

ORDINANCE NO. 2015-59

**AN ORDINANCE AMENDING CHAPTER 17.24
OF THE CASTLE ROCK MUNICIPAL CODE BY THE ADDITION
OF A NEW SECTION 17.24.050 CONCERNING PLAT NOTE
FOR MULTI-FAMILY DEVELOPMENT PLAN**

WHEREAS, the Town of Castle Rock, Colorado (the “Town”) is a home rule municipality organized pursuant to Article XX of the Colorado Constitution; and

WHEREAS, as a home rule municipality, the Town has broad authority to exercise its police power to promote and protect the health, safety, and welfare of its residents; and

WHEREAS, the adoption, implementation, and enforcement of land use and zoning regulations and building codes are well-established as matters of local concern for home rule municipalities; and

WHEREAS, Town Council (“Council”) is desirous to take meaningful action to further fair housing, including the removal of impediments to the development of attainably-priced, for-sale housing that may be made available; and

WHEREAS, the Town’s zoning ordinance and comprehensive plan contemplate a diverse housing stock, consisting of a mix of single-family and multi-family housing units (whether owner-occupied or rental) designed to serve the needs of all Town residents; and

WHEREAS, when compared with the development of residential housing in the area, there are relatively few condominiums available for sale in the Town; and

WHEREAS, the low percentage of multi-family housing appears in part to be attributed to a litigation climate that can make it prohibitively difficult for builders and developers of such projects to plan for the risk of construction defects litigation; and

WHEREAS, the uncertainty and inability to plan and allocate for risk may have led insurance companies who would normally insure condominium projects to stop writing policies for such projects, or price policies at a level that substantially increases the cost of condominium projects; and

WHEREAS, Council finds that the health, safety and welfare of the Town residents is being negatively impacted by the lack of housing options and diversity of housing inventory; and

WHEREAS, Council further finds that the use of alternative dispute resolution as a means to resolve construction defect claims, whether by arbitration or mediation, should be encouraged within the Town; and

WHEREAS, Council finds that arbitration encourages the resolution of issues related to alleged construction defects in a fashion that tends to better engage the parties to work toward resolution, rather than escalating angst and hostility often associated with litigation; and

WHEREAS, Council finds that arbitration is normally less expensive than litigation insofar as the process is quicker and generally less complicated than court proceedings; and

WHEREAS, Council further finds that arbitration is also more efficient and flexible and that the use of simplified rules of evidence and procedure tend to make the process more easily adapted to the needs of those involved; and

WHEREAS, Council therefore desires to take reasonable steps within its power as the governing body of a home rule municipality to encourage the development of condominium projects in the Town through the adoption of regulations designed to reduce the risk and exposure to builders and developers of such projects associated with litigation and obtaining insurance, while protecting the rights of homeowners to pursue legitimate construction defect claims through an arbitration process.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO:

Section 1. Amendment. Chapter 17.24 of the Castle Rock Municipal Code is amended to add a new Section 17.24.050, Binding Arbitration, to read as follows:

17.24.050 Binding arbitration.

At the request of the applicant, the following condition shall be placed on the face of an approved Site Development Plan:

THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK HEREBY ESTABLISHES THE FOLLOWING LEGISLATIVE CONDITION TO THE APPROVAL OF THIS SITE DEVELOPMENT PLAN TO PROMOTE THE PROMPT, EFFICIENT AND COST EFFECTIVE RESOLUTION OF DISPUTES PERTAINING TO THE DEVELOPMENT OF THE PROPERTY AS A MULTI-FAMILY PROJECT, EXCLUDING ANY PROPERTY OWNED BY THE TOWN (THE "PROPERTY") FOR THE PURPOSE OF ENCOURAGING AND FOSTERING THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE TOWN AND THE CONSTRUCTION OF OWNER-OCCUPIED MULTI-FAMILY DEVELOPMENTS IN THE TOWN.

AS A LEGISLATIVE CONDITION TO THE TOWN COUNCIL'S APPROVAL OF THIS SITE DEVELOPMENT PLAN, THE FOLLOWING CLAIMS INVOLVING THE PROPERTY SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A COURT OF LAW:

ANY AND ALL CONSTRUCTION DEFECT CLAIMS:

1. THAT ARE BETWEEN ANY TWO OR MORE OF THE FOLLOWING PERSONS OR ENTITIES:

- (A) ANY OWNER OF ANY PORTION OF THE PROPERTY;
- (B) ANY COMMON INTEREST COMMUNITY ASSOCIATION CREATED WITH RESPECT TO THE PROPERTY;
- (C) THE SUBDIVIDER, DEVELOPER OR ANYONE CLAIMING UNDER OR THROUGH ANY SUCH PERSONS;
- (D) ANY PARTY THAT CONSTRUCTS OR DESIGNS ANY PORTION OF ANY RESIDENTIAL DWELLING UNITS UPON THE PROPERTY; AND
- (E) ANY CONSTRUCTION PROFESSIONAL AS DEFINED IN THE CONSTRUCTION DEFECT ACTION REFORM ACT, C.R.S. §13-80-802.5, *ET SEQ.*, AS AMENDED ("CDARA"), AND

2. THAT PERTAINS TO ANY OF:

- (A) THE PROPERTY;
- (B) ANY DWELLING UNIT OR OTHER IMPROVEMENTS CONSTRUCTED ON THE PROPERTY OR COMMON AREA DEVELOPMENT STRUCTURE;
- (C) THE COMMON INTEREST COMMUNITY TO BE CREATED FOR THE PROPERTY OR ANY PORTION THEREOF, OR
- (D) THE DECLARATION OR OTHER DOCUMENTS GOVERNING SUCH COMMUNITY.

3. FOR THE PURPOSES OF THE FOREGOING:

(A) A "CONSTRUCTION DEFECT CLAIM" MEANS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM FOR DAMAGES, INDEMNITY OR CONTRIBUTION BROUGHT AGAINST A DEVELOPMENT PARTY FOR DAMAGE OR LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL PROPERTY OR PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY THAT IS PART OF THE COMMON INTEREST COMMUNITY.

(B) A "DEVELOPMENT PARTY" MEANS ANY PARTY REFERRED TO IN SECTION 1(C), (D), OR (E).

(C) A "COMMON INTEREST COMMUNITY" MEANS REAL ESTATE AS DEFINED IN THE COMMON INTEREST OWNERSHIP ACT, C.R.S., §38-33.3-103(8).

THE LEGISLATIVE CONDITION SHALL NOT PRECLUDE ANY OF THE PERSONS OR ENTITIES DESCRIBED ABOVE FROM ENDEAVORING TO RESOLVE ANY SUCH CONSTRUCTION DEFECT CLAIM(S) THROUGH EITHER NEGOTIATIONS OR MEDIATION BEFORE SUBMITTING SUCH CONSTRUCTION DEFECT CLAIM TO BINDING ARBITRATION. ADDITIONALLY, THE PROPERTY MAY ALSO BE SUBJECT TO A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS THAT MAY IMPLEMENT AND EXPAND UPON THE REQUIREMENTS OF THIS NOTATION ON THE SITE DEVELOPMENT PLAN AND THAT MAY REQUIRE THAT EXEMPT CERTAIN OTHER TYPES OF CLAIMS ~~FROM THE REQUIREMENT THAT SUCH CLAIMS MUST~~ BE SUBMITTED TO

BINDING ARBITRATION; ~~INCLUDING CLAIMS BROUGHT TO FORECLOSE LIENS FILED AS A PART OF THE CONSTRUCTION PROCESS, CLAIMS BROUGHT BY A COMMON INTEREST COMMUNITY ASSOCIATION TO RECOVER UNPAID ASSESSMENTS PAYABLE TO SUCH ASSOCIATION OR TO OBTAIN A TEMPORARY RESTRAINING ORDER OR INJUNCTION FROM A COURT OF LAW PROHIBITING A VIOLATION OF SUCH COVENANTS, CONDITIONS AND RESTRICTIONS;~~ PROVIDED, HOWEVER, THAT ANY SUBSEQUENT AMENDMENT OR CHANGE TO SUCH DECLARATION OF COVENANTS, CONDITIONS OR RESTRICTIONS SHALL NOT ELIMINATE THE REQUIREMENT THAT THE CONSTRUCTION DEFECT CLAIMS DESCRIBED IN THIS PLAT NOTE, ~~INCLUDING CONSTRUCTION DEFECT CLAIMS, AS MORE PARTICULARLY DEFINED BY THE CDARA,~~ SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A JUDICIAL PROCEEDING.

FOR PURPOSES OF THIS SITE DEVELOPMENT PLAN, BINDING ARBITRATION SHALL MEAN SUBMISSION OF ANY CONSTRUCTION DEFECT CLAIM DESCRIBED ABOVE ~~BE SUBMITTED~~ TO A SINGLE ARBITRATOR WHO MUST BE, AT A MINIMUM, A RETIRED COLORADO STATE DISTRICT COURT JUDGE OR FEDERAL DISTRICT COURT JUDGE OR THROUGH THE USE OF SUCH ORGANIZATION THAT SUCH RETIRED JUDGE MAY BE A MEMBER OF, INCLUDING SUCH ORGANIZATIONS AS THE JUDICIAL ARBITER GROUP OR ITS SUCCESSORS. IN SUCH ARBITRATION, THE COSTS AND EXPENSES OF ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES AND SHALL BE CONDUCTED UTILIZING SUCH RULES OF PROCEDURE AS THE ARBITRATOR MAY REASONABLY ADOPT TO PROMOTE THE EFFICIENT AND ECONOMICAL RESOLUTION OF ANY SUCH CONSTRUCTION DEFECT CLAIM.

ALL FUTURE PURCHASERS OF ANY INTEREST IN THE PROPERTY ARE DEEMED TO HAVE ACCEPTED AND AGREED TO THE TERMS AND CONDITIONS OF THIS SITE DEVELOPMENT PLAN, WHICH IS RECORDED IN THE DOUGLAS COUNTY CLERK AND RECORDERS OFFICE AND IS DEEMED TO BE A COVENANT RUNNING WITH THE PROPERTY.

Section 2. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 3. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this 15th day of December, 2015 by a vote of - 5 - for and - 0 - against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 5th day of January 2016, by the Town Council of the Town of Castle Rock by a vote of for and against.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare, Town Clerk

Paul Donahue, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Bill Detweiler, Director of Development Services