

1 20. Mr. Varaly noted that one could not currently walk from one area of the
2 development to the other without leaving the Resort area or Commercial area. (N.T. 5/23/23,
3 p. 690 [Varaly])

4 21. Mr. Houle placed into the record a definition of “integration” from the Merriam-
5 Webster Internet Dictionary which he thought was applicable and reads, as follows: “to form,
6 coordinate, or blend into a functioning or unified whole.” (N.T. 6/8/23, pp. 717-718 [Houle].)

7 22. The Board of Supervisors finds that the definition of *integrated* provided by
8 Mr. Houle must closely resemble the customary meaning of *integrated* in this matter.

9 23. The Board of Supervisors finds that the testimony of Mr. Varaly lacks
10 credibility and adopts the definition of *integration* provided by Mr. Houle.

11 **III. CONCLUSIONS OF LAW**

12 1. Jurisdiction to hear the Application for Conditional Use is conferred upon the
13 Paradise Township Board of Supervisors pursuant to the Pennsylvania Municipalities Planning
14 Code, 53 P.S. §§10909.1(b)(3) and 10913.2 as well as §160-29 of the Paradise Township Code of
15 Ordinances.

16 2. Municipalities are creations of the Commonwealth and possess no power beyond
17 that which is expressly delegated to them. *In re Appeal of Realen Valley Forge Greener
18 Associates*, 576 Pa. 115, 132-38, 838 A.2d 718, 729 (2003).

19 3. Section 501 of the Pennsylvania Municipalities Planning Code grants
20 municipalities the authority to control development within their borders. *See*, 53 P.S. §10501
21 (making multiple references to the authority to control development “within the municipality”);
22 *see also*, *King v. Perkasio Borough Zoning Hrg. Bd.*, 552 A.2d 354, 355-56, 122 Pa.Cmwlt. 510

1 (1989) (interpreting § 501 of the MPC to forbid extraterritorial control by a municipality on the
2 grounds that, under the MPC, a municipality's powers stop at its border).

3 4. Pursuant to §619.1(d) of the MPC, municipalities may exercise extraterritorial
4 control when they enter into a specific written agreement with a neighboring municipality.
5 53 P.S. §10619.1(d). *Baronoff v. Zoning Bd. of Adjustment*, 122 A.2d 65, 68, 385 Pa. 110, 118,
6 (1956).

7 5. Municipal authority to regulate land use and development is further limited by the
8 constitutional source of that authority, the police power, which grants municipalities the authority
9 to enact zoning to protect the "public health, safety, morals or general welfare" of the community.
10 *Ward's Appeal*, 137 A. 630, 631, 289 Pa. 458, 462-63 (1927).

11 6. If an ordinance exceeds either the scope of the municipality's authority under the
12 MPC, or the limits of its police power, the ordinance is invalid. Robert S. Ryan, Pennsylvania
13 Zoning Law and Practice §3.1.2 (2001).

14 7. All hearings held for this Application were properly advertised and timely
15 conducted in accordance with §10908 of the MPC and §160-29.E of the Paradise Township Code
16 of Ordinances.

17 8. Only the four Paradise Township Parcels of land (approximately 151.98 acres) are
18 approved for Conditional Use for a Master Development Plan in a Resort Development Area
19 Overlay District.

20 9. The Resort component contains 117.78 net contiguous acres in Paradise Township.

21 10. The Commercial component contains an additional 34.20 acres in Paradise
22 Township.

1 11. The Applicant will not seek variances or waivers for water and sewage utilities per
2 statements of Applicant’s representatives. (N.T. 3/9/23, p. 375 [Oram].)

3 12. All the Paradise Township Parcels are located in an R-2 Zoning District,
4 §160-5.B(4); §160-6, Official Zoning Map.

5 13. The Property is bisected by an existing residential neighborhood along Rock Ridge
6 Road, Wiscasset Road, and Goldfinch Place.

7 14. All portions of the Property in Paradise Township are located in a Resort
8 Development Area Overlay District per §160-71.

9 15. The Property contains and drains into two exceptional value, migratory fishery
10 streams, the Indian Run and the Swiftwater Creek. 25 Pa. Code §§93.4b, 93.9c.

11 16. A resort overlay is an overlay to the Official Zoning Map which allows a developer
12 to replace the underlying district provisions and opt to develop under the Resort Development Area
13 Overlay option per §160-71.C.

14 17. The resort overlay is established for the following purposes:

- 15 (1) To provide an opportunity for integrated development of a variety of uses
16 according to a Master Development Plan (“Master Development Plan”);
- 17 (2) To encourage efficient, compact patterns of land use while maintaining the
18 community’s visual character;
- 19 (3) To diversify the Township’s economy and upgrade the tourism industry;
- 20 (4) To attract new enterprises that support jobs with good pay, contribute to the
21 tax base, and balance the burden homeowners and businesses now bear for
22 financing public facilities and services, especially schools.
- 23 (5) To encourage the preservation of greenway land for conservation and
24 recreation;
- 25 (5) To encourage the preservation of greenway land for conservation and
26 recreation;
- 27 (5) To encourage the preservation of greenway land for conservation and
28 recreation;
- 29 (5) To encourage the preservation of greenway land for conservation and
 recreation;

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- (6) To provide opportunities for site design that conserve the natural, aesthetic and visual resources of the tract;
- (7) To provide the opportunities for stormwater and wastewater management facilities which protect existing stream water quality and promote recharge of clean groundwater;
- (8) To provide flexibility in design and use of larger tracts of land within the Township consistent with the goals and objectives listed at §160-2, the Comprehensive Township Development Plan, the Paradise Township Strategic Plan, the Barrett-Mt. Pocono-Paradise Open Space Recreation Plan, the Monroe County Open Space Plan, and Monroe County Comprehensive Plan.

§160-71.A. *Emphasis added.*

18. The purpose of §160-71 is consistent with the Paradise Township Comprehensive Plan which states in part that the new Resort Development Area is “to provide an opportunity for integrated development of a variety of uses....” (emphasis added), Paradise Township Comprehensive Plan, p. 3-11.

19. The word *integrated* is not defined in the Paradise Township Code of Ordinances and therefore shall carry its customary meaning per §160-52.

20. The Board of Supervisors is 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.Cmwth. 1998). *See Johnston v. Upper Macungie Township*, 162 Pa. Cmwth 170, 638 A.2d 408 (1994). *See also* 1 Pa. C.S.A. §1921(c)(8).

21. 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*

1 *Associates v. Zoning Board of Adjustment of City of Philadelphia*, 138 Pa.Cmwlth. 62, 587 A.2d
2 827 (1991).

3 22. Boards confronted with interpreting undefined terms in an ordinance are guided to
4 construe words and phrases in a sensible manner, utilize the rules of grammar and apply their
5 common and approved usage, and give undefined terms their plain, ordinary meaning. *Diocese*
6 *of Altoona-Johnstown v. Zoning Hearing Bd. of Borough of State College*, 899 A.2d 399
7 (Pa.Cmwlth. 2006).

8 23. Undefined terms must be construed “in a sensible manner” and given “their plain,
9 ordinary meaning.” 1 Pa. C.S.A. §1903; *Adams Outdoor Advertising, L.P. v. Zoning Hearing Bd.*
10 *of Smithfield Twp.*, 909 A.2d 469, 483 (Pa.Cmwlth. 2006). *Emphasis added.*

11 24. Where a tribunal needs to define an unidentified term, it may consult definitions in
12 statutes, regulations, or the dictionary for guidance. *H. E. Rohrer, Inc. v. Zoning Hearing Bd. of*
13 *Jackson Twp. and Jackson Twp.*, 808 A.2d 1014 (Pa.Cmwlth. 2002).

14 25. The definition of “integration” meaning “to form, coordinate, or blend into a
15 functioning or unified whole” is adopted as the definition of “integration” best suited for this
16 Ordinance provision and as used in the Comprehensive Plan. Houle Exhibit 1.

17 26. Resorts are permitted as a conditional use in an R-2 Zoning District, Chapter 160,
18 Attachment 1, Zoning Schedule I, Regulations Governing the Use of Land.

19 27. The Resort Overlay allows the developer to exercise the option to utilize a Master
20 Development Plan per §160-71.E.

21 28. A Master Development Plan is permitted as a conditional use in a Resort
22 Development Overlay District per §160-12.A(43.B)(a).

1 29. A Master Development tract may be composed of a combination of residential and
2 nonresidential uses. Not less than one-half of the Development area shall be dedicated to Resort
3 use per §160-12.A(43.B)(f).

4 30. Uses allowed in a Master Development are subject to the following criteria:

5 (1) Uses permitted within the underlying Zoning District;

6
7 (2) Resorts, hotels and resort amenities;

8
9 (3) Timeshares in compliance with Article IX;

10
11 (4) Planned community office parks and shopping centers;

12
13 (5) Short-term rentals,

14
15 per §160-12.A(43.B)(h)[1][2][4][5].

16 31. All of Applicant’s proposed uses, with the exception of Resort use, are not allowed
17 in an R-2 Zone absent an election to utilize the Resort Development Overlay District per
18 §160-12.A(54.A)(a).

19 32. Both a master development in a Resort Overlay and planned community office
20 parks and shopping centers must have direct access to and a valid highway occupancy permit for
21 a road or highway controlled by the Pennsylvania Department of Transportation per
22 §§160-12.A(43.B)(e) and 160-12A.(54.A)(a).

23 33. The Commercial area of the proposed Master Development Plan has direct access
24 to S.R. 611, a road or highway controlled by the Pennsylvania Department of Transportation.

25 34. The Resort area does not have direct access to a road or highway controlled by the
26 Pennsylvania Department of Transportation. Rather, its access to S.R. 611 is through Trinity Hill
27 Road, a local rural road owned and maintained by Paradise Township.

1 35. Trinity Hill Road is a Township roadway owned and controlled by Paradise
2 Township. PennDOT will require the Township, as owner, to agree to and apply for a highway
3 occupancy permit for the Project only if the Township is willing. 67 Pa. Code, Chapter 441,
4 Access to and Occupancy of Highways by Driveways and Local Roads, §441.1, 441.3(b), 441.7.

5 36. PennDOT requires either the fee owner of a property or a local municipality owning
6 a local road to be an applicant for an HOP if off-site improvements are necessary in order to
7 effectuate an HOP. The Township does not have to apply for the HOP for this Project.

8 37. Trinity Hill Road is not a road or highway controlled or occupied by the
9 Pennsylvania Department of Transportation and therefore does not meet the requirements of
10 §§160-12.A(43.B)(e) and 160-12.A.(54.A)(a).

11 38. JSPA Realty is seeking conditional use approval for a Master Development Plan in
12 the Resort Development Overlay District in accordance with §§160-11.A(43.B), 160-12.A(43.B),
13 and 160-71 of the Paradise Code of Ordinances.

14 39. The Master Development proposes a Resort area and a Commercial area.

15 40. The Resort will include a lodge, separate villas, restaurants, banquet facilities, a
16 spa, pool areas, a hotel, a six-room house rental with attendant water, sewer, stormwater, and
17 parking facilities.

18 41. The Commercial area will consist of 182,000 square feet of retail, office space, and
19 restaurant.

20 42. JSPA Realty’s proposed use for both the Resort and Commercial areas are all
21 allowable as conditional uses in a Resort Development Overlay District per §§160-71,
22 160-12.A(43.B), (60), and (54.A).

1 43. Resort development in a master development must comply with
2 §160-12.A(43.B)(h)[2].

3 44. Planned community and shopping center development in a master development
4 must comply with §160-12.A(54.A).

5 45. JSPA's Master Development will not include timeshares.

6 46. Article III, §160-12.A (Special land use requirements), Subsection (43.B), Master
7 development, sets forth the requirements for a master development which in part requires: i) a
8 minimum of 60 contiguous acres; ii) greenway land design, ownership, and maintenance which
9 complies with §160-21.C(D), (E), and (F); iii) frontage along and direct access to a road or
10 highway controlled by the Pennsylvania Department of Transportation.

11 47. Development of steep slopes in a master development is governed by §160-21.A,
12 §160-21.C(7)(a)-(e) (Other required approvals) as well as §160-21-C (Conservation subdivisions
13 and master developments).

14 48. Master developments must delineate/dedicate all greenway conservation lands to
15 meet the Project requirements through adherence to Option 1 of §160-21-C(A) as required by
16 §160-12.A(43.B)(a)(c).

17 49. Any land used by Applicant to meet the requirements of §160-12(43.B)(c)(d) shall
18 be subject to the criteria of §160-21-C and must be located within Paradise Township.

19 50. The Property located in Paradise Township contains steep slopes of grades of 25
20 percent or greater which are primary conservation areas per §160-21.C(7) and §160-21-C.

21 51. A master development conditional use permit application must include an existing
22 resource site analysis plan consistent with §131-39 and a community impact analysis which

1 includes an evaluation of the potential impacts of the proposed master development upon the
2 following community facilities:

- 3 (1) Emergency services and fire protection;
- 4 (2) Solid waste disposal;
- 5 (3) Recreation;
- 6 (4) Transportation and surrounding roadway systems;
- 7 (5) School facilities and school district budget;
- 8 (6) Water supply;
- 9 (7) Sewage disposal;
- 10 (8) Public utilities;
- 11 (9) Township revenues and expenses,

12 per §160-12.A(43.B)(n)(o).

13 52. The general criteria for conditional use approval in the Paradise Township Code of
14 Ordinances is, as follows:

15 A. General standards. All conditional uses:

- 16 (1) Shall not cause substantial injury to the value of other property where it
17 is to be located.
- 18 (2) Shall conform with regulations applicable to the district where located
19 and shall conform to the more specific standards listed in §§160-11 and
20 160-12 of this chapter.
- 21 (3) Shall be compatible with adjoining development.
- 22 (4) Shall provide adequate buffers, landscaping and screening to protect and
23 enhance adjoining areas.
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- 1 (5) Shall provide off-street parking and loading and access in keeping with
2 this chapter so as to minimize interference with traffic on all streets.
3
4 (6) Shall not jeopardize the public health, safety, welfare, quality of life or
5 convenience of Township residents.
6
7 (7) Shall be designed and constructed such that vehicular and pedestrian
8 traffic does not create undue congestion or hazards prejudicial to the
9 general area.
10
11 (8) May be subject to any other conditions, requirements or safeguards,
12 established by the Supervisors or Zoning Hearing Board, which may be
13 warranted by the character of the area in which such use is proposed or
14 by other special factors which may be necessary to implement the
15 purposes of this chapter.
16
17 (9) May require the applicant to prepare and submit, at his expense, any
18 additional information such as an environmental impact statement, a
19 traffic impact analysis, a community impact analysis, an historical and
20 cultural analysis or any other report or study as the Supervisors may
21 deem necessary for their review and consideration of the application.
22
23 (10) Shall demonstrate that all other regulations within the Township Code
24 of Ordinances have been complied with and that all required permits
25 from the federal, state or other local agencies will be obtained and
26 provided to the Township.
27

28 §160-10.A.
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30 53. In addition to the general criteria, §160-10.B authorizes the Paradise Township
31 Board of Supervisors to create additional conditions in each case as may be warranted by the
32 character of the area in which such uses are proposed or by such other special factors which are
33 necessary to implement the purpose of this Chapter.

34 54. A conditional use has been defined as nothing more than a special exception which
35 falls within the jurisdiction of the municipal legislative body, rather than zoning hearing board.
36 *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324, 1326 (Pa.Cmwlth. 1997). A conditional use

1 is actually a permitted use absent proof that an adverse impact on the public interest is greater than
2 might be expected under normal circumstances. *Robinson Twp. v. Westinghouse Broadcasting*
3 *Co.*, 63 Pa.Cmwth. 510, 440 A.2d 642, 644 (1981).

4 55. In order to demonstrate that the applicant is entitled to the conditional use, the
5 applicant initially bears the burden of establishing that the application complies with the objective
6 standards and criteria of the particular ordinance. *Appeal of Richboro CD Partners, L.P.*, 89 A.3d
7 742, 745 (Pa.Cmwth. 2014). *See also, Kretschmann Farm, LLC v. Township of New Sewickley*,
8 131 A.3d 1044 (Pa.Cmwth. 2016). *Bray v. Zoning Bd. of Adjustment*, 48 Pa.Cmwth. 523, 410
9 A.2d 909 (1980).

10 56. “[T]he standard applied to conditional use applications is whether the plan
11 submitted complies with all zoning requirements; an applicant is not required to present particular
12 details of the design of the proposed development at the conditional use stage, however, an
13 intention or promise to comply with all zoning requirements is insufficient to show entitlement to
14 a conditional use.” *Appeal of Richboro CD Partners, L.P.*, 89 A.3d at 745.

15 57. An applicant for conditional use approval has the burden of establishing compliance
16 with the specific, objective criteria of the Zoning Ordinance. Once that burden is satisfied, the
17 Applicant has made out a *prima facie* case and must be granted a conditional use, unless the
18 objectors present sufficient evidence that the proposed use will have a detrimental effect on the
19 public health, safety and welfare. *Joseph v. North Whitehall Township Board of Supervisors*, 16
20 A.3d 1209, 1215 (Pa.Cmwth. 2011) (citations omitted). *See also Gorsline v. Board of*
21 *Supervisors of Fairfield Township*, 123 A.3d 1142 (Pa.Cmwth. 2015).

1 58. The inclusion of a use as a conditional use in a zoning district constitutes a
2 legislative determination by the governing body that the use at issue will not have an adverse
3 impact on the public interest under normal circumstances. *K. Hovnanian Pennsylvania*
4 *Acquisitions, LLC v. Newtown Township Board of Supervisors*, 954 A.2d 718 (Pa.Cmwlth. 2008).
5 *See also*, §160-10.A(6). (Use shall not jeopardize the public health, safety and welfare, quality
6 of life or convenience of Township residents.)

7 59. To deny a request for a conditional use, there must be a high probability that the
8 proposed use will generate conditions from the proposed type of use that will propose a substantial
9 threat to the health and safety of the community. *Joseph v. North Whitehall Township Board of*
10 *Supervisors*, supra at 1217 (citations omitted).

11 60. Conditions may be imposed to mitigate the impacts of a use authorized by
12 conditional use approval. *In Re: Appeal of Thompson*, 896 A.2d 659 (Pa.Cmwlth. 2006).

13 61. A board considering an application for a conditional use or special exception may
14 “reduce that impact to an acceptable level, if it can, by imposing conditions, rather than denying
15 the exception.” *Edgmont Township v. Springton Lake Montessori School, Inc.*, 622 A.2d 418,
16 420 (1993) (n.4).

17 62. A statement on the record or testimony of how an applicant will operate is sufficient
18 to support imposition of a condition requiring development or operation in accordance with the
19 testimony or documentary evidence presented. *Clinton County Solid Waste Authority v. Wayne*
20 *Township*, 643 A.2d 1162 (Pa.Cmwlth. 1994); *Good v. Zoning Hearing Board of Heidelberg*
21 *Township*, 967 A.2d 421 (Pa.Cmwlth. 2009).

1 63. Conditions may be attached to the grant of a conditional use approval to preserve
2 and protect the surrounding neighborhood and to implement the purposes of the Paradise Township
3 Code of Ordinances and the Pennsylvania Municipalities Planning Code (MPC). (*See*,
4 §§160-10.A(8) and 160-10.B(1).)

5 64. With respect to the modification of conditions imposed in the zoning process, the
6 Pennsylvania Commonwealth Court has held that “An Owner which wishes to obtain a
7 modification of a condition which has become final can obtain relief if he establishes: (1) Either
8 grounds for a traditional variance (*Saber*) or changed circumstances which render the condition
9 inappropriate (*Amoco*); and (2) Absence of injury to the public interest.” *Ford v. Zoning Hearing*
10 *Board of Caernarvon Township*, 151 Pa.Cmwlth. 323, 616 A.2d 1089, 1092 (1992).

11 65. Thus, if the applicant establishes “...(1) a change in circumstances that make the
12 condition inappropriate, and (2) that the grant of relief will not injure the public, the board should
13 grant the landowner relief from the condition.” *Id.*, 151 Pa.Cmwlth. at 328, 616 A.2d at 1092.

14 66. A tribunal faced with the task of interpreting a zoning ordinance must follow the
15 rules of statutory construction. *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d
16 886, 889 (Pa. 2019). The “fundamental objective” of these rules “is to determine the intent of the
17 legislative body in enacting the ordinance.” *Kissane v. Town Council of McCandless, (non-*
18 *reported disposition affirmed Table)*, 133 A.3d 127 (Pa.Cmwlth. 2016); *Bailey v. Zoning Bd. of*
19 *Adjustment of City of Philadelphia*, 801 A.2d 492, 502 (Pa. 2002); 1 Pa. C.S.A. §1921. This is
20 the “polestar” guiding the interpretation. *Tobin v. Radnor Twp. Bd. of Commissioners*, 597 A.2d
21 1258, 1267 (Pa.Cmwlth. 1991).

1 67. “When the words in an ordinance are not explicit, the legislative body’s intent may
2 be ascertained by considering, among other things, the ordinance’s goal, the consequences of a
3 particular interpretation of the ordinance, and interpretations of the ordinance by an administrative
4 agency.” *Bailey, supra.*; 1 Pa.C.S.A. §1921(c).

5 68. Only if the ordinance remains unclear after applying the rules of statutory
6 construction should a tribunal resort to consulting a “law dictionary and, finally, a standard
7 dictionary, in that order.” *Cogan House Twp. v. Lenhart*, 197 A.3d 1264, 1268 (Pa.Cmwlth.
8 2019).

9 69. While ambiguity in a zoning ordinance must be construed “in favor of the property
10 owner,” 53 P.S. 10603.1, this principle applies only in cases of true ambiguity and “gives way
11 where the ordinance, read rationally and as a whole, clearly signals that a more restrictive meaning
12 was intended.” *Hamilton Hills Group, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 4 A.3d 788,
13 793 (Pa.Cmwlth. 2010).

14 70. Tribunals should be cautioned that:

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

26
27 *Beers v. Zoning Hearing Bd. of Towamensing Township*, 933 A.2d 1067, 1069 n.3 (Pa.Cmwlth.
28 2007) (quoting Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, §4.2.4 (2001)); *Three*

1 *Rivers Youth v. Zoning Bd. of Adjustment*, , 63 Pa.Cmwlth. 184, 437 A.2d 1064, 1065 (Pa.Cmwlth.
2 1981) (Ryan’s treatise on zoning is “definitive”).

3 71. Both the MPC and the Paradise Township Code of Ordinances specifically
4 authorizes the Paradise Township Board of Supervisors to impose “conditions, requirements or
5 safeguards” necessary to protect the public and implement the purpose of the Ordinance. *See*
6 §160-10.B; 160-29.G; 52 P.S. §10608.2.

7 72. In interpreting §160-12.A(43.B) and §160-71, the word *integrated* means “to form,
8 coordinate, or blend into a functioning or unified whole.”

9 73. The Applicant can provide the necessary integration between the Resort and
10 Commercial components by adhering to the Conditions set by the Board of Supervisors.

11 74. The grant of this Conditional Use approval for Applicant’s Master Development
12 Plan in a Resort Development Area Overlay District, all to be located in Paradise Township, is
13 specifically based on Applicant’s compliance with all Conditions set forth herein.

14 **IV. DISCUSSION**

15 **A. Jurisdiction**

16 The jurisdiction to hear applications for conditional use permits is with the Paradise
17 Township Board of Supervisors pursuant to §160-29 of the Paradise Township Code of Ordinances
18 and pursuant to 52 P.S. §§10909.1(b)(2) and 10913.2(a) of the MPC.

19 JSPA’s Conditional Use Application covers seven parcels of Property owned by
20 JSPA, four of which are located in Paradise Township, two in Pocono Township, and one in the
21 Borough of Mount Pocono. The Conditional Use Application is to utilize a Master Development
22 Plan in a Resort Development Area Overlay District. (*See* §160-71 and §160-12.A(43.B.) All

1 Paradise Township Parcels are in a Resort Development Overlay District with an underlying R-2
2 Zoning District.

3 The total acreage of the four Paradise Township Parcels is approximately 151.98
4 acres. Of that acreage, there is 117.78 contiguous acres for the Resort component in Paradise
5 Township and an additional 34.20 net acres for the Commercial component in Paradise Township
6 separated by a residential neighborhood. The Board of Supervisors is in agreement with the
7 Applicant that the requirement of 60 contiguous acres has been met. Section 160-12.A(43.B)(b)
8 does not require that all parcels of land used in a Master Development be connected in Paradise
9 Township. The Board of Supervisors are also mindful that a municipality cannot legislate beyond
10 its boundary. *King v. Perkasio Borough Zoning Hrg. Bd., supra.*¹ Therefore, “a municipality
11 cannot . . . regulate land that is outside of its borders” and “has no authority to approve construction
12 of improvements—large or small—outside its geographic boundaries.” *Ellzey v. Upper Gwynedd*
13 *Twp. Bd. of Commissioners, (non-reported disposition affirmed Table)*, 241 A.3d 694 (Pa.Cmwlth.
14 2020). *Bd. of Commissioners of Cheltenham Twp. v. Hansen-Lloyd, L.P.*, 166 A.3d 496, 506
15 (Pa.Cmwlth. 2017). Land outside of municipal boundaries cannot be used to meet the ordinance
16 requirements of a municipality outside a specific provision authorizing same.² *Hamilton Hills*
17 *Group, LLC v. Hamilton Twp. Zoning Hearing Bd., supra.* Accordingly, only four Paradise
18 Township Parcels are the subject of this Conditional Use approval. Land use regulation of land

¹ Exhibit A-20, sheets 9, 11 show sewage disposal field I and II partially located in Mount Pocono Borough and stormwater basins discharging into the Indian Run as being located in Pocono Township. A proposed walkway along the stream corridor would be substantially located in Pocono Township.

² The Board of Supervisors take official notice that Paradise Township has not entered into any intergovernmental cooperation planning agreements with either the Borough of Mount Pocono or Pocono Township as authorized pursuant to 53 P.S. §11101, *et seq.*

1 located within the municipal boundaries of Pocono Township and Mount Pocono Borough are
2 beyond the jurisdictional authority of Paradise Township.

3 Accordingly, the grant of conditional use for a Master Development in a Resort
4 Overlay can only be granted for the Paradise Township Parcels. As will be discussed further,
5 Applicant is proposing to construct portions of i) drip irrigation fields; ii) stormwater basins in
6 Mount Pocono Borough and Pocono Township. In addition, the stormwater and sewage facilities
7 will require approval by Paradise Township and not just Pocono Township and Mount Pocono
8 Borough. It is believed that these facilities will require both PaDEP and/or Monroe County
9 Conservation District review, approval, and permitting for the entire Project, and therefore may be
10 distinguished from *Hamilton Hills Group, LLC v. Hamilton Twp. Zoning Hearing Bd., supra.*
11 *See, Bd. of Commissioners of Cheltenham Twp. v. Hansen-Lloyd, L.P., supra. (distinguishing the*
12 *holding of Hamilton Hills as involving open space requirement is not applicable to the*
13 *interpretation of property line and municipal boundaries).* Inasmuch as Applicant has proposed
14 these facilities to be used in furtherance of the Master Development, the Board of Supervisors has
15 established conditions regarding the necessity of obtaining outside approvals from local
16 municipalities or any agency with jurisdiction over the proposed improvements.

17 It is also noted that Applicant repeatedly testified that all development requirements
18 for the Master Development Plan are within the borders of its Paradise Township Parcels. The
19 law requires that all greenway/conservation land must be located within the municipal boundaries
20 in order for Applicant to meet the greenway/conservation requirements of §160-12.A(43.B) and
21 §160-21-C. Simply, all greenway lands offered to satisfy criteria for the Master Development
22 must be in Paradise Township and constrained by the provisions of §160-21-C. Applicant

1 offering open space located in other municipalities is not sufficient to meet the purposes of
2 §160-71.B(1)(5)(6) and §160-12.A(43.B)(c)(d). *See also* 53 P.S. §10603(b)(5).

3 Prior to reviewing the exhibits and testimony presented with the criteria of §160-10,
4 the Board will analyze the questions presented to the parties at the June 22, 2023 and August 14,
5 2023 hearings from the solicitor.

6 **B. Integration**

7 The first and foremost difficult issue to resolve is the question regarding
8 “integration” of the Master Development.

9 Chapter 160, Article XII, Section 160-71(B)(2) (*sic*) sets forth a
10 purpose of the Resort Development Overlay District, “to provide the
11 opportunity for integrated development of a variety of uses
12 according to a Master Development Plan.” Please provide the
13 factual and legal basis for how the two proposed uses (resort and
14 commercial/shopping center) on two separate parcels meet the
15 purpose of the ordinance. Please also address the factual and legal
16 basis of whether the use of a walking path on Rock Ridge Road
17 supports a finding of interconnectivity and integration of the resort
18 and commercial shopping center sites.

19
20 A Master Development is a use only allowed in a Resort Development Overlay
21 District per §160-12.A(43.B)(a). The word *integration* is key to understanding that both
22 §160-12.A(43.B) and §160-71 are symbiotic and must be read in *pari materia*. All of Applicant’s
23 proposed uses with the exception of the Resort, hotel, and Resort amenities (§160-12.A(60)),
24 would not be allowed in an R-2 Zoning District without the Resort Development Overlay District.³

³ Resorts are allowed in all districts as a conditional use.

1 Therefore, the purpose of the RDA is essential to the interpretation of a Master Development and
2 its implementation.

3 The Board of Supervisors is the entity charged with the interpretation and
4 application of the Zoning Ordinance. It is well settled that a board's interpretation of its own
5 zoning ordinance is entitled to great weight and deference from a reviewing court. *Borough of*
6 *Milton v. Densberger, supra.; Johnston v. Upper Macungie Twp., supra.* See also, the Statutory
7 Construction Act of 1972, 1 Pa. C.S. §1921(c)(8). The basis for the judicial deference is the
8 knowledge and expertise that a board possesses to interpret the ordinance that it is charged with
9 administering. *Willits Woods Associates v. Zoning Board of Adjustment of City of Philadelphia,*
10 *supra.*

11 The purpose of the RDA, in sum, is to i) provide an opportunity for integrated
12 development, which maintains the community visual character including the preservation of
13 greenway lands, to conserve the natural, aesthetic, and visual resources, while protecting existing
14 stream quality; and ii) while allowing development which includes the ability to develop a variety
15 of uses authorized by §160-12.A(43.B) in a compact pattern to improve the Township's economy,
16 upgrade the tourism industry, and provide new jobs which help elevate existing tax burdens per
17 §160-71.B. In addition, §160-71 provides added internal guidance as to how the interpretation of
18 the Resort should be implemented.

19 (8) To provide flexibility in design and use of larger tracts of land
20 within the Township consistent with the goals and objectives
21 listed at §160-2, the Comprehensive Township Development
22 Plan, the Paradise Township Strategic Plan, the Barrett-Mt.
23 Pocono-Paradise Open Space Recreation Plan, the Monroe

1 County Open Space Plan, and the Monroe County
2 Comprehensive Plan.

3
4 §160-71.B(8).

5 Section 160-2 provides a detailed list of goals and objections to be utilized in
6 interpreting the Paradise Township Code of Ordinances. The community development objections
7 set forth therein track with both the purposes of the RDA and the criteria for conditional uses found
8 in §160-10. The criteria of §160-2, in part, includes:

- 9 A. To guide and regular the orderly growth and development of
10 the community; to promote public health, safety and general
11 welfare; to provide for the most appropriate use of land; to
12 protect the character and value of properties; to preserve the
13 natural and scenic qualities of open land; to prevent undue
14 concentration of population; and to lessen traffic congestion
15 on public roads and highways.
- 16
17 C. To provide updated zoning regulations that accommodate the
18 community character desired by local residents, including the
19 protection of existing neighborhoods, and to reasonably
20 protect property values.
- 21
22 D. To protect important natural features and natural areas for
23 future generations to enjoy.
- 24
25 E. To ensure that new development is carefully coordinated with
26 existing development, to ensure that the best use of land is
27 achieved.
- 28
29 G. To encourage appropriate development that will create jobs
30 and increase the tax base, while avoiding development that
31 would have an adverse impact on the Township's existing
32 economic base of tourism.
- 33
34 I. To recognize that there are no limited access expressways
35 within Paradise Township, and that the existing road system
36 has many physical limitations that make most roads unsuitable
37 for heavy truck traffic.
- 38

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- K. To seek to minimize traffic safety hazards, especially including hazards caused by high volume traffic.
- N. To conserve open land, including those areas containing unique and sensitive natural features such as woodlands, steep slopes, streams, floodplains, riparian buffers, and wetlands, by setting them aside from development.
- P. To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes.
- R. To implement adopted Township policies to conserve a variety of irreplaceable and environmentally sensitive resource lands as set forth in the Barrett-Mt. Pocono-Paradise Open Space Recreation Plan and the Paradise Township Strategic Plan, including provisions for reasonable incentives to create a greenway system for the benefit of present and future residents.
- S. To implement adopted land use, transportation, and community policies, as identified in the Township's Comprehensive Plan.
- U. To provide for the conservation and maintenance of open land within the Township to achieve the above-mentioned goals and for active or passive recreational use by residents.
- W. To conserve scenic views and elements of the Township's character, and to minimize perceived density, by minimizing views of new development from existing roads.

§160-2, Community development objectives; Section 160-2 is attached hereto as **Appendix B**.

34 In addition, Mr. Varaly underscored the importance of the Paradise Township
35 Comprehensive Plan by noting the requirements for *integrated* development as an objective of the
36 RDA. (N.T. 5/23/23, p. 673 [Varaly]); Paradise Township Comprehensive Plan, Adopted
37 February 17, 2015.) The objectives of the Barrett-Mt. Pocono-Paradise Open Space Recreation
38 Plan (Sections 4-1 through 4-27 Open Space and Recreation Plan) and the Paradise Township

1 Strategic Plan (Sections 2.2 and 2.3, pp. 4, 5, Planning Goals)include similar provisions regarding
2 the need to preserve greenway land and protect the natural aesthetics of the Township and its
3 natural resources.⁴

4 Accordingly, a Master Development Plan must both meet criteria of
5 §160-12.A(43.B) while attaining the purpose of the authorizing ordinance which is set forth in
6 §160-71. The lynchpin in understanding the melding of this concept is the word *integrated*. It
7 is agreed that word *integrated* is not defined in either Chapter 1 (Definitions) or Chapter 160,
8 Article X, Definitions, §160-51. However, §160-52. requires the ordinary use of words not
9 defined in the Code, to wit: “Except as defined in this Code (see Chapter 1, General Provisions,
10 Article II, Definitions), all words carry the customary meaning.

11 As all of the above is a guide, the Board of Supervisors are mindful that when words
12 in an ordinance are not defined, it is the Board’s obligation to ascertain the legislative intent of the
13 ordinance through the review of its goals and consequences. *Bailey v. Zoning Bd. of Adjustment*,
14 *supra*. A board confronted with interpreting undefined terms in an ordinance are guided to
15 construe words and phrases in a sensible manner, utilize the rules of grammar and apply their
16 common and approved usage, and give undefined terms their plain, ordinary meaning. *Diocese*
17 *of Altoona-Johnstown v. Zoning Hrg. Bd. of Borough of State College, supra*. Where a tribunal
18 needs to define an undefined term, it may consult definitions in statutes, regulations, or the
19 dictionary for guidance. *H. E. Rohrer, Inc. v. Zoning Hrg. Bd. of Jackson Twp., supra*.
20 (N.T. 5/23/23, p. 675 [Varaly].)

⁴ The Board of Supervisors takes official notice of these Paradise Township planning documents.

1 Two definitions of the word *integrated* were provided at hearing. A third
2 definition utilizing *Black's Law Dictionary* was offered in PennFuture's Brief, p. 25. Mr. Varaly
3 quoted the *Merriam-Webster Dictionary* definition of *integrated* as "something with various parts
4 or aspects linked or coordinated." (N.T. 5/23/23, p. 675.) Mr. Houle also cited the *Merriam-*
5 *Webster Dictionary* (Internet version) defining *integrated* as meaning "to form, coordinate, or
6 blend into a functioning or unified whole." (N.T. 6/8/22, pp. 717-718; Houle Exhibit 1.) *Black's*
7 *Law Dictionary*, 7th Ed. 1999 defines "integration" as the "process of making whole or combining
8 into one."

9 The Board of Supervisors rejects Mr. Varaly's definition as it does not allow for
10 the combining of §160-71 and §160-12.A(43.B) to create a meaningful intent. Mr. Varaly's
11 testimony was consistent with his truncated definition of *integrated* and is therefore rejected by
12 the Board of Supervisors. He provided several reasons as to why the Project is integrated, to wit:
13 i) guests can drive on Route 611 from one use to another; ii) water and sewer facilities are being
14 planned together; iii) Applicant elected the Resort and Commercial component in an Overlay
15 District; iv) the Commercial center is consistent with the JSPA Casino & Resort; v) guests can
16 walk using pathways. (N.T. 5/23/23, p. 685 [Varaly].) While this may all be true, this level of
17 integration could accommodate the City of Philadelphia (which has a casino) or the Borough of
18 Mount Pocono (which is close to Mount Airy Casino). All have coordinated water and sewer, all
19 are walkable with sidewalks, and all can be accessed by driving on Route 611. The fact that uses
20 are authorized in the Overlay District and the Applicant chose the uses have nothing to do with
21 integration. Rather, integration is a necessary basis for approving the requested use as a
22 Conditional Use. Applicant must demonstrate integration of uses and not simply that it chose a

1 use. Interestingly, the last factor Mr. Varaly considered is “Applicant coordinated the design and
2 layout for both.” (N.T. 5/23/23, p. 685.) This simply is not true. The Applicant went out of its
3 way to provide as little information about the Commercial center, its design, its use, and the
4 symbiotic relationship between the two components. In fact, Mr. Varaly acknowledged that the
5 Commercial area could not exist in an R-2 Zone without the Commercial component.
6 (N.T. 5/23/23, p. 687.) Despite this admission, it is clear that the Resort and Commercial
7 components are not commercially dependent on one another. (N.T. 5/23/23, p. 686.) The two
8 components are so segregated that Mr. Garrison, the Applicant’s architect, opined that:

9 “The Resort Property, not inclusive of the Commercial
10 component, is designed so that a guest coming to stay at the
11 Resort will have everything they need at the Resort to function
12 and enjoy their time without leaving the Property, including a
13 bathing suit or towel.” (N.T. 1/30/23, pp, 113, 114 [Garrison].)
14

15 It is apparent that a definition, of the word *integration*, which lacks the concept of
16 unifying various coordinated elements of the Master Development by blending and combining into
17 a whole, misses the point of the interaction between §161-71 and §160-12.A(43.B).

18 It is the definition of *integrated* provided by Mr. Houle, and as supported by
19 PennFuture, which most clearly fits the intent of the Ordinance. The definition to be utilized is
20 “to form, coordinate or blend into a functioning or unified whole.” When applying the definition
21 to the facts at hand, it is clear that Applicant did not provide enough evidence as to how the two
22 components work together.

23 The total substance of what Applicant provided with regard to the Commercial
24 component is summed up in the Findings of Fact under the heading “Project – Commercial,” i) the
25 proposed square footage of the buildings are known; ii) water will be provided by the Resort; iii)

1 sewage needs have not been tested or designed for on-site sewer but the Resort field can
2 accommodate the Commercial flows; iv) the proposed uses are what is allowed in a Master
3 Development without specifics; v) the estimates for the traffic flows and water and sewage flows
4 are based on general estimates; vi) the driveway will be a right in and right out; vii) there is
5 sufficient parking to accommodate the theoretical uses in the Commercial component; and viii)
6 that walking paths will be the method of accessing from one area to the other. There was scant
7 testimony of evidence provided on how the Commercial center would work with the Resort
8 component to i) maintain the community's visual impact; ii) encourage the preservation of
9 greenway land for conservation and recreation; iii) provide site design that can serve the natural,
10 aesthetic, and visual resources of the tract per §160-71.B(2)(5)(6). Finally, simply because the
11 Applicant owns two parcels, which even if connected, does not imply a merger of the Property.
12 *Tinicum Township v. Jones*, 723 A.2d 1068 (Pa.Cmwlth. 1998). It is also noted that Applicant
13 failed to provide testimony as to which phase of the Project the Commercial component will be
14 built. The only reference to phasing of the Strickland golf area is found in Exhibit A-15, p. 2. It
15 does not identify the Commercial component and only indicates the development of the Strickland
16 golf area will occur in Phase 2. The phasing is important since no less than one half of the
17 development area shall be dedicated to Resort use pursuant to §160-12.A(43.B)(f). The paucity
18 of evidence provided regarding the Commercial component compared to the plethora of evidence
19 provided on the Resort raises concerns as to the true intent of the Project. Accordingly, the Board
20 of Supervisors will hold Applicant at its word that the Resort will go forward and will require that
21 the Commercial component be built in one of the proposed phases.

1 The foregoing interpretation does not require that the Board of Supervisors reject
2 Applicant's request for Conditional Use approval for lack of *integration* between the different
3 components. It is believed that *integration* may be achieved through Conditions of approval set
4 by the Board of Supervisors. The Applicant's presentation was more akin to a conditional use for
5 a planned community office park and shopping center without consideration of the Resort
6 Development Overlay District. (See §160-12.A(54.A)(a).) It is acknowledged by the parties,
7 that the Applicant's presentation of the Resort component not only met the requirements of a
8 Resort pursuant to §160-12(60) but represented an integrated development of the Resort
9 component. (See ZO Exhibit 30, PennFuture's Brief; ZO Exhibit 35, Ms. Montgomery's Brief,
10 p. 23, Conclusion; ZO Exhibit 31, Mr. Houle's Brief, p. 6, Conclusion, Issue 3.)

11 The concerns raised by the parties included i) no interior vehicular access between
12 the two components of the Master Development Plan; ii) walking paths between the two
13 components would be through a steep walking path along a public roadway (Rock Ridge and
14 Wiscasset roadways); iii) that drivers must enter upon Route 611 to access either components
15 (citing Exhibit A-2, sheets 2, 3); iv) the inconvenience of right turn in, right turn out model as it
16 relates to intermobility between the components (Exhibit A-31); v) redundancy of components in
17 the form of restaurants on each component. (See N.T. 2/23/23, p. 164, lines 4-21; Exhibits A-7,
18 A-15, p. 1, A-20.) Other concerns which were raised include failure to meet the requirements of
19 i) §160-12.A(43.B)(a), 60 contiguous acres for development, (e) frontage along and direct access
20 to a road or highway owned or controlled by PennDOT; ii) the parcels being separated by an
21 existing residential neighborhood; and iii) the Commercial component being indistinguishable
22 from a normal shopping center.

1 While all of these are legitimate points, most concerns imply requirements which
2 are not found in the Ordinance. First, it cannot be denied that Applicant has 117.78 contiguous
3 acres in Paradise Township. As will be discussed further, the Master Development Ordinance
4 does not impose a requirement as to where a point of location must be, only that the Properties
5 have a minimum of 60 contiguous acres. There is no prohibition from the component being on
6 separate parcels. Indeed, multiple owners may participate in a master development per
7 §160-12.A.(43.B)(b). The Zoning Ordinance also encourages pockets of development
8 interspersed with greenway land per §160-12.A(43.B)(c)(d)(k). Additionally, residential
9 neighborhoods interspersed between the two components is consistent with, and would be allowed
10 in a master development plan, §160-12.A.(43.B)(f).

11 The issue of Applicant's claim for connection by a strip of land of which a
12 significant portion is the actual roadway for Rock Ridge Road, a dedicated Township road, is more
13 difficult. Assuming *arguendo* that Applicant has retained fee ownership of the entire strip, such
14 fee interest provides the Applicant no greater use of Rock Ridge Road and its right of way than
15 the general public. At best, Applicant's interest therein is reversionary. If Applicant is able to
16 demonstrate a reversionary interest in Rock Ridge Road, then the interest only ripens if the
17 Township road is abandoned. *Buffalo Township v. Jones*, 813 A.2d 659, 571 Pa. 637 (Pa. 2002).
18 While *Buffalo Twp., supra.*, is not directly analogous with the current situation as the underlying
19 law of the case dealt with railroad right-of-way abandonment and procedures. However, it is
20 agreed that if Applicant offers the case to establish the basic tenant that a reversionary interest
21 ripens (in the event of abandonment), then the Board of Supervisors agrees with that perspective.
22 The Board of Supervisors does not agree that Rock Ridge Road and its right of way constitutes a

1 point of connection between the two components owned by Applicant. If Applicant owns land
2 outside of the Township road and road right of way, then Applicant may develop that additional
3 Property to act as a connection point in keeping with the Paradise Township Code of Ordinances.
4 A sidewalk or walking path along Rock Ridge Road on land owned by Applicant outside of the
5 Rock Ridge Road right of way would be such a connection point.

6 Applicant also cites the case of *Glencrest Realty Company v. Zoning Hrg. Bd. of*
7 *Washington Twp.*, 406 A.2d 836, 46 Pa.Cmwlth. 177 (1979) to indicate that the presence of Rock
8 Ridge Road does not break the continuity of the subject tract. The case held where a zoning
9 ordinance required 50 contiguous acres to establish a mobile home park, the developer could
10 develop an additional 18 acres across a divided highway once the tract of 50 acres minimum was
11 established. The Court found continuity between the two parcels.

12 At hand, Rock Ridge Road is a point of connection between the parcels – not of
13 separation. The parcels are separated in Paradise Township by an existing residential
14 neighborhood. The fact that there exist points of connection within the Township assists with the
15 concept of continuity between the tracts, even if those connections are only walking paths. The
16 Ordinance as written does not require more.

17 The Board of Supervisors also considered the testimony of Mr. Rosen. In a
18 nutshell, Mr. Rosen was approved as an expert in general real estate evaluation in both residential
19 and commercial real estate. Mr. Rosen did not author a report or study for the hearing. His
20 opinion was based solely on his 24 years of experience. He opined that the Resort and
21 Commercial components if constructed, as testified to, would have little effect on the value of the
22 residential properties but would most likely enhance the value from existing conditions. In

1 addition, Mr. Rosen opined that the two separate components would not adversely affect the
2 character of the residential district. While several parties asked good questions of Mr. Rosen, no
3 party provided evidence to the contrary. Once Applicant established compliance with a criteria,
4 the parties must establish a high probability that the proposed use would cause a greater impact
5 than that normally associated with such use. *Visionquest National, supra.* As to property values,
6 it is not enough to speculate that property values may decrease; rather, there must be credible
7 substantive evidence of substantial injury to property values. *See, Soble, supra. Sunnyside Up*
8 *Corporation v. City of Lancaster Zoning Hrg. Bd., 739 A.2d 644 (Pa.Cmwlth. 1999).*

9 As noted above, the Board of Supervisors does not believe the Application should
10 be dismissed due to specific lack of integration evidence as between the Resort and Commercial
11 components. A board considering an application of conditional use may impose conditions to
12 mitigate the proposed use. *Appeal of Thompson, supra.* A board hearing a conditional use
13 application may impose conditions rather than denying the use. *Edgmont Twp. v. Springton Lake*
14 *Montessori School, Inc., supra.* Section 603(c)(8) of the Pennsylvania MPC states in pertinent
15 part:

16 . . . In allowing a conditional use, the governing body may attach
17 such reasonable conditions and safeguards, other than those related
18 to off-site transportation or road improvements, in addition to those
19 expressed in the ordinance, as it may deem necessary to implement
20 the purpose of this act and the zoning ordinance;

21
22 52 P.S. §10603(c)(8). Section 160-10.B(1) of the Paradise Township Code of Ordinances
23 provides authorization for the Board of Supervisors to add conditions “in each case which may be
24 warranted.”

1 The Board of Supervisors believes that the lack of integration evidence may be
2 remedied by the application of additional conditions. The Supervisors specifically provide
3 conditions which Applicant must meet during land development in order to establish integration
4 of the Resort and Commercial components. If Applicant fails to provide the following criteria or
5 appeals these conditions, then the Application is denied as failing to establish the required
6 integration between the components. The conditions are:

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

12 Applicant is required to demonstrate compliance with all requirements of §160-71
13 regarding eligibility for the Resort Overlay District. In order to meet the Resort Overlay District
14 Ordinance requirements, Applicant shall:

- 15 a. Create an integrated design of the Commercial component of the Project
16 including architectural “landscape design” as was testified to by Applicant’s
17 architect in such a manner that the Commercial component is identifiable
18 as related to the proposed Hawthorne Resort. Applicant shall coordinate
19 outside lighting fixtures, landscaping, and other design elements for both
20 the Commercial and Resort components of the Project;
- 21 b. Provide a cohesive Master Sign Plan under the Paradise Code of Ordinances
22 for both the Commercial and Resort components of the Project utilizing the
23 same design features, colors, and structure for each use;
- 24 c. Provide a written Connectivity Plan to demonstrate and provide intermodal
25 access between the Resort and Commercial components of the Project to
26 include an additional walking path/trail(s) connecting the Resort and
27 Commercial Areas for pedestrian access and upon approval of the Township
28
29

1 Board of Supervisors, Applicant shall implement thereafter. This plan
2 shall be required during land development for the Commercial Area;

- 3
- 4 d. All uses on or in the Commercial Area shall be required to support and
5 enhance the resort and the tourism industry and not simply the public at
6 large;
- 7
- 8 e. Applicant shall strictly adhere to the phasing of its Project as testified to at
9 hearing and as shown on its plan. The Commercial Area shall only be
10 developed and constructed in conjunction with any one (1) of the three (3)
11 proposed phases, as testified at hearing, or after completion of all phases for
12 the Resort;
- 13
- 14 f. If Applicant appeals any conditions set forth herein, then the Application is
15 denied for failing to establish the requirement for a Conditional Use of a
16 Master Development Plan in a Resort Overlay District.

17

18 **C. Traffic**

19 The second issue the parties were asked to address was a question regarding
20 §160-12.A(43.B)(e), as follows:

21 A master development tract under the Paradise Township Zoning
22 Ordinance is required to have frontage along and direct access to a
23 road or highway controlled by PennDOT (*see* Chapter 160, Article
24 III, §160-12.A(43.B)(e)). Please address based on facts of record
25 how the proposed Application intends to meet this requirement for
26 both the Resort and Commercial components. Also address
27 whether restricted access to and from the Resort and/or the
28 Commercial area and shopping center meet the intent of the
29 Ordinance. Finally, if the proposed roundabout is not approved,
30 how will the Master Development meet this zoning requirement?

31

32 The Applicant was able to establish, at hearing, that its Property has approximately
33 530 feet of frontage on S.R. 611. (N.T. 5/23/23, p. 614 [Horner].) Frontage, however, does not
34 necessarily equate to direct access to a road or highway controlled by PennDOT. Road frontage
35 is the means by which the ordinance mandates the obtaining of direct access to such a road. The
36 Applicant has a direct access point on the Commercial component to S.R. 611. While it is a direct

1 access, it is intended to be a restricted access which allows only right turns in and right turns out.
2 (N.T. 4/27/23, p. 554 [Horner].)

3 The Resort component of the Master Development, while having frontage on S.R.
4 611, currently gains its access through Trinity Hill Road. Trinity Hill Road is a Township road
5 which currently provides access to S.R. 611 for the Trinity Episcopal Church, residents on
6 Montanesca Road, Trillium Way, and the Resort. Trinity Hill Road is operated and maintained
7 by Paradise Township. It does not constitute a direct access for the Resort's purposes for a road
8 or highway controlled by PennDOT.

9 The Applicant's expert testified that he believes that Trinity Hill Road is controlled
10 by PennDOT because, citing PennDOT Publication No. 282 (Highway Occupancy Permit
11 Operations Manual), Chapter 1, p. 7, "While PennDOT generally maintains curbed highway
12 sections within municipalities from curb-to-curb only, its permit issuance authority extends to the
13 right-of-way line (in the case of utilities) and beyond (in the case of access or drainage) where the
14 proposed and permitted work outside the right-of-way may affect the efficiency, operation and
15 maintenance of the State Highway." Where the proposed and permitted work outside the right-
16 of-way may affect the efficiency, operation, and maintenance of the State highway.
17 (N.T. 5/23/23, p. 616.) Such a reading of Publication No. 282 by Mr. Horner is, at best, tortuous.

18 There is no dispute that PennDOT can require off-site improvements if a person or
19 entity is proposing a project which will affect an intersection or access to a State highway. Those
20 improvements cannot be required of a landowner or a municipality owning a local road unless a
21 landowner or municipality joins in the application. The procedure is clearly spelled out in
22 Title 67, Transportation, Part I, Department of Transportation, Subpart B, Nonvehicle Code

1 Provisions, Article III, Highways, Chapter 441, *et seq.*, Access to and Occupancy of Highways by
2 Driveways and Local Roads which requires owners of property to be an applicant for a highway
3 occupancy permit. Section 441.3 states that applications for permits to construct or alter a State
4 highway shall be submitted in the name of the owner. An owner is defined as a person who is
5 holding various estate interests pursuant to Chapter 441.1, Definitions. A person includes “a
6 political subdivision.” Further, the permit must only be issued in the name of the property owner
7 pursuant to Chapter 441.5(b).

8 Finally, and most importantly, the position taken by Applicant leads to an absurdist
9 result. If the basis for PennDOT’s control of a roadway is that it controls the intersection, then a
10 significant number of Township roads are controlled by PennDOT regardless of the road length or
11 construction. Applicant does assert how much of Trinity Hill Road PennDOT controls – the first
12 five feet?; the first 100?; 10 miles? In interpreting the Ordinance, the intent is clear – Applicant
13 is required to have frontage along and direct access to a PennDOT controlled or owned highway
14 or road. This interpretation is consistent with the provisions of the Ordinance and the goals set
15 forth in §§160-2(E)(I)(K), 160-71.B(8), and 160-10.A(1)(3)(6)(7)(9). The goal of §§160-10 and
16 160-12.A(43.B)(e) is designed to protect the small rural roads of the Township from undue
17 congestion or hazards prejudicial in the general area. The direct access requirement is
18 fundamental to the preservation of the general area in which the Master Development use is
19 located. It may be argued that the allowance of a resort and commercial area indicates a
20 compatibility with the area and accordingly, increase in traffic is to be expected. *In Re: Appeal*
21 *of Cutler Group, Inc., supra.* Such a statement might be true except the Master Development use
22 itself anticipates the increased traffic, congestion, and potential hazards of the Master

1 Development, and therefore through §160-12.A(43.B)(e) removes those conditions from rural
2 roads.

3 It is unknown whether Applicant can meet this Condition during land development.
4 Applicant's testimony and evidence only provided for a roundabout solution. (Exhibit A-35.)
5 The traffic impact analysis provided by Mr. Horner assumed the roundabout will be built. If
6 constructed in accordance with Exhibit A-35, the roundabout will meet the requirement of
7 §160-12.A(43.B)(e). Accordingly, Applicant has met its burden of persuasion regarding its
8 compliance with §160-12.A(43.B)(e) as the Supervisors agree that if the roundabout is constructed,
9 the configuration potentially meets the objectives of §160-10.A(2)(3)(6)(7). *See, Sheetz, Inc. v.*
10 *Phoenixville Borough Council*, 804 A.2d 113, 115 (Pa.Cmwlth. 2002). Whether the roundabout
11 actually works and will be approved will depend on the results of the expanded TIA study agreed
12 to by Applicant and both PennDOT and Township agreement and approval.

13 Nothing stated herein shall preclude Applicant from developing a direct access
14 from its Resort Property to S.R. 611. The scope of an expanded TIA and cooperation between
15 the Applicant, the Township, and PennDOT will be determinative of whether such will allow a
16 direct access.

17 Finally, many concerns were raised by parties regarding i) Wiscasset and Rock
18 Ridge Roads as a potential back loop to the Commercial component; and ii) a dramatic increase in
19 U-turns in the neighborhood roads as a result of the right turn in and right turn out configuration
20 of the Commercial component for S.R. 611 access. General concerns, alone, are not enough to
21 meet the burden of Applicant to demonstrate substantive evidence of health, welfare, and safety
22 concerns. *In Re: Appeal of Cutler Group, Inc., supra*. Here, however, Mr. Horner, the

1 Applicant's expert, agreed with those concerns and agreed to address them in an expanded traffic
2 impact study. (N.T. 4/27/23, p. 554 [Horner].) The Finding of Fact section is replete with
3 statements by Mr. Horner as to the scope of the expanded traffic impact study to be performed
4 during land development. Those statements are adopted herein as though fully set forth as
5 conditions agreed upon by Applicant.

6 A statement on the record or testimony of how an applicant will operate is sufficient
7 to support imposition of a condition requiring development or operation in accordance with the
8 testimony or documentary evidence presented. *Clinton County Solid Waste Authority v. Wayne*
9 *Twp., supra.; Good v. Zoning Hrg. Bd. of Heidelberg Twp., supra.*

10 In regard to traffic, the Board of Supervisors believes that the following Conditions
11 are necessary in order to establish i) the health, welfare, and safety requirements of §160-10; and
12 ii) meet the Ordinance requirements for access per §160-12.A(43.B)(e):

- 13 a. Applicant shall perform Traffic Impact Studies as part of land
14 development on the additional roads requested by the Paradise
15 Township Board of Supervisors and as set forth herein.
- 16
17 b. Applicant shall demonstrate compliance with Chapter 160, Article III,
18 §160-12.A(43.B)(e). A road or highway controlled by PennDOT is a
19 roadway which PennDOT has primary control and not Township roads
20 regardless of the fact that PennDOT's requirements for a Highway
21 Occupancy Permit (HOP) may need to impact a Township road.
- 22
23 c. A valid Pennsylvania HOP must be issued and received for the site prior
24 to the Paradise Township Zoning Officer issuing a Certificate of
25 Habitability.
- 26
27 d. Applicant shall perform a full Traffic Impact Study to include all
28 intersections and roads previously studied as well as the intersection of
29 S.R. 314 and S.R. 611, intersection of S.R. 611 and Lower Swiftwater
30 Road, and S.R. 611 and Trinity Hill Road in coordination with
31 PennDOT and the Township Traffic Engineer pursuant to §160-20 of

1 the Paradise Township Code of Ordinances during land development.
2 Applicant shall submit the Traffic Impact Study to the Township in
3 compliance with §160-20 of the Paradise Township Code of Ordinances
4 with the Land Development Application. Applicant shall assess the
5 traffic impact and loss of service at the intersections studied resulting
6 from its new facilities and shall immediately mitigate any impact or loss
7 of service, if any, is demonstrated by the traffic impact analysis. If
8 Applicant fails to comply with this requirement, the Township may
9 withhold any further permits or approvals including, but not limited to,
10 Certificates of Habitability for any building or other improvements in
11 Applicant's master development of the Project. The Traffic Impact
12 Study shall be recommended for approval by the Township Traffic
13 Engineer. The Traffic Impact Study shall include all roads required by
14 PennDOT in obtaining a Highway Occupancy Permit and be
15 substantially consistent with all PennDOT permit applications. The
16 Applicant shall comply with all recommendations of the Traffic Impact
17 Study.

18
19 e. The Applicant shall provide the Township with all correspondence to
20 and from PennDOT and a copy of the PennDOT Highway Occupancy
21 Plan issued and approved by PennDOT as well as all Temporary and
22 Final Highway Occupancy Permits issued by PennDOT for the
23 proposed access to both the Resort and the Commercial Areas of the
24 Project. The Applicant shall complete all improvements required by the
25 PennDOT Highway Occupancy Permit, close out the Permit, and
26 furnish the Township with a copy of the As-Built PennDOT Highway
27 Occupancy Permit Plans prior to issuance of the Final Zoning
28 Certificate of Habitability by the Zoning Officer.

29
30 f. Applicant shall construct the roundabout as per its testimony of its
31 Traffic expert, David Horner, P.E., and Exhibits A-31 and A-34 and
32 Joint Exhibit 3, Letter of 5-5-2023 from Township Traffic Engineer,
33 James A. Milot, in order to meet the requirements of
34 §160-12.A(43.B)(e). If PennDOT refuses to approve the roundabout
35 and design, then any other alternate arrangement utilizing Township-
36 owned roads must be approved by the Township as well as PennDOT
37 and shall include provisions regarding signage and physical measures
38 approved by the Township and PennDOT to limit U-turn traffic from
39 Route 611 onto Wiscasset Road, Trinity Hill, and Rock Ridge Road,
40 due to limited capacity of these roadways to handle non-residential
41 traffic.

1
2 **D. Congruity of Acreage**

3 The third issue the solicitor asked the parties to address is regarding congruity of
4 acreage to meet the requirements of Chapter 160, Article III, §160-12.A(43.B) in a Resort
5 Development Area Overlay District, to wit: “Master developments require a minimum of 60
6 contiguous acres for development,” as follows:

7 Please provide the factual basis and legal support that the proposed
8 Resort and Commercial areas are on contiguous parcels and whether
9 any other municipal approvals are required to support the argument
10 that the Property is contiguous by way of connection through a
11 separate municipality. Also include factual support and legal basis
12 that a Township road, Rock Ridge, can be used to support a finding
13 of a contiguous parcel under the Ordinance and law.
14

15 The Applicant argues that the Property contains a minimum of 60 contiguous acres
16 in Paradise Township and therefore complies with the requirements of §160-12.A(43.B).
17 (Exhibit A-20, sheet 3 of 11.) The Applicant further argues that once the minimum area is
18 established, other non-congruous parcels may be utilized in the Master Development. *Glencrest*
19 *Realty Company v. Zoning Hrg. Bd. of Washington Twp., supra.* In addition, the Applicant argues
20 that its fee ownership of the strip of land between the Resort and Commercial components along
21 Rock Ridge Road should also be considered a point of connection, and therefore the continuity of
22 the two parcels is not broken by the presence of Rock Ridge Road. Finally, the Applicant states
23 that the Ordinance does not prohibit from consideration acreage outside of Paradise Township for
24 both the purpose of establishing continuity and adding additional acreage for conservation
25 purposes. (ZO Exhibit 34, pp. 4-8, JSPA’s Brief by Eastburn & Grey.)

1 The Supervisors agree with most but not all of the arguments proposed by
2 Applicant. First, the Supervisors have found that the Master Development contains over 60
3 contiguous acres in Paradise Township therefore meeting the criteria of §160-12.A(43.B). It is
4 also true that there is a point of connection between the two components in Pocono Township and
5 possibly alongside of Rock Ridge Road if Applicant can establish ownership of the strip of land.

6 The Rock Ridge Road issue was addressed in the Integration section of this
7 Decision. The Applicant has no greater claim to use Rock Ridge Road for any purpose than does
8 the general public. If, however, Applicant legally establishes ownership to a parcel of property
9 sufficient to construct a sidewalk, in accordance with the Paradise Township Code of Ordinances,
10 then Applicant has established continuity between the two parcels. Further, the Township
11 understands the concerns of its residents regarding the two components being separated by their
12 residential neighborhood. While it is a concern, the Ordinance does not require complete
13 congruity between the parcels in a Master Development once the minimum 60 contiguous acres
14 requirement is met. It also has to be understood that the Ordinance does prohibit a separation of
15 the two uses by a residential neighborhood. The Ordinance authorizes the underlying use
16 (residential) as well as those uses approved under §160-12.A(43.B)(h).

17 More problematic is Applicant's position that the point of connection also includes
18 property in Pocono Township. The Applicant also argues that land in both Mount Pocono
19 Borough and Pocono Township can be utilized as greenway or conservation space. It is agreed
20 that doing so would further enhance integration of the Project and the objectives of the Resort
21 Overly District. The issue, however, is that the Board of Supervisors lacks authority to approve
22 a Master Development in either Pocono Township or Mount Pocono Borough.

1 In the matter of *Hamilton Hills Group, LLC v. Hamilton Twp. Zoning Hearing Bd.*,
2 *supra.*, the Commonwealth Court found that a municipality had no legal authority to determine the
3 land lying beyond its municipal boundary could satisfy the dimensional requirement of the
4 municipal ordinance.

5 On appeal, this Court found that such an exercise of control is
6 improper because a municipality cannot act and regulate land
7 that is outside of its borders. *Hamilton Hills*, 4 A.3d at 795.
8 “While the MPC does not state that municipalities are precluded
9 from considering extraterritorial matters when making zoning
10 decisions, numerous sections of the MPC indicate that there is
11 an underlying assumption that zoning decisions can be made
12 based on factors within the municipality’s jurisdiction. *Id.*
13 Moreover, municipal authority to regular land use and
14 development is further limited to protect the “public health,
15 safety, morals or general welfare” of the community. *Id.* at 796.
16 Finally, we explained that the central goals of the ordinance
17 were to prevent the overcrowding of land, preserve the rural
18 nature of the community, and avoid excessive development
19 *within* the Township. *Id.* Such goals can “only be
20 accomplished if the density and open space requirements used
21 to balance higher density developments are satisfied by land
22 *within the borders of the Township.*” *Id.* at 794 (emphasis
23 added).
24

25 *Bd. of Commissioners of Cheltenham Twp. v. Hansen-Lloyd, L.P., supra.* (distinguishing the
26 holding of *Hamilton Hills* as involving open space requirement is not applicable to the
27 interpretation of property line and municipal boundaries).
28

29 Accordingly, the Township is precluded from including the acreage in Pocono
30 Township and Mount Pocono Borough to meet the requirements of the Master Development
31 Ordinance without a specific recognition of the Ordinance that it may do so or an
32 intergovernmental agreement offering. Nothing in the Ordinance precludes the Applicant from
33 adding open space to the Master Development Plan and Applicant understands such an addition
34 cannot be utilized to satisfy the requirements of the Ordinance. The Township simply cannot

1 compel Applicant to provide acreage outside its municipal boundary. Conversely, the Township
2 cannot allow the additional acreage to “count” towards the requirements of §160-12.A(43.B).

3 **E. Continuation of Commercial Component**
4

5 The final issue raised in the Township’s solicitor’s memorandum was, as follows:
6

7 Chapter 160, Article III, §160-12.A(43.B)(h)[4] authorizes
8 commercial shopping centers in the Resort Development Overlay
9 District as part of the Master Development Plan. The Resort is
10 authorized to be developed separately in the district with
11 Conditional Use approval. Please provide the factual basis and
12 legal support as to whether the Commercial shopping center may be
13 developed and continued if the Resort fails or the Resort use is
14 terminated at any time after Conditional Use approval is granted.
15

16 The Applicant has briefed the issue regarding the ability of the Commercial use to
17 continue, after Conditional Use approval, in the event the Resort use fails or is terminated. It is
18 Applicant’s position that neither section of the Ordinances §160-71 or §160-12.A(43.B) requires
19 the Commercial component to be closed if the Resort ceases to function once Conditional Use
20 approval is granted. The protections for the municipality in such an event are found in
21 §§160-12.A(43.B)(f)(l)(m). The first subsection (f) requires that no less than one half of the
22 Master Development tract must be dedicated to Resort use. Thereafter, the approved Resort tract
23 of the Master Development would remain a Resort use pursuant to the Conditional Use approval
24 pursuant to subparagraphs (l) and (m).

25 The Board of Supervisors agree with the rationale of Applicant, in response to the
26 above question, as set forth in ZO Exhibit 34, pp. 15-16, JSPA’ Brief prepared by Eastburn &
27 Grey, with one exception. The Supervisors have found in this Decision and Order that the Master
28 Development must occur on Paradise Township Parcels which is comprised of a net 151.98 acres

1 of land, of which the Resort area contains 117.78 acres and the Commercial area contains 34.20
2 acres, all located within Paradise Township. (Exhibit A-20, sheet 3 of 11.) On page 16 of ZO
3 Exhibit 34, the Applicant asserts that there is 161.99 acres or 10.01 additional acres are dedicated
4 to the Resort use – the Supervisors disagree that the 10.01 additional acres outside of Paradise
5 Township can be dedicated to the Resort use.

6 **F. Compliance with Conditional Use Criteria**

7 The Applicant is seeking Conditional Use approval for a Master Development in a
8 Resort Overlay District. The approval of this Board of Supervisors for the Project is limited to
9 those four parcels of Applicant's Property which are located in Paradise Township. The
10 Applicant has asserted that all development requirements can be attained on the Paradise Township
11 Parcels. These development requirements include all the provisions applicable to land
12 development approval as well as Conditional Use approval.

13 This Decision has already set forth a variety of Conditions which must be included
14 in any order approving Conditional Use for Applicant's Project. These Conditions, along with
15 those to be discussed, create the necessary milieu in which Conditional Use approval can be made.

16 All applications for conditional uses filed in Paradise Township are to be
17 considered in accordance with the standards set forth in §160-10.A and B (*see also*, §160-29.G)
18 which provide, as follows:

19 A. General Standards. All conditional uses:

20 (1) Shall not cause substantial injury to the value of other property
21 where it is to be located.
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- (2) Shall conform with regulations applicable to the district where located and shall conform to the more specific standards listed in §§160-11 and 160-12 of this chapter.
- (3) Shall be compatible with adjoining development.
- (4) Shall provide adequate buffers, landscaping and screening to protect and enhance adjoining areas.
- (5) Shall provide off-street parking and loading and access in keeping with this chapter 8 so as to minimize interference with traffic on all streets.
- (6) Shall not jeopardize the public health, safety, welfare, quality of life or convenience of township residents.
- (7) Shall be designed and constructed such that vehicular and pedestrian traffic does not create undue congestion or hazards prejudicial to the general area.
- (8) May be subject to any other conditions, requirements or safeguards, established by the Supervisors or Zoning Hearing 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 chapter.
- (9) 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 Supervisors may deem necessary for their review and consideration of the application.
- (10) 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.

B. Special standards.

- (1) Conditional uses authorized by the Supervisors may be subject to any additional conditions and safeguards established by the Supervisors in each case which may be warranted by the character

1 of the areas in which such uses are proposed or by other special
2 factors and which are necessary to implement the purposes of this
3 chapter.
4

5 *See also*, §160-29.G.
6

7 In order to demonstrate that the Applicant is entitled to the Conditional Use, the
8 Applicant initially bears the burden of establishing that the Application complies with the objective
9 standards and criteria of the particular ordinance. *Appeal of Richboro CD Partners, L.P.*, 89 A.3d
10 742, 745 (Pa.Cmwlt. 2014). *See also, Kretschmann Farm, LLC v. Twp. of New Sewickley*, 131
11 A.3d 1044 (Pa.Cmwlt. 2016). “[T]he standard applied to conditional use applications is whether
12 the plan submitted complies with all zoning requirements; an applicant is not required to present
13 particular details of the design of the proposed development at the conditional use state, however,
14 an intention or promise to comply with all zoning requirements is insufficient to show entitlement
15 to a conditional use.” *Appeal of Richboro CD Partners, LP, supra.*, 89 A.3d at 745.

16 An applicant for conditional use approval has the burden of establishing compliance
17 with the specific, objective criteria of the Zoning Ordinance. Once that burden is satisfied, the
18 applicant has made out a *prima facie* case and must be granted a conditional use, unless the
19 objectors present sufficient evidence that the proposed use will have a detrimental effect on the
20 public health, safety and welfare. *Joseph v. North Whitehall Twp. Bd. of Supervisors*, 16 A.3d
21 1209, 1215 (Pa.Cmwlt. 2011) (*citations omitted*). *See also, Gorsline v. Bd. of Supervisors of*
22 *Fairfield Twp.*, 123 A.3d 1142 (Pa.Cmwlt. 2015).

23 To deny a request for a conditional use, there must be a high probability that the
24 proposed use will generate conditions from the proposed type of use that will propose a substantial
25 threat to the health and safety of the community. *Joseph v. North Whitehall Twp. Bd. of*

1 *Supervisors, supra.* at 1217. A board considering an application for a conditional use or special
2 exception may “reduce that impact to an acceptable level, if it can, by imposing conditions, rather
3 than denying the exception.” *Edgmont Twp. v. Springton Lake Montessori School, Inc., supra.*
4 The MPC and the Paradise Township Code of Ordinances specifically authorize the Paradise
5 Township Board of Supervisors to impose “conditions, requirements or safeguards” necessary to
6 protect the public and implement the purpose of the Ordinance. *See* 52 P.S. §10608.2,
7 §§160-10.A(8), 160-10.B(1), and 160-29.G.

8 In applying the facts as found in the previous section of this Decision and Order to
9 the legal principles set forth directly above, the Board of Supervisors believe that JSPA’s request
10 for a Conditional Use Permit for a Master Development Plan within a Resort Development Area
11 Overlay District should be granted only if JSPA strictly adheres to the terms and conditions as set
12 forth herein. The granting of the Application is conditioned upon each and every one of the
13 Conditions set forth below. If JSPA files an appeal and any Condition is requested to be stricken,
14 the Paradise Township Board of Supervisors hereby denies the Application in its entirety. The
15 grounds for denial include, but are not limited to i) inclusion in the Application of land and
16 facilities outside the jurisdictional authority of Paradise Township; and ii) failure to provide an
17 adequate Traffic Impact Study which was coordinated with the Township Traffic Engineer to study
18 Township-requested intersections; impacts on Wiscasset Road and Rock Ridge Road from U-turns
19 as well as impacts from through-traffic resulting from built-out conditions; and failure to consider
20 impacts of controlled intersections other than a roundabout when the constructability of the
21 roundabout and its approval is untested; iii) failure to provide stormwater analysis for the
22 Commercial component; iv) failure to provide required information to demonstrate compliance

1 with §160-12.A(43.B)(c)(d); and v) failure to provide a Conditional Use Application which
2 demonstrated *integration* between the Resort and Commercial components.

3 The record reflects that JSPA elected to proceed with the Conditional Use process
4 and accept the responsibility for remediation of any impact which may be demonstrated by the
5 final Traffic Impact Study.⁵

6 The Supervisors find that unrebutted testimony and evidence by Mr. Rosen,
7 Mr. Hetzel, and Mr. Leonard, along with all Conditions agreed upon by Applicant, support a
8 finding that the Application complies with §160-10.A(1)(3). In addition, the testimony of
9 Mr. Horner regarding off-street parking, loading, and access, along with the Conditions agrees
10 upon by Applicant, demonstrate compliance with §160-10.A(5) with regard to parking.

11 The Order arising out of this Decision contains a section entitled Conditions Agreed
12 Upon by Applicant.⁶ These Conditions are based on testimony and documentary evidence
13 provided by Applicant. A statement on the record or testimony of how an applicant will operate
14 is sufficient to support imposition of a condition requiring development or operation in accordance
15 with the testimony or documentary evidence presented. *Clinton County Solid Waste Authority v.*
16 *Wayne Township, supra.*; *Good v. Zoning Hearing Board of Heidelberg Township, supra.* These
17 agreed upon Conditions are critical in Applicant's ability to demonstrate compliance with the
18 criteria of §160-10.A(1)(2)(3)(4)(5)(6)(7)(10).

⁵ JSPA was aware that a Traffic Impact Study was required. Despite that knowledge, Applicant did not provide its Traffic Impact Study until the eve of the hearing in which its traffic expert testified. Testimony was started and then continued in order for the Township and the parties to review the study. Joint Exhibit No. 3 was a result of the Township reviews. The Fact section of this Decision is replete with Mr. Horner agreeing to provide an expanded traffic impact study to address traffic effects on the health, safety, and welfare concerns arising out of the Project.

⁶ These Conditions are numbered 24 through 40 in the Order.

1 One such Condition is that all land which is used in the development of the Resort
2 component must be joined (Condition 24). While it is true that Master Development may be
3 comprised of multiple parcels, Applicant is designating a specific use on multiple parcels.
4 Applicant cannot break up continuity of the approved use by the selling of individual parcels of
5 land within that use. Therefore, the parcels used within the Resort component must be joined.

6 The Supervisors have attached Conditions 19, 20, and 22 regarding the Resort
7 obtaining all required tax licenses/permits and hotel license/permits for the operation of the Resort
8 as well as a Condition requiring the Resort to operate in the fashion as presented at hearing.
9 Applicant must comply with 48 Pa. C.S.A. §1301, *et seq.*, including the maintenance of an accurate
10 registry. These Conditions work in connection with the fiscal impact testimony of Applicant as
11 well as demonstrates compliance with Condition 22 regarding no dwelling units in the Resort or
12 long-term leasing of units. Long-term leasing would require a different set of parameters and
13 impact considerations not presented by Applicant (e.g., school impacts; water and sewer analyses;
14 traffic and parking analyses). These Conditions are imposed to establish compliance with
15 §160-10.A(1)(5)(6)(10). While these Conditions were mostly agreed upon (no dwelling unit in
16 Resort villas, lodge, or hotel), the Supervisors impose same pursuant to §§160-10.A(9)B(1) and
17 160-29.G.

18 There are several component of the Conditional Use approval which need separate
19 discussion to demonstrate compliance. These components are water, wastewater, stormwater,
20 and conservation easement/greenway lands. Traffic concerns have been previously addressed in
21 this Decision. The Supervisors find that Applicant can establish compliance with all of
22 §160-10.A criteria necessary for Conditional Use approval regarding traffic by imposing the

1 Conditions set forth herein to work in concert with the testimony and exhibits presented by
2 Applicant.

3 The Supervisors find the testimony of both Mr. Gable and Mr. Oram to be
4 persuasive as to the development and implementation of water and sewer facilities. This
5 Conditional Use approval is premised on the testimony that an integrated water and sewer facility
6 can be developed to be utilized by both components of the Resort. It was and is important to the
7 parties and the Supervisors that water withdrawals, as proposed, will be significantly below the
8 recharge rate of the Property and that water usage in the two components will be on a non-
9 consumptive basis. This Property borders on and drains into two very environmentally sensitive
10 EV streams, the Indian Run and Swiftwater Creek. Protection of these resources, as well as the
11 existing residential wells, is of tantamount importance in order to demonstrate compliance with
12 §§160-10.A(1)(6) and 160-12.A(43.B)(c)(d). In addition to the testimony and documentary
13 evidence, the Supervisors will impose additional protective Conditions pursuant to §§160-10.A(8),
14 160-10.B, and 160-29.G.

15 While the testimony regarding the sewer component was detailed, there were
16 concerns were raised regarding i) the lack of design experience of the design engineer; ii) the lack
17 of experience by either Messrs. Gable or Oram with the proposed system situated so closely to EV
18 streams; iii) lack of knowledge of the proposed advanced treatment component used in the
19 proposed system; and iv) the lack of knowledge of required denitrification levels and the ability of
20 the advanced proposed treatment system to reach the required levels of denitrification. It is

1 believed the system will work as proposed but additional Conditions should apply.⁷ Further,
2 Applicant is being required, due to the environmentally sensitive nature of the area, to obtain a
3 written determination from the Delaware River Basin Commission regarding the necessity of a
4 docket for either or both the proposed water and sewer usage and systems to be utilized in the
5 Project.

6 As noted, the following Conditions are imposed in this Conditional Use approval
7 for the water and sewer components of the Property:

8 **WATER**

9 The Applicant, its successors, assigns, employees and/or agents shall on a
10 quarterly basis provide proof that the water system utilized on the permitted site
11 is being tested, inspected, and monitored by PaDEP and that the water being
12 distributed on site meets Federal and State Safe Drinking Water Standards. Any
13 violation of State and/or Federal Safe Drinking Water Standards will be just
14 cause for immediate revocation after appeal of the Conditional Use Permit until
15 such time as the violation is corrected.

16
17 The Applicant shall conduct an aquifer test according to the more stringent of
18 the process set forth in Section 9.4 of Applicant's Sanitary Survey and
19 Predrilling Plan (Exhibit A-11a) or a process required by PaDEP and
20 demonstrate, to the satisfaction of the Township Engineer, that the proposed
21 well(s) will supply the peak daily demand for the Property without adverse
22 impact to the environment or other users in the vicinity of the Project.

23
24 The Applicant shall obtain a determination from the Delaware River Basin
25 Commission regarding its jurisdiction over the Project prior to land
26 development approval.

27
28 **WASTEWATER**

29 The Applicant shall construct the sewage disposal system as testified at the
30 hearing on a non-consumptive basis after receiving Act 537 Planning Module

⁷ These Conditions enhance protections particularly where the testimony was that not all drip irrigation fields would be constructed at once – only when needed. This approach requires conditions which act as an advanced alarm that new fields would be constructed.

1 approval and required Township approval, or, alternatively, utilize both public
2 sewer and water after obtaining Act 537 Planning Module and Township
3 approvals. Any deviation from either of these two options shall require
4 Applicant to reapply for conditional use approval.
5

6 The Applicant shall comply with all requirements of Chapter 110, Sewage
7 disposal of the Paradise Township Code of Ordinances with complete
8 Township Sewage Enforcement Officer (SEO) participation; §110-5
9 Applicable standards for all sewage facilities; and §110-7 Applicable standards
10 for community sewage systems.
11

12 The Applicant shall conduct water testing and mapping, all of which is to be
13 included in an Annual Greenway Monitoring Report as set forth herein:
14

- 15 a. Applicant shall conduct testing at stream stations to be established at i)
16 Indian Run Creek; and ii) Swiftwater Creek in a location approved by
17 the Paradise Township Board of Supervisors for water quality, coliform
18 bacterial counts, and macroinvertebrate monitoring which shall be
19 conducted semi-annually at the **two (2) stream stations** above and
20 below each infiltration area utilized in the wastewater drip irrigation
21 facilities;
22
- 23 b. Monitoring Station Mapping – The monitoring stations will be shown
24 on a United States Geological Survey; 7.5 minute topographic map and
25 GPS coordinates will be provided for each monitoring station in a table
26 on the map. The map will be completed and provided to the Township
27 by **September 1, 2024**;
28
- 29 c. Data from the stream stations will be evaluated for water quality in the
30 streams before and after implementation of the wastewater disposal
31 system with findings, conclusions, and recommendations.
32 Modifications to the wastewater disposal system shall be made as
33 necessary based upon the data received in consultation with the
34 Township and PaDEP to meet the goals of maintaining the status of the
35 Indian Run and Swiftwater Creeks as exceptional value streams.
36

37 The Applicant shall coordinate all future site investigations and soil testing or
38 related site work for the Project with the Township SEO with **two (2) days** prior
39 written notice before any activity is undertaken.
40

41 The Applicant shall comply with the requirements of §160-21-C(9), Wellhead
42 protection zone, for the protection of all wells utilized on the Property and
43 adjacent properties where applicable. The Applicant will take all necessary

1 steps sufficient to prevent Resort guests and other unauthorized persons from
2 entering the drip irrigation fields and shall provide a note on the land
3 development plan as to the means and methods.
4

5 The Applicant shall obtain a determination from the Delaware River Basin
6 Commission regarding its jurisdiction over the Project prior to land
7 development approval.
8

9 The Applicant shall obtain all necessary approvals and permits from Pocono
10 Township and Mount Pocono Borough in coordination with the Paradise
11 Township SEO for sewage facilities located in or for effluent discharges into
12 the respective municipalities prior to land development approval.
13

14 The Board of Supervisors finds that the addition of these Conditions along with the
15 testimony and documents offered at hearing by Applicant meet the criteria for Conditional Use
16 approval.

17 The Board of Supervisors is aware that its approval of Applicant's Conditional Use
18 allows Applicant to obtain additional approvals for proposed drip irrigation fields and stormwater
19 facilities to be constructed outside of the Township. The use of drip irrigation fields or stormwater
20 basins only within Paradise Township is not a requirement of §§160-12.A(43.B) or 160-71. More
21 importantly, the Township, along with PaDEP and the Monroe County Conservation District, will
22 have to review and approve the systems designs and functions. Each of the facilities approval
23 will necessarily require input, review, and approval by Paradise Township during the land
24 development process for their use. The testimony was clear that the design and implementation
25 of these systems are in their nascent stage of design and development. The Township shall be
26 involved, with authority, in that design and development process. Accordingly, the Supervisors
27 find that this situation is distinguishable from the facts and holdings set forth in *Hamilton Hills*,

1 *LLC v. Hamilton Twp. Zoning Hrg. Bd., supra.* Paradise Township will retain control and
2 authority to approve the functioning and design of these Project components.

3 In light of the above analysis, the concerns raised by the stormwater testimony was
4 the complete lack of evidence concerning stormwater design or implementation for the
5 Commercial component. This concern is heightened because of the location of the proposed
6 stormwater facilities to the high quality streams on the Property. It is acknowledged that
7 stormwater design, construction, and implementation will be considered and reviewed as one
8 project by the Monroe County Conservation District. That being true, the Applicant must also
9 receive reviews and approvals for any stormwater generated from development on the four
10 Paradise Township Parcels during land development. It is therefore found that Applicant must
11 meet the Conditions set forth below for its stormwater facilities for both the Resort and
12 Commercial components in order to satisfy the criteria of §160-10(1)(2)(3)(4)(6)(10). The
13 conditions are, as follows:

14 **STORMWATER**

15 In compliance with Chapter 123 entitled, “Paradise Township Stormwater
16 Ordinance,” NPDES permit requirements for the discharge of stormwater from
17 construction activities, and the requirements of the DEP MS4 program, the
18 project shall comply with the following conditions:

- 19
- 20 a. The Applicant shall obtain approval of the stormwater management plan
21 by the Township Engineer;
- 22
- 23 b. Stormwater rate, volume, and quality shall be managed in accordance
24 with NPDES permit and the Township’s stormwater management
25 ordinance requirements. Stormwater quality management facilities
26 shall be provided to treat all paved areas of the site;
- 27
- 28 c. Applicant shall solely maintain all stormwater management facilities
29 and shall perform all inspections, operation requirements, and

1 maintenance requirements identified in its Land Development Plan as
2 approved;

3
4 d. The operation and maintenance requirements for the stormwater
5 management facilities shall be listed on the Land Development Plan
6 detailing the required tasks and frequency of required maintenance
7 activities. A log shall be kept by the Applicant and a record of this log
8 shall be submitted annually to the Township with the stormwater
9 inspection report;

10
11 e. Annual inspections of the stormwater management facilities and
12 conditions of the Project conditional use approval and land development
13 approval related to stormwater management shall be performed by a PA
14 licensed engineer qualified in the area of stormwater management
15 facilities confirming the requirements of the conditions have been
16 implemented and followed for the Project. This report shall be
17 submitted each year prior to the anniversary of the occupancy of the site.
18 If the owner fails to submit the stormwater management report, the
19 Township shall have the right to suspend the occupancy permit for the
20 Project until the appropriate report has been filed. If the report does
21 not confirm the requirements of the Project approval have been met, the
22 Township shall have the right to suspend the occupancy permit until
23 compliance has been demonstrated by the Applicant through an updated
24 report from a qualified engineer, after due notice and right of appeal.
25

26 The Applicant shall execute a Stormwater Facilities Operation and
27 Maintenance Agreement in a form satisfactory to the Township Solicitor and
28 provide satisfactory security for the required improvements pursuant to the
29 Pennsylvania Municipalities Planning Code.
30

31 The Applicant shall obtain all necessary approvals from Mount Pocono
32 Borough and Pocono Township for the plans as presented at the Public Hearing,
33 including, by way of illustration and not limitation, installation of Stormwater
34 Basin K and maintain the riparian buffers along Indian Run and Swiftwater
35 Creeks in accordance with these municipalities respective Act 167 Plan and
36 NPDES requirements, whichever is more stringent.

37 Applicant provided little testimony and virtually no documentation regarding how
38 it will meet the requirement of §160-12.A(43.B)(e). The lack of evidence alone would be
39 sufficient to deny the Application. Zoning requirements which are a criteria for a use to be

1 approved must be addressed even though it is not typically addressed during the approval process.
2 *Greth Development Group, Inc. v. Zoning Hrg. Bd. of Lower Heidelberg Twp.*, 918 A.2d 181
3 (Pa.Cmwlth. 2007); *see also, Williams Holding Group, LLC v. Bd. of Supervisors of West Hanover*
4 *Township*, 101 A.3d 1202 (Pa.Cmwlth. 2014). The Board will not withhold approval if the
5 following Conditions are attached to the approval of this Conditional Use Application.

6 The Applicant has demonstrated that there exists various steep slopes of 25 percent
7 or greater throughout the Property, particularly on the Commercial component. Many of these
8 steep slopes are considered primary conservation areas (along with wetlands, streams, etc.). The
9 Applicant's Conditional Use approval is for only the four parcels located in Paradise Township.
10 The Applicant must adhere to the requirements of §160-12.A(43.B)(c)(d) in order to establish its
11 ability to develop the Property. The Supervisors are cognizant of the heavy lift in front of the
12 Applicant.

13 As noted, the following Conditions are imposed in this Conditional Use approval
14 for conservation easement/greenway component of the Project:

15 **CONSERVATION EASEMENT/GREENWAY**

16 The Applicant shall provide an updated conservation plan for the Township's
17 review and approval detailing the location, size, and nature of primary
18 conservation areas in the Master Development and the location of all secondary
19 conservation areas to be conserved prior to approval and recording of any land
20 development plan.

21
22 Prior to recording its land development plan, Applicant shall dedicate a
23 conservation easement over the preserved greenway land within Paradise
24 Township depicted on its conditional use plan and in accordance with the
25 Paradise Township Code of Ordinances.

26
27 The Applicant shall identify the title owner of the Greenway Land and the
28 holder of the conservation easement required by Zoning Ordinance

1 §§160-12.A(43.B)(d) and 160-21-C(E)(1). Applicant shall also submit a plan
2 identifying the easement area(s) and a Plan for Maintenance of Greenway Lands
3 and Operation of Common Facilities as required by Zoning Ordinance
4 §§160-12.A(43.B)(d) and 160-21-C(F)(3)(c), subject to the approval of the
5 Township.
6

7 The Applicant shall not construct improvements in areas of the Master
8 Development approval in excess of **two thousand (2,000) square feet** with
9 **twenty-five (25%) percent** slope or greater as measured over a minimum
10 vertical distance of **six (6') feet**, or **three (3)** contiguous segments at **two (2')**
11 **foot** contour intervals except as otherwise permitted in accordance with the
12 Ordinance.
13

14 The Applicant shall provide to the Township an Annual Greenway Monitoring
15 Report, in addition to any conditions previously set forth herein, prepared by a
16 professional engineer or licensed professional approved by the Board of
17 Supervisors, detailing the status of all conservation areas (primary and
18 secondary conservation areas) including any and all actions taken under the
19 approved maintenance plan pursuant to §160-21-C of the Paradise Township
20 Code of Ordinances.
21

22 The balance of the Conditions which appear in the Order are General Conditions
23 designed to work in conjunction with land development (e.g., registering nonconforming uses;
24 notations on plans; adherence to Ordinances). Other Conditions make clear that Applicant must
25 comply with the requirements of 160-10.A(10) and obtain all required approvals and permits from
26 federal, state, and local agencies with jurisdiction including, but not limited to, Pocono Township
27 and Mount Pocono Borough.

28 Several of the Conditions address the Township's concerns with the phasing of the
29 Project and the effect of construction vehicles on Township roads. It is clear that JSPA's
30 contractors will be utilizing Trinity Hill Road, Wiscasset Road, and Rock Ridge Road (hereinafter
31 "**Township Roads**") for ingress and egress to the work sites and utility placement. JSPA is
32 responsible to maintain the Township Roads in a condition equal to their current state, normal

1 wear and tear accepted. The Township Roads must be passable at all times. Accordingly, JSPA
2 shall prepare a pre-construction video to assess the current condition of Township Roads used by
3 construction vehicles prior to commencement of any construction activity. JSPA shall provide
4 the Township Engineer and the Zoning Officer with notice of the date and time JSPA intends to
5 video the Township Roads. JSPA shall allow a Township representative to be present. After
6 completion of the construction, JSPA shall prepare a video of the Township Roads used by
7 construction vehicles. JSPA shall provide the Township Engineer and the Zoning Officer with
8 notice of the date and time JSPA intends to video the Township Roads. JSPA shall allow a
9 Township representative to be present. JSPA shall make repairs to the Township Roads damaged
10 through the construction process and/or by construction vehicles at the sole cost and expense of
11 JSPA within **six (6) months** after notice from the Township that repairs are required. If JSPA
12 fails to make the necessary repairs to the Township Roads within this time period, JSPA shall be
13 in violation of this condition and the Township may exercise any enforcement provision authorized
14 by the MPC and, in addition, may withhold any permits or approvals necessary for any further
15 construction on JSPA Property.

16 As noted, all the Township Roads shall remain open and passable during the
17 construction of all phases of the Project. JSPA shall designate to its contractors that they provide
18 the appropriate number of flaggers at intersections and locations designated by the Township
19 Engineer during the construction process as determined in the land development planning process.
20 Homeowners shall be allowed access to their properties at all times except that driveway access
21 may be closed for no more than **three (3) hours** to accommodate utility work. JSPA shall provide
22 **forty-eight (48) hours'** actual notice prior to closing off any residential driveways.

1 The approval of the Project requires that JSPA comply with all applicable Federal,
2 State, and local laws and ordinances. JSPA must also obtain all required permits from local,
3 County, and State Regulatory Agencies for the Project and its facilities.

4 The testimony of JSPA tracked the criteria for establishing a conditional use as set
5 forth in §160-10. JSPA also presented testimony, when enhanced with the attached Conditions
6 of approval, did establish compliance with the criteria set forth in §160-12.A(43.B) (Master
7 development plan) and §160-71 (Resort Development Area Overlay District) for the proposed
8 Project. Various aspects of the Project as proposed have been deferred until subdivision and land
9 development approval. JSPA has acknowledged its obligation to meet all requirements for
10 development which are set forth in the Paradise Township Code of Ordinances.

11 As noted previously, the Property was formerly used as a resort and golf course.
12 The condition of the former resort and golf course is at best in disarray. JSPA's Project will
13 revitalize the Property allowing for a new Resort and Commercial area which are to be constructed
14 pursuant to an approved Master Development Plan located in an approved Resort Overlay District.
15 As long as JSPA follows through with the commitments it made during the hearing, it strictly
16 adheres to the Conditions set forth herein, and continues to meet the applicable requirements of
17 the Paradise Township Zoning and Land Development and Subdivision Ordinances, the request
18 for a Conditional Use would be a benefit to the surrounding community.

19 Nothing in this Decision and Order shall be deemed an approval of the Project as
20 proposed by JSPA. The Project must still obtain approvals pursuant to the Paradise Township
21 Code of Ordinances including subdivision and land development review and approvals. The
22 Board of Supervisors specifically finds that if the proposed Project is implemented, after obtaining

1 all necessary approvals and permits, as was presented in its Application and at hearing, and JSPA
2 strictly adheres to the Conditions set forth herein, then the Project meets the Conditional Use
3 criteria set forth in §160-10.

4 **V. CONCLUSION**

5 The Board of Supervisors deliberated on August 14, 2023. After a public discussion
6 regarding the proposed Project for its Conditional Use and applicable Conditions, a motion was
7 made to authorize the issuance of a Conditional Use Permit by the Township Zoning Officer with
8 the Conditions as announced in public and as are set forth in the Order. This Decision and Order
9 confirms and explains the Paradise Township Board of Supervisors issuance of Conditional Use
10 approval for Master Development Plan in a Resort Development Area Overlay District which
11 approval is limited to the four parcels of land located in Paradise Township. The Board of
12 Supervisors has no jurisdiction to issue conditional use approval for lands outside its jurisdictional
13 authority. The Board of Supervisors may impose reasonable conditions and safeguards, in
14 addition to the express criteria as set forth in the Ordinances as they deem necessary pursuant to
15 §§160-10(A)(8)(B)(1) and 160-29.G. *See also*, 53 P.S. §10608.

16

1
2 **ORDER**

3 **AND NOW**, this 27th day of September, 2023, the Paradise Township Board of Supervisors
4 grants JSPA Realty, LLC's Application for Conditional Use to Develop a Master Development
5 Plan in a Resort Development Area Overlay District, pursuant to §§160-71, 160-11.A(43.B), and
6 160-12.A(43.B) of the Paradise Township Code of Ordinances, consisting of a Resort area
7 including a lodge, separate villas, spa, pools, rental house and related amenities, and a Commercial
8 area including a mixed use of retail, office, and restaurants only for the four Paradise Township
9 Parcels consisting of approximately net 151.98 acres of land, of which the Resort area contains
10 117.78 acres and the Commercial area contains 34.20 acres, all located within Paradise Township,
11 as more further delineated in Applicant's Application, testimony at hearing, and exhibits, and
12 subject to compliance and approval for Preliminary and Final Land Development approvals, is
13 granted subject to the following conditions:

14 **GENERAL CONDITIONS**

15 1. The conditions run with the land and shall apply to the Applicant, developer, and
16 all subsequent owners and operators and shall apply to all phases of development located in
17 Paradise Township.

18 2. The Applicant shall comply with all comments in the Hanover Engineering review
19 letter, dated January 9, 2023, all future review letters citing specific Ordinance requirements in
20 response to filings of Applicant or issued to JSPA Realty, LLC.

21 3. The Applicant must place into the note section its Preliminary/Final Plans as a
22 reference:

- 1 a. All registered non-conformities including code number, date approved, and the
2 person and/or entity responsible for approval;
3
4 b. All variances granted including code section and date approved;
5
6 c. All conditions of this Conditional Use Decision and Order by reference;
7
8 d. If Applicant requests waivers from any subdivision and land development
9 requirements during the land development approval process, Applicant shall set
10 forth the waivers including applicable codes sections and dates granted.
11
12 e. All approvals from adjoining municipalities including name of municipality,
13 notice of approval, date of approval, and entity granting approval.
14

15 4. The Applicant shall comply with all local zoning, land development, and
16 subdivision ordinances, as well as Federal and State laws, in developing its Resort and Commercial
17 areas in accordance with this Conditional Use Decision and Order and thereafter, except as
18 modified by nonconforming rights established through the Zoning Office, and by the variances
19 granted by the Zoning Hearing Board.

20 5. Applicant shall obtain any necessary approvals and permits for areas within the
21 authority of Mount Pocono Borough and/or Pocono Township to permit improvements or uses
22 proposed in the respective municipalities of Mount Pocono Borough and/or Pocono Township as
23 part of the Project. The Applicant shall obtain these approvals prior to recording its record plans
24 for the Project.

25 6. The Applicant shall obtain required approvals and permits from local, County, and
26 State regulatory agencies with jurisdiction in order to implement any portion of the Project.

27 7. The Applicant shall provide a certification on the land development plan attesting
28 that all Federal, Commonwealth, and local permits shall be obtained for the Project or the
29 Township approval for Conditional Use shall be null and void. The Applicant shall obtain any

1 and all Federal, Commonwealth, and local permits and complete any and all construction or
2 requirements of those permits prior to occupancy and receipt of the Final Zoning Certificate of
3 Habitability is issued by the Zoning Officer.

4 8. The Applicant shall provide a title report to the Township confirming all existing
5 easements on the Property. The Applicant shall show all existing utilities and easements on the
6 Land Development Plan for the Property.

7 9. The Applicant shall execute a Development Agreement in a form satisfactory to the
8 Township Solicitor. The Applicant shall post insurance, indemnity, and financial guarantees for
9 required improvements in accordance with the Paradise Township Code of Ordinances and the
10 Pennsylvania Municipalities Planning Code (MPC).

11 10. The Applicant shall apply for and receive both a Pennsylvania Uniform
12 Construction Code Certificate of Occupancy issued by Township Building Codes Officer and a
13 Final Zoning Certificate of Habitability issued by the Township Zoning Officer prior to
14 Applicant's occupancy of any structure.

15 11. The Applicant shall pay all Township fees, charges, and other expenses applicable
16 to the Project prior to issuance of a Certificate of Habitability for each and every phase of the
17 Project

18 12. The grant of the Conditional Use Permit is conditioned on all pre-existing zoning
19 nonconformities, if any, on the site being registered with and approved by the Paradise Township
20 Zoning Officer within **one hundred twenty (120) days** from the date of the final Decision and
21 Order for this conditional use application in accordance with the Paradise Township Code of
22 Ordinances. Applicant may appeal an adverse determination of the Township Zoning Officer. If

1 Applicant is unable to obtain a favorable ruling regarding the nonconformities, then Applicant
2 must address the outstanding zoning issues by complying with the relevant requirements of the
3 Paradise Township Code of Ordinances.

4 13. All Township Roads to Applicant's land shall remain open and passable during the
5 construction of all phases of the Project. The Applicant shall designate to its contractors that they
6 provide the appropriate number of flaggers at intersections and locations designated by the
7 Township's Engineer during the construction process as determined in the land development
8 planning process.

9 14. Applicant shall prepare a pre-construction video to assess the current condition of
10 Township Roads used by construction vehicles prior to commencement of any construction
11 activity. Applicant shall provide the Township Engineer and the Zoning Officer with notice of
12 the date and time Applicant intends to video the Township Roads. The Applicant shall allow
13 Township representatives to be present.

14 15. After completion of the construction of the Project or portion thereof, the Applicant
15 shall prepare a video of the Township Roads used by construction vehicles. The Applicant shall
16 provide the Township Engineer and the Zoning Officer with notice of the date and time Applicant
17 intends to video the Township Roads. The Applicant shall allow a Township representative to be
18 present.

19 16. The Applicant shall make repairs to any Township Roads damaged through the
20 construction process and/or by construction vehicles at the sole cost and expense of Applicant
21 within **six (6) months** after notice from the Township that repairs are required. If Applicant fails
22 to make the necessary repairs to Township Roads within this time period, Applicant shall be in

1 violation of this Condition and the Township may exercise any enforcement provision authorized
2 by the MPC and, in addition, may withhold any permits or approvals necessary for any further
3 construction on Applicant's Property.

4 17. If Applicant fails to timely complete any improvement for which a developer would
5 be required to post financial security under Article V of the MPC or the Paradise Township Code
6 of Ordinances, the Township may withhold any further permits or approvals including, but not
7 limited to, certificates of habitability, for any buildings or other improvements on Applicant's
8 Property.

9 18. If Applicant defaults in its performance of any requirement or condition of this
10 Conditional Use Decision and Order, the Township will send a notice to Applicant providing
11 **thirty (30) days** to comply. If Applicant fails to comply or make substantial steps towards
12 compliance which steps must be approved by the Township's Board of Supervisors at an open
13 meeting, then Applicant shall be in violation of this condition and shall be subject to all penalties
14 and remedies of the MPC and the Paradise Township Code of Ordinances, the Township may
15 withhold any further permits or approvals including, but not limited to, subdivision and land
16 development approval for this Project, certificates of habitability, or any other approval or permit
17 for any buildings or other improvements on Applicant's properties until such time as compliance
18 is achieved.

19 19. The Applicant must obtain and maintain at all times all tax licenses issued by the
20 Commonwealth of Pennsylvania, the Federal government, and the County of Monroe including a
21 sales tax license(s) and hotel tax permit(s)/license(s) and must strictly adhere to the requirements
22 thereof.

1 20. The Applicant must adhere to 48 Pa. C.S.A. §1301, *et seq.*, including, but not
2 limited to, maintaining a registry of all Resort guests, in a truthful and accurate condition, as
3 required by 48 Pa. C.S.A. §1311.

4 21. The Applicant shall strictly adhere to the requirements of §§160-71 and
5 160-12.A(43.B) in developing its Master Development Plan.

6 22. All cabins and rooms constructed and used at the Resort Area shall be utilized in
7 the Resort and no unit may be turned into or utilized as a dwelling unit as defined by the Paradise
8 Township Code of Ordinances for stays exceeding **one hundred twenty (120)** days in a single
9 unit or combination of units on the Property per rolling year.

10 23. The right to a conditional use, based on the Conditional Use Decision and Order,
11 shall expire and be of no further validity if the Project which is the subject of the Conditional Use
12 Decision has not commenced through a land development application within **five (5) years** of the
13 date of this Decision and Order or **five (5) years** after the final date of subdivision and land
14 development approval.

15 **CONDITIONS AGREED UPON BY APPLICANT**

16 24. The Applicant shall file and have approved a lot consolidation plan for all lots used
17 in the Resort Area of the Project in accordance with the Paradise Township Code of Ordinances.
18 All Resort Area parcels shall be joined and shall not be subdivided without prior written approval
19 of the Paradise Township Supervisors. A deed shall be filed listing all tracts of property involved
20 in the Resort Area of the Project which shall contain the following language:

21 **The above parcels shall hereby become merged into**
22 **one parcel for taxing purposes, and shall not be separately**

1 **conveyed without prior express approval of the municipality, as**
2 **provided by law.**
3

4 Proof of compliance of this provision shall be provided to the Paradise Township Zoning Officer
5 as a prerequisite to issuance of either a Conditional Use Permit or a Certificate of Habitability for
6 the Project.

7 25. The Applicant shall develop the property in accordance with its application, the
8 testimony and exhibits presented at hearing, specifically including, but not limited to,
9 Exhibits A-2, A-4, A-7, A-8, A-13 through A-18, A-20 through A-28, A-31, A-31a, and A-34.

10 26. The Applicant shall promptly demolish and properly dispose of all dilapidated
11 structures on the Property, as identified at hearing, prior to development of the Project or any
12 portion thereof.

13 27. The Applicant shall provide a walking path along the stream corridor connecting
14 the Resort and Commercial Areas of the Project.

15 28. All parking lots used in the Master Development Plan shall be designed with
16 sufficient buffer strips and greenery so that “a field” of automobiles cannot be seen from adjacent
17 residential properties.

18 29. All parking lots bordering residential properties on Wiscasset Road will have a
19 minimum **fifty (50’) foot** landscape buffer which includes but does not disturb existing trees and
20 landscaping. The plantings will include sufficient Norway spruces, white pines, and arborvitaes
21 to create a visual barrier between the residents of Wiscasset Road and the parking areas.

1 30. All parking areas in the Project shall only utilize LED lights with poles at a
2 maximum height of **eighteen (18') feet** and shall provide zero light spillage onto adjoining
3 properties as testified by Applicant's engineer.

4 31. All walking areas and paths in the Resort Area will contain only low ground level
5 lighting facilities.

6 32. The existing two (2) roads from Applicant's property to Wiscasset Road and
7 Montanesca Road, respectively, shall be for emergency and utility operator use only and for
8 construction purposes during development. Each emergency access shall be gated and locked
9 with a Knox box or combination lock. Applicant shall provide keys or combination codes to
10 emergency responders.

11 33. The stream corridor for the Indian Run and Swiftwater Creeks shall not be disturbed
12 within Paradise Township except for a stormwater basin which will be located more than **one**
13 **hundred fifty (150') feet** from the median high watermark of the stream or pursuant to an
14 approved NPDES permit, whichever is more stringent.

15 34. The Property's water distribution system shall be designed and constructed to
16 Pennsylvania Department of Environmental Protection (PaDEP) standards for community water
17 supplies.

18 35. The wastewater collection system and disposal utilized by the Applicant for the
19 Project shall not have a direct discharge into streams and shall maintain the wooded characteristics
20 of the Property.

21 36. All stormwater management facilities and Best Management Practices (BMPs)
22 shall be kept as natural as possible.

1 37. The Applicant shall perform Traffic Impact Studies as part of land development on
2 the additional roads requested by the Paradise Township Board of Supervisors and as set forth
3 herein.

4 38. Loading and unloading of guests, customers, suppliers, and/or contracted services
5 shall not occur on any PennDOT controlled roadway or Township road.

6 39. Internal connections for pedestrians between the Commercial Area and the Resort
7 Area shall be designated and located so that there will be no need to traverse S.R. 611 to go from
8 one area to the other.

9 40. The Applicant shall demonstrate compliance with Chapter 160, Article III,
10 §160-12.A(43.B)(e). A road or highway controlled by PennDOT is a roadway which PennDOT
11 has primary control and not Township roads regardless of the fact that PennDOT's requirements
12 for a Highway Occupancy Permit (HOP) may need to impact a Township road.

13 **INTEGRATION**

14 41. The Applicant shall provide a pedestrian connection between the Resort area and
15 the Commercial area to the reasonable satisfaction of the Township. To the extent third-party
16 approvals are required to effectuate the connection, Applicant and the Township shall work in
17 good faith to obtain such approvals and if such approvals are not granted by such third parties,
18 shall work in good faith to agree on an alternate pedestrian access.

1 42. The Applicant is required to demonstrate compliance with all requirements of
2 §160-71 regarding eligibility for the Resort Overlay District. In order to meet the Resort Overly
3 District Ordinance requirements, Applicant shall:

- 4 a. Create an integrated design of the Commercial component of the Project
5 including architectural “landscape design” as was testified to by Applicant’s
6 architect in such a manner that the Commercial component is identifiable as
7 related to the proposed Hawthorne Resort. Applicant shall coordinate outside
8 lighting fixtures, landscaping, and other design elements for both the
9 Commercial and Resort components of the Project;
- 10 b. Provide a cohesive Master Sign Plan under the Paradise Code of Ordinances for
11 both the Commercial and Resort components of the Project utilizing the same
12 design features, colors, and structure for each use;
- 13 c. Provide a written Connectivity Plan to demonstrate and provide intermodal
14 access between the Resort and Commercial components of the Project to
15 include an additional walking path/trail(s) connecting the Resort and
16 Commercial Areas for pedestrian access and upon approval of the Township
17 Board of Supervisors, Applicant shall implement thereafter. This plan shall be
18 required during land development for the Commercial Area;
- 19 d. All uses on or in the Commercial Area shall be required to support and enhance
20 the resort and the tourism industry and not simply the public at large;
- 21 e. Applicant shall strictly adhere to the phasing of its Project as testified to at
22 hearing and as shown on its plan. The Commercial Area shall only be
23 developed and constructed in conjunction with any one (1) of the three (3)
24 proposed phases, as testified at hearing, or after completion of all phases for the
25 Resort;
- 26 f. If Applicant appeals any conditions set forth herein, then the Application is
27 denied for failing to establish the requirement for a Conditional Use of a Master
28 Development Plan in a Resort Overlay District.

29
30
31
32
33
34
35 **WATER**

36 43. The Applicant, its successors, assigns, employees and/or agents shall on a quarterly
37 basis provide proof that the water system utilized on the permitted site is being tested, inspected,

1 and monitored by PaDEP and that the water being distributed on site meets Federal and State Safe
2 Drinking Water Standards. Any violation of State and/or Federal Safe Drinking Water Standards
3 will be just cause for immediate revocation after appeal of the Conditional Use Permit until such
4 time as the violation is corrected.

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

10 45. The Applicant shall obtain a determination from the Delaware River Basin
11 Commission regarding its jurisdiction over the Project prior to land development approval.

12 **WASTEWATER**

13 46. The Applicant shall construct the sewage disposal system as testified at the hearing
14 on a non-consumptive basis after receiving Act 537 Planning Module approval and required
15 Township approval, or, alternatively, utilize both public sewer and water after obtaining Act 537
16 Planning Module and Township approvals. Any deviation from either of these two options shall
17 require Applicant to reapply for conditional use approval.

18 47. The Applicant shall comply with all requirements of Chapter 110, Sewage disposal
19 of the Paradise Township Code of Ordinances with complete Township Sewage Enforcement
20 Officer (SEO) participation; §110-5 Applicable standards for all sewage facilities; and §110-7
21 Applicable standards for community sewage systems.

1 48. The Applicant shall conduct water testing and mapping, all of which is to be
2 included in an Annual Greenway Monitoring Report as set forth herein:

- 3 a. Applicant shall conduct testing at stream stations to be established at i) Indian
4 Run Creek; and ii) Swiftwater Creek in a location approved by the Paradise
5 Township Board of Supervisors for water quality, coliform bacterial counts, and
6 macroinvertebrate monitoring which shall be conducted semi-annually at the
7 **two (2) stream stations** above and below each infiltration area utilized in the
8 wastewater drip irrigation facilities;
- 9 b. Monitoring Station Mapping – The monitoring stations will be shown on a
10 United States Geological Survey; 7.5 minute topographic map and GPS
11 coordinates will be provided for each monitoring station in a table on the map.
12 The map will be completed and provided to the Township by **September 1,**
13 **2024;**
- 14 c. Data from the stream stations will be evaluated for water quality in the streams
15 before and after implementation of the wastewater disposal system with
16 findings, conclusions, and recommendations. Modifications to the wastewater
17 disposal system shall be made as necessary based upon the data received in
18 consultation with the Township and PaDEP to meet the goals of maintaining
19 the status of the Indian Run and Swiftwater Creeks as exceptional value
20 streams.
21 streams.

22 49. The Applicant shall coordinate all future site investigations and soil testing or
23 related site work for the Project with the Township SEO with **two (2) days** prior written notice
24 before any activity is undertaken.

25 50. The Applicant shall comply with the requirements of §160-21-C(9), Wellhead
26 protection zone, for the protection of all wells utilized on the Property and adjacent properties
27 where applicable. The Applicant will take all necessary steps sufficient to prevent Resort guests
28 and other unauthorized persons from entering the drip irrigation fields and shall provide a note on
29 the land development plan as to the means and methods.
30
31

1 51. The Applicant shall obtain a determination from the Delaware River Basin
2 Commission regarding its jurisdiction over the Project prior to land development approval.

3 52. The Applicant shall obtain all necessary approvals and permits from Pocono
4 Township and Mount Pocono Borough in coordination with the Paradise Township SEO for
5 sewage facilities located in or for effluent discharges into the respective municipalities prior to
6 land development approval.

7 **STORMWATER**

8 53. In compliance with Chapter 123 entitled, “Paradise Township Stormwater
9 Ordinance,” NPDES permit requirements for the discharge of stormwater from construction
10 activities, and the requirements of the DEP MS4 program, the project shall comply with the
11 following conditions:

- 12 a. The Applicant shall obtain approval of the stormwater management plan by the
13 Township Engineer;
- 14 b. Stormwater rate, volume, and quality shall be managed in accordance with
15 NPDES permit and the Township’s stormwater management ordinance
16 requirements. Stormwater quality management facilities shall be provided to
17 treat all paved areas of the site;
- 18 c. Applicant shall solely maintain all stormwater management facilities and shall
19 perform all inspections, operation requirements, and maintenance requirements
20 identified in its Land Development Plan as approved;
- 21 d. The operation and maintenance requirements for the stormwater management
22 facilities shall be listed on the Land Development Plan detailing the required
23 tasks and frequency of required maintenance activities. A log shall be kept by
24 the Applicant and a record of this log shall be submitted annually to the
25 Township with the stormwater inspection report;
- 26 e. Annual inspections of the stormwater management facilities and conditions of
27 the Project conditional use approval and land development approval related to
28 stormwater management shall be performed by a PA licensed engineer qualified
29
30
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32

1 in the area of stormwater management facilities confirming the requirements of
2 the conditions have been implemented and followed for the Project. This
3 report shall be submitted each year prior to the anniversary of the occupancy of
4 the site. If the owner fails to submit the stormwater management report, the
5 Township shall have the right to suspend the occupancy permit for the Project
6 until the appropriate report has been filed. If the report does not confirm the
7 requirements of the Project approval have been met, the Township shall have
8 the right to suspend the occupancy permit until compliance has been
9 demonstrated by the Applicant through an updated report from a qualified
10 engineer, after due notice and right of appeal.

11
12 54. The Applicant shall execute a Stormwater Facilities Operation and Maintenance
13 Agreement in a form satisfactory to the Township Solicitor and provide satisfactory security for
14 the required improvements pursuant to the Pennsylvania Municipalities Planning Code.

15 55. The Applicant shall obtain all necessary approvals from Mount Pocono Borough
16 and Pocono Township for the plans as presented at the Public Hearing, including, by way of
17 illustration and not limitation, installation of Stormwater Basin K and maintain the riparian buffers
18 along Indian Run and Swiftwater Creeks in accordance with these municipalities respective Act
19 167 Plan and NPDES requirements, whichever is more stringent.

20 **CONSERVATION EASEMENT**

21 56. The Applicant shall provide an updated conservation plan for the Township's
22 review and approval detailing the location, size, and nature of primary conservation areas in the
23 Master Development and the location of all secondary conservation areas to be conserved prior to
24 approval and recording of any land development plan.

25 57. Prior to recording its land development plan, Applicant shall dedicate a
26 conservation easement over the preserved greenway land within Paradise Township depicted on
27 its conditional use plan and in accordance with the Paradise Township Code of Ordinances.

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

6 59. The Applicant shall not construct improvements in areas of the Master
7 Development approval in excess of **two thousand (2,000) square feet** with **twenty-five (25%)**
8 **percent** slope or greater as measured over a minimum vertical distance of **six (6') feet**, or **three**
9 **(3)** contiguous segments at **two (2') foot** contour intervals except as otherwise permitted in
10 accordance with the Ordinance.

11 60. The Applicant shall provide to the Township an Annual Greenway Monitoring
12 Report, in addition to any conditions previously set forth herein, prepared by a professional
13 engineer or licensed professional approved by the Board of Supervisors, detailing the status of all
14 conservation areas (primary and secondary conservation areas) including any and all actions taken
15 under the approved maintenance plan pursuant to §160-21-C of the Paradise Township Code of
16 Ordinances.

17 **TRAFFIC**

18 61. A valid Pennsylvania HOP must be issued and received for each site prior to the
19 Paradise Township Zoning Officer issuing a Certificate of Habitability for that site.

20 62. The Applicant shall perform a full Traffic Impact Study to include all intersections
21 and roads previously studied as well as the intersection of S.R. 314 and S.R. 611, intersection of
22 S.R. 611 and Lower Swiftwater Road, and S.R. 611 and Trinity Hill Road in coordination with

1 PennDOT and the Township Traffic Engineer pursuant to §160-20 of the Paradise Township Code
2 of Ordinances during land development. Applicant shall submit the Traffic Impact Study to the
3 Township in compliance with §160-20 of the Paradise Township Code of Ordinances with the
4 Land Development Application. The Applicant shall assess the traffic impact and loss of service
5 at the intersections studied resulting from its new facilities and shall immediately mitigate any
6 impact or loss of service, if any, is demonstrated by the traffic impact analysis. If the Applicant
7 fails to comply with this requirement, the Township may withhold any further permits or approvals
8 including, but not limited to, Certificates of Habitability for any building or other improvements
9 in Applicant's master development of the Project. The Traffic Impact Study shall be
10 recommended for approval by the Township Traffic Engineer. The Traffic Impact Study shall
11 include all roads required by PennDOT in obtaining a Highway Occupancy Permit and be
12 substantially consistent with all PennDOT permit applications. The Applicant shall comply with
13 all recommendations of the Traffic Impact Study.

14 63. The Applicant shall provide the Township with all correspondence to and from
15 PennDOT and a copy of the PennDOT Highway Occupancy Plan issued and approved by
16 PennDOT as well as all Temporary and Final Highway Occupancy Permits issued by PennDOT
17 for the proposed access to both the Resort and the Commercial Areas of the Project. The Applicant
18 shall complete all improvements required by the PennDOT Highway Occupancy Permit, close out
19 the Permit, and furnish the Township with a copy of the As-Built PennDOT Highway Occupancy
20 Permit Plans prior to issuance of the Final Zoning Certificate of Habitability by the Zoning Officer.

21 64. The Applicant shall construct the roundabout as per its testimony of its Traffic
22 expert, David Horner, P.E., and Exhibits A-31 and A-34 and Joint Exhibit 3 (Letter of 5-5-2023

1 from Township Traffic Engineer, James A. Milot) in order to meet the requirements of
2 §160-12.A(43.B)(e). If PennDOT refuses to approve the roundabout and design, then any other
3 alternate arrangement utilizing Township-owned roads must be approved by the Township as well
4 as PennDOT and shall include provisions regarding signage and physical measures approved by
5 the Township and PennDOT to limit U-turn traffic from Route 611 onto Wiscasset Road, Trinity
6 Hill, and Rock Ridge Road, due to limited capacity of these roadways to handle non-residential
7 traffic.

8 65. The Conditions set forth in this Conditional Use may be modified by request of
9 Applicant to the Board of Supervisors for good cause shown at a regularly scheduled Board of
10 Supervisors meeting as an agenda item without reopening the Conditional Use contingent upon
11 Applicant notifying all parties to this Conditional Use hearing at the last address with the Township
12 or the property records of Monroe County with **thirty (30) days** written notice of the public
13 meeting in which any request for modification shall be held. The Applicant must also **five (5)**
14 **days** public notice by advertisement of the hearing date, time, and location and a description of all
15 items requested for modification.

16 The Zoning Officer is hereby directed to issue a Conditional Use Permit to JSPA Realty,
17 LLC upon proof of satisfaction of all the Conditions and requirements set forth in this Conditional
18 Use Decision and Order.

19 [THIS SPACE HAS BEEN INTENTIONALLY LEFT BLANK.]

20 [SIGNATURES FOLLOW ON NEXT PAGE.]

ATTEST:

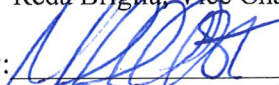
Tina Kansue
Secretary

Dated: September 27, 2023

PARADISE TOWNSHIP BOARD OF
SUPERVISORS

By: 
Peter Gonze, Chair

By: 
Reda Briglia, Vice Chair

By: 
Michael Stein, Supervisor

APPENDIX A

**HEARING EXHIBITS
CONDITIONAL USE APPLICATION OF JSPA REALTY, LLC**

Exhibit No. & Location in Hearing Transcripts	Description of Exhibit
ZO Exhibit No. 1 (N.T. 1/30/23, pp. 10-14)	Public Notice for January 30, 2023 Hearing
ZO Exhibit No. 2 (N.T. 1/30/23, pp. 10-14)	Certificate of Posting (Commercial)
ZO Exhibit No. 3 (N.T. 1/30/23, pp. 10-14)	Certificate of Posting (Resort)
ZO Exhibit No. 4 (N.T. 1/30/23, pp. 10-14)	Proof of Publication of Notice of Public Hearing of January 30, 2023
ZO Exhibit No. 5 (N.T. 1/30/23, pp. 10-14)	Affidavit of Tina Transue, Executive Secretary verifying posting of Public Notice of Hearing of January 30, 2023 on Township Building & on <i>Savvy Citizen</i>
ZO Exhibit No. 6 (N.T. 1/30/23, pp. 10-14)	Monroe County Planning Commission Review Letter
ZO Exhibit No. 7 (N.T. 1/30/23, pp. 10-14)	Paradise Township Planning Commission Draft Minutes dated 1-10-23
ZO Exhibit No. 8 (N.T. 1/30/23, pp. 10-14)	Application submitted on August 15, 2022
ZO Exhibit No. 9 (N.T. 2/23/23, pp. 140-141)	Proof of Publication of Notice of Public Hearing of February 23, 2023
ZO Exhibit No. 10 (N.T. 2/23/23, pp. 140-141)	Affidavit of Posting of Notice of Public Hearing of February 23, 2023 on Township Building
ZO Exhibit No. 11 (N.T. 2/23/23, pp. 140-141)	Certificate of Posting (Commercial)
ZO Exhibit No. 12 (N.T. 2/23/23, pp. 140-141)	Certificate of Posting (Resort)
ZO Exhibit No. 13 (N.T. 2/23/23, p. 140-141)	Sign-In Sheet
ZO Exhibit No. 14 (N.T. 3/9/23, p. 283)	Proof of Publication of Notice of Public Hearing of March 9, 2023

APPENDIX A

**HEARING EXHIBITS
CONDITIONAL USE APPLICATION OF JSPA REALTY, LLC**

Exhibit No. & Location in Hearing Transcripts	Description of Exhibit
ZO Exhibit No. 15 (N.T. 3/9/23, p. 283)	Certification of Posting by Township Secretary of Notice of Public Hearing of March 9, 2023 on Township Building
ZO Exhibit No. 16 (N.T. 3/16/23, p. 413)	Certification of Posting of Notice of Public Hearing of March 16, 2023 on Township Building
ZO Exhibit No. 17 (N.T. 3/16/23, p. 413)	Proof of Publication of Notice of Public Hearing of March 16, 2023
ZO Exhibit No. 18 (N.T. 4/27/23, pp. 532/533)	Notice of Special Meeting of April 27, 2023 Public Notice published in the <i>Pocono Record</i>
ZO Exhibit No. 19 (N.T. 4/27/23, p. 533)	Certification by Township Secretary of Posting of April 27, 2023 Special Meeting on Township Building
ZO Exhibit No. 20 (N.T. 5/23/23, pp. 600/612)	Proof of Publication of Special Meeting in <i>Pocono Record</i> published on May 9, 2023 & May 16, 2023
ZO Exhibit No. 21 (N.T. 5/23/23, pp. 600/612)	Affidavit of Proof of Posting of Special Meeting on Township Building on May 23, 2023
ZO Exhibit No. 22 (N.T. 6/8/23, p. 712)	Affidavit of Posting of Tina Transue
ZO Exhibit No. 23 (N.T. 6/8/23, p. 712)	Proof of Publication of June 8, 2023 Meeting published on May 26, 2023 and June 2, 2023
ZO Exhibit No. 24 (N.T. 6/22/23, pp. 736/746)	Proof of Publication of June 22, 2023 Hearing
ZO Exhibit No. 25 (N.T. 6/22/23, pp. 736/746)	Verification of Posting of Public Notice of June 22, 2023 Hearing on Township Building and on <i>Savvy Citizen</i>
ZO Exhibit No. 26 (N.T. 6/22/23, pp. 745/746)	Memo for Brief Instructions

APPENDIX A

**HEARING EXHIBITS
CONDITIONAL USE APPLICATION OF JSPA REALTY, LLC**

Exhibit No. & Location in Hearing Transcripts	Description of Exhibit
ZO Exhibit No. 27 (N.T. 8/14/23, p. 5)	Certification of posting by Township Secretary of Public Notice of Hearing of January 30, 2023 on Township Building & on <i>Savvy Citizen</i>
ZO Exhibit No. 28 (N.T. 8/14/23, p. 5)	Proof of Publication of June 8, 2023 Meeting published on July 31, 2023 and August 7, 2023 in the <i>Pocono Record</i>
ZO Exhibit No. 29 (N.T. 8/14/23, p. 6)	Petition to Reopen Evidentiary Record
ZO Exhibit No. 30 (N.T. 8/14/23, p. 9)	PennFuture's Brief
ZO Exhibit No. 31 (N.T. 8/14/23, p. 9)	Mr. Houle's Brief
ZO Exhibit No. 32 (N.T. 8/14/23, p. 9)	Brodhead Watershed Association's Brief
ZO Exhibit No. 33 (N.T. 8/14/23, p. 9)	JSPA Attorney Karpowich's Brief
ZO Exhibit No. 34 (N.T. 8/14/23, p. 9)	JSPA Attorney VanLuvander, of Eastburn & Grey
ZO Exhibit No. 34 (N.T. 8/14/23, p. 9)	Ms. Montgomery's Brief (without petition)
Applicant Exhibit No. 1 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	<i>Curriculum vitae</i> of Michael E. Gable, P.E.
Applicant Exhibit No. 2 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Plan of Overall Project Land Area, prepared by LVL Engineering Group, dated January 30, 2023
Applicant Exhibit No. 3 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Conceptual Overall Master Plan, prepared by LVL Engineering Group, last revised January 10, 2023
Applicant Exhibit No. 4 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Resort Master Plan, prepared by LVL Engineering Group, dated January 10, 2023

APPENDIX A

**HEARING EXHIBITS
CONDITIONAL USE APPLICATION OF JSPA REALTY, LLC**

Exhibit No. & Location in Hearing Transcripts	Description of Exhibit
Applicant Exhibit No. 5 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Aerial maps of the Property
Applicant Exhibit No. 6 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	<i>Curriculum vitae</i> of James Garrison, AIA
Applicant Exhibit No. 7 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Floor plans and renderings of proposed Resort villas/cabins
Applicant Exhibit No. 8 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Renderings of proposed lodge, pool, spa, and villa/cabin
Applicant Exhibit No. 9 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Photographs/images of existing structures
Applicant Exhibit No. 10 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	<i>Curriculum Vitae</i> of Brian Oram, PG
Applicant Exhibit No. 11 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Sanitary Survey and Predrilling Plan, prepared by Brian Oram, dated February 2023
Applicant Exhibit No. 11a (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Updated Sanitary Survey
Applicant Exhibit No. 12 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Well Inventory Mapping Plan, prepared by Boucher & James, Inc., last revised February 20, 2020
Applicant Exhibit No. 13 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Sewage Findings, prepared by Brian Oram, dated February 17, 2023

APPENDIX A

**HEARING EXHIBITS
CONDITIONAL USE APPLICATION OF JSPA REALTY, LLC**

Exhibit No. & Location in Hearing Transcripts	Description of Exhibit
Applicant Exhibit No. 13a (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Updated Sewage Findings, prepared by Brian Oram, dated March 2, 2023
Applicant Exhibit No. 14 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Drip System Testing Plan, prepared by Boucher & James, Inc., last revised January 24, 2023
Applicant Exhibit No. 15 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Sewage System Overview
Applicant Exhibit No. 16 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Drip Irrigation System Schematic Drawings
Applicant Exhibit No. 17 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Netafim Wastewater Reuse and Drip Dispersal Design Guide
Applicant Exhibit No. 18 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Ecoflo/Rewatec Guide for Professionals
Applicant Exhibit No. 19 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Preliminary Environmental & Community Impact Statement
Applicant Exhibit No. 20 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Conditional Use and Master Development Plan, prepared by LVL Engineering Group, last revised November 23, 2022
Applicant Exhibit No. 21 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Geotechnical Engineering Report, prepared by Midlantic Engineering, Inc., dated June 3, 2022
Applicant Exhibit No. 22 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Stormwater Management and Infiltration Testing Report, prepared by Midlantic Engineering, Inc., dated March 3, 2023

APPENDIX A

**HEARING EXHIBITS
CONDITIONAL USE APPLICATION OF JSPA REALTY, LLC**

Exhibit No. & Location in Hearing Transcripts	Description of Exhibit
Applicant Exhibit No. 23 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Pennsylvania Stormwater Best Management Practices Manual § BMP 6.4.2; Infiltration Basin
Applicant Exhibit No. 24 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Pennsylvania Stormwater Best Management Practices Manual § BMP 6.4.5; Rain Garden/Bioretenion
Applicant Exhibit No. 25 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Pennsylvania Stormwater Best Management Practices Manual § BMP 6.5.1; Vegetated Roof
Applicant Exhibit No. 26 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	<i>Curriculum Vitae</i> of Erik Hetzel, AICP/PP
Applicant Exhibit No. 27 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Fiscal and Economic Impact Report, prepared by EH Creative Services, LLC, dated March 15, 2023
Applicant Exhibit No. 28 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Projected police, fire, and EMS demand from proposed Development
Applicant Exhibit No. 29 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	<i>Curriculum Vitae</i> of Alan P. Rosen, Esq.
Applicant Exhibit No. 30 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	<i>Curriculum Vitae</i> of Dave Horner, P.E.
Applicant Exhibit No. 31 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Traffic Impact Assessment
Applicant Exhibit No. 31a (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Appendix to Traffic Impact Assessment

APPENDIX A

**HEARING EXHIBITS
CONDITIONAL USE APPLICATION OF JSPA REALTY, LLC**

Exhibit No. & Location in Hearing Transcripts	Description of Exhibit
Applicant Exhibit No. 32 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	<i>Curriculum Vitae</i> of John R. Varaly, AICP
Applicant Exhibit No. 33 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Report of John R. Varaly, dated April 27, 2023
Applicant Exhibit No. 34 (N.T. 5/23/23, p. 703) See Procedure section for date of offer.	Conceptual roundabout installation design
Joint Exhibit No. 1 (N.T. 3/9/23, p. 286)	Letter from Attorney Leo DeVito, Solicitor for Pocono Township, dated 3/9/23
Joint Exhibit No. 2 (N.T. 3/9/23, pp. 286)	List of Persons with Party Status
Joint Exhibit No. 3 (N.T. 5/23/23, p. 613)	Letter from James A. Milot, P.E., Township Engineer
Paul Houle Exhibit No. 1 (N.T. 6/8/23, p. 719)	Merriam-Webster Definition of “Integration”

APPENDIX B

Township of Paradise, PA
Tuesday, September 26, 2023

Chapter 160. Zoning

Article I. General Provisions

§ 160-2. Community development objectives.

This chapter is hereby adopted in accordance with the objectives of the Comprehensive Township Development Plan and is promulgated and set forth for the following purposes:

- A. To guide and regulate the orderly growth and development of the community; to promote public health, safety and general welfare; to provide for the most appropriate use of land; to protect the character and value of properties; to preserve the natural and scenic qualities of open land; to prevent undue concentration of population; and to lessen traffic congestion on public roads and highways.
- B. To seek to ensure that Paradise Township continues to be a desirable and tranquil location in which to reside and vacation.
- C. To provide updated zoning regulations that accommodate the community character desired by local residents, including the protection of existing neighborhoods, and to reasonably protect property values.
- D. To protect important natural features and natural areas for future generations to enjoy.
- E. To ensure that new development is carefully coordinated with existing development, to ensure that the best use of land is achieved.
- F. To ensure that Paradise Township meets its legal obligations to provide opportunities to develop all legitimate land uses.
- G. To encourage appropriate development that will create jobs and increase the tax base, while avoiding development that would have an adverse impact on the Township's existing economic base of tourism.
- H. To recognize that Paradise Township lacks a public water and sewer system and has limited capacity to serve intense development.
- I. To recognize that there are no limited access expressways within Paradise Township, and that the existing road system has many physical limitations that makes most roads unsuitable for heavy truck traffic.
- J. To seek to minimize potential hazards and nuisances, and to reasonably control the hours of operation of nuisance causing uses to meet the other objectives of this section.
- K. To seek to minimize traffic safety hazards, especially including hazards caused by high volume traffic.
- L. To assist in meeting the purposes stated in the Pennsylvania Noncoal Surface Mining Conservation and Reclamation Act, as amended.^[1]

[1] *Editor's Note: See 52 P.S. § 3301 et seq.*

M. To meet the purposes for zoning as stated in the Pennsylvania Municipalities Planning Code, as amended.^[2]

[2] *Editor's Note: See 53 P.S. § 10101 et seq.*

- N. To conserve open land, including those areas containing unique and sensitive natural features such as woodlands, steep slopes, streams, floodplains, riparian buffers, and wetlands, by setting them aside from development.
- O. To provide greater design flexibility and efficiency in the location of services and infrastructure, including the opportunity to reduce length of roads, utility runs, and the amount of paving required for residential development.
- P. To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes.
- Q. To provide for a diversity of lot sizes, building densities, and housing choices to accommodate a variety of age and income groups, and residential preferences, so that the community's population diversity may be maintained.
- R. To implement adopted Township policies to conserve a variety of irreplaceable and environmentally sensitive resource lands as set forth in the Barrett-Mt. Pocono-Paradise Open Space Recreation Plan and the Paradise Township Strategic Plan, including provisions for reasonable incentives to create a greenway system for the benefit of present and future residents.
- S. To implement adopted land use, transportation, and community policies, as identified in the Township's Comprehensive Plan.
- T. To create neighborhoods with direct visual access to open land, with amenities in the form of neighborhood open space, and with a strong neighborhood identity.
- U. To provide for the conservation and maintenance of open land within the Township to achieve the above-mentioned goals and for active or passive recreational use by residents.
- V. To provide standards reflecting the varying circumstances and interests of individual landowners, and the individual characteristics of their properties.
- W. To conserve scenic views and elements of the Township's character, and to minimize perceived density, by minimizing views of new development from existing roads.
- X. To provide multiple options for landowners in order to minimize impacts on environmental resources (sensitive lands such as wetlands, floodplain, and steep slopes) and disturbance of natural or cultural features (such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings, and fieldstone walls).