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**BEFORE THE PARADISE TOWNSHIP BOARD OF SUPERVISORS**

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**IN RE: APPLICATION OF JSPA REALTY, LLC  
FOR CONDITIONAL USE APPROVAL OF A  
MASTER DEVELOPMENT**

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**MEMORANDUM OF LAW**

**I. INTRODUCTION**

This matter is a conditional use application (“Application”) filed by JSPA Realty, LLC (“Landowner”) for a proposed Master Development (the “Proposed Development”) under the terms of the Paradise Township Zoning Ordinance’s (the “Zoning Ordinance”) Resort Development Area Overlay District (the “Overlay”) on a tract of land comprising 240.83 acres, of which 151.98 acres are in Paradise Township, 81.07 acres are in Pocono Township, and 7.78 acres are in Mount Pocono Borough (“Subject Tract”). Evidentiary hearings on the Application are closed. By memorandum dated June 22, 2023, the solicitor for Paradise Township (the “Township”), on behalf of the Township Board of Supervisors (the “Board”), requested that the parties brief certain legal issues identified by the Board as relevant to its consideration of

the Application. A copy of the Township solicitor’s memorandum is attached hereto as Addendum A for the convenience of the Board. Landowner submits this Memorandum of Law to address the issues raised in the solicitor’s memorandum. In the Memorandum we make references to following materials:

- the Paradise Township Zoning Ordinance;
- Chapter 1 *General Provisions*, Article II *Definitions* of the Paradise Township code of ordinances;
- plan set titled Hawthorne Mount Pocono Resort Conditional Use and Master Development Plan, comprised of 11 sheets, prepared by LVL Engineering Group, dated August 8, 2022, last revised November 23, 2022 (“Conditional Use Plan”);
- plan titled Boundary Resolution Plan, prepared by LVL Engineering Group, dated May 18, 2022 (“Boundary Resolution Plan”);
- plan titled Overall Project Land Area, prepared by LVL Engineering Group, dated January 30, 2023 (“Land Area Plan”);
- plan titled Entrance Alternate Plan, prepared by LVL Engineering Group, dated May 23, 2023 (“Entrance Alternate Plan”); and
- plan set titled Hawthorne Mount Pocono Resort Preliminary Land Development Plan, comprised of 29 sheets, prepared by LVL Engineering Group, dated November 23, 2022.

The Township solicitor’s June 22, 2023 memorandum and the Conditional Use Plan identify two “areas” of the Proposed Development—the “Resort Area” to the north, containing resort uses, and the “Commercial Area” to the south containing a shopping center. The terms “Resort Area” and “Commercial Area” are used herein to refer to these areas.

The four issues raised by the Township’s solicitor are addressed in turn in each of the below sections.

## II. DISCUSSION

- A. **The Master Development satisfies the “60 contiguous acre” requirement of Section 160-12.A(43.B) where the Resort Area and the Commercial Area are located on 240.81 acres of contiguous parcels, with 151.98 acres located in Paradise Township, and the presence of Rock Ridge Road does not break the contiguity of the Subject Tract.**

The initial issue that Township solicitor’s memorandum requests Landowner to address is as follows:

Chapter 160, Article III, Section 160-12(43.B) requires in a Resort Development Overlay District, to wit: "Master developments require a minimum of 60 contiguous acres for development." Please provide the factual basis and legal support that the proposed resort and commercial areas are on contiguous parcels and whether any other municipal approvals are required to support the argument that the property is contiguous by way of connection through a separate municipality. Also include factual support and legal basis that a Township road, Rock Ridge, can be used to support a finding of a contiguous parcel under the ordinance and law. Please provide any proposed conditions, if any.

As a preliminary matter, we note that under the well-established principals of ordinance interpretation a governing body has an obligation to construe the words of an ordinance as broadly as possible to give the landowner the benefit of the least restrictive use when interpreting its own zoning ordinance. *Albert v. Zoning Hearing Bd. of N. Abington Twp.*, 854 A.2d 401, 405 (Pa. 2004). With respect to zoning matters, “[u]ndefined terms are given their plain meaning, and any doubt is resolved in-favor of the landowner and the least restrictive use of the land. *Kohl v. New Sewickley Tp. Zoning Hrg. Bd.*, 108 A.3d 961, 968 (Pa. Cmwlth. 2015). It is an abuse of discretion for a board to narrow the terms of an ordinance and further restrict the use of property. *Balady Farms, LLC v. Paradise Township Zoning Hrg. Bd.*, 148 A.3d 496, 505 (Pa. Cmwlth. 2016).

Where the words of the ordinance are ambiguous, the ordinance must be construed in

favor of the landowner. *Lench v. Zoning Board of Adjustment of City of Pittsburgh*, 13 A.3d 576, 579 (Pa.Cmwlt.2011). A zoning ordinance is ambiguous if the pertinent provision is susceptible to more than one reasonable interpretation, *Adams Outdoor Advertising, L.P. v. Zoning Hearing Board of Smithfield Township*, 909 A.2d 469, 483 (Pa.Cmwlt.2006), or when the language is vague, uncertain, or indefinite. *Kohl v. New Sewickley Tp. Zoning Hrg. Bd.*, 108 A.3d 961, 968 (Pa. Cmwlt. 2015).

Under Pennsylvania law, when defining ordinance terms, a court may look at statutes, regulations, or dictionaries for assistance. *Balady Farms, LLC v. Paradise Township Zoning Hrg. Bd.*, 148 A.3d 496, 503 (Pa. Cmwlt. 2016) (referring to *Merriam-Webster's Collegiate Dictionary* and *Black's Law Dictionary* when interpreting term not defined in the zoning ordinance)

The Proposed Development complies with the contiguous acreage requirement found at Zoning Ordinance § 160-12.A(43.B)(b), which provides:

Master developments require a minimum of 60 contiguous acres for development. All owners of record must join in the application for development.

While there is no definition in the Zoning Ordinance or Chapter 1 *General Provisions*, Article II *Definitions* of the Paradise Township code of ordinances (the “Definitions”) for the term “contiguous”, Black’s Law Dictionary defines “contiguous” as: “touching at a point or along a boundary; adjoining”. There can be no dispute that the Subject Tract is comprised of at least 60 acres that “touch at a point or along a boundary”. [Conditional Use Plan, Sheet 3.] In total, the Subject Tract comprises 240.81 acres, with 151.98 acres located in Paradise Township. [Id.]

Considering only the 151.98 acres located in Paradise Township, the Subject Tract qualifies for use as and for a Master Development. Even removing the portions of the Subject

Tract identified by the Township solicitor as potentially problematic (*i.e.* the Commercial Area which is connected to the Resort Area either through a neighboring municipality or in the area of Rock Ridge Road), there are still 117.78 acres of the Subject Tract located in Paradise Township. Taking only the area of the Subject Tract that is not apparently in question, the Subject Tract still meets the “60 contiguous acre” requirement and qualifies for a Master Development.

The Zoning Ordinance does not prohibit a Master Development tract from having a portion of its acreage located in a different municipality or from including parcels that are not contiguous to the portion of the tract that satisfies the 60 contiguous acre requirement. The Zoning Ordinance specifically contemplates that separate parcels will be assembled for purposes of amassing 60 contiguous acres, and provides that the parcels that comprise the Master Development do not need to be held in single ownership. Zoning Ordinance § 160-12.A(43.B)(b) (“all owners of record must join in the application for development”). The Zoning Ordinance provides for “building groups” and contemplates that there will be pockets of development interspersed with required greenway land. Zoning Ordinance §§ 160-12.A(43.B)(k); (c); and (d).

The purposes of the Overlay District, as set forth in section 160-71.B of the Zoning Ordinance, include, but are not limited to, (i) integrated development of a variety of uses, (ii) efficient, compact patterns of land use, (iii) maintaining the community’s visual character, (iv) diversifying the Township’s economy and upgrading the tourism industry, (v) attracting new enterprises, and (vi) preservation of greenway land and conservation of natural, aesthetic, and visual resources. These purposes will all be furthered or served regardless of the fact that a part of the Subject Tract is located in a neighboring municipality. This is particularly the case where the Proposed Development meets the purposes of the Overlay District even if the focus is solely on the portion of the Subject Tract within Paradise Township. For example, the proposed uses

are all located in Paradise Township and the greenway land requirements for a Master Development are met even if only the greenway land that will be located in Paradise Township is counted. [Conditional Use Plan, Sheet 3.] That there is additional greenway land (88.84 acres) located in the neighboring municipalities only furthers the purposes of the Overlay District. The Proposed Development has been designed to preserve the ecologically sensitive areas of the Subject Tract while focusing development on those areas more appropriate for development.

With respect to the connection at Rock Ridge Road, the definition of “tract” set forth in Definitions § 1-16 specifically provides that a tract “may be assembled even if separated by a road right-of-way or other easement or right-of-way”:

TRACT-- One or more contiguous lots assembled for the purpose of a conservation subdivision or land development. However, lots may be assembled as a single tract even if separated by a road right-of-way or other easement or right-of-way.

The presence of Rock Ridge Road, then, does not break the contiguity of the Subject Tract. *See Glencrest Realty Co. v. Zoning Hrg. Bd. of Washington Tp.*, 406 A.2d 836, 838 (Pa. Cmwlth. 1979) (where a zoning ordinance required a mobile home park have a minimum of 50 contiguous acres, a mobile home park could be developed on 18 acres across a road from the developer’s 50 acre property where the zoning ordinance did not expressly prohibit the development from being bisected by a public street)

Rock Ridge Road is an improved Township road for which the Township receives liquid fuels monies. The Boundary Resolution Plan and the Land Area Plan show that the Landowner has fee simple ownership of the land underneath the Rock Ridge Road and Wiscasset Road right-of-way.



*Excerpt from Land Area Plan  
(Green Pattern indicates Landowner's Fee Simple Ownership)*

If Rock Ridge Road were abandoned or vacated by the Township in the future, the Subject Tract would remain connected in the area of Rock Ridge Road, as title to the right-of-way would revert to the underlying property owner. *Buffalo Tp. v. Jones*, 813 A.2d 659, 664 (Pa. 2002).

Accordingly, even if the portion of that connection through the neighboring municipality did not count (it does), the Subject Tract is also contiguous by virtue of this connection at Rock Ridge Road.

Based on the foregoing, the Subject Tract meets the requirements of Zoning Ordinance § 160-12.A(43.B)(b) because:

- even subtracting those portions of the Subject Tract that are the located in neighboring municipalities, there are still 117.78 contiguous acres located solely in Paradise Township;
- a tract that is proposed as a Master Development may include land that is not contiguous to a portion of the tract that satisfies the 60 contiguous acre requirement;

- the fact that a portion of the Subject Tract is located in a different municipality does not affect the contiguousness of the Subject Tract under the Zoning Ordinance; and
- the Subject Tract may be connected in the area of Rock Ridge Road even if the area is currently improved with a Township road.

With respect to whether the neighboring municipalities in which portions of the Subject Tract are located will require any approvals for the Proposed Development, those approvals would not be required in order for the Subject Tract to meet the “contiguous” requirement at the conditional use stage. If the Proposed Development is granted conditional use approval and moves forward to the land development stage, it would be appropriate to obtain confirmation of the process, if any, that will be required by Pocono Township or Mount Pocono Borough. Given the limited amount of improvement proposed in either municipality, a waiver of land development would likely be appropriate. To address this issue, an appropriate condition of conditional use approval would be:

“Landowner shall obtain any necessary approvals within the authority of Mount Pocono Borough and Pocono Township to permit the Proposed Development, including specifically to permit any improvements proposed in Mount Pocono Borough or Pocono Township as part of the Proposed Development. These approvals shall be obtained prior to recording of the record plans for the Proposed Development.”

- B. Master Development satisfies Section 160-12.A(43.B)(e) where it has frontage along and direct access to Route 611, and PennDOT has the jurisdiction to determine how the connection to Route 611 at both the Resort Area and the Commercial Area will be designed and function.**

The Township solicitor’s memorandum next requests that Landowner address the below issue:



A master development tract under the Paradise Township Zoning Ordinance is required to have frontage along and direct access to a road or highway controlled by PennDOT (see Chapter 160, Article III, Section 160-12(43.B.(e)). Please address based on facts of record how the proposed application intends to meet this requirement for both the commercial and resort. Also address whether restricted access to and from the resort and/or the commercial shopping center meet the intent of the ordinance. Finally, if the proposed roundabout is not approved, how will the master development meet this zoning requirement? Please provide any proposed conditions, if any.

Zoning Ordinance § 160-12.A(43.B)(e) provides:

Master development tracts shall have frontage along and direct access to a road or highway controlled by the Pennsylvania Department of Transportation.

While there is no definition of the term “PennDOT controlled highway” in the Zoning Ordinance or the Definitions, Black’s Law Dictionary Defines “control” as “the power or authority to manage, direct, or oversee.” Therefore, the relevant inquiry is whether PennDOT has the “power or authority to manage, direct, or oversee” Landowner’s proposed points of access to the Master Development.

The proposed accesses to the Resort Area and to the Commercial Area will each require PennDOT approval through a Highway Occupancy Permit (HOP) application. PennDOT has the authority to dictate how the connections to Route 611 at both the Resort Area and the Commercial Area will be designed and function. This is undoubtedly the “power or authority to manage, direct, or oversee” access to the Proposed Development. Both proposed accesses are under PennDOT control. This is the case even if the access is “restricted”, particularly because any “restriction” will be imposed by PennDOT.

Access to the Commercial Area goes directly from the Subject Tract to the PennDOT right-of-way for Route 611. Access to the Resort Area is slightly more complicated. Landowner’s ownership to this area of the Subject Tract is shown on the following excerpt from

the Land Area Plan:



*Excerpt from Land Area Plan  
(Green Pattern indicates Landowner's Fee Simple Ownership)*

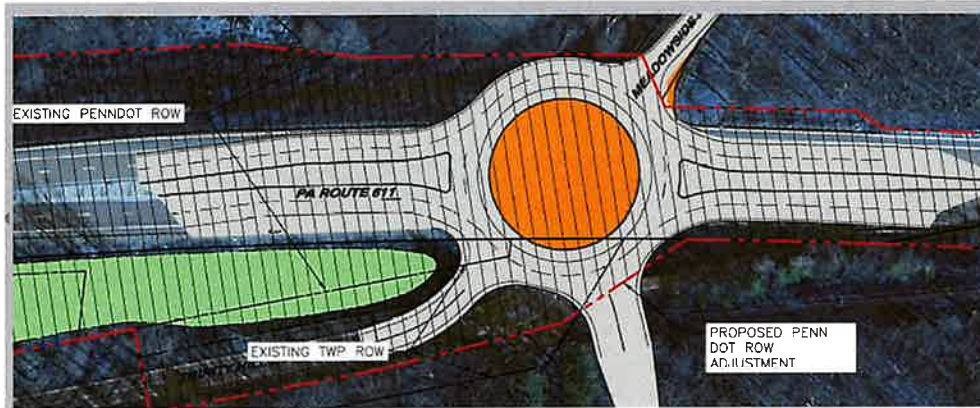
As shown on this excerpt, Landowner owns the land under the Township's existing right-of-way for Trinity Hill Road and a portion of the land underneath PennDOT's Route 611 right-of-way.

Landowner has proposed two alternatives for access from Route 611 to the Resort Area. The first, shown here, contemplates realignment of the existing Township right-of-way of Trinity Hill Road:



*Excerpt from Entrance Alternate Plan*

The second, shown below, contemplates a roundabout:



*Excerpt from Entrance Alternate Plan*

To effectuate either proposed access, rights-of-way will need to be readjusted. Whether the PennDOT right-of-way or the Township right-of-way needs to be adjusted, the adjustment can be effectuated because Landowner owns the land underlying and adjacent to the rights-of-way. Even if PennDOT or the Township, required Landowner to make connection directly from the Resort Area to Route 611 (*i.e.* not in the area of the improved Trinity Hill Road), Landowner owns the land to do so. At the end of the day, the location will be subject to the ultimate approval of PennDOT.

Access to Route 611 will be a significant subject during the land development stage of this project. The Township, PennDOT and Landowner will need to determine responsibility, ownership, and maintenance of the access points. However, it is clear that both the access to the Resort Area and the Commercial Area from Route 611, will be controlled by PennDOT through the HOP process.

The direct access requirement serves to ensure that the surrounding road system can handle a Master Development. While access to the Resort Area is more complicated than access to the Commercial Area, the result to the traveling public is the same—the public will access the Proposed Development from Route 611. The PennDOT HOP permitting process will ensure appropriate access to and from Route 611 at both access points.

If the access is “restricted” pursuant to the PennDOT HOP or because of the nature of Route 611’s existing improvements, the access would still comply with the Zoning Ordinance requirement of PennDOT control. It would be PennDOT restricting the access pursuant to the control it has over its rights-of-way and access thereto.

An appropriate condition at the conditional use stage would be:

“Landowner shall obtain all necessary approvals from PennDOT, including application for, and receipt of, a Highway Occupancy Permit, for the proposed access to both the resort area and the commercial area of the Proposed Development.”

- C. The Master Development furthers the purpose of the Resort Development Overlay District by integrating the resort use, the commercial use and preserved greenway land throughout the Subject Tract which includes the pedestrian walking trail to physically connect the Resort Area and the Commercial Area.**

The Township solicitor’s memorandum requests that Landowner address the below issue:

Chapter 160, Article XII, Section 160-71(B)(2) (*sic*)<sup>1</sup> sets forth a purpose of the Resort Development Overlay District, "to provide the opportunity for integrated development of a variety of uses according to a Master Development Plan." Please provide the factual and legal basis for how the two proposed uses (resort and commercial/shopping center) on two separate parcels meet the purpose of the ordinance. Please also address the factual and legal basis of whether the use of a walking path on Rock Ridge Road supports a finding of interconnectivity and integration of the resort and commercial shopping center sites. Please provide any proposed conditions, if any.

Zoning Ordinance § 160-71.B(1) provides that a purpose of the Resort Overlay District is:

To provide an opportunity for integrated development of a variety of uses according to a Master Development Plan...

Zoning Ordinance § 160-71.B(1). Neither Zoning Ordinance nor the Definitions provide a

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<sup>1</sup> The purpose quoted in the Solicitor’s memorandum is found at subsection 1, not subsection 2, of 160-71.B.

definition of the term “integrated”. A general definition of the term “integrate” is “to form, coordinate, or blend into a functioning or unified whole.” *Integrate*, Merriam-Webster Dictionary (11<sup>th</sup> ed. 2003).

The purposes of the Overlay District are effectuated by the Zoning Ordinance provisions governing a Master Development, the only use permitted in the Overlay District. The sub-uses proposed in a Master Development (*e.g.* the resort use) are only one component of the “unified whole” of the development. Priority is given to other aspects of the development, including greenway lands, efficient and compact patterns of land use, and conservation of natural, aesthetic, and visual resources. The sub-uses permitted in a Master Development serve to make the significant conservation of natural resources required in a Master Development financially viable to a developer.

The Proposed Development was designed so that the greenway space is distributed throughout the development, while ensuring that the most sensitive areas of the Subject Tract (including those areas closest to Swiftwater Creek) were included in the greenway lands. In total, 86.59 acres of greenway space are being provided in Paradise Township itself. 88.84 acres of additional greenway lands are proposed on the portion of the Subject Tract in the neighboring municipalities.

The Proposed Development is comprised of unbroken, interconnected areas dedicated to the resort use, the commercial use and greenway land, comprising the “unified whole” that is a Master Development.

While there is no requirement in the Zoning Ordinance that the Resort Area and the Commercial Area be physically connected internally to satisfy the requirements of a Master Development, as proposed, the two areas are physically connected by the pedestrian walking trail and by Route 611. Landowner has even considered relocating the pedestrian connection could

be relocated to an area that would be more scenic and attractive (*e.g.* closer to Swiftwater Creek) to take advantage of the “unified whole” of the Master Development, including the greenway land.

Internal vehicular connection between the Commercial Area and the Resort Area would not serve the purposes of the Overlay District. To the contrary, removing greenway land to install an internal vehicular connection or relocating the Commercial Area to different location (*e.g.* one that would be better for vehicular connectivity but worse for greenway land preservation), is precisely the type of forced form development that the Resort Overlay and Master Development concepts aim to avoid. The Proposed Development preserves greenway lands, conserves natural and ecological resources, uses efficient and compact patterns of land use, and places the commercial area where it belongs—along Route 611.

With respect to the “variety” of uses proposed, the only use permitted in the Resort Overlay is a Master Development. Zoning Ordinance § 160-71.E. The uses permitted within a Master Development are found at Zoning Ordinance § 160-12.A(43.B)(h), and include “resorts, hotels, and resort amenities...” and ...“planned community office parks and shopping centers”. Zoning Ordinance § 160-12.A(43.B)(h)[2], [4].

The proposed Master Development includes resort, hotel, and resort amenities, and a commercial area containing a shopping center. Landowner is able to offer the variety of uses that are permitted within a shopping center, enumerated at Zoning Ordinance § 160-12.A(54.A)(d).As shown on the Conditional Use Plan, Landowner offers many of the permitted used with the shopping center, and thus has taken advantage of the variety of uses permitted in a Master Development in the Resort Overlay.

The fact that the Commercial Area and Resort Area are located on different tax parcels has no relevance to the Board’s consideration of the Application. The Zoning Ordinance provides

that a Master Development tract may be assembled out of separate parcels that may be separately owned. Zoning Ordinance § 160-12.A(43.B)(b). As discussed above, the Zoning Ordinance also specifically permits for “building groups” within a Master Development. Zoning Ordinance § 160-12.A(43.B)(k). This flexibility facilitates designing a plan that allows for significant preservation of natural resources and greenway space within a Master Development. Furthermore, the Zoning Ordinance provides that land that comprises a Master Development may be subdivided for separate ownership or lease, provided the subdivision does not interfere with “the development or use of the master development tract in accordance with the approved master development conditional use permit.” Zoning Ordinance § 160-12.A(43.B)(l). Developing the Resort Area and Commercial Area on different parcels is specifically permitted in a Master Development.

An appropriate condition of conditional use approval which would allow Landowner to continue to investigate a more attractive walking path closer to Swiftwater Creek would be the following:

Landowner shall provide a pedestrian connection between the Resort Area and the Commercial Area to the reasonable satisfaction of the Township. To the extent third-party approvals are required to effectuate the connection, Landowner and the Township shall work in good faith to obtain such approvals and, if such approvals are not granted by such third-parties, shall work in good faith to agree on an alternate pedestrian access.

- D. The Zoning Ordinance does not prohibit continuation of the Commercial Area uses if the resort use fails or is terminated, however, if the Master Development is approved the Township is protected from abandonment of the resort use because the portion of the Subject Tract dedicated to the Resort Area may not be developed for use as something other than a resort use without violating the terms of the conditional use approval.**

The final issue raised in the Township solicitor’s memorandum is as follows:

Chapter 160, Article III, Section 160-12(43.B)(h)[4] authorizes

commercial shopping centers in the Resort Development Overlay District as part of the Master Development Plan. The resort is authorized to be developed separately in the district with conditional use approval. Please provide the factual basis and legal support as to whether the commercial shopping center may be developed and continued if the resort fails or the resort use is terminated at any time after conditional use approval is granted. Please provide any proposed conditions, if any.

The Zoning Ordinance requires that “not less than half of the [Master Development] tract shall be dedicated to resort use(s).” Zoning Ordinance § 160-12(43.B)(f). The Master Development tract area dedicated to the Resort Use is 161.99 acres (with 117.78 acres in Paradise Township). The Master Development tract area dedicated to the commercial shopping center is 34.2 acres (all in Paradise Township). [Conditional Use Plan, Sheet 3.] Even if the Resort Area were limited to that portion in Paradise Township, more than half of the Master Development tract is dedicated to the resort use(s). [*Id.*]

Assuming conditional use approval is granted, development of the Subject Tract as and for a Master Development will need to comply with the terms of the conditional use approval. As noted above, while the Subject Tract could be subdivided, that subdivision may not interfere with “use of the master development tract in accordance with the approved master development conditional use permit.” Zoning Ordinance § 160-12.A(43.B)(1). This means the portion of the Subject Tract dedicated to the Resort Area could not be subdivided and sold off for use as something other than a resort use without violating the terms of the conditional use approval for the Proposed Development.

The Zoning Ordinance’s Master Development regulations further provide:

Once the master development conditional use is approved, permits may be issued only pursuant to approved Land Development or Subdivision Plans consistent with Chapter 131 of the Paradise Township Code of Ordinances.

Zoning Ordinance § 160-12.A(43.b)(m). The land development process will protect the



Township from any attempt to obtain building permits to develop the Master Development in a manner inconsistent with the conditional use approval because compliance with the Zoning Ordinance, and therefore with the conditional use approval, will be a requirement of land development approval.

While the “Master Development” concept under the Zoning Ordinance is designed to achieve the purposes of the Overlay, it does not require that Landowner absolutely guarantee that any given use within the Master Development will be completed within a certain time period. There is nothing in the Zoning Ordinance that would prohibit development of the Commercial Area first, or that would prohibit continuation of the Commercial Area uses if the resort use fails or is terminated. Conservation is a paramount purpose of the Overlay. The Overlay allows for expanded uses, but requires significant conservation of natural resources. That purpose will be furthered by the fact that greenway land is preserved even if the resort use is not successful.

Moreover, the Zoning Ordinance ensures compliance with a Master Development plan after it is approved. Because of the requirement that not less than half of the Master Development be dedicated to the resort use, Zoning Ordinance § 160-12(43.B)(f), the resort use itself cannot be abandoned through mere amendment to the conditional use approval. Instead, zoning variances would be required.

In short, then, while there is no provision of the Overlay or Master Development regulations that would require the uses in the Commercial Area to close down should the resort use fail or be terminated, the Township is as protected from abandonment of the resort use as it is from abandonment of any other use under the Zoning Ordinance. Either another resort use is proposed, potentially requiring an amendment of the conditional use approval, or zoning variances would be required.

While an appropriate condition would be that no permits may be issued for the Proposed Development unless land development approval is obtained, this requirement is already imposed, as noted above, in the Zoning Ordinance itself. The Township may impose the following condition on conditional use approval to ensure that the goal of the Overlay to conserve natural resource is advanced even if the resort uses fail or are terminated:

Prior to recording its land development plan, Landowner shall dedicate a conservation easement over the preserved greenway land depicted on Landowner's Conditional Use Plan.

### III. CONCLUSION

For the foregoing reasons, Landowner's Master Development conditional use must be granted.

**EASTBURN AND GRAY, P.C.**

By: \_\_\_\_\_

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