

ORDINANCE NO. 31
SERIES OF 2004

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, APPROVING THE SUBDIVISION PLAT FOR FILING NO. 2, TOWN CENTER SUBDIVISION, GRANTING VESTED RIGHTS, AND GRANTING A VARIANCE

WHEREAS, CARSAM REALTY TEN, LTD., a Texas limited partnership, (Applicant) is the owner of certain real property described in Exhibit A attached hereto and incorporated herein by this reference, and has submitted a subdivision application for Town Center Subdivision, Filing No. 2 to create sixteen lots (Lots 1 through 16) and to request vested rights for Filing No. 2 of the Town Center Subdivision; and

WHEREAS, the Planning and Zoning Commission of the Town of Carbondale reviewed this application at a regularly scheduled meeting held on June 27, 2002, and recommended approval with conditions; and

WHEREAS, the Board of Trustees conducted a public hearing on the application on November 23 and December 14, 2005, 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 Applicant, in cooperation with and with assistance from Applicant's legal counsel, has negotiated with the Town the preparation of a Subdivision Improvements Agreement (SIA) that documents the methods and mechanisms by which the Applicant's proposed plan for development of Filing No. 2, Town Center Subdivision, can be implemented in accordance with the applicable provisions of Title 17 of the Carbondale Municipal Code pertaining to subdivisions; and

WHEREAS, the Board of Trustees of the Town of Carbondale has accepted the Applicant's proposed method and plan for the development and the Applicant's voluntary offer to improve the property through the installation of certain public improvements, which, due to the Applicant's proposed layout and plan, are deemed necessary to protect the health, safety and welfare of the public and to mitigate the impact of the development; and

WHEREAS, the Board finds and determines it is appropriate to approve said application on the terms and conditions set forth below; 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 to promote the health, safety and welfare of the citizens of the Town. All of those conditions shall be met by making certain changes to the Final Plat and documents submitted as part of the application and by virtue of the terms and conditions of the SIA;

TOWN OF CARBONDALE
511 COLORADO AVE.
CARBONDALE, CO 81623

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CARBONDALE, COLORADO, APPROVING THE SUBDIVISION PLAT
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WHEREAS, the Board finds and determines it is appropriate to approve said application on the terms and conditions set forth below; 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 to promote the health, safety and welfare of the citizens of the Town. All of those conditions shall be met by making certain changes to the ~~Final~~ Plat and documents submitted as part of the application and by virtue of the terms and conditions of the SIA;

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

Section 1. CONDITIONAL APPROVAL. The Final Plat for Filing No. 1, Town Center Subdivision, is hereby approved subject to the following conditions:

A. SIA. Within thirty (30) days of the date of this Ordinance, the Applicant shall deliver a properly and fully executed Subdivision Improvements Agreement (SIA) to the office of the Town Clerk, the terms and conditions of which shall be subject to approval of Town staff. In addition, the Applicant shall deliver the security required by the SIA. Such SIA, together with a copy of this Ordinance, shall be promptly recorded at the expense of the Applicant immediately prior to recording of the plat. The SIA, as executed and recorded, is incorporated into this Ordinance by this reference as if set forth verbatim as an exhibit and shall constitute additional conditions of approval.

B. Final Plat/Recording. Within ninety (90) days after the date of approval of this Ordinance, the Applicant shall record the Final Plat for Filing No. 2, Town Center Subdivision. Prior to recording, the Final Plat shall be delivered to Town staff for review and approval and signature by appropriate Town officers. The Final Plat shall comply with all other conditions set forth herein.

C. Applicant Representations. All of the representations of the Applicant and its representatives made before the Planning & Zoning Commission and the Board of Trustees during public hearings shall be considered conditions of approval of the Final Plat.

D. Phasing. By Ordinance No. 9, Series of 2003 Town Center Subdivision was approved for development in two phases, with Filing No. 1 consisting of Lots 17 through 22, on the easterly half of the property, and Filing No. 2 consisting of Lots 1 through 16 on the westerly half of the property. Filing No. 2, as approved hereby, is consistent with that approved Phasing Plan.

E. CRFPD Impact Fees. The Applicant shall enter into an agreement with the Carbondale & Rural Fire Protection District for payment of impact fees prior to the recording of the Final Plat. A copy of said agreement shall be delivered to the Town prior to recording this Ordinance and the SIA.

F. Reimbursement of Town Costs. The Applicant shall be required to pay and reimburse the Town for professional and staff fees pursuant to Sections 13.16.180 and 1.30.030 of the Carbondale Municipal Code and as set forth in the SIA.

Section 2. BASIS FOR APPROVAL. The basis and grounds supporting the Board of Trustee's approval and the conditions imposed upon such approval are documented by the recorded testimony and other evidence presented before the Planning Commission and the Board of Trustees. The Board of Trustees finds that, based on such evidence and complete conformance with the conditions imposed by this Ordinance, the requirements and criteria for approval of a Final Plat are satisfied.

Section 3. PROVISIONS NOT SEVERABLE. The Board of Trustees finds that judicial invalidation of any one or more provisions of this Ordinance, including the invalidation of any one or more of the conditions of approval, shall render the remainder of the Ordinance void and invalid, it being the intent of the Board of Trustees that the provisions of this Ordinance are not severable and are each independent and interdependent to effectively protect the health, safety and welfare of the public in the development of Filing No. 2, Town Center Subdivision.

BE IT FURTHER ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, that the Applicant is granted vested rights as follows:

Section 4. VESTED RIGHTS. The Applicant has requested that vested rights be granted pursuant to Chapter 17.40 of the Carbondale Municipal Code. For the purpose of granting vested rights, the Final Plat for Town Center Subdivision, Filing No. 2 consisting of Lots 1 through 16, submitted by the Applicant, shall be considered a site specific development plan according to Section 17.40.040 of the Carbondale Municipal Code. The site specific development plan is hereby approved. The site specific development plan includes specific lots, internal vehicular and pedestrian ways, parking layout, and other matters. Vested rights are hereby granted based on this site specific development plan for three (3) years from the date of this Ordinance. All construction shall be in conformance with the approved site specific development plan.

BE IT FURTHER ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, that the Applicant is granted a variance from the requirements of Carbondale Municipal Code, Section 17.16.040, Lot and Block Design, for Lots 10 through 16 to allow creation of lots with less than twenty-five (25) feet of frontage on a dedicated public street and to allow principle access to said lots by way of an easement. The Board of Trustees specifically finds that there exists a hardship due to the unusual physiography and character of the development of the subject land and that the requested variance is therefore appropriate.

INTRODUCED, READ, AND PASSED this 14th day of December, 2004.



ATTEST

Suzanne Cerise
Suzan E. Cerise, Town Clerk

THE TOWN OF CARBONDALE

By: *[Signature]*
_____, Mayor



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EXHIBIT A

FUTURE FILING NO. 2, ACCORDING TO THE FINAL PLAT OF TOWN
CENTER SUBDIVISION, FILING NO. 1, RECORDED AS RECEPTION NO.
623529 AT THE GARFIELD COUNTY RECORDS.

TOWN OF CARBONDALE
COUNTY OF GARFIELD
STATE OF COLORADO