

MEMORANDUM

To: Centerville Township ZBA Members
From: Lauren Teichner and Chris Bzdok
Date: December 1, 2022
Re: Staff Report

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Overview

The matter before you is an appeal of the Planning Commission's decision to deny approval of an application for site plan approval. Your task as the Zoning Board of Appeals is to review the record before the Planning Commission, and decide the appeal. You may affirm the Planning Commission's decision to deny approval, reverse the Planning Commission's decision and approve the site plan, and / or modify the Planning Commission's decision as you see fit. Whichever decision you make, you are required to support your decision with written findings.

We suggest that you use the meeting on December 7, 2022 to hear from the applicant, conduct a public hearing, and then discuss with each other your opinions regarding the issues presented. We suggest you then refer the matter to legal to draft a proposed decision and findings that are consistent with your discussion. Finally, we suggest you then use the meeting on December 20, 2022 to review the proposed decision, revise it as appropriate, and vote on it.

This staff report provides you with background on the application and Planning Commission process; next, it reviews the site plan standards, along with the applicant's arguments and other pertinent information; and lastly, it discusses some of the legal issues.

Background

On June 22, 2022, applicant Northgate Leelanau Pines, LLC ("Leelanau Pines") submitted a Site Plan Application ("SPA") to the Centerville Township Planning Commission ("PC"). Under the proposed Site Plan ("SP"), Leelanau Pines wishes to expand an existing campground and RV park located within the Commercial Resort District pursuant to Article 6 of the Centerville Township Zoning Ordinance ("ZO"). The requested land use is a "Use Permitted By Special Approval" as set forth in Section 6.2 of the ZO, it is not a use permitted by right. Specifically, Leelanau Pines wishes to add the following:

- 172 new campsites (seasonal, RV and campers)
- 113 future campsites – these were ultimately removed from the application in subsequent revisions
- A new check-in office building
- A new waterfront pavilion
- A new marina store with food and beverage service and parking
- New employee housing with parking
- New open-air pavilion
- New pools
- Equipment buildings
- Bathhouse
- New maintenance building
- New recreational amenities, including walking trails, boardwalk, splashpad, mini-golf, jump pillow, and sports courts

- Renovated camp office and restrooms with parking
- Renovated game room and storage building
- Renovated bathhouse and laundry
- Renovated cabin
- Renovated/repared commercial marina and boat launch with parking

Under Section 2.2 of the ZO, “Special Land Uses Permitted by Special Approval” are defined as “uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within the zoning district, but could present potential injurious effects upon the primary uses and structures within the zoning district and therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole. All such proposed uses shall be subject to a public hearing and Site Plan Approval by the Planning Commission.”

Tim Cypher, the Centerville Township Zoning Administrator (“ZA”), found Leelanau Pines’ SPA to be administratively complete and suitable for processing as of July 17, 2022. Under Section 13.1(C) of the ZO, that finding initiated a 90-day clock for any final approval, which was set to expire on October 15, 2022.

Leelanau Pines submitted five different SPA revisions to the PC on the following dates: June 20, 2022; August 2, 2022; August 25, 2022; September 16, 2022; and September 30, 2022.

On August 26, 2022, the PC held a public hearing on the SPA, as required by Section 13.1(D)(d) of the ZO.

On September 19, 2022, Leelanau Pines submitted an extensive document to the PC answering dozens of questions posed by the PC and through public comment, and expounding on its other many revisions to the SPA.

On September 21, 2022, the PC held a special meeting, at which it requested that the applicant agree to a 90-day extension to the timeline for review, given the many revisions to Leelanau Pines’ original application. Leelanau Pines indicated it would respond at the next regular meeting. The PC also discussed the 17 “Standards for Granting Site Plan Approval” found in Section 13.1(G)(a) of the ZO, but only had time to consider the first five of these.

On October 3, 2022, the PC held a regular meeting. Leelanau Pines responded that it was unwilling to extend the PC's timeline for an additional 90 days as requested; it was only willing to extend the timeline until October 15, 2022, and would attend a special meeting at any point between October 3, 2022 and October 15, 2022. The PC continued to discuss the 17 “Standards for Granting Site Plan Approval” found in Section 13.1(G)(a) of the ZO, picking up with number six, where they had left off at the prior special meeting. The PC also considered a motion prepared by one member of the PC (Tim Johnson) in advance of the October 3, 2022 meeting, which addressed each of these 17 standards. This motion had been previously reviewed by Centerville Township’s legal counsel and not shown to any other members of the PC prior to the

meeting. **After a lengthy discussion, the PC ultimately voted to deny Leelanau Pines' SPA and adopt the motion, with edits reflecting the PC's discussion on October 3, 2022.**

Centerville Township Recording Secretary Dana Boomer made edits to the motion accordingly. At the November 7, 2022 regular PC meeting, these edits were approved along with the meeting minutes from October 3, 2022.

The public submitted 81 written comments, as well as 56 in-person comments, to the PC. Of these, not a single one expressed support for the proposed expansion.

Standards of Review

This section presents:

- (1) the standard of review for the ZBA's review of the PC's findings;*
- (2) all applicable requirements to be considered by the ZBA;*
- (3) the standard of review for the circuit court's review of the ZBA's findings.*

(1) Standard of review for the ZBA's review of the PC's findings:

Section 13.1(M)(c) of the ZO provides that the Zoning Board of Appeals ("ZBA") "*shall review the record of action taken on the final site plan and shall determine whether the record supports the action taken.* No new evidence shall be presented. The Zoning Board of Appeals shall approve the final site plan if the requirements of this Section and other applicable ordinance requirements are met. The Zoning Board of Appeals shall make written findings in support of its opinion on the appeal." (emphasis added)

And the Michigan Zoning Enabling Act ("MZEA") Section 604(6) empowers the ZBA to "reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination." MCL 125.3604(6).

Neither the ZO nor the MZEA define what the term "support" from ZO Section 13.1(M)(c) means in the context of the ZBA reviewing the record to determine whether it "supports" the PC's determination. But the ZO does dictate that the ZBA must consider the requirements of the ZO and other applicable ordinances itself, and "shall approve" the final site plan on its own if those requirements are met.

For these reasons, we are not certain whether the ZBA is required to either **defer** to the PC's determination and consider if there exists competent, material, and substantial evidence in

the record to support it (as is typically the standard for other similar administrative appeals), or whether the ZBA is required instead to perform its own *de novo* review of the SPA, where the ZBA can decide whether to reverse, affirm, or modify the PC's findings, as if the ZBA was considering the SPA for the first time based on the record below. Unfortunately, related caselaw is unclear on this topic.¹ The deference standard of review is less stringent; the *de novo* standard of review is more fulsome.

¹ The Michigan Municipal League's ZBA Handbook does provide some additional guidance, but the advice is broad, and does not differentiate between the deference and *de novo* standards of review, although the description seems to lean towards deference: "Although the ZBA may reverse or affirm, wholly or partly, or may modify a prior decision, its powers are generally limited to determining ***whether or not the official or body making the administrative decision acted properly***. The ZBA must recognize that the zoning administrator or planning commission has already made a decision regarding the issue as part of its delegated duties. ***The role of the ZBA is to determine whether the decision was authorized or supported by the zoning ordinance***. In addition, the ZBA should not treat the appeal as a new decision. Rather, review of the decision should be limited to the information that was available to the body or person who made the decision initially. Allowing testimony or evidence in addition to that previously submitted is inappropriate, unless the zoning ordinance directs otherwise. In those instances where the official or body used proper procedures and standards, the ZBA should uphold the decision, even if the members personally disagree with it." (See Zoning Board of Appeals Handbook, Section 21, available here: https://www.mml.org/pdf/ZBA_Handbook_2015.pdf, last visited November 29, 2022 (emphasis added)).

On the other hand, the MSU Extension's Planning and Zoning Database provides its own guidance, and clearly states that it believes the ZBA's review of an administrative decision is *de novo*: "When the ZBA does hear an appeal of an administrative decision, members must understand they are first reviewing the administrative decision to determine whether it was based on the standards in the zoning ordinance is therefore a defensible decision. This is somewhat of a different mindset, as compared to deciding a more typical dimensional variance request where the decision is brand new. ***When they are reviewing the previous decision, the ZBA is reviewing the case de novo, meaning they are reviewing the material anew – with fresh eyes*** (*Hughes v. Almena Township*, 284 Mich App 50 (2009)). In making its decision, the ZBA shall therefore consider the original information presented to the administrative official or body, the minutes, findings, and / or notes documenting the original decision, and any additional relevant evidence presented. Based on all the facts, the ZBA will decide whether the individual or body correctly applied the proper ordinance standards and acted within the scope of his / her / its authority." (See MSU Extension, "How to Handle Appeals of Administrative Decisions," August 19, 2022, available here: https://www.canr.msu.edu/news/how_to_handle_appeals_of_administrative_decisions, last visited November 30, 2022).

If the ZBA wishes to err on the side of a more extensive review for this appeal, given the complexity of the information and arguments presented, we suggest using the *de novo* standard of review (while still limited to the record below) to consider Leelanau Pines' SPA in the context of each of the requirements of the ZO and other applicable standards (more on these below).

Another option is to use *both standards of review* when rendering your opinion. You can state first what you would find if you were deciding a point *de novo*. If your opinion differs from the PC on that point, then we can discuss whether you would otherwise support the PC under a deference standard of review, and make that point clear as well.

The ZO is unmistakable, however, in its mandates that *no new evidence* may be submitted for consideration by the ZBA, and that the ZBA must make *written findings* in support of its opinion.

Additionally, the ZO is unambiguous that if *all* of the site plan requirements and other applicable ordinance requirements are met (again, more on this below), the ZBA *must approve the final site plan*.

(2) All applicable requirements to be considered by the ZBA:

The ZBA must consider the requirements of the ZO, the Centerville Township Master Plan ("Master Plan"), Leelanau County General Plan, and any other planning documents or applicable ordinances.

Pursuant to MZEA Section 501(4), a decision on a proposed site plan must be made on the basis of the "requirements and standards contained in the zoning ordinance, other statutorily authorized and properly approved local unit of government planning documents, other applicable ordinances, and state and federal statutes." MCL 125.3501(4).

And, similarly, under MZEA Section 501(5), if a proposed site plan contains all of the information required by the zoning ordinances and "is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly approved local unit of government planning documents, other applicable ordinances, and state and federal statutes," the local unit of government must approve the site plan. MCL 125.3501(5).²

This mandate stems from Michigan legislature's aspiration that *zoning* and *planning* will play a complementary role, where the planning helps to shape the policy underlying the zoning

² For further discussion on these MZEA requirements, see generally *KI Properties Holdings, LLC v Ann Arbor Charter Twp*, No. 348010, 2020 WL 563652 (Mich. Ct. App. Feb. 4, 2020), *appeal denied*, 506 Mich 969, 950 NW2d 744 (2020).

map and regulations. Accordingly, MZEA Section 203 provides that “[a] zoning ordinance shall be based upon a plan.” MCL 125.3203. The Michigan Court of Appeals has explained: “[G]iven the Legislature’s insistence on planning, the courts of this state should make every effort to preserve such plans where they are developed in good faith and are reasonable as a whole with regard to the needs of the local and the general community.” *Binkowski v Shelby*, 46 Mich App 451, 463, 208 NW2d 243 (1973).

Moreover, the Michigan Municipal League’s ZBA Handbook (which Leelanau Pines itself attached to its appeal brief as Exhibit A) explains in Section 12 (titled “The Planning Commission”) that “it is essential that any action related to zoning, including those actions taken by the zoning board of appeals, should take into consideration the master plan.” (See Zoning Board of Appeals Handbook, Section 12, available here: https://www.mml.org/pdf/ZBA_Handbook_2015.pdf, last visited November 29, 2022).

Similarly, the Michigan Municipal League’s PC Handbook also advises PCs to rely on the master plan in reaching zoning decisions: “[C]onsistent and vigorous use of the [master] plan will lend credibility to the community’s attempts to implement controversial decisions on rezonings or other zoning actions. While the courts of the State of Michigan do not recognize the absolute authority of the master plan, they do lend much more credibility to actions supported by careful planning than those that appear to be taken arbitrarily against an individual property owner.” (See Planning Commission Handbook, Section 12, available here: <https://www.mml.org/pdf/pcebook.pdf>, last visited November 28, 2022).

Accordingly, here, the ZBA must consider the requirements of the ZO, the Master Plan, and the Leelanau County General Plan, as well as any other planning documents or applicable ordinances in determining whether to affirm, reverse, or modify the PC’s denial of Leelanau Pines’ SPA. These include the following:

First, the ZBA must consider the 17 separate “Standards for Granting Site Plan Approval” delineated in Section 13.1(G) of the ZO:

- “1. All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of the lot, the character of adjoining property and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.*
- 2. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications which result in maximum harmony with adjacent areas.*
- 3. Site plans shall fully conform with the published surface water drainage standards of the County Drain Commission.*

- 4. Special attention shall be given to proper site drainage so that removal of storm waters will not adversely affect neighboring property owners.*
- 5. The site plan shall provide reasonable, visual and sound privacy for all dwelling units located therein and adjacent parcels. Fences, walks, barriers and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.*
- 6. All buildings or groups of buildings shall be so arranged as to permit emergency access by some practical means to all sides.*
- 7. If there is a pedestrian circulation system, it shall be insulated as completely as reasonably possible from the vehicular circulation system.*
- 8. All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened, by a vertical screen consisting of structural or plant material no less than six (6) feet in height.*
- 9. Exterior lighting shall be arranged so that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets.*
- 10. The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are a part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of-way equal to that specified by the County Road Commission.*
- 11. All streets shall be developed in accordance with the Centerville Township Private Road Ordinance or the Leelanau County Road Commission specifications as required.*
- 12. Site plans shall fully conform to the driveway and traffic safety standards of the Michigan Department of Transportation and/or the County Road Commission.*
- 13. Site plans shall fully conform to the applicable fire safety and emergency vehicle access requirements of the State Construction Code and/or local Fire Chief requirements.*
- 14. Site plans shall fully conform to the County Soil Erosion and Sedimentation Control Ordinance.*
- 15. Site plans shall fully conform to the requirements of the Michigan Department of Public Health and the District Health Department.*

16. *Site plans shall fully conform to all applicable state and federal statutes.*

17. *Site plans shall conform to all applicable requirements of local, state and federal statutes and approval shall be conditioned on the applicant receiving necessary state and federal permits before final site plan approval or an occupancy permit is granted."*

Second, the ZBA must consider the ZO's stated general purpose: *"To promote the health, safety and general welfare of the inhabitants of the Township of Centerville, County of Leelanau, Michigan, by preventing overcrowding of lands, avoiding undue congestion of population, facilitating transportation, public utilities, and fire safety; and to promote the orderly development of the residential, commercial, recreational, agricultural, and other legitimate interests of said inhabitants."*

Third, the ZBA must consider the ZO's definition of "Special Land Uses Permitted by Special Approval" found in Section 2.2: These are defined as *"uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within the zoning district, but could present potential injurious effects upon the primary uses and structures within the zoning district and therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole. All such proposed uses shall be subject to a public hearing and Site Plan Approval by the Planning Commission."* (emphasis added)

Fourth, the ZBA must consider the ZO's reference to the Master Plan in Section 13.1 ("Requirements for Site Plan"): *"[T]hrough the application of the following provision, the attainment of the aims of the Centerville Township Master Plan will be assured and the Township will develop in an orderly fashion."* (emphasis added)

Fifth, the ZBA must consider the Master Plan's guidance and goals for consideration of site plan applications:

- a. Section 7.1 ("Vision Statement"): *"According to the results of the 2011 Survey, the residents of Centerville Township value and want to maintain the peaceful rural character and the scenic beauty of their township. Most citizens want to maintain the township's farmland, open space, and natural environment without the burden of uncontrolled growth and its associated impacts. Under Michigan law, a plan should also promote public health, safety and general welfare. The Planning Commission is committed to promoting a future for the township that is environmentally, socially and economically resilient for the present and future generations of Centerville residents."*
- b. Section 7.2.1 ("Land Use Goal"): *"Retain the township's rural and scenic character" through the following objectives – "Objective 1: Minimize the loss of farmland, forestland and open space . . . Objective 2: Guide growth and development towards*

the towns of Cedar and Lake Leelanau . . . Objective 3: Preserve the Township’s scenic and aesthetic assets.”

- c. Section 7.2.3 (“Natural Resource Goal”): *“Protect the natural resource assets, which are the basis for recreation, agriculture, scenic beauty and rural character and our health and well-being” through the following objectives – “Objective 1: Encourage sensitive site planning to protect the air, water and soil quality . . . Objective 2: Preserve environmentally sensitive areas.”*
- d. Section 7.2.4 (“Residential Goal”): *“Support a range of housing opportunities that respond to varying economic, family, and lifestyle needs in a manner that is consistent with the character of the township as described in the vision statement of this Master Plan” through the following (relevant) objective – “Objective 1: Support affordable housing.”*
- e. Section 7.2.5 (“Economic Goal”): *“Support local economic opportunities in a manner that is consistent with the character of the township as described in the vision statement of this Master Plan” through the following objectives – “Objective 1: Support employment opportunities that aren’t dependent on seasonal businesses . . . Objective 2: Preserve a tourist-friendly community.”*
- f. Chapter 8 Summary: *“Centerville is a rural township with land uses that are mainly residential, agricultural, tourism- related, conservation-based and recreational. Agriculture has declined from historic highs, but according to the 2011 Survey, township residents continue to value active farms. Through its Master Plan and Zoning Ordinance, Centerville Township strives to provide a planning and regulatory framework to ensure that rural-residential, agricultural, recreational and conservation uses can coexist compatibly without negative impacts on the environment and natural resources. To this end, high density residential and commercial development should be directed toward surrounding villages.”*
- g. Section 8.3.2 (“Commercial Resort”): *“There are two resorts on Lake Leelanau. These businesses are thriving and contribute to our tourism economy. Their uses should continue to be supported through this district. The uses allowed under this designation should be reviewed to assure they are compatible with the goals of the township Master Plan.”* **[Note: this Section specifically references the Leelanau Pines resort at issue in this appeal]**
- h. Section 8.4 (“Zoning Plan” for “Commercial Resort”): *“This district encompasses two long standing Lake Leelanau resorts. The Plan does not anticipate expansion of these uses or this district.”* **[Note: this Section specifically references the Leelanau Pines resort at issue in this appeal]**

- i. Section 3.63 (“Surface Water”): *“The two major water resources in Centerville Township are Lake Michigan and Lake Leelanau. One/two (1-2) miles of Lake Michigan frontage and approximately seven/eight (7-8) miles of Lake Leelanau frontage fall within the township boundaries. These lakes and their associated tributary streams and creeks offer natural, scenic and recreational amenities to township residents and visitors. It is extremely important that the quality of these surface waters be protected from negative impacts of overdevelopment such as pollution and loss of scenic views to open water.”*
- j. Section 3.8 (“Summary”): *“The review of the natural resources in Centerville Township indicates that natural features and agricultural resources are relatively unimpaired at this time; however, these resources are extremely vulnerable. As indicated in the 2011 Survey, residents highly value the natural resources and scenic features of the township. The environmental features of the township are an important asset to the community, and need continued protection.”*
- k. Section 6.1 (“Views and Ridgeline Development”): *“Views to and from the hills and water are an important component of the character of Centerville Township (see Appendix A, page 6). The township recognizes the importance of views to many residents and visitors as well as concerns regarding the rights of the property owners. The township is exploring ways to provide for development options in the Zoning Ordinance to encourage the siting of buildings so that development occurs in a manner with less visual impact. Strategies include preserving existing vegetation to provide filtered views to and from the development site and/or to requiring additional landscape screening.”*
- l. Section 6.2 (“Keyhole Development”): *“Keyhole or funnel development is the practice of providing shared lake access to lakefront and/or non-lakefront property owners through a commonly owned parcel of waterfront property. Centerville Township, with its extensive water frontage, faces decisions on how this type of use should be managed in the future. Some of the issues associated with keyhole development pertain to the “use ratio,” i.e. how many property owners can use a parcel that meets the minimum district area and frontage requirements, how many docks are allowed, amount of parking, and buffering/screening requirements along adjacent property lines. In many instances a keyhole development site has a boat launch or dock which increases the traffic on the lake. This increase in boat traffic may negatively impact water quality, natural vegetation, and wildlife habitats. Keyhole development can also impact existing neighboring single-family homes due to excessive noise and traffic. Therefore, the regulation of keyhole development is necessary to ensure such development occurs only in a manner compatible with the surrounding area.”*
- m. Section 6.3 (“Farmland and Open Space Preservation”): *“Agriculture and agriculture-related businesses are a critical part of the township’s economy and rural heritage. They should be supported through zoning that fosters a healthy economic*

environment for farmers. Farmland and Open Space Preservation are very important to the property owners of Centerville Township, as evidenced by the findings from the 2011 Survey (see Appendix A – Property Owner Survey Results, page 10-1. Over 65 percent of the responding property owners indicated that they either agree or strongly agree that ‘Centerville Township should preserve open spaces.’ Approximately 60 percent of the respondents indicated they agree or strongly agree that it is important to ‘slow the conversion of farmland to residential uses or mandate more Open Space preservation requirements.’”

And sixth, the ZBA must consider the Leelanau County General Plan’s guidance and goals as well, which include:

- a. *“Principal Strategies” Section: “The General Plan proposes a compact land development pattern that protects renewable resource lands (such as orchard land and forests) as well as sensitive natural resources (like wetlands and dunes). It proposes policies to encourage location of future land development in and near existing villages, as well as near Traverse City. It proposes infrastructure management policies to achieve and reinforce this land use pattern. It encourages open space protection, while simultaneously permitting large landowners an opportunity to capture the development value of their land . . . More specifically, the plan proposes an environmental protection strategy that also:*
 - *Identifies and avoids development near sensitive environments.*
 - *Protects water quality of surface water and ground water . . .*
 - *Restricts keyhole development.*
 - *Protects renewable resources.”*
- b. Chapter 3 (“Working With Nature”): *“[T]he the primary environmental goal of the Leelanau General Plan is the protection of unique and sensitive lands and the water resources from inappropriate and poorly designed development. This includes unique and prime agricultural lands as well as sensitive environments like dunes, wetlands, and wildlife habitat. It is important to guide new development in a way which works with nature rather than against nature . . .”*

In sum, the ZBA must determine whether the site plan meets all of these requirements imposed by the relevant ordinances and planning documents. See MCL 125.3501(4). [All of these requirements are discussed in specific detail in the Argument section below.]

It is important to note that the ZBA is not necessarily tasked with evaluating every single one of the PC’s findings. As cited above, under the ZO, the ZBA must assess “whether the record supports” the PC’s decision. Therefore:

- If the ZBA finds that if even *one* of the 17 “Standards for Granting Site Plan Approval” found in ZO Section 13.1(G) is not satisfied, the ZBA must **affirm** the PC’s denial of the

SPA, or **modify** it as needed. In other words, it is not necessary for the ZBA to determine that all of the findings of the PC are supported by the record in order to affirm the decision of the PC.

- The same holds true if the ZBA finds that either the stated purpose of the ZO has not been met by this project, or that the “welfare of adjacent properties or the community as a whole” is not being served by the project (as required by ZO Section 2.2), or that any provision of the Master Plan or Leelanau County General Plan has not been met³ – in any *one* of those cases, the ZBA must **affirm** the decision of the PC, or **modify** it as needed.
- On the other hand, if the ZBA finds that *all* 17 “Standards for Granting Site Plan Approval” found in ZO Section 13.1(G) are satisfied by the project, and that *all* other requirements imposed by the ZO and planning documents are also met, then the ZBA must **reverse** the PC’s denial of the SPA, or **modify** it as needed.

(3) Standard of review for the circuit court’s review of the ZBA’s findings:

Any party aggrieved by a decision of the ZBA has the right to appeal to the circuit court for review. MZEA Section 606 dictates that the circuit court must show some amount of administrative deference to the ZBA: “The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements: (a) Complies with the constitution and laws of the state; (b) Is based upon proper procedure; (c) Is supported by competent, material, and substantial evidence on the record; (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.” MCL 125.3606(1). The circuit court may “affirm, reverse, or modify the decision,” and make any other orders “as justice requires.” MCL 125.3606(4).

The circuit court will not review the evidence *de novo*, nor will it make credibility determinations, nor will it weigh the evidence. See *Brainard v Secretary of Health & Human Servs*,

³ In its Brief in Support of Appeal, Leelanau Pines discourages the ZBA from considering the Master Plan in its deliberations here, citing an internet article and case law (*Cole’s Home & Land Co, LLC v City of Grand Rapids*, 271 Mich App 84, 90-92; 720 NW2d 324 (2006)) for support. Leelanau Pines’ arguments to this effect fail to overcome the mandates of the MZEA as explained above. Moreover, the case that Leelanau Pines cites is inapplicable here, because the court only considers whether a master plan constitutes “published rules approved specifically for the purpose of carrying out the provisions of the [Land Division Act],” which is not a relevant standard for the ZBA’s considerations here. Instead, the MZEA is clear that *in site plan reviews*, the requirements of ordinances and planning documents (such as Master Plans) must be taken into account.

889 F2d 679, 681 (6th Cir 1989). Instead, the circuit court will determine if the ZBA's decision was "authorized by law" and "supported by competent, material, and substantial evidence on the record." MCL 125.3606; *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 202–03, 550 NW2d 867, 870 (1996). "Substantial evidence" is evidence that a reasonable person would accept as sufficient to support a conclusion. It is "more than a scintilla" but can be substantially less than a preponderance. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 72, 592 NW2d 724 (1998).

The deference afforded to the ZBA by the circuit court stems from the fact that local zoning bodies use significant experience-based judgment in their interpretation of the applicable ordinances and other planning documents in reviewing a site plan application. See *Hessee Realty v Ann Arbor*, 61 Mich App 319, 323-25; 232 NW2d 695 (1975) ("Municipalities are given great breadth in establishing general land use patterns through their power to zone. The overall zoning map and individual zoning decisions are clothed with a presumption of validity and will be upheld if at all reasonable."); *Gordon v City of Bloomfield Hills*, 207 Mich App 232; 523 NW2d 806 (1994) (a reviewing court "must give due deference to the agency's regulatory expertise and may not 'invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views'") (internal citations omitted).

Like the ZBA, the circuit court is also barred from ruling on constitutional issues presented in an appeal from a ZBA's decision. See *Houdini Properties, LLC v City of Romulus*, 480 Mich 1022, 1022-23, 743 NW2d 198 (2008); *Jon Jon's Inc v City of Warren*, 534 F App'x 541, 544 (6th Cir 2013).

Arguments

This section presents:

- (1) a summary of Leelanau Pines' arguments in support of the SPA;*
- (2) a summary of the PC's findings in denying the SPA; and*
- (3) a summary of the specific arguments made by both Leelanau Pines and the PC regarding each of the 17 separate "Standards for Granting Site Plan Approval" found in ZO Section 13.1(G).*

(1) Summary of Leelanau Pines' Arguments in Support of the SPA:

Leelanau Pines argues that the PC's findings are "based entirely on the [PC's] unfounded speculation, personal concerns, and misstatements or mischaracterizations of the record." (See Appellant's Brief on Appeal ("Brief"), page 3, ROA001008). Leelanau Pines claims there was a "lack of substantive support" for any of the PC's findings that the proposed project failed all 17

zoning standards, making denial of the SPA a “ridiculous conclusion.” (*See id.*) Leelanau Pines contends that the PC “made a predetermined decision before its fact-finding meeting, it refused to let the actual record interfere with its preconceived notions, and it then erroneously based its decision on factors that were the *exact opposite* of the record presented. This same error was repeated again and again.” (*See* Brief, pages 3-4, ROA001008-001009).

Leelanau Pines also asserts that “the Planning Commission offered no alternative layout suggestions, dimensional changes, natural resource management or other possible site plan revisions for Leelanau Pines consideration or incorporation towards a conditional approval. In fact, the Planning Commission never engaged in any collaboration at all, and never made even a single suggestion in response to three months of collaboration and five separate submittals. This is not a Planning Commission that was interested in evaluating a proposed development, this was a Planning Commission that was motivated only to deny the proposal.” (*See* Brief, page 4, ROA1009).

Moreover, Leelanau Pines claims that record “is replete with examples of the Planning Commission ignoring the advice of the Township Zoning Administrator, violating Leelanau Pines’ due process rights, and treating Leelanau Pines differently from any other similarly-situated applicant.” (*See id.*)

Leelanau Pines avers that it will appeal the ZBA’s decision if the PC’s “errors are not corrected and reversed before this body . . . and it will join with its appeal several substantive claims against Centerville Township, seeking millions of dollars in damages along with its attorneys fees and costs.” (*See* Brief, page 5, ROA001010).

Leelanau Pines further asserts that it is “noteworthy” that the PC “failed to schedule another special meeting (or meetings) before the October 3 regular meeting, which would have afforded additional time to resolve any questions or engage in further deliberations. Moreover, the [PC] also refused Leelanau Pines’ offer to waive any requirement that site plan approval occur at a regular meeting, would have afforded the [PC] additional time and opportunity to schedule a special meeting on or before the 90-day deadline expired on October 15, 2022.” (*See* Brief, pages 8-9).

Leelanau Pines also argues that it is improper for the PC to rely on “policy statements in the Township Master Plan – as opposed to the requirements in the Zoning Ordinance – in denying the Site Plan Application.” Leelanau Pines claims that “[t]he Zoning Ordinance provides that site plan applications are subject to specific Zoning Ordinance requirements. It does not require compliance with any of the provisions in the Township Master Plan [T]he Master Plan cannot be used to impose additional requirements on Leelanau Pines.” (*See* Brief, page 24 & page 24 FN 3, ROA001029). [This argument is addressed in FN 3 of this Staff Report, above]

Leelanau Pines discounts the public comments submitted and the role that they may have played in persuading members of the PC to deny the SPA. (*See* Brief, page 5 FN 2, ROA001010).

Leelanau Pines also argues that the PC violated its procedural and due process rights and its equal protection rights, by “actively interfering with Leelanau Pines’ ability to provide information, correct the [PC’s] misstatements, or even answer specific questions. . . . [and by] singling Leelanau Pines out for disparate treatment, failing to consider a conditional approval of Leelanau Pines’ Site Plan Application.” (See Brief, pages 25-27, ROA001030-001032).

Leelanau Pines declares that “taken together, [the PC’s] conduct presents a condemning indictment of a rogue Planning Commission that was driven by its preordained decision to deny the Site Plan Application, while engineering and manipulating the steps along the way that would lead to that conclusion.” (See Brief, page 26, ROA001031).

Above all, Leelanau Pines requests the ZBA approve the SPA with conditions, given that “it has satisfied (or where necessary, can and will satisfy) each and every one of the 17 Zoning Ordinance standards for granting site plan approval.” Leelanau Pines asserts that a conditional approval, conditioned on Leelanau Pines obtaining the required local, county, state and federal approvals, “will ensure the proper balancing of the public interests in a safe and orderly development with Leelanau Pines’ rights to the lawful use, development, and enjoyment of its property.” (See Brief, page 6, ROA001011).

(2) Summary of the PC’s findings in denying the SPA:

As explained in the Background section above, the PC denied the SPA on October 3, 2022 – following a public hearing on August 29, 2022 and subsequent detailed fact-finding discussions on September 21, 2022 and October 3, 2022.

On October 3, 2022, the PC voted to carry Tim Johnson’s proposed motion (with real-time edits). (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; *see also* recording of October 3, 2022 PC Meeting, ROA000992).

Ultimately the denial of Leelanau Pines’ SPA was “based on the information submitted by [Leelanau Pines], the [PC’s] consideration of this application and supporting documents, the standards and requirements of the [ZO] (effective and amended through February 23, 2020), the Centerville Township Master Plan (effective and amended through August 26, 2019), and the Leelanau County General Plan (effective and amended through 2019).” (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA 000368-000376).

The PC also indicated it considered all of Leelanau Pines’ revised versions of its site plans, as well as “recommendations from agencies having jurisdiction in the area of the proposed development.” (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA 000368-000376).

The PC considered in detail the 17 standards for granting site plan approval in depth, but found that these standards were not met by the SPA. (See approved minutes from September 21, 2022 PC meeting, ROA000203-000214; recording of September 21, 2022 PC Meeting, ROA000991; approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992; and motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

The PC additionally found that the expansion of the campground, as proposed, would be in direct conflict with the articulated purpose of the ZO. (See approved minutes from September 21, 2022 PC meeting, ROA000203-000214; recording of September 21, 2022 PC Meeting, ROA000991; approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992; and motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

The PC also found that the expansion of the campground, as proposed, would violate several of Sections of the Centerville Township Master Plan – including Sections 3.6; 3.6.2; 3.8; 7.2.1; 8.3.2; 8.4; the Master Plan’s Vision Statement; and the Master Plan’s overarching goals. (See approved minutes from September 21, 2022 PC meeting, ROA000203-000214; recording of September 21, 2022 PC Meeting, ROA000991; approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992; and motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

The PC also found that the expansion of the campground, as proposed, would violate many of the Principal Strategies of the Leelanau County General Plan. (See approved minutes from September 21, 2022 PC meeting, ROA000203-000214; recording of September 21, 2022 PC Meeting, ROA000991; approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992; and motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

And lastly, the PC found that “the SUP Application accuracy is in question: The Applicant cannot provide a true number of current campsites, a true number of sites that will be removed, and a true number of total campsites included after proposed modifications. This brings into question the accuracy of the entire application as well as the results of other department’s responses as they are based on inaccurate information.” (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992; and motion attached to approved minutes from October 3, 2022 PC meeting, ROA000367-000376).

(3) Summary of the specific arguments made by Leelanau Pines and the PC regarding each of the 17 separate “Standards for Granting Site Plan Approval” found in ZO Section 13.1(G):

Standard 1:

All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of the lot, the character of adjoining property and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.

Leelanau Pines’ argument: Only 14 of the total 40 acres (with 0.5 miles of lake frontage) will be used as part of the proposed expansion and improvement project. The majority of the expansion is maintained in the center of the property to maximize the distance from adjacent properties. This expansion mimics and expands on the current layout that has been in use for decades, and is compatible with neighboring properties. (See Brief, pages 11-12, ROA001016-001017).

PC’s findings: This standard was discussed in detail at the September 21, 2022 meeting, and in the PC’s approved motion denying the SPA.

The PC’s motion finds that Leelanau Pines has not provided sufficient information to satisfy this requirement in relation to the shallow water table, extensive wetlands, and the presence of sensitive wetland / shoreline areas. Further, Section 4.4 (“Schedule of Zoning Regulations”) limits the “maximum lot coverage” within the Commercial-Resort District to 25%. Leelanau Pines’ building lot coverage does not account for lot coverage from all of the parking lots, pools, septage lagoons, vehicles, structures, RVs, house trailers and camper trailers. When all of these items are accounted for, the total proposed lot coverage exceeds 25%. Lastly, the application does not include adequate detail / plans for mitigating noise, campfire smoke, and light along the boundaries with adjoining parcels zoned Residential 1 and Agricultural that permit single family residential use. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-00376).

Leelanau Pines’ response: The project will not implicate a shallow water table, nor wetlands, nor the shoreline area, as the developments are largely to occur in the center of the property over areas that are already developed or used. Indeed, the information in the record supports the opposite: Leelanau Pines has already removed its elevated boardwalk and fishing pier proposals. Moreover, the SPA arguably reduces development impact along the shoreline, as it removes 13 existing campsites from the shoreline and consolidates two boat launches into a single boat launch. And the SPA calls for shoreline stabilization and improvement on the existing used shoreline. The improvements will also not impact the water table – (1) buildings, amenities and RV sites will be “slab-on-grade” style structures and gravel pads with only foundations being provided below grade; (2) the buried sealed utilities are reasonable, customary, and do not impact groundwater

quality or movement; and (3) the septic treatment lagoon is regulated through EGLE and has monitoring wells with annual inspections available online. (See Brief, pages 18-19, ROA001023-001024).

Additionally, under a proper reading of the ZO, the total proposed lot coverage falls well below 25%. Section 4.4 relates solely to existing and proposed “building” square footage. There is no language in the ZO that could even arguably extend this provision to apply to driveways and parking areas. And even assuming there was some ambiguity, the language of the ZO must be interpreted, where doubt exists, in favor of the property owner. Even if Leelanau Pines considers the argument that a trailer or RV could be included in “lot coverage” for comparison purposes, the total lot coverage would only be brought to 4.54%, well below the allowed 25% lot coverage maximum. There is no support in the record for the PC’s erroneous findings. (See Brief, pages 18-19, *id.*).

Other considerations:

- ❖ When the PC raised this topic at the **September 21, 2022 meeting**, and asked Leelanau Pines to clarify whether the buffers they are proposing will provide buffering from noise, odors, smoke, and other nuisances, J. Vander Kodde (Fishbeck) referred the PC to the landscaping plan. He also stated that he believed that the trees proposed to be retained would be enough to mitigate nuisances. He did not provide any additional information. (See recording of September 21, 2022 PC Meeting, ROA000991; approved minutes from the September 21, 2022 PC meeting, ROA 000203-000214).
- ❖ Additionally, at the **September 21, 2022 meeting**, the PC discussed the number of people coming into the campground as a concern – specifically, the sheer numbers of short-term campers coming into the campground. The PC stated that with some quick math, assuming two people in seasonal campsites and four people in short-term campsites, and 75% occupancy, that comes out to almost 1000 people at the campground, which almost equals the number of registered voters in the township. With regard to the impact to the community and the community amenities, given this number of people coming into the community, Leelanau Pines stated that they acknowledge that there will be growth and new people, but claimed that the majority of the campground amenities are tucked into the center of the campground, which both makes them easily accessible by guests and buffers them from surrounding properties. The intent would be for campers to stay on-site, and offer amenities to keep this, which decreases in-and-out traffic. Additionally, Leelanau Pines claimed that the campground will benefit the local economy by creating jobs, both part-time and full-time, for the local community. (See recording of September 21, 2022 PC Meeting, ROA000991; approved minutes from the September 21, 2022 PC meeting, ROA 000203-000214).
- ❖ At the **September 21, 2022 meeting**, the PC also requested some topographical drawings that represent the view of someone at eye level from the lakeshore and the road, along with a comparison with what is currently present. (See recording

of September 21, 2022 PC Meeting, ROA000991; approved minutes from the September 21, 2022 PC meeting, ROA 000203-000214).

- ❖ A **public comment** raises the additional considerations that the expansion of Leelanau Pines as proposed will produce more trash, campfire smoke, over-usage of local electrical systems, and excessive sewage – all of which will impact the neighboring properties. (Concerned Campers written comment, August 29, 2022, ROA000416)
- ❖ A **public comment** from someone who has been a seasonal camper at Leelanau Pines, who has also been to the Yogi Bear parks. She requests that the PC consider whether there will be a PA system at the campground. (Ann Bell, in person comment at September 21, 2022 PC meeting, see approved meeting minutes, ROA 000203-000214)
- ❖ A **public comment** from nearby residents raises the concern that the proposed expansion of Leelanau Pines is above the 25% maximum lot coverage permitted in ZO section 4.4. They also noted that the community impact statement required by Leelanau County ZO 2.2 has not been submitted. (Neil and Susan Dziedzic, written comment dated August 29, 2022, ROA000428-000430)
- ❖ A **public comment** by a nearby resident outlines concerns with the Leelanau Pines expansion including the overdevelopment of the area in direct violation of section 3.63 of the Master Plan; concerns with overcrowding on the lake from the increased boat traffic; concerns with increased growth and spread of invasive species; and destruction of the scenic views due to the increase in number or permanent structures, marina and swimming pools. (J. Stoller, written comment, September 12, 2022, ROA000452-000453)

Standard 2:

The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications which result in maximum harmony with adjacent areas.

Leelanau Pines' argument: The expansion will occur in previously used or already developed areas that contain minimal trees (with the exception of a man-made pine plantation that notably lacks biodiversity). The submitted landscape plan graphically depicts trees that will be retained as well as the new hardwood trees that will be added. (See Brief, page 13, ROA001018).

PC's findings: This standard was discussed in detail at the September 21, 2022 meeting, and in the PC's approved motion denying the SPA.

The PC's motion finds that the SPA as submitted and revised does not adequately minimize, detail, or quantify planned tree removal or topographic modifications (e.g., grading, filling, compacting, paving, etc. for campsite, internal drives, on-site parking, building footprints, renovated camp store / boat launch / parking, recreation facilities,

and other proposed development areas). (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: The SPA is not deficient on these points. It contains a 22-page drawing set that show the locations of proposed improvements, including areas that will be paved, all on-site parking, building permits, and other proposed development areas. Some landscape plans graphically depict tree areas that will be retained and new hardwood trees that will be added. The SPA also includes a grading plan. And the improvements were intentionally planned in areas that were already used or developed – as such, the areas in question are generally flat, requiring minimal grading. (See Brief, page 21, ROA001026).

Other considerations:

- ❖ When the PC raised this topic at the **September 21, 2022 meeting**, J. Vander Kodde (Fishbeck) replied that there has not been a full tree survey done, and so they do not know yet how many trees will be removed or planted. He also stated that if trees do need to be removed, they will be replanted in other areas. The PC expressed concerns regarding the high number of trees being removed. The PC also requested more information regarding which trees would be removed along the waterfront. (See recording of September 21, 2022 PC Meeting, ROA000991; approved minutes from the September 21, 2022 PC meeting, ROA 000203-000214).
- ❖ **Relevant agency response:** See letter from Robyn Schmidt (EGLE, WRD) to Leelanau Pines dated July 28, 2022 (ROA000109-000111) detailing a number of potential environmental impacts from the project, including those to shorelines; those to nearshore areas of lakes that are the most productive areas, supporting habitat for aquatic life, including fish; potential floodplain effects; and potential impacts to state-listed threatened Cisco and Common Loon.
- ❖ A **public comment** discusses that the increased number campsites will lead to a dramatic increase in the number of boats, personal watercraft and canoes / kayaks on this section of the lake. This will be true even without an increase in the number of docks or boat slips. (Nick Minnick written comment, August 24, 2022, ROA000391)
- ❖ Another **public comment** mentions that the new features and attractions of the campground overall, with its “Yogi-Bear Jellystone” theme, will change the character of the area dramatically, by turning the existing campground into a glitzy, upscale, flashy, mega-attraction. (Michael Hartings written comment, August 25, 2022, ROA000395)
- ❖ Another **public comment** states that there are intentionally no traffic lights, no billboards, and no fast-food restaurants on the peninsula, and residents take pride in that fact. This expanded campground (Yogi Bear Park) will add a commercial presence to the area that is unwelcome and that will change the natural

landscape, as well as residents' ability to live in harmony with nature. (Nancy Hartings written comment, August 25, 2022, ROA000396)

- ❖ Another **public comment** highlights Master Plan Sections 6.1, 7.1, and 7.2.1 that reference landscaping and rural character. The addition of a check-in building, parking spaces, camper row, maintenance building, and other infrastructure would drastically affect the scenic and rural character by creating a commercialized look and feel to the property. The SPA does not provide for sufficient screening and buffering to meet the objectives of the Master Plan. Additionally, the Township should consider how the expansion would affect the scenic view and character from the lake itself. The SPA does not address how the trees and vegetation would be incorporated on the lakeside to preserve the scenic quality in the Township. The shoreline view must be preserved. (Dave Morgan written comment, August 29, 2022, ROA000417-000419)
- ❖ A **public comment** from the current Lake Biologist for the Lake Leelanau Lake Association (whose duties involve monitoring water quality in, and dealing with emerging threats to, the lake) emphasizes that the lagoon sewage treatment system requires significant upgrades to result in zero additional nutrient flow to Lake Leelanau (which is located less than ¼ mile from the current lagoon) and to the sensitive wetlands (located about 500 feet from the current lagoon). The proposed 165% expansion in the number of campsites would suggest a similar increase in the amount of raw sewage generated. Between the lagoon and the shoreline, and north of the present-day campsites, lies a 23-acre coniferous swamp wetland that is presently largely undisturbed. This wetland includes 2,000 feet of natural shoreline on Lake Leelanau. The nearshore waters of the lake in the vicinity include woody debris and native aquatic plants, providing a particularly rich habitat for spawning fish and a nursery for all manner of aquatic wildlife. Any degradation of this wetland, even by trails for use by campers, should be prevented. And at a minimum, any expansion of the campground, if approved, should include a provision for the permanent protection of this sensitive habitat. (Brian Price written comment, August 29, 2022, ROA000413-000415)
- ❖ A **public comment** from the Lake Leelanau Lake Association identifies five areas of concern it would like to see addressed: (1) increased boat traffic (LLLA asks that a lake carrying capacity study be performed), (2) invasive species (LLLA asks that any special use permit that may be granted require that every boat launched from the park be washed with a high-pressure water spray system staffed by trained personnel), (3) development on the shoreline (LLLA asks that at a minimum, the 40' shoreline requirement should be honored and the existing shoreline should be restored to natural conditions), (4) impacts of nutrients from the sewage lagoon (LLLA asks that hydrological studies of the potential impact of the expansion be performed), and (5) impacts to wetlands (LLLA asks that the project avoid degrading the wetland). (Lake Leelanau Lake Association written comment, August 29, 2022, ROA000425-000427)
- ❖ An additional **public comment** from the Lake Leelanau Lake Association offers "more detail on the environmental impact of increased development on inland

lakes based on a review of scientific literature and information prepared by Michigan environmental protection agencies and groups.” (See Lake Leelanau Lake Association’s full public comment for more information, written, dated October 3, 2022, ROA000562-000568).

- ❖ An additional **public comment** from the Vice President of the Lake Leelanau Lake Association, Nancy Popa, addresses the critical need for a lake carrying capacity study due to the expected increase in the number of boats from the campground expansion. The carrying capacity of a lake is the number of boats that can be used on a lake at any one time with minimal environmental damage to the lake and to ensure safe and enjoyable recreational use. (N. Popa written comment, September 23, 2022 (attaching the 2001 study of the Carrying Capacity of South Lake Leelanau), ROA000505-000514)
- ❖ A **public comment** by retired District Forester for Leelanau, Benzie and Grand Traverse Conservation Districts and Centerville Township resident Kama Ross stresses the need for retention of “deep-rooted natural vegetation to best protect the integrity of the shoreline”. Ms. Ross further stated that maintaining control over invasive species will be physically impossible with the increase in campers with boats. (Kama Ross, written comment, August 29, 2022, ROA000424)
- ❖ A **public comment** discusses the protection of 780 acres of Rice Creek and the Lake Leelanau Watershed through conservation easements to the Leelanau Conservancy. This public comment explains that “it is important for the purposes of reviewing the applicant’s proposal to know that the protection of these lands was made possible by both the generosity and concerns of us landowners and also by grants funded by the State through the Clean Michigan Initiative under the Lake Leelanau Watershed Management Plan Ironically, despite community efforts to protect the watershed, the bottleneck for meaningful protection of Lake Leelanau could occur at the most environmentally sensitive location, the mouth of Rice Creek and the wetlands on the shores of the Lake, where the expansion of the campground together with increases in storm water and site-treated septage pose serious threats.” (C. Weed written comment, September 29, 2022, ROA000537-000540) (see also T. Price and C. Carlson written comment, September 27, 2022, ROA000532) (see also R. Karfonta written comments, August 29, 2022, ROA000431-000436 and September 27, 2022, ROA000530-000531)
- ❖ A **public comment** highlights four “choke points” of Lake Leelanau that have already reached a saturated level of boat and other water craft traffic, and which – with a further increase in boat traffic from an expanded campground – will create risks for both human safety and for preservation of the natural environment: (1) the area around Leelanau Pines; (2) Cedar Creek, which is a quiet and environmentally-sensitive area south of Leelanau Pines at the southwest corner of the Lake; (3) “the narrows,” which provides a modest natural passage from South Lake Leelanau to North Lake Leelanau, and which is lined with tall grass, lily pads, and other natural vegetation; and (4) the river that flows from North Lake Leelanau to the dam at the entrance to Lake Michigan in the town of Leland. (T. Blashill written comment, September 25, 2022, ROA000519-000522)

Standard 3:

Site plans shall fully conform with the published surface water drainage standards of the County Drain Commission.

Leelanau Pines' argument: Leelanau Pines discussed the location and sizing of the stormwater management basin with the PC and agreed that approval of its SPA would be conditioned on obtaining final approval from the County Drain Commissioner. (See Brief, page 13, ROA001018).

PC's findings: This standard was discussed in detail at the September 21, 2022 meeting, and in the PC's approved motion denying the SPA.

The PC's motion finds that the SPA as submitted and revised does not demonstrate adequate conformance with the Leelanau County Drain Commission regulations or the Leelanau County Stormwater Ordinance. The PC has not received adequate evidence of Drain Commission assurance or approval, storm water management calculations, or sufficient detail to assess the efficiency or effectiveness of the proposed storm water management. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: Leelanau Pines does not respond to the PC's findings regarding the surface waters standard in its Brief.

Other considerations:

- ❖ **Relevant agency communications:** See letter from Robyn Schmidt (EGLE, WRD) to Leelanau Pines dated July 28, 2022 (ROA000109-000111) discussing the need for a permit under Part 301, Inland Lakes and Streams for stormwater basins within 50 feet of lake or stream, if they are designed to hold water (among other requirements).

Standard 4:

Special attention shall be given to proper site drainage so that removal of storm waters will not adversely affect neighboring property owners.

Leelanau Pines' argument: The SPA demonstrates that the proposed development will not change the existing drainage patterns with respect to the removal of stormwaters from neighbors. All stormwater moving down-gradient from the campground continues to flow to Rice Creek and Lake Leelanau without crossing other's lands except a small portion at the northeast corner. This area will remain undisturbed and continue the

historical drainage pattern. As such, the development will protect Rice Creek, the shoreline and sensitive wetlands by preserving the hydrology (maintaining the current stormwater runoff patterns). Additionally, the stormwater will be pretreated by detention areas in accordance with Leelanau County Drain Commission standards prior to discharge. (See Brief, page 13, ROA001018).

PC's findings: This standard was discussed in detail at the September 21, 2022 meeting, and in the PC's approved motion denying the SPA.

The PC's motion incorporates its findings for Standard 3 above. Additionally, the SPA does not provide adequate storm water management detail to the PC and has not applied for Parts 301 and 303 of the Michigan Natural Resources and Environmental Protection Act permits for storm water management or other site plan elements proposed to impact wetlands or surface waters. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376) (accidentally cites to Part 31 instead of 301).

Leelanau Pines' response: This is inaccurate and represents a failure to review the SPA materials. Storm water management detail is included in the SPA on page C300, and it was also submitted to the County Drain Commission with supplemental materials for their review and comment. Moreover, Leelanau Pines claims this topic was also directly discussed with the PC at the September 21, 2022 special meeting. Leelanau Pines specifically reviewed the detention basin sizing depicted in its drawing C300 and confirmed to the PC that the calculations had been submitted to the Drain Commission for review. The PC did not edit the pre-prepared motion to correct this point to reflect the factual record. (See Brief, page 20, ROA001025).

Other considerations:

- ❖ **Relevant agency response:** See J. Vander Kodde (Fishbeck) to S. Christensen (Leelanau County Drain Commissioner/SESC Officer) dated July 6, 2022, and S. Christensen to J. Vander Kodde reply dated July 10, 2022, stating "please forward the sheets with respect to storm water control and sedimentation control as they are available. This site appears to have enough acreage accommodate the required structures." (ROA000099-000100)
- ❖ **Relevant agency response:** See letter from Robyn Schmidt (EGLE, WRD) to Leelanau Pines dated July 28, 2022 requiring a permit for construction of a boardwalk, construction of fishing dock, construction of storm water basins, and discharge of stormwater "unless all outfall structures are outside wetlands, the water is pretreated (including sediment removal) and the volume does not have an adverse impact on the wetland." This letter outlines all of the requirements for permits under Parts 301 and 303. [Note: Leelanau Pines subsequently agreed to remove the proposed elevated boardwalk and fishing piers from its original SPA] (ROA000109-000111)

- ❖ A **public comment** from the current Lake Biologist for the Lake Leelanau Lake Association emphasizes that the current areas of campground property now used as common open space along the lake south of the wetland would be converted to recreational facilities, parking lots, and a retail store. The problem of stormwater runoff from both new buildings and new hard surfaced roads and campsites is very real. Runoff from these areas will carry pollutants directly to the lake, and any approval of expansion should require extensive efforts to retain and treat stormwater before it pollutes the lake. (Brian Price written comment, August 29, 2022, ROA000413-000415)
- ❖ A **public comment** discusses the protection of 780 acres of Rice Creek and the Lake Leelanau Watershed through conservation easements to the Leelanau Conservancy. This public comment explains that “it is important for the purposes of reviewing the applicant’s proposal to know that the protection of these lands was made possible by both the generosity and concerns of us landowners and also by grants funded by the State through the Clean Michigan Initiative under the Lake Leelanau Watershed Management Plan Ironically, despite community efforts to protect the watershed, the bottleneck for meaningful protection of Lake Leelanau could occur at the most environmentally sensitive location, the mouth of Rice Creek and the wetlands on the shores of the Lake, where the expansion of the campground together with increases in storm water and site-treated septage pose serious threats.” (C. Weed written comment, September 29, 2022, ROA000537-000540) (see also T. Price and C. Carlson written comment, September 27, 2022, ROA000532) (see also R. Karfonta written comments, August 29, 2022, ROA000431-000436 and September 27, 2022, ROA000530-000531)
- ❖ A **public comment** by a property owner in the Rice Creek watershed and frequent rower at the south end of Lake Leelanau states his concerns that the increased traffic and the clearing of the land will “substantially increase runoff into the Lake and Solon Swamp of oils, gas, grease, salt and metals, which often enter waterways and wetlands via unnoticed runoff.” (R. Karfonta written comment, August 29, 2022, ROA000431-000436)

Standard 5:

The site plan shall provide reasonable, visual and sound privacy for all dwelling units located therein and adjacent parcels. Fences, walks, barriers and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.

Leelanau Pines’ argument: The majority of the expansion and the proposed amenities are maintained in the center of the property to maximize the distance from adjacent properties. With respect to sound privacy, there have been no noise complaints in twenty plus years. No evidence or reason to believe that noise will become an issue. The campground maintains quiet hours from 10pm to 8am, and those hours are strictly

enforced. The campground will have 24-hour staff on site. With respect to lighting, the SPA makes clear that outdoor lighting will be dark sky approved with full cut-off fixtures. Lighting will be low intensity, and used only to enhance the camping experience and improve safety. It will comply with local, state and federal codes, and will promote dark night sky preservation. Finally, Leelanau Pines has an existing landscape buffer, and there have been no concerns expressed that it is insufficient. With that said, the SPA will enhance the existing buffer in key areas along the road and lake to further reduce any perceived visual impact. (See Brief, page 14, ROA001019).

PC's findings: This standard was discussed in detail at the September 21, 2022 meeting, and in the PC's approved motion denying the SPA.

The PC's motion expresses that vegetative screening and buffering in and of itself does not adequately mitigate nuisance sound, including RV generator use. Barriers such as adequately landscaped earthen berms would adequately provide reasonable visual and sound privacy. The SPA does not provide adequate plans to manage / mitigate noise, visual impact, outdoor and other lighting impact (see also ZO Section 3.18 Outdoor Lighting Ordinance), nor does it otherwise adequately protect privacy along boundaries with adjoining properties zoned R-1 and AG. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: There is no evidence in the record of any problems related to noise, campfire smoke, or light along boundaries with adjoining parcels. This is an existing use – a campground that has been in operation for several dates. There have been no concerns or complaints raised historically or with respect to the proposed expansion. This fact alone demonstrates that the existing screening / buffering is sufficient. RV generator use is no concern at all, as all of the RV sites will have full hook ups to electrical with no need to run generators. With that said, the SPA does call for enhanced screening and buffering, and the existing vegetation will remain as well. There will be limited artificial outdoor lighting, consistent with the camping experience, which will promote dark night sky preservation. (See Brief, page 21, ROA001026).

Other considerations:

- ❖ During the **September 21, 2022 meeting**, the PC expressed concerns with activities, such as music, encroaching on the sound privacy of adjacent properties. The PC also felt that they did not have enough information at that time to consider any action that Leelanau Pines should take to buffer if a wind event or other event results in the loss of a substantial number of trees. (See approved minutes from September 21, 2022 PC meeting, ROA000203-000214; recording of September 21, 2022 PC Meeting, ROA000991).
- ❖ A **public comment** compiles complaints posted by campers from thirteen of Northgate's other campgrounds on prominent review websites. The "common complaints revolve around general noise, loud and sometimes vulgar music played

during the day and after quiet hours, rules not being enforced, excessive drinking, poor and sometimes absent management, and flocks of children running around the campground unattended.” (J. Stoller written comment, September 27, 2022, ROA000523-000529)

Standard 6:

All buildings or groups of buildings shall be so arranged as to permit emergency access by some practical means to all sides.

Leelanau Pines’ argument: Leelanau Pines agrees that approval of its SPA will be conditioned on the Cedar Fire Chief approving all aspects of the project within that agency's jurisdiction, including emergency access to buildings. The drawings were revised according to the Chief’s letter received on August 29, 2022 and resubmitted to the Chief on September 12, 2022. At the time of the PC decision, the Chief had not provided further comment. Thus, the final SPA will have all buildings arranged to permit emergency access by some practical means to all sides. (See Brief, pages 14-15, ROA001019-001020).

PC’s findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC’s approved motion denying the SPA.

At the October 3, 2022 meeting, all PC members agreed that there would have to be a condition regarding approval by the Cedar Fire Chief. PC members were unsure if the Fire Chief’s review included the most recent versions of the SPA. The Zoning Administrator did not have any updates from the Fire Chief. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992)

In its motion, the PC incorporated its findings for Standard 13 below. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines’ response: Leelanau Pines does not respond to the PC’s findings regarding this standard in its Brief.

Other considerations:

- ❖ **Relevant agency communication:** See email from J. Vander Kodde (Fishbeck) to A. Doornbos (Solon-Centerville Fire Department) dated July 6, 2022, ROA000101.
- ❖ **Relevant agency communication:** See letter from A. Doornbos (Solon-Centerville Fire Department) to ZA Tim Cypher dated August 29, 2022, ROA000993-000994. This letter contains six Fire Department Access / Water Supply Recommendations, one Facilities recommendation, and three other points regarding snow removal

plans for the areas within the park that may have campers on them during the course of the winter.

[NOTE: On November 28, 2022, Cedar Area Fire & Rescue Chief Andy Doornbos emailed a letter to J. Vander Kodde (Fishbeck) indicating his *approval* of Leelanau Pines' updated plans, which had been submitted to his office on November 21, 2022. He indicated these updated plans were submitted in response to his recommendations in an October 21, 2022 letter. However, ZO Section 13.1(M)(c) is clear that the ZBA is not permitted to consider new evidence beyond the PC's record up through the PC's decision.]

Standard 7:

If there is a pedestrian circulation system, it shall be insulated as completely as reasonably possible from the vehicular circulation system.

Leelanau Pines' argument: The SPA demonstrates designated pedestrian walkways (including sidewalks and walking trails) that are insulated from vehicle traffic. There are also specific pedestrian accommodations for access to the site amenities, which are also shown and labeled in the SPA. Moreover, there is limited vehicle traffic in the campground in general. Upon checking in, guests park at their campsite and primarily bicycle or walk to access the rest of the property, as is reasonable and customary in the campgrounds. (See Brief, page 15, ROA001020).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

In the October 3, 2022 meeting, the PC expressed it would like to see the pedestrian crosswalks marked, bike lanes marked, and physical speed reduction measures put in place. The PC also has serious concerns about the separation between the vehicle and pedestrian circulation systems generally. There have been several comments from existing campers who are concerned about the lack of enforcement of existing speed limits and the safety of pedestrians, especially children. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992)

The PC's motion finds that the SPA as submitted and revised does not adequately demonstrate this isolation of pedestrian circulation from vehicular traffic (either as completely or as reasonably possible). As proposed, the expansion will not improve pedestrian circulation systems. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: Speed limits are enforced at the property. Letters from former disgruntled campers opposing the expansion suggesting otherwise are simply false. The

new owners have added speed bumps upon acquiring the property to enhance vehicular speed control. We are not aware of any pedestrian / vehicular incidents at the property. The PC's findings are not clear – there are defined roadways for vehicle traffic, and defined parking spaces for vehicles. There are also pedestrian walking areas, as well as sidewalks connecting certain amenities. The PC did not indicate how or why the current pedestrian circulation systems need to be improved. This is another example of the PC reciting the applicable standard and making an unsupported contention that Leelanau Pines failed to meet that standard, while ignoring the information in the SPA. (See Brief, page 22, ROA001027)

Other considerations:

- ❖ A **public comment** from a seasonal camper who indicates that the 5-mph speed limit is "absolutely not" enforced. He states that "10 to 15 mph is normal and 20 mph is not that uncommon in areas where kids play. (R. Shultz written comment, September 21, 2022, ROA000499)
- ❖ A **public comment** indicates that there is no one enforcing the speed limit. (N. Solanskey written comment, October 1, 2022, ROA000545-000551)
- ❖ A **public comment** compiles complaints posted by campers from thirteen of Northgate's other campgrounds on prominent review websites. One of the complaints regarding Jellystone Park Guadalupe River in Kerrville, TX states: "The only criticism is that on the weekend when there's lots of kids, they were riding their bikes after dark and running around playing and making noise." (J. Stoller written comment, September 27, 2022, ROA000523-000529)
- ❖ A **public comment** from Leelanau County Road Commission Member John Popa discusses safety concerns from the potential for more foot and bike traffic on Lake Shore Drive, which does not have wide, non-motorized shoulders. It is a rural road with many curves, hills, farm equipment, double-yellow lines, and already heavily traveled by unfamiliar tourists. This public comment also mentions a fatality 10 years ago on Lake Shore Drive where a camper (a young boy) was killed while riding his bike. (John Popa written comment, October 3, 2022, ROA000552-000554)

Standard 8:

All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened, by a vertical screen consisting of structural or plant material no less than six (6) feet in height.

Leelanau Pines' argument: Leelanau Pines provides a dumpster enclosure behind the maintenance building which does not directly face a residential district or thoroughfare. Leelanau Pines confirmed with the PC at the October 3, 2022 meeting that it would comply with this screening height requirement as a condition of approval. (See Brief, page 15, ROA001020).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

The PC's motion finds that the SPA as submitted and revised does not adequately demonstrate compliance to this requirement. (See motion attached to approved minutes from October 3, 2022 meeting, ROA000368-000376).

Leelanau Pines' response: This contention is demonstrably false. Leelanau Pines specifically stated at the October 3, 2022 meeting that it would comply with the screening height requirement for the dumpster enclosure. The PC ignored that information and did not change this portion of its pre-prepared motion. And the PC then prohibited any further discussion on these assertions at the meeting. (See Brief, page 22, ROA001027).

Standard 9:

Exterior lighting shall be arranged so that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets.

Leelanau Pines' argument: The SPA explains that the intent of the campground is to have limited outdoor lighting in keeping with the camping experience (see Sheet L101). Stargazing and viewing the dark night sky are prime camping activities that Leelanau Pines will promote and preserve. The SPA further indicates that Leelanau Pines will comply with all local, state, and federal codes and will promote dark sky preservation. Outdoor illumination will be low intensity. The new lighting (see drawing L103) will be three post-mounted, exterior, photo-cell lights that will not impede the vision of traffic on any roadway nor any adjacent properties. (See Brief, page 15, ROA001020).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

In the October 3, 2022 meeting, the PC expressed that there is not enough detail to confirm whether the lighting meets the ZO. For example, there is some ambiguity around the lighting in the parking areas, and whether the lighting in the parking lot near the shore will be on all night, as it would reflect onto the lake. There would also need to be a condition that the lights would be non-operational when the campground is not open, unless otherwise required by authorizing agencies. (See approved minutes from October

3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

The PC's motion finds that the application as submitted and revised does not adequately demonstrate that exterior lighting shall be effectively deflected from adjoining properties or protective of the dark night sky. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: This is another example of the PC reaching a predetermined conclusion and then not considering the facts. The SPA shows and labels only three new exterior lights. The PC did not and cannot explain how the addition of these three lights will deflect onto adjoining properties or not be protective of the night sky. The specific information offered by Leelanau Pines at the August 29, 2022; September 21, 2022; and October 3, 2022 meetings disprove the PC's contentions. (See Brief, pages 22-23, ROA001027-001028).

Standard 10:

The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are a part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of-way equal to that specified by the County Road Commission.

Leelanau Pines' argument: The proposed expansion was designed to mimic and naturally continue from the existing campground, which respects the patterns of existing streets and pathways. Leelanau Pines agrees that the approval of its SPA will be conditioned on approval from the Leelanau County Road Commission regarding all aspects of the project within that agency's jurisdiction, including compliance with the Centerville Township Private Road Ordinance for Commercial Driveways, or the Leelanau County Road Commission specifications, as required. (See Brief, page 16, ROA001021).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting (but not in the PC's approved motion denying the SPA).

At the October 3, 2022 meeting, the PC noted errors in the traffic study, one where the three-way "T" intersection was not modelled correctly, as well as other errors involving stop signs (there should be no stop sign on Schomberg Road, and there should be a stop sign on Lakeshore). These errors still needed to be corrected in the traffic study as of the October 3, 2022 meeting. The PC also expressed a desire to see a condition regarding approval by the County Road Commission. The PC also expressed a desire for Leelanau Pines to work with the Road Commission to install a right-turn taper into the campground.

Additionally, within the park, there are not markings regarding which roads will be one-way and which will be two-way; this needs to be pointed out or added. The new road widths may affect those notations, and the road widths should be provided as part of the SPA. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

Leelanau Pines' response: Leelanau Pines indicated that there is a deceleration taper and right-turn lane being provided to vehicle traffic approaching from the south at the entrance to the campground. (See approved minutes from October 3, 2022 PC meeting, ROA000306-000376).

All roads within the park are two-way, with the exception of where the road splits around the island at the entrance to the park. There are two different lane widths, based on fire code recommendations. Most existing roads will remain the same width, with the exception of the roads directly in front of the entrance, and the road to the dry hydrant at the launch, which will be widened to accommodate fire apparatus. (See approved minutes from October 3, 2022 PC meeting, ROA000306-000376).

Leelanau Pines does not otherwise respond to the PC's findings regarding this standard in its Brief.

Other considerations:

- ❖ **Relevant traffic study:** See Leelanau Pines Campground Traffic Impact Assessment Memo dated September 21, 2022, ROA000215-000290.
- ❖ **A public comment** references errors with the traffic study: "It does not paint a true picture of traffic flow in the area. With the amount of future extra campers, traffic flow increase will not be limited to check in and out times. That suggests that campers will not travel outside the campground except at check in and out times. The Study Trip Distribution table indicates that 90% of traffic increases occur exclusively south of the campground. With proposed increase of 172 new camp sites and 113 in the next application, it will greatly increase traffic on Co. Rd. 643 to the North as well. The first major intersection to the north, not included in the study, is located at Co. Rd. 643 and M 204, in the village of Lake Leelanau. For times other than check in and out, which the study disregarded, it is highly likely traffic will be heading north towards the tiny village of Lake Leelanau. To suggest otherwise, defies logic. Many popular restaurants in the county are located north of the campground. Campers will utilize Co Rd 643 northbound to access restaurants, the village of Lake Leelanau, wineries, Fishtown and shops in Leland, Suttons Bay, and Northport. Along that route on Co Rd 643, there are many walkers, runners, and bicyclists in addition to vehicular traffic. This will increase safety issues." (Sarah Bordeaux written comment, October 3, 2022, ROA000569-000572).

- ❖ A **public comment** from Leelanau County Road Commission Member John Popa discusses safety concerns from the potential for more foot and bike traffic on Lake Shore Drive, which does not have wide, non-motorized shoulders. It is a rural road with many curves, hills, farm equipment, double-yellow lines, and already heavily traveled by unfamiliar tourists. This public comment also mentions a fatality 10 years ago on Lake Shore Drive where a camper (a young boy) was killed while riding his bike. (John Popa written comment, October 3, 2022, ROA000552-000554).

Standard 11:

All streets shall be developed in accordance with the Centerville Township Private Road Ordinance or the Leelanau County Road Commission specifications as required.

Leelanau Pines' argument: Leelanau Pines agrees that approval of the SPA can be conditioned on approval from the Leelanau County Road Commission regarding all aspects of the project within that agency's jurisdiction, including compliance with the Centerville Township Private Road Ordinance for Commercial Driveways, or the Leelanau County Road Commission specifications, as required. A detailed traffic impact study and revised driveway entrance geometry was submitted to the LCRC and PC supporting the proposed traffic accommodations shown on the site plan. (See Brief, page 16, ROA001021).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

At the October 3, 2022 meeting, the PC discussed that the SPA does not comply with ZO Section 6.6's requirements regarding off-street parking, which requires 1.5 spaces per camping space. There is currently only 1 designated parking space per camp site. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

The PC's motion finds that the application as submitted and revised does not adequately demonstrate compliance with this requirement. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: There is enough room for two vehicles to park at each campsite. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

Leelanau Pines does not otherwise respond to the PC's findings regarding this standard in its Brief.

Other considerations:

- ❖ **Relevant traffic study:** See Leelanau Pines Campground Traffic Impact Assessment Memo dated September 21, 2022, ROA000215-000290.

Standard 12:

Site plans shall fully conform to the driveway and traffic safety standards of the Michigan Department of Transportation and/or the County Road Commission.

Leelanau Pines' argument: The PC has already agreed that this requirement is not applicable as the County Road 643 is not a "M" route and MDOT therefore has no jurisdiction. Leelanau Pines agrees that the approval of its SPA will be conditioned on approval from the Leelanau County Road Commission regarding all aspects of the project within its jurisdiction, including compliance with driveway and traffic safety standards. (See Brief, page 16, ROA001021).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

At the October 3, 2022 meeting, the PC discussed that this standard is not applicable with regards to MDOT. The PC pointed out that while the PC has been receiving updated site plans, it has not been receiving updated applications, and the two diverge. There is now outdated or incomplete information in the application. The application must contain detailed information, which is not provided – instead it is vague. There could also be a condition that all submittals made in addition to the application should be represented as part of the official final application. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

The PC motion finds that overall, the application as submitted and revised does not demonstrate adequate conformance with the traffic safety standards of the Leelanau County Road Commission. The traffic impact assessment submitted to the Township on September 21, 2022, while not projecting an unacceptable degradation to the existing level of service at CR-643 (S. Lake Shore Dr.) states that 90% of trips generated at peak hours by the Leelanau Pines site will proceed southerly on CR-643 (S. Lake Shore Dr.) and 10% will turn northerly on CR-643 (S. Lake Shore Dr.). Importantly, the expanded Leelanau Pines Campground will weekly generate a 4.6-fold increase in traffic associated with Friday check-in and Monday check-out times at S. Lake Shore Dr. These increases in traffic are contextual, and are considered to represent unacceptable increases in traffic volume and potential unacceptable hazards to public safety / pedestrian and other multi-modal non-motorized transportation, i.e., "complete streets." It is further noted that vehicle trips generated were not assessed for holidays or peak hours during holidays, and

additional increased traffic is also reasonably anticipated at those times. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: Leelanau Pines does not respond to the PC's findings regarding this standard in its Brief.

Other considerations:

- ❖ **Relevant traffic study:** See Leelanau Pines Campground Traffic Impact Assessment Memo dated September 21, 2022, page 7, ROA000221.

Standard 13:

Site plans shall fully conform to the applicable fire safety and emergency vehicle access requirements of the State Construction Code and/or local Fire Chief requirements.

Leelanau Pines' argument: Leelanau Pines agrees that the approval of its SPA be conditioned on compliance with the State Construction Code and the Cedar Fire Chief approving all aspects of the project within that agency's jurisdiction, including all applicable fire safe and emergency vehicle access requirements. Moreover, local police, fire, and emergency response departments have all received copies of the proposed campground improvements and evidence of the communications submitted to the planner as required by the ZO. These agencies have provided feedback which has been incorporated in the SPA accordingly. (See Brief, pages 16-17, ROA001021-001022).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

At the October 3, 2022 meeting, the PC discussed that the final review by the Fire Chief had not yet been completed, as the site plan changed since the letter received from the Fire Chief. The PC expressed needing to see a final review letter from the Fire Chief before considering the standard met. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

The PC's motion finds that, based on information and belief, the application as submitted and revised has not demonstrated conformance with local fire safety requirements from the Cedar Area Fire & Rescue Department, or written assurance of Fire & Rescue Department review. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: Leelanau Pines does not respond to the PC's findings regarding this standard in its Brief.

Other considerations:

- ❖ **Relevant agency communication:** See email from J. Vander Kodde (Fishbeck) to A. Doornbos (Solon-Centerville Fire Department) dated July 6, 2022, ROA000101.
- ❖ **Relevant agency communication:** See letter from A. Doornbos (Solon-Centerville Fire Department) to ZA Tim Cypher dated August 29, 2022, ROA000993-000994. This letter contains six Fire Department Access / Water Supply Recommendations, one Facilities recommendation, and three other points regarding snow removal plans for the areas within the park that may have campers on them during the course of the winter.

[NOTE: On November 28, 2022, Cedar Area Fire & Rescue Chief Andy Doornbos emailed a letter to J. Vander Kodde (Fishbeck) indicating his *approval* of Leelanau Pines' updated plans, which had been submitted to his office on November 21, 2022. He indicated these updated plans were submitted in response to his recommendations in an October 21, 2022 letter. However, ZO Section 13.1(M)(c) is clear that the ZBA is not permitted to consider new evidence beyond the PC's record up through the PC's decision.]

Standard 14:

Site plans shall fully conform to the County Soil Erosion and Sedimentation Control Ordinance.

Leelanau Pines' argument: Leelanau Pines has provided the proposed Soil Erosion and Sedimentation Control measures on drawings C300-C303 and submitted them to the Leelanau County Drain Commission for review on September 26, 2022. At the time of the PC decision, the Drain Commission had not provided further comment. Leelanau Pines agrees that the approval of its SPA will be conditioned on compliance with the Leelanau County Soil Erosion and Sedimentation Control Ordinance. (See Brief, page 17, ROA001022).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting (but not in the PC's approved motion denying the SPA).

At the October 3, 2022 meeting, the PC expressed a desire to have a condition regarding approval by Soil & Erosion Control. When the PC asked whether any such final approval had yet been received, they learned that Soil & Erosion Control made a statement in July 2022, which acknowledged receipt of the initial site drawings and asked for additional information. The PC stated that it wants to have an extra condition that the agency recommendations be required and reviewed by the PC before granting SPA approval,

given the importance of this project. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

Leelanau Pines' response: Leelanau Pines does not respond to the PC's findings regarding this standard in its Brief.

Other considerations:

- ❖ **Relevant agency communication:** See letter from Robyn Schmidt (EGLE, WRD) to Leelanau Pines dated July 28, 2022 explaining that the project, as currently designed, would also require authorization under Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. (ROA000109-000111)

Standard 15:

Site plans shall fully conform to the requirements of the Michigan Department of Public Health and the District Health Department.

Leelanau Pines' argument: Leelanau Pines agrees that the approval of its Site Plan Application will be conditioned on compliance with the requirements of the Michigan Department of Public Health and the District Health Department. (See Brief, page 17, ROA001022).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

At the October 3, 2022 meeting, the PC discussed that the most recent letter from the District Health Department expressed reservations with regard to the soil conditions and the lagoon system, and there has been no follow-up submitted by Leelanau Pines. The PC has the same concern with this standard as the previous standard. (See approved minutes from October 3, 2022 PC meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

The PC's motion finds that the application as submitted and revised does not demonstrate adequate conformance with Michigan EGLE Part 41 or Benzie-Leelanau District Health Department (BLDHD) codes and regulations for sewage treatment / disposal and additional required public water supply. It is noted that BLDHD informed Leelanau Pines that "required onsite permitting will be through EGLE (Groundwater Discharge permit). Campground construction permits will also be required through EGLE (Dave Graves / Sarah Rottiers). Additional Type II wells will need to be permitted through our Department. Soils in this general area are unsuitable to marginal, not sure how much expansion will be allowed with current lagoon system." The PC has not received evidence

of EGLE or BLDHD related studies, engineered plans for sewage system expansion, new Type II public wells and distribution system location / detail / plans, etc., or sufficient detail to assess sewage treatment system expansion plans and the related potential for groundwater, wetland and / or surface water impact. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: Leelanau Pines does not respond to the PC's findings regarding this standard in its Brief.

Other considerations:

- ❖ **Relevant agency response:** See email from C. McNitt, BLDHD to J. Vander Kodde (Fishbeck) dated July 7, 2022. (ROA000097-000098)
- ❖ **Relevant agency communication:** See email from MiWaters Support to J. Vander Kodde (Fishbeck) dated August 19, 2022, showing that EGLE has received Leelanau Pines' "groundwater discharge permit application permits for specific discharges: Rule 323.2216." (ROA000112)
- ❖ A **public comment** from the current Lake Biologist for the Lake Leelanau Lake Association emphasizes that the lagoon sewage treatment system requires significant upgrades to result in zero additional nutrient flow to Lake Leelanau (which is located less than ¼ mile from the current lagoon) and to the sensitive wetlands (located about 500 feet from the current lagoon). The proposed 165% expansion in the number of campsites would suggest a similar increase in the amount of raw sewage generated. Between the lagoon and the shoreline, and north of the present-day campsites, lies a 23-acre coniferous swamp wetland that is presently largely undisturbed. This wetland includes 2,000 feet of natural shoreline on Lake Leelanau. The nearshore waters of the lake in the vicinity include woody debris and native aquatic plants, providing a particularly rich habitat for spawning fish and a nursery for all manner of aquatic wildlife. Any degradation of this wetland, even by trails for use by campers, should be prevented. And at a minimum, any expansion of the campground, if approved, should include a provision for the permanent protection of this sensitive habitat. (Brian Price written comment, August 29, 2022, ROA000413-000415)

Standard 16:

Site plans shall fully conform to all applicable state and federal statutes.

Leelanau Pines' argument: Leelanau Pines agrees that the approval of its SPA will be conditioned on compliance with all applicable state and federal statutes. (See Brief, page 17, ROA001022).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

At the October 3, 2022 meeting, the PC expressed concerned that they do not have all of the pertinent information with regard to applicable state and federal statutes. (See approved minutes from October 3, 2022 meeting, ROA000360-000376; recording of October 3, 2022 PC Meeting, ROA000992).

The PC's motion finds that, based on information and belief, there is a likelihood of pollution, impairment and destruction of the air, water, and other natural resources of the State and the public trust therein as represented by this site plan, as submitted and revised, which may represent a violation of Michigan's Part 17 of the Michigan Natural Resources and Environmental Protection Act, P.A. 451 of 1994. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Leelanau Pines' response: Leelanau Pines does not respond to the PC's findings regarding this standard in its Brief.

Other considerations:

- ❖ A **public comment** expresses that since one side of the Leelanau Pines property is adjacent to a creek and contains so much lakefront, an environmental impact study by an independent party paid for by the Developer is probably mandated if there is any question about the negative environmental impact of the proposed expansion. (David Baty written comment, August 26, 2022, ROA000397-000408)
- ❖ A **public comment** references the fact that there have been several changes to the application since the initial public hearing. He said there is always a question regarding what is the authority of the Township and what is the authority of the other agencies. The Township can ask for environmental studies. The Township can ask for detailed stormwater plans (none of which have been shown to the PC as of the date of the public comment). There will be up to five state permits, and the PC should either have those permits, or have the information those permits will be based on. Food service will cause changes to the septic permitting. There are ample reasons to deny. (Chris Grobbel, in person at September 21, 2022 PC meeting, ROA000209)
- ❖ A **public comment** from a retired district forester reiterates that the PC does not have all of the information that it needs. There are professionals who can tell you exactly how many trees will be removed from this site, and the impact the removal of those trees will have on the quality of the environment, and the ability of the environment to handle pollution and sedimentation. The PC should ask for more information on how this proposal will impact the environment (Kama Ross, in person at September 21, 2022 PC meeting, ROA000210)

- ❖ A **public comment** explains that campgrounds generate contaminants, including stormwater runoff, septage, PFAS, medical waste, and other issues. Expanding the campground means expanding contaminants. The PC should make sure these contaminants are being managed properly currently before allowing an expansion. (Chris Bunbury, in person at September 21, 2022 PC meeting, ROA000210)
- ❖ A **public comment** from the Vice President of the Lake Leelanau Lake Association, Nancy Popa, addresses the critical need for a lake carrying capacity study due to the expected increase in the number of boats from the campground expansion. The carrying capacity of a lake is the number of boats that can be used on a lake at any one time with minimal environmental damage to the lake and to ensure safe and enjoyable recreational use. (N. Popa written comment, September 23, 2022 (attaching the 2001 study of the Carrying Capacity of South Lake Leelanau), ROA000505-000514).

Standard 17:

Site plans shall conform to all applicable requirements of local, state and federal statutes and approval shall be conditioned on the applicant receiving necessary state and federal permits before final site plan approval or an occupancy permit is granted.

Leelanau Pines' argument: Leelanau Pines agrees that the approval of its Site Plan Application will be conditioned on compliance with all applicable local, state, and federal statutes and on its receipt of necessary state and federal permits. (See Brief, page 17, ROA001022).

PC's findings: This standard was discussed in detail at the October 3, 2022 meeting, and in the PC's approved motion denying the SPA.

The PC's motion finds that the, based on the information as provided by Leelanau Pines, the PC finds that the application insufficiently demonstrates compliance with all applicable local and state statutes. The PC finds that it cannot conditionally approve the site plan because the application has not adequately demonstrated that the project as proposed: (a) would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity; (b) would protect the natural environment and conserve natural resources; (c) would ensure compatibility with adjacent uses of land; and (d) would promote the use of land in a socially and economically desirable manner as required by Article XIII Section 13.1(H)(a) of the ZO. (See motion attached to approved minutes from October 3, 2022 meeting, ROA000368-000376).

Moreover, the expansion of the Leelanau Pines Campground, as proposed, is in direct conflict with the Purpose of the ZO. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Additionally, the expansion of the number of camp/RV sites, new land uses and structures at the Leelanau Pines Campground as proposed would violate several of the Goals of Chapter 7 of the Centerville Township Master Plan entitled “Community Vision, Goals & Objectives”, including the Land Use Goal, the Natural Resource Goal, and the Infrastructure and Public Service Goal. Specifically, the proposed expansion is inconsistent with:

- a. Preserving the unique character of the Township, including the “peaceful rural character and the scenic beauty” of the Township (an overarching goal of many provisions in the entire Master Plan);
 - b. Managing growth consistent with the goals and objectives of the Master Plan (another overarching goal of many portions of the Master Plan);
 - c. Protecting water resources to ensure their quality generally, including protecting surface waters from the negative impacts of overdevelopment and overuse (Section 3.6);
 - d. Preserving and protecting wetlands (Section 3.6.2);
 - e. Generally protecting the environmental features and natural resources of the Township (Section 3.8.)
 - f. Land Use Goal 7.2.1, Objective 2: Guide growth and development towards the towns of Cedar and Lake Leelanau.
- (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Additionally, the expansion (as acknowledged by Northgate CEO Zachary Bossenbroek in a letter to campers dated September 23, 2022) of the number of camp/RV sites, new day use and mooring of watercraft, and new land uses and structures at the Leelanau Pines Campground, as proposed, would violate Section 8.4 of the Master Plan. (See motion attached to approved minutes from October 3, 2022 PC meeting, ROA000368-000376).

Further, the expansion of the Leelanau Pines Campground, as proposed, is in direct conflict with the Vision Statement of the Master Plan. (See motion attached to approved minutes from October 3, 2022 PC meeting ROA000368-000376).

And lastly, the expansion of the Leelanau Pines Campground, as proposed, would violate many of the Principal Strategies of the Leelanau County General Plan. (See motion attached to approved minutes from October 3, 2022 PC meeting ROA000368-000376).

Leelanau Pines’ response: This is an improvement and expansion of an existing, approved use that has been in place for decades. This is not in direct conflict with the ZO, without further explanation or analysis from the PC. This finding reflects personal biases and

deference to public comment over rationality. (See Brief, pages 23-25, ROA001028-001030).

Moreover, the PC's findings rely improperly on policy statements in the Master Plan. The Master Plan is not law and not enforceable. The Master Plan cannot be used to impose additional requirements on Leelanau Pines beyond the ZO's requirements. The ZO contains no such prohibition on growth or expansion. (See Brief, pages 23-25, ROA001028-001030). [This argument is addressed in FN 2 of this Staff Report, above]

Other considerations:

- ❖ **Relevant agency response:** See emails between A. Weber (Leelanau County Department of Building Safety) and J. Vander Kodde (Fishbeck) regarding required building permits, dated July 6 and 7, 2022. (ROA000104-000105)
- ❖ A **public comment** from a citizen volunteer who assisted the PC in drafting the Master Plan expresses that other sections of the Master Plan are relevant to the PC's consideration: Section 7.3.3 Natural Resources Goal, Objectives 1 and 2, as well as the vision statement (which was the result of a 2011 survey reflecting what residents want). (Cary Weed written comment, August 25, 2022, ROA000392-000394)
- ❖ A **public comment** expresses that the proposed expansion is in conflict with the purpose of the ZO, the Master Plan, and the County General Plan because it is not in the best interests of the health, safety and general welfare of the Township and the County, it is inconsistent with residents' wishes and sound land use planning, and any claims of benefit to the local economy cannot outweigh the irreparable harm to the Township and surrounding area by allowing creation of the largest campground in Leelanau County and surrounding counties and one of the largest campgrounds in the state of Michigan. (David Baty written public comment on August 26, 2022, ROA000397-000408 and also in person at the September 21, 2022 PC meeting, ROA000210)
- ❖ A **public comment** attaches a letter sent by Northgate Leelanau Pines LLC CEO Zachary Bossenbroek to seasonal campers. This letter appears to "threaten" campers who have expressed unhappiness with the proposed expansion plan, stating: "Leelanau Pines has operated as a campground for decades and, as a property owner, Northgate has development rights. Your opposition to the expansion application will not help 'save your place of paradise.' On the contrary, your opposition could be the very reason the expansion is denied and we, as the property owners, decide to develop our property differently. That different development may or may not include seasonal campers." (N. Solanskey written comment, September 23, 2022, ROA000515-000517)

Other Relevant Legal Analysis

The PC did not err when it carried a motion that had been prepared prior to the October 3, 2022 meeting – there were no violations of the ZO, MZEA or Open Meetings Act (“OMA”). Tim Johnson’s motion – which was ultimately approved as the PC’s findings (with edits) – was never seen by other PC members before the October 3, 2022 meeting. It was reviewed by legal counsel prior to the meeting, and presented to the full PC in the course of the discussion at the October 3, 2022 meeting. There is nothing in the ZO, the MZEA, nor the OMA, that prohibits a PC member from preparing a motion in advance of a meeting, so long as any decisions or discussions on matters that could pertain to a decision are conducted in a public meeting.

The PC did not err by refusing to hold another meeting to consider the SPA between October 3, 2022 and October 15, 2022. Leelanau Pines argues that the PC erred when it failed to schedule another special meeting (or multiple meetings) before the October 3, 2022 regular meeting, which Leelanau Pines claims would have afforded additional time for the PC to resolve any questions or engage in further deliberations. Leelanau Pines also takes issue with the fact that the PC refused Leelanau Pines’ offer to waive the requirement that any site plan approval occur at a regular meeting (as required by the ZO), which Leelanau Pines also claims would have afforded the PC additional time and opportunity to schedule a special meeting on or before the 90-day deadline expired on October 15, 2022. (See Brief, pages 8-9, ROA001013-001014).

Under ZO Section 13.1(D)(e), the PC is required to issue any final site plan approval “at a regular meeting.”

Under ZO Section 13.1(C)(b), the PC has ninety (90) days to act upon a site plan, starting from the date a complete application is submitted to the Township, unless the review period is “extended upon written agreement between the applicant and the [PC].”

Here, the 90 days were set to expire on October 15, 2022. The final regular meeting prior to that expiration date was October 3, 2022. The next regular meeting was set for November 7, 2022.

The PC asked Leelanau Pines on September 21, 2022 if it would agree to an extension of the 90-days, as permitted by the ZO, as the PC did not feel that it would have enough information by the final regularly scheduled meeting before the expiration of the 90 days to make a decision. Leelanau Pines did not respond to that request until the October 3, 2022 meeting. At the October 3, 2022 meeting, Leelanau Pines stated it would agree only to another special meeting being held prior to October 15, 2022 (the deadline), but no further extension of the 90 days.

This late response from Leelanau Pines tied the hands of the PC under the ZO. The PC was thereupon required to issue a decision by the October 3, 2022 regular meeting, because the 90-day window was set to expire before the next regularly scheduled meeting. [This conundrum

was discussed by the PC at the October 3, 2022 meeting (*see* approved minutes from the October 3, 2022 PC meeting)]. As a result, holding any such suggested special meeting between October 3, 2022 and October 15, 2022 would prove meaningless.

The remaining exceedingly short time period for the PC to consider the SPA (and all of its many revisions) was due to Leelanau Pines' refusal to consent to an extension – not any error by the PC. Leelanau Pines could have agreed to even a short extension (for example, from October 15, 2022 through the next regularly scheduled meeting on November 7, 2022), which would have given the PC more time to hold additional special meetings and have further discussion. Such a short extension would not have prejudiced Leelanau Pines in any way.

Leelanau Pines' offer to waive the requirement that any site plan approval occur at a regular meeting (as required by the ZO) was also unavailing, as the ZO does not permit any such waiver option. Instead, that requirement presumably exists for the benefit of the public, so that the public can know for certain when final consideration of SPAs will be conducted (i.e., at regular meetings).

Analysis of the ZBA's jurisdiction to review Leelanau Pines' constitutional (due process and equal protection) claims. The ZBA does not have jurisdiction to review Leelanau Pines' due process claims. The ZO only gives the ZBA power to review the record of action taken on the final site plan, and to determine whether the record supports the action taken (*see* ZO Section 13.1(M)(c)). The ZO does not give the ZBA power to consider Leelanau Pines' constitutional claims.

Moreover, the Michigan Supreme Court has held that a ZBA lacks jurisdiction to consider constitutional claims. *See Houdini Properties, LLC v City of Romulus*, 480 Mich 1022, 1022-23, 743 NW2d 198 (2008); *Jon Jon's Inc v City of Warren*, 534 F App'x 541, 544 (6th Cir 2013).

Even if the ZBA were to consider Leelanau Pines' due process claims, the Michigan Court of Appeals has made clear that a zoning applicant is not denied due process when it is "on notice" of issues that could be addressed earlier, "during public comment sessions," before decision-making bodies, but fails to do so. *See Hughes v Almena Twp*, 284 Mich App 50, 70, 771 N.W.2d 453, 465 (2009). "The critical element provided by a judicial trial or an administrative hearing is the opportunity for a party to present arguments and evidence in support of its position before a decision is rendered, the chance to respond before final action is taken." *Id.* at 69 (internal citations and quotations omitted).

Here, Leelanau Pines had every opportunity to address the PC and provide supplemental application materials to the PC during the course of the PC's consideration of the SPA – which Leelanau Pines exercised thoroughly. As stated in the Background section above, Leelanau Pines submitted five revisions to its original SPA between June and September 2022. It also submitted many other documents to the PC containing information regarding its position and thoughts on

a variety of issues. The Record on Appeal does not contain any evidence that Leelanau Pines was precluded from submitting any information it wished to the PC for consideration. The PC even requested during the September 21, 2022 and October 3, 2022 meetings that Leelanau Pines agree to an extension of the 90-day period so that the PC could have additional time to review the submitted information and consider the application further. Leelanau Pines refused to grant an extension. That refusal forced the PC to make a decision by October 3, 2022, its last regularly scheduled meeting before the expiration of the 90-day window – this was a faster decision than the PC would have been able to if Leelanau Pines had agreed to (even a reasonably short three week) extension.

If the ZBA chooses to consider Leelanau Pines’ constitutional claims as part of this appeal, the ZBA should carefully review the video recordings of the September 21, 2022 (ROA000991) and October 3, 2022 PC (ROA000992) meetings that are available in the Record on Appeal, as well as consider all of Leelanau Pines’ written submissions to the PC, to determine whether Leelanau Pines had a sufficient “opportunity” to “present arguments and evidence” to the PC “before a decision [was] rendered.” *Hughes*, 284 Mich App 50 at 69.

Timing of approval by local, state, federal agencies. As explained earlier, in the Standards of Review section above, Section 13.1(M)(c) of the ZO provides that the ZBA “shall review the record of action taken on the final site plan and shall determine whether the record supports the action taken. *No new evidence shall be presented.*” (emphasis added)

To the extent that Leelanau Pines has sought *new or updated* approval from local, state, and federal agencies *after* the PC denied its SPA on October 3, 2022, such updated requests and / or approvals may not be added to the ZBA’s record for consideration on appeal.

However, it is important to note that Leelanau Pines asserts that it will obtain all required local, county, state, and federal permits and approvals as a condition to the final approval of its site plan as set forth in ZO Section 13.1(H)(a), and it argues that the PC erred in failing to conditionally approve the SPA accordingly (and that it was a violation of Leelanau Pines’ equal protection rights to fail to do so). (See Brief, pages 3 & 25-27, ROA001008 & ROA001030-001032).

Under ZO Section 13.1(C)(a), a conditional approval is *permitted*, but not required. In other words, it is in the PC’s and ZBA’s *discretion* whether to require other agency approval(s) before granting a zoning application, or to grant the zoning application conditioned on future receipt of other agency approval(s), or to deny a zoning application without such agency approval(s) in place.

Moreover, even if the ZA makes a recommendation for approval of the SPA with such conditions, the PC is not required to follow the ZA’s advice, particularly if the PC believes such

advice is wrong. (See Planning Commission Handbook, Section 43, available here: <https://www.mml.org/pdf/pcebook.pdf>, last visited November 28, 2022).

The ZBA should consider public comments (whether written or oral). As noted above, 137 total written and oral public comments were submitted to the PC during its fact-gathering and deliberation phase. Of these, not a single public comment voiced support for the proposed campground expansion.

In its appeal brief, Leelanau Pines attempts to discount the role that these public comments should play in both the PC's and the ZBA's consideration of the SPA. (See Brief, page 5 FN 2, ROA001010 ("[N]egative public comments cannot override compliance with the zoning requirements, least of all from non-residents, as was primarily the case here."). To the contrary, public comments are a proper source of information in the record for the ZBA to consider in this appeal.

For example, public comments can provide insight into questions regarding the "welfare of adjacent properties and to the community as a whole," which is a key consideration under the ZO (see Section 2.2 of the ZO defining "Special Land Uses Permitted by Special Approval").

Public comments can also factor into considerations regarding the stated purpose of the ZO, which is "to promote the health, safety and general welfare of the inhabitants of the Township of Centerville, County of Leelanau, Michigan," as well as deliberations regarding the vision and goals of the Master Plan, which was created with input from Township residents.

Here, the public comments are extensive, and raise many relevant concerns regarding the natural environment; public safety; waste; traffic; noise; light; smoke; scenic views; the character, beauty, and health of Lake Leelanau and its aquatic and waterfowl inhabitants; and the identity of and vision for the Township generally.

The Michigan Municipal League's ZBA Handbook advises: "Making everyone happy in most cases is impossible, and probably shouldn't be tried. One of the most difficult aspects of planning and zoning is the need to balance the various, often competing, interests of property owners and residents. *Michigan law dictates that the public has a legitimate interest in maintaining the important health, safety and welfare aspects of their neighborhood and in having their property values protected.*" (See Zoning Board of Appeals Handbook, Section 36, available here: [https://www.mml.org/pdf/ZBA Handbook 2015.pdf](https://www.mml.org/pdf/ZBA%20Handbook%202015.pdf), last visited November 28, 2022) (emphasis added).