

**ORDINANCE NO. 15
SERIES OF 2019**

**AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING A COMBINED PRELIMINARY AND FINAL PLAT FOR PHASE 2
OF THE THOMPSON PARK SUBDIVISION**

WHEREAS, Thompson Park, LLC, a Colorado limited liability company (“Applicant”), has submitted an application for the contemporaneous approval of a combined Preliminary and Final Plat (“Phase 2 Plat”) in order to subdivide 24 lots and develop up to 27 residential dwelling units within Parcel 2, Thompson Park Subdivision, according to the Master Plat thereof recorded in the Garfield County real property records on May 19, 2015 at Reception No. 862909 (“Subject Property”); and

WHEREAS, after all required notices, the Planning and Zoning Commission of the Town of Carbondale reviewed this application at a noticed public hearing held on October 24, 2019 and recommended approval of this application with conditions; and

WHEREAS, after all required notices, the Board of Trustees conducted a noticed public hearing on this application on November 12, 2019 during which public hearing the Board of Trustees heard and considered the statements of Town staff, the Applicant’s representatives, and members of the public, and reviewed and considered all other relevant documents and information presented at such hearing, all as required by law; and

WHEREAS, the Board of Trustees finds and determines that the application meets the following approval criteria for preliminary subdivision plats set forth in Municipal Code Chapter 17.02, Sub-Sections 2.6.4.C.4.a.i through –x, inclusive, including:

- i. The proposed subdivision provides lots which are compliant with development and design standards;
- ii. The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision is designed in a way that minimizes the amount of land disturbance, maximizes the amount of open space in the development, preserves existing trees/vegetation and riparian areas, protects critical wildlife habitat, and otherwise accomplishes the purposes and intent of this Code;
- iii. The applicant has provided evidence that provision has been made to connect to the Town’s public water supply system;
- iv. The applicant has provided evidence that provision has been made for a public sewage disposal system;
- v. The applicant will be required to provide evidence to show that all areas of the proposed subdivision that may involve soil or topographical conditions presenting hazards and that the proposed use of these areas are compatible with such conditions;



- vi. The applicant has provided evidence to show that all areas of the proposed subdivision do not involve natural hazards including flood and wildfire;
- vii. The application provides a clear assumption of responsibility for maintaining all roads, open spaces, and other public and common facilities in the subdivision;
- viii. The proposed phasing for development of the subdivision is rational in terms of available infrastructure capacity and financing;
- ix. The subdivision is consistent with the subdivision conceptual plan, which was approved as part of the Thompson Park Annexation and Rezoning; and
- x. The subdivision is consistent with the Comprehensive Plan as it optimizes the use of land in Town and functions as infill development; and

WHEREAS, the Board of Trustees further finds that the Phase 2 Plat complies with the following standards for final plat approval in Municipal Code Chapter 17.02, Sub-Sections 2.6.5.C.2.b.i through iii, inclusive:

- i. The final Phase 2 Plat will conform to the approved preliminary plat and incorporate all recommended changes, modifications, and conditions attached to the approval of the preliminary plat;
- ii. The development will comply with all requirements of the Town's Unified Development Code ("UDC"); and
- iii. The development will comply with applicable technical standards and specifications adopted by the Town; and

WHEREAS, the Board of Trustees finds that certain conditions of approval should be imposed so that said subdivision will be developed consistent with the purposes of Title 17 of the Carbondale Municipal Code and the terms of the Annexation and Development Agreement Relating to the Thompson Park Property, Town of Carbondale, recorded in the Office of the Garfield County Clerk and Recorder on March 16, 2012, Reception No. 816055, as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Amendments to the same, which amendments were recorded at Reception Nos. 854368, 847651, 851116, 859604, 859605, 862912, 881125, 914138, and 921277, respectively (said agreement, as amended, is referred to herein as the "Annexation Agreement"). Exhibit C to the Annexation Agreement sets forth the Thompson Park Development Plan, which terms and conditions apply to the Development in addition to applicable provisions of the Carbondale Municipal Code. The Development is also subject to: (1) all terms and conditions of the Master Subdivision Improvements Agreement for the Thompson Park Subdivision dated May 19, 2015 and recorded in the real property records of Garfield County, Colorado at Reception No. 862913 ("the Master SIA"); (2) all

terms and conditions of the Ordinance No. 11, Series of 2018, dated July 10, 2018 and recorded in the Garfield County, Colorado real property records on November 14, 2018 at Reception No. 914139 (the “Major Site Plan Approval Ordinance”); and (3) the Development Improvements Agreement, Parcel 2, Thompson Park Subdivision dated November 8, 2018 and recorded in the real property records of Garfield County, Colorado on November 14 2018 at Reception No. 914139 (the “DIA”).

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO as follows:

1. **Approval of Phase 2 Plat.** The Board of Trustees hereby grants preliminary and final plat approval for the Phase 2 Plat, subject to compliance with all terms and conditions of this Ordinance, the Master Site Plan Approval Ordinance, the DIA, the Master SIA, and the Annexation Agreement. The Phase 2 Plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the Phase 2 Plat on or before November 18, 2019. The Phase 2 Plat shall include plat notes in substantially the form set forth below:
 - a. Except as otherwise expressly authorized by the Town of Carbondale, all lawn and garden, common space, open space and parkland irrigation uses within Thompson Park shall be from a separate private raw water irrigation system or systems that shall not be connected to the domestic in-house supply for any building unit or residence or to the non-potable irrigation system that serves the Historic House Parcel. Total irrigated areas within Thompson Park, including irrigation of the Historic House Parcel, shall not exceed 4.71 acres, and total residential lawn and garden irrigation shall not exceed 3.3 acres. Each lot depicted hereon shall have no more than 2500 square feet of irrigated lawn and garden area.
 - b. The residential lots shown hereon are all part of a common interest community governed by the Master Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Garfield Clerk and Recorder on Nov. 18, 2019, at Reception No. 928313. Such Declaration includes common expense budgeting, assessment, and collection procedures for the purposes of funding common expenses, including upkeep of private common areas as well as operation, maintenance, repair and replacement of certain infrastructure located within public rights-of-way, including open sections of irrigation ditches and a private irrigation system, as well as upkeep of all landscaped areas within public rights-of-way.
 - c. A Declaration of Covenant—Real Estate Transfer Assessment (“RETA”) in a form approved by the Town of Carbondale has been

recorded in the Office of the Garfield County Clerk & Recorder, Reception No. 922724, for purposes of establishing a transfer assessment of one percent (0.01) of the gross sales price of each sale, payable to the Town of Carbondale at the time of future resales of Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

- d. Future condominium units to be developed upon Lots 1 and 2 shall be subject to a Deed Restriction to be approved by the Town and recorded in the Office of the Garfield County Clerk & Recorder for purposes of establishing income qualifications, and occupancy and resale restrictions, to preserve the affordability of all future condominium units to be located upon these two Lots.
- e. There shall be non-exclusive public access and utility easements for the benefit of the Town of Carbondale throughout the public access and utility easement areas shown on this Plat, including the easement areas for Lewie's Circle and Jewel's Court, for purposes of allowing perpetual public access, ingress/egress, and the construction, operation, maintenance and repair of public utilities to be located within these easement areas, including but not limited to public water and sewer mains to be placed within these areas. These easement areas shall not be signed as private property or in any way that limits public access to or use of streets and sidewalks to be constructed within these areas. Despite the public having access to these Parcels, the homeowners association for the Thompson Park Subdivision shall have perpetual responsibility for maintenance, repair and replacement of all sidewalks, curbs, gutters, drainage and paved street areas within these easement areas, and the Town of Carbondale shall have no obligation to construct, maintain, repair or replace the same, or to plow snow within public access easement areas shown on this Plat.

2. **Dedication of Public Easements/Title Commitment.** The Phase 2 Plat shall include dedications to the Town of public utility and access easements. These public easements shall provide for perpetual public pedestrian, bicycle and vehicle access across and upon all private roadways and sidewalk areas shown on the Phase 2 Plat, and each roadway shall be signed at each connection with public roadways in a manner acceptable to the Public Works Director without any restriction as to public access and use. Prior to recordation of the Phase 2 Plat, the Applicant shall provide the Town Attorney with an updated title commitment showing that such dedications and conveyances shall be free and clear of all encumbrances, except those shown on the Phase 2 Plat, or subject only to such exceptions as may be approved by the Town Attorney. Any lender with a lien against the Subject Property shall sign consents and lien subordinations for the Phase 2 Plat prior to recordation.

3. **Master Declaration of Covenants.** A Master Declaration of Covenants, Conditions and Restrictions (“Master Declaration”) for the Thompson Park Subdivision in the form approved by Town staff and the Town Attorney shall be recorded contemporaneously with the Phase 2 Plat. The Applicant shall also incorporate a homeowners association as a Colorado non-profit corporation to hold title to all common areas in accordance with the Colorado Common Interest Ownership Act prior to recordation of the Phase 2 Plat. No properties outside of the Thompson Park Subdivision shall be included in the common interest community for the Thompson Park Subdivision without prior approval of the Board of Trustees. At the time of future subdivision of Parcels 3 and 4 and into residential lots, those lots shall be incorporated into the common interest community and commence paying assessments for common expenses in the same manner as the lots shown on the Phase 2 Plat. Affordable housing units shall have full voting rights but shall only pay 50% of the assessments levied against free market residential units within the community. These provisions of the Master Declaration shall not be amended in the future except with advance approval of the Town’s Board of Trustees.

4. **Affordable Housing Deed Restrictions.** All future residential units to be developed upon Lots 1 and 2 shall be subject to Deed Restrictions to be recorded in the Office of the Garfield County Clerk & Recorder for purposes of establishing income qualifications, and occupancy and resale restrictions, to preserve the affordability of residential units located upon these two Lots. The Applicant shall execute and record the Deed Restrictions in a form approved by Town staff and the Town Attorney contemporaneously with the condominiumization of residential units within Lots 1 and 2 (presently anticipated to be a duplex on Lot 1 and a tri-plex upon Lot 2, for a total of five residential units). At the time that the Deed Restrictions are recorded, the Applicant shall provide the Town Attorney with an updated title commitment showing that such Deed Restrictions shall be free and clear of all encumbrances, except those shown on the Phase 2 Plat, or subject only to such exceptions as may be approved by the Town Attorney. Any lender with a lien against the properties to be deed-restricted shall sign consents and lien subordinations for each Deed Restriction. No certificates of occupancy shall issue for any residential units upon any Lot shown upon the Phase 2 Plat until at least five residential units have been condominiumized according to all applicable Town land use requirements and review procedures, and thereafter deed-restricted for affordable housing in accordance with this paragraph.

5. **Easement Access.** The Board of Trustees hereby approves and authorizes the use of easements dedicated on the Phase 2 Plat for legal access to all 27 dwelling units to be located on the Subject Property.

6. **Additional Conditions of Approval.** The Board of Trustees imposes the following additional conditions of approval:

a. The Applicant shall submit to the Town proof of payment of the following fees required by the Carbondale and Rural Fire Protection District prior to recordation of the Phase 2 Plat:

$$27 \text{ units} \times \$730 = \$19,710$$

b. The Applicant shall submit proof of payment of the following fees to the Roaring Fork School District prior to recordation of the Phase 2 Plat:

22 3-bedroom units x \$1104 =	\$24,288
4 2-bedroom units x \$378 =	1,512
1 1-bedroom unit x \$131 =	<u>131</u>
TOTAL:	\$25,931

c. All representations of the Applicant in written submittals to the Town or in public hearings concerning this project shall also be binding as conditions of approval.

d. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code. The Applicant shall reimburse the Town for any outstanding reimbursable legal or engineering expenses incurred through the date of recordation.

e. All development shall continue to comply with all related development approvals and agreements, including the Annexation Agreement, the Master SIA, the Master Site Plan Approval Ordinance, and the DIA. To the extent that the Phase 2 Plat vary from the standards set forth in the Thompson Park Development Plan attached to the Annexation Agreement as Exhibit C, including in particular building design and street, sidewalk and trail layout standards, these differences are approved in the discretion of the Board of Trustees and shall not exempt future development upon Parcels 3 and 4 from all terms of the Annexation Agreement, as amended.

f. No more than 27 residential units (consisting of one townhome unit per lot upon lots 3-24, two condominium units upon Lot 1, and three condominium units upon Lot 2), shall be developed upon the property shown on the Phase 2 Plat.


g. No certificates of occupancy shall issue for any residence within Phase 2 until all required public and private improvements to serve each residence are completed, including deep utilities, shallow utilities, asphalt paving, and concrete curb and gutters, but excepting landscaping, are certified by Developer's engineer as being complete according to all applicable plans and specifications, and thereafter inspected and accepted by the Town, in accordance with the DIA.

7. **Recording.** A copy of this Ordinance shall be recorded in the Office of the Garfield County Clerk and Recorder at the expense of the Developer. The terms and

conditions of this Ordinance, which touch and concern the property shown on the Phase 2 Plat, are intended to run with title to said property and to be binding upon any successors or assigns.

INTRODUCED, READ AND PASSED this 12th day of November, 2019.

THE TOWN OF CARBONDALE

By: 
Dan Richardson, Mayor

ATTEST:


Cathy Derby, Town Clerk

