

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

NORTHGATE LEELANAU PINES, LLC,

Appellant,

File No. 2023010986AA
HON. KEVIN A. ELSENHEIMER

v

CENTERVILLE TOWNSHIP, and the
CENTERVILLE TOWNSHIP PLANNING
COMMISSION,

Appellees,

And

LAKE LEELANAU LAKE ASSOCIATION,

Third-Party Intervenor.

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DECISION AND ORDER ON APPEAL

Northgate Leelanau Pines, LLC, (hereinafter “Appellant”) is a Michigan limited liability company that owns approximately 73 acres of real property located in Centerville Township, Leelanau County, Michigan.¹ The real property, which is zoned “Commercial Resort District” and borders Lake Leelanau, is maintained as a campground with rental cabins and recreational vehicle sites.² On May 11, 2022, Appellant submitted a generalized site plan for a pre-application

¹ The address for the real property is 6500 East Leelanau Pines Drive, Cedar, Michigan.

² See Leelanau Pines website at <<<http://www.leelanaupinescampresort.com>>>

conference to the Centerville Township Planning Commission (“Planning Commission”).³ The proposed plan sought to enlarge the campground by adding additional campsites, renovating existing buildings, constructing new buildings and increasing the number of boat slips on Lake Leelanau. Appellant’s proposal qualified as a “Special Land Use Permitted by Special Approval.”⁴

Pursuant to the Centerville Township Ordinance⁵ (hereinafter “Ordinance”), the Planning Commission must ensure that each site plan conform to all applicable provisions of the Ordinance and the following standards:

1. All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of the lot, the character of adjoining property and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.
2. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications which result in maximum harmony with adjacent areas.
3. Site plans shall fully conform with the published surface water drainage standards of the County Drain Commission.
4. Special attention shall be given to proper site drainage so that removal of storm waters will not adversely affect neighboring property owners.
5. The site plan shall provide reasonable, visual and sound privacy for all dwelling units located therein and adjacent parcels. Fences, walks, barriers and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.

³ The pre-application conference is a conceptual review phase where a prospective applicant presents the overall idea of the development. Centerville Township Ordinance §13.1(D)(c).

⁴ Special land uses permitted by special approval are uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within the zoning district, but could present potential injurious effects upon the primary uses and structures within the zoning district and therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole. All such proposed uses shall be subject to public hearing and Site Plan approval by the Planning Commission. Ordinance §2.2. In the Commercial Resort District, uses permitted by special approval include: mobile home parks; rental cottages; inns, lodges, hotels, motels, campgrounds and RV parks; trailer parks and churches/religious institutions. Ordinance §6.2.

⁵ Local governments have no inherent power to regulate land use, but the Legislature has empowered local governments to zone for the broad purposes identified in the Michigan Zoning Enabling Act (the “Act”). MCL §125.3201. Generally, zoning ordinances are intended to promote the public health, safety and welfare and to encourage the use of lands in accordance with their character and adaptability. MCL §125.3203. To achieve these goals, local units of government may provide under a zoning ordinance for the regulation of land development and the establishment of districts within its zoning jurisdiction. MCL §125.3201. Zoning ordinances shall be made with reasonable consideration of the character of each district, the peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development. MCL §125.3203. The Court was a principal author of the Act. However, any application of the Act by the Court is based on applicable appellate authority versus any knowledge the Court may have regarding the intent of the Act.

6. All buildings or groups of buildings shall be so arranged as to permit emergency access by some practical means to all sides.
7. If there is a pedestrian circulation system, it shall be insulated as completely as reasonably possible from the vehicular circulation system.
8. All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened, by a vertical screen consisting of structural or plant material no less than six (6) feet in height.
9. Exterior lighting shall be arranged so that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets.
10. The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are a part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of-way equal to that specified by the County Road Commission.
11. All streets shall be developed in accordance with the Centerville Township Private Road Ordinance or the Leelanau County Road Commission specifications as required.⁶
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.⁷
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.⁸

The Planning Commission may conditionally approve a site plan in conformance with the standards of another local, county or state agency when such conditions: (1) would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity; (2) would protect the natural environment and conserve natural resources and energy; (3) would insure

⁶ See generally Resolution 2009-08 Centerville Township Driveways and Private Roads Ordinance, Adopted July 15, 2009. Ordinance §3.6 further sets forth requirements for driveways and private roads.

⁷ See generally Leelanau County Soil Erosion, Sedimentation and Stormwater Runoff Control Ordinance (SESSRC), adopted November 18, 2014.

⁸ Ordinance §13.1(G)(a).

compatibility with adjacent uses of land and (4) would promote the use of land in a socially and economically desirable manner.⁹

On June 22, 2022, Appellant presented a Preliminary Site Plan for review.¹⁰ The Planning Commission held a public hearing on August 26, 2022. A Final Site Plan was submitted on September 19, 2022, and reviewed by the Planning Commission on September 21, 2022 and October 3, 2022.¹¹ After reviewing the Site Plan, with regard to the Ordinance standards, the Planning Commission denied Appellant's Final Site Plan.

Any person aggrieved by a decision of the Planning Commission in granting or denying approval of a final site plan may appeal the decision to the Zoning Board of Appeals.¹² 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.¹³ On December 20, 2022, the Centerville Zoning Board of Appeals ("ZBA") reversed the Planning Commission's determination as to standard No. 8, found that standard No. 9 should have been conditionally approved and affirmed the Planning Commission on the remaining standards, subsequently upholding the Planning Commission's denial.¹⁴

On February 6, 2023, Appellant filed a Claim of Appeal asserting that it submitted a site plan that complied with all the requirements set forth in the Ordinance, the Planning Commission arbitrarily denied the site plan and the ZBA "rubber stamped" the Planning Commission's denial.¹⁵ Appellees claim that the ZBA's denial complied with the Constitution and laws of the state, was based upon proper procedure, was supported by competent, material and substantial evidence on the record and represented the reasonable exercise of discretion granted by law to the ZBA. On January 8, 2024, the Court heard oral arguments by the parties and took the matter under

⁹ Ordinance §13.1(H)(a).

¹⁰ Ordinance §13.1(D)(d). This meeting is handled as a public hearing.

¹¹ 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. Ordinance §13.1(D)(e).

¹² Ordinance §13.1(M)(b).

¹³ Ordinance §13.1(M)(c).

¹⁴ The ZBA review was held on December 7, 2022 and December 20, 2022. The December 20, 2022, ZBA Meeting Minutes were approved on January 17, 2023.

¹⁵ Subsequently, Appellant, the Planning Commission and ZBA entered an agreement to allow Appellant to submit a revised site plan to the Planning Commission for reconsideration. After reviewing the revisions, the Planning Commission determined that it failed to meet certain requirements and again denied the site plan.

advisement.¹⁶ After further review, the Court now issues this decision and order for the reasons stated herein.

Initially, the Court notes that a party aggrieved by a decision of a zoning board of appeals may appeal to the circuit court for the county in which the property is located.¹⁷ Pursuant to the statute, courts are limited to reviewing decisions by *zoning boards of appeal*.¹⁸ On appeal, a circuit court shall review the record and decision to ensure that the decision: (1) complies with the Constitution and laws of the state; (2) is based upon proper procedure; (3) is supported by competent, material and substantial evidence on the record; and (4) represents the reasonable exercise of discretion granted by law to the zoning board of appeals.¹⁹

‘Substantial evidence’ is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence.²⁰ A decision is supported by ‘substantial evidence’ when the inferences made were legitimate and supportable.²¹ When reviewing a decision for substantial evidence, a court should accept the zoning board of appeals findings of fact if they are supported by that quantum of evidence.²² A court will not set aside findings merely because alternative findings also could have been supported by ‘substantial evidence’ on the record.²³ Appellate review of the decision does not determine if the evidence preponderates one way or the other, but determines if the evidence justifies the findings as a legitimate inference from the facts proved.²⁴

A decision that violates a statute or Constitution, exceeds the statutory authority or jurisdiction of the board, is made upon unlawful procedures resulting in material prejudice or is arbitrary and capricious is a decision that is not authorized by law and must be set aside.²⁵ A decision is arbitrary and capricious if it: (1) lacks a determining principle; (2) reflects an exercise of will or caprice without acknowledgment of principles, circumstances, or significance; or (3)

¹⁶The Court granted Lake Leelanau Lake Association’s Motion to Intervene, filed December 15, 2023, at the hearing.

¹⁷MCL §125.3606. Therefore, the Court will not review the claims specially pertaining to the Planning Commission.

¹⁸The statute does not contemplate review of the actions of a zoning administrator or planning commission; therefore, the Court will not review the claims specifically pertaining to the Planning Commission.

¹⁹*Id.*

²⁰*St. Clair Intermediate School District v Intermediate Education Ass’n/Michigan Education Ass’n*, 218 Mich App 734, 736, 555 NW2d 267 (1996), *aff’d* 458 Mich 540 (1998).

²¹*In re Payne*, 444 Mich 679, 690–691 n 8; 514 NW2d 121 (1994).

²²*Id.* at 692.

²³*Id.* at 690. The reviewing court should not invade administrative fact finding by replacing an agency’s selection between two reasonably differing views. *Romulus*, *infra* at 63.

²⁴*In re Payne*, at 690.

²⁵*Romulus v Dep’t of Environmental Quality*, 260 Mich App 54, 64, 678 NW2d 444 (2003).

reflects an unreasoned, freakish, whimsical or humorous outcome.²⁶

As discussed above, the Planning Commission may conditionally approve site plan standards that conform 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.²⁷ In this case, the relevant agencies/departments include: the Leelanau County Drain Commission (LCDC), the Leelanau County Road Commission (LCRC), the Michigan Department of Environment, Great Lakes and Energy (EGLE), the Leelanau County Erosion Control Office (as County Enforcing Agency of the Soil Erosion, Sedimentation and Stormwater Control Ordinance), Benzie-Leelanau District Health Department (BLDHD) and the Centerville Township Fire Chief. Similarly, conditional approval of a standard may be warranted when compliance with a separate ordinance or statute has been demonstrated.²⁸ While the Ordinance language states that the Planning Commission *may* conditionally approve a site plan, the Planning Commission is not obligated to conditionally approve a site plan or specific standards, even if said site plan is otherwise in conformance with the standards of another local, county or state agency.²⁹ Conditional approval by the Planning Commission is therefore discretionary.

In this matter, Appellant's request that the Planning Commission grant conditional approval as Site Plan Standards No. 3, 6, 10, 11, 12, 13, 14, 15, 16 and 17, was denied.³⁰ On appeal, the ZBA acknowledged that conditional approval as to certain standards *could* have been granted,

²⁶ *VanZandt v State Employees' Retirement System*, 266 Mich App 579, 584–585, 701 NW2d 214 (2005). Generally, although deference is generally given to an administrative agency's construction of statute or administrative rule with which it is charged with administering, this deference does not permit the reviewing court to abandon its responsibility to give meaning to the plain language of statutes and administrative rules. An agency's interpretation will not be given deference where the language of the rule is unambiguous or the agency's interpretation is clearly wrong.

²⁷ Conditional approval is justified when such conditions: (1) would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity; (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.

²⁸ In this case the relevant ordinances and statutes include: the Natural Resources and Environmental Protection Act (NREPA), Centerville Township Private Road Ordinance, and County Soil Erosion and Sedimentation Control Ordinance.

²⁹ Emphasis added. The use of the word "shall" constitutes clear language designating a mandatory course of conduct; whereas, the term "may" presupposes a discretion and does not mandate an action. *In re Estate Weber*, 257 Mich App 558; 669 NW2d 288 (2003).

³⁰ Specifically, Appellant requested conditional approval of Standards No. 3 (LCDC), No. 6 (Fire Chief), No. 10 (LCRC, Private Road Ordinance), No. 11 (LCRC, Private Road Ordinance), No. 12 (LCRC, Private Road Ordinance), No. 13 (Fire Chief), No. 14 (Leelanau County Erosion Control Office, County Soil Erosion and Sedimentation Control Ordinance), No. 15 (BLDHD), No. 16 (EGLE, NREPA) and No. 17 (EGLE, NREPA).

but noted that, as of October 3, 2022, the Planning Commission did not feel it had adequate information to find the relevant standards had been met.

Standard No. 3 requires site plans conform with the surface water drainage standards of the LCDC and Standard No. 4. focuses on drainage of storm waters. The Planning Commission determined that Standard Planning No. 3 was not met because LCDC had not approved the Site Plan and the plan did not demonstrate adequate conformance with the LCDC regulations or the Leelanau County Stormwater Ordinance.³¹ Standard No. 4 was not met because the Site Plan did not provide adequate storm water management detail and Appellant had not yet sought the necessary NREPA permits. Similarly, Standard No. 6, regarding emergency access to buildings, and Standard No. 13, requiring conformance with local Fire Chief requirements, were not met because the Fire Chief had not submitted a final review of the site plan at the time of the Planning Commission's analysis.³² The ZBA agreed that Standards No. 3, 4, 6 and 13 had not been met, noting it was appropriate to withhold approval given the relation of these standards to environmental health and public safety.³³ Additionally, the ZBA properly determined that the approvals by LCDC and the Fire Chief, received after the October 3, 2022, meeting, could not be considered on appeal pursuant to Ordinance §13.1(M)(c).³⁴ For these reasons, the ZBA's findings as to Standards No. 3, 4, 6 and 13 were appropriate and supported by competent, material and substantial evidence on the record.

Standard No. 10 pertains to vehicular and pedestrian circulation and requires road width appropriate for the traffic volume. The Planning Commission found Standard No. 10 was not met because the Site Plan contained insufficient evidence as to road widths and directional signage was lacking (e.g. one way versus two way streets).³⁵ As the traffic study and Site Plan did not indicate whether the width of the site's roads were appropriate to the traffic volume they will carry, the ZBA agreed that without this information Appellant could not meet the requirements of Standard No. 10 and properly affirmed the Planning Commission. The Court finds the ZBA's determination

³¹ The Leelanau County Drain Commission ultimately approved the site plan as to the proposed surface water drainage and storm water management plans, albeit after the Planning Commission had denied Appellant's site plan.

³² The Fire Chief's approval was not provided until after October 3, 2022.

³³ As to Standard No. 4 the Planning Commission further noted that the proposed plan for stormwater failed to conform to the Drain Commission regulations and that Appellant had not yet applied for or received the necessary NREPA permits. In addition to upholding the findings of the Planning Commission, the ZBA noted that it had concerns about stormwater runoff into Lake Leelanau and Rice Creek, neither of which had been addressed in Appellant's site plan.

³⁴ 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. Emphasis added.

³⁵ Further, the traffic study contained certain errors that precluded its reliability.

as to Standard No. 10 was appropriate and supported by competent, material and substantial evidence on the record.

Standard No. 11, which relates to street development and parking, was not met because the Site Plan designated a single parking space for each campsite, yet Ordinance §6.6 requires off street parking for 1.5 automobiles for each rental unit.³⁶ After reviewing video from the October 3, 2022, hearing, the ZBA determined that Appellant indicated there would be 14-foot wide aggregate pads allowing two vehicles to park in close proximity.³⁷ The ZBA however, affirmed the Planning Commission because the Site Plan did not demonstrate specific compliance with Ordinance §6.6 and did not “show how cars will fit in each campsite.” Given the record, the Court finds that Standard No. 11 was satisfied pursuant to the information provided in the September 16, 2022 Site Plan and Appellant’s explanation at the October 3, 2022 meeting. To deny the standard as not met would result in an unreasoned outcome. For this reason, the ZBA’s determination as to Standard No. 11 was not supported by competent, material and substantial evidence on the record and is reversed.

Standard No. 12 requires conformance with state and local traffic standards. The Planning Commission determined that this Standard was not met because the site plan and application failed to demonstrate adequate conformance with traffic safety standards of LCRC.³⁸ The ZBA properly determined this standard was not met because Appellant’s proposed expansion would generate unacceptable increases in traffic volume and potential hazards to public safety. The ZBA also noted there was insufficient information from Appellant as to potential degradation of CR-643 due to the increase in traffic. The Court finds the ZBA’s determination as to Standard No. 12 was appropriate and supported by competent, material and substantial evidence on the record.

Standard No. 14 requires that site plans fully conform with County Soil Erosion and Sedimentation Control Ordinance. Leelanau County Erosion Control Office, enforcing agency of the Soil Erosion, Sedimentation and Stormwater Control Ordinance, had not provided final

³⁶ Ordinance §6.6. All developments of Land-Use permitted in this District shall, to reduce fire hazard and make possible access to all buildings by the Fire Department, provide a driveway to each building with not less than twenty (20) feet clear right-of-way and each such development shall provide off street parking for one and one half (1.5) automobiles for each rental unit. If dining facilities are provided in connection with any of the uses permitted in this District then off-street parking shall be provided for non-resident patrons to accommodate an automobile for each two (2) persons that the facility is legally capable of seating at one time.

³⁷ The 14-foot wide space was also reflected on Page C201 of the Site Plan Application submitted September 16, 2022.

³⁸ According to the Planning Commission, the amended site plan and the submitted applications were not in conformance and the application contained outdated, incomplete and vague information.

approval of the Site Plan as of October 3, 2022, therefore, the Planning Commission found the Standard had not been met. Given the environmentally sensitive nature of the property and the lack of approval from the Erosion Control Office, the ZBA properly determined that Standard No. 14 was not met. Further, the ZBA considered the fact the project would require authorization from EGLE, pursuant to NREPA, that had not yet been granted to Appellant. The Court finds the ZBA's determination as to Standard No. 14 was appropriate and supported by competent, material and substantial evidence on the record.

Standard No. 15 requires compliance with the requirements of BLDHD. Due to the expressed reservations of BLDHD regarding the soil conditions and lagoon system, the Planning Commission found that Standard No. 15 was not met. Moreover, the Site Plan did not demonstrate adequate conformance with BLDHD regulations regarding sewage treatment and Appellant had not obtained the necessary permits from EGLE for groundwater discharge. The ZBA indicated that appropriate waste disposal is critical to the project and the Site Plan lacked sufficient information regarding how water quality would be protected and maintained. Due to the outstanding concerns of BLDHD and the remaining questions of appropriate waste disposal, the ZBA properly affirmed the Planning Commission. The Court finds the ZBA's determination as to Standard No. 15 was appropriate and supported by competent, material and substantial evidence on the record.

Standard No. 16 states site plans shall fully conform to all applicable federal and state laws. This standard was not met because the Planning Commission did not feel it had the pertinent information to determine whether the site plan was in compliance with the applicable state and federal statutes. The ZBA agreed that there was insufficient evidence to determine compliance. However, neither the Planning Commission nor ZBA suggested which, if any, federal or state laws were being violated by the Site Plan. Without any information as to what laws the Site Plan failed to conform with, Appellant was expected to argue in a vacuum. An applicant cannot be expected to argue for compliance with a law when no specific violation has been asserted. The Court finds that, absent any specifically stated violations of federal and state law, the Site Plan sufficiently conformed with Standard No. 16 and the ZBA should have granted conditional approval. For this reason, the ZBA's determination as to Standard No. 16 was not supported by competent, material and substantial evidence on the record and is reversed.

Standard No. 17 states all site plans shall conform to all applicable requirements of local, state and federal statutes. The Planning Commission determined this standard was not met, in part,

because the Site Plan was in direct conflict with the purpose of the Ordinance and the Township Master Plan. The ZBA affirmed, noting that as proposed, the Site Plan is “at a scale that is too big and could damage...fragile natural areas through wetland runoff and sediment. The ZBA further stated it was concerned about environmental impacts and irreparable harm to the Township and its welfare as a whole.

Municipal ordinances are interpreted and reviewed in the same manner as statutes.³⁹ The goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body and the most reliable evidence of this intent is the language used.⁴⁰ The plain language of Standard No. 17 requires conformance with all applicable local statutes. This Standard can reasonably be interpreted to mean that all site plans must conform with the Centerville Township Zoning Ordinance. The stated purpose of the Ordinance is “to promote the health, safety and general welfare of the inhabitants of the Township...by preventing overcrowding of lands, avoiding undue congestion of population, facilitating transportation, public utilities and fire safety and to promote the orderly development of the residential, commercial, recreational, agricultural and other legitimate interests of said inhabitants.” The ZBA noted that inhabitants of Centerville have a legitimate interest in limiting over development so as to protect the environmental features and natural resources in the Township and to preserve creeks, wetlands and swamps in the area. Given that a stated purpose of the Ordinance is to promote the legitimate interests of the inhabitants, the ZBA properly found that the Site Plan directly conflicted the Ordinance. Moreover, protection of the natural environment and conservation of natural resources and energy, in addition to promotion of the use of land in a socially and economically desirable manner are factors to be considered before conditional approval is granted. Therefore, the ZBA’s finding that Standard No. 17 was not met for failing to conform with the Ordinance was proper and supported by competent, material and substantial evidence on the record.

With regard to Site Plan Standards Nos. 1, 2, 5, 7, 8, and 9, the Court finds they are discretionary in nature, allowing a more subjective analysis.⁴¹ As to Standard No. 1, all elements of a site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of lot, the character of adjoining property and the type and size of buildings. The ZBA

³⁹ *City of Grand Rapids v Brookstone Capital, LLC*, 334 Mich App 452; 965 NW2d 232 (2020).

⁴⁰ *Id.* The words used must be given their plain and ordinary meanings.

⁴¹ Standards No. 8 and 9 will not be addressed as they were previously reversed by the ZBA.

determined that the proposed Site Plan potentially violated Ordinance §4.4 by exceeding the maximum lot coverage within the Commercial-Resort District.⁴² The Site Plan did not include all parking lots, pools, septage lagoons, vehicles, structures, RVs, house trailers and camper trailers when calculating total lot coverage. Therefore, the ZBA agreed that the Planning Commission lacked sufficient information to satisfy Standard No.1. Appellant further failed to address whether the expansion would create additional campfire smoke, light and noise impacting neighboring properties and if so, how these impacts might be mitigated. Independently, the ZBA noted concerns about how increasing the number of campers might impact the surrounding roads. The Court finds the ZBA's determination as to Standard No. 1 was appropriate and supported by competent, material and substantial evidence on the record.

Standard No. 2 dictates that the landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal. As to Standard No. 2, the ZBA agreed that, without a tree study, there was insufficient information in the Site Plan to assess whether tree and soil removal was necessary and how it might negatively impact the surrounding areas. The ZBA noted the serious potential impacts of tree removal and topographic modification to the shoreline, aquatic habitats and local wildlife. Independently, the ZBA found that removing mature trees limits the site's capacity to absorb sound, light and excess campfire smoke. The Court finds the ZBA's determination as to Standard No. 2 was appropriate and supported by competent, material and substantial evidence on the record.

Standard No. 5 requires that a site plan provide reasonable visual and sound privacy for property users and adjacent parcels. This Standard was not met because Appellant's Site Plan failed to provide adequate plans to manage/mitigate campground noise and lighting. Moreover, the proposed Site Plan did not protect privacy along boundaries with adjoining properties in other land use districts. The ZBA agreed with the Planning Commission, finding that the Site Plan did not account for the potential noise caused by generator use or the elevated noise levels from a greater number of campers.⁴³ It further noted that increased campfire smoke could be a nuisance for adjacent property owners. The Court finds the ZBA's determination as to Standard No. 5 was appropriate and supported by competent, material and substantial evidence on the record.

⁴² The maximum lot coverage in the Commercial Resort District is 25%.

⁴³ Despite having electrical outlets at each site, the ZBA predicted that many campers would rely on RV generators in lieu of paying for an electrical hookup.

Standard No. 7 dictates that if there is a pedestrian circulation system, it shall be insulated as completely as reasonably possible from the vehicular circulation system. ZBA members had different views on whether it was realistic to completely separate pedestrian from vehicular traffic within a campground. There were further concerns that the infrastructure needed to isolate pedestrians and vehicles might change the “cultural feel of the campground” and make it feel less rustic. Ultimately, the ZBA did not feel comfortable approving Standard No. 7 without additional speed reduction measures and more bicycle lane and crosswalk signage. The Court finds the ZBA’s determination as to Standard No. 7 was appropriate and supported by competent, material and substantial evidence on the record.

Decisions by zoning boards of appeal are largely discretionary and considerable weight is accorded to their findings.⁴⁴ The presumption is that these board members are local residents who reside in the township and possess a much more thorough knowledge of local conditions, current land uses and the manner of future development desirable for those who reside in the community.⁴⁵ Appellant’s assertion that the ZBA merely “rubber stamped” the findings of the Planning Commission is not supported by the record. It is clear the ZBA thoughtfully considered the record in relation to the requirements set forth in the Ordinance. Specifically, the ZBA reviewed video evidence from the October 3, 2022 meeting, requested additional information from Township legal counsel and made determinations independent of the Planning Commission. Moreover, while the majority of the Planning Commission’s decision was affirmed, the ZBA did reverse on two standards.

In conclusion, the Court finds that Standards No. 11 and No. 16 should be reversed and granted conditional approval. The ZBA’s determinations as to the remaining standards are affirmed. The Court further finds that the actions of the ZBA complied with the Constitution and laws of the State of Michigan, were based on proper procedure, were supported by competent, material and substantial evidence on the record and represented a reasonable exercise of discretion. For these reasons, the Court affirms the December 20, 2022 decision of the ZBA.

⁴⁴ *Szluha v Charter Township of Avon*, 128 Mich App 402; 340 NW2d 105 (1983).

⁴⁵ *Id.*

IT IS SO ORDERED.



01/29/2024
05:51PM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge