

**ORDINANCE NO. 12
SERIES OF 2017**

**AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING THE THOMPSON PARK SUBDIVISION PHASE 2A FINAL PLAT
AND MAJOR SITE PLAN REVIEW**

WHEREAS, Cerise Park, LLC, a Delaware limited liability company (“Applicant”), has submitted an application for the contemporaneous approval of a combined Preliminary and Final Plat (“Phase 2A Plat”) and Major Site Plan Review (“Site Plan”) in order to develop four new townhomes upon a portion of 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 September 8, 2016 and continued on October 6, 2016, 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 October 25, 2016, 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, after changing the scope of its application from 16 homes to only four homes, and to develop only a portion of Parcel 2 rather than the entirety of Parcel 2, the Board of Trustees conducted another public meeting on this application on June 27, 2017, during which public meeting 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 meeting, all as required by law;

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 to connect to the Town's 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 also finds and determines that the application also meets the following site plan approval criteria set forth in Municipal Code Chapter 17.02, Sub-Sections 2.5.3.C.1 through 4, inclusive, including:

- 1. The site plan is consistent with the Comprehensive Plan as it optimizes the use of land in Town and functions as infill development;
- 2. The site plan is consistent with the conceptual subdivision plat, which was approved as part of the Thompson Park annexation initial zoning;
- 3. The site plan complies with all applicable development and design standards set forth in this Code; and
- 4. Traffic generated by the proposed development will be adequately served by existing streets within Carbondale; 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

Chapter 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, and Seventh Amendments to the same, which amendments were recorded at Reception Nos. 854368, 847651, 851116, 859604, 859605, 862912 and 881125 (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. All of these conditions shall be met by making certain changes to the Phase 2A Plat and other documents submitted as part of the application and by virtue of the terms and conditions of the Phase 2A Subdivision Improvements Agreement ("Phase 2A SIA") to be entered into between the Town and Applicant and recorded contemporaneously with the Phase 2A Plat.

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

1. **Approval of Phase 2A Plat.** The Board of Trustees hereby grants final plat approval for the Phase 2A Plat, subject to compliance with all terms and conditions of this Ordinance, the Phase 2A SIA, and the Annexation Agreement. The Phase 2A Plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the Phase 2A Plat within 90 days after the date of adoption of this Ordinance. The Phase 2A Plat shall include the following plat notes:

- 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. 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 _____, 2017, at Reception No. _____. 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. _____, for purposes of establishing a transfer assessment of one-half percent (0.005) of the gross sales price at the time of initial sale, and one percent (0.01) of the gross sales price of each subsequent sale, payable to the Town of Carbondale at the time of future resales of Lots 4, 5 and 6.
- d. Lot 3 is subject to a Deed Restriction recorded in the Office of the Garfield County Clerk & Recorder on _____ at Reception No. _____ for purposes of establishing income qualifications, and occupancy and resale restrictions, to preserve the affordability of a residential unit to be located upon Lot 3.
- e. There shall be non-exclusive public access and utility easements for the benefit of the Town of Carbondale throughout the Private Alley Parcel for purposes of allowing perpetual public access, ingress/egress, and the construction, operation, maintenance and repair of public utilities to be located within these Parcels, including but not limited to public water and sewer mains to be placed within these Parcels. The Private Alley Parcel 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 the Private Alley Parcel, 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 this Parcel.

2. **Approval of Major Site Plan Review.** The Board of Trustees hereby grants Major Site Plan Review approval for Phase 2A upon Parcel 2 of the Thompson Park Subdivision, subject to all terms and conditions of this Ordinance, the Phase 2A SIA and the Annexation Agreement. The final site plan shall be delivered to the Town’s Community Development Director prior to recording of the Phase 2A Plat.

3. **Phase 2A Subdivision Improvements Agreement.** The Applicant and the Town shall enter into a Phase 2A SIA acceptable to the Town setting forth all terms and conditions approved by the Board of Trustees. Said Phase 2A SIA shall generally set forth all of the obligations of the Applicant in connection with the infrastructure for Phase 2A, including, without limitation, obligations relating to installation of utilities, construction of roadways, and construction of other improvements on the subject property as well as off-

site improvements. The Phase 2A SIA shall be recorded with the Garfield County Clerk and Recorder contemporaneously with the Phase 2A Plat. Prior to recordation of the Phase 2A Plat or the Phase 2A SIA, the Applicant shall also submit the security required by Section 15 of the Phase 2A SIA to secure required public improvements, in form and with terms approved by the Town Attorney. All conditions of the Phase 2A SIA are incorporated as conditions of this Ordinance. The Applicant shall be responsible for the construction and cost of all infrastructure improvements. The construction of the infrastructure shall be initiated and completed according to the timelines set forth in the Phase 2A SIA. If construction is not timely commenced and completed, the Town may revoke or amend this subdivision approval.

4. **Dedication of Public Easements.** The Phase 2A Plat shall include dedications to the Town of public utility, access and snow storage easements. Prior to dedication, 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 2A 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 2A Plat and the Phase 2A SIA.

5. **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 2A 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 2A 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 Parcel 2B1 and/or 2B2 (as shown on the Phase 2A Plat) and 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 2A 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.

6. **Real Estate Transfer Assessment (RETA).** Pursuant to the Annexation Agreement, Applicant agreed to record a Real Estate Transfer Assessment against all free market residential lots or units within the Thompson Park Subdivision. The RETA, in a form approved by the Town Attorney, shall be recorded contemporaneously with the Phase 2A Plat and shall not be amended or revoked in the future without prior approval of the Board of Trustees.

7. **Affordable Housing Deed Restriction.** Lot 3 shall be subject to a Deed Restriction 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 said Lot. The Applicant shall execute and record the Deed Restriction in a form approved by Town staff and the Town Attorney contemporaneously with the Phase 2A Plat.

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

a. All conditions of the Annexation and Development Agreement (“Annexation Agreement”) recorded as Reception Number 816055 and recorded on March 16, 2012 remain in effect and in full force. All development shall comply with the Phase 2A SIA and the Annexation Agreement. To the extent that the Phase 2A Plat and/or the Phase 2A Site Plan 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 2B1, 2B2, 3 and 4 from all terms of the Annexation Agreement, as amended.

b. All site and building design shall be in compliance with the Major Development Review plans approved by the Town on October 25, 2016.

c. The final landscape plan shall be subject to review and approval by the Town Arborist prior to recordation of the Phase 2A Plat.

d. The final shading analysis shall be subject to review and approval by the Building Official prior to the issuance of any residential building permits.

e. Final construction drawings of all required public and private improvements shall be subject to the review and approval of Town Staff and the Town Engineer prior to recordation of the Phase 2A Plat.

f. At all times and throughout all phases of construction, public vehicular access shall be maintained to the Historic House Parcel either from State Highway 133 (to the north) or North Bridge Drive (to the south), and at no time during construction shall both accesses be shut off at the same time unless otherwise permitted by the Town. On days that Ross Montessori School (“RMS”) is in session, Developer shall ensure that its contractors and subcontractors utilize their best efforts to minimize heavy truck traffic relating to construction in Thompson Park (including deliveries

of building materials, concrete, etc.) through the intersection of Lewie's Lane and Highway 133 and upon Lewie's Lane adjacent to RMS during the hours of 7:30 to 8:30 am and 2:45 to 3:30 pm, and Developer shall require its contractors and subcontractors to cooperate with RMS with respect to any reasonable request for reduced speed limits or monitors to supervise the safety of school children and to maintain the efficient flow of school-related traffic. However, nothing in this paragraph 8.f shall restrict the Town's Chief of Police or his designee from implementing additional traffic control restrictions that he deems necessary to protect public safety. The Applicant shall also implement reasonable and appropriate dust control measures. The bike path/sidewalk along Graceland Court adjacent to Lots 4, 5, and 6 shall remain open and fenced during construction to continue to allow safe access between the School and Triangle Park; provided that said bike path may be temporarily moved, with appropriate signage, to accommodate construction, upon condition that any such temporary relocation shall be subject to the prior approval of the Public Works Director, who may require plans and specifications and/or additional security to guarantee the restoration of the current bike path upon completion of construction. All staging areas on Parcel 2 shall be located as far away from the School as reasonably practicable. The dust control plan, fencing for the bike path, and staging areas shall be subject to review and approval by the Town's Public Works Director.

g. The sewer services for Lots 3, 4, 5, and 6 shall be provided as shown in the civil engineering plans submitted by Developer and finally approved by the Town Utilities Director and Town Engineer.

h. The Engineer's Estimate of cost of required improvements shall be increased to include revegetation and landscaping. A revised final estimate shall be signed and stamped by Applicant's engineer and attached to the Phase 2A SIA prior to recordation.

i. The Phase 2A Plat shall be revised to reflect a snow storage easement upon Lot 3 prior to recordation for the benefit of the Thompson Park Homeowners Association (the Town shall have no responsibility to plow private streets).

j. There shall be perpetual public pedestrian, bicycle and vehicle access across and upon all private roads, and all private roadways shown on the Phase 2A Plat 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.

k. No certificates of occupancy shall issue for residences upon Lots 3, 4, 5, or 6, nor shall any of these Lots be individually sold by the Applicant, until all public and private improvements to be completed within

the Private Alley Parcel, 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 approved by the Town.

l. No certificates of occupancy shall issue for residences located upon Lots 4, 5, or 6 until a certificate of occupancy issues for a required affordable housing unit upon Lot 3. Up to two additional affordable housing units may be constructed upon Parcel 2B1 concurrent with future development upon Parcel 2B2.

m. Except for the construction and installation of utilities on Parcel 2B1, no development shall occur on Parcel 2B1 or 2B2 until a site plan, preliminary and final subdivision plats, and a subdivision improvements agreement are approved for Parcels 2B1 and 2B2 in accordance with the Municipal Code and Annexation Agreement.

n. Phase 2A shall be considered the first of the five additional Phases of the Thompson Park development allowed by Section 10 of the First Amendment to Annexation Agreement. Therefore, unless otherwise agreed to by the Town and Developer, the Developer may develop up to, but no more than, four additional project Phases pursuant to said Section 10..

9. **Fees.** The following fees shall be paid by the Applicant prior to recordation of the Phase 2 Plat:

a. **Water Rights.** No fee in lieu of water rights shall be due at this time as the Developer has already dedicated water rights to the Town in excess of the water rights required to be dedicated for Phase 2A; after application of a 2.025 acre-foot portion of these previously dedicated water rights toward Phase 2A, the Developer shall retain a water rights dedication credit in the amount of 2.635 acre-feet for use in connection with future development upon Parcel 2.

b. **Fire Protection.** The following fee shall be paid by Applicant to the Carbondale and Rural Fire Protection District, with proof of payment provided to the Town, prior to recordation of the Phase 2A subdivision plat:

$$4 \text{ lots} \times \$730 = \$2,920$$

c. **Schools.** The following fees shall be paid by Applicant to the Roaring Fork School District, with proof of payment provided to the Town, prior to recordation of the Phase 2 Plat:

One two-bedroom x \$219	= \$219
Three three-bedroom x \$656	= <u>\$1,968</u>
Total Fees Due	= \$2,187

- d. The Applicant shall reimburse the Town for any outstanding reimbursable legal or engineering expenses incurred through the date of recordation.

10. **Other representations.** All other representations of the Applicant and its representatives made in written submittals to the Town or during Town public hearings shall be considered additional conditions of approval of the Phase 2A Plat.


11. **Cost reimbursement.** The Applicant shall be required to pay and reimburse the Town for professional and outside consultant fees pursuant to the Annexation Agreement, for recording fees, and for additional review and inspection expenses as set forth in the Phase 2A SIA.

12. **Effect of Ordinance No. 3, Series of 2017.** On February 14, 2017, the Board of Trustees voted to pass Ordinance No. 3, Series of 2017 (“Ordinance No. 3”), which Ordinance included approval of a Phase 2 Plat for 16 residential lots and two private roads. However, due to the Developer’s subsequent change in plans which has resulted in the approvals set forth herein, Ordinance No. 3 was never published or effective, and the documents that it contemplated were never recorded. The Board of Trustees intends that the terms of this Ordinance shall fully supersede and replace those set forth in Ordinance No. 3, and that Ordinance No. 3 shall be of no further force and effect.

13. **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 subject property, are intended to run with title to said property and to be binding upon any successors or assigns.

INTRODUCED, READ AND PASSED this 11th day of July, 2017.

THE TOWN OF CARBONDALE

By: 
Dan Richardson, Mayor

ATTEST:


Cathy Derby, Town Clerk



EXHIBIT A

Parcel 2 of the THOMPSON PARK SUBDIVISION according to the MASTER PLAT thereof recorded May 19, 2015, as Reception No. 862909, Garfield County, Colorado