

CENTERVILLE TOWNSHIP ZONING BOARD OF APPEALS

NORTHGATE LEELANAU PINES, LLC,

Appellant,

v.

CENTERVILLE TOWNSHIP PLANNING
COMMISSION,

Appellee.

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APPELLANT'S BRIEF ON APPEAL

I. INTRODUCTION AND BACKGROUND

Appellant, Northgate Leelanau Pines, LLC ("Leelanau Pines") appeals the Centerville Township Planning Commission's (the "Planning Commission") October 3, 2022 denial of Leelanau Pines' June 22, 2022 site plan application (the "Site Plan Application"). The campground in question, while under new ownership, has been in operation for decades. Leelanau Pines' Site Plan Application seeks to modernize the existing campground facilities and make new improvements in order to better serve existing campers and welcome new families to the campground. A copy of the Site Plan Application has been provided with Leelanau Pines' Zoning Board of Appeals Application.

As an existing campground and RV park located entirely within the Commercial Resort District, Leelanau Pines' requested land use is permitted by special approval, as set forth in Section 6.2 of the Centerville Township Zoning Ordinance (the "Zoning Ordinance"). Pursuant to the definitions in Section 2.2 of the Zoning Ordinance, proposals for "Special Land Uses Permitted by Special Approval" are subject to a public hearing and Site Plan approval by the Planning Commission. The term Site Plan is in turn defined as "[a]ll documents pertinent to a development of special land use; including drawings, tables, surveys, testing data, etc. that will be evaluated to determine if a proposed development meets the requirement of this Ordinance." *Id.* (emphasis added). It is undisputed that Leelanau Pines' Site Plan Application materials were deemed administratively complete, and the Site Plan Application was then discussed at multiple Planning Commission meetings during the 90-day period in which the Planning Commission was required to issue its decision. At its October 3, 2022 regular meeting, the Planning Commission voted to deny Leelanau Pines' Site Plan Application. That decision was made in error and should be reversed on appeal.

First and most fundamentally, the primary role of the Zoning Board of Appeals is to determine whether the Site Plan Application meets the applicable standards set forth in the Zoning Ordinance. An application that satisfies the standards in a zoning ordinance must be approved on appeal: "If all ordinance standards and state law standards are met, the application must be approved."¹ Leelanau Pines' Site Plan Application meets each of the 17 listed "Standards for Granting Site Plan Approval," as set forth in Section 13.1.G.a of the Zoning Ordinance. In particular, and as described below, Leelanau Pines provided detailed information demonstrating

¹ See Zoning Board of Appeals Handbook Published by the Michigan Municipal League at § 52, attached as **Exhibit A**.

that it satisfied each of the 17 requirements under its control, and indicated that it would 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 13.1.H.a of the Zoning Ordinance. The Planning Commission largely ignored this information, and it erred as a matter of law in failing to conditionally approve Leelanau Pines' Site Plan Application.

Second, not only did the Planning Commission err in failing to consider the information provided by Leelanau Pines in support of each of the standards for granting site plan approval, the Planning Commission independently erred by failing to support any of its contrary findings with competent, material, and substantial record evidence. Instead, the Planning Commission's "findings," as presented in a written motion that the Chairman prepared in advance of the October 3 regular meeting, are based entirely on the Planning Commission's unfounded speculation, personal concerns, and misstatements or mischaracterizations of the record. This is the only way that the Planning Commission could reach the ridiculous conclusion that the proposed project – the expansion of an existing campground in the Commercial Resort District – failed all 17 Zoning Ordinance requirements. The lack of substantive support for any of these findings presents an independent ground for the reversal of the Planning Commission's denial of the Site Plan Application.

As one example, Leelanau Pines specifically stated at the October 3 meeting that it would ensure that all trash receptacles would be screened by a vertical screen of at least six feet in height, as is required (it was shortly after that confirmation was provided that the Chairman prohibited Leelanau Pines from offering any further information). But the Planning Commission then cited a concern about the failure to comply with the six-foot screening requirement as one of the bases for denying the Site Plan Application. In other words, the Planning Commission 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, as detailed below.

Additionally, 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.

When a Planning Commission ignores the facts and evidence presented by the applicant and instead denies the application based on the subjective and unsubstantiated (and, in many cases, false) concerns of the individual members, the natural question before the Zoning Board of Appeals is how and why such a fundamental error could have occurred. There is no mystery here. The members of the Planning Commission allowed their personal biases and antipathy towards the proposed special use to override an objective review of the facts before them. The 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.

Perhaps the most blatant example of this misconduct is the Planning Commission Chairman's actions in preparing the 15-page motion denying Leelanau Pines' application before the key October 3 meeting at which the Planning Commission was supposed to have deliberated

and engaged in fact-finding with respect to the Site Plan Application. Instead of engaging in fact-finding, the Chairman prohibited further Leelanau Pines input and directed the Planning Commission through a cursory and superficial recitation of the Zoning Ordinance requirements and then presented the 15-page motion for a vote. The Planning Commission voted to approve that motion, virtually unchanged from the draft that was prepared before the meeting. This is indisputable evidence that the Planning Commission made up its mind before it engaged in its required deliberations, review, and factual findings. And the Planning Commission cut off any attempt by Leelanau Pines to correct the Commissioners' misstatements or even answer questions, as the Commission did not want its premeditated (and erroneous) narrative disrupted by the facts.² Indeed, the Planning Commission did not even bother to correct those portions of the pre-prepared motion that were demonstrated to be false during the meeting.

This matter comes before the Zoning Board of Appeals at a key crossroads. If the Planning Commission's errors are not corrected and reversed before this body, Leelanau Pines will exercise its rights to a further appeal before the Leelanau County Circuit Court, and it will join with its appeal several substantive claims against Centerville Township, seeking millions of dollars in damages along with its attorney fees and costs. The Zoning Board of Appeals has acted in the past to correct the Planning Commission's errors before they became compounded and resulted in a multiplicity of damages, expense, and embarrassment on the part of the Township. Similar action is required here.

² It may also be the case that some of the Planning Commission members were improperly swayed by the public comments against the Site Plan Application. It is important to note that only a small fraction of the opponents actually reside in Centerville Township. The vast majority were either former campers who do not want changes made to "their" campground or lake-front property owners from other Townships who do not want to have to share "their" lake. In any event, negative public comments cannot override compliance with the zoning requirements, least of all from non-residents, as was primarily the case here.

An objective review of the record on appeal should result in the Zoning Board of Appeals conditionally approving Leelanau Pines' Site Plan Application. The Site Plan Application will then only move forward if and when Leelanau Pines obtains the required local, county, state, and federal approvals, which will in turn 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.

II. SUMMARY OF PROCEEDINGS BEFORE PLANNING COMMISSION

As demonstrated by the following timeline, Leelanau Pines' Site Plan Application is the result of several months of preparation and planning, including numerous submissions of additional information at the request of the Planning Commission:

- May 11, 2022: Leelanau Pines submits its concept plan to the Planning Commission for a pre-application conference pursuant to Section 13.1.D.c of the Zoning Ordinance.
- June 6, 2022: Leelanau Pines and Fishbeck attend a pre-application conference with the Planning Commission pursuant to Section 13.1.D.c of the Zoning Ordinance.
- June 22, 2022: Fishbeck submits the Site Plan Application, fee, and drawings.
- July 17, 2022: The Zoning Administrator deems the Site Plan Application administratively complete and suitable for processing by the Planning Commission under the Zoning Ordinance.
- August 1, 2022: Leelanau Pines attends regular Planning Commission meeting to schedule a public hearing on its Site Plan Application.
- August 2, 2022: Fishbeck submitted a revised site plan for scheduling the public hearing under Section 13.1.D.d of the Zoning Ordinance.
- August 26, 2022: Required public hearing held on Site Plan Application under Section 13.1.D.d of the Zoning Ordinance.
- September 19, 2022: Fishbeck submits a final site plan and written responses to public and planning comments for consideration under Section 13.1.D.e of the Zoning Ordinance.

- September 21, 2022: Planning Commission schedules and hold special meeting to consider findings of fact under Section 13.1.D.e of the Zoning Ordinance.
- October 3, 2022: Planning Commission completes consideration of findings of fact and votes to deny Site Plan Application.
- October 15, 2022: Deadline for Planning Commission decision on Site Plan Application under 90-day requirement in Zoning Ordinance.

In addition to the dates in the timeline above, Leelanau Pines also provided additional submissions to the Planning Commission with requested supplemental information on June 20, June 21, June 23, July 7, August 25, and September 30. Leelanau Pines spared no effort in working to answer each and every question and request for clarification was posed during this process.

In considering this appeal, it is also important for the Zoning Board of Appeals to understand the significant concessions that Leelanau Pines made during the Site Plan Application review process (pre-application conference, preliminary site plan review, and final site plan review steps). Even though many of the concerns regarding the proposed increase in campsites came from non-residents, Leelanau Pines agreed to significantly reduce the scope of its planned expansion, removing 113 expansion sites from its proposal. Likewise, in response to concerns regarding boat traffic and associated environmental impacts, Leelanau Pines (1) agreed to require guests to register their boat and read and sign an agreement to follow proper boat safety and wash protocol, (2) reduce the improvement footprint along the waterfront to improve tree preservation and protect scenic views, (3) proposed to consolidate the two existing launch points into a single boat launch, and (4) agreed to implement a mandatory washing station – only the second one of its kind on Lake Leelanau – to help combat the threat of invasive species. *See* September 30, 2022 Transmittal to Planning Commission, attached as **Exhibit B**.

Leelanau Pines also agreed to remove a proposed waterside patio adjacent to the camp store in response to concerns about development on the shoreline, and it agreed to remove a proposed

elevated boardwalk and fishing piers in response to general (unsubstantiated) concerns about impact to wetlands. Thus, while the Planning Commission criticized Leelanau Pines for submitting “revised” Site Plan Applications that the Planning Commission claimed complicated and confused the review process, in every case, these revisions scaled back or reduced the scope of the proposed development, simplifying the Planning Commission’s review.

In addition to its submittals to clarify certain points in its Site Plan Application at the request of the Planning Commission and its significant reductions in the scope of its proposed development, Leelanau Pines also presented the Planning Commission with an extensive document that answered dozens and dozens of questions that had been posed by the Planning Commission and through public comment during the September 14, 2022 public hearing. A copy of Leelanau Pines’ detailed responses to questions related to environmental concerns, boat and water traffic concerns, camp operation concerns, road traffic impact concerns, social and physical infrastructure concerns, pollution and neighboring property concerns, along with several other topics, is attached hereto as **Exhibit C**. This submission was not required, but was voluntarily provided with significant effort as part of Leelanau Pines’ ongoing efforts to resolve any questions or concerns regarding the development. Notably, the Planning Commission failed to review or even address any of this information during its final deliberations on October 3, 2022.

Finally, several aspects of the October 3, 2022 Planning Commission meeting warrant further attention on appeal. First, it is noteworthy that the Planning Commission 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 Planning Commission also refused Leelanau Pines’ offer to waive any requirement that site plan approval occur at a regular meeting, which would have afforded the Planning Commission

additional time and opportunity to schedule a special meeting on or before the 90-day deadline expired on October 15, 2022. It is now clear that the Planning Commission had no interest or need for further fact-finding, as it had already made up its mind before it engaged in its so-called deliberations on October 3, as is evidenced by the 15-page motion denying the Site Plan Application that the Planning Commission prepared before the October 3 meeting.

Second, the Planning Commission's preparation and drafting of the 15-page motion denying the Site Plan Application *before* the October 3 meeting is itself quite noteworthy, as it demonstrates that the Planning Commission put the proverbial cart before the horse: it made up its mind before it was supposed to have engaged in deliberations and findings of fact. Just as alarmingly, the Planning Commission did not bother to amend or correct the 15-page motion even when it was presented with contrary facts. Instead, the Planning Commission forbade Leelanau Pines from providing any further information or clarification midway through the fact-finding session.

On that latter point, the Planning Commission went so far as to forbid the Township Zoning Administrator from seeking information from Leelanau Pines or for Leelanau Pines to provide points of clarification, even when information was readily available to answer open questions in the findings of fact. In hindsight, it is now easy to see that the Planning Commission's ire was due to the fact that the few points of information and clarification that Leelanau Pines was initially permitted to provide directly contradicted the already-prepared 15-page motion, which was in turn complicating or weakening the Planning Commission's premeditated plan to deny the Site Plan Application. Once Leelanau Pines' ability to respond to questions or correct false statements was shut down, the Planning Commission completed the "fact-finding" process in short order and then introduced and passed the motion to deny the Site Plan Application.

III. LAW AND ARGUMENT

A. STANDARD OF REVIEW

Section 13.1(M)(c) of the Zoning Ordinance provides the standard of review for the Zoning Board of Appeals:

The Zoning Board of Appeals 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.

Id. (emphasis added). As is discussed below, Leelanau Pines demonstrated that the Site Plan Application complied with all of the requirements of Section 13.1(G), and Leelanau Pines requested conditional approval of the Site Plan subject to Leelanau Pines obtaining or satisfying any necessary local, state, or federal requirements. The Planning Commission's denial of the Site Plan Application must therefore be reversed on appeal.

B. THE LEELANAU PINES SITE PLAN APPLICATION SATISFIED THE APPLICABLE ORDINANCE REQUIREMENTS AND SHOULD BE APPROVED WITH CONDITIONS.

Section 13.1(C) of the Zoning Ordinance instructs the Planning Commission in its review of site plans:

The Planning Commission as specified in this Section, shall review and approve, review and approve with conditions, or review and deny all site plans submitted under this Ordinance. Each site plan shall comply with the "Standards for Granting a Site Plan Approval" as described in [sic] H of this Section.

Id. (emphasis added). Section 13.1(G) of the Zoning Ordinance sets forth the 17 separate "Standards for Granting Site Plan Approval" that are referenced in Section 13.1(C).

Several of the standards in Section 13.1(G) relate to approvals issued by other local, state, or federal bodies. For this reason, the Zoning Ordinance specifically authorizes the Planning Commission to conditionally approve site plan applications subject to the applicant obtaining such

other local, state, or federal approvals, permits, or authorizations as may be required. As an example in this case, the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") issues campground licenses, but licensure application is allowed only after the approval of a site plan. Thus, in order to satisfy the standard in Section 13.1(G)(17), which requires an applicant to obtain any necessary state and federal permits, site plan approval must necessarily be made conditional.

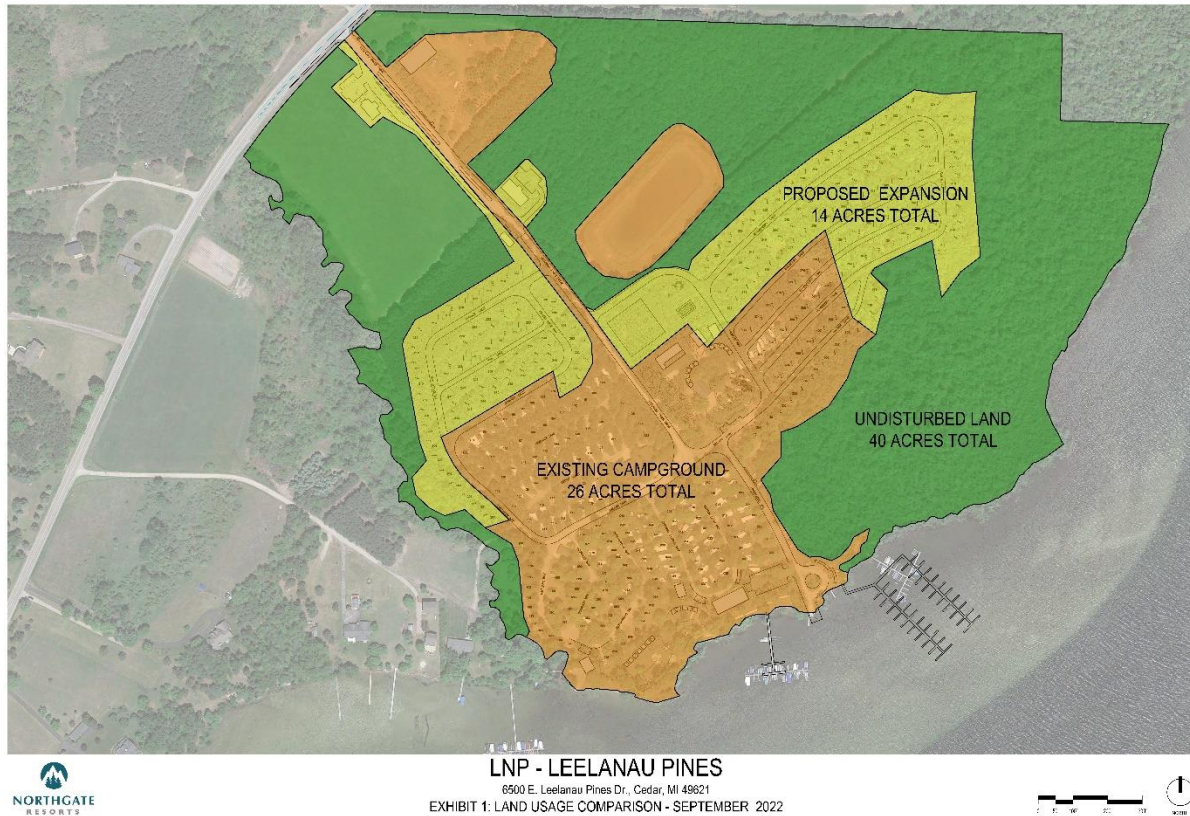
The Township Zoning Administrator confirmed during the October 3 meeting that applicants are typically granted conditional approval subject to demonstrating compliance with applicable local, state, and federal requirements and permitting, which, again, is specifically contemplated in the Zoning Ordinance:

Final Site Plan approval shall be considered by the Planning Commission at a regular meeting. The Planning Commission shall indicate in writing that all requirements of the Ordinance, including those of other reviewing agencies within Centerville Township, have been met, including any conditions that may be necessary.

See Zoning Ordinance at Section 13.1(D)(e) (emphasis added). Consistent with this standard practice, Leelanau Pines specifically requested both verbally and in writing that it be afforded conditional approval. With such conditions, Leelanau Pines demonstrated compliance with each of the 17 standards for site plan approval:

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 has a total of 40 acres of undeveloped land with approximately 3,000 linear feet (0.5 miles) of lake frontage. Out of this total area, only approximately 14 acres will be used as part of the proposed expansion and improvement project, as is illustrated on this map of the property which was provided to the planning commission:



As can be seen, the majority of the expansion is maintained in the center of the property to maximize distance from adjacent properties. Moreover, much of the proposed expansion will occur on areas of the property that have already been developed or are in use. For example, the check-in building is proposed to be constructed in an area where an open lawn currently exists, the RV sites are proposed to be placed in part in existing parking and man-made pine tree plantation areas, and the MLPS, sports courts, mini golf, open-air pavilion, pool restrooms, and jump pillow will be placed where maintenance facilities, man-made pine tree plantations, and a jump pad currently exist.

In short, the proposed expansion mimics and expands upon the current layout, which has been in use for decades. The proposal is rationally organized within the existing approved layout, and it will not in any way "impede the normal and orderly development or improvement of surrounding property for uses permitted in [the Zoning Ordinance]." In addition, a campground is, by its very nature, a rural land use. A campground saves many trees, respects topography, and preserves water features more than most non-residential land uses to achieve maximum natural feature conservation and guest enjoyment.

There can also be no reasonable dispute that the expansion is compatible with the neighboring properties. One common definition of compatibility is "capable of existing together in harmony." There is no question that the existing campground

land use and the neighboring residential and agricultural uses have achieved this co-existent harmony for several decades and will continue to do so. More specifically, Northgate's immediate neighbor to the south and west sold a portion of the former campground property to Northgate, and intentionally retained the portion of land (also zoned Commercial Resort) along the campground on the south side of Rice Creek and raised no objection to the planned improvements. Northgate's immediate neighbor to the north currently consists of agricultural fields, and two residential lots with an access easement (also zoned Commercial Resort), which will be protected by retaining an existing vegetative buffer.

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.

The Leelanau Pines expansion will occur in previously used or 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. Tree preservation areas are provided on the landscape drawings L101-L104 and are scattered throughout the campground to protect the resource to the greatest extent possible and enhance the camping experience. The Site Plan Application also includes a grading plan. Notably here, the proposed development areas are generally flat and require minimal grading.

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

Leelanau Pines specifically discussed the location and sizing of the stormwater management basin with the planning commission and agreed that approval of its Site Plan Application would be conditioned on obtaining final approval from the County Drain Commissioner. Thus, the final Site Plan Application fully conforms 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.

The Site Plan Application demonstrates on pages C300-C303 that the proposed development will not change the existing drainage patterns with respect to the removal of stormwaters from neighbors. The existing topography of our site shows that all stormwater moving down-gradient from our 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.

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.

As was shown above, the majority of the expansion and the proposed amenities are maintained in the center of the property to maximize distance from adjacent properties. With respect to sound privacy, the Township Zoning Administrator noted on the record that he is not aware of the Township receiving a single noise complaint in the more than twenty years that he has been in his position. See September 21, 2022 Minutes. Given the location of the expansion area, the accommodation of the neighbor to the south who retained some property, and the extensive buffer to the north there is no evidence or reason to believe that noise will become an issue, and there was no evidence presented of any particular neighboring property that could even be potentially impacted by noise concerns. The campground maintains quiet hours from 10:00 p.m. to 8:00 a.m., and those hours are strictly enforced, for good reason. Leelanau Pines depends on positive user reviews to maintain existing business and generate referrals and new business, and its campers expect that quiet hours for families will be maintained. With the expansion, the campground will have 24-hour staff on site, and Leelanau Pines has already increased the numbers of employees (who enforce campground rules like the quiet hours) under new ownership.

With respect to lighting, the Site Plan Application was specifically discussed with the planning commission. Drawing L101 and L103 make clear that outdoor lighting will be dark sky approved with full cut-off fixtures. Lighting will be used to enhance the camping experience and improve safety. It will comply with local, state and federal codes, and will promote dark night sky preservation. Outdoor illumination will be low intensity and will be provided only where necessary for safety.

Finally, Leelanau Pines has an existing landscape buffer, and there were no comments received in any of the meetings indicating that the existing buffer is insufficient or that any of the adjacent properties had concerns regarding visual privacy. With that said, the Site Plan Application shows enhancements of the existing buffer in key areas along the road and lake to further reduce any perceived visual impact.

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 agreed that approval of its Site Plan Application would 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 8/29/22 and resubmitted to the Chief on 9/12/22. At the time of the Planning Commission decision, the Chief had not provided

further comment. Thus, the final Site Plan Application will have all buildings arranged 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.

The campground has certain designated pedestrian walkways, including sidewalks and walking trails, which are insulated from vehicle traffic, as is demonstrated in the Site Plan Application. The specific pedestrian accommodations for access to the site amenities (check-in building, courts, pillow jump, pavilion, minigolf, splash pad, boat launch, etc.) are shown and labeled on C201, C202, and C203. Moreover, there is limited vehicle traffic within the campground in general. Upon checking in, guests park at their campsite and primarily bicycle or walk to access the property as is reasonable and customary in campgrounds.

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 provides a dumpster enclosure behind the maintenance building on the drawing C201 which does not directly face a residential district or thoroughfare. Nevertheless, Leelanau Pines specifically confirmed with the Planning Commission at the October 3 meeting that it would comply with this screening height requirement as a condition of approval.

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.

Sheet L101 of the Site Plan Application states that "the intent of the campground is to have limited outdoor lighting in keeping with the camping experience." Stargazing and viewing the dark night sky are prime camping activities that Leelanau Pines will promote and preserve. The Site Plan Application 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. With respect to new lighting, three post-mounted exterior lights are proposed in the Site Plan Application on drawing L103, which will be photo-cell lights. The Site Plan Application makes clear that these lights will not impede the vision of traffic on any roadway and will not impact any adjacent properties.

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.

The proposed expansion was designed to mimic and naturally continue from the existing campground, which respects the pattern of existing streets and pathways. Moreover, Leelanau Pines agreed that the approval of its Site Plan Application would 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. Thus, the final Site Plan Application will have all streets developed in accordance with the Centerville Township Private Road Ordinance for Commercial Driveways or the Leelanau County Road Commission specifications, as required.

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 agreed that the approval of its Site Plan Application would 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. A detailed traffic impact study and revised driveway entrance geometry was submitted to the LCRC and the Planning Commission supporting the proposed traffic accommodations shown on the site plan. Thus, the final Site Plan Application will have all streets developed in accordance with the Centerville Township Private Road Ordinance for Commercial Driveways 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.

The Planning Commission pointed out that this requirement should be not applicable as the County Road 643 is not a "M" route and MDOT therefore has no jurisdiction. Leelanau Pines agreed that the approval its Site Plan Application would be conditioned on approval from the Leelanau County Road Commission regarding all aspects of the project within those agencies' jurisdiction, including compliance with driveway and traffic safety standards. Thus, the final Site Plan Application fully conforms to the driveway and traffic safety standards of 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.

Leelanau Pines agreed that the approval of its Site Plan Application would 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 safety 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 Centerville Township Ordinance. These agencies have provided feedback which has been incorporated into the Site Plan Application accordingly. Thus, the final Site Plan Application fully conforms 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.

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 Planning Commission decision, the Drain Commission had not provided further comment. Leelanau Pines has agreed that the approval of its Site Plan Application would be conditioned on compliance with the Leelanau County Soil Erosion and Sedimentation Control Ordinance. Thus, the final Site Plan Application fully conforms 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.

Leelanau Pines agreed that the approval of its Site Plan Application would be conditioned on compliance with the requirements of the Michigan Department of Public Health and the District Health Department. Thus, the final Site Plan Application fully conforms 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.

Leelanau Pines agreed that the approval of its Site Plan Application would be conditioned on compliance with all applicable state and federal statutes. Thus, the final Site Plan Application fully conforms 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.

Leelanau Pines agreed that the approval of its Site Plan Application would be conditioned on compliance with all applicable local, state, and federal statutes and on its receipt of necessary state and federal permits. Thus, the final Site Plan Application will be based on the receipt of any necessary state and federal permits.

Thus, as is summarized above, and is conveyed in great detail in the Site Plan Application, Leelanau Pines has satisfied (or, where necessary, can and will satisfy) each and every one of the

17 Zoning Ordinance standards for granting site plan approval. Moreover, the Planning Commission provided no justification for its refusal to afford Leelanau Pines with conditional approval subject to Leelanau Pines satisfying all applicable local, state, and federal requirements. The Township Zoning Administrator confirmed on the public record that this is how other applications are routinely treated, and there is no justification for the Planning Commission treating Leelanau Pines differently. For these reasons, pursuant to Section 13.1(M)(c) of the Zoning Ordinance, the Site Plan Application should be conditionally approved as a matter of law.

C. THE FINDINGS IN THE PLANNING COMMISSION'S MOTION DENYING THE SITE PLAN APPLICATION ARE UNSUBSTANTIATED AND INCORRECT.

As detailed above, Leelanau Pines demonstrated to the Planning Commission that it would comply with each and every one of the 17 Zoning Ordinance standards. The Planning Commission did not analyze this information, question it, request or recommend further changes, or even refute it. Instead, the Planning Commission simply disregarded that information altogether and presented its own set of "findings," by way of a 15-page motion that the Planning Commission prepared before it even finished its deliberations and fact-finding review. Not surprisingly, the Planning Commission's motion denying the Site Plan Application is replete with factual inaccuracies and unsupported contentions. Indeed, Leelanau Pines can demonstrate that every single factual contention in the Planning Commission's motion is unsupported and/or incorrect:

1. "Applicant has not provided sufficient information to demonstrate that the site plan will be harmoniously and efficiently organized due the presence of a shallow water table, presence of extensive wetlands, and presence of sensitive wetland/shoreline areas (it is noted that the application lists the subject parcel as 80.08 acres in size and also as 72.74 acres in size due the presence of a "swampy nature of shore," i.e., a wetland shoreline)." (emphasis added)

Leelanau Pines Response: This contention is completely unsupported. The Planning Commission does not even attempt to explain how the proposed project – which is to largely occur in the center of the property over areas that are already developed or used – would implicate a shallow water table or impact wetlands or the shoreline area.

It is wholly insufficient for the Planning Commission to make such a conclusion without the findings to support it. And there are no such findings, as the information on the record demonstrates just the opposite. While Leelanau Pines originally proposed an elevated boardwalk and fishing piers in a portion of the wetlands area, which would have been developed pursuant to all required local and state permitting, Leelanau Pines removed those elements from its plan. Second, the Site Plan Application 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. Moreover, the Site Plan Application calls for shoreline stabilization and improvement on the 1,000 linear feet of existing used shoreline, which is suffering from extreme erosion due to wave-action.

With respect to the water table, the planning commission provided no data to support the assertion that the improvements would impact it. The buildings, amenities and RV sites are depicted on drawings C300-C303 to be “slab-on-grade” style structures and gravel pads with only foundations being provided below grade. Buried sealed utilities are reasonable, customary, and have not been shown to impact groundwater quality or movement in similar campgrounds. The septic treatment lagoon is regulated through EGLE and has monitoring wells with annual inspections available on-line.

2. "Section 4.4 Schedule of Zoning Regulations limits “Maximum Lot Coverage” within the Commercial-Resort District to 25%. Data submitted by the Applicant states maximum “building lot coverage” is 3.6 acres/80.08 acres or 4.54%. Applicant’s 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, which count towards the maximum lot coverage calculation. When these items are accounted for, the total proposed lot coverage exceeds 25% (see Applicant’s 9/30/22 site plan, Sheet C200)."

Leelanau Pines Response: This contention is incorrect, and it was proven as such on numerous occasions through Leelanau Pines' submissions. The terms *coverage* and *lot coverage* are not defined in the Zoning Ordinance (as noted by the Zoning Administrator during the proceedings), and are only used in a handful of instances, primarily with respect to vertical structures such as towers and antennas. The usage in Section 4.4, which is the only section applicable to the use at issue, relates solely to existing and proposed "building" square footage. Under this proper reading of the Zoning Ordinance, there is no dispute that the total proposed lot coverage falls well below 25%.

There is no language in the Zoning Ordinance that could even arguably extend this provision to apply to driveways and parking areas, as the Planning Commission contends. And even assuming, for purpose of argument, that there was some ambiguity, "[w]hen interpreting the language of an ordinance to determine the extent of a restriction upon the use of the property, the language must be interpreted, where doubt exists, in favor of the property owner." See *Fremont Twp v McGarvie*, 164 Mich App 611, 614; 417 NW2d 560 (1987). Here, interpreting any doubt in favor of Leelanau Pines, as is proper, results in lot coverage that is a tiny fraction of what is allowed.

Moreover, out of an abundance of caution, Leelanau Pines considered the argument that a trailer or RV could be included in “lot coverage” for comparison purposes. Under that scenario, if all 337 campsites are occupied by the largest trailer possible (10’x40’ = 400 sf) then there would be an additional 134,800 sf (337 x 400 sf), which equates to 3.09 acres of lot coverage from trailers. That acreage, when combined with 23,698 sf (0.55 acres) of both existing and proposed buildings, would bring the total lot coverage to 158,498 sf or 3.64 acres out of 80.08 total acres, for a total lot coverage of 4.54%, assuming that the Planning Commission's erroneous interpretation of lot coverage applied. This 4.54% is of course well below the allowed 25% lot coverage maximum in the Commercial Resort District.

Finally, the Planning Commission also committed the separate error – again – of not supporting its (erroneous) findings. It did not explain which section of the ordinance contradicted Leelanau Pine’s calculations, or how it interpreted the ordinance to define and calculated lot coverage to reach its erroneous conclusion (or even provide a calculation at all).

3. "The Applicant has not provided adequate storm water management detail to the Planning Commission and has not applied for Parts 31 or 303 permits for storm water management or other site plan elements proposed to impact wetlands or surface waters."

Leelanau Pines Response: This incorrect finding simply represents a failure to review Site Plan Application materials. Storm water management detail was included in the Site Plan Application on page C300, and it was also submitted to the County Drain Commission with supplemental materials for their review and comment. Moreover, this topic was also directly discussed with the Planning Commission at the September 21 meeting. Leelanau Pines specifically reviewed the detention basin sizing depicted in its drawing C300 and confirmed to the Planning Commission that the calculations had been submitted to the Drain Commission for review. The Planning Commission did not bother to edit its pre-prepared motion and pre-meeting findings to correct this point to reflect the factual record.

4. "Vegetative screening/buffering in and of itself does not adequately mitigate nuisance sound including RV generator use (i.e., barriers such as adequately landscaped earthen berms may adequately provide reasonable visual and sound privacy). The application does not provide adequate plans to manage/mitigate noise, visual impact, outdoor and other lighting impact (also See Section 3.18 Outdoor Lighting Ordinance), and otherwise adequately protect privacy along boundaries with adjoining properties zoned R-1 and AG."

Leelanau Pines Response: This is another prime example of a completely unsupported "finding." There is no evidence in the record that there will be any problems related to noise, campfire smoke, or light along boundaries with adjoining parcels. It cannot be overstated that this is an existing use – a campground that has been in operation for several decades. There have been no complaints or concerns raised from the adjoining parcels at all, either historically or with respect to the proposed expansion, let alone

related to noise, campfire smoke, or light. That fact alone demonstrates that the existing screening/buffering is sufficient, particularly where the planned expansion will primarily occur in the center of the property, as depicted on the map above. Moreover, the only specific sound concern raised, 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, and even though no concerns have been raised by any adjoining parcels, the Site Plan Application does call for enhanced screening and buffering, and the landscaping plans L101, L102, and L103 clearly depict the existing vegetation to remain as a buffer around the perimeter of the campground. The Site Plan Application also specifically recites the intention to have limited artificial outdoor lighting – consistent with the camping experience. The limited outdoor lighting on site will promote dark night sky preservation and will be low intensity.

5. “The application 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.”

Leelanau Pines Response: This contention is factually incorrect and disproven by reviewing the Site Plan Application. Leelanau Pines provided a 22-page drawing set, and its Site Plan Application was considered administratively complete in July 2022. The Planning Commission thereafter never once indicated that the Site Plan Application was deficient on these points, and for good reason – it is not. The set of layout drawings C200, C201, C202, and C203 show the locations of proposed improvements, including areas that will be paved, all on-site parking, building permits, and other proposed development areas. The landscape plans L101-L103 graphically depicts tree areas that will be retained and new hardwood trees that will be added. The Site Plan Application materials also includes a grading plan. And Leelanau Pines intentionally planned for the improvements to be made in areas of its property that were already used or developed. As such, the areas in question are generally flat, requiring minimal grading.

6. "The application as submitted and revised does not adequately demonstrate that pedestrian circulation will be completely or as reasonably possibly isolated from vehicular traffic. Several letters from campers have been submitted to the public record that indicate speed limits are not currently enforced and there is no insulation between the pedestrian circulation system and the vehicular circulation system. As proposed, the expansion will not improve pedestrian circulation systems."

Leelanau Pines Response: Speed limits are enforced at the property, and the letters from disgruntled former campers who oppose the expansion suggesting otherwise are simply false. To that point, the new owners added speed bumps upon acquiring the property to enhance vehicular speed control. Leelanau Pines is not aware of any pedestrian/vehicle incidents ever occurring at the property, and certainly not under the current ownership.

In further response, it is not clear to what the Planning Commission is referring when it compares the "pedestrian circulation system" to the "vehicular circulation system" and suggests that there is no insulation between those two undefined systems or that the expansion will not improve the undefined pedestrian circulation system. This is an existing campground. There are defined roadways for vehicle traffic, and defined parking spaces for vehicles. Upon checking in, guests park at their campsite and primarily bicycle or walk to access the property. There are also pedestrian walking trails that are completely insulated from vehicular traffic. Likewise, there are sidewalks that connect certain amenities, and those too are completely insulated from vehicular traffic. The specific pedestrian accommodations for access to the site amenities (check-in building, courts, pillow jump, pavilion, minigolf, splash pad, boat launch, etc.) are shown and labeled on C201, C202, and C203. The Planning Commission did not raise any specific concerns related to those pedestrian accommodations. The Planning Commission likewise did not indicate how or why the current pedestrian circulation systems need to be improved.

This is another example where the Planning Commission simply recited the applicable standard and made an unsupported contention that Leelanau Pines failed to meet that standard, while ignoring the information in the Site Plan Application.

7. "The application as submitted and revised does not adequately demonstrate compliance to . . . [the] requirement [that] . . . [a]ll 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 feet in height."

Leelanau Pines Response: This contention is demonstrably false. Leelanau Pines specifically stated at the October 3 meeting that it would comply with this screening height requirement for the dumpster enclosure. The Planning Commission ignored that information and did not bother to change this portion of its pre-prepared motion. And the Planning Commission then cut off/prohibited any further opportunity for the Zoning Administrator or Leelanau Pines to correct these types of false assertions at the meeting.

8. "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."

Leelanau Pines Response: This is another prime example of a Planning Commission that reached a predetermined conclusion and refused to let the facts get in the way.

The Site Plan Application shows and labels three proposed exterior lights. Three new lights. On an eighty-acre parcel. The Planning Commission did not – and cannot – explain how the addition of these three lights will deflect onto adjoining properties (which properties? how? where?) or not be protective of the dark night sky. On that latter point, sheet L101 of the Site Plan Application states that "the intent of the campground is to have limited outdoor lighting in keeping with the camping experience." Stargazing and

viewing the dark night sky are prime camping activities that Leelanau Pines will promote and preserve. The Site Plan Application 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.

Here again, the Planning Commission's contention is demonstrably false and disproven by the Site Plan Application and specific information offered by Leelanau Pines at the August 29, September 21, and October 3 meetings, which the Planning Commission simply ignored.

9. "Based on information as provided by the Applicant, the Centerville Township Planning Commission finds that the expansion of the Leelanau Pines Campground, as proposed, is in direct conflict with the Purpose of the Centerville Township Zoning Ordinance."

Leelanau Pines Response: This is a completely unsupported conclusion that merely represents the personal opinions of the members of the Planning Commission. No actual, direct conflict is even identified or factually supported, and for good reason. Leelanau Pines is proposing the improvement and expansion of its existing campground property use that is specifically provided for by special approval in the Commercial Resort Zoning District.

That point bears repeating: the Planning Commission would have the Zoning Board of Appeals believe that the improvement and expansion of an existing, approved use that has been in place for decades and decades is somehow in "direct conflict" with the Zoning Ordinance, with no further explanation or analysis. This point alone is more than sufficient to show that the Planning Commission completely abandoned any objective, rational fact and drawing based analysis in favor of personal biases and deference to the most numerous and loudest voices in the room.

The Planning Commission's motion also improperly relied upon policy statements in the Township Master Plan – as opposed to the requirements in the Zoning Ordinance – in denying the Site Plan Application. This represents yet another error by the Planning Commission. The 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, and for good reason. As commentators note, under Michigan law, master plans represent policy statements, while zoning ordinances represent the law:

The zoning ordinance is a law with penalties and consequences for not following it. A master plan is a policy document that expresses intent. It is not an enforceable document and is not law. A zoning ordinance and a master plan are not the same

thing. A master plan is not enforceable, and attempting to do so can get a community in trouble.

See "Difference Between a Zoning Ordinance and Master Plan," Michigan State University Extension, October 10, 2019 (emphasis added), attached as **Exhibit D**. See also *Cole's Home & Land Co, LLC v City of Grand Rapids*, 271 Mich App 84, 90-92; 720 NW2d 324 (2006) (expressly rejecting the defendant's reliance on its master plan as a grounds for denial of the plaintiff's plat under the provisions of the Land Division Act, stating that a master plan contains only "general guidance," and is not a "municipal or county ordinance[]" or published rule[]," and further noting that such mere guidance "does not regulate or govern conduct").

Townships and other municipal bodies may well incorporate their policy goals into specific zoning ordinance requirements, allowances, or prohibitions, but they cannot borrow language from the master plan to add additional requirements to a particular site plan application that do not exist in the zoning ordinance, which is exactly what the Planning Commission is attempting to do here. In particular, the Planning Commission claims that certain language in the Township Master Plan prohibits any growth or expansion of either of the two existing campgrounds in the Commercial Resort zoning district. Even if the Planning Commission's interpretation of that provision of the Master Plan was correct – and it most certainly is not³ – the Zoning Ordinance itself contains no such prohibition on growth or expansion. To the contrary, the Zoning Ordinance provides for the

³ Because the Master Plan cannot be used to impose additional requirements on Leelanau Pines, it is not necessary for the Zoning Board of Appeals to consider the Township's interpretation of the provision in question. However, the provision cited by the Township, which references that the Master Plan "does not anticipate expansion of these uses or this district" refers to resorts in general, and cannot be read as a prohibition on a particular resort business. Moreover, the Planning Commission's false interpretation also flies in the face of multiple provisions that support the Site Plan Application. This includes the provision in Section 8.3.2 that notes that the two resorts on Lake Leelanau "are thriving and contribute to our tourism economy" and that "their uses should continue to be supported through this district."

exact opposite: it allows for campground uses in the Commercial Resort District that meet the Zoning Ordinance requirements, without any quantified limitation on the number or size of campgrounds or campsites and amenities allowed. For this reason, the Planning Commission clearly erred in partially basing its denial on this or any other supposed requirement from the Township Master Plan.

D. THE PLANNING COMMISSION VIOLATED LEELANAU PINES' PROCEDURAL AND DUE PROCESS RIGHTS.

Finally, the Planning Commission's decision is also subject to reversal on the independent basis that the Planning Commission violated Leelanau Pines' rights, including its due process rights and rights to a fair and impartial proceeding. Both the state and federal constitutions provides that no person shall be deprived of life, liberty, or property, without due process of law. *See* U.S. Const. Amend. V, XIV; Mich. Const. art I, § 17. These due process clauses protect the rights of persons, including corporations and other business entities, from deprivation at the hands of arbitrary and capricious government actions. The Planning Commission's conduct in this case gives rise to multiple due process violations, and its process in denying the Site Plan Application is the very definition of arbitrary and capricious.

In particular, the Planning Commission actively interfered with Leelanau Pines' ability to provide information, correct the Planning Commission's misstatements, or even answer specific questions. This pattern of conduct started at the September 21, 2022 meeting, when the Planning Commission interrupted the portion of the agenda set aside for findings of fact to re-open public comment, which ended any dialogue between Leelanau Pines and the Planning Commission. This misconduct continued, and became much more severe, at the October 3 meeting, when the Planning Commission prohibited Leelanau Pines from providing input and even forbade its own Zoning Administrator from seeking clarification from Leelanau Pines, even as the parties sat

together on the same stage.⁴ Indeed, the Zoning Administrator repeatedly asked whether he could seek clarification from the Leelanau Pines' representatives who were seated a few feet away, and he was repeatedly instructed by the Planning Commission that he could not.

The Planning Commission also announced that the October 3 meeting would end at 9:00 pm (even though other meetings had gone much later), and it then used much of that meeting time to discuss topics unrelated to deliberations and fact-finding, including using nearly a half hour of read its pre-prepared 15-page motion. As a review of the video of the meeting reflects, the Planning Commission significantly and artificially limited the time to actually review the Site Plan Application, and then used the scarcity of time that it created as an excuse to cut off further engagement and participation from the Leelanau Pines' representatives in attendance.

The Planning Commission also violated Leelanau Pines' constitutional due process and equal protection rights by singling Leelanau Pines out for disparate treatment, failing to consider a conditional approval of Leelanau Pines' Site Plan Application. Leaving no question on this point, the Zoning Administrator specifically noted at the October 3 meeting that the Planning Commission was treating Leelanau Pines differently than other similarly-situated applicants. If the Zoning Board of Appeals does not reverse the Planning Commission, Centerville Township will answer to the Circuit Court for this misconduct and be responsible for the damages and attorney fees that Leelanau Pines incurs.

The record reflects numerous other procedural irregularities and violations, many of which are coming to light in real time as Leelanau Pines receives responses to its FOIA requests. This

⁴ Leelanau Pines downloaded a video of the October 3 meeting, and a copy of that file will be provided with Leelanau Pines' electronic submission to the Zoning Board of Appeals. Leelanau Pines is also having the video transcribed, and it will provide that supplemental information to the Zoning Board of Appeals once completed.

includes (1) the Chairman of the Planning Commission hiring an outside consultant who is vocally opposed to the Site Plan Application without first seeking consensus from the Planning Commission or input from the Zoning Administrator; (2) *ex parte* communication between the Planning Commission Chairman and at least one member of the Zoning Board of Appeals regarding this matter; (3) modifying the set meeting agendas during the public meetings to the disadvantage of Leelanau Pines; and (4) drafting a motion to deny the Site Plan Application before its review and deliberations were complete – or had hardly even begun. Much more can and will be said about that last point, but the Zoning Board of Appeals should consider the fact that for all of the claims of insufficient or missing information in the pre-prepared motion, the Site Plan Application was deemed administratively complete on July 17, 2022, and every single subsequent request for information or clarification was promptly provided. Taken together, this 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.

Leelanau Pines recognizes that views will diverge on almost any proposed development, and it also expects that the development process will lead to compromise as differing views are articulated and advanced. But Leelanau Pines also expects a fair process and an impartial decision, and it was denied both here. This matter should end with the Zoning Board of Appeals reversing the Planning Commission and conditionally approving the Site Plan Application subject to outside agency approvals and permits. Such a decision will save the Township considerable time and expense, as Leelanau Pines is resolved to enforce and protect its rights, including its lawful rights to use and develop its property.


IV. CONCLUSION

Based on all of the foregoing, Appellant, Northgate Leelanau Pines, LLC, respectfully requests that the Centerville Township Zoning Board of Appeals reverse the decision of the Centerville Township Planning Commission and conditionally approve the Site Plan Application, along with such further relief as would be just and equitable.

Respectfully submitted,

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Dated: October 21, 2022

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Exhibit A

Zoning Board of Appeals Handbook

Published by the Michigan Municipal League

Written by Steve Langworthy
LSL Planning
Community Planning Consultants

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About the Author:

Steve Langworthy is retired from the firm of LSL Planning. His more than 25 years of planning experience includes six years as the Planning Director and Zoning Administrator for the city of Kentwood and extensive experience in a variety of communities as a consulting planner. Steve authored numerous master plans, zoning ordinances, and special studies for communities of all sizes and levels of government.

Forward:

Along with the other appointed and elected municipal officials in your community, members of a zoning board of appeals accept responsibility to protect the personality and vitality of your community. To carry out their duties, these volunteers must digest a mountain of information and negotiate a maze of delicate situations.

This handbook was written to help new zoning board of appeals members understand the scope of their role and responsibilities, and to provide them with a basis of understanding in order to capably perform their duties within the law. Topics covered include: the role of the zoning board of appeals as a whole and the roles and responsibilities of individual members; an explanation of the Michigan Zoning Enabling Act; the ZBA's relationship to other municipal bodies and individuals; how to identify and handle conflicts of interest; how to interpret a zoning ordinance; types of variances; preparing for and conducting meetings; and guidelines for making tough decisions.

As the state association of cities and villages, the Michigan Municipal League is committed to providing a variety of educational resources for both elected and appointed municipal officials to assist them in doing their jobs. The League is a non-partisan, nonprofit association working through cooperative effort to strengthen the quality of municipal government and administration.

This handbook is the latest step in our continuing effort to help municipalities meet the daily challenges of governing. Our thanks go to community planning consultant Steve Langworthy of LSL Planning for developing this text. His knowledge, creativity, insight and patience are most appreciated. Contributing to the legal accuracy of this book were attorney Gerald A. Fisher of Kohl, Secrest, Wardle, Lynch, Clark & Hampton and League Associate General Counsel Sue Jeffers. The Information and Publications staff of the League added a measure of common sense and smooth flavor.

The League's goal is to produce publications that will help to make your job easier. We welcome suggestions for additions to this publication and your comments in regard to all of our publications. Let us know how we are doing and how we can be of further assistance.

Daniel P. Gilmartin
Executive Director

Introduction—The Job

Congratulations!

§ 1 Your appointment to the zoning board of appeals (ZBA) is one that carries a significant responsibility for protecting your community and its future.

This handbook will provide you with some hints about how to be an effective member of the zoning board of appeals. It will tell you about the laws and regulations governing zoning and provide information about some of the expectations and methods you may use to prepare, make and enforce your decisions.

During your term you will encounter a wide variety of zoning related problems. Knowing some of the intricacies of zoning is only a part of your responsibilities. You will also learn how to deal with people, both applicants and neighbors, with patience, tact and diplomacy. Knowing how to act in stressful circumstances is one of the most important parts of the job, and one that is best learned through experience. The *Zoning Board of Appeals Handbook* is your head start on learning how to deal with these difficult situations.

You are encouraged to seek other sources for learning about the technical details of zoning and related topics. These, too, will be a significant part of your job as a member of the zoning board of appeals. The Michigan Municipal League can suggest a number of documents that can help you on your way, as well as an ongoing series of courses you may find helpful.

What's in a Name?

§ 2 Your zoning ordinance may have given a different name to your board than the zoning board of appeals, such as the Board of Appeals, Board of Zoning Appeals, Board of Appeals and Adjustment or some other

similar name. In townships this should not be confused with the Zoning Commission, which is a derivative of a planning commission. Regardless of the name, the duties and authority of the ZBA are largely the same.

The Job

§ 3 The future of your community will be greatly affected by the decisions you make as a member of the zoning board of appeals. Few voluntary, non-elected appointments have the kind of power granted to the ZBA. This is because it is one of only a few bodies that can permit someone to legally avoid compliance with an adopted ordinance. The exercise of this power is restricted by standards discussed in greater detail below that are to be applied in decision making.

It Begins with a Philosophy

§ 4 Becoming an effective ZBA member begins with a clear philosophy of your approach to the task. Perhaps you had a desire to give something back to the community, or something happened in your neighborhood that disturbed you or you wanted to help people. Most likely, you did not get into the job for the money (you did volunteer, after all).

Regardless of why you decided to accept the appointment, to be an effective member, your participation will require a serious commitment of time and energy, and a serious commitment to the laws governing the decisions of the ZBA.

It may help to understand why the job of the zoning board of appeals was created in the first place.

What is a Zoning Board of Appeals?

§ 5 Early in the history of zoning it was recognized that it was nearly impossible to write a set of regulations affecting the development of land that could be universally applied. Many communities in Michigan and throughout the country had hundreds or thousands of parcels of land to which zoning standards had to be applied. As a result, it was clear that a means of providing relief from the strict requirements of the zoning ordinance was needed for property owners with unique conditions related to their property.

To provide an avenue of appeal, each state's zoning enabling acts required that any community which adopted a zoning ordinance have a zoning board of appeals. The function of the ZBA was to be a quasi-judicial body, to carry out two principal functions:

1. To hear and decide appeals of administrative decisions made in implementing the zoning ordinance; and
2. To hear and decide requests for variances from the strict terms of the zoning ordinance. In addition, the ZBA is occasionally called upon to interpret the provisions of the zoning ordinance.

The Role of the ZBA

§ 6 As a member of the zoning board of appeals, you will be dealing with one of the most enduring elements of society – land. Decisions based on the land nearly always last forever because they are in place regardless of the owner. Therefore, your decisions can have a serious effect on the use and value of land.

At the same time, you will be dealing with people, both applicants and neighbors affected by your decisions. You will find that this can create uniquely challenging

situations. Consequently, your actions must be based on the long-term interests of the community which, in turn, must be guided by the decision-making standards of the zoning ordinance.

Every person who can meet the criteria for relief has the right to seek relief from a zoning ordinance requirement. If the standards used by the ZBA are carefully considered and followed, the integrity of the ordinance should be maintained. However, not following such standards leads to problems. Too often variances are granted simply because no one sees any harm. The ZBA soon gains a reputation for not following its ordinance. One merely has to go to the zoning board of appeals to obtain relief from the ordinance—getting a variance is no problem. Eventually, the offhand granting of variances harms the community's ability to enforce the ordinance. Moreover, poorly supported decisions can, over time, destroy the credibility of the zoning ordinance. It is up to the members of the zoning board of appeals to prevent this by strictly applying the standards of the ordinance.

These decisions will not always be easy. In some instances, you will know the land owners, neighbors or applicants personally. The key to acting in a responsible manner is to act in ways that will allow you to treat each person and property in a fair and consistent manner.

Chapter 1 The Basics

§ 7 In the Introduction we noted that being an effective ZBA member begins with a clear understanding of the job and each member's approach to it. Two important aspects with which you should be familiar are the legal basis for the zoning board of appeals and the relationship between the ZBA and other bodies and officials dealing with the zoning process.

The Zoning Enabling Act

§ 8 All zoning authority is granted by the state through the new Michigan Zoning Enabling Act, (PA 110 of 2006). Counties that have adopted a zoning ordinance have zoning authority over townships (but not over cities or villages) which do not have their own zoning ordinance. Cities, villages and townships that have their own zoning ordinances do not fall under county authority.

The zoning enabling act defines the membership, responsibilities and authority of the ZBA. It also describes general rules for the formation and operation of a zoning board of appeals. The chart on the following page outlines some of the differences in the organization of the ZBA at various levels of government.

Membership

§ 9 Qualifications for membership are generally minimal. Members are only required to be an elector and be representative of the population distribution and the "various interests present" in the community."

Although less common, but still practiced, legislative bodies may also act as the ZBA, but only in cities and villages. In townships, an elected official may be a

member of the ZBA, but cannot be the chair.

In addition to regular members, up to two alternates may be appointed to the ZBA. Alternates serve in the event of a declared conflict of interest or absence of a regular member. When called, alternates serve until the application(s) is resolved. In the case of an absence, the alternate stays with the cases heard even if the absent member returns.

Bylaws

§ 10 The enabling act also permits the zoning board of appeals to adopt rules governing their operation, commonly referred to as bylaws. The bylaws should specify certain responsibilities, such as defining officers and their duties, quorum rules, special meeting procedures, conflict of interest procedures, and other aspects of the ZBA's operation. Bylaws are not part of the zoning ordinance but are adopted by the ZBA as its rules for operation.

Relationship to Other Bodies/Individuals

§ 11 It is also important to understand the relationship between the zoning board of appeals and others with responsibility in the zoning process. Zoning responsibilities are divided between several individuals and bodies.

<p>Zoning Act: Michigan Zoning Enabling Act 2006 PA 110 MCL 125.3101 et seq.</p>
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	Community
Number of members	Less than 5,000 population—not less than 3 members
	5,000 or more population—not less than 5 members
Membership	Planning commission member must be on the ZBA; elected official may be on ZBA. In cities and villages, the elected body may act as the ZBA.

Planning Act:

Municipal Planning Enabling Act
2008 PA 33
MCL 125.3081 et seq.

Purpose: to codify the laws regarding and to provide for county, township, city, and village planning; to provide for the creation, organization, powers, and duties of local planning commissions; to provide for the powers and duties of certain state and local governmental officers and agencies; to provide for the regulation and subdivision of land.

The Planning Commission

§ 12 The planning commission is given the responsibility of drafting the master plan; the legislative body must “approve the plan for distribution,” and may elect to become the adopting authority for the plan. After preparing a proposed plan, the planning commission must submit the proposed plan to the legislative body for review and comment. Before the adoption process can proceed, the legislative body must approve the distribution of the proposed plan. If it does not, it must return the plan to the commission with its objections. The

commission must then revise the plan until it is accepted by the legislative body.

The long-term effect of this change to the adoption process will have to be determined. But even if the planning commission is delegated the responsibility of completing and adopting the master plan, the legislative body should be involved in all of the critical steps of the process in order for the plan to be effectively implemented.

The master plan is intended to serve as a guide for the future development of the community. The plan is used to indicate locations for new development where natural features and the environment are not at risk, where community character will not be diminished, and where expenses for new roads and services will be at a minimum. 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.

The planning commission is also responsible for writing the first draft of the zoning ordinance. This was done to ensure a direct connection between the master plan and zoning ordinance. Local control of the use of land (with some exceptions, such as some state land uses and federal land

uses) is an accepted legal principle. Land use is controlled through the separation of land into various use areas, called zoning districts. The rules governing these districts are found in the zoning ordinance, which contains provisions controlling the type and intensity of development allowed.

The zoning ordinance should be established and amended as guided by the master plan. The future land use classifications of the ordinance's zoning districts are depicted on the zoning map that is part of the ordinance. The density and intensity planned for the land use districts are translated to the uses permitted, lot sizes and other regulations.

The courts of the State of Michigan do not recognize the master plan as authorizing land uses on its own. This authorization is contained in the zoning ordinance. However, the courts do lend much more credibility to land use actions supported by careful planning than those actions that appear to have been taken arbitrarily against an individual property owner.

The Legislative Body

§ 13 The elected governing body of the community has several responsibilities related to the zoning board of appeals. First, and most obvious, the members of the ZBA are appointed or approved by them, unless the legislative body itself decides to act as the ZBA (cities and villages only). Second, the legislative body is responsible for providing the funds necessary for the operation of the ZBA. This includes per diem (or per meeting) payments to members and other expenses such as mileage for site visits, attendance at conferences and training sessions, educational materials and other costs associated with the ZBA.

Finally, the legislative body is required to adopt the zoning ordinance and any

subsequent amendments, based on a recommendation from the planning commission. Ultimately, the legislative body decides what zoning regulations and policies will be adopted and followed by the community.

It is especially important for the ZBA to recognize its role in relation to the planning commission and legislative body, particularly with respect to the writing and adoption of the master plan and zoning ordinance. There is no formal process for the zoning board of appeals to play an advisory role in determining planning policies or zoning regulations. Accordingly, it is not the role of the ZBA to attempt to change those regulations or policies through their actions. This, of course, does not prevent the ZBA from communicating their thoughts regarding the ordinance during the course of performing its functions.

The Zoning Administrator

§ 14 The zoning administrator is the individual responsible for the day-to-day administration and enforcement of the zoning ordinance. In many communities the zoning administrator is a valuable contact between the ZBA and the applicant, ensuring that all relevant materials are provided, offering advice in filling out application forms, and advising the ZBA on important factual matters pertaining to the requests before them. In some communities the administrator is asked to provide written, advisory recommendations regarding applications.

In communities where staff or other assistance is available, some of the roles filled by the zoning administrator, including submission of recommendations, may be complemented or completed by these other individuals.

Duties and Responsibilities of the Zoning Board of Appeals

§ 15 The zoning board of appeals exercises three basic roles or functions. These include:

- a) Interpreting the ordinance (text and map),
- b) Deciding appeals from administrative decisions, and
- c) Granting variances (use and non-use).

The terms *appeal* and *variance* are often used interchangeably, but in fact are two entirely different concepts.

A variance, if granted, allows a departure from a particular requirement of the zoning ordinance.

An appeal is based on the fact that someone has made a decision related to the zoning ordinance, and another person disagrees with that decision.

Conflicts of Interest

§ 16 Knowing about conflicts of interest is important since the zoning act requires the use of an alternate when a member has a conflict. In some instances, failure to declare a conflict of interest may result in the removal of a ZBA member.

What Constitutes a Conflict of Interest?

§ 17 You probably have a conflict of interest if:

- you are the applicant;
- a close relative is the applicant;
- a business associate, lender or renter is the applicant;
- the proposal could allow you or a business associate to receive a financial gain or benefit;
- you are a planning commission representative to the zoning board of appeals and the matter to be heard is an appeal from a previous

planning commission decision in which you participated; or

If you have to ask...chances are others are asking as well. If you are in doubt about whether or not you have a conflict, it is often advisable to take a conservative approach and declare a conflict. This helps to avoid a public appearance of unfairness.

You may also consider the possibility of declaring a conflict of interest if your home falls within a notification radius used by your community for zoning board of appeals' actions. Since the sending of the notice automatically presumes some degree of interest, this fact should be recognized by declaring a conflict, particularly if a financial impact is likely.

Ultimately, the declaration of a conflict of interest becomes a personal issue and one that should be honored by the other members. If in doubt about whether a conflict of interest is present, it will generally be better to avoid the perception of a conflict, even though an individual member may conclude that a conflict does not exist.

What to Do

§ 18 In order to maintain public trust and insure fairness, it is important to follow some simple steps if a conflict is present. The ZBA bylaws should address fully those actions to be taken in the event of a conflict of interest. Suggested actions are:

1. Declare the apparent conflict of interest. If a member is aware of a conflict prior to the meeting, the staff/chair should be notified in order to allow an alternate to be called. If an alternate is called in, he or she serves on that case until it is completed.
2. Generally, voting by the other members on a conflict of interest is not necessary. However, if the ZBA adheres strictly to Robert's Rules of Order for all meeting procedures (not

just conflicts), members should be excused through a vote. However, declaring a conflict of interest should not be used as a means of avoiding a difficult or uncomfortable decision.

3. Abstain from voting and do not participate in deliberations, either as a member of the ZBA, or as a citizen. Although no one can be prohibited from speaking as a citizen, the comments from a fellow ZBA member will likely be viewed by the audience as being very influential and have the appearance of bias. This does not prevent the member from being represented by an attorney, family member or friend.
4. Once the conflict is declared, you may wish (but have no obligation) to leave the room. This will be a clear indication to the audience that the member has no part in the deliberation or decision, and it avoids any perception by the audience that the member is attempting to influence the others. By all means, the member with a conflict should vacate his or her seat during all proceedings involving the case.

Some Don'ts

§ 19 if you have a conflict of interest, Don't discuss the proposal, either formally or informally with any of the other members.

Don't use inside knowledge and contacts. Make sure that minutes, staff materials, etc., are obtained through the same procedures as any other applicant. It is best to have someone else collect this information.

Don't represent yourself if you are the applicant. Have someone else perform that function. It is acceptable to have other family members, an attorney or a personal representative speak for the member.

Interpretations

§ 20 The ZBA is authorized to issue an official interpretation of the zoning ordinance. Interpretations may be related to either the text of the zoning ordinance or to the boundaries of the zoning map. Unlike legal opinions or recommendations of consultants, an interpretation by the ZBA establishes the meaning of the matter being interpreted and is deemed to be the actual meaning of the ordinance from that point forward, unless the ZBA's interpretation is appealed to the courts.

Several rules of thumb may help in making interpretations.

a) Base map interpretations on the zoning ordinance itself and any relevant historical information. Commonly, these rules are of the "walk like a duck" variety. In other words, if it appears as though the zoning boundary follows a river, it should be assumed to follow the river, or a road right-of-way, or some other physical feature. Where the boundary is unclear, the ZBA should take into account past zoning history (if any) and the potential effect of a determination on surrounding properties.

b) Interpret the text of the zoning ordinance based on a thorough reading of the ordinance in order not to have the effect of amending the ordinance.

c) Give weight to reasonable practical interpretations by administrative officials if applied consistently over a long period of time.

d) Keep records of all interpretations. Once an interpretation is rendered, it is the official position of the community as to that provision. Consistency in decision making is important for the long-term.

e) Generally, if equally convincing points are put forth by the zoning administrator and an individual affected by an interpretation, fairness dictates that the person most affected by the interpretation should prevail. In other words, where two

interpretations are reasonably equal, the benefit of the doubt should be given to the property owner rather than the zoning administrator.

Once an interpretation is made, it is advisable for the planning commission to review the matter to determine whether or not an amendment to the ordinance is needed to further clarify the language (for a text interpretation), or to review the zoning map to determine a specific location of a zoning boundary (for a map interpretation).

Appeals

§ 21 The zoning board of appeals is empowered to hear and decide appeals from any person aggrieved by an administrative decision. An administrative decision is one made by a zoning administrator or the planning commission, or by the legislative body when they are acting in an administrative capacity, (if, for example, the legislative body approved all site plans). Most often, appeals are the result of a disagreement with a decision of the zoning administrator, or, in some cases, a person aggrieved by a site plan review decision by the planning commission. Appeals may be required to be filed within a specific time period set in the zoning ordinance.

The ZBA cannot hear two types of zoning decisions. The first is an amendment to the zoning ordinance (rezoning or text change)—this is reserved for the legislative body. The second type of decision is for special land uses and planned unit developments, which can only be heard by the ZBA if the zoning ordinance specifically allows for an appeal.

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 the result.

Some communities attempt to make appeals and variances the same by allowing an application to the zoning board of appeals only after the denial of a requested permit, such as a building permit or zoning compliance permit. This can be an inefficient and cumbersome procedure since a permit application may require submission of a full application for the permit, even when it is obvious that some requirement of the zoning ordinance is not met and a variance will be needed before a permit can be issued.

Variances

§ 22 A variance grants permission to depart from a requirement or limitation of the zoning ordinance. There are two types of variances:

- a) Nonuse variances (dimensional variances)
- b) Use variances

Nonuse or Dimensional Variances

§ 23 A nonuse variance, also known as a dimensional variance, is a modification of a provision or requirement of the zoning ordinance authorized by the zoning board of appeals when the strict or literal application of the ordinance would cause “practical difficulties” for the applicant. Nonuse variance requests are typically associated with modifications of required yard setbacks, building heights, parking requirements, landscaping or buffering restrictions and related building or facility placement provisions.

To obtain a nonuse variance, the applicant must show that a *practical difficulty* exists on the property by demonstrating that the applicable review standards are met. A detailed examination of these standards is provided in Chapter 3.

Use Variances

§ 24 A use variance allows a use of land that is not permitted in the district in which the property is placed. Granting of a use variance requires that the applicant demonstrate that an “unnecessary hardship” would be imposed if the owner cannot use the property as requested.

Use variances are permitted in cities and villages but limited in townships and counties. According to the Michigan Zoning Enabling Act, only the following townships and counties are eligible to hear use variances:

1. Those that as of February 15, 2006 had an ordinance that used the phrase “use variance” or “variances from uses of land” to expressly authorize the granting of use variances; and

2. Those that granted a use variance before February 15, 2006.

However, even if permitted and eligible to hear use variances, the Zoning Enabling

Act allows community opt out of this procedure.

To prohibit use variances the community must adopt zoning ordinance language that prohibits submission of use variance requests.

From a community planning perspective, the indiscriminate granting of use variances is a poor zoning and planning practice. Given the long-term implications, it is important that the ZBA understand the ultimate effects of use variances on the master plan or zoning plan for the community. Approval of a use variance can change the overall land use character of a particular area. That is why strict attention to the use variance standards is necessary.

Following the Rules

§ 25 It is especially important that the zoning board of appeals establish a consistent method of processing applications, conducting meetings and handling other procedures. As noted earlier, the ZBA should have a set of written procedures, or bylaws, for those rules of operation not covered in the zoning ordinance.

Some common considerations follow.

- Incomplete applications (inadequate site plan, fee unpaid, etc.) should not be accepted, i.e., should not be placed on an agenda.
- If public notice was not properly completed, the process must be stopped and a new process begun using a correct notice as to form, content and publication.
- Action should not be taken on any application unless the applicant or a representative is present (unless legal time limits dictate otherwise).

Conclusion

§ 26 Variances are not intended to relieve requirements of the zoning ordinance that are simply preventing applicants from doing what they wish.

Instead, the zoning board of appeals was intended to serve as a safety valve in those relatively rare circumstances where the application of the zoning requirements results in a practical difficulty (for nonuse variances) or unnecessary hardship (for use variances). However, variances approved without sufficient justification can turn the safety valve into a leak. Eventually, this will erode the overall purpose and effectiveness of the zoning ordinance, particularly when it is commonly known that the ZBA is likely to approve virtually any request.

Chapter 2

Preparing for and Conducting Meetings

§ 27 Membership on the zoning board of appeals can mean either just showing up for the meeting or being prepared to make informed decisions. While it is difficult to ask a volunteer to put forth an extra effort, your agreement to serve is also a commitment to do the best possible job for your community.

It is difficult for any member of the ZBA to reach a fair and impartial result without a firm base of knowledge about the matters on which he or she is asked to decide. To gain this knowledge, you will need assistance from the community's staff, the applicant and each member. There are some positive "fact finding" steps you can take to make sure you are ready to make the best possible decision.

Information

§ 28 In order to prepare properly for a meeting, you must review all available and relevant information. At a minimum, this will include copies of applications, site plans and other supporting material. This material should reach you early enough to allow adequate time to study and prepare, normally, at least one week before the meeting.

Public Hearing Notices

§ 29 A public hearing is required for all ZBA approvals (variances, interpretations, and appeals). The notices differ slightly.

For variances, a notice of the request must be published in a newspaper of general circulation.

Notice shall also be sent by mail or personal delivery to the owners of property for

which approval is being considered, to all persons to whom real property is assessed within 300 feet of the property, and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the community. If the name of the occupant is not known, the term occupant may be used in making notification.

The notice shall be given not less than 15 days before the date the application will be considered for approval. The notice shall do all of the following:

(a) Describe the nature of the request.

(b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

c) State when and where the request will be considered.

(d) Indicate when and where written comments will be received concerning the request.

Public hearings for interpretations and appeals are the same, except that notices to individual property owners other than the applicant is necessary only if a specific property is involved in the interpretation or appeal.

Site Visits

§ 30 Visiting the site is a critical step in the decision making process. Even if you have lived in the community all your life, a site will look different to you when a specific request is made. Prior to the site visit you should review any site plans or sketches submitted as part of the application. This review will allow you to gain a proper perspective on the request and how it relates to surrounding properties and to the standards of review you are required to use to reach your decision.

Some precautions must be taken when doing site visits. First, all such visits should always be made individually rather than as a group. Meeting on site (even with less than a quorum) presents several potential problems.

- A site visit by a majority of the membership of a decision making body is a “meeting,” and must be advertised in accordance with the Michigan Open Meetings Act, MCL 15.261 et seq., and the requirements of the Americans With Disabilities Act (ADA) must be met.
- Practically, it is hard for the visiting members to avoid talking among themselves about the proposal. Such discussions can violate the spirit as well as the letter of the Open Meetings Act.

Second, do not go onto the site unless the property owner has granted specific written permission or unless the site is otherwise available to the public (such as an existing shopping center). Verbal approvals should not be relied upon as sufficient permission. Written permission helps avoid misunderstandings and problems with trespassing accusations.

Refusal by the applicant to allow you on the site can not influence your decision.

Many people are concerned about liability or are simply determined to protect their privacy.

The Michigan Open Meetings Act, MCL 15.261 et seq., was intended to make sure that the decision making process followed by government bodies always takes place under the watchful eye of the public. Even though you can simply meet the *letter* of the act, it is just as important that the *spirit* of open meetings be observed. *Don't look for ways around the act; look for ways you can make it work better.*

If permission has not been granted and you feel as though your decision cannot be made without viewing the site, look for other ways to get the same information. This might include aerial photos or surveys. You may also request that the applicant submit photographs, slides or video tape particularly for larger, inaccessible sites. This information may be available from community staff or you may ask for it from the applicant. There are many ways to gather the necessary information and you should not make a decision until it is obtained.

TIP: Consider adding a line to your application form that allows the applicant the option to grant permission for the members to conduct a site visit.

You may feel free to request information from the community's staff. Make sure whatever information you receive is also distributed to each of the other members. Similarly, written materials received at home from applicants or others

should be provided to the community's staff⁶ for distribution to the rest of the members.

Finally, do not talk to the property owner, neighbors or applicant outside of the meeting. The intent of information gathering is to ensure that everyone has the same information on which to base a decision. This is not possible if individual members contact or are contacted by others outside of the meeting.

If the applicant or others contact you, be prepared to tell them that you are required to conduct all of your discussions only when the other members of the ZBA are present. Encourage them to come to the meeting (tell them when and where) or ask them to submit their comments in writing (tell them to whom and by what date). If contact cannot be avoided, it should be reported to the rest of the members during the meeting, along with the general content of the conversation.

Remember - you are only one person on the ZBA; the only time you should act as a member of the zoning board of appeals is in the presence of the other members at a posted meeting.

Before Leaving Home

§ 31 Make sure you have everything. Follow this checklist.

1. Do you have your zoning ordinance and other applicable ordinances, if any?
2. Have you examined the agenda and related materials?
3. Have you written down your questions?
4. Have you completed the site visit? If not, at least drive by the site on the way to the meeting.
5. Have you reviewed the standards that will be used for each decision?

6. Remind yourself that the purpose of preparing for the meeting is not to make a decision; it is only to gather the information needed to prepare you for the decision that is to come.

Meeting the Public

§ 32 Land use issues, as you will no doubt discover, can bring out strong emotions. Faced with a roomful of angry and concerned people, you may sometimes find it difficult to maintain the decorum and professionalism needed. Although many zoning boards of appeal follow Robert's Rules of Order in one form or another, there are other, more subtle aspects that, while not unique to zoning, nevertheless are important.

Being Fair

§ 33 The foremost concern of any member of a public body should be to ensure fairness for all concerned. To accomplish this, it is helpful to keep some simple things in mind.

- Everyone must have the opportunity to speak and present evidence at public hearings. While some limitations may be placed on this right, as described later, no action should be taken that would deprive a person of his or her right to be heard within the confines of applicable rules of procedure.
- Recognize emotional responses and treat them with concern and understanding. Strong responses, within limits, should be expected and understood. Controlling your own emotions is essential, even if the comments get personal.
- One of mankind's greatest fears is public speaking. Make an effort to look beyond the mannerisms

and nervousness to find the speaker's message.

- Regardless of how many people show up to oppose or support a request, you must represent the long term interests of the entire community, not just those at the public hearing. Further discussion of this issue is presented later in this chapter.
- Listen. Public meetings are your chance to take the pulse of the community and to learn more about the neighborhood in which a request is pending. Take advantage of the efforts that those attending the meeting have made and learn as much as you can.

Follow the Rules

§ 34 Playing fair means playing by the rules. Having an effective set of meeting rules helps provide a sense of professionalism and ensures that meetings are orderly. Rules do not need to be rigid. Nor should they be too confining. Occasionally agendas will need to be altered to take unanticipated events into account.

Keeping a subtle balance between the degree of formality required and the informality that is sometimes needed is a learned art. For example, applicants should not be called by their first names. Doing so gives the impression of favoritism, that the person is "connected" in the community. Hearing rules should be made a part of the bylaws of the ZBA and a summary of those rules printed on the back of the meeting agenda so that everyone is aware of them.

Rules for Speakers

§ 35 You will soon learn that people do not often come to a meeting in support of a particular project. Most people have concerns they wish to address, while others are simply opposed to change in their

neighborhood. Having meeting rules for speakers are especially valuable when there are many people who wish to speak. Without a few basic rules (which should be approved by vote of the ZBA) it would be easy for one or two people to dominate the meeting, thus depriving others of the chance to speak their minds.

- Direct comments to the chair. This rule can help avoid debates between members of the audience, between the presenter and the audience, and between ZBA members and the audience or presenter. It also helps ensure that the chair controls the meeting.
- Limit speaking time, when necessary. If there are many people who wish to speak, it is appropriate to limit the time of each speaker to 3-5 minutes, with the exception of the applicant. The applicant should be given as much time as needed, within reason, to present his or her case. During the public comment period, the applicant may wish to respond to individual issues or questions raised. It is generally best to ask that the applicant respond to (or rebut) those questions after all comments have been received.
- Limit the number of times one person may speak. Generally, each person needs to be given only a single opportunity to speak. At the discretion of the chair, persons may be allowed to speak a second time to respond to earlier comments. However, the chair should emphasize that repeat comments are not desired. Your rules may also require a sign-up sheet for those persons wishing to speak, with

- the chair only recognizing those who have signed the sheet.
- The chair may also ask if there is a spokesperson for the audience, and ask that the spokesperson speak for others present who agree with his or her point of view. The chair should allow those for whom the spokesperson is speaking to be recognized, either through a show of hands or by standing. The spokesperson may be given additional time in recognition of his or her role.
 - After the public hearing is closed, it should remain closed. Further comments should not be accepted unless specifically requested by a member of the ZBA.

And the Applause Meter Says...

§ 36 Zoning cannot be a popularity contest, decided by a show of hands in the audience or names on a petition. Many zoning approvals require public input, usually in the form of a hearing. The dilemma in which most decision makers find themselves is trying to determine what weight to give public comments and complaints.

It will quickly be obvious to you that most people do not generally come to a meeting in support of a particular project. Most have concerns they wish addressed or they may simply oppose any development. Some may come to complain about things having little or nothing to do with the issue at hand.

While public input is a valuable part of decision making, the ZBA cannot simply mirror the wishes of those who come to the meeting or send letters. Your job is to follow the standards and requirements of the zoning ordinance. You are obligated to protect the interests of the applicant, those having a direct interest, and the entire

community, not simply the desires of those who happen to attend the meeting.

If it were simply a matter of counting hands in the audience, only one ZBA member would be needed to count the votes or read the applause meter. Simply because a roomful of people shows up to oppose a project, this is not a reason for denial. Similarly, petitions, letters and other written expressions of concern are useful, but only to the point where they provide relevant information.

Ultimately, the role of the public is to provide information to the decision maker. The public can provide a unique perspective on an issue, which may create the need for further study by the community or identify additional information to be provided by the applicant.

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.

"*My home is my castle*" is not an idle remark. Those who follow the NIMBY and BANANA principles sometimes represent this view. The *NIMBYs* believe that the project is well designed, and needed, but located in the wrong place. Not In My Back Yard is their battle cry.

Others may believe that the project should not be built anywhere in their community, or perhaps anywhere at all. Their motto is Build Absolutely Nothing Anywhere Near Anything—*BANANA*.

On the other hand, we are also told that owners of property have a right to a reasonable return on their investment and

that zoning cannot unreasonably deprive the owners of that return.

Satisfying all of these conflicting views is simply not possible. The intent of zoning is to avoid the necessity of trying to judge between them. Instead, zoning decisions should treat each person, property, and point of view in a fair and consistent manner. It is not the responsibility of the ZBA to create zoning classifications for rezoning property. Rather, the ZBA must merely determine whether, after considering all evidence presented, the applicant has satisfied the necessary level of proofs for the particular case in order to be entitled to relief.

Rules for ZBA Members

§ 37 As members of a public body, you should follow the same set of rules when presenting yourselves to the public.

- All comments should be directed through the chair. Just as the audience must be recognized by the chair, so too should the members. Not only does this respect the role of the chair, it also sets an example for the audience to follow.
- All deliberations should be in the open. This is a strict legal requirement. It is important that the citizens view the zoning board of appeals as an open, fair and deliberative body. Remember, people are generally suspicious of government. Don't add substance to that perception.
- Stay in the public eye. Do not hold private conferences prior to meeting. Don't meet in a group in a small room or other place outside the meeting chamber. When arriving at the meeting, stay in the chamber. While socializing is acceptable, make

sure the citizens do not get the wrong impression.

- Speak up. Make all of your comments aloud during the deliberations. If you have a question, ask the applicant or the chair, rather than your neighbor. Don't allow yourself to be caught up in private discussions with other members.
- Make all of your comments loudly enough so everyone can hear.
- Express your opinions. Don't just vote without letting everyone know why you are voting, whether for or against the issue. Your comments may help others decide (or change their vote). It also lets the applicant and the audience know the strengths or weaknesses of the proposal. Moreover, it may add to the record if the case goes to court.
- Do not always attempt to answer every question. Some comments cannot be answered and may be asked just to express frustration. When this happens, calmly try to narrow questions down to specifics. Once you get a handle on the real problem, you may be able to suggest a solution.

It is also important that neither the chair nor members of the ZBA attempt to answer questions from audience members that are better answered by the applicant.

- If things get out of hand, take a recess. Long evenings and emotional topics can make for short tempers. A breather may be helpful.

- Do not feel compelled to make a hasty decision the night of the hearing. Everyone should feel comfortable with his or her vote. If he or she does not, obtain whatever additional information is needed before proceeding with the decision.
- Always use the review standards of the zoning ordinance. The standards are your guarantee of reaching fair, consistent and reasonable decisions. Failing to follow the standards of review can easily lead to discriminatory, subjective and inconsistent decisions.

The Experts Say...

§ 38 The question may also arise about how much influence staff reports and opinions should have on a decision. In most cases, staff members are trained in their various fields and are providing their professional opinion. Consequently, their advice and direction are likely to be useful and should be taken seriously. However, that advice and direction should be supported by the facts and by application of the ordinance standards just as the ZBA's decisions are expected to be. The professional's opinions of how the facts relate to the standards may differ from the ZBA's. But ultimately, it is the decision of the zoning board of appeals that will stand.

Keeper of the Gavel

§ 39 The chair is entrusted with enforcing meeting rules. Having a strong chair is important both to the operation of the ZBA and to public's perception of their professionalism. The role of the chair is to maintain order throughout the meeting. The chair should announce each agenda item and note the rules that apply to the hearing. During the meeting, the chair

should ensure that courtesy is maintained and that speakers are not interrupted.

Keeping Faith with the Public

§ 40 Too often, people feel that government works against them rather than in their best interests. While you will not always be able to satisfy everyone, you can make sure that the public knows that they have been heard and that you are acting responsibly. Following rules of fairness, preparing for meetings and making effective decisions can affirm the confidence placed in you by those who appointed you and those whom you serve.

Making Your Decisions Stick

§ 41 It won't matter how much attention is paid to the principles of the previous chapters if the decisions made are not properly documented. New members may have a tendency to rely on those who have the most experience to remember past actions. There is no doubt that their memories are valuable, but their recall may not be complete. The only reliable method of documenting actions is the written word and exhibits.

Meeting Minutes

§ 42 In smaller communities, keeping minutes may be one of the least glamorous parts of building a written record. The task of keeping minutes should be taken seriously. There are no firm rules or formats for minutes, but there are some basic principles. As a minimum, section 9 of the Open Meetings Act, MCL 15.269, requires the minutes to show the date, time, place, members present, members absent, any decisions made and all roll call votes taken. In general, minutes should contain enough detail so that a person not present can understand:

- What matters were discussed (the nature of the request, applicant, location);

- Receipt of any correspondence or other communications on the matter (including name and address, if known, and general content);
- Who spoke at the meeting and the general content of his or her comments (including name and address);
- What action was taken by the ZBA (including the motion, vote and any conditions attached to approved applications); and
- Why an action was taken and how the standards of review of the zoning ordinance were or were not met, i.e., the detailed findings that support the decision.

One of the reasons that minutes are especially important has to do with the appeal procedure that occurs once the ZBA has made its decision. As noted earlier, there are no other levels of review by the community itself after the zoning board of appeals. The next avenue of appeal is to the circuit court of the county in which the property is located.

The zoning enabling act directs the circuit court to decide an appeal on the basis of the record presented by the ZBA and the applicant. In other words, the only information seen by the court will be the written record created at the ZBA hearing. Accordingly, it is essential that the ZBA provide a suitable written record of the proceedings.

Motions

§ 43 One of the important features of documenting decisions is the record of the action taken, as evidenced by the specific motion and vote. There are several essential elements of a motion:

- a maker and seconder;
- a description of the nature of the request;

- the action taken (approval, approval with conditions, denial, postponement of the decision);
- any conditions attached to affirmative decisions; and,
- the reasons for the action taken (the standards of review and how they were or were not satisfied) based upon the facts and evidence presented at the hearing—the findings that support the decision.

Some ZBAs have found it useful to have a blank format to help them word their motions. This can be an effective practice, as long as the motions are not completed prior to the meeting. Having staff or legal counsel prepare a motion or several motions in advance can create the perception that decisions have already been made if a case is highly controversial, and is likely to go to court, there may be a desire to have legal counsel assist in formulating the language of the decision. If such assistance does occur, consideration should be given to seeking such assistance on a decision granting the relief requested as well as a decision denying the relief.

Some hints about motions:

§ 44

- Be sure everyone is clear on the motion by restating it. Do not ask the person writing the minutes to “clean it up later,” or say, “you know what we want to say.” Take the time to get the wording right. Have the person who is writing down the motion read it back to ensure its accuracy.
- Include specific references to the ordinance’s review standards. If discussion on the issue is thoroughly documented and referenced in the minutes, they may be adequate to represent information related to

compliance with the standards of the ordinance. Otherwise, a summary of the discussion on the standards is appropriate.

- Properly stated and supported motions are particularly important. Simply referring to the standards of review is not enough; saying a standard is met doesn't make it so. A motion that states "this variance is approved (or denied) because it meets (or does not meet) the standards of Section ____" is not sufficient. There must be enough information presented to indicate specifically which standards were or were not met, and the reasons, in terms of the specific facts and evidence presented, the ZBA made the finding.
- Conditions may be imposed on any affirmative decision. Conditions attached to a decision should have a clear purpose: to ensure that the standards used to make the decision are met. In other words, the condition should strengthen the decision to grant relief. Any condition placed on an approval must have a direct relationship to one or more of the specifications stated in the zoning enabling act for conditions.

One informal way to test the appropriateness of a proposed condition is to review the decision without the condition in place. For example, one of the review standards noted in Chapter 3 is "(T)he variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare." If, during their deliberations, the board members become concerned that the approval of a variance could have an adverse affect on adjacent

properties, a possible condition might be a requirement that a fence or landscaping be installed. If the fence or landscaping were not required, this review standard would not be met. Accordingly, this condition would be an appropriate one to attach to the approval.

- If the motion includes the need for further action, it should state who will be responsible to see that action completed. For example, the required landscaping shall be reviewed and approved by the zoning administrator."

Findings of Fact

§ 45 It is worth emphasizing the obligation to make Findings of Fact. Findings of Fact are embodied in a concise statement of the action taken by the members, and include the reasons for the decision, including the specific facts and evidence supporting the decision. In the absence of such findings, it is quite difficult for a reviewing court to sustain the decision of the ZBA.

The Findings, which are part of the minutes, are not official until reviewed and adopted by the ZBA at the next meeting, or certified as approved at the same meeting. One reason this is important is that the applicant or other person disagreeing with the decision has a specific time limit in which to file an appeal to the circuit court (30 days). The clock on the time limit does not begin ticking until the minutes of the meeting at which the action was taken are officially approved.

If the ZBA only meets on demand, or infrequently, another option would be to schedule a meeting after the minutes are completed to review and adopt them.

Post-Decision Documentation

§ 46 Once the decision is made, some administrative steps should be taken to help complete the record. The applicant and

secretary of the ZBA should each sign and date 2-3 copies of the site plan or sketch submitted as part of the application. The applicant should keep one copy and the community at least one other. This provides a record of what was approved and when.

A copy of the minutes should be sent to the applicant following review by the approving bodies along with a letter specifically noting the action taken by the ZBA, including any conditions placed on the approval, if appropriate.

This letter may include further instructions regarding the proposal. For example, if a variance was granted, the letter may state that a site plan approval by the planning commission is necessary prior to issuance of a building permit.

Record Retention

§ 47 The community's records for each application should include, at a minimum:

- Relevant pages of minutes at which the proposal was discussed;
- Staff notes, meeting notes, correspondence, telephone conversation notes, etc.;
- Copy of the application and supporting material;
- Approved/signed copy of the site plan; and
- Follow-up correspondence (as noted above).

If You Build It, We Will Come...

§ 48 ...to make sure it complies with the approvals that were granted. Someone should be given the direct responsibility to make sure that any conditions or changes required by the zoning board of appeals are accomplished. Sending the building official and zoning administrator a copy of the approved application and meeting minutes could help this process.

Remember, building a complete record is important. Should a decision be legally

challenged, the written record will provide the background needed to help defend the decision of the ZBA. Also, a suitable record of past actions is needed to ensure that decisions are implemented and that they are enforced over a long period of time.

Reliance on someone with a good memory is not enough.

Chapter 3 - Making the Tough Decisions

§ 49 In these days of increasing litigation and public participation, it is not enough to approve or deny an application for a variance or appeal because of a vague notion that the request is or is not a good idea, or that it will hurt the neighborhood, or make things better. If challenged, any decision must have a solid, well-supported foundation.

Decisions related to zoning are rarely easy. And, they are not usually a matter of right or wrong. The duties of the zoning board of appeals require a balancing of the needs of the community and the rights of a private property owner.

- The community has a strong interest in maintaining the integrity of the rules under which zoning operates, through the zoning ordinance. Variances granted without proper foundation can eventually, or even quickly in some cases, lead to a weakening of the ordinance.
- On the other hand, private property owners do have certain rights to use their property and the inappropriate application of the zoning ordinance to that property should not deprive them of those rights.

Proper decision making starts with the basics: knowledge of the zoning ordinance, knowledge of relevant case facts and using review standards to reach a decision.

Knowledge of the zoning ordinance

§ 50 While it is not necessary for each member to know the intimate workings and details of a zoning ordinance, they must

be familiar with the relevant parts of the ordinance when reviewing applications. But more important, it is essential that each member understands the purpose and need for the regulation being discussed.

Intent and Purpose

A front yard setback variance is being considered by the ZBA. A new member asks, "Why can't the building be built all the way to the property line?" What would be your answer?

One of the standards of review typically applied to variance requests asks that the decision not impair the intent and purpose of the ordinance. If the intent and purpose of the regulation would be materially affected, it is possible that the variance would not be appropriate. For example, one of the recognized purposes of a side yard setback is to provide access for safety personnel to the rear of a building. Should a variance be permitted that eliminates this access, the intent and purpose of the ordinance would not be fulfilled.

Knowledge of Relevant Case Facts

§ 51 Facts are critical to good decision making. Sources of facts include:

- a) The application and supporting materials;
- b) The master plan or other relevant governmental plans;
- c) Staff and agency reports regarding impacts on public services, natural resources, character of the area, traffic and parking, and others;

- d) A visit to the site to see the physical characteristics of the property and adjacent parcels (see Chapter 2) and;
- e) Public hearing comments.

However, what is a fact is not always clear. Sometimes it will be necessary for the members to use their own experience and common sense (a concept not often applied to zoning).

Use of Ordinance Standards

§ 52 Following an effective and consistent decision making process is one of the most important methods of supporting your decisions. Proper and consistent use of the standards of the zoning ordinance or other ordinances is essential. If all ordinance standards and state law standards are met, the application must be approved. Before any variance should be approved, the applicant should be required to demonstrate that either a practical difficulty or unnecessary hardship exists. While these terms are sometimes used interchangeably, they are, in fact, distinct and different terms.

- *Practical difficulty* is applied only to nonuse, or dimensional variances;
- *Unnecessary hardship* is relevant only for use variances.

The wording and number of standards will often differ from one community to another, but the following standards have been considered by various court decisions and are common to ordinances.

Standards for Nonuse or Dimensional Variances

§ 53 Granting of a nonuse variance requires the existence of a practical difficulty, which is demonstrated by showing that:

1. *Special or unique conditions and circumstances exist which are peculiar to the land, structure, or*

building involved and which are not generally applicable to other lands, structures, or buildings in the same district.

§ 54 Meeting this standard requires the requested variance to be related to the characteristics of the property and not to the personal situation of the applicant. Should a variance be granted because of a perceived special condition related to the applicant, that condition would no longer exist if the applicant leaves the property. But the variance remains with the land.

Similarly, trying to distinguish between individual circumstances related to individuals is nearly impossible. Nearly every person has some situation that may consider unique. You are not expected to be able to draw a line between various applicants' special conditions.

This dilemma cannot be resolved by restricting the approval to a particular individual. Variances, like other zoning approvals, cannot be restricted solely to the benefit of or use by a specific person. Variances, once granted, run with the land, not with the property owner.

Special conditions or circumstances that are related to the property are generally physical characteristics that may normally include:

- exceptional narrowness, shallowness or shape;
- exceptional topographic conditions or other extraordinary situations related to the property; or
- use or development of the property immediately adjoining the property in question.

Also, the characteristics of the property asserted as the basis for relief must not be common among other properties in the same district or vicinity. As with all

variances, the principle is that the variance is needed to relieve a practical difficulty caused by the unique conditions present on the land. Common conditions or situations should be addressed by a change in the text of the ordinance, rather than by the granting of individual variance applications.

2. A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary.

§ 55 Property owners are given certain rights to use their property within the limits allowed by the zoning ordinance. If the conditions present on the property are such that owners are deprived of these rights, the zoning board of appeals should find this standard (but not necessarily the variance) in favor of the applicant. However, this does not entitle the applicant to the maximum benefit that might be available. For example, while the ordinance provides that property owners may have accessory buildings, it does not grant the authority to allow any size building desired by the applicant.

This standard also permits the ZBA to modify the request of the applicant to accommodate the special condition or circumstance but only approve the amount of variance that is necessary to do so. For example, an applicant may wish to construct a garage closer to the lot line to avoid a large tree. The ZBA could approve a variance that would miss the tree, but in order to protect an adjoining property, not come as close to the property line as requested.

3. The special conditions and circumstances do not result from the actions of the applicant.

§ 56 This standard, often referred to as self-created, is often misunderstood and the subject of differing opinions. There are circumstances when the applicant has clearly taken some action creating a need for the variance. For example, if an applicant splits a lot which previously conformed to the requirements of the zoning ordinance into two smaller ones, one or both of which then do not meet the ordinance, the action is clearly self-created.

On the other hand, a buyer of a lot that cannot be developed without a variance may ask that the ZBA grant a variance to allow use of the lot. In this case, the applicant did not take an affirmative action by creating the lot. Accordingly, this standard should not be used as a reason for denial (although the variance still must meet the other standards of the ordinance).

4. The granting of the variance will be in harmony with the general purpose and intent of this ordinance.

§ 57 While the intent and purpose portion of this standard may sometimes seem like a catchall phrase, it does have meaning. The construction of the zoning ordinance was a carefully considered process that was begun by the planning commission, reviewed by the public and adopted by the legislative body. Each provision of the ordinance has a reason for its existence and it is important that the ZBA understand that reason and not act to impair that purpose.

Whether the ZBA agrees or disagrees with any provision in the ordinance is irrelevant. The ZBA's function is to enforce the provisions of the ordinance, except in very specific instances where conditions

exist that would make compliance with the requirements impractical. Those conditions are defined by the review standards of the ordinance.

It is equally important that the zoning ordinance be reviewed frequently to ensure it is kept current and relevant to today's conditions. This includes making sure that binding court rulings are included and new legislation recognized. Often, an outdated ordinance will tend to generate additional variance requests.

One way the ZBA can help keep the ordinance current is to review its decisions at the end of each year to determine if there are provisions of the ordinance that are consistently being requested for variances. If the review highlights some particular parts of the ordinance, it may be an indication that these provisions need to be updated.

A joint meeting with the planning commission to discuss these provisions will be useful. One of two outcomes is possible. The planning commission may agree that a provision needs updating and begin the actions necessary to amend the ordinance. Or, the commission may determine that the ordinance does not need to be updated and that the provision should remain unchanged. If this is the outcome, the ZBA should respect that decision and only approve variances in those cases where the standards of review are clearly met.

5. The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.

§ 58 As with any zoning action, the result of the proposed variance should not be harmful to adjacent properties. Potential harm could be in the form of restricted access or view, noise, lights or any other effect not normally experienced by property owners in similar circumstances.

While the opinions of surrounding property owners are useful, they should not be given absolute weight. The role of the public is not to give their blessing or veto, but to provide the ZBA with information useful to its decision making process. As an illustration, a current adjoining property owner may be a relative or close friend and not object to a variance. But since the variance goes with the land, the next property owners may find themselves with an objectionable situation.

On the other hand, it is appropriate for the ZBA to take the comments of the public into consideration to determine whether or not the variance may adversely affect nearby property or the neighborhood. (See Chapter 2.) Note, however, that simply because a variance is not harmful to the neighborhood does not mean that it meets all of the other applicable standards.

6. The spirit of this ordinance shall be observed, public safety secured and substantial justice done.

§ 59 The concepts of this standard, though broad, are important. Observing the spirit of the ordinance will mean that the ZBA understands the potential effects one or several variances could have on the effectiveness of the zoning ordinance. For example, if the ZBA's reputation is one of easy approvals, applicants are more likely to seek variances in other than special conditions and circumstances.

"Public safety secured" indicates that the variance, if approved, will not create an unsafe condition.

While "substantial justice" directly addresses fairness to the applicant, it also applies to others who might be affected by the variance, such as neighboring property owners. Often the initial expectations of neighbors are that the ZBA will follow the

requirements of the zoning ordinance. The substantial justice requirement dictates that the variance should not be granted if it would undermine the purpose and intent of the zoning ordinance as it relates to adjoining properties. This includes a consideration of the extent of variance to be granted. In this context, substantial justice requires the variance to be the minimum necessary to afford relief.

The ZBA's Reputation

A zoning board of appeals known for easy approvals may find itself barraged with variance requests. As the word spreads that the ZBA grants almost any variance, the attitude among builders, attorneys, planners, and others who frequently advise property owners is, "Don't bother trying to meet the zoning ordinance, All you need to do is apply for a variance and you will get it."

Standards for Use Variances

§ 60 As noted in Chapter 1, a use variance allows a use of land that is not permitted in the district in which the property is placed. Because this type of relief is so significant, granting of a use variance requires the existence of an unnecessary hardship, which is demonstrated by showing that:

1. *The property could not be used (be put to a reasonable use) for the purposes permitted in that zone district.*

§ 61 The principle behind a use variance is that it is necessary because the property is not usable as it is zoned. Therefore, a thorough review is needed to first establish that none of the uses currently allowed in the district, either as permitted by right or through a special land use, are appropriate

for the property. While it is true that financial considerations are not generally the subject of review for variances, this standard may be satisfied by a finding that the property would essentially be valueless if an attempt were made to develop it as zoned.

Part of this review will require determining if the property can be reasonably used for any of the uses permitted in the district. This does not mean that the use has to be the most profitable, or the use proposed by the applicant. It only requires a finding that there is one or more uses permitted in the district which could reasonably be placed on the property.

2. *The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.*

§ 62 This standard is generally similar to that for nonuse variances, particularly with respect to the necessity for having unique circumstances that are specific to a property and not related to the applicant's personal situation. The other important aspect is the requirement that the situation on the property not be common in the area. If conditions are common to the area, a use variance would not be appropriate because the area should be reviewed by the planning commission to determine if the zoning for the entire area should be changed. But that is the function of the planning commission and not that of the zoning board of appeals.

The use would not alter the essential character of the area.

§ 63 Probably the most difficult aspect of this standard is determining what the essential character of an area is, and if the

use variance is approved, what effect might the variance have on that character.

One of the easiest ways to determine the essential character of an area is through a site visit to examine the area and see the various land uses that exist.

In some cases the character may be evidenced simply by the dominance of one land use over any others. In others it may not be as obvious. For example, some areas may have a wide variety of uses, occupying different sizes of lots. Viewing the area may not directly lead to a conclusion as to the character of the area and may require some degree of judgement.

*What is the “area”
affected by a use variance?*

The “area” which may be affected by a use variance will depend on the nature of the request and the size of the property that is the subject of the requested use variance. For example, a small residential lot requesting a use variance for an office will affect a smaller area than a request on a large site for an intensive commercial use.

Another way to determine the character of an area and the possible effect of a use variance is to examine the community’s master plan. The plan may clearly indicate the existing or intended character of an area. The ZBA may also seek the advice of the planning commission to help interpret the master plan, or to provide guidance when there is no plan or if it is out-of-date. Any opinion of the commission is simply advice, and should be considered only as input to the ZBA’s deliberations.

After determining the essential character, the next step is to evaluate

whether or not approval of the use variance would alter that character. This decision might hinge on whether or not the proposed use variance may tip the scales in one direction or another. If an area appears to be in transition from a residential to commercial area, for example, a commercial use variance may be appropriate. However, if the specific character of the area is unclear, a use variance may not be appropriate since it could tend to establish a specific character. This type of decision will require the exercise of discretion by members of the ZBA, as assisted by staff and consultants.

4. The problem is not self-created.

§ 64 This standard is essentially the same as that for nonuse variances. If the applicant created a particular situation that made a property essentially unusable as zoned, that applicant would not be entitled to relief by approval of a use variance. For example, if a property owner subdivides a large, residentially zoned property, leaving a corner lot as an isolated parcel, an argument that the parcel should only be used for nonresidential purposes could fail because the parcel was created by the direct action of the applicant.

5. The other general requirements are met.

§ 65 As in the case of nonuse variances, an applicant must show that the variance meets the state law requirements, that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.

Use Variances and Rezonings - The Paragon Rule

§ 66 Understanding use variances was made

more important by a 1996 decision of the Michigan Supreme Court, *Paragon Properties Company v City of Novi*, (452 Mich 568, 550 NW2d 772 (1996)) in which the court required a “final decision” of the municipality. Under the *Paragon* decision, it will not be deemed that a final decision has been rendered by the municipality until the property owner seeks a use variance from the zoning board of appeals. The *Paragon* decision, therefore, requires submission of a use variance application following a rezoning request denial by the legislative body before any legal disputes may be brought before the court.

The Michigan Zoning Enabling Act allows a community to choose whether or not it wishes to have a use variance procedure in its ordinance. Therefore, if the use variance procedure was not available, the applicant would not have to exhaust this remedy, and *Paragon* would not apply.

Even if provided for by statute, some communities have language in their zoning ordinances that prohibits consideration of use variances. Often this language is in the form of not permitting the zoning board of appeals to hear variances that would have the effect of changing land use or zoning.

For those communities that continue to hear use variances further definition of the meaning of the *Paragon* decision will likely require additional litigation and clarification.

In general, the full effect of this decision has yet to be felt and the interpretation of its language will likely result in some confusion as individual county circuit courts utilize this case.

What about precedents?

§ 67 One of the concerns often expressed by ZBA members is the fear that by approving or not approving a request they may be setting or violating a precedent. This concern can be real if the ZBA is not

using the standards of review of the zoning ordinance. Failure to use these standards consistently requires the ZBA to make up the rules as they go. As a result, future applicants gain the right to be considered by the same considerations used by the ZBA in previous meetings.

Consequently, the way to avoid setting a precedent is to base every decision on the standards of review of the zoning ordinance, and include findings of fact that distinguish cases from one another. When the standards are used and findings made consistently, the ZBA is less likely to be bound by past decisions because the facts of each case are different. On the other hand, where the facts are very similar the same decision should be reached, not because of a precedent but because the same facts were applied against a consistent set of review standards.

Therefore, consistent and faithful use of the review standards for variances allows the ZBA to reach decisions based on the facts of each individual case. This, together with the detailed findings of fact, helps ensure consistency and fair treatment for every applicant by avoiding the arbitrary and capricious labels often given to zoning decisions that are not well supported.

As each application is debated, each of the applicable standards should be specifically reviewed and individual findings made for each. No approvals should be granted until the members clearly agree that all the standards of review are satisfied. Zoning decisions are permanent. Care must be taken to ensure that each decision is well supported. It is essential that the decisions are well documented and that the records pertaining to all applications are complete.

How to Avoid Litigation

§ 68 The short answer to avoiding litigation is simple—you can’t! Governments are

always open to lawsuits, regardless of the quality of their decisions. Far too often, disappointed applicants or neighbors look to the courts to solve their problems. As a result, the ZBA cannot be overly influenced by threats or concerns about whether a decision will result in a lawsuit, provided, of course, that the ZBA has acted properly and thoroughly supported and documented the decision.

However, there are some actions that can strengthen the ZBA's legal position should any decision be challenged.

- Follow a standard decision making process. The zoning process involves a wide variety of technical, administrative and judgmental factors. Making sure that the requirements of the ordinance are followed, including proper notices, use of standards of review and proper documentation of decisions is a good start.
- Use review standards and make findings. The most important step you can take is the proper use of the review standards provided in the zoning ordinance to guide your decisions. These standards outline a clear path to reaching fair and consistent decisions. All decisions must be based on these standards and the facts that are used to apply them. Therefore, apply and make findings on each review standard.
- Follow proper procedures. The community should ensure that adequate procedures are in place to ensure that application procedures are clear, notices are properly completed, and adequate records are kept. The ZBA should ensure that proper hearing procedures are followed.

This includes creating a suitable record of the actions taken and the reasons for those actions as part of the ZBA minutes.

Exhibit B

Transmittal

Mr. Tim Cypher
Planner
Cypher Group Inc.
tim@allpermits.com
231-360-2557,

September 30, 2022

Re: Leelanau Pines Campground Improvements

Project No. 211505

- ☐ FOR REVIEW
☒ FOR YOUR USE
☐ AS REQUESTED

Sent By: Jason T. Vander Kodde, PE

COPIES	DATE	DESCRIPTION
1	9/30/22	Revised site plan drawings G001, C100-C403, L101-L104 (22 pgs)
1	9/30/22	Zoning Ordinance Section 13 – conditional approval portions highlighted (4 pgs)
1	9/30/22	Zoning Ordinance Excerpts – lot coverage portions highlighted (8 pgs)
1	9/26/22	Northgate Letter to Lake Leelanau Lake Association (6 pgs)

COMMENTS

Hello Tim,

Per your recent conversation with Katy Hallgren, attached please find the following revised information for the Leelanau Pines Campground Improvements proposal for the planning commission's consideration during next week's regularly scheduled meeting on 10/3/22

- 1) Revised site plan drawings. – on behalf of Northgate, Fishbeck has made the following site plan revisions to address concerns raised by the Planning Commission or Lake Leelanau Association.
 - New pools/amenities geometry to encourage recreation off the lake and meet 40' setback
 - New mandatory boat registration and tracking for campground guests
 - New mandatory boat washing station to eliminate invasive species
 - Elimination of an existing second boat ramp by combining into one ramp location
 - Elimination of 13 existing campsites along the waterfront to improve future scenic views
 - Provide supplemental shoreline tree plantings to improve future scenic views
- 2) Zoning Ordinance excerpts highlighted to confirm Conditional Approvals are allowed and expected by the planning commission when a site plan application merits such collaboration.
 - 13.1.C.a – Allows conditional approvals for all site plans (major and minor)
 - 13.1.D.e – Allows necessary conditions on major site plans

- 13.1.E.C – Allows necessary conditions on minor site plans
 - 13.1.H.a – Allows conditional approvals deferring to other local, county or state agencies
- 3) Zoning Ordinance Excerpts highlighted to clarify lot coverage meaning and application –
- There are 8 unique citations of the word “coverage” in the Centerville Zoning Ordinance. 6 of the 8 citations are specific to vertical structures and 2 citations are not related. Based on Section 4.4, it remains our opinion that the correct way to calculate “Lot Coverage” is to measure the existing and proposed building square footages.
 - Out of an abundance of caution, we reviewed the concept that a seasonal trailer or short term trailer could be included in “lot coverage” for comparison purposes. If all 337 campsites are occupied by the largest trailer possible (10'x40' = 400 sf) then there would be an additional 337 x 400 sf = 134,800 sf or 3.09 acres of lot coverage of trailers. From our recent “answers to questions” document, we have also calculated 23,698 sf (0.55 acres) of buildings existing and proposed. This concept would bring our total lot coverage to 158,498 sf = 3.64 acres / 80.08 acres (to shoreline) = 4.54% lot coverage. This 4.54% is well below the allowed 25% lot coverage maximum in the Commercial Resort District.
- 4) Finally in an effort to provide full transparency to the Planning Commission, we are providing a copy of the recent correspondence between the applicant and the Lake Leelanau Lake Association board. Although the LLLA is not a required agency, Northgate is a member in good standing and has been in periodic communication with the LLLA throughout the site plan process.

We trust that this extra information will support our Campground Improvement site plan proposal by clarifying how we follow the masterplan goals along the lakeshore and clarifying any misunderstandings of the zoning ordinance requirement relating to our approval process and technical calculations.

If you have any further questions, please feel free to contact us via phone or email.

By email


Copy: Katy Hallgren, Northgate Leelanau Pines, LLC

Conditional approvals for major site plans are anticipated and allowed by Article XIII Section 13 as follows:

17. Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used.
18. Location and specifications for all fences, walls, and other screen features with cross-sections.
19. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. For each new landscape material the proposed size at the time of planting must be indicated. All vegetation to be retained on the site must also be indicated, as well as its typical size by general location or range of sizes as appropriate.
20. Location, size and specifications for screening of all trash receptacles and other solid waste disposal facilities.
21. Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials, or hazardous materials as well as any containment structures or clear zones required by government authorities.
22. Identification of any site amenities or natural features.
23. Identification of any views onto or from the site to or from adjoining areas.
24. North arrow, scale and date of original submittal and last revision.
25. Seal of the registered engineer, architect, landscape architect, surveyor, or planner who prepared the plan.
26. Deed restrictions, Master Deed restrictions, and bylaws as applicable, for Township review to insure that the condominium subdivision, or any use or development which requires site approval, its Master Association, and the applicant have provided for the continual maintenance of the development's services and facilities, to insure protection of the natural environment; compatibility with adjacent uses of land; and general upkeep of the subdivision's land in a socially and economically desirable manner.

13.1.C.a - Allows conditional approvals for all site plans (major and minor)

C. Site Plan Review and Approval

- 
- a. The Planning Commission as specified in this Section, shall review and approve, review and approve with conditions, or review and deny all site plans submitted under this Ordinance. Each site plan shall comply with the "Standards for Granting a Site Plan Approval" as described in H of this Section. Each action taken with reference to site plan review shall be duly recorded in the official record of action by the Planning Commission. The Zoning Administrator shall forward any site plan received to the Planning Commission for review. Prior to any final decision, the Centerville Township Planning Commission may seek the recommendation of the Leelanau County

Conditional approvals for major site plans are anticipated and allowed by Article XIII Section 13 as follows:


with any special problems or steps that might have to be followed, such as requests to the Board of Appeals for a variance.

d. Preliminary Site Plan Review.

The second phase is called Preliminary Site Plan Review. At this step a preliminary site plan meeting is scheduled. This meeting will be handled as a public hearing. Notice of the public hearing will be made according to Act 110 of Public Acts of 2006, as amended, and the Public Notification Section of the Centerville Township Zoning Ordinance. Verification of the Applicant's compliance with the submittal requirements of this Ordinance (see G in this Section) is reviewed by the Planning Commission, and the changes necessary, if any, for final site plan approval are indicated in writing to the applicant.

13.1.D.e - Major site plans are allowed conditional approvals

e. Final Site Plan Review. (Begun 9/21/22, continuation for 10/3/22)



Final Site Plan approval shall be considered by the Planning Commission at a regular meeting. The Planning Commission shall indicate in writing that all requirements of the Ordinance, including those of other reviewing agencies within Centerville Township, have been met, including any conditions that may be necessary. Where the applicant is dependent upon the grant of any variances by the Zoning Board of Appeals, said favorable action by the Zoning Board of Appeals is necessary before final site plan approval can be granted. An approved site plan shall include a note referencing the case number and date of all variances granted.

f. Data submittal requirements are be specified in F (f) of this Section.

E. Procedures for Submission and Review of Application for Minor Projects.

a. All developments less than ten thousand (10,000) square feet of structure, and ten (10) acres in size or smaller, are minor projects which may be reviewed by the Planning Commission pursuant to the requirements below. All other projects may be either major projects (see D of this Section) subject to review and approval by the Planning Commission or amendments to existing plans which are processed pursuant to the requirements in M of this Section.

b. The Planning Commission may review and approve the following site plans:

1. Accessory uses incidental to a conforming existing use where said use does not require any variance and where said site plan conforms with all the requirements of this Ordinance.
2. Expansion and/or addition to an existing conforming use where said site plan conforms with all the requirements of this Ordinance and does not increase the size of the existing use or structure more than ten percent (10%) of the present size.
3. Accessory storage buildings in all Zoning Districts.

Conditional approvals for major site plans are anticipated and allowed by Article XIII Section 13 as follows:

4. Increases in off-street parking areas, parking buildings and/or structures, increases in loading/unloading spaces in commercial and industrial Zoning Districts, and landscape improvements as required by this Ordinance.
5. For those conditional land uses so specifically identified in this Ordinance.
6. Amendments to approved site plans.
7. Final site plans.

Sidenote: 13.1.E.c - Minor Projects also allow conditional approvals



- c. The Planning Commission shall apply all applicable standards and procedures of this Ordinance in approving, conditionally approving or denying site plans.
- d. Data submittal requirements shall be as specified in F (f). below.

F. Distribution of Required Copies and Action Alternatives.

Where Site Plan Review is required by this Ordinance, an applicant for Site Plan Approval shall complete and submit copies of an Application for Site Plan Approval, site plans, and other information where applicable, as set forth below.

- a. The Application for Site Plan Approval must be obtained from the Planning Commission. The applicant is asked to keep one copy for his/her records. The applicant shall return the original and six (6) copies of the application and seven (7) copies of the Site Plan to the Planning Commission at least thirty (30) days prior to the next regularly scheduled meeting of the Planning Commission for the purpose of preliminary site plan review.
- b. The entire application (including Application for Site Plan Review and Site Plan) must be distributed as follows:
 - Original and six (6) copies returned to the Planning Commission
 - Copy, or copies, to the Road Commission per their requirements
 - Copy, or copies, to the Health Department, per their requirements
 - Copy, or copies, to the Drain Commission, per their requirements
 - Copy, or copies, to the local Fire Department, per their requirements
 - Copy, or copies, to the Leelanau County Department of Building Safety, per their requirements


Delivery may be via electronic or hardcopy format as indicated by each agency. The Planning Commission does accept electronic copies. Upon delivery of the application and site plans; the applicant shall obtain a receipt from the agencies as proof of delivery or a stamped, signed site plan indicating no comment. This receipt may be in electronic format (i.e., email). The receipt with comments, if any, from each agency shall be returned to the Planning Commission. Without these receipts and applicable comments, the site plan will not be processed.

Conditional approvals for major site plans are anticipated and allowed by Article XII Section 13 as follows:

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.

13.1.H.a - Paragraph allows conditional site plan approvals based upon agency comments and reviews

H. Conditional Approvals.

- 
- a. The Planning Commission may conditionally approve a site plan in conformance with the standards of another local, county or state agency, such as but not limited to a Water and Sewer Department, County Drain Commission, County Road Commission, State Highway Commission or Environmental Quality Department. They may do so when such conditions:
 1. would insure 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,
 2. would protect the natural environment and conserve natural resources and energy,
 3. would insure compatibility with adjacent uses of land, and
 4. would promote the use of land in a socially and economically desirable manner.
 - b. The Planning Commission may conditionally approve a site plan for its conformance with fencing, screening, buffering or landscaping requirements of this Ordinance and may collect a performance guarantee consistent with the requirements of J of this Section

Section 3.8 Boat Houses

Unless otherwise specifically provided in This Ordinance, Boat Houses constructed on lakes or watercourses in the Township do not have to comply with setback restrictions from such shoreline of lakes or watercourses as would be applicable to other types of structures. A 14' x 24' maximum building footprint and an 18' high peak with a 6/12 gable roof are allowed; no habitable space or decking is allowed. Boat Houses must still comply with side yard setbacks and lot coverage.

Section 3.9 Use of Lots for Lake Access Easements

A minimum of one hundred (100') feet of Lake Frontage is required before granting an easement in accordance with this section. Easements must contain a minimum of twenty-five (25') feet of lake frontage and can only be granted to or held by person's owning property within the same section as the lot to be used for Lake Access. An easement may only be granted or held by one party. Separating and selling the right to use Lake Access associated with nearby inland acreage is prohibited. Granting easements across a previously improved residential lake lot is prohibited and will void the lake lot as an approved building site. The owner of the lake lot used for the lake access easement is required to provide one sanitation facility for each one hundred (100') feet of Lake Frontage. Any such sanitation facility must be appropriately screened from public view. A minimum of one off-street parking space for each authorized access right must be provided for all Lake lots.

Section 3.10 Docks, Moorings and Boats

Unless otherwise specifically provided for in the ordinance, the following shall apply:

- A. On in-land lake property, docks shall be limited to one dock per 100' lake lot, or 50' lot which has been grand fathered in.
- B. On in-land lakes, no more than three motor-boats and ten (10) water craft other than motor boats shall be allowed per 100' of lot width, or per lot if the lot is less than 100' in width and grand-fathered in. No more boats than this may be stored on hoists, beached, moored, docked, or anchored; no more than one motorboat and one watercraft other than a motorboat shall be allowed for each additional 25' of lot width on hoists, beached, moored, docked, or anchored. No person may be allowed to rent slippage or mooring rights unless that person possesses a commercial marina permit.
- C. Shoreline alterations to riparian properties for on site boat launching and/or development of launch sites for multiple party use- private or commercial - is prohibited.

Section 3.11 Maximum Height

In order to preserve the pastoral character of the area, no building or structure or any part thereof shall be constructed having a height greater than forty (40) feet. This does not include antenna systems that might require a greater height for adequate signal reception, windmill towers, or any structure actively used for agricultural purposes.

- g) Preexisting towers and antennas means any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.
- h) Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, monopole towers or poles. The term includes, but is not limited to radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like. The term includes the structure and any support thereto.

B. Applicability:

- a). New towers and antennas. All new towers or antennas in Centerville Township shall be subject to these regulations, except as provided in paragraphs B(b) through B(d) inclusive of this section.
- b). Amateur Radio Station Operators/Receive only Antennas. This ordinance shall not govern any tower, or the installation of any antenna, that is under sixty (60) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.
- c). Renewable energy towers. This ordinance shall not govern any tower, or the installation of any tower, that is under one-hundred (150) feet in height and is owned and operated by an individual and used for the generation of renewable energy.
- d). Preexisting Towers or Antennas. Preexisting towers and antennas shall not be required to meet the requirements of this zoning ordinance, other than the requirements of paragraphs C(f) and C(g), of this section, provided they are not improved in a way which raises their pre-existing height.
- e). AM Array. For purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as an AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

C). General Requirements.

- a) Principal or Accessory use. Towers and antennas may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of a tower or antenna on such lot.
- b) Lot size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the towers or antennas may be located on leased parcels within such lot.
- c) Inventory of existing sites. Each applicant for a tower or antenna shall provide to the Zoning Administrator an inventory of existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of Centerville Township or within six miles of

the border thereof, including specific information about the coverage area, location, height, and design of each such tower or antenna. The Zoning Administrator may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate towers or antennas within the jurisdiction of Centerville Township, provided, however that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- d) Aesthetics. towers and antennas shall meet the following requirements:
 - 1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - 2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
 - 3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- e) Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- f) State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the towers or antennas at the owner's expense.
- g) Building codes; safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection Centerville Township/Leelanau County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- h) Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in Centerville Township irrespective of municipal and county jurisdictional boundaries.
- i) Not essential services. Towers and antennas shall be regulated and permitted pursuant to this section of the zoning ordinance and shall not be regulated or permitted as essential services, public utilities or private utilities.
- j) Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in

- a. the location, type and height of the proposed towers or antennas;
 - b. on-site land uses and zoning, adjacent land uses and zoning
 - c. Master plan classification of the site and all properties within the applicable separation distances set forth in section C(p);
 - d. Adjacent roadways, proposed means of access;
 - e. Setbacks from property lines;
 - f. Elevation of the proposed tower and any other structures;
 - g. Topography;
 - h. Parking; and
 - i. Other information deemed by the Planning Commission to be necessary to assess compliance with the intent of this zoning ordinance.
- (4) Legal description of the parent tract and leased parcel (if applicable).
 - (5) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties, including those within the commercial and agricultural districts.
 - (6) The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 3.16.C(c) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing towers.
 - (7) A landscape plan showing specific landscape materials.
 - (8) Method of fencing, and finishing color and, if applicable, the method of camouflage and illumination.
 - (9) A descriptive narrative of compliance with the following sub-sections of Section 3.16.C of this Ordinance:
 - (c) Inventory
 - (d) Aesthetics;
 - (e) Lighting
 - (f) State of Federal Regulations
 - (g) Building codes
 - (j) Franchises
 - (l) Signs
 - (m) Building and support Equipment
 - (o) Setbacks
 - (p) Separation
 - (q) Security fencing
 - (r) Landscaping and
 - (s) All applicable federal, state or local laws.
 - (10) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
 - (11) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the coverage area which has an impact on this application.
 - (12) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

- (13) A description of the feasible location(s) of future towers or antennas within Centerville Township based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

E) Exempt Tower and Antenna Uses.

Personal towers used for wireless internet access, TV reception or radios, less than 60' in height are exempt from Site Plan Review.

F) Special Land Use Permits.

- 1) A special land use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.
- 2) In granting a special use permit, the Planning Commission may impose conditions to the extent the Planning Commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
- 3) Each applicant for special land use permit approval shall apply to the Planning Commission providing the information set forth in Sections 3.16 C, D & F of this zoning Ordinance and a non-refundable fee as established by resolution of the Centerville Township Board to reimburse the Township for the costs of reviewing the application.
- 4) The Planning Commission shall consider the following factors in determining whether to issue a special use permit, although the Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Planning Commission concludes that the goals of this Zoning Ordinance are better served thereby:
 - (i) Height of the proposed tower.
 - (ii) Proximity of the tower to residential structures and residential district boundaries;
 - (iii) Nature of uses on adjacent and nearby properties;
 - (iv) **Surrounding tree coverage and foliage;**
 - (v) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (vi) Availability; of suitable existing towers, antennas, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in Section 3.16.C(n).
- 5) The Planning Commission shall prepare a report containing a synopsis of the relevant facts pertaining to the request for a special use permit and then approve, approve with conditions, or deny the request.

G) Removal of abandoned Antennas and Towers.

Any tower or antenna that is not operated for a continuous period for six (6) months shall be considered abandoned, and the owner of such tower or antenna shall remove the same within ninety (90) days of receipt of notice from the Centerville Township Zoning Administrator notifying the owner of such abandonment. Failure to remove and abandoned antenna or tower within said ninety days shall be grounds for the Township to remove the tower at the owners expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

"Coverage" citation #6 - Lot Coverage for the various Zoning Districts.
The heading for BOTH columns (max height and max lot coverage) is Maximum Building Dimensions
The maximum lot coverage for the buildings varies by zoning district

Section 4.4 Schedule of Zoning Regulations

Zoning District	Minimum Lot Dimension		Setback Requirements for buildings from							Maximum Building Dimensions	
	Area ft²	Width ft	Water's Edge ft	Private Easement Ft	Front	Yard ft		From Highway ft		Max Height	Max Lot Coverage
Residential I	15,000	100	40	20²	40	10	15	40	25	40	30%
Residential II	15,000	100	40	20	40	10	15	40	25	40	30%
Commercial Resort	20,000	100	40	20	40	10	15	40	25	40	25%
Recreational	40,000	100	40	20	40	10	15	40	25	40	40%
Business	22,000	100	40	20	50	25	15	40	25	40	50%
Agricultural	65,340	150	40	20	40	10	15	40	25	40¹	25%
Governmental	20,000	100	40	20	40	10	15	40	25	40	40%

¹ except as allowed in section 3.11 (Max Height)

² except for platted Lake Lots as of 12/05/02 where garage/accessory building minimum is 15' if the entrance does not face the easement. Setback is from the property line to the easement.

agrees. Minor changes to an approved site plan may be approved by the Zoning Administrator after construction has begun provided no such change results in any of the following.

1. A significant change in the use or character of the development.
 2. An increase in overall coverage of structures.
 3. A significant increase in the intensity of use.
 4. A reduction in required open space.
 5. A reduction in required off-street parking and loading.
 6. A reduction in required pavement widths or utility pipe sizes.
 7. A significant increase in traffic on neighborhoods or public streets or an increase in the burden on public utilities or services.
- b. Minor amendments include, but are not limited to, the following:
1. Moving building walls within the confines of the smallest rectangle that would have enclosed each original approved building(s). Relocation of building entrances or exits, or shortening of building canopies.
 2. Changing to an equal or more restricted use provided there is no reduction in the amount of off-street parking as originally provided.
 3. Changing the angle of parking or aisle width provided there is no reduction in the amount of required off-street parking or in reduction of aisle width below ordinance requirements.
 4. Moving of ingress or egress drives a distance of not more than 100 ft if required by the appropriate state, county or other local road authority with jurisdiction.
 5. Substituting landscape plan species provided a nurseryman, landscape architect, engineer or architect certifies the substituted species is similar in nature and screening effect.
 6. Changing type and design of lighting fixtures provided an engineer or architect certifies there will be no change in the intensity of the light at the property boundaries.
 7. Increase peripheral yards.
 8. Changing the location of an exterior building wall or location no more than ten (10) feet because of a natural impediment or hazard such as bedrock or muck soils,

Section 14.4.3 Calculating Total Allowable Units in Multiple Districts:

The Total Allowable Units for a clustered development that is located in more than one zoning district shall be determined by calculating the Total Allowable Units in each individual district (gross acreage in district divided by allowable density within district) and adding the individual district results together.

Section 14.4.4 Off-Premises Open Space:

The Open Space requirement of a clustered development may be partially achieved by using dedicated Open Space from a separate Agricultural, Recreational, or Residential 1- zoned property in Centerville Township and must meet the following conditions:

- 1) At least half of the Open Space required shall be located on the parcel in which the development is located.
- 2) Wetlands and natural water courses in the off-premises parcel shall not be included in the calculation of Open Space.
- 3) Only sixty five percent (65%) of the Open Space in the off-premises Agricultural, Recreational or Residential 1-zoned property parcel shall be credited toward the Open Space Requirement of the principle parcel.

Section 14.4.5 Minimum Standards for Clustered Developments:

In order to encourage flexibility and creativity consistent with the open space preservation concept, a clustered housing development may depart from the normal dimensional standards for lot size, setbacks, lot width, and lot coverage; however, the following minimum standards shall apply.

- 1) The minimum setback shall be 10' from any lot line, easement line, or right-of-way line, or 40' from any shoreline.
- 2) Clustered lots that have a lot line which borders on a development boundary shall maintain the normal zoning district side or rear setback on that line.
- 3) All lots shall have a minimum of 30 feet of frontage on an approved road.



September 26, 2022

VIA Email: jwysor@aol.com, jjpopa@charter.net
Lake Leelanau Lake Association
P.O. Box 123
Leland, MI 49654-0123

Dear Messrs. Wysor & Popa and Board of Directors:

This letter follows up on my conversation with Mr. Popa last week. We'd like to take this opportunity to summarize the many concessions we've offered to address the concerns raised by the Lake Leelanau Lake Association (the "LLLA") and improve the lake quality. As you know, Leelanau Pines Campground ("LPC") is a member of the LLLA. As such, we support LLLA's stated mission of "protecting and enhancing the quality and beauty of Lake Leelanau and its surrounding watershed for current and future generations." We believe LLLA's recent opposition to LPC's very reasonable expansion proposal goes well beyond this mission statement¹. If LLLA is going to oppose all growth and development adjacent to the lake, no matter how reasonable and environmentally conscious, LLLA should revise its mission statement because we certainly would not desire to be a paying member of an association with such a mission. Indeed, some of the largest supporters of the LLLA have earned a living in real estate development and/or have done expansions and improvements on their Lake Leelanau properties, as is their right as property owners.

We've taken numerous steps to address each of LLLA's concerns, as outlined below. We want to stress that LPC has a total of 40 acres of undeveloped land with approximately 3,000 linear feet (0.5 miles) of lake frontage. Out of this, we are only disturbing 13 acres (see attached **Exhibit 1: Land Usage Comparison**) of mono-species pine plantation and maintaining a 40' buffer from the waterfront. We are replacing the pine plantation with more diverse, native trees and shrubs. The remainder of the improvements and/or expansion are proposed to occur in already disturbed areas.

Consequently, there is not a more reasonable and benign use for LPC's expansion land, especially considering the Commercial Resort zoning of that land. One way or another, LPC will develop its expansion land for some use — that's our right as a property owner. There are many

¹ The LLLA's recent adversarial approach is surprising to us in light of the fact that Northgate has responded cordially and regularly to all communications and inquiries received from LLLA regardless of timing or content.

other uses of this expansion land that would be far less benign and environmentally-friendly than the 13 acre campground expansion LNP is currently proposing.

In response to the LLLA's concerns, we've recently taken the drastic step of removing 113 expansion sites from our expansion proposal. As such, the LLLA's previous claim of "an increase of 2.5 times the existing campsites," is no longer accurate. We've reduced the total site count to 337 campsites (170 of the 183 existing to remain, 167 proposed). Of the 183 existing sites, 13 along the waterfront are being removed to accommodate the new camp store and pools, thereby improving the waterfront aesthetics.

The following responses address each of the concerns raised in the LLLA's recent Statement by the Lake Leelanau Lake Association Read to Centerville Township Planning Commission Regarding Proposed Expansion of Northgate Leelanau Pines on August 29, 2022:

1. Increased Boat Traffic: The doubled expansion of campsites from 170 to 455 will almost certainly result in a significant increase in the number of boats on the lake. The lake can only handle so many boats without adversely affecting the ecosystem, recreation, and boater safety. Boats disturb the sensitive shallow water habitat where fish spawn and invertebrates live. Leaking gas and oil and emissions from boats add to lake pollution. Finally, too many boats are a detriment to safety and create excessive noise that detracts from the enjoyment of this beautiful lake. We ask that a Lake Carrying Capacity Study be performed to assure that the additional boat traffic will not degrade the lake ecosystem or jeopardize boater safety or riparian enjoyment of the lake.

Northgate Leelanau Pines, LLC ("Northgate") has reduced the number of proposed campsites to 167, bringing the total number of campsites to 337. In Northgate's current proposal, 170 out of 183 existing sites will remain and the 167 proposed campsites will be added in areas that have been previously disturbed, including an existing parking area and a pine plantation.

Northgate is not proposing an increase in the number of boat slips. We are proposing a consolidation of the three existing docks into two while maintaining the existing 82 slips. In addition, Northgate is proposing a consolidation of the two existing boat launches into one. These consolidations will minimize lake coverage and enhance safety.

Furthermore, in order to enhance enforcement efforts, Northgate is adding a controlled access check-in building and gate near the main entrance to keep anyone other than registered campground guests from entering and using the launch and docks.

Campground guests will be required to register their boat and pay an additional fee when they book their campsite. They will also be required to read and sign an agreement to terms to follow

proper boat safety and wash protocol. This will control the number of boats and provide additional oversight and opportunity for guest education on proper invasive species mitigation and protocols.

In addition to the above measures related to boats, the proposed amenities include a pool and a multi-level water playground/splash pad. These amenities, along with playgrounds, sports courts, and other activities programming, will provide guests with ample opportunities outside of the lake to recreate.

2. Invasive Species: Our Association is currently spending several hundred thousand dollars annually to combat the threat aquatic invasive species present to our lake. Increased boat traffic will significantly increase the risk of introduction and re-introduction of invasive species like Eurasian watermilfoil, which has severely compromised the beauty and recreational use of many lakes in Michigan specifically and across North America. We recommend 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.

LPC has two existing boat launch areas in service. Our site plan proposes to provide a consolidated boat launch with a mandatory washing station. Our station will have informational boat wash signs reminding boaters to clean, drain and dry boats and trailers and to dispose of bait in the trash. Rack cards will be provided to guests with their check-in package. The signs and rack cards will be similar to those available through the [Michigan Department of Environment, Great Lakes, and Energy](#). No other washing station on the Lake has staffed personnel.

It should be noted that short-term LPC guests typically travel from within a four hour drive which means these are primarily Michiganders coming to visit the campground. As state residents, they generally appreciate the State's natural resources and desire to enjoy them long-term.

3. Development on the Shoreline: The shoreline itself is a precious ecosystem that must be protected. The development of pools, stores, pavilions and parking on the beautiful shoreline of Lake Leelanau and along Rice Creek would be detrimental to the water quality and habitat of Lake Leelanau. These facilities add significant amounts of impervious surfaces which will carry sediment and nutrients into the lake when it rains. At a minimum, the 40' setback requirement should be honored and the existing shoreline should be restored to natural conditions, including removal of the seawall, to minimize the impact of the large number of people on the property. This recommendation is consistent with EGLE's best management practices, as contained in their pre-application letter sent by EGLE on July 28, 2022.

A 40' setback has been honored for all proposed buildings and structures. **In response to the LLLA's concern, the proposed waterside patio adjacent to the Camp Store has been removed.** We will work with EGLE to achieve a shoreline treatment that follows best management practices and mitigates the current shoreline erosion made apparent by the number of trees tipping into the lake.

In short, Northgate is maintaining the 40' shoreline buffer, keeping existing trees and planting an additional 8 trees along the shoreline (red maple and yellow birch, 2.5" caliper, 12-14' tall at planting). Also, as noted above, as part of its proposal, Northgate is removing 13 existing campsites along the waterfront.

4. Impacts of Nutrients from the Sewage Lagoon: The proposed plan does not address the consequences of the increased usage of the sewage lagoon to groundwater and surface water. There is no mention of upgrading the lagoon even though the usage will increase substantially. Hydrological studies of the potential impact of the expansion must be performed.

The Lagoon operation is closely governed and monitored by EGLE to assure environmental compliance. An application for growth to accommodate the expansion has been made. We anticipate that a condition of site plan approval requiring EGLE permitting will be appropriate under ordinance 13.1.H.

5. Impacts to wetlands: The property includes an endangered forested wetland which is of tremendous importance in the filtration and maintenance of the high quality of the water in Lake Leelanau's ecosystem. The construction of hiking trails will degrade the wetland, which must be avoided.

In response to the LLLA's concern, the proposed elevated boardwalk and fishing piers have been removed from our proposed plan.

In light of the above, I trust it's clear to the LLLA that Northgate has gone above and beyond to resolve all of the LLLA's concerns. We're hopeful that the LLLA will recognize the reasonableness and appropriateness of LNP's revised, proposed expansion and will communicate this to the association members. To the extent that the association members are successful, so also will the association succeed.

We're on the same team. Our campground succeeds only so long as the lake remains beautiful. As stated above, we share in the LLLA's mission of protecting the quality and beauty of the lake. That's the reason we joined the LLLA as a member as soon as we purchased LPC. In fact,

when we joined, we paid more than the minimum dues. Compare this to LPC's lack of involvement and support of the LLLA prior to Northgate's ownership.

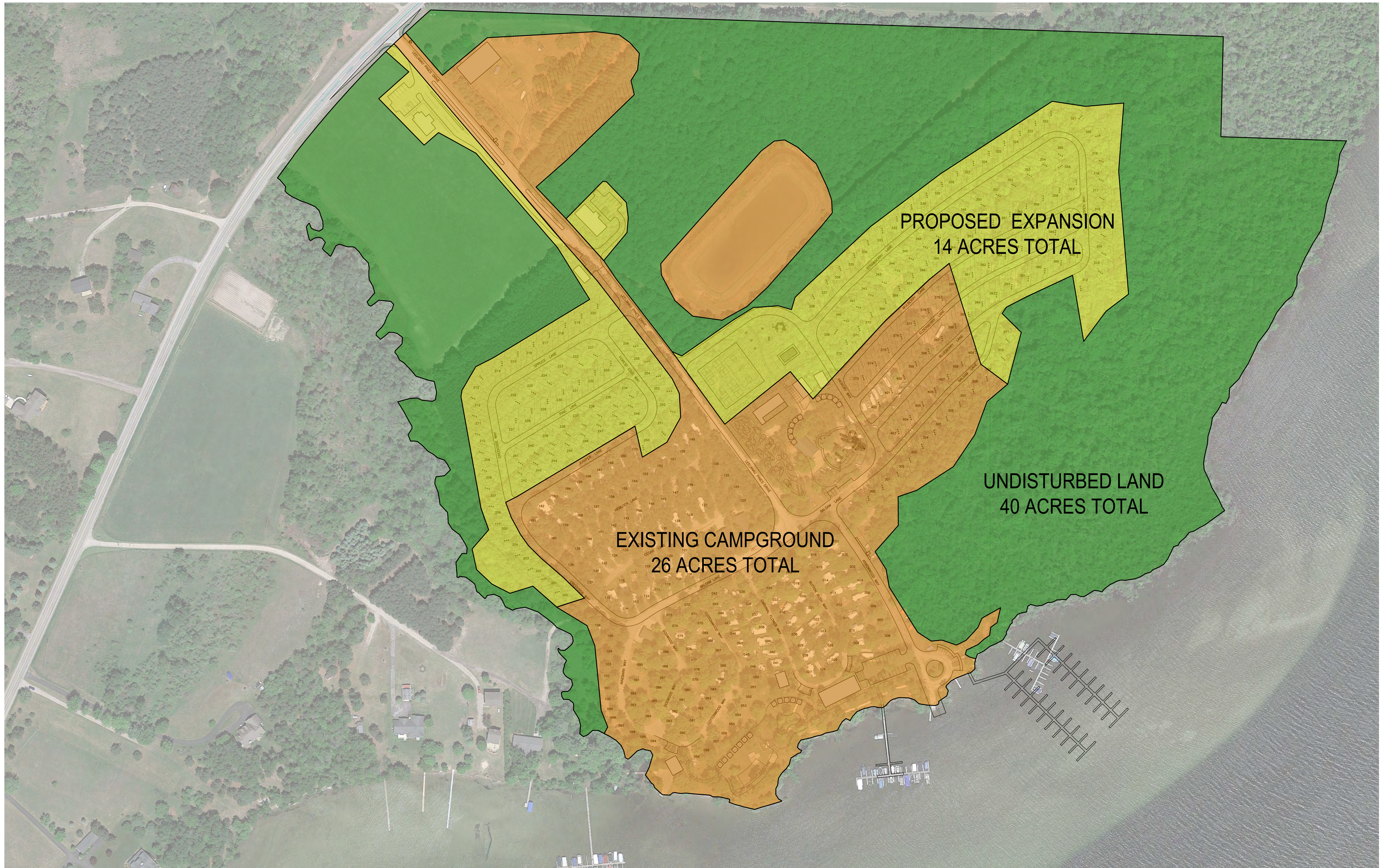
If the LLLA is being honest, nothing about LPC's proposal will negatively impact the quality and beauty of the lake. To the contrary, **the initiatives we're taking in connection with the expansion proposal — including mandatory boat washing, mandatory boat registration and tracking, elimination of an existing second boat ramp, elimination of 13 existing campsites along the waterfront, shoreline tree plantings and new pools/amenities to encourage recreation off the lake — will enhance the quality and beauty of lake.** So, if the LLLA is truly interested in advancing its mission (rather than simply opposing any growth around the lake) the LLLA should be a supporter of LPC's expansion proposal.

We'd like to meet with the LLLA committee at your earliest convenience to further discuss this matter and hopefully earn your trust and support. Please let us know your availability to meet with you this week if possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zachary J. Bossenbroek', written over a horizontal line.

Zachary J. Bossenbroek
Chief Executive Officer



LNP - LEELANAU PINES

6500 E. Leelanau Pines Dr., Cedar, MI 49621

EXHIBIT 1: LAND USAGE COMPARISON - SEPTEMBER 2022

Exhibit C

LPN - Leelanau Pines Campground

Responses by Northgate Leelanau Pines, LLC on September 19, 2022 (in blue arial italicized font)

Please note that not all of the questions are relevant or applicable to the application review process or statutory review requirements. Therefore, less detailed responses are provided for non-applicable questions. However, out of courtesy to the neighbors, and cooperation with staff and the planning commission Northgate has made an effort to respond to all items in some fashion.

Please be advised that Northgate has opted to remove the future phase from the site plan and special land use application. This reduction of 113 campsites will improve the tree preservation, screening, buffering, and should adequately address the public concerns associated with additional vehicle traffic and boating impacts.

Please note that many of these answers were provided in the project introduction and dialogue during the public hearing held on August 29, 2022. We understand that the audio may have been difficult for some residents to hear, and therefore are providing repeat answers. As a result, some less detailed explanations are provided for repeat answers.

Questions from PC members, Public Hearing Comments, and Staff September 14, 2022

Environmental Concerns

The proposed expansion has a direct impact on sensitive wetlands and shoreline. How many acres do you intend to clear or develop of the total undeveloped area and what is the estimated tree removal (#) that will result?

Any proposed impacts on wetlands and shoreline are governed by the State of Michigan Department of Energy, Great Lakes, and Environmental Quality (EGLE – pronounced “eagle”). These impacts require a state permit application process, which is customarily a Condition of Approval on site plans and special land use permits. EGLE’s wetland regulations require extensive research, review, justification, and acceptance prior to work authorization.

The tree preservation areas are provided on the landscape drawings L101-L104 and are scattered throughout the campground to protect

	<i>the resource to the greatest extent possible and enhance the camping experience.</i>
What steps have you taken to ensure that clearing and/or development of along Rice Creek, the Rice Creek Watershed, or the lake shoreline will not affect the sensitive wetlands?	<i>The development strives to 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.</i>
How will stormwater runoff be managed to address the increased risk resulting from areas being cleared and developed, including impervious surfaces? Runoff concerns relate to both risk exposure for wetlands around Rice Creek watershed and the lake. Specifically: o It appears that the boat launch circle drive is within feet of the water's edge. How will you handle the runoff from the asphalt road surface?	<i>The existing hard-pack gravel boat launch circle drive is also within a few feet of the water's edge. The proposed resurfacing will not change the existing drainage pattern.</i>
What are your plans for managing shoreline setbacks? Specifically: o Please confirm the single story camp store minimum setback of 40' from the water's edge on the plan.	<i>Confirmed.</i>
o The camp store's lakeside patio or decking is right up to the water's edge. Explain how that is not an encroachment into the required 40' setback.	<i>The planning and zoning language quoted needs to be clarified. The ordinance definition of "setback" is, "The minimum distance from the lot line within which no buildings or structures, including overhangs, may be placed, except as otherwise provided in this ordinance." Therefore, surface or subsurface improvements like patios, decks, septic fields, or similar features are legally permitted within those areas.</i>
How do you plan to ensure that the expanded demands on the existing lagoon do not generate any additional runoff or nutrient inflow to the lake, impacts to soil health, or other contamination of the shallow water table at the location?	<i>The sanitary sewer lagoon is permitted and governed by EGLE. Some of EGLE's governing criteria are the protection of public health, groundwater, and the environment. All sewage processing and discharge must fall within their permit criteria.</i>

Boat and Other Water Vehicles Traffic Concerns	
	<p><i>Please note that the Boat concern responses are provided as a courtesy only. The site plan application does not propose to add slips or boat launches. All launch and dockage facility repairs and modernization is governed by EGLE through a permit application process with public notification.</i></p>
<p>Beyond the 82 slips presently available, do you intend to allow residents and campers to launch their boats for daily use? If so, what do you estimate that traffic to be?</p>	<p><i>The existing boat launches currently allow day use by campers. The reconstruction and modernization of the launch will continue to allow day use by campers. Continuing to use the existing boat launches for day use is allowed by right in the Commercial Resort zoning district. Day use camper boat traffic estimates are not available at this time.</i></p>
<p>Regarding the previously forwarded attorney opinion are these daily uses considered keyhole- ing ? Please provide a response regarding whether or not you consider the use of the launch for day-use boaters to be keyhole-ing.</p>	<p><i>Keyholing in the ordinance is defined as “The practice of using one or more lake lots as Lake access for one or more off lake lots.” As stated in the September 29 public hearing, the property (lake lot) has over 2,900 linear feet of lakeshore frontage with only 427 feet of road frontage. The Leelanau Pines property geometry and boat use situation is the opposite of keyholing.</i></p>
<p>With the substantial increase of the number of campsites and only 82 slips available for boat use, how do you propose to handle boaters daily in and outs when there is no temporary mooring in the lake?</p>	<p><i>The existing boat launches currently allow day use by campers. The reconstruction and modernization of the launch will continue to allow day use by campers.</i></p>
<p>Do you now and do you intend to allow non-camp residents to launch boats and/or store trailers on your property?</p>	<p><i>The existing boat launches and trailer storage areas currently allow use by campers and staff. The reconstruction and modernization of the boat launch and trailer storage areas will continue to allow use by campers and staff.</i></p>
<p>Do you now and do you intend to rent boat slips to non-camp residents? If yes, what percentage are rented to non-camp residents?</p>	<p><i>The existing boat slips allow use by campers and staff. The reconstruction and modernization of the boat slips will continue to allow use by campers and staff.</i></p>
<p>There are considerable efforts underway to combat the invasive species Eurasian Milfoil. We note the presence of a boat washing station in the application. What protocols</p>	<p><i>The proposed boat wash facilities will be mandatory for boats entering the lake. We will have signage indicating that the boat wash is mandatory for all boats entering the lake. We will have signage providing education on the</i></p>

will be in place to supervise and ensure guests are properly washing boats and other water vehicles before and after they enter or exit the lake? Will there be an enforced requirement? How will you enforce the use and educate users on how to properly wash their water craft? Will staff be responsible for washing water craft?	<i>benefits and instructions on the use of the facility. Day-use boating activity levels are not expected to merit direct staff oversight. This innovative wash station will be a great example for other public and private boat launches to follow as we are unaware of any others on the Lake.</i>
What plans, policies, and/or procedures will you establish to ensure responsible boating and on- water traffic habits by your residents. Including, but not limited to, maintaining safe distances from other boats, maintaining safe distance from docks and swim areas, and excessive congregation of boats in-front of shoreline properties.	<p><i>The operation of watercraft on Lake Leelanau is governed by Michigan DNR, Michigan State Police, and Leelanau County Sheriff. The same rules and enforcement will apply to Leelanau Pines boaters that apply to public day-use boaters from the existing public launches as well as private seasonal boaters from private cottages and docks, (just like they currently do). No changes to boating regulations or law enforcement are proposed.</i></p> <p><i>With over ½ mile of lake frontage and sandy bottom to choose from in front of the campground property, excessive congregation in front of other private properties is not anticipated.</i></p>

Camp Operations Concerns	
What are the intended hours of operation and defined "quiet hours" for LP residents?	<i>Quiet hours are from 10:00 p.m. - 8:00 a.m. and are strictly enforced.</i>
What noise mitigation controls are you implementing for the proposed increase in occupancy?	<i>Strictly enforced quiet hours.</i>
What is the intended season of operations included opening and closing dates?	<i>The 2023 operating dates are May 5th - October 14th. In general, our season begins around May 1st and ends around November 1st.</i>
What is your average occupancy rate in current configuration? How do you anticipate occupancy rates being after expansion?	<i>Occupancy rates and projections are proprietary Northgate business information. Our goal is always to be fully occupied.</i>

What is the current and expected ratio of seasonal residents to transient residents?	<i>Seasonal and short-term rental ratios are proprietary Northgate business information. Our goal is always to be fully occupied. We expect that most of the seasonal occupants will continue to be campers and that most of our new spaces will be short-term guests. The ratio may change over time based on any number of factors including market demand.</i>
Electrical systems seem to be maxed out based on input from campers and neighbors, what are the plans to increase the electrical capacity of the resort?	<i>Our ongoing communications with Cherryland Electric system engineers have not identified capacity concerns with serving Leelanau Pines and neighbors in either the existing condition or accommodating the proposed growth. In the event that Cherryland Electric determines that their system needs to be upgraded to serve our proposed growth, we would rely on them to upgrade their system.</i>
Current campers state there are staffing shortages, how will that be addressed with a two-fold increase in occupancy?	<i>We employed 13 team members from the community of Cedar and 5 seasonal campers during the 2022 prime camping season. That staffing level was consistent with or exceeded staffing levels of the prior years.</i>

Road Traffic Impact Concerns	
	<i>Please note that the Road Traffic Impact Concerns are governed by the Leelanau County Road Commission (LCRC). The LCRC has required a Traffic Impact Assessment as part of the Leelanau Pines driveway improvement permit application process. The traffic questions and answers are relatively technical in nature, have been studied with computer models, and are provided within that study as well as any resulting recommendations. The Road Commission has required that an MDOT compliant drive entrance be provided and the model supports that this entrance will operate efficiently. The model has also shown that the existing local road network has the capacity to handle the additional traffic without additional improvements being necessitated at nearby intersections.</i>
What # and % of the RV spaces would be full season residents and what # and % would turnover routinely?	<i>See Traffic Impact Assessment</i>

How does that compare to current operations?	<i>See Traffic Impact Assessment</i>
How do you intend to manage the increased traffic in and out of the resort?	<i>See Traffic Impact Assessment</i>

Social & Physical Infrastructure Concerns	
What incremental demands do you anticipate this expansion would put on existing utilities which historically have already been strained by the campground? How do you ensure that campground expansion does not create excessive demands that negatively impact the broader area's energy needs?	<i>Our ongoing communications with Cherryland Electric system engineers have not identified capacity concerns with serving Leelanau Pines and neighbors in either the existing condition, or accommodating the proposed growth. In the event that Cherryland Electric determines that their system needs to be upgraded to serve our proposed growth, we would rely on them to upgrade their system.</i>
Have you considered the incremental demands that this may put on local police, fire, and emergency response services? Do you have confidence that this expansion and resulting increase of visitors is within local capacity to accommodate?	<i>The 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 Centerville Township Ordinance. These agencies have provided feedback which has been incorporated into the site plan accordingly.</i>

Pollution/Neighboring Property Concerns	
What policies or procedures will be implemented to control against negative impacts of noise and light pollution resulting from the expansion?	<i>As mentioned previously, quiet hours extending from 10:00 p.m. to 8:00 a.m. are strictly enforced. The intent of the campground is to have limited artificial outdoor lighting in keeping with the camping experience. Outdoor lighting will be dark sky approved with full cut-off fixtures. Lighting will be used to enhance the camping experience and improve safety. It will comply with local, state and federal codes, and will promote dark night sky preservation. Outdoor illumination will be low intensity and will be provided only where</i>

	<i>necessary for safety. This includes the entry sign, major interior intersections, and buildings. Existing lighting is to remain.</i>
Because residential zoning districts border the north and south property lines, what precautions will be taken to minimize or prevent noise/sound, odors, or campfire smoke from traveling across the property lines. Is there a proposed landscape plan including additional landscaping, screening, or buffering including but not limited to berms between the campsites that are close to the residential use areas?	<i>We will maintain the current landscape buffer with enhancements in key areas to minimize visual impact.</i>

Studies, Analyses and Outside Agency Questions	
Have you received comments back from EGLE on the campsite expansion, and if so, what requirements will they have?	<i>The EGLE campsite expansion permit is a licensing process, not a zoning entitlement process. Any EGLE licensing requirements will be accommodated, and addressed with the Township if they impact zoning requirements.</i>
Will the proposed walking trail impact the fragile wetlands and has EGLE stated on the record that they will be issuing a permit for this walking trail?	<i>The EGLE pre-application response letter indicates that the permitting requirements have also been copied to Centerville Township. The approval of the planning commission for Northgate to construct a walking path in the wetlands does not obligate Northgate to build one. Without EGLE's concurrence, the path will not be built. See the Environmental Concerns response section above.</i>
During the Public Hearing, comments were made regarding a need for an Environmental Assessment as recommended by the Leelanau County General Plan (LCGP) and Part 17 of PA 451 of 1994 as amended (aka/Michigan Environmental Protection Act, MEPA). Please respond as to why the LCGP & MEPA should or should not be considered as part of this review by the Planning Commission.	<i>Neither the zoning ordinance site plan, nor the special land use application for the proposed campground improvements require the Environmental Assessment be completed for growing an existing land use. The application was considered administratively complete by staff and authorized for public notice and planning commission review without one being required. (By way of further explanation, typically an Environmental Assessment is required for consideration of a brand-new land use and/or a brand-new zoning action which significantly changes the use and character/topography of the existing</i>

<p>o If conducted, should such an Environmental Assessment also include a site performance analysis and a community service analysis?</p>	<p><i>property. Leelanau Pines is a long standing existing use which does not significantly change the character/topography of the property).</i></p>
<p>The Lake Leelanau Lake Association is asking for a lake carrying capacity study to be conducted prior to any approvals by the Planning Commission due to the unknown number of additional boats using the launch on a daily basis because of the increased campsite numbers. Please address why you do or do not feel such a study should be conducted.</p>	<p><i>A lake carrying capacity study is unnecessary for several reasons as follows:</i></p> <p><i>First, the current (September) proposal does not include a large marina expansion that was part of the original (June) proposal. Rather, the current proposal maintains the existing number of slips and boat launches that currently operate.</i></p> <p><i>Second, the subject lake, Lake Leelanau, is a very large lake. According to Wikipedia, it has 8,608 acres (13.45 square miles) of Usable Surface Area. This surface area has a very large carrying capacity, which is highly unlikely to be impacted by approximately 30 acres of campground improvements.</i></p> <p><i>Third, the carrying capacity study is completely subjective to the type of use that the Lake in question is “intended for”. For example, the Optimum Boating Density goal heavily depends on the types of uses desired by the boaters (canoes, kayaks, sailing, fishing, skiing/tubing, or cruising) and the resulting quantitative value varies almost an order of magnitude (7.5x) from 4 acres/boat to 30 acres/boat. It is highly unlikely that the applicant and the Lake Association will come to a consensus on the underlying assumptions supporting calculations involved to assess the lake capacity.</i></p> <p><i>Fourth, the requested carrying capacity calculation is not an industry standard nor is a boating census (counting existing boating traffic) an industry standard. This quantitative approach may (or may not) be a valuable tool for assessing specific problems or setting specific goals and policies for any given lake. However, we are unaware of another instance of its use and application as a zoning tool for site plan approval. We question whether the application of the tool in the site planning process is appropriate as the commonly intended use(s) appear to be waterward of the shoreline.</i></p>

	<p><i>Finally, neither the zoning ordinance site plan nor the special land use application suggest/require such a study be completed for the planning commission's review. The original application with marina expansion was considered administratively complete by staff and authorized for public notice and planning commission review without one being required.</i></p>
<p>Because of comments received by the Leelanau County Road Commission and their requirement of having a traffic study completed, and pending comments from EGLE regarding the number of campsites expanding including the Sewer Lagoon system, it will be very difficult for the Planning Commission to create a complete finding of facts without that input.</p>	<p><i>Allow us to address the two comments received as they influence the answers to the subsequent questions;</i></p> <p><i>1) LCRC TIS request: The TIS has been completed, will be submitted to the LCRC, and shows that although the additional vehicles will be present, the road network has adequate capacity to handle them and no off-site road improvements are needed or recommended.</i></p> <p><i>2) EGLE permitting feedback on the number of campsites, the sewage lagoon system use, the wetlands, and the marina are all separate permitting processes with separate applications. These separate processes have been initiated and documented in accordance with the Township Zoning Ordinance.</i></p> <p><i>The Planning Commission's role is to evaluate if the proposed land use of growing an existing campground within the Commercial Resort District complies with zoning regulations. The LCRC and EGLE permitted activities are customarily required as "Conditions of Approval" meaning that the land use must also secure those permits in addition to the site plan approval.</i></p>
<p>Therefore, how would you insure:</p> <p>a. That public services and facilities affected by the proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.</p>	<p><i>The public services (School, Police, Fire, Building Department, Electric, etc.) have all been contacted, received copies of the drawings and application and provided feedback in writing which has been submitted. Any outstanding permits should be considered "Conditions of Approval" as they only affect their specific technical items, but not the land use in question. Therefore, the Township's site plan process inherently assures this capability of accommodation by public services.</i></p>
<p>b. That the project would protect the natural environment and conserve natural resources & energy,</p>	<p><i>As stated in the Masterplan section below, the planning and zoning language quoted needs to be clarified. The legal meaning of "rural character and</i></p>

	<p><i>preservation of natural resources” is that the zoning district will not permit structures and features that are not customary for the area in which they are proposed. A campground by nature is a rural land use as the outdoor environment is best achieved in rural areas. This can be contrasted to a use such as a three story hotel with over 100 rooms, which is much better suited for urban or suburban areas or along interstate travel corridors. Similarly, “preservation of natural resources” means protecting existing land forms and features from impacts such as logging, mining, or removal/relocation. A campground saves many trees, respects topography, and preserves water features more than most non-residential land uses to achieve maximum natural feature conservation and guest enjoyment.</i></p>
c. That the project would insure compatibility with adjacent uses of land, and	<p><i>The planning commission should rely on their published Zoning Map and Masterplan/Future Land Use plan which have both specifically approved and documented this parcel of land (among others) as suitable for campgrounds as a special land use. It should be noted that <u>compatibility</u> means “capable of existing together in harmony” but not “identical land uses”. Clearly the existing campground land use and the neighboring residential and agricultural uses have achieved this co-existent harmony for several decades already and will continue to do so.</i></p> <p><i>More specifically, Northgate’s immediate neighbor to the south and west sold a portion of the campground property to Northgate, and intentionally retained the portion of land along the campground on the south side of Rice Creek and raised no objection to the planned improvements. Northgate’s immediate neighbor to the north currently consists of agricultural fields, which will be protected by retaining an existing vegetative buffer.</i></p>
d. That the project would promote the use of land in a socially and economically desirable manner?	<p><i>The planning commission should rely upon their published Master Plan with the goals achieved as noted in the first section of this response.</i></p>

Master Plan Questions	
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<p>You mention that the project complies with the Master Plan. Please provide supporting documentation to substantiate this statement. Specifically:</p>	<p><i>See responses below.</i></p>
<p>Master Plan Section 8.4 states “This district encompasses two long standing Lake Leelanau resorts. The Plan does not anticipate expansion of these uses or this district.” How does the proposed expansion of Leelanau Pines correlate with this Master Plan statement?</p>	<p><i>The planning and zoning language quoted in the question needs to be clarified for those not familiar or accustomed to working with the master plan and zoning ordinance documents. We interpret, and the plain language of the ordinance supports this interpretation that, “expansion of these uses” means “adding different types of uses to the zoning district” but not “increasing the quantity of existing uses within the district”. In other words, the Masterplan does not prohibit Northgate (or others) from growing their existing services within their properly zoned land. Rather the Masterplan language prohibits Northgate (or others) from adding different types of uses (such as a hardware store or wine tasting room to the site plan for the property. Northgate is only proposing to grow within their existing land use, but they are not proposing to add new land uses to the property. Therefore, Northgate is fully compliant with section 8.4.</i></p>
<p>Explain how the rural character and the preservation of the natural resources of Centerville Township will be kept intact, meeting the requirements of the Master Plan.</p>	<p><i>Again, the planning and zoning language quoted needs to be clarified. The legal meaning of “rural character and preservation of natural resources” is that the zoning district will not permit structures and features that are not customary for the area in which they are proposed. A campground by nature is a rural land use as the outdoor environment is best achieved in rural areas. This can be contrasted to a use such as a three story hotel with over 100 rooms, which is much better suited for urban or suburban areas or along interstate travel corridors. Similarly, “preservation of natural resources” means protecting existing land forms and features from impacts such as logging, mining, mass grading, or relocation. A campground use generally saves trees, topography, and water features wherever possible for maximum natural feature conservation and guest enjoyment. Therefore, Northgate is fully compliant with sections 7.2.1 and 7.2.3.</i></p>

<p>Please address the concerns of the public relating to creating a “town” potentially larger than some of the Leelanau County villages and the “theme park” atmosphere which may be inconsistent with the Centerville Township’s “rural character”.</p>	<p><i>In addition to the rural character described above, Northgate’s improvements will not create a “town” or “theme park”. This language has been used to misconstrue the proposal in an effort to exaggerate the proposal to create unrealistic and fearful mental associations with undesirable impacts.</i></p> <p><i>Northgate’s campers are primarily families and friends who are looking to get away for a week or weekend and relax in a safe, welcoming, family environment. The vehicles are either parked or driven slowly on the low-speed limit roads. The time is spent walking, playing games, and enjoying each other’s company. The amenities proposed are in the center of the campground where they will be most accessible to all campers and least impactful to all neighbors.</i></p>
<p><i>Northgate offers the following Masterplan sections as additional support for our Site Plan Application:</i></p>	<p><i>Chapter 2.3 and 2.5. Tourism and the resource industries provide the basis for the majority of occupations. The existing land use and proposed growth has an acknowledged vital connection to the local economy and tax base.</i></p> <p><i>Chapter 3.5 and Figure 3-5 The land use is NOT located in a prime farmland or local importance farmland on the township map, and is therefore not subject to farmland protections and is available for improvement</i></p> <p><i>Chapter 3.6.3 and 3.8 Leelanau Pines campground offers lakefront, creekfront and wooded recreational opportunities to Centerville residents and guests alike. Therefore Leelanau Pines campground has a shared interest in protecting the quality of the lake, creek and trees as well. Consequently, the growth proposal protects large portions of these resources with wetland preservation, tree preservation, stormwater pretreatment, and limited access areas.</i></p> <p><i>Chapter 7.2.3 Natural Resources Goal (compliance further explained) Leelanau Pines will follow all existing local, county, and state regulations associated with the construction of the new facilities.</i></p>

	<p><i>Leelanau Pines will follow all existing Leelanau County Drain Commission regulations associated with preventing soil erosion and managing and treating the stormwater runoff from the new facilities.</i></p> <p><i>Leelanau Pines will protect the existing wetland and follow all state regulations associated with the proposed walking path for adults and children alike to learn, understand and enjoy them.</i></p> <p><i>Chapter 7.2.5 Economic Goals Objective 2 (compliance further explained) Leelanau Pines will help the community to preserve a tourist-friendly community. Leelanau Pines will provide its own on-site space for entry, circulation, parking, restrooms, and wayfinding signage to reduce any negative impact to neighbors from tourists and campers</i></p> <p><i>Chapter 7.2.7 Recreational Goal Objectives 1 and 2 (compliance further explained) Leelanau Pines is proposing to provide additional private recreational opportunities on the existing Commercial Resort zoned lands including relaxing, miniature golf, swimming, walking, jumping and camping for all age groups of guests.</i></p> <p><i>Chapter 8.3.2 and 8.4. Leelanau Pines is asking to be allowed to continue to thrive and grow within part of the Commercial Resort district as currently described in narrative and mapped on the Future Land Use Map. Leelanau Pines is not asking to expand the use or expand the district in accordance with the Masterplan.</i></p>
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Additional Comments/Questions form Staff:	
Please remove any reference to Marina in the application so there is no confusion moving forward.	<i>Northgate is not proposing to increase the marina size and will eliminate all associated references. However, as stated in the public hearing, the existing marina and boat launch are in need of maintenance and repair. Northgate is proposing to modernize and reconfigure the existing permitted 82 slip marina and boat launch area. We are working on submitting an application to EGLE</i>

	<i>for this activity and want the planning commission and residents to be aware of the plans out of transparency and forthrightness.</i>
What are the dimensions of the gravel trailer parking spaces?	<i>The proposed dimensions vary by location and are provided on drawing C201.</i>
Provide documentation for how the proposed outdoor lighting fixtures will comply with ZO section 3.18.	<i>The proposed dark-sky approved lighting plan is provided on the landscaping drawings L101-L104 (specifically note 4). Northgate is comfortable with an additional "condition-of-approval" placed on the site plan if the planning commission needs more assurance of compliance.</i>
Please calculate the lot coverage as the Commercial Resort zoning district only allows 25%.	<i>The proposed Building Lot Coverage is calculated as follows:</i> <i>Existing property size: 72.74 acres,</i> <i>Proposed Building Lot coverage (listed in the August 2, 2022 narrative):</i> <i>(1,930 sf+ 2,056 sf+ 1,963 sf +1,215 sf +4,000 sf +862 sf +862 sf +3,200 sf</i> <i>+925 sf +925 sf +360 sf +5,400 sf = 23,698 sf / 43560 = 0.55 acres.</i> <i>Lot Coverage = 0.55 acres / 72.74 acres = 0.75%</i> <i>0.75% lot coverage < 25.0% allowed, therefore proposal is compliant.</i>
The Planning Commission has authorization to request a Performance Guarantee per Section 13.1 J of the Centerville Township Zoning Ordinance. The purpose of the performance guarantee is to ensure completion of improvements connected with the proposed use as required by this Ordinance, including but not limited to, roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping, and widening strips. Therefore, please provide an engineer's cost estimate of the above listed costs and a timeline for completion so if the Planning Commission approves or approves with conditions, that we will already have the information in hand.	<i>Given the nature of the performance guarantee, the engineer's estimate of the project is customarily calculated after the site plan approval process is completed and the proposed infrastructure has been fully engineered and permitted by the agencies-having-jurisdiction. The engineer's estimate is customarily sealed by the design engineer and reviewed by the Township engineer. Upon acceptance by the Township engineer, the application proceeds to secure the surety on the infrastructure with the associated construction timeframe. This allows the most accurate financial representation of the improvements for the least amount of carrying time. Northgate is comfortable with an additional "condition-of-approval" placed on the site plan to formalize this process.</i>

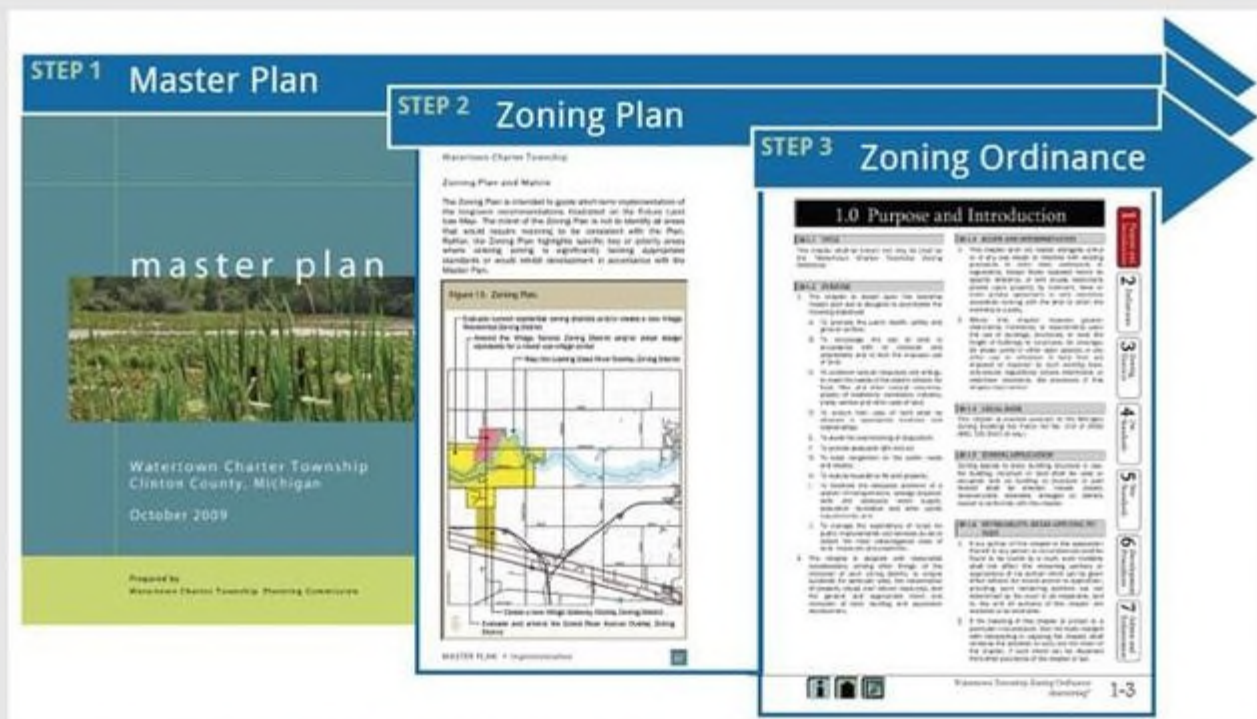
Exhibit D

Difference between a zoning ordinance and a master plan

Lindsey Gardner , Michigan State University Extension - October 10, 2019

Originally written by Kurt H. Schindler.

The zoning ordinance is a law with penalties and consequence for not following it. A master plan is a policy document that expresses intent. It is not an enforceable document and is not law.



Source: Figure by the Land Policy Institute, Michigan State University, 2015. Left and middle images: Watertown Charter Township Planning Commission. (2009). **Master Plan**. Watertown Charter Township, MI. Available at: www.watertowntownship.com/Portals/0/Master%20Plan%20%28Updated%20October%202009%29.pdf; accessed April 27, 2015. Right image: Clearzoning. (2015). **Watertown Township Zoning Ordinance**. Watertown Charter Township, MI. Available at: www.watertowntownship.com/Portals/0/LegalNotices-Ordinances/2015/Zoning%20Ordinance.pdf; accessed April 27, 2015.

Source: Figure by the Land Policy Institute, Michigan State University 2015.

A zoning ordinance and a master plan are not the same thing. A master plan is not enforceable, and attempting to do so can get a community in trouble.

Once I was asked to provide education to a community that was trying to turn down a site plan review, because it did not comply with the community's master plan. The community even had a site plan review standard in its zoning ordinance that read "the application request satisfies the goals and objectives of the ... [town name] master plan."

In Michigan, a master plan can be adopted by the municipality's planning commission – an appointed administrative body. A planning commission has no authority to adopt an ordinance or any other document that could be enforced with penalties. The planning commission can only recommend a zoning ordinance or zoning amendment to its legislative body. Michigan statutes delegate ordinance-making authority only to the following elected legislative bodies: township board of trustees (MCL 41.181 *et seq.*), city council (MCL 117.3 *et seq.*), general law village council (MCL 67.1 *et seq.*), home rule village council (MCL 78.1 *et seq.*) and very limited ordinance making authority to county boards of commissioners.

A master plan is a policy document that guides the physical development of a community. Think of it like the homework -- the compendium of facts, research, record of public support and participation, and reasoning behind what would become local ordinances. This would include the zoning ordinance, which the Michigan Zoning Enabling Act requires "shall be based on a plan..." (MCL 125.3203(1)).

A zoning ordinance is the law. It regulates things including land use; building form, placement, size, spacing, parcel area, width, depth; types of land uses allowed in a district. Because an ordinance is law, it includes consequences for violations. Consequences can be a civil infraction ticket, fines, criminal charges, injunctions, and so on.

In order for a zoning ordinance to be based on a plan, the plan should be written first. The zoning ordinance will come next and will implement parts of the master plan. Often, the plan zoning is based upon something called a "zoning plan." The zoning plan can be a chapter in the master plan, a separate document of the master plan or integrated throughout the master plan. A "master plan" is defined in the Michigan Planning Enabling Act (MCL 125.3803(g)) to include the zoning plan from the Zoning Enabling Act's section 203(1) (MCL 125.3203(1)).

Typically, the zoning plan part of a master plan, in addition to the rest of the plan, will include:

- A proposed schedule of regulation by district that includes at least building height, lot area, bulk and setbacks.
- Standards or criteria to be used to consider rezoning consistent with the master plan.
- A description of each zoning district and proposed zoning map.
- An explanation of how the land use categories on the future land use map relate to the districts on the zoning map.
- A description of each zoning district, general purpose of each district and the general locations for those types of districts.

To demonstrate how the master plan serves as a basis for zoning and is not itself an enforceable document, look at this generic example of master plan language: “Goal No X: Preserve and enhance the YYY corridor as a safe, efficient, and visually attractive...” First, it is a “goal,” not a directive. Then, the plan says there is more work to do before specific actions can be taken for this goal. How does a zoning permit or site plan review applicant “satisfy” a goal when they are beholden to actions being undertaken by a different entity?

The master plan is not a regulation and should not be expected to do double duty as a law. Statute gives ordinance-making authority only to legislative bodies not planning commissions. Master plans are not written in regulatory fashion. They lack language with clear directives or requirements. Many master plans are written with goals that are often best-case scenarios of the future. Many times, the purpose of the goal is to set a direction, but not a definitive expected outcome. Finally, master plans are often written with objectives (measurable progress points) and strategies (policy, tasks and methods) to be carried out by various agencies of the local government, not property owners or zoning permit applicants.

Those in Michigan State University Extension that focus on land use provide various training programs on planning and zoning, which are available to be presented in your county. Contact your local land use educator for more information.

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