r a n d u m

TO: The Urbana Plan Commission

FROM: Elizabeth H. Tyler, FAICP, Zoning Administrator/Director

DATE: May 30, 2008

SUBJECT: Plan Case No. 2072-T-08: Request by the Zoning Administrator to amend the Zoning Ordinance to add a new Section XIII-5 regarding Condominium Conversions

Introduction

The Zoning Administrator is requesting an amendment to the Urbana Zoning Ordinance to add a new Section XIII-5 regarding Condominium Conversions. This new Section includes provisions to require a notice of intent to convert existing properties to condominium status, to require the preparation and submittal of a Condominium Plat for City review and approval, and to provide for code inspection, maintenance of common elements, and the identification of necessary easements and dedications.

Background

In recent years, City officials have noticed an increasing number of conversions of existing apartment units to condominium units for sale. Such conversions are authorized by the Illinois Condominium Property Act, but there are no requirements to provide notice of the conversion to the local authorities or to provide for proper platting, inspection, and maintenance of the property. While the Illinois Condominium Property Act enables communities to inspect the premises for code compliance prior to the conversion, without notification requirements, the City may be unaware of the conversion until it has already occurred. In addition, such conversions may occur without proper review of development regulations (such as street widths and provision of utilities) through a plat review process, and without an opportunity to require adequate maintenance of common elements, such as stormwater retention facilities and parking lots, or to provide for appropriate dedications and easements. The proposed Amendment to the Zoning Ordinance would rectify these concerns by requiring for local notification, review and approval of condominium conversions to ensure the improved protection of the public health, safety, and welfare of the community.

The proposed Amendment is consistent with Public Act 94-386 (copy attached), which amended the Condominium Property Act to allow a municipality to inspect an apartment building prior to conversion to condominium units and to require the conversion to comply with the current life safety, building, and zoning codes of the municipality.

The conversion of rental properties to condominium status can be beneficial to the community in some circumstances. For example, the Fairlawn Village Apartments on South Vine Street were recently converted to condominium status and major upgrades to the property were made as a part of this process. The developer, Devonshire, worked closely with the City in the conversion process and obtained all necessary zoning, engineering, and building approvals as a part of the upgrade. The units are being marketed to owner occupants, rather than solely as an investment opportunity. Fairlawn Village lent itself to condominium conversion due to its attractive location and extensive provision of open space.

However, in other instances, an apartment building may be marketed as individual condominiums without any notice to the City, upgrades to the property, or provision for common element maintenance. In some instances, the units are marketed solely for investment purposes (often at out of state venues), leaving the City with the task of dealing with dozens of out of area owners who must comply with the provisions of our rental registration program and without any one management or ownership group to address issues pertaining to maintenance of common elements. This situation has occurred at a number of properties in recent years and appears to have been stoked by the heated real estate investment market that preceded the recent nationwide slowdown. The pattern of multiple out of area investment owners (many of whom are inexperienced first time investors), lack of local knowledge, and increased rates of foreclosure increases the potential for property maintenance concerns, tenant complaints, and neighborhood degradation at these locations. While recent changes in the lending environment may reduce the rate of conversions, the potential for negative impacts of these unregulated conversions remain.

In 2007, Mayor Laurel Prussing convened a Problem Property Team represented by staff from Community Development, Police, Human Relations, Public Works, and Legal. The work of this team is regularly presented to the Mayor's Neighborhood Safety Task Force. The Problem Property Team identified uncontrolled condominium conversions as a potential concern in addressing problem property issues within the City. Many communities control the conversions of rental properties to condominiums through local legislation. Mayor Prussing directed Community Development staff to work in conjunction with Legal staff to prepare appropriate legislation to address this concern. Assistant City Attorney Curt Borman was assigned to this project and prepared the draft legislation.

Urbana Comprehensive Plan

The 2005 Urbana Comprehensive Plan has the following Goals and Objectives which pertain to the proposed text amendment:

Goal I.0 **Preserve and enhance the character of Urbana's established residential neighborhoods.**

Objectives

- I.2 Encourage investment in older properties to help maintain their appearance and long-term potential.
- I.3 Promote the improvement of existing structures through the enforcement of property maintenance codes.

Goal 19.0 Provide a strong housing supply to meet the needs of a diverse and growing community.

Objectives

- I.2 Encourage residential developments that offer a variety of housing types, prices and designs.

Goal 40.0 Make affordable housing available for low-income and moderate-income households.

Summary of Proposed Amendment

The proposed text amendment is contained in the attached Draft Ordinance. The Ordinance would add a new Section XIII-5 entitled “Condominium Conversions” to Article XIII, “Special Development Provisions”. Cross references include Chapter 21 of the Municipal Code, “Subdivisions and Other Land Development” and State Law references to the Plat Act and Condominium Property Act.

The text amendment is divided into the following subsections:

A. Definitions.

Provides definitions pertaining to the Ordinance.

B. Applicability.

Defines where the Ordinance will be applicable, i.e., to all condominium conversions in Urbana, where the units are intended or designed to be used principally for residential purposes. The Ordinance will not pertain to previously established condominium conversion projects.

C. Notice of Intent

Requires submission of a written notice to the Community Development Director of the City of Urbana of intent to submit a property to the provisions of the Illinois Condominium Property Act or to offer an existing apartment for sale as a proposed condominium unit at least 30 days prior to the closing of a sales contract. The notice shall include relevant information, such as property location, contact information, leasing status, insurance coverage, covenants and restrictions, condominium association information, description of common elements, and management contracts. The notice shall be accompanied by a condominium plat, as provided in Section D.

This section will address the problem of condominium conversions occurring without any notice to or review by local authorities.

D. Condominium Plat

Requires submission of a plat to the Community Development Director and City Engineer prepared in accordance with the Illinois Condominium Property Act, the Plat Act, and the City's Subdivision and Land Development Code (Article 21). Upon approval, the Plat shall be signed by the local authorities and recorded at the Champaign County Recorder of Deeds, similar to the process currently used for Minor Plats. This section addresses the concern whereby Condominium Plats are prepared and recorded without any local review or approval, and will help to ensure adherence to the provisions of the City's Subdivision and Land Development Code.

E. Code Inspection

Will allow for City inspection of the existing building prior to the conversion to ensure adherence to all life safety, building, and zoning codes. Consistent with the City's Property Maintenance and Building Code provisions and administrative procedures, all violations or deficiencies must be corrected by the owner within the prescribed time frames. The Ordinance further requires that these be completed no fewer than 30 days prior to the closing of a sales contract. This section will help to ensure that life safety provisions are applied to conversion projects prior to their transfer.

F. Maintenance of Common Elements

Requires covenants to be prepared and recorded to provide for the proper maintenance of any common elements that will be conveyed to a condominium owner's association or similar entity and allows for a process of City correction and reimbursement in the event of failed maintenance. The covenants shall be reviewed and approved by the Community Development Director prior to recording. This section will assist in the proper long-term maintenance of common facilities, such as detention basins and drainage ditches, the failure of which may endanger the public health, safety, and welfare of the community.

G. Easements and Dedications

Allows for the granting and dedication, at no cost, of any necessary easements or rights-of-way necessary for the provision of public utilities or services to the subject property or other property, without impacting the material use of the property. These easements shall include access for maintenance of stormwater management facilities. Such easements and dedications shall be properly recorded.

H. Penalty

Provides for penalties and liabilities associated with violation of this Section.

Summary of Staff Findings

1. Currently, there is a trend of conversion of existing apartment properties to condominium status without an opportunity for local official review and approval to ensure adherence to local building, zoning, and development codes.
2. The multiple investment ownership patterns of condominium conversion projects can result in deficiencies in ensuring proper long-term maintenance of common areas and elements, such as stormwater maintenance facilities.
3. The proposed amendment will help to protect the public health, safety, and welfare of the community by ensuring that condominium conversion projects provide for proper code compliance, maintenance of common elements, access and easements,
4. The proposed amendment will help to ensure that all structures are safe, sanitary, and fit for occupation and use
5. The proposed amendment would assist in the administration of the City's Zoning Ordinance, Building Codes, and Subdivision and Land Development Code.

Options

The Plan Commission has the following options for recommendation to the Urbana City Council. In Plan Case 2072-T-08, the Plan Commission may:

- a. forward this case to City Council with a recommendation for approval of the proposed text amendment to the Zoning Ordinance, as presented herein; or
- b. forward this case to City Council with a recommendation for approval of the proposed text amendment to the Zoning Ordinance, as modified by specific suggested changes; or
- c. forward this case to City Council with a recommendation for denial of the proposed text amendment to the Zoning Ordinance.

Staff Recommendation

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Commission recommend **APPROVAL** of the proposed Zoning Ordinance text amendment, as presented herein.

Attachments: Draft Ordinance
Public Act 094-0386

Cc: Champaign County Realtors Association
Champaign County Chamber of Commerce
Central Illinois Apartment Association
Cunningham Township Assessor
Local Developers and Engineers (Partial)
Local Utilities (Plat Review List)
Champaign County Recorder of Deeds

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE CITY OF URBANA, ILLINOIS

(Addition of Section XIII-5 concerning condominium conversions)

WHEREAS, the City of Urbana, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Urbana may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City Council of the City of Urbana, Illinois, adopted Ordinance No. 9293-124 on June 21, 1993 consisting of a comprehensive amendment to the 1979 Zoning Ordinance of the City of Urbana, also known as the Urbana Zoning Ordinance; and

WHEREAS, the Mayor and City Council find that the protection of the public health, safety, and welfare are served by regulating the practice of converting residential apartment dwellings into condominiums to ensure that all such structures are safe, sanitary, and fit for occupation and use; and

WHEREAS, the State of Illinois passed into law Public Act 94-386, amending the Condominium Property Act to allow a municipality to inspect an apartment building prior to conversion to condominium units and to require the conversion to comply with the current life safety, building and zoning codes of the municipality; and

WHEREAS, the Urbana Zoning Administrator has submitted a petition to add a new Section XIII-5 regarding Condominium Conversions; and

WHEREAS, said petition was presented to the Urbana Plan Commission as Plan Case No. 2072-T-08; and

WHEREAS, after due publication in accordance with Section XI-7 of the Urbana Zoning Ordinance and with Chapter 24, Section 11-13-14 of the Illinois Revised Statutes, the Urbana Plan Commission held a public hearing to consider the proposed amendment on June 5, 2008; and

WHEREAS, the Urbana Plan Commission voted ___ ayes and ___ nays to forward the proposed amendment set forth in Plan Case No. 2072-T-

08 to the Urbana City Council with a recommendation for approval/denial; and

WHEREAS, the Mayor and City Council find that the best interests of the City of Urbana are served by allowing for inspection of apartment buildings prior to conversion to condominium units and by requiring each building and unit prior to conversion to meet all current life safety, building and zoning code of the City; and

WHEREAS, after due and proper consideration, the Urbana City Council has deemed it to be in the best interests of the City of Urbana to amend the text of the Urbana Zoning Ordinance as described herein.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

The Urbana Zoning Ordinance, Article XIII, "Special Development Provisions," is hereby amended by adding the following section thereto:

Section XIII-5

Condominium Conversions

A. Definitions.

Board of managers means the Board of Managers provided for and referred to in the Illinois Condominium Property Act, 765 ILCS 605 et seq.

Closing of a sales contract means the act of transferring ownership of a condominium unit to the purchaser from the developer.

Common elements means all portions of the property except the condominium units, including limited common elements, unless otherwise specified.

Condominium means a form of property established by the Illinois Condominium Property Act.

Condominium instrument means any document and authorized amendments thereto recorded pursuant to the provisions of the Illinois Condominium Property Act, including the declaration, bylaws, and plat.

Condominium project means the sale of or plan by a developer to sell or offer for sale residential condominium units in an existing building or any modification or reconstruction of an existing building.

Condominium unit means a separate three-dimensional area within a condominium building, identified as such in the declaration and on the

condominium plat, including all improvements contained within such area except those excluded in the declaration.

Conversion means the offering for sale by a developer or his or her agent of a condominium unit that was rented by any person prior to the commencement of a condominium project.

Developer means any person who undertakes to develop a condominium unit or building by conversion, as further defined in the Illinois Condominium Property Act.

Director means the director of the Community Development Services Department or his or her designee.

Master association means an organization described and referred to in the Illinois Condominium Property Act.

Person means any individual, partnership, corporation, joint stock association or any city or state or any subdivision thereof, and includes any trustee, receiver, assignee, or personal representative thereof.

Plat means a plat or a plat of survey of all the units and common elements in a property submitted to provisions of the Illinois Condominium Property Act.

Unit Owners' Association means the association of all the condominium unit owners, acting pursuant to bylaws through its duly elected board of managers.

B. Applicability. This article shall apply to all condominium conversions in the city, where the units are intended or designed to be used principally for residential purposes, provided, however, that this article shall not apply to:

1. Condominium units which, prior to the effective date of this article, have been sold under a binding contract of sale to a purchaser for use as a residence; or
2. Condominiums lawfully established prior to the effective date of this article.

C. Notice of intent required; contents.

1. A developer intending to submit a property to the provisions of the Illinois Condominium Property Act or offering an existing apartment for sale as a proposed condominium unit shall file with the director a written notice of intent to convert and shall certify by affidavit that all disclosures are true to the best of his or her knowledge and belief. Notice shall be provided at least thirty (30) calendar days prior to the closing of a sales contract on any condominium unit and shall include, at minimum, the following information about the condominium project, numbered and indexed in such a manner as the developer may select, so as to permit ready reference thereto:

- a) The address of the condominium property, a legal description of the condominium units to be offered for sale, and the proportionate percentage of individual ownership of said units;
 - b) The names and telephone numbers of existing occupants and the current property owner if other than the developer;
 - c) Any leases on real or personal property applicable to the condominium;
 - d) The coverage and amounts of property insurance policies maintained on the condominium building;
 - e) The declaration of covenants, conditions and restrictions that would apply to owners of the units within the condominium project;
 - f) The condominium plat, as provided in section D below;
 - g) The articles of incorporation or charter of the condominium association, if any;
 - h) The by-laws and regulations of the condominium association;
 - i) A description of the common elements and a statement of the percentage ownership of the common elements applicable to the condominium units to be offered for sale;
 - j) A description of all existing and proposed facilities not included, or not to be included, as part of the common elements.
 - k) Any management contract, employment contract or any other contract affecting the use, maintenance, or access to all or any part of the condominium. Said disclosures under this subsection shall include:
 - (1) The name of the management company, if any, and the services the agent will perform;
 - (2) The length of term of any management contract and the charges and circumstances, if any, under which the charges may be increased;
 - (3) The conditions, if any, under which the contract may be canceled or terminated; and
 - (4) A statement disclosing any relationship between the developer and the management company.
2. If the covenant or similar condominium instrument does not require the hiring of a professional management company to carry out maintenance and repairs, the developer shall

explain how maintenance and repairs of the proposed conversion will be accomplished.

3. The developer shall timely provide such other information regarding the condition of the proposed development of the property as the director shall reasonably request.
4. No existing building, or part thereof, shall be submitted to the provisions of the condominium property act, nor shall an existing apartment unit be offered for sale or be sold as a proposed condominium unit or be occupied as a condominium unit, without the prior filing of a notice of intent pursuant to this section.
5. No person shall convert any apartment building into a condominium without complying with each of the requirements of this article, in addition to all other applicable laws and ordinances.

D. Condominium Plat.

1. A developer intending to submit a property to the provisions of the Illinois Condominium Property Act or offering an existing apartment for sale as a proposed condominium unit shall file with the director and the city engineer a condominium plat pertaining to the property. The condominium plat shall be prepared and submitted in accordance with the provisions of the Condominium Property Act (765 ILCS 605), the Plat Act (765 ILCS 205), and Chapter 21 of the Urbana City Code.
2. Upon approval, the plat shall be signed and attested by the director and the city engineer. The developer shall then record the plat with the Office of the Recorder of Deeds and shall submit a recorded copy to the City Clerk within seven (7) days of receipt of the recorded documents from the Recorder.
3. No condominium plat or amended condominium plat shall be recorded or shall be effective unless first approved by the director and the city engineer.

E. Code inspection.

1. In the case of the conversion of an existing building into condominium units, the city shall have the right to inspect the existing building prior to the conversion. Each proposed condominium unit and building shall comply with the current life safety, building, and zoning codes of the city.
2. The developer shall correct at his or her expense any code violations and deficiencies detected during an inspection of projected condominium units and common elements and facilities to the satisfaction of the director. The developer shall complete all such corrections no fewer than thirty (30) days prior to the closing of a sales contract on

any condominium unit to allow the director adequate time to reinspect the premises.

3. The fee for each inspection or reinspection shall be as set forth in the schedule of fees.
4. The developer shall bear the costs of the inspection and any required reinspection.
5. Whenever the director or Fire Department personnel, upon presentation of proper credentials and request for entry to inspect, is refused access to any building undergoing conversion to condominiums, the city is authorized to petition any judge for the issuance of a search warrant authorizing the inspection of such building or unit for the purpose of making such inspections as shall be necessary for the enforcement of the provisions of this article.

F. Maintenance of common elements.

1. Whenever a condominium is created that contains any common elements that will be conveyed to a unit owners' association, master association, or similar entity, the developer shall record among the county land records, prior to the conveyance of any unit in the condominium, a covenant or similar condominium instrument that shall provide for the following:
 - a) That the entity which owns the common elements shall be responsible for its maintenance;
 - b) That in the event the entity fails to maintain the common elements in accordance with applicable city ordinances, the city shall have the right to enter upon the common elements for the purposes of bringing it into compliance with the ordinances;
 - c) That in addition to any fine levied, the costs incurred by the city pursuant to subsection b) shall include, but shall not be limited to, the actual costs and expenses in time of city employees and the costs of material relating to the efforts of bringing the area into compliance, including overhead and administrative costs associated with such effort, or if the work is contracted out in whole or in part, the full costs of such contract;
 - d) That a pro rata share of the costs incurred by the city pursuant to subsection b) above shall constitute a lien on each unit within the condominium; and
 - e) That the covenant shall run with the real property within the condominium and shall be binding on all parties having any right, title, or interest in any unit therein.

2. Prior to recording said covenant or similar condominium instrument, the developer shall submit a copy to the director for review and approval to ensure proper provision for maintenance of common elements. After approval by the director, the developer shall record the instrument with the Office of the Recorder of Deeds and shall submit a recorded copy to the City Clerk within seven (7) days of receipt of the recorded documents from the Recorder.

G. Easements and dedications.

1. The developer or board of managers shall grant or dedicate to the city, at no cost, those easements and right-of-ways the city indicates it reasonably needs to provide or to continue to provide or facilitate, utilities or other city services to the condominium project or other property. Such easements and rights-of-way shall not materially impact the use of the property.
2. The developer shall ensure that the condominium instruments include a provision requiring that the owners of the condominium property adequately maintain and repair any stormwater management facilities located on the property. The developer or board of managers shall grant the city an easement on the property so that in the event stormwater management on the property is not adequately maintained or repaired in the future, the city shall have the right, but not the obligation, to access the property for purposes of maintaining or repairing such stormwater management facilities, the cost of which may be assessed against the property owners or may be filed as a lien against the property.
3. All grants of easement or dedication required from the developer pursuant to this subsection and any plats of easement or dedication shall be prepared at the developer's expense and shall be in a form approved by the director. After any instrument required by this section is recorded with the Officer of the Recorder of Deeds, the developer shall submit a recorded copy to the City Clerk within seven (7) days of receipt of the recorded documents from the Recorder.

H. Penalty.

1. Any person who violates any provision of this article or who makes any false statement or affidavit pursuant to this article shall be guilty of an offense. Any person convicted of an offense under this article, in addition to other legal and equitable remedies available to the city, shall be punished by a fine of not less than one hundred dollars (\$100.00) for each day during or on which a violation occurs or continues.
2. The developer, the unit owner, and the unit owners' association or similar entity shall be liable for violations occurring in a unit, and each may be cited for any individual violation. The developer and the association or

similar entity shall be liable for violations occurring in common elements, and each may be cited for any individual violation.

3. In addition to the imposition of a fine, the city may seek injunctive relief to prevent a violation of this article, including, but not limited to enjoining the occupancy or sale of any building or unit.

I. **Effective date.** This Ordinance shall be in full force and effect after its passage and approval and publication according to law.

Cross reference: Chapter 21, "Subdivisions and Other Land Developments."

State law references:

765 ILCS 605
765 ILCS 205

Section 2.

The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

Public Act 094-0386

SB1219 Enrolled	LRB094 08882 LCB 39101 b
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AN ACT concerning property.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Condominium Property Act is amended by adding Section 30.5 as follows:

(765 ILCS 605/30.5 new)

Sec. 30.5. Conversion of apartments. In the case of the conversion of an apartment building into condominium units, a municipality shall have the right to inspect the apartment building prior to the conversion to condominium units and may require that each new proposed condominium unit comply with the current life safety, building, and zoning codes of the municipality.

Section 99. Effective date. This Act takes effect upon becoming law.

Effective Date: 7/29/2005