

**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

**IN RE: APPEAL OF CITIZENS FOR : No. 7069 CV 2023
PENNSYLVANIA'S FUTURE FROM :
THE DECISION OF THE PARADISE :
TOWNSHIP BOARD OF SUPERVISORS :
DATED SEPTEMBER 27, 2023 :
APPROVING THE CONDITIONAL USE :
APPLICATION OF JSPA REALTY, LLC, :**

OPINION

Citizens for Pennsylvania's Future (PennFuture) has appealed the September 27, 2023, decision of the Paradise Township Board of Supervisors (Board) to grant JSPA Realty, LLC a conditional use. The conditional use gave JSPA the right to develop a master development plan in the township's Resort Development Area Overlay District, pursuant to §§ 160-71, 160-11.A (43.B), and 160-12.A (43.B) of the Paradise Township Code of Ordinances.

The JSPA master development plan consists of a resort area including a lodge, separate villas, spa, pools, rental house and related amenities, and a commercial area including a mixed use of retail, office, and restaurants. The Paradise Township portion of the subject property includes 117.78 acres in the resort area and 34.20 acres in the commercial area. The conditional use approval was contingent upon preliminary and final land development approvals under the Subdivision and Land Development ordinance, and was subject to sixty-four conditions imposed by the Board.

The proceedings before the township began when JSPA Realty submitted an application to the Board on August 15, 2022, seeking conditional use approval for its

master development plan consisting of a resort and shopping center in Paradise Township's Resort Development Area Overlay District. The Board held nine hearings between January 30, 2023, and the final hearing on August 14, 2023, when it approved the application. The Board filed a written decision on September 27, 2023. PennFuture filed this land use appeal on October 26, 2023. JSPA intervened in the appeal on November 1, 2023. The parties have filed briefs and argued the appeal on January 2, 2024.

DISCUSSION

A conditional use is a special exception which falls within the jurisdiction of the municipal governing body rather than the zoning hearing board. *In re Thompson*, 896 A.2d 659, 670 (Pa.Cmwlt. 2006). A conditional use involves the use of the land, as opposed to the particular design details of the development. *Joseph v. North Whitehall Township Board of Supervisors*, 16 A.3d 1209, 1215 (Pa. Cmwlt. 2011). An applicant is entitled to a conditional use as a matter of right, unless it is determined "that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use." *In re Drumore Crossings, L.P.*, 984 A.2d 589, 595 (Pa. Cmwlt. 2009).

The applicant bears the burden of establishing that the proposed conditional use satisfies the criteria in the zoning ordinance. *Id.* If the board is persuaded that the application complies with the zoning ordinance, a presumption arises that "the proposed use is consistent with the general welfare of the community." *H.E. Rohrer, Inc. v. Zoning Hearing Board of Jackson Township*, 808 A.2d 1014, 1018 (Pa. Cmwlt. 2002),

Kretschmann Farm, LLC v. Township of New Sewickley, 131 A.3d 1044, 1052–53 (Pa. Cmwlth. 2016).

I. Factual Background

The Board found that JSPA proposes to build a resort and shopping center on Route 611 on seven contiguous parcels of land. Four of the tracts are located in Paradise Township, two are in Pocono Township, and one is in the Borough of Mt. Pocono. The entire property is 240.81 acres and there is 530 feet of frontage on Route 611 in Paradise Township. The property will have two components, a resort area and a commercial shopping center area. Both are located entirely within Paradise Township. The resort area contains 117.78 acres and will be located on the former Hawthorne Resort property which is accessed by Route 611 and Trinity Hill Road and borders the Borough of Mt. Pocono. JSPA's proposed resort would include a lodge building with restaurants and banquet facilities that will be open to the general public, a hotel with 94 hotel rooms, 151 villas, a spa, a pool area with three pools and a parking area, all within Paradise Township. The lodge, hotel, villas, and the pool and spa building will all have a similar architectural style.

The proposed shopping center area will be on 34.20 acres in the area formerly occupied by the Strickland's golf course. The Rock Ridge residential neighborhood owned by others lies between the commercial area and the resort area, but the properties are connected on the southwest boundary of the development along the Swiftwater stream in Pocono Township. JSPA plans to connect the resort area and the commercial area by a pedestrian pathway through the Rock Ridge residential neighborhood. JSPA's

plan does not provide for a roadway between the resort area and the commercial area. Access to the commercial area by vehicle from the resort area would be by Route 611. The pedestrian pathway between the two areas is a 40' wide strip of land which is over a quarter mile long, and traverses steep slopes in excess of 25% in some areas. Two-thirds of the length of the walkway underlies Rock Ridge Road and Wiscasset Road.

The proposed lodge in the resort area will have a registration area, a restaurant and banquet facilities. The lodge will not have living accommodations. The villas will be built in three clusters of 1) stand-alone duplex villas, 2) stand-alone single floor duplexes with decks and 3) deck villas. The villas will be designed to look out into the forest and will not allow a view of other villas. They will have a kitchenette with a sink and small refrigerator, but will have no cooking facilities and therefore, will not be stand-alone dwelling units. There will be no parking at the villas; guests will register and leave their vehicles in the resort's front parking lot. Guests will walk or be shuttled by golf cart to their villa and to amenities.

A 20,000 square foot hotel will be constructed with 94 rooms, to be built in character with the rest of the development. When all living accommodations are constructed, there will be 244 rental units, plus the Montenesca House, an existing structure that will become a short-term rental facility.

The proposed commercial area will be located on the former Strickland's golf course. No plans were presented for the particulars of the commercial area, but it is proposed as a shopping center consisting of an 85,000 square foot retail building, a 57,000 square foot mixed-use commercial building, a 10,000 square foot franchise

restaurant building and parking. JSPA plans to build the shopping center during the second phase of construction, after the lodge, banquet facilities, restaurants, spa and one-half of the villas in the resort are completed.

JSPA's proposal for access to the resort from Route 611 is a two-lane roundabout with five entrances: northbound Route 611, southbound Route 611, Trinity Hill Road, Meadowside Road (a local roadway directly opposite Trinity Hill Road) and an entrance to the resort. Access to the commercial area would be directly from Route 611. Both of these access points would require the approval of PennDOT.

Greenways are included in JSPA's plans, which will not be open to the general public, and will be used for passive recreation by resort guests. The plans show 86.98 acres of greenway space in Paradise Township and a combined 88.84 acres of greenway space in Pocono Township and Mt. Pocono Borough.

The only improvements proposed in Mt. Pocono Borough and in Pocono Township are drip irrigation fields and stormwater basins.

The property in Paradise Township is in an R-2 District in a Resort Development Area Overlay District (RDA). The Resort Overlay District allows hotels, motels, restaurants and shops. JSPA's proposed resort and commercial uses are permitted as a conditional use in an R-2 zone in Paradise Township. Land development in the RDA Overlay District must constitute a "Master Development," which the zoning ordinance defines as "a combination of land uses, consisting of a resort and additional uses." *Zoning Ordinance, §§1-16; 160-71E, 160-12(43.B)(a), Decision, p.73.* These uses may include a shopping center. *Id. §160-12(43.B)(h)(4).* A resort is permitted as a conditional

use in the underlying R-2 Residential District but a shopping center is not, unless it is part of a Master Development in the RDA Overlay District. *Id.*, §160-12(54.A)(a), (b).

The Board found that Route 611 is a commercial corridor with several resorts in close proximity. The proposed development is consistent with the nature and character of the area and the existing commercial uses. *Decision, Finding of Fact No. 3*, p.52. The Board cited the testimony of Mr. Varaly concerning the township's comprehensive plan:

The most important part of the Comprehensive Plan is "(t)he purpose of the district (Resort Overlay) is to provide an integrated development of a variety of uses according to a master development plan and diversify the Township's economic (*sic*) and update the tourism industry."

NT 5/23/23, p.673, (Varaly), *Decision, Finding of Fact No. 11*, p.54.

The Board noted that the Paradise Township Code of Ordinances does not contain a definition of "integrated." The Board adopted a definition of "integration" from the Merriam-Webster dictionary:

"To form, coordinate, or blend into a functioning or unified whole."

Id. Finding of Fact No. 21.

II. Issues on Appeal

1. Is the proposed master development integrated as required by the zoning ordinance?

When considering a municipality's conditional use decision, a court's review is "limited to determining whether the municipality abused its discretion, or committed an error of law." *EQT Products Company v. Borough of Jefferson Hills*, 208 A.3d 1010, 1024 (Pa. 2019). In a conditional use hearing, the governing body acts as the "ultimate fact-finder and the exclusive arbiter of credibility and evidentiary weight." *Slate Hills*

Enterprises, Inc. v. Zoning Hearing Board of Portland Borough, 303 A.3d 846 (Pa. Cmwlth. 2023). Therefore, an abuse of discretion occurs only when the governing body's factual findings are not supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". *EQT Products Company, supra*, at 1024-25.

The first issue raised by PennFuture is whether the Board erred in finding that the proposed resort and the shopping center are integrated uses. PennFuture contends that the Board found that JSPA did not provide an integrated plan. PennFuture argues that JSPA's plan equated to a well-designed resort property and a separate stand-alone shopping center. PennFuture argues several points to support this contention. One is that a physical connection between the resort and the shopping center is lacking because there is only the pedestrian walkway connecting the resort and the shopping center. Resort vacationers would have to use Route 611 to drive to the shopping center. Secondly, JSPA's architect testified that the resort was designed so that guests "will have everything they need at the Resort to function and enjoy their time," without venturing to the shopping center. *Decision*, p.79. Thirdly, the applicant did not identify the tenants that would occupy the shopping center, but did propose that it include restaurants. PennFuture notes that there will be two restaurants for resort guests in the resort area, limiting their need to go to the shopping center. Finally, JSPA did not propose any common architectural features between the resort and the shopping center.

JSPA responds that its plans for the two areas are properly integrated. The resort area is designed to minimize vehicular traffic. Resort guests will park their cars when

they arrive and will not need to use them on the resort property during their stay, as everything is designed for pedestrian or shuttle use. The resort and the shopping center will be connected by pedestrian pathways along Wiscasset Road and Rock Ridge Road and by a walking path along the stream corridor. For those guests who choose not to walk or who need to make purchases of numerous or bulky items, the drive from the resort to the shopping center will take minutes on Route 611.

The Board discussed at length the proper interpretation of the term "integrated" as used in §160-71 of the Zoning Ordinance, which provides in part:

**Chapter 160. Zoning, Article XII, Resort Development Area
Overlay District
§160-71.**

B. Purpose: The Resort Development Area is established for the following purposes:

- (1) To provide an opportunity for integrated development of a variety of uses according to a Master Development Plan ("Master Development Plan");

Zoning Ordinance, §160-71.

The term "integrated" is not defined in the ordinance. The ordinance provides that terms which are not defined shall be given their customary meaning. *Id.* §160-52. The Board used the definition found in the *Merriam-Webster* dictionary which defines "integration" as "to form, coordinate, or blend into a functioning or unified whole." *Decision, Conclusion of Law No. 25*, p. 60. The Board discussed arguments made during the hearings similar to those raised here by PennFuture on the question of integration:

1. No interior vehicular access between the resort area and the commercial area;

2. The walking path between the resort and the commercial area has steep inclines along Rock Ridge and Wiscasset roads;
3. Guests and customers have to use Route 611 to travel by vehicle to and from the resort and the shopping center, which will have a right turn in and a right turn out requirement;
4. There will be restaurants in the resort and restaurants in the shopping center.

Decision, p.81.

However, the Board concluded that:

While all these are legitimate points, most concerns imply requirements which are not found in the ordinance.

Id. p. 82.

The Board found that the property consisted of 117.78 contiguous acres in Paradise Township, which met the size requirement of the Resort Overlay District. The zoning ordinance encouraged "pockets of development interspersed with greenway land per §160-12.A.(43.B)(c)(d)(k)". *Id.* The Board found that the ordinance also encouraged residential neighborhoods between the resort and commercial areas. *Id.* The Board considered the walking pathway from the resort to the shopping area to be a point of connection between the two uses:

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

Id. at 83.

The Board cited expert appraisal testimony which opined that the master development was in harmony with other uses in the area:

Mr. Rosen noted that all of S.R. 611 is a commercial corridor with several resorts in close proximity. Accordingly, the proposed development is consistent with nature and character of the area and existing commercial uses.

Decision, p.52, NT 3/16/23, 486, 488 (Rosen).

The Board determined that JSPA properly met the minimal ordinance requirements for integration of the two uses. However, it acted to increase the level of integration details. The Board added conditions to ensure that JSPA implements further connections between the resort and commercial uses. They were, in summary:

1. The design of the shopping center should be complementary to the design of the Hawthorne resort. This would include building and landscape design.
2. A master sign plan must be submitted for both the resort and the shopping center, using the same design features and colors.
3. A connectivity plan must be submitted to provide for an additional walking path between the resort and the shopping center.
4. Uses in the shopping center shall support and enhance the resort and the tourism industry and not just the public at large.
5. The shopping center must be constructed in conjunction with one of the three proposed phases, or after completion of all three phases of the project.

Id. 85-86.

The Board's decision that JSPA's plans met the integration requirements of the ordinance was supported by the record. The Board also acted within its authority to impose conditions that would enhance the integration of these two parts of the master development. An applicant for a special exception or conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance when the application is submitted. *Edgmont Township v. Springton Lake Montessori School*,

Inc., 622 A.2d 418 (Pa. Cmwlth. 1993). The Commonwealth Court in *In re Application for Conditional Use Approval of James Saunders*, 636 A.2d 1308 (Pa. Cmwlth. 1994) stated:

The existence of a conditional use provision indicates legislative acceptance of the proposition that the use is consistent with the zoning plan and should be denied only where the adverse impact on the public interest exceeds that which might be expected in normal circumstances. *In re Appeal of the Estate of Achey*, 86 Pa. Commonwealth Ct. 385, 484 A.2d 874 (1984), *aff'd.*, 509 Pa. 163, 501 A.2d 249 (1985). Once the applicant has brought himself within the standards of the ordinance, the application must be granted unless the objectors present sufficient evidence that the use would present a substantial threat to the community. *Susquehanna Township Board of Commissioners v. Hardee's Food Systems, Inc.*, 430 A.2d 367 (Pa. Cmwlth. 1981).

Id. 1310-311.

The resort and shopping center uses that are being combined in this master development do not lend themselves to being joined at the hip. The resort area emphasizes undisturbed natural surroundings and minimizes automobile traffic on site. One walking pathway between the two uses has been provided and another is being required by the Board as a condition imposed. It is not a great inconvenience for resort guests to drive the few minutes from the resort to the shopping center on Route 611 for necessary purchases or services. It would take them almost the same time to use an internal road if one were provided, but that would detract from the resort and make it more like suburbia. Penn Future's objection to lack of integration of the master development will be denied.