

**ORDINANCE NO. 5  
SERIES OF 2016**

**AN ORDINANCE OF THE BOARD OF TRUSTEES  
OF THE TOWN OF CARBONDALE, COLORADO  
APPROVING THE FINAL SUBDIVISION PLAT FOR  
THE CARBONDALE MARKETPLACE SUBDIVISION, A SPECIAL USE  
PERMIT FOR A PROPOSED FUELING STATION UPON LOT 3, AND SITE  
PLAN REVIEW FOR DEVELOPMENT OF LOTS 2, 3, AND 4**

WHEREAS, Crystal River Marketplace LLC ("Applicant"), has submitted an application to the Town of Carbondale ("Town") for the approval of a final subdivision plat ("Final Plat") for a five-lot subdivision of the property described in Exhibit A ("subject property"), for a special use permit to authorize a fueling station upon proposed Lot 3 of the subdivision, for site plan approval to authorize the location and development of an approximately 60,000 s.f. grocery store upon Lot 2, a fueling station upon Lot 3, and a 9,600 s.f. (net leasable space) retail building upon Lot 4 pursuant to Ordinance No. 21, Series of 1997; and for a conditional use permit to authorize a drive-through pharmacy as part of the grocery store operation on Lot 2; and

WHEREAS, after required public notices, the Town's Planning and Zoning Commission reviewed these requests at a noticed public hearing on January 21, 2016 and February 4, 2016 and recommended approval with conditions; and

WHEREAS, after required public notices, the Town's Board of Trustees conducted a public hearing on these requests on February 24, 2016, which hearing continued on March 2, 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, the Board of Trustees finds and determines that the subdivision application should be granted, with conditions, for the following reasons:

- a. The development is capable of accommodating a structure devoted to the intended use of land;
- b. The property is free from natural hazards such as flooding, falling rock, landslides and snowslides;
- c. The development is served by a street system providing safe and convenient access;
- d. The development is served by accessible utility installations;

- e. The subdivision promotes the health, safety and welfare of the citizens of the Town;
- f. The lot design requirements set forth in Section 17.16.040 of the Carbondale Municipal Code will be met, provided that character of the proposed development of the land (which includes a single coordinated site plan for Lots 2, 3 and 4 that includes shared parking, access, lighting, and landscaping, with contemporaneous development of these features for all three lots) supports a variance pursuant to Section 17.32.010 of the Municipal Code such that lot design standards have been addressed cumulatively for Lots 2, 3 and 4, upon condition that lots 2, 3 and 4 may not be individually developed or redeveloped in the future unless all three Lots will individually or collectively continue to comply with applicable Town zoning and design requirements at the time of such redevelopment; and

WHEREAS, the Board of Trustees also finds and determines that the special use permit application for the fueling station should be granted, with conditions, for the following reasons:

- a. The proposed fueling station is in compliance with the zoning parameters in the zone district;
- b. The proposed special use shall comply with all applicable fire, building, occupancy and other municipal code provisions adopted by the Town of Carbondale for the protection of public health, safety and welfare;
- c. The proposed fueling station will not have an adverse impact on the traffic in a neighborhood;
- d. The proposed fueling station will not otherwise have an adverse effect upon the character of surrounding uses;
- e. There are no impacts of the proposed fueling station upon adjacent properties and the surrounding neighborhood or such impacts have been minimized in a satisfactory manner;
- f. The impacts of the proposed use, including but not limited to its design and operation, parking and loading, traffic, noise, access to air and light, impacts on privacy of adjacent uses, and others, will not create a nuisance and such impacts shall be borne by the owners and residents of the property on which the proposed use is located rather than by adjacent properties or the neighborhood;
- g. Access to the site from Main Street and Highway 133 will be adequate for the proposed use, considering the width of adjacent streets and alleys;

- h. The project is in scale with the existing neighborhood or will be considered to be in the scale with the neighborhood as it develops in the immediate future; and
- i. The project maximizes the use of the site's desirable, natural characteristics; and
- j. The project involves no residential units; and,

WHEREAS, the Board of Trustees also finds and determines that the Applicant's site plan for Lots 2, 3 and 4 should be approved pursuant to Ordinance No. 21, Series of 1997, with conditions, and that future development of Lots 1 and 5 should be conditioned upon future site plan approval, both as set forth in more detail below; and

WHEREAS, the Community Development Director has determined that Applicant's request for a conditional use permit to authorize operation of a two-lane drive-through pharmacy as part of the grocery store operation upon Lot 2, upon the conditions set forth in this Ordinance; and

WHEREAS, the Board of Trustees finds that certain conditions of approval should be imposed so that the project will be developed consistent with the purposes of Title 17 and Title 18 of the Carbondale Municipal Code. All of those conditions shall be met by making certain changes to the draft Final Plat and other documents submitted as part of the application and by virtue of the terms and conditions of a Subdivision Improvements Agreement to be entered into between the Town and Applicant and recorded contemporaneously with the revised Final Plat.

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

1. The Applicant's requests for preliminary and final subdivision plat approval for a five lot commercial subdivision, a special use permit to authorize a fueling station upon Lot 3, and site plan approval to authorize the location and development of a new grocery store upon Lot 2, the fueling station upon Lot 3, a 9,600 square foot (net leasable space) building upon Lot 4 are hereby approved, subject to the conditions set forth below.

2. All development shall be consistent with the final site plan and architectural renderings approved by the Town concurrent with this application, or pursuant to such plans approved by the Town in a subsequent site plan application.

3. The Final Plat shall be in a form acceptable to and approved by Town staff prior to recording. The Applicant shall execute and record the Final Plat within ninety (90) days of the date of adoption of this Ordinance. Prior to recordation, the Final Plat

shall be revised to include the following items in forms acceptable to the Town Attorney, which items shall also be conditions of approval pursuant to this Ordinance:

a. A plat note cross-referencing by Reception Number to recorded copies of this Ordinance, the SIA, and a Declaration of Covenants, Conditions and Restrictions for Lots 2, 3 and 4.

b. A plat note indicating that all future development upon all Lots shall be consistent with site plans approved by the Town of Carbondale.

c. A plat note indicating that no development may proceed upon Lot 1 or Lot 5 until future approval of a site plan or plans by the Town in accordance with the SIA, at which time the Town may require additional public improvements, right-of-way and/or water right dedications as required to serve the scope of development shown on such future site plan(s).

d. A plat note indicating that, if a building permit is not issued for a new grocery store upon Lot 2, and construction of that new store is not diligently commenced within 24 months of the date of recordation of the Final Plat, and said timeline is not extended by the Town in accordance with the SIA, no development may proceed upon Lot 2, 3 or 4 until future approval of a new site plan by the Town in accordance with the SIA, at which time the Town may require additional public improvements, right-of-way and/or water rights dedications as required to serve the scope of development shown on such future site plan(s). Additionally, in the event that the retail building upon Lot 4 is not concurrently developed with the grocery store upon Lot 2, the site plan approval for the retail building shall lapse four years from the date of recordation of this Final Plat unless extended by the Board of Trustees.

e. A plat note indicating that: (1) no more than 1.6 acres of land area may be irrigated upon Lots 2, 3 and 4; (2) all irrigation upon all Lots shall be served by non-potable irrigation system(s) supplied by the Rockford Ditch; and (3) no treated water from the Town's municipal system shall be used for outdoor irrigation.

f. A plat note indicating that operation of a fueling facility upon Lot 3 shall be subject to all provisions of the Carbondale Municipal Code regarding transferability, duration and revocation of a special use permit authorization by the Town.

g. A plat note or depiction on the plat of internal private access easements across to allow access between Lots 1 and 5 across Lots 2 and 4 and to public rights of way.

h. A plat note confirming that, at the time of site plan approval for future development upon Lot 5, the Developer or its successor shall be required to

dedicate additional public right-of-way necessary to establish a road connection from Lots 2 and 4 to the future Industry Way roundabout.

i. A plat note confirming that Lots 2, 3 and 4 may not be individually developed or redeveloped in the future unless all three Lots will individually or collectively comply with the Town of Carbondale's zoning and design standards at the time of such redevelopment.

4. Approval of the Final Plat shall also be subject to the following conditions:

a. All conditions of Ordinance No. 21, Series of 1997, recorded in the Office of the Garfield County Clerk & Recorder on March 13, 1998 at Reception No. 521822 shall remain in full force and effect except to the extent modified or conditioned by the terms of this Ordinance, the SIA, or the approved Final Plat.

b. The Applicant shall submit final engineering and construction drawings to the Town prior to recordation of the Final Plat.

c. Contemporaneous with recordation of the Final Plat, the Applicant and the Town shall enter into a Subdivision Improvements Agreement ("SIA") acceptable to the Town setting forth all terms and conditions approved by the Board of Trustees. Said SIA shall also generally set forth all of the obligations of the Applicant in connection with this development, including, without limitation, obligations relating to installation of utilities and construction of other improvements on the subject property and off site. All required public improvements shall be completed within two years of the date of recordation of the Final Plat.. The Applicant shall record the SIA with the Garfield County Clerk and Recorder contemporaneously with recording of the Final Plat. The Applicant shall also submit a letter of credit in a form acceptable to the Town Attorney securing the public improvements described in this Ordinance and the SIA for a period extending at least 30 days following the deadline for completion of the public improvements..

d.. The Applicant shall be responsible for the construction and cost of all infrastructure improvements. The construction of the infrastructure shall be completed within two years of recordation of the Final Plat, unless such timeline is extended by the Board of Trustees in its discretion for good cause shown. If no construction has started by this deadline, the Town may revoke or amend the subdivision approval.

e. The Applicant's engineer's estimate of the anticipated cost of public improvements shall be updated to reflect all required public improvements, subject to Town review and approval, prior to recordation of the Final Plat. A

final estimate stamped by a Colorado-registered professional engineer shall be attached to and incorporated in the SIA.

f. Engineered construction plans for utilities shall be subject to review and approval by the Town's Utilities and Public Works Directors prior to issuance of any building permit. The Applicant shall repair Town streets after utility lines are installed as per the Public Works Manual. Upon completion of construction, as-builts of all public and private utility locations shall be provided to the Town in accordance with the SIA.

g. A construction management plan must be included in the SIA to minimize the effects of construction upon the environment. The construction management plan shall include reclamation requirements, including re-grading and re-seeding, in the event that ongoing construction ceases prior to completion, and that the security held by the Town pursuant to the SIA may be applied to perform reclamation if the Applicant fails to do so.

h. A fee in lieu of highway improvements in the amount of \$200,000.00 shall be paid at the time of issuance of a building permit for the new grocery store on Lot 2. Said fee shall be retained and applied by the Town for improvements to the intersection of Highway 133 and Industry Way and/or to establish pedestrian access (e.g. a crosswalk) across the Highway 133 Corridor adjacent to the project. Any portions of such fee not applied by the Town toward such purposes within 12 years of payment shall be refunded to the then-owner of Lot 2 unless otherwise agreed by the then-owner of Lot 2 and the Town.

i. Prior to recordation of the Final Plat, the Applicant shall enter into, and provide the Town with a copy of, an agreement with the Rockford Ditch Association authorizing the Applicant to relocate a portion of the ditch in accordance with this approval and install diversion points to supply two non-potable water systems for this development. The Applicant shall thereafter timely perform all obligations pursuant to said agreement and the Town shall have no liability therefor.

j. Prior to recordation of the Final Plat, the Colorado Rocky Mountain School ("CRMS") shall cause an additional 17.0 shares of stock in the Rockford Ditch Association to be conveyed to the Town of Carbondale, free and clear of all liens and encumbrances, and the Developer shall cause an additional 3.0 shares of stock in the Rockford Ditch Association to be conveyed to the Town of Carbondale, free and clear of all liens and encumbrances. Contemporaneously with recordation of the Final Plat, the Developer shall also quit claim and convey to the Town any other water rights historically used upon or associated with all of the properties to be subdivided, including all historical consumptive use of water that historically occurred upon said properties.

k. Contemporaneous with recordation of the Final Plat, the Developer shall dedicate all streets, sidewalks, and other right-of-way areas (including the potential future roundabout location on Lot 5) as well as all public utility, bicycle/pedestrian trail, and drainage easements, all as depicted on the Final Plat, to the Town of Carbondale by General Warranty Deed free and clear of all encumbrances. Developer shall also provide title insurance coverage to the Town evidencing that such dedications and conveyances are free and clear of all encumbrances except any which may be expressly accepted by the Town after reviewing a title insurance commitment. The final title policy shall issue to the Town with coverage in the amount of at least \$500,000.00. Any title insurance premiums, including any additional premium(s) necessary to delete the "standard" title exceptions from the final title policy, shall be paid by the Developer. Any security interest in such property or easements in favor of Developer's lender shall be released or subordinated prior to or contemporaneous with dedication on the Final Plat. A current title insurance commitment shall be provided to the Town for review no later than ten (10) days prior to dedication to the Town and recordation of the Final Plat. The Developer shall also pay all property taxes assessed against the dedicated property for periods through date of conveyance to the Town, even if such charges are billed by Garfield County after the date of conveyance to the Town.

l. Prior to recordation of the Final Plat, a declaration of covenants, conditions and restrictions shall be submitted for review and approval by town staff and the Town Attorney. Said covenants shall include establishment of a cost-sharing mechanism among Lots 2, 3 and 4 for all common interests and areas, including: shared parking and access, outdoor lighting, maintenance and replacement of private landscaping, maintenance and replacement of a non-potable irrigation system for private landscaped areas, and provisions for permanent private access between Lots 1 and 5 for the benefit of all lots within the development.

7. All other representations of the Applicant and its representatives made before the Board of Trustees during public hearings shall be considered additional conditions of approval of the Final Plat.


8. The Applicant shall be required to pay and reimburse the Town for professional and staff fees as set forth in the SIA.

INTRODUCED, READ AND PASSED this 16<sup>th</sup> day of March, 2016.

THE TOWN OF CARBONDALE

By:   
Stacey Patch Bernot, Mayor

ATTEST:

  
Cathy Derby, Town Clerk





**EXHIBIT A**

ATTACH legal description of subject property.

EXHIBIT A  
CRM PROPERTY DESCRIPTION

SUBJECT PARCEL 1:

A PARCEL OF LAND BEING DESCRIBED AS THE CRYSTAL RIVER MARKET PLACE, LLC PARCEL ACCORDING TO THE LOT LINE ADJUSTMENT OF CRYSTAL RIVER MARKET PLACE LLC/CRMS PROPERTIES RECORDED SEPTEMBER 16, 2010 AS RECEPTION NO. 791487.

TOWN OF CARBONDALE  
COUNTY OF GARFIELD  
STATE OF COLORADO

TOGETHER WITH:

SUBJECT PARCEL 2:

THE PROPERTY DESCRIBED IN THAT DOCUMENT RECORDED AS RECEPTION NO. 735364 OF THE GARFIELD COUNTY RECORDS; SAID PARCEL BEING MORE FULLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND SITUATED ON LOTS 8 AND 9, SECTION 33, TOWNSHIP 7 SOUTH, RANGE 88 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF STATE HIGHWAY NO. 133, FEDERAL AID PROJECT NO. S 016 (1), WHENCE THE STREET CENTER MONUMENT LOCATED AT THE CENTERS OF EIGHTH STREET AND MAIN STREET IN THE TOWN OF CARBONDALE, COLORADO, BEARS SOUTH 60°30'10" EAST 1706.90 FEET (*SOUTH 60°30'30" EAST 1707.14 FEET DEED*);

THENCE SOUTH 89°19'30" WEST, 157.29 FEET (*157.75 FEET DEED*) TO THE WEST LINE OF SAID LOT 8;

THENCE NORTH 0°50' WEST, 721.49 FEET (*726.65 FEET DEED*) ALONG THE WEST LINE OF SAID LOT 8 TO THE WESTERLY LINE OF SAID STATE HIGHWAY NO. 133;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 5695.90 FEET A DISTANCE OF 739.38 FEET (*745.00 FEET DEED*), THE CHORD OF WHICH BEARS SOUTH 13°07'30" EAST (*SOUTH 13°01' EAST DEED*) 738.86 FEET (*743.84 FEET DEED*), TO THE POINT OF BEGINNING.

TOWN OF CARBONDALE  
COUNTY OF GARFIELD  
STATE OF COLORADO