

**BEFORE THE PARADISE TOWNSHIP BOARD OF SUPERVISORS,
MONROE COUNTY, PENNSYLVANIA**

IN RE: APPLICATION OF JSPA REALTY, LLC, FOR CONDITIONAL USE APPROVAL FOR A RESORT ON PROPERTY IN PARADISE TOWNSHIP, MONROE COUNTY, PENNSYLVANIA, AND LOCATED IN THE RESORT DEVELOPMENT AREA OVERLAY DISTRICT.

I. FINDINGS OF FACT:

A. Procedural History:

1. The Paradise Township Board of Supervisors (“Board”) is the governing body of Paradise Township, a second-class township and political subdivision located in Monroe County, Pennsylvania. The Board consists of three elected supervisors: Peter Gonze, Chairperson, Reda Briglia, Vice Chairperson, and Michael Stein, Supervisor. Attorney John C. Prevoznik represented the Board in the conditional use application of JSPA Realty, LLC.

2. JSPA Realty, LLC, is a Pennsylvania limited liability company, with an office address of 175 Tillman Street, Staten Island, NY 10314 (“Applicant”).

3. On December 15, 2022, the Applicant filed a completed Conditional Use Application for a Master Development Plan in the Resort Development Overlay District. (Hrg. Tr., 1-30-23, pp. 5, 15, 46).

4. Section 160-30(B) and (C) of the Paradise Township Zoning Ordinance requires a conditional use application to be referred to the Paradise Township Planning Commission and the Monroe County Planning Commission for review and recommendation.

5. The Paradise Township Planning Commission reviewed the Applicant’s Conditional Use Application and recommended approval. (Exh. ZO-5).

6. The Monroe County Planning Commission reviewed the Applicant’s Conditional Use Application and recommended approval. (Exh. ZO-6).

7. The Board held hearings on the Applicant’s Conditional Use Application on January 30, 2023, February 23, 2023, March 9, 2023, March 16, 2023, April 27, 2023, May 23, 2023, June 8, 2023, and June 22, 2023.

8. During the January 30, 2023, and February 23, 2023, hearings, the Board granted party status to the following individuals or entities: Paul Houle, of 229 Rock Ridge Road, Mount

Pocono, PA 18344; Annelese Montgomery Taylor, of 233 Rock Ridge Road, Mount Pocono, PA 18344; Jeff Ingrassia, of 174 Montanesca Road, Mount Pocono, PA 18344; Abigail Jones on behalf of PennFuture; Michael Bolton, of 289 Goldfinch Place, Mount Pocono, PA 18344; Rob Felicetti, of 238 Rock Ridge Road, Mount Pocono, PA 18344; AD Slutter, of 673 Route 314, Swiftwater, PA 18370; Michael Jackson, of 212 Rock Ridge Road, Mount Pocono, PA 18344; Reverend Susan Treanor, of 137 Trinity Hill Road, Mount Pocono, PA 18344; Nancy Tkacs, on behalf of Trinity Episcopal Church; Jan Anglemire on behalf of Trinity Episcopal Church; Dana Garrett on behalf of Trinity Episcopal Church; Michael Johnson on behalf of Swiftwater Preserve; Meredith Montgomery, of 233 Rock Ridge Road, Mount Pocono, PA 18344; David Edinger, of 211 Trillium Way, Mount Pocono, PA 18344; Robbin Henley Jr., of 293 Goldfinch Place, Mount Pocono, PA 18344; Peter Salmon on behalf of Trinity Episcopal Church; Dr. Alex Jackson on behalf of Broadhead Watershed Association; Ewa Monsul, of 315 Goldfinch Place, Mount Pocono, PA 18344; and Jacquelynn Lascala, of 238 Rock Ridge Road, Mount Pocono, PA 18344.

9. At the January 30, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. Also present was Shawn F. McGlynn, the Paradise Township Zoning Officer represented by F. Andrew Wolf, Esquire. Appearing on behalf of the Applicant was James Garrison, AIA, and the Applicant's counsel, Donald G. Karpowich, Esquire.

10. At the February 23, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. Also present was Shawn F. McGlynn, the Paradise Township Zoning Officer represented by F. Andrew Wolf, Esquire. Appearing on behalf of the Applicant was an expert, Michael E. Gable, P.E., and the Applicant's counsel, Donald G. Karpowich, Esquire.

11. At the March 9, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. Also participating in the hearing was the Paradise Township Zoning Officer's counsel F. Andrew Wolf, Esquire. Appearing on behalf of the Applicant were experts, Michael E. Gable, P.E., and Brian F. Oram, P.G., and the Applicant's counsel, Donald G. Karpowich, Esquire.

12. At the March 16, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. Also participating in the hearing was the Paradise

Township Zoning Officer's counsel F. Andrew Wolf, Esquire. Appearing on behalf of the Applicant were experts, Brian F. Oram, P.G., Erik Hetzel, AICP, and Alan Rosen, Esquire, Certified General Real Estate Appraiser, and the Applicant's counsel, Donald G. Karpowich, Esquire. Also appearing on behalf of the Applicant was Charles A. Leonard, Executive Director of Pocono Mountains Economic Development Corporation.

13. At the April 27, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. Also participating in the hearing was the Paradise Township Zoning Officer's counsel F. Andrew Wolf, Esquire. Appearing on behalf of the Applicant was David Horner, P.E. and the Applicant's counsel, Donald G. Karpowich, Esquire.

14. At the May 23, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. Also participating in the hearing was the Paradise Township Zoning Officer's counsel F. Andrew Wolf, Esquire. Appearing on behalf of the Applicant was experts, David Horner, P.E., John R. Varaly, AICP, and Michael E. Gable, P.E., along with the Applicant's counsel, Donald G. Karpowich, Esquire.

15. At the June 8, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. The only party to appear and present evidence and testimony was Paul N. Houle. Appearing on behalf of the Applicant was the Applicant and his counsel, Donald G. Karpowich, Esquire.

16. At the June 22, 2023, hearing, the members of the Board were present along with their counsel, John C. Prevoznik, Esquire. The only party to appear and present testimony was Michael Johnson. Appearing on behalf of the Applicant was the Applicant and his counsel, Donald G. Karpowich, Esquire.

17. At the conclusion of the June 22nd hearing, the Board requested written briefs consisting of proposed Findings of Fact, Conclusions of Law, Discussion, and Decision be submitted by the parties no later than July 28, 2023, and then continued the hearing until August 14, 2023.

18. There were no objections to notice, advertising, or procedure by any of the parties to the hearings.

B. Factual Background

Description of Property

19. The Applicant owns seven adjoining parcels of land consisting of 244.6 acres of land located off State Route 611, in Monroe County, Pennsylvania. Four parcels are in Paradise Township (Property Identification Numbers 1163650021956 5, 11636500221351, 11636500403397, 11636500100937, 1263650000); two parcels are in Pocono Township (Property Identification Number 161679 and 12636500108111); and one parcel is in Mount Pocono Borough (Property Identification Number 10636517016178) (collectively the “Property”). (Hrg. Tr., 1-30-23, p.6; Hrg. Tr., 1-23-23, p. 196).

20. Shawn McGlynn, the Paradise Township Zoning Officer, described the seven contiguous parcels of land as being “connected”. (Hrg. Tr., 1-30-23, p. 45). (See also Exh. A-3, Map showing the Property and how the parcels connect with one another).

21. The Property is owned by the Applicant. (Hrg. Tr., 1-30-23, p. 6).

Resort Development Area Overlay District

22. In 2005, Paradise Township adopted an amendment to the Paradise Township Zoning Ordinance to establish a Resort Development Area (RDA) Overlay Zoning District. *See Paradise Township Comprehensive Plan, 3-11.*

23. The purpose of the new overlay district is (a) to provide an opportunity for integrated development of a variety of uses according to a Master Development Plan, and (b) to diversify the Paradise Township’s economy and upgrade the tourism industry. The overlay district is a special zoning district with a set of additional regulations that are applied to this geographic area based on specific attributes of the area and the types of uses proposed. The Master Development Plan must include a resort and may include additional uses. The minimum tract size required to develop under the overlay district requirements is 60 contiguous acres. *See Paradise Township Comprehensive Plan, 3-11.*

24. The Applicant is requesting conditional use approval for a master development in the Resort Development Area Overlay District (the “Application”) under Section 160-11(43.B) of the Paradise Township Zoning Ordinance (“Zoning Ordinance”). (Hrg. Tr., 1-30-23, p.5).

25. The portion of the Property located in Paradise Township is in the R-2 Zoning District and the Resort Development Area Overlay District. (Hrg. Tr., 1-30-23, pp. 6, 45).

26. A property owner is at liberty to proceed under the basic district requirements or under the Resort Development Area District requirements. *See Article XII Section 160-71(A) of the Paradise Township Zoning Ordinance.*

27. When a property owner selects the Resort Development Area District option, the entire property must be developed in accordance with the Resort Development Area District requirements. *See Article XII Section 160-71(C) of the Paradise Township Zoning Ordinance.*

28. Mr. McGlynn testified that the uses permitted in the Resort Development Area Overlay District include resorts, hotels, resort amenities, and shopping centers. (Hrg. Tr., 1-30-23, p. 47).

29. Chapter 160, Zoning Schedule I, Regulations Governing Land Uses, of the Paradise Township Zoning Ordinance permits a “Resort” by Conditional Use in the R-2 Zoning District.

30. Chapter 160-12(54.A(a)) of the Paradise Township Zoning Ordinance permits shopping centers or planned community office parks as part of a master development plan within the Resort Development Area Overlay District provided it has direct access to, and a valid highway occupancy permit for, a road or highway controlled by the Pennsylvania Department of Transportation.

31. The Applicant’s proposed resort will include a lodge, separate villas, pools, related amenities, and a commercial shopping center consisting of a mix of retail, office, and restaurant uses. (Hrg. Tr., 1-30-23, pp. 5-6).

32. Chapter 160-12 (60) (g) of the Paradise Township Zoning Ordinance permits resort amenities like those proposed by the Applicant, including conference centers, eating, and drinking establishments, off-track betting and legal gambling establishments, retail sales, spas, beauty salons, barber shops, indoor and outdoor recreation facilities, health centers, day-care centers, commercial special events, and employee living quarters.

Master Development Plan

33. The Applicant filed a Master Development Plan with Paradise Township. (See Exh. A-4, Master Development Plan).

34. Section 160-30B (1) (a) through (h) and Section 160-30B(2)(a), (b), (c), and (e) of the Paradise Township Zoning Ordinance apply to plans relating to resorts. More specifically,

the plan should be prepared by a civil engineer, surveyor, land planner, architect or other competent person, and shall include: (a) Basic data. (i) Name and address of the owner of record. (ii) Lot, block, and section number of the property taken from the latest tax records. (iii) Name and address of person, firm or organization preparing the map. (iv) Date, North point and written and graphic scale. (v) Description (bearings and distances) of the boundaries of the property. (vi) The location, names, and widths of all existing roads. (vii) The names of owners of all adjoining lands as shown on the latest records and the location of all buildings within 1,320 feet of the tract. (viii) Existing deed restrictions or covenants applying to the property. (b) Development plan. (i) The location of existing and proposed buildings or structural improvements. (ii) The location of all uses not requiring structures, such as off-street parking and loading areas. (iii) The location and time of use of any proposed outdoor lighting or public address system. (iv) The location and plans for any outdoor signs. (v) The location and arrangement of proposed means of ingress and egress, including sidewalks, driveways, or other paved areas.

35. The Applicant's Plans were reviewed by Mr. McGlynn, who determined they were complete under the Zoning Ordinance. (Hrg. Tr., 1-30-23, p. 46). The plans comply with the zoning ordinance requirements concerning their content. (Hrg. Tr., 2-23-23, p. 175).

History and Condition of Property

36. The Property consists of three historic development areas: the Montanesca Hotel/House, the Hawthorne Resort, and the Strickland Golf Course.

37. Aerial photography taken in 1939, 1952, 1959, 1969, 2005, 2008 and 2018 show how the historical development areas became blighted and their uses abandoned. (Exh. A-5).

38. James Garrison, AIA, a registered architect within all 50 states, testified on behalf of the Applicant. (Hrg. Tr., 1-30-23, p. 67). Mr. Garrison was offered and recognized by the Board as an expert architect in commercial resorts particularly with an emphasis on interior design and landscaping. (Hrg. Tr., 1-30-23, p. 67). (Exh. A-6, Curriculum Vitae of James Garrison).

39. Mr. Garrison described the Property as consisting of older dilapidated buildings with logging and resort access roads. (Hrg. Tr., 1-30-23, p. 74). The buildings are falling apart. (Hrg. Tr., 1-30-23, p. 82). There is an old pool on the Property. (Hrg. Tr., 1-30-23, p. 83). The

Property also had a prior hotel on it that burned down. (Hrg. Tr., 1-30-23, p. 79). The shopping center portion of the resort was the former Strickland Golf and Driving Range. (Hrg. Tr., 1-30-23, p. 73).

40. Michael E. Gable, P.E., was offered and recognized by the Board as an expert professional engineer in the areas of land development and conditional uses with an emphasis in commercial and recreational development. (Hrg. Tr., 2-23-23, p. 155). (Exh. A-1, Curriculum Vitae of Michael E. Gable).

41. Mr. Gable confirmed the condition of the Property. He introduced the aerial photos to show the remnants of the old hotel that was burned down in the 1930s. (Hr. Tr., 2-23-23, p. 180). Mr. Gable also explained how the Strickland golf course changed into a driving range and miniature golf course. (Hrg. Tr., 2-23-23, p. 183). Mr. Gable identified between 24 and 26 dilapidated buildings on the Property that are no longer functional. (Hrg. Tr., 2-23-23, pp. 183, 185). Mr. Gable opined that it would be cost prohibitive to rehabilitate the buildings to something safe and usable. (Hrg. Tr., 2-23-23, p. 185). However, the Environmental Report found no meaningful environmental concerns. (Hrg. Tr., 2-23-23, p. 184).

Proposed Conditional Use

As testified to by the Architect, James Garrison, AIA:

42. Mr. Garrison stated that the Applicant is proposing a “Landscape Hotel” on the Property, where you enter the resort, park your car, register, and then the resort shuttles you to your cabin. A “Landscape Hotel” is meant to allow people to come out into the landscape and experience nature, walk, get a little exercise, and not be in their automobile running around the resort. (Hrg. Tr., 1-30-23, pp. 74-75).

43. Mr. Garrison designed the different cabin types to allow flexibility for a lot of different family configurations. (Hrg. Tr., 1-30-23, pp. 75, 85). There will be a total of 150 units consisting of: (a) six standalone single floor villas with a living room, bedroom, and deck; (b) 18 standalone duplex villas with an open floor concept and a living area, sink, refrigerator, microwave, television room, and restroom on the first floor with sleeping areas on a loft above the first floor; (c) 26 deck villas in three-unit clusters totaling 78 units connected by common walls but not physically connected by common doors; and (d) six group villas with each group villa containing eight units totaling 48 units with four units on each size with a common room in

the middle of the cluster. (Hrg. Tr., 1-30-23, pp. 86-92); see also Exh. A-19, Proposed Development Project Narrative subsection (A).

44. The cabins will not function as stand-alone dwelling units. (Hrg. Tr., 1-30-23, pp. 93).

45. The cabins will not have parking spaces around them. (Hrg. Tr., 1-30-23, p. 92).

46. There will be a reasonable slope distance between the cabins so that nature is the only thing visible. (Hrg. Tr., 1-30-23, p. 107).

47. The resort will also have a standard 94 guest hotel with a pitched roof in character with the rest of the development. (Hrg. Tr., 1-30-23, pp. 97, 104).

48. The main lodge consists of a banquet hall, restaurant and bar, and meeting rooms. (Hrg. Tr., 1-30-23, p. 87). The resort is accessible to the public, so no one needs to stay at the resort to use the banquet hall. (Hrg. Tr., 1-30-23, p. 95).

49. There will also be three pools of different levels of activity. (Hrg. Tr., 1-30-23, p. 89).

50. The buildings will be of timber type. (Hrg. Tr., 1-30-23, p. 88).

51. The resort will be connected to the shopping center by way of a walking path along the riverbank and electric covered golf carts. (Hrg. Tr., 1-30-23, pp. 99, 102).

52. Parking lots will be designed with buffer strips and greenery so that you will not see a field of automobiles. (Hrg. Tr., 1-30-23, p. 108).

53. The parking lot near Wiscasset Road will have a 50 foot buffer and the existing trees and landscaping will not be disturbed. (Hrg. Tr., 1-30-23, p. 109).

54. The walking areas will contain very low lighting. (Hrg. Tr., 1-30-23, p. 103).

As testified to by the Professional Engineer, Michael E. Gable, P.E.:

55. The resort will offer traditional support amenities such as swimming pools, a spa, tennis court, toddler play area, walking trails, and shuttler service. (Hrg. Tr., 2-23-23, pp. 163-164).

56. The shopping center includes a 10,000 square feet (250 seat) restaurant; a 87,000 square feet two-story mixed-use building consisting of professional, medical, retail and recreational uses; and a 85,000 square feet retail building. (Hrg. Tr., 2-23-23, pp. 163-164, 203), see also (Exh. A-2 and A-3).

57. The Property currently consists of approximately 188 acres of woodland. The plan is to clear approximately 44 acres of woodland, 40 acres in the resort area and four acres in the shopping center. (Hrg. Tr., 3-9-23, p. 309).

58. There are two primary access points for the Property. The access to the recreational and commercial areas is State Route 611. (Hrg. Tr., 1-23-23, p. 162). There are also two proposed emergency access routes, one from Wiscasset Road and the other from Montanesca Road. These are both existing access driveways that will be gated and utilized only for emergency use. (Hrg. Tr., 1-23-23, p. 162).

59. The Property has two predominant drainage patterns. The upper portion of the Property drains toward State Route 611 under Trinity Hill Road to Swiftwater Creek. The lower portion of the Property drains down the hillside in the Indian Run to Swiftwater Creek. The entire stream corridor is not going to be disturbed by the project area except for the stormwater basin. However, both stormwater basins will be more than 150 feet from the stream corridor as required under the NPDES Permit. (Hrg. Tr., 1-23-23, pp. 162-163).

Water and Sewer

60. Brian F. Oram, was offered and recognized by the Board as an expert professional geologist and professional soil scientist in the areas of earth and environmental sciences, land-based wastewater management, ground water, water supply development and hydrology. (Hrg. Tr., 3-9-23, p. 345). (Exh. A-10, Curriculum Vitae of Brian F. Oram).

Water

61. The Property is in the Delaware River Basin. The project is in the headwaters of the Indian Run and the upper portions of the Swiftwater Creek that then merge and flow and form Forest Hill Run, Paradise Creek, Brodhead Creek as they move down into the Delaware River. The streams, especially Indian Run and Swiftwater, are classified as exceptionally valued streams, migratory fishery. (Hrg. Tr., 3-9-23, pp. 349-350).

61. The Property will have two wells and a water storage tank that will be designed to meet DEP construction standards. (Hrg. Tr., 2-23-23, pp. 165, 214; Hrg. Tr., 3-9-23, p. 353). (Exh. A-14). The wells will be steel cased that's grouted in place and will be at a depth of between 500 and 800 feet. (Hrg. Tr., 3-9-23, pp. 356-357).

62. The first well will be located on the northern portion of the property, north of the Montanesca House, close to the current driveway to the Property. (Hrg. Tr., 3-9-23, p. 354). The

second well is in the southern portion of the Property, near the existing well that serviced the Hawthorne Inn. The Hawthorne Inn also has a secondary water source, a spring. (Hrg. Tr., 3-9-23, p. 354). The second well was permitted by DEP and had a daily approved water withdrawal of more than 40,000 gallons per day. (Hrg. Tr., 3-9-23, p. 354).

63. The purpose of the two wells will be to provide a primary and backup water source. (Hrg. Tr., 3-9-23, p. 357). The backup well will be used if there is a problem where the pump goes down in the primary well. (Hrg. Tr., 3-9-23, p. 357). The two wells could also be rotated to minimize impacts on surrounding neighbors. (Hrg. Tr., 3-9-23, p. 357). The sustainable yield per well is 60 gallons per minute. (Hrg. Tr., 2-23-23, p. 215). The minimum required yield for the entire resort including the shopping center will be met. (Hrg. Tr., 2-23-23, p. 209).

64. The project will have a peak daily water demand of 60,500 gallons per day or average daily demand of approximately 39,757 gallons per day. (Hrg. Tr., 3-9-23, p. 347; Hrg. Tr., 2-23-23, p. 213). Based upon the anticipated average daily flow the new use will have less water demand than the Hawthorne Inn had during its peak. (Hrg. Tr., 3-9-23, p. 355).

65. Based upon initial tests and assessments, Mr. Oram concluded that 187,258 gallons of water per day is available for the conditional use, and the conditional use will withdraw the equivalent of 20 percent of the water, which will be recharged back into the aquifer. (Hrg. Tr., 3-9-23, p. 355).

66. Approvals for the public water system will include (a) Submitting a Predrilling and Aquifer Testing Plan to the Pennsylvania Department of Environmental Protection (“DEP”); (b) Obtaining drilling permits to drill two water wells from Paradise Township; (c) Implementing a Drilling and Aquifer Test Plan and preparing and submitting non-community water supply modules to DEP related to proposed withdrawal, system operation, and design; and (d) Obtaining a construction permit from DEP, Part II Water Quality Management Permits. (Exh. A-11a, Sanitary Survey and Pre-Drilling Plan).

67. No approval is required from the Delaware River Basin Commission (“DRBC”) because it is not a consumptive water source that would withdraw more than 100,000 gallons per day, and there is no direct stream discharge. (Hrg. Tr., 2-23-23, p. 209; Hrg. Tr., 3-9-23, p. 350)

68. Mr. Oram opined that he does not foresee any adverse or measurable impacts or influences on the surrounding wetlands, surface water features, or existing ground water withdrawals. (Hrg. Tr., 3-9-23, pp. 352-353, 355).

69. Mr. Oram has identified the local wells in the area. (Hrg. Tr., 3-9-23, p. 356). Mr. Oram opined that he does not anticipate any adverse impacts from the proposed conditional use on wells that are located off the site or the local streams. (Hrg. Tr., 3-9-23, p. 355).

70. Mr. Oram also opined that there is sufficient water for both the resort and shopping center. (Hrg. Tr., 3-9-23, p. 359).

71. Mr. Oram represented that the water system will be operated by a licensed drinking water operator. (Hrg. Tr., 3-9-23, p. 380).

Sewer

72. Mr. Gable researched the possibility of servicing the use with public sewer. However, he concluded public sewer was not available. (Hrg. Tr., 3-9-23, p. 289). There are two public sewer systems in the area, Mount Pocono Municipal Authority and Pocono Township. Mount Pocono Municipal Authority's spray fields adjoin the Property; however, it has capacity limitations and litigation issues that prohibit connection to their system. (Hrg. Tr., 3-9-23, pp. 198-199). To connect to Pocono Township, the Applicant would need to connect to Broadhead Creek Regional Authority's water system, which is currently out of the service area. (Hrg. Tr., 3-9-23, p. 199). As a result of Mr. Gable's alternatives analysis, he determined the best option is an "on-lot" sewer system, and the best disposal system is "drip irrigation". (Hrg. Tr., 3-9-23, p. 290).

73. Mr. Gable testified that the Applicant is proposing a series of drip irrigation fields. (Hrg. Tr., 2-23-23, p. 165). Mr. Gable described the system as "convenient and highly desirable" because it involves on-lot sewer disposal instead of a stream discharge. Mr. Gable explained that the Property is in an exceptional value watershed, so on-lot disposal and drip irrigation is the preferred system. (Hrg. Tr., 2-23-23, p. 169). Mr. Gable represented that the drip irrigation system will be operated by a licensed wastewater operator and there will be ground water monitoring wells located downslope. (Hrg. Tr., 2-23-23, p. 170).

74. Mr. Oram authored an expert report, wherein he concluded that the drip irrigation source is the most appropriate method of sewer disposal for the use. (Exh. 13-A, Sewer Report;

Hrg. Tr., 3-9-23, p. 360). Mr. Oram explained that the system is preferred because it is designed so that there is no stream discharge. (Hrg. Tr., 3-9-23, p. 370).

75. Mr. Oram's alternative analysis reviewed all land-based disposal approaches, including conventional land-based disposal using elevated sand mounds, micro mounds, spray irrigation, and drip irrigation. (Hrg. Tr., 3-9-23, p. 360). On-site testing occurred as recently as January of 2023 and included 73 test pits and 31 hydro-connectivity tests. (Hrg. Tr., 3-9-23, pp. 360-361). Based upon the four areas of the Property tested, the Property is generally suitable for land-based waste management and the preferred approach is a drip irrigation system. (Exh. 14; Hrg. Tr., 3-9-23, p. 363). The total drip irrigation capacity for the system ranges from 45,000 gallons per day to 60,000 gallons per day with a peak capacity of 74,000 gallons per day. (Hrg. Tr., 3-9-23, p. 368). It allows for maintaining existing vegetation while removing the least number of trees and provides enough water to meet the proposed project needs while maintaining additional capacity of 5,000 gallons per day in the winter and 35,000 gallons per day in the summer. (Hrg. Tr., 3-9-23, pp. 363, 369).

76. Mr. Oram opined that the Property can provide enough capacity to meet the peak daily flows (and more) based monthly. (Hrg. Tr., 3-9-23, pp. 366-367).

77. Mr. Oram had discussions with DEP and the drip irrigation system is an approach DEP would consider. (Hrg. Tr., 3-9-23, p. 368).

78. Mr. Oram concluded that the drip irrigation system would maintain the wooded characteristics of the Property; implement a sustainable wastewater management system; and would not adversely impact the public. (Hrg. Tr., 3-9-23, p. 368).

79. Mr. Gable represented that an individual NPDES Permit from DEP would be required for the use because the overall discharge area is near the Swiftwater Creek, which is an exceptionally valued stream. (Hrg. Tr., 3-9-23, p. 187).

Lighting

80. The Applicant is proposing an exterior lighting plan for the resort that will meet the requirements of the Paradise Township Subdivision and Land Development Ordinance ("SALDO"). (Hrg. Tr., 3-9-23, pp. 336, 342).

81. There will be low ground lighting facilities on the walking paths. (Hrg. Tr., 3-9-23, p. 335). In the parking areas, the light poles will be mounted at a height of 18 to 24 feet. (Hrg. Tr., 3-9-23, p. 336).

82. The proposed lighting will be LED with downward facing lamps intended to protect and prevent night glow. (Hrg. Tr., 3-23-23, p. 177).

83. The lighting plan will have zero spillage onto adjoining properties meaning that when you stand in the parking lot if all other lights are turned off and you look down to the ground it will be pitch black. (Hrg. Tr., 3-23-23, p. 243).

Buffering and Landscaping

84. Buffering and landscaping will be provided to protect and enhance the adjoining areas. (Hrg. Tr., 3-9-23, p. 341).

85. The Applicant will be planting bushes and shrubbery between the parking lot and Wiscasset Road to protect adjoining property owners. The plantings include Norway Spruces, White Pines, and Arborvitae. (Hrg. Tr., 2-23-23, p. 234).

Stormwater Management Facilities

86. This Property is in an Exceptional Value (EV) Watershed which requires an Individual NPDES Permit for Stormwater Discharges. The Property will be designed and permitted in compliance with the PA Stormwater Best Management Practices Manual and the Township Stormwater Management Ordinance. These regulations require that the site stormwater discharge, at a peak rate, be no greater than what discharges today for the 2-year through 100-year intensity design storms. Also required is that the site's stormwater structures infiltrate the difference between the volumes of the two-year storm existing and proposed conditions. (Exh. A-20-A-25)

87. Stormwater management facilities for any new land development are required to be designed, constructed, and operated to protect the water quality of the receiving watershed. In designing such stormwater management facilities, the three primary considerations are: water quality, volume of discharge, and rate of discharge. The primary "non-structural" goal is to spread stormwater facilities throughout the development area and avoid large areas of impervious cover to promote flows to impervious surfaces to non-impervious via sheet flow, to avoid concentrated flow. While these are interrelated considerations, each is approached differently as follows:

- a. Rate of Stormwater Discharge: All projects must include control of the rate of discharge for all design storms up to and including the 100-year design storm. This project proposes to utilize rain gardens, infiltration basins, a green roof, and other

similar techniques to control stormwater. A model will be created which determines the rate of discharge from the site in its current existing condition.

b. Volume of Stormwater Discharge: The on-site infiltration systems will be designed to infiltrate this difference in volume of stormwater for the 2-year storm using structural and non-structural best management practices.

c. Stormwater Quality: Stormwater quality discharge from developed areas is always a concern. The water quality protection systems will include the abovementioned stormwater controls combined with other BMPs such as discharging stormwater from impervious areas to promote sheet flow, utilizing flatly sloped, grass lined water quality swales, retaining natural woodlands close to impervious areas, soil augmentation, and other similar best management practices. (Exh. A-20-A-25).

88. The soil on the Property has been evaluated by a geotechnical engineer to determine areas suitable for stormwater infiltration. This will be the design rates and set bottom elevations of infiltration facilities. (Exh. A-21 and A-22).

89. There will likely be four points of concentrated discharge of stormwater from the site. The flows to those points will likely be very low during low intensity storm events and designed to safely convey flows to the receiving waters for all design storms up to the 100-year storm. The points of discharge will likely be the small stream and wetland corridor along Trinity Hill Road and Montanesca Road, at the Main intersection with SR 0611 connecting to existing stormwater conveyance in the highway, a discharge from stormwater basins to the Indian Run for the Hawthorne Resort and to the Swiftwater Creek from the basins from the Strickland Commercial area. The discharges to the Trinity Hill wetlands will be small and likely by way of a culvert to a simple rock outfall apron. The conveyance to the SR 0611 drainage will be a direct connection to highway drainage by culverts. The discharges to the Indian Run and Swiftwater Creek will be made by wide bottom flatterly sloped water quality swales. These swales will be lined with turf matting and fully vegetated to restore the natural conditions along the streams while providing final polishing of the stormwater prior to discharge to the streams. Once constructed and stabilized, the drainage pattern will be all but disguisable from the existing natural vegetation and drain patterns in the stream corridor. (Exh. A-20- A-25)

90. The stormwater management facilities will be kept as natural as much as possible. (Hrg. Tr., 2-23-23, p. 272).

Economic Impacts

91. Mr. Erik Hetzel, AIA, was offered and recognized by the Board as an expert in the field of community impacts and assessments, including economic and financial aspects of the project. (Hrg. Tr., 3-16-23, p. 455; Exh. A-26).

92. Mr. Hetzel authorized a report on the fiscal impacts of the use on the community. (Exh. A-27, Fiscal Impacts Report). The report was prepared to meet the requirements of the zoning ordinance regarding the township and school district revenues and expenses. (Hrg. Tr., 3-16-23, p. 457).

93. The economic impact in favor of the township is a total of \$123,911.00 in tax revenues per year (\$76,775.00 real estate taxes; \$31,000.00 in earned income taxes; and \$15,780.00 in local service taxes). (Hrg. Tr., 3-16-23, pp. 460-461). With a modest annual cost to the township against the revenues Mr. Hetzel anticipates approximately \$118,179.00 in net positive fiscal impacts to the township each year. (Hrg. Tr., 3-16-23, p. 462).

94. As for the school district, Mr. Hetzel anticipates \$1,200,000.00 in revenue annually without any offsetting costs. (Hrg. Tr., 3-16-23, p. 463).

95. Mr. Hetzel concluded that the total net positive benefit impacts to township, school district, county and Commonwealth of Pennsylvania is estimated at \$3,900,000.00 per year. (Hrg. Tr., 3-16-23, p. 464).

96. Mr. Hetzel opined that he does not expect the proposed development to have any significant impact on any of the public safety demands (police, fire, and EMS). (Exh. A-28; Hrg. Tr., 3-16-23, p. 465).

97. Charles Leonard, Executive Director of Pocono Mountains Economic Development Corporation also appeared and testified in favor of the conditional use. The primary purpose of the corporation is to attract new industry to the community, help industries grow and expand, create jobs, and increase the tax base. (Hrg. Tr., 3-16-23, p. 583).

98. Mr. Leonard characterized the use as a redevelopment project because of the abandoned resort and golf course and dilapidated buildings. (Hrg. Tr., 3-16-23, p. 507).

99. Mr. Leonard believes that this project will create jobs for locals in the community, not have any impact on the school district, and will have great success in the marketplace. (Hrg. Tr., 3-16-23, p. 505).

100. Mr. Leonard, who is very familiar with the area, observed that the commercial portion of the resort and the resort is harmonious with the other uses on the SR 611 corridor. (Hrg. Tr., 3-16-23, pp. 508-509).

101. Mr. Leonard referenced the Monroe County Comprehensive Plan and found that the proposed resort is consistent with the Future Land Use Plan of the comprehensive plan. (Hrg. Tr., 3-16-23, pp. 509-510).

102. Mr. Leonard feels that the tax income on the Property currently is \$17,000.00 per year and the development of the Property for the proposed use will increase that tax income by more than one hundred times. (Hrg. Tr., 3-16-23, p. 510).

Property Values

103. The Applicant offered and the Board recognized Alan Rosen, Esquire, as a general real estate evaluation expert in both residential and commercial real estate. (Exh. A-29; Hrg. Tr., 3-16-23, p. 483).

104. Mr. Rosen evaluated the impacts of the shopping center and the resort on the surrounding neighborhood and based upon the prior uses of the Property opined that the impact, if any, will be positive on property values. (Hrg. Tr., 3-16-23, pp. 484-485).

105. Mr. Rosen opined that the proposed use is consistent with the nature and character of the area in that it is located on SR 611 and there are commercial properties, shopping centers and other resorts in both directions on SR 611. (Hrg. Tr., 3-16-23, pp. 485-486).

106. Mr. Rosen also opined that the proposed conditional use will not have any adverse impacts on the value of adjacent properties. (Hrg. Tr., 3-16-23, p. 487).

Traffic

107. The Applicant offered, and the Board recognized, David H. Horner, P.E. PTOE, as an expert in the field of traffic engineering. (Exh. A-30, Curriculum Vitae; Hrg. Tr., 4-27-23, p. 535).

108. Mr. Horner performed a Traffic Impact Assessment for the resort. (Exh. A-31; Hrg. Tr., 4-27-23, p. 535). In preparing the report, Mr. Horner studied the intersection of SR 611, Trinity Hill Road, and Meadowside Road, which is the access to the resort. The report includes the intersection of SR 611 and Woodland Road, which is the existing traffic signalized intersection just south of the commercial area, and the intersection of SR 61, Wiscasset Road, Stricklands Road, which is between the two, an unsignalized intersection. (Hrg. Tr., 4-27-23, pp.

539-540). The intersections studied were the ones required by Chapter 120 Section 20B of the Zoning Ordinance because they were the ones adjacent to the site or have direct impact upon the access to the site. (Hrg. Tr., 4-27-23, p. 540). However, as part of land development should the Board request additional intersections be studied, the Applicant would do so. (Hrg. Tr., 4-27-23, p. 540).

109. The Traffic Impact Assessment Report reviewed existing and future conditions as well as site traffic. (Exh. A-31). Based upon the 2028 and 2033 No-Build and Build Conditions analysis, Mr. Horner concluded that the site-generated traffic can be safely and acceptably accommodated at each studied intersection. (Exh. A-31; Hrg. Tr., 4-27-23, pp. 541-565).

110. Mr. Horner also prepared and offered a conceptual two-lane round-about installation design at Trinity Hill Road and SR 611. (Exh. A-34; Hrg. Tr., 4-27-23, pp. 558. 560). Based upon the plan, the roundabout connects SR 611 with Meadowside Road, Trinity Hill Road and the resort. (Hrg. Tr., 4-27-23, p. 559). Mr. Horner opined that this is the preferable option for access because it would accommodate U-turn movements for traffic that is destined from the south to enter the commercial area. (Hrg. Tr., 4-27-23, p. 562).

111. Mr. Horner also reviewed that internal vehicular and pedestrian circulation. (Hrg. Tr., 4-27-23, p. 568).

112. Mr. Horner opined that:

a. Loading could be accomplished without doing so in the area roadways. (Hrg. Tr., 4-27-23, p. 568).

b. The site is designed and constructed so that vehicular and pedestrian traffic would not create undue congestion or hazards prejudicial to the general area. The connection for pedestrians between the commercial area and the resort area is designed and located so that pedestrians will not feel the need to traverse SR 611. (Hrg. Tr., 4-27-23, p. 569).

c. The off-street parking, loading and access is in accordance with the minimum requirements of the Paradise Township Zoning Ordinance and will minimize interference with traffic on all streets. Based upon the level of service projections in terms of parking, loading, and access, the parking and loading is designed to be in accordance with the zoning ordinance and will not create any undue hazard outside the property boundaries or even within the property boundaries on the adjacent streets. (Hrg.

Tr., 4-27-23, p. 570). Based upon the detailed analysis, Mr. Horner concluded that vehicular and pedestrian traffic will not create undue congestion or hazards prejudicial to the general area. (Hrg. Tr., 4-27-23, p. 570).

d. Traffic generated from the project will not have any adverse impacts upon public health, safety, and welfare. Mr. Horner concluded that traffic can be accommodated in the study area at the intersections without detrimental level of service, undue delays, or safety hazards. There will be, obviously, additional traffic as any development would generate, but that does not, in Mr. Horner's opinion, automatically represent adverse conditions. There will be no adverse conditions because there are no level of service deficiencies or safety hazards. (Hrg. Tr., 4-27-23, p. 571).

e. Access locations in terms of location, configuration, and traffic control are subject to review and approval of the Pennsylvania Department of Transportation ("PennDOT") since they are to a state highway (SR 611). (Hrg. Tr., 4-27-23, p. 571).

f. The project will not generate unusual or atypical traffic other than the type of traffic that is normally expected by a resort. (Hrg. Tr., 4-27-23, p. 571).

g. There is an expanded scope of Penn DOT's highway occupancy permit zone of influence, wherein Penn DOT's jurisdiction includes the portion Trinity Hill Road between the resort aspect driveway and SR 611. (Hrg. Tr., 5-23-23, p. 628).

Land Use Planning

113. The Applicant offered and the Board recognized John R. Varaly, AICP, as an expert in the areas of land use planning and zoning. (Exh. A-32; Hrg. Tr., 5-23-23, p. 670).

114. Mr. Varaly reviewed the plans and concluded that the Property has been designed to comply with all dimensional requirements of the Paradise Township's Zoning Ordinance. As such, no variances are required for the project. (Exh. A-32).

115. Mr. Varaly opined that the project meets the purposes of the overlay district in that:

a. The development is integrated with a variety of uses according to the Master Development Plan. The resort and the shopping center are integrated, as that term is defined by Webster's Dictionary, by walking trails; and the seven properties comprising the resort are all contiguous and "linked together" and accessible by vehicular and pedestrian travel. (Hrg. Tr., 5-23-23, pp. 674-675).

b. The project encourages efficient, compact patterns of land use while maintaining the community's visual character in that the properties are in the resort overlay district and the community's visual character shall be improved with the redevelopment of the property for resort development consistent with the neighborhood. (Exh. A-32).

c. The project will diversify the Township's economy and upgrade the tourism industry for the reasons expressed at a previous hearing by Erik Hetzel and Charles A. Leonard. (Exh. A-32).

d. The project will attract new enterprises that support jobs with good pay, contribute to the tax base, and balance the burden homeowners and businesses now bear for financing public facilities and services, especially schools. (Exh. A-32).

e. The project will encourage the preservation of greenway land for conservation and recreation. (Exh. A-32).

d. The project will provide opportunities for site design that conserve the natural, aesthetic, and visual resources of the tract. (Exh. A-32).

f. The project will provide opportunities for stormwater and wastewater management facilities which protect existing stream water quality and promote recharge of clean groundwater. (Exh. A-32).

g. The project will provide flexibility in design and use of larger tracts of land within the Township consistent with the goals and objectives listed under the Comprehensive Township Development Plan, and Monroe County Comprehensive Plan. It should also be pointed out that the Paradise Township Planning Commission recommended approval of this project. The Monroe County Planning Commission provided advisory comments, as did the review by Hanover Engineering. In both cases their advisory comments related to applicable provisions required for the Master Development Plan, which the applicant was aware of. Neither Monroe County Planning Commission recommended disapproval of the proposed project. (Exh. A-32).

116. Mr. Varaly also reviewed the Master Development plan and concluded that the plan meets the site development plan requirements of the Zoning Ordinance. (Hrg. Tr., 5-23-23, p. 676).

117. Mr. Varaly opined that the Applicant has met the burden of proof in that it complied with the specific criteria of the ordinance and has met the burden of proof in that the proposed project will be designed in compliance with Article XII of the zoning ordinance and will not have an adverse impact upon the public health welfare and safety of the Township and its residents. (Exh. A-32).

118. Mr. Varaly reviewed the general standards of the zoning ordinance as found at §160-10 (A) of the Zoning Ordinance and concluded that:

a. The project shall not cause substantial injury to the value of other property where it is to be located. The project as determined by Alan Rosen, a General Real Estate Appraiser, will not cause substantial injury to the value of other property based upon where it is located. (Exh. A-32).

b. The project conforms with regulations applicable to the district where it is located, and no variances are necessary. (Exh. A-32).

c. The project is compatible with adjoining development. (Exh. A-32).

d. There is provided adequate buffers, landscaping, and screening to protect and enhance adjoining areas. (Exh. A-32).

e. The project provides off-street parking and loading and access in keeping with this chapter to minimize interference with traffic on all streets. (Exh. A-32).

f. The project does not jeopardize the public health, safety, welfare, quality of life or convenience of township residents. (Exh. A-32).

g. The project was designed and constructed such that vehicular and pedestrian traffic will not create undue congestion or hazards prejudicial to the general area. (Exh. A-32).

h. The applicant prepared and submitted, at its own expense, an environmental impact statement, a traffic impact analysis, a community impact analysis, and historical and cultural analysis, all of which show that the proposed project will not have any adverse impacts on the public health, safety and welfare in a way not normally expected from the type of use. (Exh. A-32).

119. In Mr. Varaly's opinion as a professional planner, the applicant provided more detail than was necessary for a conditional use application. A conditional use proceeding concerns only a proposed use of land, not particular design details of the proposed development that are

relevant during land development. Design criteria for water, sewer, storm water management, building codes, and water and sewer supply and capacity requirements are less relevant concerns when determining whether to grant a conditional use since they are addressed further along in the permitting and approval process. In addition, any anticipated traffic increase resulting from a proposed use would not, on its own, defeat a conditional use request. The mere fact that a proposed use would contribute to projected traffic congestion primarily generated by other sources is not a sufficient basis for denying a conditional use. (Exh. A-32).

120. Mr. Varaly opined that the Applicant has met the burden of proof regarding documentation of measurable standards and criteria contained in Article XII of the zoning ordinance which would entitle it to approval of the conditional application. The Applicant has provided documentation that this proposed project will be developed in compliance with all applicable zoning regulations that have been enacted to ensure it will be compatible with surrounding land uses. There is no evidence that this project would have an adverse impact upon the public health, welfare and safety of the Township and its residents. (Exh. A-32).

II. DISCUSSION:

A. Contiguous Acres

Chapter 160, Article III, Section 160-12.A (43.B)(b) of the Paradise Township Zoning Ordinance requires in a Resort Development Overlay District, to wit: “Master developments require a minimum of 60 contiguous acres for development.” The Board requested that the Applicant 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. The Board also requested that the Applicant 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.

The Board is the entity charged with the interpretation and application of the zoning ordinance. It is well settled that a board's interpretation of its own zoning ordinance is entitled to great weight and deference from a reviewing court. *Borough of Milton v. Densberger*, 719 A.2d 829 (Pa.Cmwlth. 1998). See *Johnston v. Upper Macungie Township*, 162 Pa.Cmwlth. 170, 638 A.2d 408 (1994). This principle is also codified in Section 1921(c)(8) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921(c)(8). The basis for the judicial deference is the

knowledge and expertise that a board possesses to interpret the ordinance that it is charged with administering. Willits Woods Associates v. Zoning Board of Adjustment of City of Philadelphia, 138 Pa.Cmwlth. 62, 587 A.2d 827 (1991).

Boards confronted with interpreting undefined terms in an ordinance are guided to construe words and phrases in a sensible manner, utilize the rules of grammar and apply their common and approved usage, and give undefined terms their plain, ordinary meaning. Diocese of Altoona-Johnstown v. Zoning Hearing Bd. of Borough of State College, 899 A.2d 399 (Pa. Cmwlth. 2006). Where a court needs to define an undefined term, it may consult definitions in statutes, regulations or the dictionary for guidance. H.E. Rohrer, Inc. v. Zoning Hearing Bd. of Jackson Twp., 808 A.2d 1014 (Pa.Cmwlth. 2002).

The word "Contiguous" is not defined by the Paradise Township Zoning Ordinance. See Chapter 1, Article II, Section 1-16. Therefore, the Board should consult definitions in statutes, regulations, and the dictionary for guidance. The following is a review of other statutes, regulations and the dictionary:

1. Title 7 of the Pa.Code defines contiguous land or contiguous area as “All portions of one operational unit as described in the deed, whether or not the portions are divided by streams, paved public roads, streets or bridges...” 7 Pa.Code 137.12.

2. Chapter 1, Article II, Section 1-16 defines "Tract" as "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." Feick v. Berks Cnty. Bd. of Assessment Appeals, 720 A.2d 504, 508 (Pa.Cmwlth. 1998).

3. Black's Law Dictionary defines “contiguous,” in pertinent part, as: “Touching at a point or along a boundary.” Black's Law Dictionary at 338 (8th ed.2004). Moonlite Cafe, Inc. v. Dep't of Health, 23 A.3d 1111, 1116 (Pa.Cmwlth. 2011).

4. The Oxford Dictionary has defined “contiguous” as “touching, in actual contact, next in space, meeting at a common boundary, bordering, adjoining; continuous, with its part in uninterrupted contact.” Lancaster City Annexation Case (No. 5), 374 Pa. 546, 548, 98 A.2d 34, 35 (1953).

The case of Glencrest Realty Co. v. Zoning Hearing Bd. of Washington Twp. provides guidance on the use of the word contiguous in a zoning context. Glencrest applied for special

exception to construct a second phase expanding the already existing mobile home park. The site proposed contains 18.5 acres and is situated on the opposite side of a Township Road directly across from the Glencrest Park. It does not touch the park at any point. If constructed, the addition will contain 72 mobile home sites and recreational facilities. Water and sewage are to be provided by extending the systems currently used by Glencrest. The addition will be owned, operated and managed as part of Glencrest Mobile Home Park. The Board denied the application for special exception finding that the proposed site was not contiguous to the Glencrest Mobile Home Park, and that standing alone it did not consist of 50 contiguous acres. The court found that the board's denial was an abuse of discretion or clear error of law. The ordinance provided that mobile home parks shall have a minimum of 50 contiguous acres of usable site area. The board, in interpreting the ordinance, determined that mobile home parks may only exist on 50 minimum acre tracts and that the entire tract of 50 acres or more must be contiguous in the sense that it is a single, integrated site not bisected by public streets which divide it into separate parcels. However, the court, in reading the ordinance, saw nothing to suggest such an interpretation. While the clear and unambiguous language of the ordinance requires that at least 50 acres of each mobile home park must be contiguous, there is no requirement that acreage in excess of the 50-acre minimum used for development actually adjoin the 50-acre contiguous tract or individually constitute 50 contiguous acres. Nor may such requirement be inferred from the language. If the language of a statute is clear, it may not be disregarded under the guise of presumed "legislative intent." *Glencrest Realty Co. v. Zoning Hearing Bd. of Washington Twp., 46 Pa.Cmwlth. 177, 178-79, 406 A.2d 836, 837-38 (1979).*

Since the word "contiguous" is not defined by Paradise Township, the proposed resort and commercial areas are on contiguous parcels because as in *Glencrest* the Applicant meets the minimum required acreage without consideration of the township road. Nevertheless, the Township Right-of-Way ("ROW") known as Rock Ridge Road should not be considered since the Applicant owns the land under the road. Even if Rock Ridge Road were abandoned/vacated by the Township in the future then, the Subject Tract would remain connected in the area of Rock Ridge Road, as the right-of-way would revert to the underlying property owner. *Buffalo Tp. v. Jones*, 813 A.2d 659, 664 (Pa. 2002). The Applicant's expert, Michael E. Gable, testified that the Applicant owns the land under the road, which land is described on the conditional use plans for the development. (Hrg. Tr., 2-23-23, pp. 223-226; Exh. A-20, Conditional Use Plans).

More importantly, the land in the rear of the project area does not hold any ROW and is clearly contiguous if the Board was to consult the statutes, regulations and dictionary definitions cited above. The word contiguous has no bearing, whatsoever, on which municipality the land is located in and the ordinance does not require all of the land to be located in Paradise Township. Since the ordinance is silent on the issue, under Section 603.1 of the PA MPC, the ordinance shall be interpreted, where doubt exists in favor of the property owner and against any implied extension of the restriction. 53 P.S. Section 10603.1.

When interpreting zoning ordinances, the court relies on the common usage of words and phrases and construes language in a sensible manner. Steeley v. Richland Twp., 875 A.2d 409, 414 (Pa. Cmwlth. 2005). While it is true that zoning ordinances are to be liberally construed to allow the broadest possible use of land, it is also true that zoning ordinances are to be construed in accordance with the plain and ordinary meaning of their words." Zappala Grp., Inc. v. Zoning Hearing Bd. of Town of McCandless, 810 A.2d 708, 710 (Pa. Cmwlth. 2002). The Board should consider in reviewing the plain and ordinary meaning of the term "contiguous acres" the following:

1. The Act 537 Planning, relating to sewage is required for the project in Paradise Township, Pocono Township and Mount Pocono Borough.
2. A subdivision or lot line adjustment is required for the project in Paradise Township, Pocono Township and Mount Pocono Borough.
3. The stormwater management under Paradise and Pocono Townships SALDO and Stormwater Management Ordinances are required for the project.

B. Frontage or Access to a Penn DOT Controlled Road

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.A(43.B.(e)). The Board requested the Applicant to address this provision of the ordinance based on facts of record regarding how the proposed application intends to meet this requirement for both the commercial and resort. The Board also requested that the Applicant 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? The Board asked that the Applicant provide any proposed conditions.

In interpreting provisions of a zoning ordinance, undefined terms, such as the word "frontage" and the term "direct access", must be given their plain, ordinary meaning. Appeal of Mount Laurel Racing Association, 458 A.2d 1043 (Pa. Cmwlth. Ct. 1983). Absent a limiting legislative definition, a term permitting a use must be presumed to have been employed in its broadest sense. R. Anderson, Law of Zoning in Pennsylvania §15.05 (1982). Moreover, words in a zoning ordinance should be given their common meanings, and any doubt should be resolved in favor of the landowner. Abington Township v. Dunkin' Donuts Franchising Corp., 291 A.2d 322 (Pa. 1972). See also Gilden Appeal, 178 A.2d 562 (Pa. 1962). When appropriate definitions are lacking, the court will not attach strained meanings to the words used or find a prohibition by implication. Appeal of Mount Laurel Racing Association, supra. The Supreme Court has reaffirmed the principle that, in construing zoning ordinances, to permit the widest use of land is the rule and not the exception, unless the use is specifically restrained in a valid and reasonable exercise of the police power. Council of Middletown Township v. Benham, 523 A.2d 311 (Pa. 1987); Fidler v. Zoning Board of Adjustment, 182 A.2d 692 (Pa. 1962).

In this case, it is obvious based upon the Applicant's Plan for the development that the shopping center portion of the resort has frontage and direct access to State Route 611. It is also clear that the ordinance does not prohibit other access to the resort even though the Hawthorne portion of the resort also has frontage on State Route 611 and direct access by way of a road or highway under control of Penn DOT. The Hawthorne portion of the project has plans that show frontage on State Route 611 from the original ROW of Trinity Hill Road to Wiscasset Road. Mr. Horner testified that the Property has approximately 530 feet of frontage along State Route 611. (Hrg. Tr., 5-23-23, p. 614). In terms of direct access, Mr. Horner testified that the entire stretch of frontage is controlled by Penn DOT, including the intersection of Trinity Hill Road and Meadowside Road. (Hrg. Tr., 5-23-23, p. 614). The access proposed is controlled by Penn DOT regardless of whether the ultimate form is a roundabout, traditional four-way intersection or signalized intersection. (Hrg. Tr., 5-23-23, p. 614). Mr. Horner even went as far as to represent that a connection from another road to State Route 611 in this case would be under the control of Penn DOT because of Publication 282 of the Highway Occupancy Permit Application issued by Penn DOT. (Hrg. Tr., 5-23-23, p. 615). Page 7 of Publication 282 states that Penn DOT's permit issuance authority extends to the right-of-way line (in case of utilities) and beyond (in case of access or drainage) where the proposed and permitted work outside the right-of-way may affect

the efficiency, operation and maintenance of the State highway. (Hrg. Tr., 5-23-23, p. 616; Exh. A-36).

Based upon the facts and circumstances in this case, the resort, including the shopping center, will have frontage along and direct access to a road or highway controlled by Penn DOT to comply with Chapter 160, Article III, Section 160-12.A(43.B.(e) of the Paradise Township Zoning Ordinance. The intent of the ordinance provision is to limit the impacts on local township roads and require Penn DOT to control the entrance. The ordinance provision does not state to a Penn DOT ROW, so the ordinance, as written, does not intend to force the connection to a Penn DOT ROW, but only require Penn DOT's control. The project, for any of the proposed road configurations, will require a Penn DOT Highway Occupancy Permit ("HOP"). The HOP demonstrates Penn DOT's control over the intersection to comply with the intent of the ordinance provision.

When improvements, whether onsite or offsite, to an intersection controlled by Penn DOT is required, a Board cannot compel such improvements because the intersection is controlled by Penn DOT. Indeed, design and improvement fall under the jurisdiction of Penn DOT as part of the Highway Occupancy Permit application process, and the Township may condition approval on the landowner obtaining a Highway Occupancy Permit from Penn DOT. see Sections 408 and 420 of the State Highway Law. see Smithfield v. Kessler, 882 A.2d 17, 22 (Pa. Cmwlth. 2005); CACO Three, Inc. v. Board of Supervisors of Huntington Township, 845 A.2d 991, 998 (Pa. Cmwlth. 2004). However, the Township cannot deny an application on that basis. In re February 12, 2018 Decision of Westtown Twp. Bd. of Supervisors Denying Toll PA XVIII, L.P.'s Conditional Use Application for a Flexible Dev. of Crebilly Farm, 1366 C.D. 2018, 2019 WL 6770135, at *6 (Pa. Cmwlth. Dec. 12, 2019). The Board should impose a condition that the Applicant obtain an HOP from Penn DOT with review and approval by the township as part of the land development process for any improvements to township roads.

C. Integrated Development

Chapter 160, Article XII, Section 160-71(B)(2) of the Paradise Township Zoning Ordinance 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." The Board requested that Applicant to 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. The Board also requested that the Applicant 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. The Board asked that the Applicant provide any proposed conditions.

In interpreting provisions of a zoning ordinance, undefined terms, such as the word "integrated", must be given their plain, ordinary meaning. Appeal of Mount Laurel Racing Association, 458 A.2d 1043 (Pa. Cmwlth. Ct. 1983). Like statutes, the primary objective of interpreting ordinances is to determine the intent of the legislative body that enacted the ordinance. See Bailey v. Zoning Bd. of Adjustment of City of Phila., 569 Pa. 147, 801 A.2d 492 (2002). In defining an undefined term, it may be necessary to consult definitions in statutes, regulations or the dictionary for guidance, although such definitions are not controlling. H.E. Rohrer, Inc. v. Zoning Hearing Bd. of Jackson Twp., 808 A.2d 1014 (Pa. Cmwlth. 2002). Black's Law Dictionary defines "integration," in pertinent part, as: "The process of making whole or combining into one." Black's Law Dictionary at 690 (9th ed. 2010). The Applicant's expert land use planner, John R. Varaly, AICP, referenced Webster's Dictionary and defined integrated as "something with various parts or aspects linked or coordinated." (Hrg. Tr., 5-23-23, pp. 674-675); See also Merriam-Webster Dictionary (11th ed. 2003) (A general definition of the term "integrate" is "to form, coordinate, or blend into a functioning or unified whole".) . Mr. Varaly opined that just because vehicle access to the resort and shopping center was by way of SR 611, such a circumstance cannot be used to infer that the resort is not integrated. (Hrg. Tr., 5-23-23, p. 675). Mr. Varaly suggested that the resort and shopping center are integrated since they could both be accessed by SR 611; the properties are bordering one another; they are both accessible by walking trails; and the sharing of utilities. (Hrg. Tr., 5-23-23, pp. 675, 684). The engineer, Michael Gable, also noted that shuttle service will be available to transport guests between the resort to the shopping center. (Hrg. Tr., 5-23-23, p. 696).

The term "integration" has been used in zoning matters in the context of merger. The courts have held that mere common ownership of adjoining lots does not automatically establish a physical merger of those lots for purposes of zoning. Tinicum Township v. Jones, 723 A.2d 1068 (Pa. Cmwlth. 1998). Nevertheless, when a landowner acquires two adjoining lots after the passage of a zoning ordinance which rendered one or both of the lots nonconforming and the landowner uses both of the lots in such a manner so as to integrate both lots into one tract, then

the lots merge for purposes of zoning. Township of Middletown v. Middletown Township Zoning Hearing Board, 120 Pa.Cmwlth. 238, 548 A.2d 1297 (1988).

In Cheltenham Township Appeal, the court reviewed integration in the context of vested rights. In that case, the court recognized that a developer may obtain vested rights in a subdivision plan where the “integrated, comprehensive, staged development of a large tract of land” may and should be treated as a single undertaking. A detailed plan of development of approximately 150 acres was implemented by a township zoning ordinance which rezoned 33 acres to FF Commercial and the remaining acreage to FFF Commercial. The detailed plan contemplated a shopping center and parking area on the 33-acre tract and high-rise apartment buildings, a hotel, and an office building on the other tract. A building permit was issued for the first apartment building, without objection, and the installation of sewerage and electrical systems to serve the entire development was begun. Some seven months after issuance of the first permit, a building permit was issued for the construction of a store in the shopping center, whereupon a civic association filed its timely appeal from the issuance of the second permit, but its objections were to the entire comprehensive development. The Court held that the protestants waived their right to object when they failed to appeal from the issuance of the first permit. The total cost of the undertaking was estimated at \$50,000,000. More than \$3,150,000 had been expended to purchase land; a \$7,500,000 loan had been obtained; leases had been signed and a general building contractor had been engaged. Cheltenham Township Appeal, 413 Pa. 379, 196 A. 2d 363 (1964).

The court has also reviewed the term integral when dealing with a nonconforming use. The court held that the maintenance of an office is an integral part of the operation of a junkyard that is more properly viewed as a part of the totality of the junkyard operation than as a use separate from a principal junkyard use. See Hilltown Township v. Horn, 13 Pa. Commonwealth Ct. 248, 320 A.2d 153 (1974) reversed on other grounds, Horn v. Hilltown Twp., 461 Pa. 745, 337 A.2d 858 (1975).

In the case of Glencrest Realty Co., the court held two properties were integrated even though they were separated by a township road. In that case, the record reflected that the properties were bisected by a township road, but were still integrated because the two tracts would be used for mutual benefit and enjoyment, under single ownership, management, and

control. *Glencrest Realty Co. v. Zoning Hearing Bd. of Washington Twp.*, 406 A.2d 836, 837–38 (Pa. Cmwlth. Ct. 1979).

The Board should consider in reviewing the plain and ordinary meaning of the term “integrated” the following:

1. The walking path provides an opportunity to “combine” or “unite” the project into one by a walking path (which can be relocated by a condition of the Board from Wiscasset and Rock Ridge Roads to along the stream corridor in the rear of the project area). This path serves to connect pedestrian traffic between the resort and shopping center. (Hrg. Tr., 5-23-23, pp. 692-698). The Applicant’s expert Michael E. Gable testified that the Applicant owns the land under the road, which land is described on the conditional use plans for the development. (Hrg. Tr., 2-23-23, pp. 223-226; Exh. A-20, Conditional Use Plans). As such, the properties and the walking trails are linked.

2. The utilities for the resort and shopping center are being “linked” and “coordinated” and “shared”. (Hrg. Tr., 5-23-23, p. 684).

3. The traffic studies and Penn DOT approvals are being “coordinated”. (Exh. A-31).

4. The Conditional Use approval for the project is being “coordinated”.

5. The seven parcels are being merged into two parcels to create “incorporated into a larger unit” by lot line adjustments and lot mergers.

Section 160-12.A.(43.B).b states “Master developments require a minimum of 60 contiguous acres for development. All owners of record must join in the application for development. Further, section 160-12.A.(43.B),¹ states “The master development tract may be subdivided for separate ownership or lease (or as otherwise required by the Municipal Planning code or Chapter 131 of the Paradise Township Code of Ordinances), but only if 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. There is clearly no requirement to have separate ownership of any part of the development or for them to be on a single lot. Being on separate lots is not a factor as to the Mater Use Plan as it relates to integrated uses or development.

D. Failure of Resort

Chapter 160, Article III, Section 160-12(43.B)(h)[4] of the Paradise Township Zoning Ordinance 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. The Board requested the Applicant to 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. The Board asked that the Applicant provide any proposed conditions.

Section 603.1 of the PA MPC provides that “In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.” *53 P.S. Section 10603.1*. Thus, where doubt exists, the language of a zoning ordinance should be interpreted, in favor of the landowner and against any implied extension of restrictions on the use of one's property. A shopping center is permitted by conditional use as part of a resort under the zoning ordinance. There is no requirement under the zoning ordinance that prohibits the continuation of the shopping center upon the failure of the resort. Therefore, no such condition could be imposed by the Board.

E. Miscellaneous Issues

Under Chapter 160, Article III, Section 160-10(7), Conditional and Special Exception Use Regulations, of the Paradise Township Zoning Ordinance, it requires General Standards which include a demonstration that the conditional use shall not jeopardize the public health, safety, welfare, quality of life, or convenience of Township residents and shall be designed and constructed such that vehicular and pedestrian traffic does not create undue congestion or hazards prejudicial to the general area. The issue of elimination or mitigation of collateral U-turn traffic to meet the above standard at the more proximal Wiscasset Road/State Route 611 intersection and continuation of that traffic onto Rock Ridge Road resulting from restricted access into the commercial center should be addressed including, but not limited to, if the proposed roundabout is not approved by PennDOT. The Board asked that the Applicant provide any proposed conditions.

Conditional use ordinances are evidence that the municipality has determined the particular use is not adverse to the public interest *per se*. See, *Brentwood Borough v. Cooper*, 431 A.2d 1177 (Pa. Cmwlth. Ct. 1981); *City Planning Commission of Greensburg v. Threshold, Inc.*, 315 A.2d 311 (Pa. Cmwlth. Ct. 1974). Once an applicant for a conditional use permit has presented evidence to establish the specified standards in the ordinance, the application must be granted, unless the protestors to such an application have presented sufficient evidence that such a use would pose a substantial threat to the community. See, *Susquehanna Township Board v. Hardee's Food System*, 430 A.2d 367 (Pa. Cmwlth. Ct. 1981); *Greensburg, supra*. Such evidence cannot consist of mere "bald assertions, personal opinions, and perceptions" of the use and its effect on the neighborhood. *Commonwealth of Pennsylvania, Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). The Commonwealth Court noted that the mere possibility of an adverse impact, based on unsupported anxieties, was insufficient to meet protestant's burden of proof. See *Zoning Hearing Board v. Konyk*, 290 A.2d 715 (Pa. Cmwlth. Ct. 1972). To justify a denial, the impact from the proposed use must be greater than the impact that normally results from such use. *Archbishop O'Hara's Appeal*, 131 A.2d 587 (Pa. 1957).

The record in this case clearly indicates insufficient evidence to support any claim that the proposed conditional use would pose a greater detriment to the community than any other resort with a shopping center. *Visionquest Nat., Ltd. v. Bd. of Sup'rs of Honey Brook Twp., Chester Cnty.*, 524 Pa. 107, 112, 569 A.2d 915, 917 (1990). The record is devoid of any evidence or testimony from parties determined by the Board to have standing. The parties did not offer any lay or expert testimony to show adverse impacts upon the public health, welfare and safety. As such, the Board cannot deny the conditional use since the Applicant met the objective standards of the zoning ordinance for the use.

This project proposes to connect to a road controlled and regulated by Penn DOT. Wiscasset and Rock Ridge Roads are township roads open to the public. The Traffic Impact Study demonstrated that no vehicular traffic is expected to use these roads. However, should a few vehicles use the roads for an illegal U turn, the traffic would be minimal and not have a negative impact on the public roads. The issue should be a matter for law enforcement. Arguing that a use would cause a significant population increase with a resulting strain on available municipal services and roads, and would clash with the existing residential neighborhood has been explicitly rejected by the court. See *Appeal of Grish*, 437 Pa. 237 (1970), citing *National*

Land and Investment Company v. Easttown Township Board of Adjustment, 215 A. 2d at 610 (Pa. 1965) (Zoning is a tool in the hands of governmental bodies which enables them to more effectively meet the demands of evolving and growing communities. It must not and cannot be used by those officials as an instrument by which they may shirk their responsibilities. Zoning is a means by which a governmental body can plan for the future it may not be used as a means to deny the future. Zoning provisions may not be used to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring). Nevertheless, the Board could impose a condition that proper signage be posted by the Applicant with a signage plan presented during land development subject to Penn DOT approval to protect against illegal U-turns.

III. CONCLUSIONS OF LAW:

Jurisdiction

1. Section 603(c)(2) of the Pennsylvania Municipalities Planning Code (“Pa MPC”) provides that zoning ordinances may contain provisions for conditional uses to be allowed or denied by the governing body pursuant to public notice and hearing and recommendation by the planning agency and pursuant to standards or criteria set forth in the Zoning Ordinance. 53 P.S. Section 10603(c)(2).

2. Section 909.1(b)(3) of the Pa MPC provides that the governing body has exclusive jurisdiction to hear and render decisions in conditional use cases. 53 P.S. Section 10909.1(b)(3).

3. Section 913.2(a) of the Pa MPC provides that where the governing body, in the zoning ordinance, has stated conditional uses to be granted or denied by the governing body pursuant to express standards and criteria, the governing body shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. The hearing shall be conducted by the board. The decision or, where no decision is called for, the findings shall be made by the board. In granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of the Pa MPC and in the zoning ordinance. 53 P.S. Section 10913.2(a).

Standard of Review

4. A use allowed by special exception is a "permitted use." Kulak v. Zoning Hearing Board of Bristol Township, 128 Pa. Cmwlth. 457, 563 A.2d 978 (1989). Conditional use is a special exception, which falls within the jurisdiction of the municipal governing body rather than the zoning hearing board. Ligo v. Slippery Road Twp. 936 A.2d 1236, 1242 (Pa. Cmwlth. 2007), citing, Collier Stone Co. v. Zoning Hearing Board for the Township of Collier, 735 A.2d 768, 770 n. 1 (Pa. Cmwlth. 1999). Because a conditional use is equivalent to a special exception, the standards, and burdens of proof applicable to a special exception also apply to a conditional use. Joseph v. N. Whitehall Twp. Bd. of Sup'rs, 16 A.3d 1209, 1215 (Pa. Cmwlth. 2011), citing In Re Cutler Group, Inc. 880 A.2d 39 (Pa. Cmwlth. 2005).

5. Determinations as to the credibility of witnesses and the weight to be given to evidence are matters to be left solely to the board in its fact-finding role. Borough of Youngsville v. Zoning Hearing Board of Youngsville, 450 A.2d 1086, 1089 (Pa. Cmwlth. 1982).

Burden of Proof

6. An applicant for conditional use has the burden of demonstrating compliance with the specific criteria of the zoning ordinance. In re Thompson, 896 A.2d, at 670 citing Levin v. Board of Supervisors of Benner Township, 669 A.2d 1063 (Pa. Cmwlth. 1995) aff'd 689 A.2d 224 (Pa. 1997). Once the applicant meets the requirements, then the burden shifts to objectors to show the proposed use will have adverse impacts upon the public health, welfare and safety **in a way not normally expected from the type of use**. In re Thompson, 896 A.2d, at 670; see also Albridge v. Jackson Township, 983 A.2d 247, 253 (Pa. Cmwlth. 2009)(emphasis added). The evidence of objectors cannot consist of mere bald assertions or personal opinions and perceptions of the effect of the use on the community. In re Cutler Group, 880 A.2d 39, 43 (Pa. Cmwlth. 2005). If objectors demonstrate only the mere possibility of adverse impacts, rather than demonstrating a high probability of adverse impacts, they have not met their burden of proof. Kern v. Zoning Hearing Board, 449 A.2d 781, 783 (Pa. Cmwlth. 1982).

7. Under Pennsylvania Law, there are three distinct types of standards that may be at issue in a conditional use application proceeding:

- a. Specific Requirements, categorical definition of the conditional use, and objective standards governing conditional use. Applicant has both the duty and burden.

b. General detrimental effect, impacts upon the public health, safety and welfare. Objectors have both the duty and burden. An ordinance can place the burden on the applicant but cannot shift the duty.

c. General policy concerns harmony, spirit and intent or purpose of the ordinance. Objectors have the burden and duty which cannot be shifted by ordinance to the applicant. Williams Holding Grp. LLC v. Bd. of Sup'rs of W. Hanover Twp. 1312 C.D. 2013 (Pa. Cmwlth. 2014) citing Bray v. Zoning Bd. of Adjustment, 410 A.2d 909, 912-913 (Pa. Cmwlth. 1980).

8. As summarized above, the Court held that both the “burden” and the “duty” fall on an applicant with respect to the “specific” criteria as described in paragraph (6)(a) above. The Court then held that the objectors have both the “duty” and the “burden” with respect to “general detrimental effects” criteria in paragraph (5)(b) above. Although the ordinance may shift the “burden” with respect to those criteria, it may not shift the “duty”. Finally, the Court held both the “burden” and the “duty” fall on the objectors with respect to the claims described in paragraph (6)(c), and that neither may be shifted by the zoning ordinance. Marquise Investment, Inc. v. City of Pittsburgh, 11 A.3d 607, 611 (Pa. Cmwlth. Ct. 2010).

9. Once the applicant shows compliance with the specific, objective criteria of the zoning ordinance, the applicant has made out a prima facie case and must be granted a conditional use, unless the objectors present sufficient evidence, to a high degree of probability, that the proposed use will have a detrimental effect on the public health, safety and welfare in a way not normally expected from that type of use. H.E. Rohrer, Inc. v. Zoning Hearing Bd. of Jackson Twp., 808 A.2d 1014 (Pa. Cmwlth. 2002); In re Thompson, 896 A.2d 659 (Pa. Cmwlth. 2006); Aldridge et al. v. Jackson Township, Jackson Township Bd. of Supervisors, Jrad Ventures, LLC, 983 A.2d. 247, 253 (Pa. Cmwlth. 2009). It is important to appreciate that the burden placed on the objectors is a heavy one. "They cannot meet their burden by merely speculating as to possible harm, but instead must show a high degree of probability that the proposed use will substantially affect the health and safety of the community." Manor Healthcare Corp. v. Lower Moreland Twp. Zoning Hearing Bd., 590 A.2d 65, 71 (Pa. Cmwlth. 1991).

10. It is well established that, "[t]he fact that a use is permitted as a conditional use evidences a legislative decision that the particular type of use is consistent with the zoning plan

and presumptively consistent with the health, safety and welfare of the community." In re Cutler Group, Inc., 880 A.2d 39, 42 (Pa. Cmwlth. 2005) (citations omitted). In other words, once an applicant establishes compliance with the specific requirements of the ordinance, the proposed use enjoys a presumption that it is consistent with municipal planning objectives and with the public health, safety, and welfare. Sheetz, Inc. v. Phoenixville Borough Council, 804 A.2d 113, 115 (Pa. Cmwlth. 2002). Therefore, "the degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use." Cutler, 880 A.2d at 43. This is so because the governing body in enacting the ordinance presumptively considered the impact of the use and that it would not be a threat to the public health, safety, or welfare. *Id.* Opponents, therefore, must prove a high degree of probability that permitting the use will cause a substantial threat to the community. *Id.* In that regard, the burden falls on them to establish with specificity and with more than mere speculative anecdotal testimony that the specific proposal will impose detrimental impacts exceeding those ordinarily to be expected from the use at issue. See Kretschmann Farm, LLC v. Twp. of New Sewickley, 131 A.3d 1044, 1055 (Pa. Cmwlth.), appeal denied, 145 A.3d 168 (Pa. 2016) (holding that objectors' concerns did not constitute probative evidence that the applicant's compressor station would adversely affect the public health, safety and welfare in a way not expected for a usual compressor station); Cutler, 880 A.2d at 43 (holding that, "[t]he evidence of the protestants cannot consist of mere bald assertions or personal opinions and perceptions of the effect of the use on the community."). Accordingly, once the applicant satisfies the specific, objective criteria for the conditional use, the burden shifted to the objectors. The board must then consider whether objectors' testimony constitutes substantial evidence of a high degree of probability that applicants' proposal will impose detrimental impacts exceeding those ordinarily to be expected from unconventional gas wells. Kretschmann Farm, 131 A.3d at 1055; Cutler, 880 A.2d at 43.

11. Although a zoning ordinance may place the burden of proof on an applicant as to the matter of detriment to the health, safety and general welfare, such a provision merely places the burden of persuasion on the applicant. Manor Healthcare Corporation v. Lower Moreland Township Zoning Hearing Board, 139 Pa.Cmwlth. 206, 216, 590 A.2d 65, 70 (1991). The protestants ". . . still retain the initial presentation burden with respect to the general matter of the detriment to health, safety and general welfare." *Id.* In other words:

[a]n applicant, by showing the proposed use is permitted by special exception and that it complies with the specific requirements of the ordinance, identifies the proposal as one which the municipal legislative body has determined to be appropriate in the district and therefore presumptively consistent with the health, safety and general welfare of the community.

Kern v. Zoning hearing Board of Township of Tredyffrin, 68 Pa. Cmwlth. 396, 401, 449 A.2d 781, 783 (1982)(citation omitted).

Conditional Use

12. Conditional use applications are governed by the general and special standards of Section 160-10(A), (B) and (C) of the Paradise Township Zoning Ordinance (“Zoning Ordinance”).

13. General Standards. Section 160-10(A)(1)-(10) of the Zoning Ordinance provides that conditional uses:

- a. Shall not cause substantial injury to the value of other property where it is to be located.
- b. Shall conform with regulations applicable to the district where located and shall conform to the more specific standards listed in sections 160-11 and 160-12 of this Zoning Ordinance.
- c. Shall be compatible with adjoining development.
- d. Shall provide adequate buffers, landscaping, and screening to protect and enhance adjoining areas.
- e. Shall provide off-street parking and loading and access in keeping with this Zoning Ordinance to minimize interference with traffic on all streets.
- f. Shall not jeopardize the public health, safety, welfare, quality of life or convenience of Township residents.
- g. Shall be designed and constructed such that vehicular and pedestrian traffic does not create undue congestion or hazards prejudicial to the general area.
- h. May be subject to any other conditions, requirements, or safeguards, established by the Board, which may be warranted by the character of the area in which

such use is proposed or by other special factors which may be necessary to implement the purposes of this Zoning Ordinance.

i. May require the applicant to prepare and submit, at his expense, any additional information such as an environmental impact statement, a traffic impact analysis, a community impact analysis, an historical and cultural analysis or any other report or study as the Board may deem necessary for their review and consideration of the application.

j. Shall demonstrate that all other regulations within the Township Code of Ordinances have been complied with and that all required permits from the federal, state, or other local agencies will be obtained and provided to the Township.

14. Special Standards. Section 160-10(B)(1) of the Zoning Ordinance provides that conditional uses authorized by the Board may be subject to any additional conditions and safeguards established by the Board in each case which may be warranted by the character of the areas in which such uses are proposed or by other special factors and which are necessary to implement the purposes of this Zoning Ordinance.

15. Plan Requirements. Section 160-10(C) of the Zoning Ordinance establishes plan requirements that provide:

a. All applicants shall submit four copies of all plans and documentation to the Zoning Officer when making applications for a conditional use permit.

b. The plans shall comply with the requirements for a site development plan in accordance with Section 160-30. All proposed uses must be accurately and prominently labeled on the plans.

c. Plans shall be processed in accordance with the provisions of Article VI of the Zoning Ordinance.

d. Applicants shall demonstrate that the proposed use complies with all general, special, and specific requirements of the Zoning Ordinance.

General Standards

16. The Applicant proved that it met the general standards under Section 160-10(A)(1)-(10) of the Zoning Ordinance in that:

a. The Board concludes that the use will not cause substantial injury to the value of other property where it is to be located. The burden of showing that a proposed

development has a greater than normal impact on the community is not satisfied by proof that neighboring property values may decrease. Soble Construction Co. v. Zoning Board, 329 A.2d 912 (Pa Cmwlt. 1974). Testimony of objectors that a proposed use may reduce property values failed to prove the requisite high probability of substantial effect on the community since steps would be taken to make it compatible and impact would be no greater than is usually associated with similar facilities. Sunnyside Up Corporation v. City of Lancaster Zoning Hearing Board, 739 A.2d 644 (Pa. Cmwlt. 1999). Although the protestants in this case provided no evidence or testimony that the conditional use would cause substantial injury to the values to properties where it is located, the Board finds the testimony of Alan Rosen, a General Real Estate Appraiser, who testified on behalf of the Applicant credible and uncontradicted. Mr. Rosen opined that the impact, if any, of the conditional use will be positive on property values, and not have any adverse impacts on the value of surrounding properties. (Hrg. Tr., 3-16-23, pp. 484-485, 487).

b. The Board concludes that the conditional use and plans conform with regulations applicable to the district where located and conform to the more specific standards listed in sections 160-11 and 160-12 of this Zoning Ordinance. The Property is in the R-2 Zoning District and the Resort Development Area Overlay District. Mr. John R. Varaly, AICP, a land use planner, testified that he had reviewed the plans and concluded that the Property was designed to comply with the dimensional requirements of the Paradise Township's Zoning Ordinance. As such, no variances are required for the use. (Exh. A-32). Section 160-11 of the Zoning Ordinance lists Master Development Plans and resorts and hotels as general land uses. Section 160-12 of the Zoning Ordinance permits Master Development Plans under Section 43.B; Shopping Centers under Section 54.A, and resorts and hotels under Section 60.

The Board concludes that the Master Development complies with Section 43.B of the Zoning Ordinance in that:

(a) The Master Development is permitted as a conditional use within the Resort Development Area Overlay District.

(b) The Master Development is more than 60 contiguous acres. This Property included is 244.6 acres, 152 acres in Paradise which are contiguous along the rear of the property and along the Wiscasset Road Right-of-Way.

(c) The Master development is to be evaluated in the same manner as Option 1 conservation subdivisions to establish adjusted tract acreage and minimum greenway lands as described in Zoning Sections 160-21-C(B) and (C). The project has identified a total of 86.98 acres in Paradise Township that will be preserved by creation of a greenway plan map to be recorded which will only allow uses indicated on that plan, which also may be amended from time to time with prior approval of the Township.

(d) Greenway land design, ownership and maintenance shall comply with Zoning Section 160-21-C(D), (E) and (F). The land will be deeded with a restriction in compliance with the above sections for all land use and ownership which shall not be utilized inconsistent with the approved greenway plan.

(e) The Master development tract has frontage along and direct access to a road or highway controlled by the Pennsylvania Department of Transportation. The Hawthorne Resort accesses the Penn DOT Road by way of reconstruction of the intersection of Trinity Hill Road and SR 0611. This work will require a Penn DOT Highway Occupancy Permit and is under the control of Penn DOT by the nature of a required permit. In addition, there is an expanded scope of Penn DOT's highway occupancy permit zone of influence, wherein Penn DOT's jurisdiction includes the portion Trinity Hill Road between the resort aspect driveway and SR 611. (Hrg. Tr., 5-23-23, p. 628). The Strickland parcel will directly access onto SR 0611.

(f) The Master Development tract may be composed of a combination of residential and non-residential uses. Not less than one half of the development area of the tract shall be dedicated to resort use(s). The Hawthorne aggregate building size is more than 182,000 square feet, or, more than 50 % of the area proposed by the Commercial Area.

(g) Within the development area, lot coverage may not exceed eighty percent (80%). The impervious cover for the resort is less than eighty percent (the Hawthorne is 11.11% and the Strickland is 22.4 %).

(h) The following uses are permitted within an area proposed for a master development plan: i. Uses permitted within the underlying Zoning District.

ii. Resorts, hotels and resort amenities described in Zoning Section 160-12(A)(60) and subject to the standards therein. iii. Timeshares in compliance with Article IX of this chapter. iv. Planned community office parks and shopping centers in compliance with Section 160-12(A)(54-A) and subject to the standards therein.

(i) Non-residential uses within a Master Development Plan shall comply with the following standards:

(j) Minimum lot area 2 acres, the two proposed lots will be well in excess of 2 acres.

(k) Minimum lot width 150 feet, the lot widths for both parcels are well in excess of 150 feet.

(l) Minimum side and rear building setback when abutting a non-residential use 15 feet and Minimum side and rear building setback when abutting a residential use 150 feet. The minimum side and rear yards to residential uses in the Hawthorne Resort is 346 feet and non-residential use is 67.79 feet. The minimum side and rear yards to residential uses in the Strickland Commercial area is 164 feet and non-residential use is 270 feet.

(m) Minimum building setback from local street right of way 10 feet
Minimum building setback from collector street or greater right-of-way 30 feet
Minimum building setback when across any street from a residential use 30 feet.
The closest building to any front lot line is 156.24 feet.

(n) Minimum parking/service setback 30 feet, no parking is provided within 30 feet of any property line.

(o) Maximum impervious coverage 75%, while this conflicts with the 80 % requirement above, impervious cover is well less than 75 %.

(p) Parking and loading requirements shall comply with §160-16. The parking complies with all dimensional standards in this section. i. The Hawthorne Resort is not a use specifically contemplated in the Zoning ordinance allowing the calculations to be based on the ITE Parking Manual by Zoning Section 160-16.A.3 which states” Parking spaces shall be provided in the number set forth in Schedule II16 for the uses listed. Reasonable and appropriate parking requirements for uses not listed herein shall be determined by the Planning

Commission after due consideration is given to the parking needs of such uses. The intent of this section is to provide adequate parking for all residents, clients, customers, and employees.” ii. Strickland Commercial Area has a planned parking concept for the development area. This parking generation is based on peak demand model utilizing ITE data which is allowable per Zoning Section 160-16.A.5 which states “When a proposed use contains or includes more than one use, the required number of parking spaces shall be computed by adding together the required number of spaces for each separate use. For uses that require review of new land development plans in compliance with Chapter 131, parking may be shared between different uses only if an applicant can demonstrate that adequate parking exists for both uses when in use.’

(q) All building groups shall be arranged so that adequate access is provided to all structures by emergency vehicles. The site has been developed to allow access by emergency vehicles.

(r) Resorts and hotels are exempt from height restrictions contained in Schedule III and Schedule IV of this chapter, not to exceed 6 stories or 80 feet, provided fire protection facilities and firefighting capabilities are considered adequate by the Board of Supervisors. The Board shall consult with state, county and local fire and emergency management officials to make this determination. The proposed hotel may be as high as 60 feet or four stories. The building shall be constructed in compliance with the IFC and shall be completely sprinklered with fire department standpipes in all stairwells.

(s) The commercial buildings may be as high as two stories or 65 feet to allow for required pitched roofs.

(t) The master development tract may be subdivided for separate ownership or lease (or as otherwise required by the Municipal Planning code or Chapter 131 of the Paradise Township Code of Ordinances), but only if 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. The Hawthorne Resort and the Commercial area will be

under separate ownership with deed restrictions to provide the Township with control to ensure compliance with the Master Development Plan

(u) 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. Following the Conditional Use approval, all other Township and outside agency approvals will be obtained.

(v) A master development conditional use permit application shall include an Existing Resources Site Analysis Plan consistent with Section 131-38 of the Paradise Township Subdivision and Land Development Regulations. The Existing Features mapping has been provided on the Conditional Use Plan set.

(w) A master development conditional use permit application shall include a community impact analysis which includes an evaluation of the potential impacts of the proposed master development upon the following community facilities: i. Emergency services and fire protection. The site will have its own site security and fire suppression systems. In the unlikely event that Township emergency services are required, the commercial tax revenue significantly offsets additional expenses to the Township. ii. Solid waste disposal. Garbage facilities will be located on the site to collect refuse in gated areas protected from public view and disposal will be provided by a service contract provider. iii. Recreation. The project has considerable recreational facilities for guests and does not require recreation for new residential uses as none are proposed. iv. Transportation and surrounding roadway systems. The project proposes highway improvements and will provide internal transportation and will promote the use of public transportation. v. School facilities and school district budget. The project does not create any financial burden to the school district and provides considerable tax revenue. vi. Water supply. An onsite water supply is proposed to provide safe and reliable water supply to the development. vii. Sewage disposal. Onsite sewage disposal is proposed for both development areas as demonstrated in this report. viii. Public utilities. The project will coordinate with electric, gas and communication services to provide service to the project. ix.

Township revenues and expenses. The project income as demonstrated by the Regional Economic Impacts analysis provided in the appendix to this report. This report demonstrates a total tax revenue estimated to be in excess of \$ 3.4 million with a potential Township direct revenue of \$ 88,000. It is noted that this estimated revenue is for the Hawthorne Resort. The commercial area is expected to generate a similar total tax revenue.

The Shopping Center portion of the Resort complies with Section 54.A in that:

(a) The shopping center is permitted under a master development plan within the Resort Development Overlay District because it has direct access to, and will have a valid highway occupancy permit for, a road or highway controlled by Penn DOT.

(b) The uses within the Resort Development Area Overlay District comply with Schedule I and the underlying R-2 Zoning District.

(c) Parking complies with Section 160-16 of the Zoning Ordinance.

(d) The uses proposed are permitted in the shopping center.

(e) The shopping center will comply with the screening and buffering requirements described under Section 160-18 of the Zoning Ordinance.

The resort and hotel comply with Section 160-60 of the Zoning Ordinance in that:

(a) The minimum lot area for the resort exceeds 10 acres.

(b) The minimum lot area for the hotel is five acres.

(c) No building, activity area or recreational facility will be erected within 50 feet of from all side or rear lot lines.

(d) All off-street parking will be at least 50 feet from all side or rear lot lines.

(e) There will be no more than one guest room for every 5,000 square feet of lot area.

(f) Exterior lighting will comply with the SALDO requirements.

(g) The resort and hotel amenities are permitted under the Zoning Ordinance.

c. The Board concludes that the use is compatible with adjoining development. It is an objector's burden to show that the proposed use will substantially affect the health, safety, and welfare of the community "or will conflict with the expressions of general policy contained in the ordinance." JoJo Oil Co., Inc. v. Dingman Township Zoning Hearing Board, 77 A.3d 679, 688 (Pa. Cmwlth. 2013) (citing Bray v. Zoning Board of Adjustment of City of Philadelphia, 48 Pa.Cmwlth. 523, 410 A.2d 909, 913 (1980)) (objectors have both the duty and burden regarding "general policy concern, e.g., as to harmony with the spirit, intent or purpose of the ordinance")) (emphasis added). "[T]he impact of a use on the character of the neighborhood is a relevant area of inquiry in a special exception case..." Robert S. Ryan, PENNSYLVANIA ZONING LAWS AND PRACTICE, at § 5.3.4 (2012 ed.). Accordingly, if a zoning ordinance is drawn rationally, a decision to permit a use by special exception reflects at the least a legislative judgment that the *degree of impact which necessarily flows from the use does not materially affect the public interest* and will not justify a denial of the use. The most common error of protestants and of the zoning boards in special exception cases is the failure to recognize that the existence of the special exception itself represents a legislative determination *that the degree of impact is permissible*. Board of Supervisors of Lower Providence Township v. Ford, 3 Pa.Cmwlth. 380, 283 A.2d 731, 733 (1971) (quoting Ryan, PENNSYLVANIA ZONING, § 5.2.6 (1970 ed.)) (emphasis added). To justify the denial of a special exception, the impact from the proposed use must be greater than the impact that normally results from such use. *Id.* (citing Archbishop O'Hara's Appeal, 389 Pa. 35, 131 A.2d 587 (1957)); see also, Marr Development Mifflinville, LLC v. Mifflin Township Zoning Hearing Board, 166 A.3d 479 (Pa. Cmwlth. Ct. 2107)(The court held while the Board claims the proposed use is inconsistent with the character of the neighborhood, when deciding on a special exception use "[T]here is a 'presumption' that the use is a 'conditionally permitted use, legislatively allowed if the [objective] standards are met.'" JoJo Oil Co., Inc. v. Dingman Twp. Zoning Hearing Bd., 77 A.3d 679, 686 (Pa. Cmwlth. 2013) (quoting Bray v. Zoning Bd. of Adjustment of City of Phila., 48 Pa.Cmwlth. 523, 410 A.2d 909, 911 (1980)). Accordingly, the Board concludes that the use is compatible with adjoining development in that the objectors presented no evidence or testimony concerning compatibility. In addition, the Board finds

the testimony and evidence of Alan Rosen and Charles Leonard credible and uncontradicted on compatibility. Mr. Rosen opined that the proposed use is consistent with the nature and character of the area in that it is located on SR 611 and there are commercial properties, shopping centers and other resorts in both directions on SR 611. (Hrg. Tr., 3-16-23, pp. 485-486). Mr. Leonard, who is very familiar with the area, observed that the commercial portion of the resort and the resort is harmonious with the other uses on the SR 611 corridor. (Hrg. Tr., 3-16-23, pp. 508-509). John R. Varaly, AICP, also authored a report as a professional land use planner, wherein he offered credible and unrebutted expert testimony on the compatibility issue. (Exh. A-32). In reviewing the Comprehensive Plan, Mr. Varaly noted that the intent is not to prevent growth but ensure compatible development. By nature, it encourages well-planned and appropriate growth while striving for a balance between conflicting competing interests. Paradise Township proceeded to include the Property within the Resort Overlay District. Such a decision represented a policy decision on the part of the Township that the Property was appropriate for a Resort Development, subject to compliance with extensive supplemental regulations designed to protect the environment and the health, safety, and welfare of Township residents.

d. The Board concludes that the Applicant will provide adequate buffers, landscaping, and screening to protect and enhance adjoining areas. Obstruction of a view is an impermissible consideration for denying an application since aesthetics alone cannot support a determination that the general welfare of a community would be adversely affected by the granting of a special exception. *Heck v. Zoning Hearing Board for Harvey's Lake Borough*, 397 A.2d 15, 19 (Pa. 1979). Nevertheless, the Applicant offered testimony and evidence that buffering and landscaping will be provided to protect and enhance the adjoining areas. (Hrg. Tr., 3-9-23, p. 341). The Applicant also offered to plant bushes and shrubbery between the parking lot and Wiscasset Road to protect adjoining property owners. The plantings will consist of Norway Spruces, White Pines, and Arborvitaes. (Hrg. Tr., 2-23-23, p. 234). The Board concludes that by the imposition of a condition, the Applicant will provide adequate buffers, landscaping, and screening to protect and enhance adjoining areas.

e. Shall provide off-street parking and loading and access in keeping with this Zoning Ordinance to minimize interference with traffic on all streets. The Applicant offered the uncontradicted expert traffic engineering testimony of David H. Horner, P.E. PTOE. Mr. Horner studied the internal vehicular and pedestrian circulations. (Hrg. Tr., 4-27-23, p. 568). Mr. Horner determined that loading could be accomplished outside of the area roadways. (Hrg. Tr., 4-27-23, p. 568). Mr. Horner found that the site is designed and constructed so that vehicular and pedestrian traffic would not create undue congestion or hazards prejudicial to the general area. Mr. Horner concluded that the connection for pedestrians between the commercial area and the resort area is designed and located so that pedestrians will not feel the need to traverse SR 611. (Hrg. Tr., 4-27-23, p. 569). Mr. Horner opined that the off-street parking, loading, and access is in accordance with the minimum requirements of the Paradise Township Zoning Ordinance and will minimize interference with traffic on all streets. Based upon the level of service projections in terms of parking, loading, and access, the parking and loading is designed to be in accordance with the zoning ordinance and will not create any undue hazard outside the property boundaries or even within the property boundaries on the adjacent streets. (Hrg. Tr., 4-27-23, p. 570). The Board also concurs with Mr. Horner that access locations in terms of location, configuration, and traffic control are subject to review and approval of the Pennsylvania Department of Transportation (“PennDOT”) since they are to a state highway (SR 611), and the expanded scope of Penn DOT’s highway occupancy permit zone of influence includes the portion of Trinity Hill Road between the resort aspect driveway and SR 611. (Hrg. Tr., 4-27-23, p. 571; Hrg. Tr., 5-23-23, p. 628). As such, the board will ensure proper third-party approval through a condition.

f. The Board concludes that the use will not jeopardize the public health, safety, welfare, quality of life, or convenience of Township residents. The presence of a use of property does not of itself, adversely affect the public interest to any material extent in normal circumstances. Zoning Hearing Board of Upper Darby Township v. Konyk, 290 A.2d 715 (Pa. Cmwlth. 1972). The evidence of objectors cannot consist of mere bald assertions or personal opinions and perceptions of the effect of the use on the community. In re Cutler Group, 880 A.2d 39, 43 (Pa. Cmwlth. 2005). Mere speculation is not sufficient. The objectors must prove that there is a high degree of probability that a

result not normally generated by this type of use will be obtained. Schatz v. New Britian Twp. Zoning Hearing Bd. of Adjustment, 596 A.2d 294, 296, 298 (Pa. Cmwlth. 1991). In this case, the objectors presented no evidence or testimony to show that the use would have adverse impacts upon the public health, welfare, and safety to any degree let alone a greater degree than normally expected from such a use. However, the Applicant presented unrefuted expert testimony from engineers and architects that the proposed use would not have any adverse impacts upon the public health, safety, and welfare. The Board concludes such testimony and evidence to be conclusive on the impacts issue.

g. The Board concludes that the vehicular and pedestrian traffic generated from the conditional use will not create undue congestion or hazards prejudicial to the general area. The Pennsylvania Courts have held that an increase in traffic flow is obvious and not a justification for a denial of a conditional use in that “any traffic increase with its attendant noise, dirt, danger or hazard is unpleasant, yet such increase is one of the inevitable accompaniments of suburban progress and expanding population, which standing alone, does not constitute sufficient grounds to refuse a property owner the legitimate use of his land.” Linden Corporation v. Township of Upper Darby, 297 A.2d 547 (Pa. Cmwlth. 1972) citing Rolling Green Golf Club, 97 A.2d 523, 526 (Pa). An anticipated traffic increase resulting from a proposed use would not (on its own) defeat a conditional use request. Joseph v. N. Whitehall Twp. Bd of Supr’s, 16 A.3d 1209, 1217 (Pa. Cmwlth. 2011), citing In re Brickstone Realty Corp., 789 A.2d 333 (Pa. Cmwlth. 2001). The mere fact that a proposed use would contribute to projected traffic congestion primarily generated by other sources is not a sufficient basis for denying a conditional use. Joseph, 16 A.3d at 1217. A protester has a heavy burden of establishing that increased traffic would have a “high degree of probability” of causing a serious detriment to the community. Archbishop O’Hara Appeal, 131 A.2d 587 (Pa. 1957). We must accept the proposition that in contemporary society, development and progress are likely to bring with them increased traffic, but this simply is not sufficient, standing alone, to justify the refusal of land use. Id. For example, an increase in traffic is generally not grounds for denial of a special exception unless there is a high probability that the proposed use will generate traffic not normally generated by that type of use and that the abnormal traffic threatens safety. Orthodox Minyan v. Cheltenham Township

Zoning Hearing Board, 123 Pa. Cmwlth. 29, 552 A.2d 772 (1989). Nevertheless, the Applicant offered the expert testimony of Mr. Horner, who concluded, after a detailed traffic assessment, that vehicular and pedestrian traffic will not create undue congestion or hazards prejudicial to the general area. (Hrg. Tr., 4-27-23, p. 570). Mr. Horner also opined that traffic can be accommodated in the study area at the intersections without detrimental level of service, undue delays, or safety hazards. There will be, obviously, additional traffic as any development would generate, but that does not, in Mr. Horner's opinion, automatically represent adverse conditions. There will be no adverse conditions because there are no levels of service deficiencies or safety hazards. (Hrg. Tr., 4-27-23, p. 571). Mr. Horner also opined that the project will not generate unusual or atypical traffic other than the type of traffic that is normally expected by a resort. (Hrg. Tr., 4-27-23, p. 571). These opinions are consistent with Pennsylvania Law.

h. May be subject to any other conditions, requirements, or safeguards, established by the Board, which may be warranted by the character of the area in which such use is proposed or by other special factors which may be necessary to implement the purposes of this Zoning Ordinance. The Board concludes that the granting of the conditional use is warranted based upon the reasonable conditions and safeguards imposed as part of its decision.

i. May require the applicant to prepare and submit, at his expense, any additional information such as an environmental impact statement, a traffic impact analysis, a community impact analysis, an historical and cultural analysis or any other report or study as the Board may deem necessary for their review and consideration of the application. Despite the Board not requesting it, the Applicant submitted a comprehensive environmental impact statement and traffic impact analysis that complied with this section of the Zoning Ordinance. (A-19 and A-31).

j. The Board concludes that the Applicant must demonstrate that all other regulations within the Township Code of Ordinances have been complied with and that all required permits from the federal, state, or other local agencies will be obtained and provided to the Township during land development. In a land use matter a board must condition an approval rather than deny an application upon the applicant securing third party permits. Lehigh Asphalt Paving v. Bd. of Supervisors, 830 A. 2d 1063 (Pa. Cmwlth.

Ct. 2003) (Indeed, the ordinance, in declaring that a zoning permit for mining and excavation shall become effective only after the applicant secures a DEP mining permit, clearly contemplates that the ZHB may render a decision even in the absence of a DEP permit but subject to later issuance of that permit). A conditional use proceeding concerns only proposed use of land, not particular design details of the proposed development. Detailed design information, even if it is required by ordinance, is an irrelevant consideration of whether a special exception should be granted. Joseph v. N. Whitehall Twp. Bd. of Sup'rs, 16 A.3d 1209, 1215 (Pa. Cmwlth. 2011), citing In Re Thompson, 896 A.2d 659 (Pa. Cmwlth. 2006); In re McGlynn, 974 A.2d 525, 536 (Pa. Cmwlth. 2009). Stormwater issues are germane at the point of construction, rather than at the point of initial approval. Brentwood Borough v. Cooper, 431 A.2d 1177 (Pa. Cmwlth. 1981). Sewer capacity, storm water management, building codes, and water supply requirements are irrelevant concerns when determining whether to grant a conditional use since they are addressed further along in the permitting and approval process. Schatz v. New Britian Twp. Zoning Hearing Bd. of Adjustment, 596 A.2d 294, 296 (Pa. Cmwlth. 1991). Unmet Requirements must be substantive not technical. Robal Associates, Inc. v. Bd. of Supr's of Charlestown Twp., 999 A.2d 630, 636 (Pa. Cmwlth. 2010). A failure to describe material and size of water and sewer mains or submit a letter documenting capacity are defects that are correctable that do not justify outright denial. Shelbourne Square Associates, LP v. Bd of Supr's Twp. of Exeter, 794 A.2d 946, 950 (Pa. Cmwlth. 2002). Where a plan, as submitted, addresses all of the ordinance's prerequisites for the special exception sought, and reasonably shows that the property owner is able to fulfill them in accordance with the procedures set forth by the zoning ordinance (as reasonably interpreted by the board) a reviewing court should not reverse the grant of such an exception on the sole basis that some of the items described in the plan may be completed at a later date. Broussard v. Zoning Bd. of Adjustment of City of Pittsburgh, 589 A.2d 494, 502 (Pa. 2006). Nevertheless, the Board concludes that the Applicant offered credible and unrefuted expert testimony by Brian Oram and Michael Gable that there is adequate sewer, water, and stormwater will be sufficient to accommodate the conditional use, and the manner it will be provided will not have any adverse impacts upon the public health, safety, and welfare of the community. Furthermore, the township cannot preclude

development by a zoning requirement that developers use non-existent municipal services. The courts have invalidated local legislative attempts to impede development through imposition of sewage requirements in zoning ordinances. *Concord Township Appeal, 268 A.2d 765 (Pa. 1970)*(exclusionary zoning disguised as a sewage zoning ordinance) *abrogated on other grounds, C & M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd.*, 573 Pa. 2, 18, 820 A.2d 143, 153 (2002).

. A municipality must take steps to provide the services or, alternatively, allow individuals to provide it for themselves. If it chooses the latter course, it can require the individual systems to adequately provide for the service in a manner consistent with the public health, welfare and safety, and the Sewage Act. To that end, it may set reasonable non-discriminatory specifications for facilities and conditions for private provision of essential services it is not in a position to provide currently or in the reasonably foreseeable future. *Council of Middletown TP. V. Benham, 532 A.2d 311 (Pa. 1987)*.

Special Standards

17. Section 160-10(B)(1) of the Zoning Ordinance provides that conditional uses authorized by the Board may be subject to any additional conditions and safeguards established by the Board in each case which may be warranted by the character of the areas in which such uses are proposed or by other special factors and which are necessary to implement the purposes of this Zoning Ordinance. As previously stated under the General Standards of the Zoning Ordinance, the Board concludes that the granting of the conditional use is warranted based upon the reasonable conditions and safeguards imposed as part of its decision.

Plan Requirements

18. Section 160-10(C) of the Zoning Ordinance establishes plan requirements that the Board concludes the Applicant met in that:

a. All applicants shall submit four copies of all plans and documentation to the Zoning Officer when making applications for a conditional use permit. The Applicant submitted conditional use plans, conceptual Overall Master Plans and Resort Master Plans. (See Exh. A-3, A-4 and A-20). The plans were reviewed by Shawn F. McGlynn, the Zoning Officer, who determined they were complete under the Zoning Ordinance. (Hrg. Tr., 1-30-23, p. 46).

b. The plans complied with the requirements for a site development plan in accordance with Section 160-30 of the Zoning Ordinance, as accurately and prominently labeled on the plans. The plans were found to comply with the zoning ordinance requirements concerning their content. (Hrg. Tr., 2-23-23, p. 175). Section 160-30B (1) (a) through (h) and Section 160-30B(2)(a), (b), (c), and (e) of the Paradise Township Zoning Ordinance apply to plans relating to resorts. More specifically, the plan were prepared by a civil engineer and/or surveyor and included: (a) Basic data. (i) Name and address of the owner of record. (ii) Lot, block, and section number of the property taken from the latest tax records. (iii) Name and address of person, firm or organization preparing the map. (iv) Date, North point and written and graphic scale. (v) Description (bearings and distances) of the boundaries of the property. (vi) The location, names, and widths of all existing roads. (vii) The names of owners of all adjoining lands as shown on the latest records and the location of all buildings within 1,320 feet of the tract. (viii) Existing deed restrictions or covenants applying to the property. (b) Development plan. (i) The location of existing and proposed buildings or structural improvements. (ii) The location of all uses not requiring structures, such as off-street parking and loading areas. (iii) The location and time of use of any proposed outdoor lighting or public address system. (iv) The location and plans for any outdoor signs. (v) The location and arrangement of proposed means of ingress and egress, including sidewalks, driveways, or other paved areas.

c. The plans were processed in accordance with the provisions of Article VI of the Zoning Ordinance.

d. The Applicant demonstrated that the proposed use complies with all general, special, and specific requirements of the Zoning Ordinance. The record and evidence in this case, and specifically the Expert Report of John R. Varaly, AICP and Section 4 of the Preliminary Environmental and Community Impact Statement sets forth the reasons compliance with the Zoning Ordinance. (See Exh. A-19 and A-33).

IV. DECISION:

AND NOW, this ____ day of August 2023, the Paradise Township Board of Supervisors do hereby adopt the foregoing Findings of Fact and Conclusions of Law and renders its Decision, the same being that the Application of JSPA Realty, LLC, for conditional use approval to

develop the Property for a resort with a shopping center in Paradise Township, Monroe County, Pennsylvania and situated in the Resort Development Area Overlay District is hereby

GRANTED *conditioned upon the following:*

1. The Applicant must submit its plans to Pocono Township for review and approval, if applicable, as it relates to stormwater, land development/subdivision, zoning, and any other Pocono Township rules, regulations, and ordinances.

2. The Applicant shall provide adequate buffers, landscaping, and screening by way of a landscaping plan during land development to protect and enhance adjoining areas.

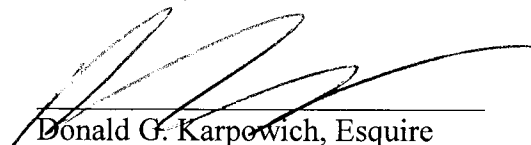
3. The Applicant's plan will require access to State Route 611, which is a highway under the jurisdiction of Penn DOT and this approval is conditioned upon the Applicant obtaining a highway occupancy permit under Section 420 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law," before driveway access to the State Highway is permitted.

4. This approval is conditioned upon the Applicant obtaining land development and/or subdivision approval from the Board prior to the issuance of building, zoning, and occupancy permits.

5. The Applicant shall obtain all third-party approvals, including, but not limited to, Act 537 Planning Approval, Part II Water Quality Permit, Chapter 109 Water Supply Permit, Act 167 Stormwater Approval, NPDES Permit for Stormwater Discharge Permit, ESPC Plan Approval, Chapter 105 Stream Encroachment Permit, and Building, Zoning, and Occupancy Permits.

Respectfully submitted,

Date: 7-27-23



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