

Before
PARADISE TOWNSHIP BOARD OF SUPERVISORS

**In re: Conditional Use Application of JSPA Realty, LLC
for a Master Development within the Resort Development Overlay District**

**PennFuture’s Proposed Findings of Fact, Conclusions of Law, Discussion and
Proposed Conditions**

I. INTRODUCTION

In creating the Resort Development Overlay District, the drafters of the Paradise Township Zoning Ordinance devised a unique zoning district to allow a particular type of land use. This use, Master Development, allows a resort to be combined with additional uses to form a single, integrated whole. Master Developments are not a “back door” allowing developers to construct otherwise impermissible uses simply by placing them alongside a resort. Rather, they are a means for resorts to provide related amenities in a unified, blended development.

Applicant’s proposal does not comport with the meaning or intent of the Master Development use classification. Applicant proposes two separate uses, a Resort and a Shopping Center, on separate parcels, divided by a residential neighborhood, with no direct vehicular link and only a long, steep pedestrian path along a public road connecting the two uses. This is not what the drafters of the Zoning Ordinance intended when they defined a Master Development, and the Board should not permit this attempted circumvention of the Zoning Ordinance’s requirements. Although resort uses are permitted as a separate use in the underlying zoning district, shopping centers are not. Therefore, while the Resort may be approved as a conditional use, the Board must deny approval for the Shopping Center.

Moreover, should the Board approve the Application, in whole or in part, certain conditions are necessary to implement the purposes of the Zoning Ordinance and to mitigate the

potential impacts of the proposed development, particularly impacts on the Exceptional Value waterways on the Property. Therefore, PennFuture urges the Board to adopt the conditions set forth herein.

II. PROPOSED FINDINGS OF FACT

A. Procedural Background

1. JSPA Realty, LLC (“Applicant”) seeks conditional use approval (“Application”) from the Board of Supervisors of Paradise Township (“Board”) to develop a Resort and Shopping Center on property located partly in Paradise Township and partly in Pocono Township and Mount Pocono Borough, UPI Nos. 11.7.1.31, 11.7.1.33-3, 11.113722, 11.113724, 12.12.1.1, 12.113723, and 10.10.1.4 (the “Property”).

2. Applicant submitted the completed Application on December 15, 2022. (N.T. S. McGlynn 1/30/2023 p. 15:17–19).

3. The Board held a hearing on the Application over eight (8) days in 2023: January 30, February 23, March 9, March 16, April 27, May 23, June 8, and June 22 (collectively, the “Public Hearing”).

4. The following persons and organizations were granted party status at the Public Hearing:

- a. Paul Houle;
- b. Annelese Montgomery Taylor;
- c. Jeff Ingrassia;
- d. Abigail Jones (PennFuture);
- e. Michael Bolton;
- f. Rob Felicetti;

- g. AD Slutter;
- h. Michael Jackson;
- i. Rev. Susan Treanor;
- j. Nancy Tkacs;
- k. Jan Anglemire;
- l. Dana Garrett;
- m. Michael Johnson;
- n. Meredith Montgomery;
- o. David Edinger;
- p. Robbin Henley, Jr.;
- q. Peter Salmon;
- r. Dr. Alex Jackson (Brodhead Watershed Association);
- s. Ewa Monsul; and
- t. Jacquelynn Lascala.

5. Applicant presented the testimony of the following witnesses at the Public Hearing:

- a. Project engineer Michael E. Gable, P.E. of LVL Engineering Group;
- b. Project architect James Garrison, AIA, of Garrison Architects;
- c. Project geologist Brian F. Oram, PG, of B.F. Environmental Consultants, Inc.;
- d. Land planner Erik W. Hetzel, AICP/PP;
- e. Real estate appraiser Alan P. Rosen, Esq. of Rosen Real Estate;
- f. Traffic engineer David H. Horner, P.E., of Horner & Canter Associates; and
- g. Land planner John R. Varaly, AICP.

6. Paradise Township presented the testimony of zoning officer Shawn McGlynn.
7. Applicant admitted the following exhibits at the Public Hearing:
 - A-1 *Curriculum vitae* of Michael E. Gable, P.E.
 - A-2 Plan of Overall Project Land Area, prepared by LVL Engineering Group, dated January 30, 2023
 - A-3 Conceptual Overall Master Plan, prepared by LVL Engineering Group, last revised January 10, 2023
 - A-4 Resort Master Plan, prepared by LVL Engineering Group, dated January 10, 2023
 - A-5 Aerial maps of the Property
 - A-6 *Curriculum vitae* of James Garrison, AIA
 - A-7 Floor plans and renderings of proposed Resort villas/cabins
 - A-8 Renderings of proposed lodge, pool, spa, and villa/cabin
 - A-9 Photographs/images of existing structures
 - A-10 *Curriculum vitae* of Brian Oram, PG
 - A-11 Sanitary Survey and Predrilling Plan, prepared by Brian Oram, dated February 2023
 - A-11a Updated Sanitary Survey
 - A-12 Well Inventory Mapping Plan, prepared by Boucher & James, Inc., last revised February 20, 2020.
 - A-13 Sewage Findings, prepared by Brian Oram, dated February 17, 2023
 - A-13a Updated Sewage Findings, prepared by Brian Oram, dated March 2, 2023
 - A-14 Drip System Testing Plan, prepared by Boucher & James, Inc., last revised January 24, 2023
 - A-15 Sewage System Overview
 - A-16 Drip irrigation system schematic drawings
 - A-17 Netafim Wastewater Reuse and Drip Dispersal Design Guide
 - A-18 Ecoflo/Rewatec Guide for Professionals

- A-19 Preliminary Environmental & Community Impact Statement
- A-20 Conditional Use and Master Development Plan, prepared by LVL Engineering Group , last revised November 23, 2022
- A-21 Geotechnical Engineering Report, prepared by Midlantic Engineering, Inc., dated June 3, 2022.
- A-22 Stormwater Management and Infiltration Testing Report, prepared by Midlantic Engineering, Inc., dated March 3, 2023.
- A-23 Pennsylvania Stormwater Best Management Practices Manual § BMP 6.4.2: Infiltration Basin
- A-24 Pennsylvania Stormwater Best Management Practices Manual § BMP 6.4.5: Rain Garden/Bioretentation
- A-25 Pennsylvania Stormwater Best Management Practices Manual § BMP 6.5.1: Vegetated Roof
- A-26 *Curriculum vitae* of Erik Hetzel, AICP/PP
- A-27 Fiscal and Economic Impact Report, prepared by EH Creative Services, LLC , dated March 15, 2023
- A-28 Projected police, fire and EMS demand from proposed development
- A-29 *Curriculum vitae* of Alan P. Rosen, Esq.
- A-30 *Curriculum vitae* of Dave Horner, P.E.
- A-31 Traffic Impact Assessment
- A-31a Appendix to Traffic Impact Assessment
- A-32 *Curriculum vitae* of John R. Varaly, AICP
- A-33 Report of John R. Varaly, dated April 27, 2023
- A-34 Conceptual roundabout installation design

8. The following exhibits were also admitted at the Public Hearing:

- Joint-1 List of persons with party status
- Joint-2 Traffic Impact Assessment Review Letter, prepared by Township Engineer, Hanover Engineering, dated May 15, 2023.
- Houle-1 Merriam-Webster Dictionary definitions

9. In addition, Shawn McGlynn introduced as exhibits the conditional use application (Exhibit ZO-8) and 25 additional exhibits relating to the public notice, posting and publication of the Public Hearing.

10. Applicant stipulated at the Public Hearing that the same was timely and duly advertised. (N.T. 1/30/2023 p. 16:5–12).

B. The Property

11. The Property consists of seven (7) parcels totaling approximately 240.81 acres (**Exhibit A-20**, sheet 3).

12. Of the total acreage of the Property, approximately 152 acres are located in Paradise Township, 81 acres are located in Pocono Township, and eight (8) acres are located in Mount Pocono Borough. (**Exhibit A-20**, sheet 3).

13. The portion of the Property located in Paradise Township is located in the R-2 Moderate-Density Residential District and the Resort Development Area Overlay District. (N.T. S. McGlynn 1/30/2023 p. 39:8–18).

14. The Property is bisected roughly from northeast to southwest by an existing residential neighborhood consisting of Rock Ridge Road and Wicasset Road (“Rock Ridge Neighborhood”). (**Exhibit A-20**, sheet 3).

15. The only connection between the two sides of the Property within Paradise Township is a strip of land approximately fifty (50) feet wide that passes through the Rock Ridge Neighborhood and encompasses a portion of Rock Ridge Road. (**Exhibit A-20**, sheet 2).

16. Indian Run flows through the southern portion of the Property from west to east to a point where it joins Swiftwater Creek. Swiftwater Creek then continues through the Property from west to east. (**Exhibit A-20**, sheet 2).

17. Both Indian Run and Swiftwater Creek are classified as Exceptional Value streams. (**Exhibit A-15**, p 1; 25 Pa. Code § 93.9c).

18. Road frontage for the Property is along Trinity Hill Road and SR 611 (**Exhibit A-20**, sheet 2).

19. The portion of the Property to the northwest of the Rock Ridge Neighborhood is primarily wooded and was formerly used as a hotel/resort, which is now abandoned. (N.T. M. Gable 2/23/2023; **Exhibit A-5**).

20. The portion of the Property to the southeast of the Rock Ridge Neighborhood was formerly used as Strickland Golf Course and remains primarily meadow. (N.T. M. Gable 2/23/2023 p. 183; **Exhibit A-5**).

21. There are approximately twenty-five (25) existing structures on the Property. (**Exhibit A-9**; N.T. N.T. M. Gable 2/23/2023 p. 185:5–6).

22. The existing structures on the Property are dilapidated and will be demolished. (**Exhibit A-9**; N.T. M. Gable 2/23/2023 p. 185:13–17).

C. The Proposed Development

23. Applicant proposes two distinct uses on the Property: an “upscale destination Resort” (“Resort”) and a commercial area consisting of a variety of retail and other commercial uses (“Shopping center”) (collectively, the “Project”). (*See* **Exhibit A-20**, **Exhibit A-15**).

24. The Resort is situated on five parcels totaling 165.8 acres to the northwest of the Rock Ridge Neighborhood. (**Exhibit A-33**, p. 2).

25. The Resort consists of 96 villas/cabins in various configurations and a 94-unit hotel (totaling 245 rental units), a lodge building with three (3) restaurants and banquet facilities, a pool area with three (3) pools, a spa area, a tennis court, a toddler play area, internal drives and

walking trails. (N.T. M. Gable, 2/23/2023 p. 164:4–21; **Exhibit A-20**; **Exhibit A-15**, p 1; **Exhibit A-7**).

26. The banquet hall and restaurants at the Resort will be open to use by persons not staying at the Resort. (N.T. J. Garrison 1/30/2023 p. 94:24–95:7, 15–19).

27. Guests will not be permitted to drive personal vehicles around the Resort; they will walk or take an on-site shuttle or “buggies” provided by the Resort. (N.T. J. Garrison 1/30/2023 p. 75:7–12).

28. The Shopping Center is situated on two parcels totaling 78.8 acres, located on the former Strickland Golf Course property to the southeast of the Rock Ridge Neighborhood. (**Exhibit A-33**, p. 2).

29. The Shopping Center includes an 85,000 sq. ft. retail building, a 57,000 sq. ft. mixed-use commercial building, a 10,000 sq. ft. franchise restaurant building, and associated parking. (**Exhibit A-20**, sheet 2).

30. Although the uses for the Shopping Center are “fairly conceptual at this point,” Applicant anticipates professional, medical, retail, restaurant and recreational uses. (*See* **Exhibit A-15**; N.T. M. Gable, 2/23/2023 p. 202:16–20).

31. The Project will be developed in phases dependent on market demand. (**Exhibit A-15**, p. 2).

32. The initial construction of the Project (Phase 1) will include the Resort restaurants and spa and up to half of the villa rental units. (**Exhibit A-15**, p. 2).

33. Later phases will include the balance of the villa units and the Shopping Center (Phase 2) and the Resort hotel (Phase 3). (**Exhibit A-15**, p. 2).

34. There is no on-site vehicular connection between the Resort and the Shopping Center. (**Exhibit A-20**, p. 2; N.T. D. Horner 4/27/2023 p. 569:16–19).

35. The only means of traversing between the Resort and the Shopping Center without leaving the Property is a pedestrian walkway through the Rock Ridge Neighborhood. (**Exhibit A-20**, sheet 2; N.T. D. Horner 4/27/2023 p. 569:16–19).

36. The pedestrian walkway incorporates parts of Rock Ridge Road and Wiscasset Road, both public roads. (**Exhibit A-20**, sheet 2).

37. The pedestrian walkway traverses two areas of steep slopes, with a portion on the Resort property crossing slopes of greater than 25%, and a change in elevation of almost 150' over the 500' closest to the Shopping Center.

D. Water Supply

38. Applicant estimates the Project would have an average water daily demand of 39,757 gpd and a potential peak demand of 60,500 gpd. (**Exhibit A-11a**, p. 1, 12).

39. To satisfy the peak demand, the Project likely will be served by two on-site wells. (**Exhibit A-12**; N.T. M. Gable 2/23/2023 p. 165:2–5).

40. Applicant anticipates that the two wells would not operate simultaneously but would alternate in operation. (**Exhibit A-11a**, p. 14).

41. Further testing is required to confirm this conclusion. (**Exhibit A-11a**, p. 13).

42. Applicant estimates that the post-development stormwater recharge rate on the Property will be 160,472 gpd. (**Exhibit A-11a**, p. 14).

43. Because the proposed maximum daily withdrawal (60,500 gpd) is equivalent to only 37% of the post-construction groundwater recharge rate, Applicant does not anticipate that

the Project will result in any groundwater mining or adverse impacts to the groundwater system. (**Exhibit A-11a**, p. 14).

44. An Aquifer Testing and Assessment Plan for the Project must be completed and approved by the Pennsylvania Department of Environmental Protection (PADEP) to confirm Applicant's preliminary conclusions. (See **Exhibit A-11a**, p. 1–2, 10, 22).

45. The proposed water supply system is classified as public water system and will require approval from PADEP under 25 Pa. Code § 109.501. (**Exhibit A-11a**, p. 1–2).

46. During the PADEP approval process, Applicant must demonstrate that the proposed system can provide peak daily demands without having an adverse impact on other users in the vicinity of the Project or the environment. (**Exhibit A-11a**, p. 12).

47. It will also be necessary to determine if the proposed well field is directly connected to a local groundwater discharge zone or surface waters associated with these areas. (**Exhibit A-11a**, p. 2).

48. The proposed wells will also require a water well permit from Paradise Township. (**Exhibit A-11a**, p. 2).

49. Applicant contemplated waterline extensions from both the Brodhead Creek Regional Authority and PA American Water Company to supply water for the Project, however, neither is feasible because neither system currently has capacity to serve the Project without considerable improvements. (**Exhibit A-15**, p. 2).

E. Sewage Treatment

1. Sewage Treatment System Overview

50. The proposed sewage treatment system for the Project is a land-based system, a forested drip irrigation system with four (4) distinct irrigation zones. (**Exhibit A-11a**, p. 12; **Exhibit A-13a**, p. 1)

51. Of the options available for the Project, forested drip irrigation is the preferred method of wastewater treatment. (N.T. B. Oram 3/9/2023 p. 363:9–15).

52. As the first stage of pretreatment, the proposed system will convey sewage from individual buildings to septic tanks for solids removal and anaerobic digestion. (**Exhibit A-15**, p. 4).

53. Each septic tank will then discharge through a filter to an EcoFlo Coco Filter system. (**Exhibit A-15**, p. 4).

54. The effluent will then be conveyed to remote equalization tanks and discharged at one of four proposed drip irrigation fields. (**Exhibit A-15**, p. 4).

55. The proposed system will require, at a minimum, secondary treatment of effluent. (**Exhibit A-15**, p.1, N.T. B. Oram 3/9/2023 p. 369:21–24).

56. There will be no surface water runoff during wastewater application with the proposed system. (N.T. B. Oram 3/9/2023 p. 365:10–13).

57. The proposed system will not discharge to the streams on site. (N.T. B. Oram 3/9/2023 p. 370:2–6).

58. The drip irrigation fields will be maintained with their current vegetation. No trees will be removed except those that are dead or dying. (N.T. B. Oram 3/9/2023 pp. 368:14–20, 381:21–25).

59. Resort guests will not be permitted to access the drip irrigation fields. (N.T. B. Oram 3/16/2023 p. 441:14–18).

2. *Wastewater Treatment System Capacity*

60. All four proposed drip irrigation fields, identified as Areas I through IV, are located within the Resort. (*See Exhibit A-14*).

61. Applicant identified an additional area near the Shopping Center that “appears to have” a wastewater management capacity of approximately 25,000 gpd but has not conducted any hydroconductivity testing of this area. (*See Exhibit A-14; Exhibit A-15*; N.T. B. Oram 3/9/2023 p. 395:22–396:1).

62. The proposed system will be sized for a maximum peak flow rate of 60,500 gpd, which includes the Resort (48,350 gpd) and the Shopping Center (12,150 gpd). (*Exhibit A-15*, p. 1; N.T. B. Oram 3/9/2023 p. 347:11–14).

63. The proposed system will include equalization tanks at each drip irrigation field, with a total holding capacity of approximately 40,000 gallons. (*Exhibit A-15*, p. 4).

64. The equalization tanks will balance actual flows over a weekly period, resulting in an anticipated average weekly peak flow to the drip irrigation fields of 39,757 gpd. (*Exhibit A-15*, p. 4).

65. Applicant’s project geologist Brian Oram performed hydroconductivity tests to determine the treatment capacity of the proposed drip irrigation fields. (*See Exhibit A-13a, A-14*).

66. PADEP was not present during Applicant’s testing and has not performed confirmation testing. (N.T. B. Oram 3/9/2023 p. 360–61).

67. Based on Oram's hydroconductivity testing and an anticipated average weekly peak flow of 39,757 gpd, Applicant calculated the treatment capacity of the proposed drip irrigation fields using both 10% and 15% of the field measured Ksp (a measurement of the permeability of the soil). (**Exhibit A-13a**, N.T. B. Oram 3/9/2023 p. 366:4–10).

68. If the 10% Ksp approach is used, the proposed drip fields do not have adequate capacity to treat the anticipated flow in nine months out of the year, with less than half the needed capacity in four of those months. (**Exhibit A-13a**, p. 10).

69. If the 15% Ksp approach is used, the proposed drip fields likely provide sufficient capacity to treat the anticipated flows. (**Exhibit A-13a**, p. 10).

70. The 15% Ksp approach requires a higher quality effluent, i.e. pretreatment beyond secondary treatment, including disinfection and some level of denitrification. (**Exhibit A-13a**, p. 10).

71. PADEP approval is required for a drip irrigation system designed using a loading of 15% Ksp. (**Exhibit A-13a**, p. 10).

72. If PADEP does not approve a loading of 15% Ksp, further testing will be required to determine whether additional areas on the Property are suitable for drip irrigation. (**Exhibit A-13a**, p. 10).

73. Applicant's testing of proposed drip field locations Area I and Area II demonstrated that certain portions of those areas have bedrock or open voids within 20 inches of the surface. (**Exhibit A-13a**, pp. 3, 5).

74. Generally, drip irrigation requires a depth to open voids and bedrock of 26 inches or more with the drip irrigation tubing installed at 6 inches below grade. (**Exhibit A-13a**, p. 3).

75. Deviation from this standard requires approval by PADEP, which is dependent on confirmation testing, the level of pretreatment, and the proposed drip tubing installation approach. (**Exhibit A-13a**, p. 3).

76. Applicant determined that connection to an existing public sewage system is infeasible due to multiple considerations, including legal concerns, limited available capacity, and providing services outside of existing service areas. (**Exhibit A-15**, p. 4).

77. A drip irrigation system is the only practical alternative for wastewater treatment for the Project. (**Exhibit A-15**, p. 4).

78. Applicant does not have an alternative wastewater treatment plan if the proposed system is not approved by PADEP. (N.T. B. Oram 3/9/2023 p. 393:6–13).

3. *Wastewater Treatment Operation, Management and Monitoring*

79. If approved, the proposed system will be operated by a PA Licensed Operator and be maintained by a contractor certified by the manufacturer of the system. (**Exhibit A-15**, p. 5).

80. Each septic tank will be emptied once per year or as otherwise needed. (**Exhibit A-15**, p. 5).

81. Monitoring wells will be installed downslope of each drip irrigation field and will be sampled based upon a frequency set by PADEP through the permitting process. (**Exhibit A-15**, p. 5; N.T. M. Gable 2/23/2023 p. 170:6–12).

82. The monitoring program will be overseen by a licensed professional and reports will be provided to PADEP and the Township. (**Exhibit A-15**, p. 5).

F. Stormwater

83. Applicant proposes a network of stormwater collection and control systems, including stormwater management facilities at various locations and depths throughout the Property. (**Exhibit A-15**, p. 2; **Exhibit A-22** p. 2).

84. Applicant's proposed stormwater management system includes 15 stormwater basins, identified as Basins A through O. (**Exhibit A-20**, sheet 9).

85. Basin K collects outflow from several other stormwater basins and discharges to Indian Run, an Exceptional Value stream (**Exhibit A-20**, sheet 9).

86. Basin K is located primarily in Pocono Township. (**Exhibit A-20**, sheet 9).

87. The discharge from Basin K to Indian Run will require a National Pollutant Discharge Elimination System (NPDES) from PADEP. (N.T. M. Gable 2/23/2023 p. 218:14–18).

88. Applicant's geotechnical engineer, Midlantic Engineering, dug 12 test pits to conduct infiltration testing in proposed Basins A, K, M, N, and O. (*See* **Exhibit A-22**, Enclosure (4), Figure 4-1).

89. Applicant did not conduct infiltration testing in the remaining basins.

90. Based on the depth to the limiting zone and soil permeability, proposed infiltration facilities at the proposed depths at Basins M and K are "generally considered feasible." (**Exhibit A-22**, pp. 5, 8).

91. Infiltration facilities at the remaining tested basin locations "may be considered feasible" but may require revised depths due to depth to the limiting zone and/or soil permeability. (**Exhibit A-22**, pp. 5, 8).

92. In addition, based on soil permeability, Applicant's geotechnical engineer proposes specific design parameters for Basins A, M and K. (See **Exhibit A-22**, p. 9).

93. In particular, due to materials having an excessive infiltration rate (>10 in./hr.) in one of the three test pits in Basin K, Applicant's geotechnical engineer recommends that this material be overexcavated a minimum of 24 inches and replaced with an engineered soils buffer layer to develop a subgrade infiltration rate to within a range of 2 to 6 inches per hour. (See **Exhibit A-22**, p. 10, enclosure (6), figure 6-1).

94. The infiltration facilities must be designed in strict accordance with the most recent edition of the Pennsylvania Stormwater Best Management Practices. (See **Exhibit A-22**, p. 9).

G. Access and Traffic

95. The proposed access to the Resort is located near the existing intersection of Trinity Hill Road and SR 611. (**Exhibit A-31**, p. 1; **Exhibit A-20**, sheet 5).

96. The proposed access to the Shopping Center is via a right-turn-in/right-turn-out-only driveway onto SR 611 south near the Woodland Road intersection. (**Exhibit A-31**, p. 1).

97. To facilitate access for northbound drivers who otherwise will be unable to turn into the Shopping Center, Applicant proposes the installation of a roundabout along SR 611 at its existing intersection with Trinity Hill Road and Meadowside Road. (**Exhibit A-34**; N.T. D. Horner 4/27/2023 p. 556:1-4).

98. The proposed roundabout would have five entrances: northbound SR 611, southbound SR 611, Meadowside Road, Trinity Hill Road and the access drive to the Resort. (**Exhibit A-34**; N.T. D. Horner 4/27/2023 p. 558:13-23).

99. The only plan of the proposed roundabout Applicant produced at the Public Hearing is “conceptual.” (See **Exhibit A-34**; N.T. Horner 4/27/2023 p. 558:1–5).

100. Applicant has not demonstrated the constructability of the proposed roundabout. (N.T. D. Horner 5/23/2023 p. 617:5–10).

101. The proposed roundabout requires approval from the Pennsylvania Department of Transportation (PennDOT), which applicant has not yet obtained. (See **Exhibit Joint-1**; N.T. D. Horner 5/23/2023 p. 616:17–617:1).

102. If the proposed roundabout is not constructed, access to the Resort must be from Trinity Hill Road or across property not owned by Applicant. (**Exhibit Joint-2**; **Exhibit A-20**, sheet 4; N.T. D. Horner 4/27/2023 p. 555:18–25).

103. Without the proposed roundabout, persons traveling northbound on SR 611 will be unable to access the Shopping Center without making an illegal U-turn or turning onto a side road. (See **Exhibit A-20**, sheet 2).

104. The closest left-hand turns off northbound SR 611 after the proposed Shopping Center are Rock Ridge Road and Wiscasset Road. (**Exhibit A-20**, sheet 2).

105. Although Applicant can install signs instructing northbound drivers not to make illegal U-turns or to use Rock Ridge Road and Wiscasset Road to access the Shopping Center, Applicant cannot effectively prevent navigation systems such as Google Maps and Waze from directing drivers toward the Rock Ridge Neighborhood or otherwise control how they will access the Shopping Center. (N.T. D. Horner 4/27/2023 p. 585–89; N.T. D. Horner 5/23/2023 p. 662:8–13).

III. PROPOSED CONCLUSIONS OF LAW

A. Applicant's Burden of Proof

106. To be entitled to conditional use approval, Applicant must prove that the proposed use meets the threshold definition of what is authorized as a conditional use and that the proposed use complies with all specific, objective, reasonably definite criteria of the zoning ordinance that relate specifically to the conditional use. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014); *In re Thompson*, 896 A.2d 659, 671 (Pa. Cmwlth. 2006).

B. Conditional use approval for the Shopping Center must be denied because Applicant has not met its burden of proving that it is combined or integrated with the Resort and the use is not otherwise permitted in the applicable zoning districts.

107. Applicant seeks conditional use approval to develop a resort and shopping center as Master Development in the Resort Development Area Overlay District.

108. The Resort Development Area Overlay District exists in part to “provide an opportunity for integrated development of a variety of uses according to a Master Development Plan.” PARADISE TWP. ZONING ORDINANCE [ZO] § 160-71(B)(1) (emphasis added).

109. A Master Development is “a combination of land uses, consisting of a resort and additional uses,” which may include a shopping center. ZO §§ 1-6, 160-12(A)(43.B)(h).

110. The Zoning Ordinance does not define “a combination of land uses” or “integrated development.”

111. The fundamental objective of zoning ordinance interpretation “is to determine the intent of the legislative body in enacting the ordinance.” *Kissane v. Town Council of McCandless*, 133 A.3d 127 (Pa. Cmwlth. 2016); *Bailey v. Zoning Bd. of Adjustment*, 801 A.2d 492, 502 (Pa. 2002); 1 Pa. C.S. § 1921.

112. “When the words in an ordinance are not explicit, the legislative body's intent may be ascertained by considering, among other things, the ordinance's goal [and] the consequences of a particular interpretation of the ordinance.” *Bailey* 801 A.2d at 495; 1 Pa. C.S. § 1921(c).

113. Only if the ordinance remains unclear after applying the rules of statutory construction should a tribunal resort to consulting a “law dictionary and, finally, a standard dictionary, in that order.” *Cogan House Twp. v. Lenhart*, 197 A.3d 1264, 1268 (Pa. Cmwlth. 2018) (emphasis added).

114. Although ambiguity in a zoning ordinance must be construed “in favor of the property owner,” this principle “gives way where the ordinance, read rationally and as a whole, clearly signals that a more restrictive meaning was intended.” *Hamilton Hills Grp., LLC v. Hamilton Twp. Zoning Hearing Bd.*, 4 A.3d 788, 793 (Pa. Cmwlth. 2010).

115. Only where there is genuine doubt as to the legislative intent should a tribunal accept the reading that gives the ordinance its least restrictive effect. *Beers v. Zoning Hearing Bd.*, 933 A.2d 1067, 1069 n.3 (Pa. Cmwlth. 2007) (quoting Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, §4.2.4 (2001)).

116. The structure of the Zoning Ordinance, the stated purpose of the Resort Development Overlay District, and the use of the terms “integrated” and “combined” indicate that the legislative body intended the individual components of a Master Development to be merged or blended into a unified whole.

117. The proposed Resort and Shopping Center are not blended or unified into a single whole, they merely exist side by side as any two uses developed on adjacent parcels might be.

118. Applicant has not met its burden of proving that the Project meets the threshold definition of a Master Development.

119. The proposed Shopping Center is not permitted in Resort Development Area Overlay District or the underlying R-2 District if not incorporated into a Master Development. *See* ZO § 160-12(54.A)(b), Zoning Schedule 1.

120. Therefore, because the Project does not meet the threshold definition of a Master Development, the proposed Shopping Center cannot be developed on the Property.

121. Resort uses are permitted in the R-2 District with conditional use approval. *See* Zoning Schedule 1.

122. The proposed Resort use satisfies the specific requirements for conditional use approval found in ZO § 160-10.

123. The proposed Resort may be developed on the Property without the Shopping Center component.

C. Conditional use approval for the proposed Shopping Center must be denied because it proposes development of primary conservation areas.

124. Among the specific, objective criteria that a Master Development must satisfy is a requirement to designate Greenway Land. ZO §§ 1-16, 160-12(43.B)(c), (d).

125. Greenway Land must be set aside for conservation and is not part of a Master Development's developable area. ZO §§ 1-16 (definitions of "Greenway Land" and "Development Area"); 160-21-C(C)(5), (D)(1)(a).

126. Greenway Land must encompass 100% of the primary conservation areas on the property. ZO §§ 1-16, 160-21-C(C)(5).

127. Primary conservation areas include areas in excess of 2,000 square feet with 25% slope or greater as measured over a minimum vertical distance of six feet, or three contiguous

contour segments at two-foot contour interval (“Steep Slopes”). ZO §§ 1-16, 160-12(43.B)(c), (d), 160-21-C(C)(5).

128. Steep Slope areas exist on the parcel where the proposed Shopping Center is located.

129. The Steep Slope areas on the Shopping Center parcel are primary conservation areas that cannot be developed.

130. Because significant portions of the improvements in the proposed Shopping Center are located in these steep slope areas, the proposed Shopping Center does not comply with the specific criteria for a Master Development and cannot be approved.

IV. DISCUSSION

A. Applicant’s Burden of Proof

To be entitled to conditional use approval, an applicant must prove two things: 1) that the proposed use meets the “threshold definition of what is authorized as a conditional use,” and 2) that the proposed use complies with all specific, objective, reasonably definite criteria of the zoning ordinance that relate specifically to the conditional use. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014); *In re Thompson*, 896 A.2d 659, 671 (Pa. Cmwlth. 2006). If the applicant does not satisfy its burden with respect to both of these requirements, conditional use approval cannot be granted and the inquiry ends. *See Williams*, 101 A.3d at 1212. Only if the applicant satisfies its burden, and the Board is persuaded that the application complies with the zoning ordinance, do objectors have any burden to prove a detrimental impact. *See Kretschmann Farm, LLC v. Twp. of New Sewickley*, 131 A.3d 1044, 1053 (Pa. Cmwlth. 2016).

B. Conditional use approval for the proposed Shopping Center must be denied because Applicant has not met its burden of proving that the Shopping Center is combined or integrated with the Resort and it is not otherwise permitted in the applicable zoning districts.

Applicant has not proven that the Project satisfies the first, most basic requirement for conditional use approval – that the Project meets the threshold definition of a Master Development. A Master Development requires that a resort and additional uses be merged or blended into an integrated whole such that the parts are not easily distinguished from one another. This must meaningfully differ from developing those uses side-by-side as if each were separately permitted. The Project does not satisfy this requirement. The Resort and Shopping Center are developed on separate parcels, divided by a residential neighborhood, with no direct vehicular connection and only a long, steep pedestrian path providing pedestrian access. The Shopping Center will not cater to the needs of resort guests and, from the perspective of shoppers, will be effectively indistinguishable from any other shopping center.

This is not what the drafters of the Zoning Ordinance intended when they defined a Master Development as a “combination” of a resort and additional uses. The Shopping Center cannot be approved because it is not part of a Master Development not otherwise permitted in the applicable zoning districts.

1. Legislative intent controls zoning ordinance interpretation.

A tribunal faced with the task of interpreting a zoning ordinance must follow the rules of statutory construction. *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d 886, 899 (Pa. 2019). The “fundamental objective” of these rules “is to determine the intent of the legislative body in enacting the ordinance.” *Kissane v. Town Council of McCandless*, 133 A.3d 127 (Pa. Cmwlt. 2016); *Bailey v. Zoning Bd. of Adjustment*, 801 A.2d 492, 502 (Pa. 2002); 1

Pa. C.S. § 1921. This is the “polestar” guiding the interpretation. *Tobin v. Radnor Twp. Bd. of Comm'rs*, 597 A.2d 1258, 1267 (Pa. Cmwlth. 1991).

“When the words in an ordinance are not explicit, the legislative body's intent may be ascertained by considering, among other things, the ordinance's goal, the consequences of a particular interpretation of the ordinance, and interpretations of the ordinance by an administrative agency.” *Bailey*, 801 A.2d at 495; 1 Pa. C.S. § 1921(c). Undefined terms must be construed “in a sensible manner” and given “their plain, ordinary meaning.” 1 Pa. C.S. § 1903; *Adams Outdoor Advert., L.P. v. Zoning Hearing Bd.*, 909 A.2d 469, 483 (Pa. Cmwlth. 2006). Only if the ordinance remains unclear after applying the rules of statutory construction should a tribunal resort to consulting a “law dictionary and, finally, a standard dictionary, in that order.” *Cogan House Twp. v. Lenhart*, 197 A.3d 1264, 1268 (Pa. Cmwlth. 2018) (emphasis added).

While ambiguity in a zoning ordinance must be construed “in favor of the property owner,” 53 P.S. 10603.1, this principle applies only in cases of true ambiguity and “gives way where the ordinance, read rationally and as a whole, clearly signals that a more restrictive meaning was intended.” *Hamilton Hills Grp., LLC v. Hamilton Twp. Zoning Hearing Bd.*, 4 A.3d 788, 793 (Pa. Cmwlth. 2010). Tribunals should be cautioned that:

Attorneys for landowners often seek to conjure up “ambiguities” and then urge that the ambiguities should be resolved in favor of their clients. However, the central focus of any attempt to interpret a written law is to ascertain the intent of the legislative body that enacted the provision. As [section 603.1 of the MPC] indicates, if the intent of the governing body can be ascertained from the language of the provision, with the aid, if necessary, of the usual interpretational tools, then that intent governs. It is only where there is genuine doubt as to the legislative intent that a board or a court should accept the reading that gives the ordinance its least restrictive effect.

Beers v. Zoning Hearing Bd., 933 A.2d 1067, 1069 n.3 (Pa. Cmwlth. 2007) (quoting Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, §4.2.4 (2001)); *Three Rivers Youth v. Zoning Bd.*

of Adjustment, 437 A.2d 1064, 1065 (Pa. Cmwlth. 1981) (Ryan’s treatise on zoning is “definitive”).

2. ***The Zoning Ordinance requires that commercial uses in a Master Development be merged or blended into a unified whole with a Resort, not merely adjacent to it.***

The Project is located in Paradise Township’s R-2 Moderate-Density Residential District and Resort Development Area Overlay District. The Resort Development Area Overlay District exists in part to “provide an opportunity for **integrated development** of a variety of uses according to a Master Development Plan.” ZO § 160-71(B)(1) (emphasis added). Accordingly a Master Development, which is exclusive to the Resort Development Area Overlay District, is defined as “a **combination of land uses**, consisting of a resort and additional uses” ZO §§ 1-6, 160-12(A)(43.B)(h). Among the additional uses permitted are “planned community office parks and shopping centers,” which may include various commercial uses such as retail sales and eating and drinking establishments. ZO §§ 1-16, 160-12A(43.B)(h)(4), 160-12(54.A)(d). Unlike resort uses, shopping centers and other commercial uses are not permitted in the R-2 District or the Resort Development Area Overlay unless they are incorporated into a Master Development. *See* ZO § 160-12(54.A)(b), Zoning Schedule 1.

The structure of the Zoning Ordinance, the stated purpose of the Resort Development Area Overlay District, and the use of the terms “integrated” and “combined” make clear that the legislative body intended Master Developments to be merged or blended into a unified whole such that they are difficult to distinguish from one another, not merely adjacent to each other. If the drafters of the ordinance intended for shopping centers and other commercial uses to be developed in the R-2 District or the Resort Development Area Overlay without being combined with resort uses into Master Developments, it would have included shopping center uses among

the list of permitted uses in those districts. This is not what the drafters of the ordinance did. Instead, they devised a zoning scheme whereby shopping centers are permitted *only* as part of a “combination of uses” in a Master Development in an overlay district that has a stated purpose of facilitating “integrated” development. By structuring the Zoning Ordinance in this way, the legislative body made clear that combining uses into a Master Development must meaningfully differ from developing these uses separately, as if each were permitted independently of the other.

The use of the terms “integrated” and “combined” illuminates what the drafters of the ordinance intended the difference to be. The Zoning Ordinance does not define these terms. However, Black’s Law Dictionary defines “integration” as “the process of making whole or combining into one.” BLACK’S LAW DICTIONARY, integration (7th ed. 1999).¹ Merriam-Webster defines “integrate” as “to form, coordinate, or blend into a functioning or unified whole.”² It defines “combine” as “to bring into such close relationship as to obscure individual characteristics; merge.”³ All of these definitions are consistent with the common understanding of these words and indicate that a Master Development requires blending or merging of uses into a single, coherent whole such that is difficult to distinguish or separate them. In other words, a Master Development requires something more than two uses merely existing side by side with some ability to access one from the other, as would be the case if each use were permitted on its own.

To interpret the Zoning Ordinance otherwise would lead to consequences unintended by its drafters. For example, allowing development of an independent commercial use that is not

¹ Black’s Law Dictionary does not contain a relevant definition of “combine” or “combination.”

² *Integrate*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/integrate>.

³ *Combine*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/combine>.

meaningfully combined or integrated with a resort begs the question of whether that commercial use would be permitted to continue operating if the resort fails. To say “yes” would result in a shopping center in the R-2 District without *any* connection to a resort, an outcome the drafters of the ordinance clearly did not intend given their decision not to permit such uses separately in the R-2 District or the Resort Development Area Overlay. To say “no” would potentially place the Township in the untenable, and legally questionable, position of attempting to terminate a (potentially thriving) shopping center use due to the failure of a wholly separate resort business. Only by requiring a resort and any additional use with which it is combined in a Master Development to be so integrated that the success of the additional uses depends on the success of the resort is this unintended consequence avoided.

3. *The Resort and Shopping Center are not merged or blended into a unified whole.*

The Resort and Shopping center are not combined or integrated in the sense required by the Zoning Ordinance. What Applicant proposes is not an integrated combination of uses but two distinct uses—a resort and a shopping center—located in proximity to one another, operating independently, as if each was developed as a separately permitted use.

To begin, the Resort and the Shopping Center are located on separate parcels divided by the Rock Ridge Neighborhood. (**Exhibit A-20**, sheet 2). Within Paradise Township, the only physical connection between the Resort parcel and the Shopping Center parcel is a 50-foot wide strip of land that includes a public right-of-way. A steep, narrow walking path along this strip is the only means by which Resort guests can directly access the Shopping Center (and vice versa). (**Exhibit A-20**, sheet 3). The distance from the closest Resort building to the Shopping Center along this path is over a quarter mile, and the journey requires navigating steep slopes and walking along Wiscasset Road and Rock Ridge Road, both public roadways. (See **Exhibit A-20**,

sheet 2). Resort guests staying in the most distant villas would be required to walk an additional half mile to reach the Shopping Center. (See **Exhibit A-20**, sheet 2).

The two uses are even less integrated from the perspective of a driver. There is no on-site vehicular connection between the Resort and the Shopping Center. Each use has its own access drive on or near Route 611, and to drive from the Resort to the Shopping Center, a driver must travel along a state highway for more than a quarter mile. (See **Exhibit A-20**, sheet 2). Drivers wishing to travel from the Shopping Center to the Resort have an even less direct route. Due to the right-turn-in/right-turn-out entrance/exit from the Shopping Center, these drivers will have to travel south along Route 611 for some distance away from the Resort before being able to cross over to northbound 611 to return. (**Exhibit A-31**, p. 1).

Furthermore, not only does the proposed Shopping Center lack meaningful physical integration with the Resort, but it is also virtually indistinguishable from any other shopping center. It will be open to the public and will not cater to the needs of the Resort guests any more than an unrelated, separately developed shopping center would. In fact, it is difficult to imagine what use Resort guests would have for the professional and medical offices Applicant envisions as part of the Shopping Center. Even the anticipated restaurant uses are duplicative of amenities provided by the Resort, which is to include three restaurants and a banquet facility. (N.T. M. Gable, 2/23/2023 p. 164:4–21; **Exhibit A-20**; **Exhibit A-15**, p 1; **Exhibit A-7**). Applicant presented no evidence that the Shopping Center would include any outward indication that it is associated with the Resort in any way. Shoppers can come and go without ever passing through the Resort's gates or even knowing the Resort is there. Similarly, Resort guests can access and use the Resort without ever using or knowing the Shopping Center exists. Moreover, Applicant presented no evidence that the Resort and Shopping Center are financially dependent on one

another or even financially connected. In fact, the Shopping Center is not even to be constructed until after a significant portion of the Resort is built.

In short, Applicant's Resort and Shopping Center are not combined or integrated in the sense that is required by the Zoning Ordinance.⁴ They are not blended or unified into a single whole, they merely exist side by side, much like any two uses developed on adjacent parcels might be. To approve such a proposal as a Master Development would go beyond a liberal construction of ambiguous language in the Zoning Ordinance into an impermissible departure from the plainly discernible intent of the enacting body.⁵

4. Applicant's proposed lodge serves as an example of an integrate use.

Ironically, Applicant's Resort provides an example of how commercial uses may be combined with a Resort into an integrated Master Development as the Zoning Ordinance intends. Applicant's proposed lodge building incorporates commercial establishments—restaurants and banquet facilities. This building is located on the same parcel as the Resort, is mere steps away from the proposed Resort hotel, and faces a number of Resort villas across a green. (*See Exhibit A-20*, sheet 5). It shares an access drive and internal road system with the villas, hotel, and other Resort amenities, and restaurant patrons must pass through the entrance of the Resort to reach it. *Id.* Resort guests staying in the hotel or villas and wishing to patronize the restaurants or banquet facility need not walk along a public road or drive along a state highway to reach them. (*See Exhibit A-20*, sheet 5). The building also shares an architectural style with the Resort's villas

⁴ PennFuture acknowledges that Applicant proposes a shared well and wastewater treatment system between the Resort and Shopping Center. This will have no meaningful impact on the way that guests or shoppers use or experience the Resort or Shopping Center and is insufficient to constitute the necessary connection between uses. Moreover, it is unclear whether a shared wastewater treatment system is necessary, as Applicant identified a potential drip field location on the Shopping Center parcel that likely provides more than twice the needed treatment capacity for the Shopping Center.

⁵ Paradise Township Zoning Officer Shawn McGlynn concurs with this conclusion. He testified that his "primary concern as the zoning officer reviewing this application . . . was that we really are dealing with two separate development proposals here. They're not connected, they're not integrated, they're really two separate developments." (N.T. S. McGlynn 1/30/2023 p. 42:9-14)

and pool/spa area. (See **Exhibit A-7, Exhibit A-8**). These commercial establishments are clearly designed primarily as part of the Resort experience and are truly integrated into the Resort. Any number of retail and other commercial uses could be integrated into the Resort in the same way, even collected into an on-site “shopping center” for Resort guests.

This is what combining commercial uses with a Resort looks like, not the proposed Shopping Center, an independent commercial area whose only connections to the Resort are virtually indistinguishable from the link between the Resort and any other, unrelated Shopping Center. Instead of truly integrating the proposed commercial uses into the Resort, Applicant’s proposal attempts to take advantage of the Resort Overlay District to develop a separate Shopping Center where it would otherwise not be permitted. This is not what the legislative body intended when it created the Resort Development Area Overlay District. The Board should deny Applicant’s conditional use application with respect to the Shopping Center.

C. The proposed Shopping Center cannot be approved because it proposes development of primary conservation areas.

Master Developments such as the Project must incorporate Greenway Land. ZO §§ 1-16, 160-12(43.B). Greenway Land must encompass 100% of the site’s primary conservation areas, which include, among other things, Steep Slopes. ZO §§ 1-16, 160-12(43.B)(c), (d), 160-21-C(C)(5). Greenway Land must be set aside for conservation and is not part of a Master Development’s developable area. ZO §§ 1-16 (definitions of “Greenway Land” and “Development Area”); 160-21-C(C)(5).

The parcel on which the proposed Shopping Center is located contains Steep Slopes. (**Exhibit A-20**, sheet 8). As primary conservation areas, these slopes must be set aside as Greenway Land and cannot be developed. However, within the Shopping Center, the proposed professional/retail/recreation building and portions of the parking lot are located in Steep Slope

areas. For this reason, the proposed Shopping Center as designed fails to comply with the requirements for a Master Development and cannot be approved. In the alternative, the Board should condition approval upon presentation of a plan for the Shopping Center that complies with the Greenway Land requirements.

D. Conditions

1. Conditions are appropriate to mitigate adverse impacts from a conditional use.

The Municipalities Planning Code (MPC) allows a municipality to attach conditions to conditional use approval, in addition to those requirements expressed in the ordinance, as the municipality may deem necessary to implement the purposes of the zoning ordinance and mitigate the potential adverse impacts from the proposal. *Whitehall Fiduciary, LLC v. Zoning Hearing Bd.*, 49 A.3d 945, 948 (Pa. Cmwlth. 2012) (citing 53 P.S. § 10912.1); *Feldman v. Bd. of Supervisors of E. Caln Twp.*, 48 A.3d 543, 548 (Pa. Cmwlth. 2012). Conditions are appropriate so long as they are reasonable, related to a standard in the zoning ordinance or MPC, and are supported by evidence in the record. *Whitehall Fiduciary*, 49 A.3d at 948.

Among the purposes of the Paradise Township Zoning Ordinance are to “protect important natural features and natural areas for future generations to enjoy” and to conserve and minimize impacts to the Township’s “variety of irreplaceable and environmentally sensitive” resources, including streams. ZO § 160-2(A), (D), (N), (R). In fact, the Township, as trustee of the Commonwealth’s public natural resources, has a constitutional obligation to participate affirmatively in the conservation and maintenance of these resources for the benefit of all the people, including generations to come. Pa. Const. art. I, § 27; *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 950, 952 (Pa. 2013) (Environmental Rights Amendment a “constitutional charge which must be respected by all levels of government in the Commonwealth”).

In light of the above, in the event that the Board approves the Project, in whole or in part, PennFuture proposes the following conditions.

2. Proposed Conditions

a. Approval by Mount Pocono Borough and Pocono Township

A municipality’s powers stop at its boundary. *King v. Perkasio Borough Zoning Hearing Bd.*, 552 A.2d 354, 356 (Pa. Cmwlth. 1989). Therefore, “a municipality cannot . . . regulate land that is outside of its borders” and “has no authority to approve construction of improvements—large or small—outside its geographic boundaries.” *Ellzey v. Upper Gwynedd Twp. Bd. of Comm’rs*, 241 A.3d 694 (Pa. Cmwlth. 2020). *Bd. of Comm’rs of Cheltenham Twp. v. Hansen-Lloyd, L.P.*, 166 A.3d 496, 506 (Pa. Cmwlth. 2017).

The Property spans three municipalities—Paradise Township, Pocono Township and Mount Pocono Borough. Applicant proposes to locate a majority of the proposed development in Paradise Township, with lands in Pocono Township and Mount Pocono Borough left largely undisturbed, including riparian buffer areas along Indian Run and Swiftwater Creek. (See **Exhibit A-20**, sheet 2). However, a portion of proposed Sewage Disposal Field III is located in Mount Pocono Borough, and several stormwater basins, including a significant portion of Stormwater Basin K are located in Pocono Township. (**Exhibit A-20**, sheets 9, 11).

Of particular concern are Stormwater Basin K and the riparian buffer surrounding Indian Run and Swiftwater Creek. Basin K collects outflow from several other stormwater basins located in Paradise Township and is therefore an integral part of the stormwater management within the Township. (**Exhibit A-20**, sheet 9). Moreover, Stormwater Basin K discharges to Indian Run, which joins Swiftwater Creek on the Property. (**Exhibit A-20**, sheet 2). Both streams are designated as Exceptional Value streams, and a significant portion of the downstream run of

Swiftwater Creek is located in Paradise Township. (See 25 Pa. Code § 93.9c, Paradise Township Zoning Map). If Pocono Township does not approve Stormwater Basin K, or if it approves development in the riparian buffer areas of Indian Run and Swiftwater Creek, detrimental stormwater and water quality impacts to the land and residents of Paradise Township may result.

Paradise Township has no power to directly require Applicant to construct suitable stormwater basins and wastewater treatment facilities outside its borders, or to require Applicant to leave lands in another municipality undisturbed. Yet Applicant's failure to do so may cause detrimental impact on Township resources. Therefore, should the Board approve the Application, PennFuture recommends the following condition:

Applicant shall obtain all necessary approvals from Mount Pocono Borough and Pocono Township for the plans as presented at the Public Hearing, including installation of Stormwater Basin K and maintenance of a 150' riparian buffer along Indian Run and Swiftwater Creek. If Mount Pocono Borough and/or Pocono Township do not approve the plans as presented at the Public Hearing, Applicant shall demonstrate to the satisfaction of the Township that no detrimental impact shall result to the Township' residents or its natural resources.

b. Final Design of Water, Stormwater Management and Wastewater Treatment Facilities

Among the purposes of the Resort Development Area Overlay District is "to provide opportunities for stormwater and wastewater management facilities which protect existing stream quality and promote recharge of clean groundwater." ZO § 160-71(B)(7). Applicant proposes drinking water, wastewater, and stormwater facilities for the Project, but acknowledges that further testing and design are required to confirm that the proposed facilities are adequate to serve the Property without detrimental impact. Without confirmation that the proposed water, wastewater and stormwater facilities are adequate, the Township cannot ensure the protection of existing stream quality and recharge of clean groundwater. Therefore, PennFuture proposes the following conditions:

i. *Water*

Applicant acknowledges that an Aquifer Testing and Assessment Plan must be completed to confirm its geotechnical engineer's preliminary conclusions that the proposed wells on the Property will not result in groundwater mining or adverse impacts to the groundwater system. (See **Exhibit A-11a**, pp. 1–2, 10, 14, 22). Applicant also concedes that further study is required to determine whether the proposed well fields are directly connected to a local groundwater discharge zone or surface waters. (See **Exhibit A-11a**, p. 2).

Therefore, to ensure adequate protection of existing stream quality of Exceptional Value streams, Indian Run and Swiftwater Creek, and the recharge of clean groundwater, PennFuture recommends the following condition:

Applicant shall conduct an aquifer test according to the more stringent of the process set forth in Section 9.4 of Applicant's Sanitary Survey and Predrilling Plan (Exhibit A-11a) or a process required by PADEP and demonstrate, to the satisfaction of the Township Engineer, that the proposed well(s) will supply the peak daily demand for the Property without adverse impact to the environment or to other users in the vicinity of the Project.

ii. *Wastewater*

Applicant concedes that additional testing will be required to confirm the adequacy of the proposed wastewater treatment system. To date, Applicant has performed only preliminary hydroconductivity testing to determine suitability of on-site soils for the proposed drip irrigation wastewater treatment system (N.T. M. Gable 2/23/23 p. 187:11–12). In addition, Applicant's proposed drip irrigation fields are sized based on 15% of the field measured Ksp, rather than the standard 10%. (**Exhibit A-13a**, N.T. B. Oram 3/9/2023 p. 366:4–10). PADEP must approve this approach, and if it is found to be unacceptable, the proposed drip fields likely do not have adequate capacity to treat the anticipated wastewater flow. (**Exhibit A-13a**, p. 10). If this is the

case, additional areas of the Property that are suitable for drip irrigation must be identified. (**Exhibit A-13a**, p. 10).

Moreover, Applicant's testing of drip irrigation Area I and Area II demonstrated that certain portions of those areas have bedrock or open voids within 20 inches of the surface. (**Exhibit A-13a**, pp. 3, 5). Generally, drip irrigation requires a depth to open voids and bedrock of 26 inches or more. (**Exhibit A-13a**, p. 3). Deviation from this standard requires PADEP approval and is dependent on confirmation testing, the level of pretreatment, and the proposed drip tubing installation approach. (**Exhibit A-13a**, p. 3).

Finally, Applicant's engineer conceded that his experience with the type of wastewater treatment system proposed is limited to his own residential property. (N.T. M. Gable 3/9/23 p. 287:23–288:3).

For these reasons, to ensure adequate protection of existing stream quality of Indian Run and Swiftwater Creek, both critical Exceptional Value streams, and the recharge of *clean* groundwater, PennFuture proposes the following condition:

Applicant shall demonstrate, to the satisfaction of the Township Engineer, that:

1. Adequate testing has been performed to confirm Applicant's preliminary testing and conclusions with respect to on-lot capacity for wastewater treatment using the proposed drip irrigation system;
2. PADEP has approved Applicant's sizing of drip irrigation fields using the 15% Ksp approach, or, if the 15% approach is not approved, that there is adequate on-lot wastewater treatment capacity using the 10% approach or other approved approach;
3. PADEP has approved the use of drip irrigation in Area I and II as proposed or that adequate on-lot capacity otherwise exists for the proposed wastewater treatment system;
4. That the proposed wastewater treatment system has been reviewed and approved by an engineer with sufficient experience designing large-scale drip irrigation systems. If, in the opinion of the Board, the

Township Engineer lacks the necessary expertise, a qualified third-party engineer shall review and approve the proposed system;

5. Monitoring wells will be installed downslope of each drip irrigation field and will be sampled quarterly while the system is in operation;
6. Applicant will take steps sufficient to prevent Resort guests and other unauthorized persons from entering the drip irrigation fields, including, but not limited to, necessary signage and monitoring.

iii. *Stormwater*

Applicant's proposed stormwater facilities also require additional testing. Applicant proposes 15 stormwater basins, identified as Basins A through O. (**Exhibit A-20**, sheet 9). However, Applicant's infiltration testing was limited to only five of these basins— Basins A, K, M, N, and O. (*See Exhibit A-22*, Enclosure (4), Figure 4-1). Based on the depth to the limiting zone and soil permeability, proposed infiltration facilities at the proposed depths at Basins M and K are "generally considered feasible," but the infiltration facilities at the remaining tested basin locations may not be. (**Exhibit A-22**, pp. 5, 8). 91. In particular, due to the soil having an excessive infiltration rate (>10 in./hr.) in one of the three test pits in Basin K, this basin may need to be overexcavated to a minimum of 24 inches and replaced with an engineered soils buffer layer to develop a suitable infiltration rate. (*See Exhibit A-22*, p. 10, enclosure (6), figure 6-1).

For these reasons, to ensure adequate protection of existing stream quality of Indian Run and Swiftwater Creek, and the recharge of clean groundwater, PennFuture proposes the following conditions:

Applicant shall demonstrate, to the satisfaction of the Township Engineer, that:

1. Testing has been performed to establish adequate infiltration capacity for all proposed stormwater basins;
2. The location and design of Basin K are adequate to prevent detrimental impact to the Exceptional Value receiving waterways— Indian Run and Swiftwater Creek.

c. Ownership and Maintenance of Greenway Land

Multiple ownership options are available for Greenway Lands. *See* 160-21-C(D)(1)(b). The options relevant to the Project include dedication of fee simple title to the Township, transfer to a private conservation organization or Monroe County, or remaining in private ownership for the enjoyment of Resort guests, or the public, or both. 160-21-C(F)(2). The cost and responsibility of maintaining the Greenway Land is borne by the property owner and must be in accordance with a Plan for Maintenance of Greenway Lands and Operation of Common Facilities. ZO § 160-21-C(F)(3)(a), (c). Regardless of who holds title to the Greenway Land, that land must “be subject to permanent conservation easements prohibiting future development and defining the range of permitted activities.” ZO §§ 160-12(43.B)(c) (master developments treated as Option 1 conservation subdivisions for purposes of Greenway Land), 160-21-C(E)(1), 160-21-C(F).

Although defining ownership and maintenance of Greenway Lands is normally left to the time of preliminary land development submission, *see* ZO § 160-21-C(F)(3)(b), in the case of Master Developments, compliance with greenway land design, ownership and maintenance requirements must be established at the time of conditional use approval. *See* ZO § 160-12(43.B)(d); *Greth Dev. Grp., Inc. v. Zoning Hearing Bd.*, 918 A.2d 181, 186 (Pa. Cmwlth. 2007) (requiring sewage capacity to be addressed by special exception applicant where expressly required by zoning ordinance, even though sewage not typically addressed during zoning approval); *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1204 (Pa. Cmwlth. 2014) (conditional use applicant must satisfy specific requirements applicable to the type of use whenever allowed, as a conditional use or otherwise).

Applicant introduced no evidence relating to the ownership of the Greenway Lands and no evidence establishing that the Greenway Lands will be placed in a conservation easement. Applicant also has not provided a Plan for Maintenance of Greenway Lands and Operation of Common Facilities. Applicant cannot be granted conditional use approval for the Project absent proof of compliance with these requirements. Therefore, PennFuture proposes the following condition to approval:

Applicant shall identify the title owner of the Greenway Land and the intended holder of the conservation easement required by Zoning Ordinance §§ 160-12(43.B)(d) and 160-21-C(E)(1). Applicant shall also submit a plan identifying the easement area(s) and a Plan for Maintenance of Greenway Lands and Operation of Common Facilities as required by Zoning Ordinance §§ 160-12(43.B)(d) and 160-21-C(F)(3)(c), subject to the approval of the Township.

c. Proposed Roundabout

Among the purposes of the Zoning Ordinance are minimizing traffic safety hazards and lessening congestion on public roads and highways. ZO § 160-2(A), (K). The Zoning Ordinance also requires developers of proposals such as the Project to address the adequacy of access to and from a proposed development site. ZO § 160-20.

Applicant proposes a right-turn-in/right-turn-out only driveway as the sole access to the Shopping Center from SR 611. (**Exhibit A-31**, p. 1). The nature of this access means that any northbound driver who wishes to access the Shopping Center must pass the Shopping Center and somehow reverse direction on SR 611. Under the existing conditions, the only options for such drivers are to make an illegal U-turn or to turn onto a side road such as Wicasset Drive and Rock Ridge Road. In addition, under existing conditions, access to the resort must be from Trinity Hill Road or across property not owned by Applicant. (**Exhibit Joint-2; Exhibit A-20**, sheet 4; N.T. D. Horner 4/27/2023).

To solve both of these issues, Applicant proposes the installation of a roundabout on SR 611 at the existing intersection with Trinity Hill Road and Meadowside Road. (**Exhibit A-34**). However, Applicant presented only a conceptual drawing of the proposed roundabout and has not demonstrated that it can be constructed or that it will receive the necessary approval from PennDOT. In the absence of a roundabout, the Project raises significant concerns about the adequacy of access to both the Resort and the Shopping Center and the safety of persons using SR 611, Wiscasset Road and Rock Ridge Road. Therefore, PennFuture proposes the following condition to approval:

Applicant shall demonstrate, to the satisfaction of the Board and the Township Engineer, that the proposed roundabout is technically feasible and approved by PennDOT. If the proposed roundabout is not technically feasible or is not approved by PennDOT, Applicant shall provide an alternative plan for access to the Resort and Shopping Center that avoids the necessity for drivers to utilize the Trinity Hill Road, the Rock Ridge Neighborhood or illegal U-turn maneuvers to access the Property.

e. Steep Slopes in Shopping Center

As noted above, Applicant proposes construction of a professional/retail/recreational building in a Steep Slopes area. Steep Slopes are primary conservation areas and are not part of a Master Development's developable area. ZO §§ 1-16, 160-12(43.B)(c), (d), 160-21-C(C)(5). Therefore, if the Board approves the Shopping Center, PennFuture recommends the following condition:

Applicant shall not construct improvements, including the proposed professional/recreational/retail building in the Shopping Center, in areas in excess of 2,000 square feet with 25% slope or greater as measured over a minimum vertical distance of six feet, or three contiguous contour segments at two-foot contour intervals.

e. Consistency with evidence of record

Approval of a conditional use application must depend on evidence presented at the public hearing on the application. *See Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014). The Township cannot review, and certainly cannot approve, plans or proposals not presented to it. PennFuture is aware that the Township, Brodhead Creek Regional Authority, and Applicant have engaged in preliminary discussions regarding extending public water and/or sewer to the Property. However, Applicant seeks approval of on-lot water and wastewater treatment only. ((**Exhibit A-15**, p. 2; N.T. M. Gable 3/9/2023 p. 289:14–21 (public waterline extension not proposed); **Exhibit A-15**, p. 4; N.T. B. Oram 3/9/2023 p. 393:6–13 (no alternative wastewater treatment plan considered)).

Therefore, PennFuture recommends the following condition:

The Property shall be developed in a manner consistent with the testimony and exhibits presented at the Public Hearing and the Findings of Fact herein. Approval is specifically conditioned upon use of on-lot water and on-lot wastewater treatment as proposed. In the event that Applicant desires to serve any part of the Property with public water and/or sewer, Applicant shall re-apply for conditional use approval.

e. Summary

In summary, should the Board approve the Application, PennFuture proposes the following conditions to approval:

1. Applicant shall obtain all necessary approvals from Mount Pocono Borough and Pocono Township for the plans as presented at the Public Hearing, including installation of Stormwater Basin K and maintenance of a 150' riparian buffer along Indian Run and Swiftwater Creek. If Mount Pocono Borough and/or Pocono Township do not approve the plans as presented at the Public Hearing, Applicant shall demonstrate to the satisfaction of the Township that no detrimental impact shall result to the Township's residents or its natural resources.
2. Applicant shall conduct an aquifer test according to the more stringent of the process set forth in Section 9.4 of Applicant's Sanitary Survey and Pre-drilling Plan (Exhibit A-11a) or a process required by PADEP and demonstrate, to the satisfaction of the Township

Engineer, that the proposed well(s) will supply the peak daily demand for the Property without adverse impact to the environment or other users in the vicinity of the Project.

3. Applicant shall demonstrate, to the satisfaction of the Board and the Township Engineer, that:
 - a. Adequate testing has been performed to confirm Applicant's preliminary testing and conclusions with respect to on-lot capacity for wastewater treatment using the proposed drip irrigation system;
 - b. PADEP has approved Applicant's sizing of drip irrigation fields using the 15% Ksp approach, or, if the 15% approach is not approved, that there is adequate on-lot wastewater treatment capacity using the 10% (or other approved) approach;
 - c. PADEP has approved the use of drip irrigation in Area I and II as proposed, or that adequate on-lot capacity otherwise exists for the proposed wastewater treatment system;
 - d. That the proposed wastewater treatment system has been reviewed and approved by an engineer with sufficient experience designing large-scale drip irrigation systems. If, in the opinion of the Board, the Township Engineer lacks the necessary expertise, an independent, third-party engineer shall review and approve the proposed system;
 - e. Monitoring wells will be installed downslope of each drip irrigation field and will be sampled quarterly while the system is in operation; and
 - f. Applicant will take steps sufficient to prevent Resort guests and other unauthorized persons from entering the drip irrigation fields, including, but not limited to, necessary signage and monitoring.
4. Applicant shall demonstrate, to the satisfaction of the Board and the Township Engineer, that:
 - a. Adequate testing has been performed to establish adequate infiltration capacity for all proposed stormwater basins; and
 - b. The location and design of Basin K are adequate to prevent detrimental impact to the Exceptional Value receiving waterways— Indian Run and Swiftwater Creek.
5. Applicant shall identify the title owner of the Greenway Land and the holder of the conservation easement required by Zoning Ordinance §§ 160-12(43.B)(d) and 160-21-C(E)(1). Applicant shall also submit a plan identifying the easement area(s) and a Plan for Maintenance of Greenway Lands and Operation of Common Facilities as required by Zoning Ordinance §§ 160-12(43.B)(d) and 160-21-C(F)(3)(c), subject to the approval of the Township.

6. Applicant shall demonstrate, to the satisfaction of the Board and the Township Engineer, that the proposed roundabout is technically feasible and approved by PennDOT. If the proposed roundabout is not technically feasible or is not approved by PennDOT, Applicant shall provide an alternative plan for access to the Resort and Shopping Center that avoids the necessity for drivers to utilize Trinity Hill Road or the Rock Ridge Neighborhood or to make illegal U-turn maneuvers to access the Property.
7. Applicant shall not construct improvements, including the proposed professional/recreational/retail building in the Shopping Center, in areas in excess of 2,000 square feet with 25% slope or greater as measured over a minimum vertical distance of six feet, or three contiguous contour segments at two-foot contour intervals.
8. Applicant shall develop the Property in a manner consistent with the testimony and exhibits presented at the Public Hearing and the Findings of Fact herein. Approval is specifically conditioned upon use of on-lot water and wastewater treatment. In the event that Applicant desires to serve any part of the Property with public water and/or sewer, Applicant shall re-apply for conditional use approval.

V. CONCLUSION

Based on the foregoing, PennFuture respectfully requests that the Board deny conditional use approval of the proposed Shopping Center. If the Board approves the Application, either in whole or in part, PennFuture respectfully requests that the Board impose the conditions suggested above.

Respectfully,

Brigitte Meyer

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