

**CENTERVILLE TOWNSHIP
ZONING BOARD OF APPEALS
Centerville Township Hall
May 29, 2024, *Approved Meeting Minutes*
5001 S. French Road
Cedar, MI**

- I. Welcome and Introductions
Lauren Teichner (Township attorney), Noel Bielaczyc, Jeff Smith, Michelle Irwin
Deb Kuhn was unable to attend. Michell Irwin is taking her place.
Present: 5 in person (including a representative of Applicant from Fishbeck)
- ~~II. Public Comment - None~~
- II. Review and Approval of Agenda
Teichner reviewed the agenda and noted that items were not in the appropriate order. Pubic comment should come after the approval of the draft minutes.
ACTION: Irwin moved to approve the agenda as amended; supported by Smith.
Motion carried. (3,0)
- III. Revise and Approve Draft minutes from May 14, 2024 meeting
ACTION: Irwin moved to approve the minutes of the May 14, 2024 meeting as presented; supported by Bielaczyc. Motion carried. (3,0)
- IV. Public comment - None
- V. Declaration of Conflict of Interest- None
- VI. Leelanau Pines Appeal of Planning Commission Site Plan Review Decision
 - a. Applicant Presentation
The ZBA gave the Applicant an opportunity to speak for 10 minutes. Mr. Jason Vander Kodde (Fishbeck) spoke on behalf of Applicant for 1 min. 45 seconds. He mentioned that Northgate’s legal counsel submitted a letter to the ZBA on May 21, 2024 that they hope was disseminated to the ZBA members (Teichner assured them it was disseminated, and also placed in the record.) The Applicant is asking for the mediated settlement to be applied. 26 acres of development is proposed. They want an explanation of why the Planning Commission (PC) disagreed. They are asking the ZBA to overturn the PC’s decision.
 - b. Overview of Proposed Findings and Decision from Legal
The proposed findings of fact and proposed decision were prepared and distributed. The proposed document has since been edited by Township counsel and there are sections that are crossed out. The plan is to go through the edited document, deliberate, and vote on its approval. It was proposed to go through the sections and standards and vote on the adoption of the sections, and then vote to approve/not approve the entire document at the end. Teichner will review the edits and propose her legal interpretation of the conversation of the last meeting.

General Findings of Fact

Under General Findings, #27 was added stating that the applicant had the opportunity to speak tonight.

ACTION: Bielaczyc moved to approve the proposed General Findings section as amended, now containing #27; supported by Irwin. Motion carried. (3,0)

ROLL CALL VOTE		
Noel Bielaczyc	Yes	
Michelle Irwin	Yes	
Jeff Smith	Yes	Motion carried (3,0)

Specific Findings of Fact

Discussion of the Application Requirements

Section 13.1(B)(a)(9) – Project Description

The project description and lot coverage were provided. Additional floor plans were provided. Some information that was asked for was not provided. Lot coverage and waste water disposal is addressed in the next section.

ACTION: Bielaczyc moved to accept proposed findings of fact and decision for Zoning Ordinance (ZO) Section 13.1(B)(a)(9) as recommended; supported by Irwin. Motion carried. (3,0)

ROLL CALL VOTE		
Noel Bielaczyc	Yes	
Michelle Irwin	Yes	
Jeff Smith	Yes	Motion carried (3,0)

Section 13.1(B)(a)(14) – Impact Statement

Teichner explained and discussed the proposed findings of fact for this application requirement which recommend that the requirement was met, and which also recommend that the ZBA link this application requirement to other ZO standards. The information submitted was not sufficient for the Planning Commission. However, the ZBA decided that sufficient information was submitted.

It was suggested that this issue be tabled for voting until the other ZO standards were discussed in this meeting.

Section 13.1(B)(b)(13) – Location of utilities

The recommendation is that the requirement was met in the application and that the ZBA link this application requirement to other ZO standards. This was also tabled for voting until the other ZO standard were discussed in this meeting.

Discussion of the ZO Section 13.1(G)(a) Standards

Standard #1 (ZO section 13.1(G)(a)(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 surrounding property for uses permitted in this ordinance."

Teichner's recommendation is to overturn the Planning Commission's conclusion. The applicant has not satisfied this standard. The information provided was too general. The findings reflect back to the impact statement as well as being linked to Standards #16 and #17. The proposed plan impacts lot coverage, and light, noise, and traffic. In relation to the adjacent property, it is also linked to Standard #5.

Smith referenced public comment and referenced the Grand Traverse Circuit Court decision. Bielaczyc noted that the lot coverage is so close to 25% that it is difficult to discern if the coverage would go over the limit. Irwin agreed that the standard has not been met.

The reference to the Circuit Court decision will be listed in Appendix A.

It was agreed that the standard has not been met.

(Waited to the end of the meeting to vote.)

Standard #2 (ZO Section(G)(A)(2)) – "The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographical modifications which result in maximum harmony with adjacent areas."

The recommendation is to affirm the Planning Commission's decision that the standard has not been met.

The ZBA is referring to what is in the center of the property and the new plan is pushing up against the water's edge and creek. There is an expansion of campsites planned as well. In addition, Teichner cited other issues.

Bielaczyc visited the property and reiterated how much the site would be disturbed. Irwin concurred. Smith referenced the Circuit Court language and agreed. Bringing in so much gravel is not good. The plan does not meet the standard of working harmoniously with the land. Lake Leelanau experts have expressed their concern about the plan's impact on the lake. There are other reasonable options.

It was agreed that the standard has not been met.

(Waited until the end of the meeting to vote.)

Standard #5 (ZO Section 13.1(G)(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 enhancement and protection of property and for the privacy of its occupants.”

The recommendation is to affirm the Planning Commission’s decision that the standard has not been met.

The ZBA posed questions at the last meeting about noise. There was inadequate information in the plan about the noise. Irwin noted that there have been no complaints about the current size. More campsites at the water’s edge would present a problem. Bielaczyc agreed with Irwin. The Planning Commission asked for information regarding events. Impact could not be determined because of insufficient information.

Smith commented that noise is important to the quality of life and there are legitimate concerns. The impact statement was too vague and not fair to the community. Sound travels over water. There are alternatives like sound buffers that would be effective. He does not believe the issue was taken seriously. Teichner will add a line to this section citing that the applicant could provide more information regarding programming/events given their experience of doing similar developments all over the country. All members agreed to amend. It was agreed that the standard has not been met.

(Waited until end of meeting to vote.)

Standard #16 (ZO Section 13.1 (G)(16)) – “Site plan should fully conform to all applicable state and federal statutes.”

The recommendation is to affirm the Planning Commission’s decision that the standard has not been met.

There is not enough information to assess the environmental impact pursuant to the Michigan Environmental Protection Act (MEPA). Impact is referred to in public comment, MEPA, and the master plan. Bielaczyc commented that there are many threads connected to this standard. There are feasible and prudent alternatives available and the applicant failed to provide alternatives. Irwin stated that this is an important portion and agreed with Bielaczyc. There have been comments from experts about the plan’s proximity to wetlands. Smith agreed, other alternatives were not considered.

Two or three sentences will be added to the proposed findings about alternatives and how much land is not developed. Buffers, amenities, and infrastructure could be relocated away from sensitive areas of the property.

It was agreed that the standard has not been met.

(Waited until the end of the meeting to vote.)

Standard #17 (ZO Section 13.1(G)(1)) – “Site plan 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 approval or an occupancy permit is granted.”

The recommendation is to reverse the Planning Commission’s determination regarding this standard and find that it has not been met for all the reasons provided for Standard #16 related to MEPA, and for other reasons as well. This links to the master plan because the zoning ordinance links to the master plan. There was also public comment about this standard. There were questions about remediation and the Circuit Court decision. Smith stated that a lot of work went into the master plan and the public desires to preserve the character and natural resources of the community. It is essential to consider the master plan. Smith noted that no one has said that they should shut down the campground. There are development alternatives that are suitable for the community. It is achievable to restructure the property. It was agreed that the standard has not been met. (Waited until the end of the meeting to vote.)

c. *Motions*

ACTION: Bielaczyc moved to accept the proposed findings of fact and decision as amended for ZO Section 13.1(B)(a)(14); supported by Irwin.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

ACTION: Irwin moved to accept the proposed findings of fact and decision for ZO Section 13.1(B)(b)(13); supported by Bielaczyc.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

ACTION: Bielaczyc moved to accept the proposed findings of fact and decision as amended for Standard #1 (ZO Section (G)(a)(1)); supported by Irwin.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

ACTION: Bielaczyc moved to accept the proposed findings of fact and decision as amended for Standard #2 (ZO Section 13.1.(G)(a)(2)); supported by Irwin.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

ACTION: Irwin moved to accept the proposed findings of fact and decision as amended for Standard #5 (ZO Section 13.1.(G)(a)(5)), supported by Bielaczyc.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

ACTION: Irwin moved to accept the proposed findings of fact and decision as amended for Standard #16 (ZO Section 13.1.(G)(a)(16)); supported by Bielaczyc.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

ACTION: Bielaczyc moved to accept the proposed findings of fact and decision for Standard #17 (ZO Section 13.1.(G)(a)(17)); supported by Irwin.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

d. Decision

ACTION: Bielaczyc moved to reverse in part and affirm in part the Planning Commission's decision; to deny the Applicant's proposal; supported by Irwin.

ROLL CALL VOTE		
Jeff Smith	Yes	
Michelle Irwin	Yes	
Noel Bielaczyc	Yes	Motion carried (3,0)

Appendix A will be added to the document.

The ZBA participants initialed each page of the document confirming the amendments, and signed their full names on the last page.

- VII. Schedule next meeting for approval of minutes.
Members provided their availability for the next meeting. Public notice will be posted once the date is determined.
- VIII. Public Comment
Rolf von Walthausen – He thanked the ZBA for their work. He was very impressed with their thoughtful care, attention to detail, and rationality.
- IX. Adjourn
ACTION: Bielaczyc moved to adjourn the meeting at 8:27 p.m.; supported by Irwin.
Motion carried. (3,0)

Respectfully submitted,
Cindy Kacin

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Centerville Township Zoning Board of Appeals
Proposed Findings of Fact and Proposed Decision Regarding
Leelanau Pines' Appeal of the Planning Commission's Site Plan Application Denial

Decision Date: May 29, 2024 *[insert date]*

The Zoning Board of Appeals ("ZBA"), having considered the entire Planning Commission ("PC") record regarding Applicant Northgate / Leelanau Pines' ("Leelanau Pines" or the "Applicant") site plan application ("SPA"), including:

- the standards and requirements of the Centerville Township Zoning Ordinance ("ZO");
- the standards and requirements of the Centerville Township Master Plan ("Master Plan");
- all information, written documentation, exhibits, and presentations submitted by Leelanau Pines to the PC;
- all information, written briefs, exhibits, and presentations submitted by Leelanau Pines to the ZBA;
- the ZBA Staff Report drafted by Township legal counsel;
- all comments and letters and emails submitted by the public to both the PC and the ZBA;
- the full Planning Commission record regarding Leelanau Pines' application, including the substance of all of PC meetings regarding Leelanau Pines' application, and the PC's approved written findings of fact dated December 4, 2023 (adopted February 5, 2024),

makes general and specific findings of fact, as follows.

Accordingly, Noel Bielaczyc *[insert name of ZBA member]* moves to adopt the following Findings of Fact and Decision to reverse in part and affirm in part *[Recommendation: reverse in part and affirm in part, as described in more detail below]* the Planning Commission's denial of Leelanau Pines' site plan application for the expansion of the Leelanau Pines Campground, and Michelle Irwin *[insert name of ZBA member]* seconds the motion. *[Insert details regarding the vote here].*

VOTE: Roll call vote, 3-0. Motion carries.

General Findings of Fact *[neutral]*:

1. On August 17, 2023, Applicant Leelanau Pines and representatives from both Centerville Township (the "Township") and the PC along with legal counsel, attended an in-person, full-day mediation, and reached a mediation settlement agreement ("Mediation Agreement"), which was thereafter approved by a majority vote of the Centerville Township Board. (See Mediation Agreement, ROA2000249-254.) The Mediation Agreement included the following relevant terms:

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“1. [Leelanau Pines] will submit a revised site plan for the Leelanau Pines Campground to the Centerville Township Zoning Administrator, for which [the Township] will waive all application fees, which will contain all information required by Article XIII of the Centerville Township Zoning Ordinance (“ZO”);

2. This revised site plan will propose 150 new campsites to be occupied in two phases (with the first phase consisting of occupancy of 98 new campsites, and the second phase consisting of occupancy of 52 new campsites), as well as 82 boat slips;

3. This revised site plan will cap the number of boats at 82, and will also contain details regarding the boat-washing station to prevent the introduction of invasive species;

4. This revised site plan will also provide proof of all regulatory approvals for the revised site plan to date, including details regarding any pending regulatory approvals;

5. Upon receipt of this revised site plan, [the Township] will follow the procedures outlined in ZO Article XIII for processing the revised site plan application;

6. All parties agree that the ‘pre-application conference’ described in ZO Article XIII has already occurred and such requirement is thereby deemed satisfied;

7. If [the Township] receive[s] an ‘administratively complete’ revised site plan from [Leelanau Pines], consistent with the requirements of the ZO, by October 1, 2023, then the Centerville Township Planning Commission will notice and schedule both a preliminary site plan review and a final site plan review (as required by ZO Article XIII) of that revised site plan by its regularly scheduled meeting in November 2023;

8. Any approval of the revised site plan shall be conditioned on obtaining all necessary regulatory approvals”

2. On August 31, 2023, the Applicant submitted its new SPA to the PC to expand an existing campground and RV park located within the Commercial Resort District pursuant to Article VI of the ZO. (See SPA, ROA2000255-380.)

3. Campgrounds are a “Use Permitted by Special Approval” under Section 6.2 of the ZO, as opposed to a use permitted by right under Section 6.1. (See ZO Section 6.2, ROA2000086.)

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4. Specifically, Leelanau Pines requested to add 150 new campsites (seasonal, RV and campers), 0 future campsites, a new check-in office building, new waterfront pavilion, new marina store with food and beverage service and parking, new open-air pavilion, new pools, new equipment buildings, new bathhouse, new maintenance building, new recreational amenities (including walking trails, pools, boardwalk, splashpad, mini-golf, jump pillow, and sports courts), renovated camp office and restrooms with parking, renovated game room and storage building, renovated bathhouse and laundry, renovated cabin, retaining the commercial marina and boat launch with parking, for a total of 2 launches and 82 slips. This SPA reflected the 320 total campsites and 82 total boat slips per the Mediation Agreement. (See SPA, ROA2000255-380.)
5. After some correspondence with the Applicant requesting additional site plan information and clarifications, Chris Grobbel, the Centerville Township Planner, found Leelanau Pines' SPA to be administratively complete and suitable for processing as of September 15, 2023. (See Final FOF, ROA2000885-899.)
6. Under Section 2.2 of the ZO, "Special Land Uses Permitted by Special Approval" are defined as "uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within the zoning district, but could present potential injurious effects upon the primary uses and structures within the zoning district and therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole. All such proposed uses shall be subject to a public hearing and Site Plan Approval by the Planning Commission." (See ZO Section 2.2 definition of "Special Land Uses Permitted by Special Approval," ROA2000032.)
7. On September 18, 2023, the PC held a special meeting, during which it set the timeline for review of the SPA. (See approved minutes from September 18, 2023 PC meeting, ROA2000432-435.)
8. On October 2, 2023, during its regularly scheduled meeting, the PC initiated its consideration of the site plan application and requested additional information from the Applicant. (See approved minutes from October 2, 2023 PC meeting, ROA2000437-461.)
9. On October 25, 2023, at a special meeting, the PC held a public hearing as required by ZO Section 13.1(D)(d) and began its deliberations. (See approved minutes from October 25, 2023 PC meeting, ROA2000567-577.)
10. The PC continued its deliberations at the November 6 and December 4, 2023 regular PC meetings. (See approved minutes from November 6, 2023 PC meeting, ROA2000747-751; approved minutes from December 4, 2023 PC meeting, ROA2000820-835.)

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11. Leelanau Pines provided additional information and materials (both in writing and in-person) to the PC on September 12, September 13, October 16, October 25, October 31, November 27, November 30, and December 4, 2023. (See Leelanau Pines' revised site plan September 12, 2023, ROA2000381-408; Leelanau Pines' Memo dated September 13, 2023, ROA2000409-410; Leelanau Pines' summary response and updated drawings dated October 16, 2023, ROA2000477-560; approved minutes from the October 25, 2023 PC meeting, ROA2000567-577; Leelanau Pines' Memo dated October 31, 2023, ROA2000654-696; Leelanau Pines Memo dated November 27, 2023, ROA2000768-773 (and related "tabs," ROA2000411-415); Leelanau Pines letter dated November 30, 2023, ROA2000791-792; approved minutes from the December 4, 2023 PC meeting, ROA2000820-835.)
12. On December 4, 2023, the PC ultimately voted to deny Leelanau Pines' SPA. (See approved minutes from December 4, 2023 PC meeting, ROA2000820-835.)
13. Township Planner Chris Grobbel drafted a final Findings of Fact document ("FOF"), which was adopted by the PC at its February 5, 2024 regular PC meeting (in conjunction with the approving the minutes from the December 4, 2023 decision), initiating the 21-day ZBA appeal window outlined in ZO Section 13.1(M) and the process articulated in ZO Article XVII. (See approved minutes from the February 5, 2024 PC meeting, ROA2000862-871; Final FOF, ROA2000885-899.)
14. The public submitted 36 written comments, as well as 32 in-person comments, to the PC. Of these, not a single one expressed support for the proposed expansion. (See approved minutes from October 2, 2023 PC meeting, ROA2000437-461; approved minutes from October 25, 2023 PC meeting, ROA2000567-577; approved minutes from November 6, 2023 PC meeting, ROA2000747-751; approved minutes from December 4, 2023 PC meeting, ROA2000820-835; written public comments from July 14 through October 29, 2023, ROA2000578-653; written public comments dated December 2, 2023, ROA200811-815; written public comments dated December 3, 2023, ROA2000816-818.)
15. The ZBA also received one written comment, as well as two in-person comments at the ZBA's public hearing on May 14, 2024. All these comments were in opposition to the proposed expansion.
16. The ZBA finds that the Mediation Agreement does not require the ZBA to *approve* Leelanau Pines' SPA, only to "follow the procedures outlined in ZO Article XIII for processing the revised site plan application." (See Mediation Agreement, ¶ 5, ROA2000249-254.)
17. Section 13.1(M)(c) of the ZO provides that the ZBA "shall review the record of action taken on the final site plan and shall determine whether the record supports the action taken. No new evidence shall be presented. 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." (See ZO Section 13.1(M)(c), ROA2000116.)

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18. Additionally, pursuant to MZEA Section 501(4), a decision on a proposed site plan must be made based on the “requirements and standards contained in the zoning ordinance, other statutorily authorized and properly approved local unit of government planning documents, other applicable ordinances, and state and federal statutes.” MCL 125.3501(4).
19. Similarly, under MZEA Section 501(5), if a proposed site plan contains all the information required by the zoning ordinance and “is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly approved local unit of government planning documents, other applicable ordinances, and state and federal statutes,” the local unit of government must approve the site plan. MCL 125.3501(5).
20. This mandate stems from Michigan legislature’s aspiration that *zoning* and *planning* will play a complementary role, where the planning helps to shape the policy underlying the zoning map and regulations. Accordingly, MZEA Section 203 provides that “[a] zoning ordinance shall be based upon a plan.” MCL 125.3203. The Michigan Court of Appeals has explained: “[G]iven the Legislature’s insistence on planning, the courts of this state should make every effort to preserve such plans where they are developed in good faith and are reasonable as a whole with regard to the needs of the local and the general community.” *Binkowski v Shelby*, 46 Mich App 451, 463, 208 NW2d 243 (1973).
21. Moreover, the Michigan Municipal League’s ZBA Handbook explains in Section 12 (titled “The Planning Commission”) that “it is essential that any action related to zoning, including those actions taken by the zoning board of appeals, should take into consideration the master plan.” (*See Zoning Board of Appeals Handbook, Section 12, available here: https://www.mml.org/pdf/ZBA_Handbook_2015.pdf, last visited May 22, 2024.*)
22. Similarly, the Michigan Municipal League’s PC Handbook also advises PCs to rely on the master plan in reaching zoning decisions: “[C]onsistent and vigorous use of the [master] plan will lend credibility to the community’s attempts to implement controversial decisions on rezonings or other zoning actions. While the courts of the State of Michigan do not recognize the absolute authority of the master plan, they do lend much more credibility to actions supported by careful planning than those that appear to be taken arbitrarily against an individual property owner.” (*See Planning Commission Handbook, Section 12, available here: <https://www.mml.org/pdf/pcebook.pdf>, last visited May 22, 2024.*)
23. Accordingly, here, the ZBA finds that it must consider the requirements of the ZO and the Master Plan, as well as any other planning documents or applicable ordinances in determining whether to affirm, reverse, and/or modify the PC’s denial of Leelanau Pines’ SPA. Specifically, the ZBA:
 - a. First, must consider the “Requirements for a Site Plan – Application for Site Plan Review” listed in ZO Section 13.1(B)(a) and 13.1(B)(b). (*See ZO 13.1(B), ROA2000102-105.*) The ZBA is aware it can consider all application requirements

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discussed in the PC's final findings of fact. However, only three of these 26 requirements are in dispute on appeal:

- i. Section 13.1(B)(a)(9);
- ii. Section 13.1(B)(a)(14);
- iii. Section 13.1(B)(b)(13); and

b. Second, must consider the "Standards for Granting Site Plan Approval" delineated in Section 13.1(G) of the ZO. (*See* ZO Section 13.1(G), ROA2000111-112.) Again, the ZBA is aware it can consider all standards discussed in the PC's final findings of fact. However, only three of these 17 standards are in dispute on appeal:

- i. Standard #2 (ZO Section 13.1(G)(a)(2));
- ii. Standard #5 (ZO Section 13.1(G)(a)(5));
- iii. Standard #16 (ZO Section 13.1(G)(a)(16)); and

c. Third, the ZBA must consider the ZO's stated general purpose (*see* ZO "Purpose," ROA2000022);

d. Fourth, the ZBA consider the ZO's definition of "Special Land Uses Permitted by Special Approval" found in Section 2.2 (*see* ZO Section 2.2 definition of "Special Land Uses Permitted by Special Approval," ROA2000032);

e. Fifth, the ZBA must consider the ZO's reference to the Master Plan in Section 13.1 ("Requirements for Site Plan") (*see* ZO 13.1, ROA2000102); and

f. Sixth, the ZBA must consider the Master Plan's guidance and goals for consideration of site plan applications (*see* Master Plan, ROA2000134-248).

24. In sum, the ZBA must determine whether the site plan meets the requirements and objectives imposed by the relevant ordinances and planning documents. *See* MCL 125.3501(4).

25. The ZBA finds that the ZBA has made every effort to ensure that Leelanau Pines receives a fair and impartial hearing for this appeal, and that Leelanau Pines' due process rights are considered and respected:

a. In this appeal, the ZBA adopted procedures during its May 14, 2024 meeting, which had previously been distributed to Leelanau Pines and posted for the public to read on the Centerville Township website (*see* Recommended Procedures for ZBA, ROA2001422-1423.) These procedures included the following:

- i. The record before the ZBA was organized, indexed, and stored in a Dropbox site. Links to the record were posted on the Township's website;
- ii. The ZBA was not permitted to consider any new evidence, in line with the ZO's requirements;

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- iii. The ZBA determined it would consider written and oral comments and arguments about the information in the record;
- iv. Leelanau Pines was given an uninterrupted 20-minute time period in which to present an argument in support of the appeal;
- v. ZBA members' questions were to be asked at the conclusion of Leelanau Pines' presentation to avoid subtracting from their time;
- vi. The public hearing was then held and opened to any member of the public who wished to speak, with a time limit of three minutes per comment;
- vii. The public hearing was then closed;
- viii. Then Leelanau Pines was given an opportunity to respond to anything they wished from the public hearing for ten minutes;
- ix. The ZBA then deliberated. The ZBA determined it was tasked with discussing its opinions regarding the appeal – in particular, the three disputed application requirements and the three disputed standards – as well as other zoning and master plan provisions highlighted in the Staff Report. The ZBA's focus was on whether the PC made a correct or incorrect decision regarding each standard. The ZBA also noted it is required to make detailed findings of fact and a written decision. The object of the ZBA's discussion was to provide sufficient guidance to draft possible findings of fact and a decision reflecting the Board's discussion, for consideration at the May 29, 2024 meeting.
- x. No additional comments from anyone were allowed during deliberation, but ZBA members were permitted to ask questions if they wish.
- xi. And, finally, public comment at the end of the meeting was limited to matters other than the Leelanau Pines appeal.
- xii. The ZBA determined that between the meetings that occurred on May 14, 2024 and May 29, 2024, Township legal counsel would prepare proposed findings of fact and draft decision for the ZBA to consider at the meeting on May 29, 2024.
- xiii. The ZBA also permitted Leelanau Pines to submit any final written comments or arguments addressing matters from the May 14, 2024 meeting by the deadline of May 21, 2024.
- xiv. The ZBA then determined that at the May 29, 2024 meeting it would review and discuss the proposed findings of fact and draft decision, modify them as needed, and vote.

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xv. Public comment would be taken at the beginning of the meeting but not a second public hearing.

26. Leelanau Pines submitted an updated letter for consideration by the ZBA on May 21, 2024. (See Varnum Letter, ROA2001565-1568.)

27. Leelanau Pines had an opportunity to present updated (or any) information at the May 29, 2024 ZBA meeting.
Specific Findings of Fact **[not neutral]**:

The ZBA makes the following specific findings of fact regarding the three “Requirements for a Site Plan – Application for Site Plan Review” that are in dispute in this appeal found in ZO Sections 13.1(B)(a)(9) & (14) and 13.1(B)(b)(13):

❖ Application Requirement in ZO Section 13.1(B)(a)(9) (project description):

[Recommendation: Reverse the PC’s determination regarding this application requirement]

1. The ZBA finds that the PC discussed this application requirement in detail the November 6 and December 4, 2023 PC meetings, and in the PC’s Final FOF denying the SPA. (See approved minutes from November 6, 2023 PC meeting, ROA2000747-751; approved minutes from December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.) At the December 4, 2023 meeting, the PC voted 2-1 that this requirement had not been met due to a perceived lack of information regarding the nine existing cabins and five existing glamping pods. (See approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, page 7, ROA2000891.)
2. The ZBA finds that this requirement is one that is typically preliminarily assessed by the Township Planner to determine whether a site plan application is “administratively complete” before submitting it to the PC; not a separate finding for the PC to make during site plan review. (See ZO Section 13.1(B), ROA2000102.)
3. At the May 14, 2024 ZBA meeting, the ZBA members discussed different views on whether this application requirement was met or not met. After reviewing the evidence and deliberating further on this issue at the May 29, 2024 ZBA meeting, **the ZBA now finds that this application requirement is met** and thereby **reverses** the PC’s decision on this application requirement, for the following reasons:
 - a. The ZBA finds that, on the face of the SPA, the required application information¹ was submitted.

¹ ZO Section 13.1(B)(a)(9) requires that the Applicant provide: “Project description, including the total number of structures, units, bedrooms, offices, square feet, total and useable floor area, parking spaces, car ports or garages, employees by shift, amount of recreation and open space, type of recreation facilities to be provided, hours of operation if applicable and related information as pertinent or otherwise required by this ordinance.” (ZO Section 13.1(B)(a)(9), ROA2000103.)

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- b. Specifically, Leelanau Pines provided a project description as part of its original SPA (see ROA2000261), and more information was added to this project description as the PC's site plan review process progressed. (See Leelanau Pines' revised site plan September 12, 2023, ROA2000381-408; Leelanau Pines' Memo dated September 13, 2023, ROA2000409-410; Leelanau Pines' summary response and updated drawings dated October 16, 2023, ROA2000477-560; approved minutes from the October 25, 2023 PC meeting, ROA2000567-577; Leelanau Pines' Memo dated October 31, 2023, ROA2000654-696; Leelanau Pines Memo dated November 27, 2023, ROA2000768-773 (and related "tabs," ROA2000411-415); Leelanau Pines letter dated November 30, 2023, ROA2000791-792; and approved minutes from the December 4, 2023 PC meeting, ROA2000820-835.)
- c. Further, it is worth noting that sheet C205 was updated in Leelanau Pines' Revised October 31, 2023 submission to include more information, including square footage, acreage and lot coverage for these structures. (See Leelanau Pines' Memo dated October 31, 2023, ROA2000654-696.) And Leelanau Pines provided floor plans on November 27, 2023 demonstrating that the Rancher Log Cabins are 400 sq feet, the Sierra Log Cabins are 400 sq feet, and the glamping units are 220 sq feet. (See Leelanau Pines' November 27, 2023 submission to the PC, at ¶ 2 and Tab 1, ROA2000768-769 & ROA2000411-413.)

❖ **Application Requirement in ZO Section 13.1(B)(a)(14) (impact statement):**

[Recommendation: Reverse the PC's determination regarding this application requirement, and instead link the PC's and ZBA's concerns about the insufficiently detailed information provided regarding "project impacts . . . on the natural environment of the site and adjoining lands" to Standards #1 2, 16 and 17]

1. The ZBA finds that the PC discussed this application requirement in detail at the October 2, October 25, November 6, and December 4, 2023 PC meetings, and in the PC's Final FOF denying the SPA. (See approved minutes from the October 2, 2023 PC meeting, ROA2000437-461; approved minutes from the October 25, 2023 PC meeting, ROA2000567-577; approved minutes from the November 6, 2023 PC meeting, ROA2000747-751; approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.) The PC determined at its December 4, 2023 meeting that questions remained unanswered regarding traffic; wastewater; infrastructure; impacts on the lakeshore, Rice Creek, and water quality; noise, events, amplified music; and the hardening of the shoreline with riprap. As a result, the PC voted 3-0 that this requirement had not been met. (See approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.)
2. The ZBA finds that this requirement is one that is typically preliminarily assessed by the Township Planner to determine whether a site plan application is "administratively

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complete” before submitting it to the PC; not a separate finding for the PC to make during site plan review. (See ZO Section 13.1(B), ROA2000102.)

3. At the May 14, 2024 ZBA meeting, the ZBA members discussed different views on whether this application requirement was met or not met. After reviewing the evidence and deliberating further on this issue at the May 29, 2024 ZBA meeting, **the ZBA now finds that this application requirement is met** and thereby **reverses** the PC’s decision on this application requirement, for the following reasons:
 - a. The ZBA finds that, on the face of the SPA, the required information² was submitted.
 - b. Specifically, Leelanau Pines provided written statements relative to project impacts in its October 16 and November 27, 2023 submissions. (See Leelanau Pines’ summary response and updated drawings dated October 16, 2023, ROA2000477-560; Leelanau Pines Memo dated November 27, 2023, ROA2000768-773 (and related “tabs,” ROA2000411-415).) It also provided a landscape plan titled L103 in its October 16, 2023 response. (See Leelanau Pines’ summary response and updated drawings dated October 16, 2023, ROA2000477-560).
4. At the same time, the ZBA finds that it was reasonable for the PC to request additional “project impacts” information from Leelanau Pines during the October 2, 2023 meeting regarding: wetlands; water quality; site treated water (e.g., pool water) management, including frequency of pool water turnover, quantity of pool water discharge / turnover, and how and where pool water is to be disposed of throughout and at the close of the season; site capacity for managing catchment and containment of a 25 year rain event, to include information on how lagoon would be managed in such an event; plan for managing a 100 year storm event (seven inches of rain in 24 hours), including an innovative stormwater management plan; shoreline impacts and shoreline hardening and how the new plan will impact / alter the nature of the shoreline, including a breakdown of existing and proposed shoreline hardening data, such as linear feet of current shoreline that is hardened as well as its location on the site plan, as well as linear feet of shoreline that is proposed to be hardened as well as its location on the site plan; number of trees that are to be removed in the to-be-developed area of the waterfront; number of boats, boat impact on the near shore environment, and how the number of boats will be policed; stormwater impacts, both quality and quantity of stormwater, and how it is to be disposed of; invasive species and management; boat-washing station details including how it is to be used and managed and standards to be followed. The PC reasonably indicated that all of this information will be needed in order to evaluate the protection of the natural environment in its site plan review process. (See approved minutes from the October 2, 2023 PC meeting, ROA2000437-461.)
5. The ZBA also finds that it was reasonable for the PC to determine at the December 4, 2023 meeting that questions still remained unanswered regarding traffic; wastewater;

² ZO Section 13.1(B)(a)(14) requires the Applicant to provide: “Written statements relative to project impacts on existing infrastructure (including traffic capacity of streets, schools, and existing utilities) and on the natural environment of the site and adjoining lands.” (ZO Section 13.1(B)(a)(14), ROA2000103.)

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infrastructure; impacts on the lakeshore, Rice Creek, and water quality; noise, events, amplified music; and the hardening of the shoreline with riprap. (See approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.)

6. The ZBA finds that it is empowered and obligated to consider public comment. One of the public comments submitted by a local resident trained professionally in architecture and planning speaks to the reasonableness of the PC's request for such additional "impacts: information: "While [the Applicant's] documents may be administratively complete, nothing has been included to help lay persons, including planning commissioners, understand the physical reality of the proposed site plan. Renderings and cross-section drawings could help illustrate what is really being proposed along the Lake Leelanau shoreline and along Rice Creek, and these items should be requested of the applicant for any parts of the plan requiring careful evaluation." (See written public comment from Cary Weed, ROA2000636.)
7. The ZBA finds this requested information was relevant and critical to the PC's and ZBA's review of Leelanau Pines' submission considering the ZO requirements. The information provided was too general to for the PC and ZBA to truly assess the impact of the development on the natural environment of the site. Therefore, while the ZBA finds that the administrative requirement in Section 13.1(B)(a)(14) is met (reversing the PC, as described above), **the ZBA further links the PC's and the ZBA's concerns regarding the insufficiency of the project impacts information provided by Leelanau Pines to the following standards, and finds that they have not been met:**

- a. **Standard #1** (ZO Section 13.1(G)(a)(1)³);
- b. **Standard #2** (ZO Section 13.1(G)(a)(2)⁴);
- c. **Standard #16** (ZO Section 13.1(G)(a)(16)⁵); and
- d. **Standard #17** (ZO Section 13.1(G)(a)(17)⁶).
- e. **Standard #5** (ZO Section 13.1(G)(a)(5)).

Each of these standards will be discussed in further detail below.

❖ **Application Requirement in ZO Section 13.1(B)(b)(13)(a)(9) (location of utilities):**

³ ZO Section 13.1(G)(a)(1) requires that "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." (ZO Section 13.1(G), ROA2000111-112.)

⁴ ZO Section 13.1(G)(a)(2) requires that "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." (*Id.*)

⁵ ZO Section 13.1(G)(a)(16) requires that "Site plans shall fully conform to all applicable state and federal statutes." (*Id.*)

⁶ ZO Section 13.1(G)(a)(17) requires that "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." (*Id.*)

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[Recommendation: Reverse the PC's determination regarding this application requirement, and instead link the PC's and ZBA's concerns about the insufficiently detailed information provided regarding "location of . . . waste water lines, clean-out locations, connection points and treatment systems, including septic systems if applicable" to Standards #1, 2, 16 and 17]

1. The ZBA finds that this application requirement was discussed in detail at the October 25, November 6, and December 4, 2023 PC meetings, and in the PC's Final FOF denying the SPA. (See approved minutes from the October 25, 2023 PC meeting, ROA2000437-461; approved minutes from the November 6, 2023 PC meeting, ROA2000747-751; approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.)
2. At the October 25, 2023 meeting, a member of the PC highlighted that it has no information from the Applicant regarding its lagoon and wastewater treatment system. The Applicant responded and indicated that they do not yet have a system design in place and will not until they receive EGLE approval. The PC member expressed desires for assurances that the Applicant will respect the watershed. The Applicant responded that it is a conversation between EGLE and Leelanau Pines as to what the final system will look like, and that is still under discussion. The Applicant also explained that EGLE provides the limits for chemicals within the effluent, and there are stricter requirements for commercial systems like theirs. (See approved minutes from the October 25, 2023 PC meeting, ROA2000567-577).
3. The ZBA finds that this requirement is one that is typically preliminarily assessed by the Township Planner to determine whether a site plan application is "administratively complete" before submitting it to the PC; not a separate finding for the PC to make during site plan review. (See ZO Section 13.1(B), ROA2000102.)
4. At the May 14, 2024 ZBA meeting, the ZBA members discussed different views on whether this application requirement was met or not met. After reviewing the evidence and deliberating further on this issue at the May 29, 2024 ZBA meeting, **the ZBA now finds that this application requirement is met** and thereby **reverses** the PC's decision on this application requirement, for the following reasons:
 - a. The ZBA finds that, on the face of the SPA, the required information⁷ was submitted.
 - b. Specifically, Leelanau Pines identified the private water supply lines, sewage collection and treatment lines, and fire hydrant area on its Drawings C400-404, as well as the conceptual location of storm sewers and retention and detention ponds

⁷ ZO Section 13.1(B)(b)(13) requires the Applicant to provide the "Location of water supply lines and / or wells, including fire hydrants and shut off valves, and the location and design of storm sewers, retention and detention ponds, wastewater lines, clean-out locations, connection points and treatment systems, including septic systems if applicable." (ZO Section 13.1(B)(b)(13), ROA2000104.)

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on Drawings C300-311. Moreover, Leelanau Pines submitted the Leelanau County Drain Commission’s written approval of the proposed stormwater design, and indicated that it is awaiting EGLE and Leelanau County Health Department approval of any on-site wells, sewage treatment and disposal system improvements. (See SPA, ROA2000255-380; Leelanau Pines’ summary response and updated drawings dated October 16, 2023, ROA2000477-560; approved minutes from the October 25, 2023 PC meeting, ROA2000567-577).

5. The ZBA is aware of the limitations created by Paragraph 8 of the Mediation Agreement, requiring that any approval of the revised site plan shall be conditioned on obtaining all necessary regulatory approvals. (See Mediation Agreement, ROA2000249-254.) At the same time, the ZBA finds that the Mediation Agreement does not foreclose the PC and the ZBA from independently considering whether the application meets this Standard #2, which is an environmentally focused land use ordinance standard, even if EGLE will also consider similar environmental issues as part of a state permitting process. The Township retains authority to consider environmental and natural resources issues that affect land use so long as it is not doing so in a way that conflicts with state authority. See *Fredericks v Highland Twp*, 228 Mich App 575; 579 (1998); *Divergilio v Charter Twp of West Bloomfield*, 2006 Mich App LEXIS 3268 (Mich Ct App Nov 2, 2006).

6. The ZBA finds that it was reasonable for the PC to request more information regarding the wastewater treatment system at the October 25, November 6, and December 4, 2023 PC meetings in order to be able to assess environmental impacts on water quality in the Lake Leelanau and Rice Creek watershed, as well as to fully assess lot coverage concerns. (See approved minutes from the October 25, 2023 PC meeting, ROA2000437-461; approved minutes from the November 6, 2023 PC meeting, ROA2000747-751; approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.) Therefore, while the ZBA finds that the administrative requirement in Section 13.1(B)(b)(13) is met (reversing the PC, as described above), **the ZBA further links the PC’s and the ZBA’s concerns regarding the insufficiency of information provided regarding the wastewater treatment system to the following standards, and finds that they have not been met:**

- e. **a. Standard #1** (ZO Section 13.1(G)(a)(1)⁸);
- f. **b. Standard #2** (ZO Section 13.1(G)(a)(2)⁹);
- g. **c. Standard #16** (ZO Section 13.1(G)(a)(16)¹⁰); and

⁸ ZO Section 13.1(G)(a)(1) requires that “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.” (ZO Section 13.1(G), ROA2000111-112.)

⁹ ZO Section 13.1(G)(a)(2) requires that “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.” (*Id.*)

¹⁰ ZO Section 13.1(G)(a)(16) requires that “Site plans shall fully conform to all applicable state and federal statutes.” (*Id.*)

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h. d. Standard #17 (ZO Section 13.1(G)(a)(17)¹¹).

Each of these standards will be discussed in further detail below.

The ZBA makes the following specific findings of fact regarding the three “Standards for Granting Site Plan Approval” that are in dispute in this appeal (Standards #2, 5, and 16) found in ZO Sections 13.1(G)(a)(2), (5), & (16), as well as regarding two additional standards (Standards #1 and #17) found in ZO Sections 13.1(G)(a)(1) & 13.1(G)(a)(17):

❖ **Standard #1 (ZO Section 13.1(G)(a)(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.

[Recommendation: Reverse the PC's determination regarding this standard and find that it has NOT been met.]

1. The ZBA finds that this standard was discussed at the November 6, 2023 meeting, and consensus was reached that this standard had been met. (See approved minutes from November 6, 2023 PC meeting, ROA2000747-751; Final FOF, ROA2000885-899.)
2. **The ZBA hereby reverses the PC's determination and finds that Standard #1 has not been met by Leelanau Pines' SPA.**
3. The ZBA finds that this standard is “discretionary in nature, allowing a more substantive analysis.” See *Northgate Leelanau Pines, LLC v Centerville Township & Planning Commission*, File No. 2023010986AA, (Grand Traverse County Circuit Court, January 29, 2024), *attached hereto as Appendix A.*
4. The ZBA finds that Leelanau Pines has not provided sufficient information to satisfy this requirement in relation to the proposed development's impacts on the natural environment, including the wetlands, Rice Creek, and lakeshore. The information provided by the Applicant was too general for the PC and ZBA to truly assess such impacts, and thereby prevents them from determining whether the proposed site plan is “harmoniously and efficiently organized in relation to topography,” as required by Standard #1.
 - a. This finding is related to the ZBA's concerns raised above regarding inadequate project impact information submitted as per the application requirement found in ZO Section 13.1(B)(a)(14). The ZBA hereby incorporates those concerns.

¹¹ ZO Section 13.1(G)(a)(17) requires that “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.” (*Id.*)

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- b. This finding is also related to the ZBA’s determination below regarding the proposed development’s likely impairment of the natural environment pursuant to the Michigan Environmental Protection Act (“MEPA”) connected to Standards #16 and 17. The ZBA hereby incorporates those findings as well.

- 5. Additionally, the ZBA finds that it also has concerns about whether the proposed site plan is “harmoniously and efficiently organized in relation to . . . the size and type of the lot” with regard to the lot coverage requirement found in ZO Section 4.4. Leelanau Pines claims that the campground lot coverage is 21.58%, and that a table clarifying the lot coverage calculation can be found on updated sheet C205, which was submitted with its October 16, 2023 updated submission to the PC. (See Leelanau Pines’ summary response and updated drawings dated October 16, 2023, ROA2000477-560.) Further, sheet C205 was updated in Leelanau Pines’ Revised October 31, 2023 submission to include more information. (See Leelanau Pines’ Memo dated October 31, 2023, ROA2000654-696.) However, this lot coverage calculation does not take into account the new and expanded wastewater treatment system; Leelanau Pines did not provide that information to the PC, as it is not finalized yet. Additionally, this lot coverage calculation does not appear to take into account vehicles, RVs, house trailers, and camping trailers that will be parked on the site. The ZBA cannot fully assess lot coverage under ZO Section 4.4 – nor (by extension) how well the site plan is organized in relation to the size and type of the lot, as required by Standard #1 - without this information.

- 6. Lastly, the ZBA also finds that the expansion of the campground will lead to additional campfire smoke, light, noise and traffic impacting neighboring properties, and that the SPA does not adequately address how these impacts might be mitigated.
 - a. This finding is related to the ZBA’s determination below regarding visual and sound concerns connected to Standard #5. The ZBA hereby incorporates those findings.

- 7. For all these reasons, the ZBA reverses the PC’s finding, and determines that Standard #1 has not been met.

❖ **Standard #2 (ZO Section 13.1(G)(a)(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.

[Recommendation: Affirm the PC’s determination regarding this standard.]

- 1. The ZBA finds this standard was discussed in detail at the November 6 and December 4, 2023 PC meetings, and in the PC’s Final FOF denying the SPA. (See approved minutes from the November 6, 2023 PC meeting, ROA2000747-751); approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.) At the

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December 4, 2023 meeting, the PC voted 2-1 that the standard was not met. Two PC members felt that the SPA conflicts with the harmony of the area and the natural state of the property. The other PC member felt that the standard had been met. (See approved minutes from the November 6, 2023 PC meeting, ROA2000747-751; Final FOF, ROA2000885-899.)

2. **The ZBA affirms the PC's determination that Standard #2 was not met by Leelanau Pines' SPA.**
3. The ZBA finds that this standard is also "discretionary in nature, allowing a more substantive analysis." See *Northgate Leelanau Pines, LLC v Centerville Township & Planning Commission*, File No. 2023010986AA, (Grand Traverse County Circuit Court, January 29, 2024).
4. Leelanau Pines claims that that the 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" (Leelanau Pines' ZBA Appeal Brief ("Brief"), pages 18-19, ROA2000949-950), and also asserts that new hardwood trees will be added and other trees and forested areas will be retained (*id.*, page 19, ROA2000950). Leelanau Pines also points to its landscape drawings L101-104 that show tree preservation areas scattered throughout the campgrounds, as well as tree coverage and buffering on the shoreline. (*Id.*, page 19 & Exhibit 20.) And Leelanau Pines argues that the majority of the proposed expansion and amenities fall in the center of the property to minimize distance from adjacent properties (*id.*, page 21, ROA2000952).
5. However, despite these claims, the ZBA finds that the proposed development pushes up against the water's edge of both Rice Creek and Lake Leelanau in a manner that does not "preserve the landscape 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," as required by this standard. (See SPA, ROA2000255-380; Leelanau Pines' revised site plan September 12, 2023, ROA2000381-408; Leelanau Pines' Memo dated September 13, 2023, ROA2000409-410; Leelanau Pines' summary response and updated drawings dated October 16, 2023, ROA2000477-560; Leelanau Pines' Memo dated October 31, 2023, ROA2000654-696; Leelanau Pines Memo dated November 27, 2023, ROA2000768-773 (and related "tabs," ROA2000411-415); Leelanau Pines letter dated November 30, 2023, ROA2000791-792.)
6. The ZBA is aware that Rice Creek is one of the most sensitive areas in the entire lot; the center of Rice Creek forms the property line for the adjacent property on the southwest side of the development. Campsite #94 is only approximately 30 feet from the property line in the center of Rice Creek; Campsite #97 is the next closest; and Campsite #200 is the third closest, at 50 feet. This information was provided to the ZBA by Leelanau Pines at the May 14, 2024 meeting in response to questions from ZBA members during deliberations. These locations are very close to the creek from the perspective of natural preservation and maximum harmony, as required by Standard #2. There does not appear to be an effort by the Applicant to move the proposed development away from the creek and other similarly

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sensitive areas. (*See* SPA, ROA2000255-380; Leelanau Pines' revised site plan September 12, 2023, ROA2000381-408; Leelanau Pines' Memo dated September 13, 2023, ROA2000409-410; Leelanau Pines' summary response and updated drawings dated October 16, 2023, ROA2000477-560; Leelanau Pines' Memo dated October 31, 2023, ROA2000654-696; Leelanau Pines Memo dated November 27, 2023, ROA2000768-773 (and related "tabs," ROA2000411-415); Leelanau Pines letter dated November 30, 2023, ROA2000791-792.)

7. The ZBA finds that the plans also show many impervious surfaces, including swimming pools surrounded by decks, very close to the lakeshore. The lot is large and could accommodate pools in other locations that would be more in harmony with the sensitive areas of the site and the flow of the campground generally. The development would not lose anything to move those pools back and center. (*See id.*)
8. The same is true for the siting of the expanded campsites themselves, which do not appear to be centered on the site, even though there is room for them to be moved to areas more in the center of the lot and farther away from the creek and lakeshore. (*See* SPA, ROA2000255-380.) Moreover, the proposed campsites are unnecessarily densely packed in a way that will increase their negative impact on the natural environment, due to the high numbers of people, noise, light, campfire smoke, wastewater and storm runoff, disturbed wildlife and plant life, and decreased water quality. (*See id.*)
9. The ZBA is also concerned that the plans show large amounts of gravel being brought onto the site for the development of parking lots and campsites (which would require 150-200 full sized gravel trucks to deliver their load, based on the ZBA's calculations). The placement of this much gravel on an environmentally sensitive site is far from "maximum harmony" with the natural landscape and the watershed. (*See id.*)
10. The ZBA also has concerns about the impact and intensity of a development of this size on the rural character and visual aesthetic of the area, including how the development appears to members of the public who can view it across the lake – all of which seems to relate directly to the concept of "maximum harmony with adjacent areas" found in this standard. The Master Plan is clear that Centerville Township residents "value and want to maintain the peaceful rural character and scenic beauty of their township" by "protect[ing] the natural resource assets, which are the basis for . . . scenic beauty and rural character and our health and well-being." (*See* Centerville Township Master Plan, Sections 7.1 and 7.2.3, ROA2000170 & ROA2000173.)
11. The ZBA finds that it is empowered and obligated to consider public comment. Public comments from local residents raised many of these same concerns, including questioning what the development will look like from the water and whether it will be consistent with the rural environment (*see* approved minutes from October 2, 2023 PC meeting, in-person comment from Ann Baty, ROA2000437-461); raising the environmental impacts of the lakeside swimming pools, as well as the structures and hardscapes on the shoreline (*id.*, in-person comment from John Stoller); commenting on the impacts of the shoreline development, impervious surfaces, and risks to Lake Leelanau and Rice Creek (*id.*, in-

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person comment from Nancy Popa, President of the Lake Leelanau Lake Association); providing professional planning concerns regarding permeability and project impacts on the shoreline and Creekside (see written public comment from Cary Weed, ROA2000617); commenting on the real risk of significant irreversible damage due to (among other things) development near the shoreline of the lake and Rice Creek, hardened seawalls, and needed vegetative buffers (see Memorandum from the Lake Leelanau Lake Association Board of Directors, ROA2000639-647); explaining efforts that have already been taken to protect Rice Creek and its watershed and expressing fears that the development will put in jeopardy Rice Creek and Lake Leelanau through hardscaping runoff and pollution due to increased traffic and inadequate planning, and asking the PC to consider their financial and personal investments in protecting shared natural resources (see written public comment from Tom Price & Cynthia Carlson, ROA200652.)

12. The ZBA is, again, aware of the limitations created by Paragraph 8 of the Mediation Agreement, requiring that any approval of the revised site plan shall be conditioned on obtaining all necessary regulatory approvals. (See Mediation Agreement, ROA2000249-254.) At the same time, the ZBA finds that the Mediation Agreement does not foreclose the PC and the ZBA from independently considering whether the application meets this Standard #2, which is an environmentally focused land use ordinance land use standard, even if EGLE will also consider similar environmental issues as part of a state permitting process. The Township retains authority to consider environmental and natural resources issues that affect land use so long as it is not doing so in a way that conflicts with state authority. See *Fredericks v Highland Twp*, 228 Mich App 575; 579 (1998); *Divergilio v Charter Twp of West Bloomfield*, 2006 Mich App LEXIS 3268 (Mich Ct App Nov 2, 2006).

13. The ZBA is also taking into account guidance from the January 29, 2024 Decision and Order on Appeal in the *Northgate Leelanau Pines, LLC v Centerville Township & Centerville Township Planning Commission* case, which is attached hereto as Appendix A (for reference), in which the Grand Traverse County Circuit Court determined that the Centerville Township Planning Commission properly withheld approval of the site plan application at issue in that case where standards pertained to “environmental health and public safety.” (page 7) The court further opined that “[t]he 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 the stated purpose of the [Zoning] Ordinance is to promote the legitimate interests of the inhabitants, the ZBA properly found that the Site Plan directly conflicted with 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.” (page 10)

14. Finally, the ZBA also hereby incorporates its concerns raised above regarding the inadequate project impact information submitted as per the application requirement found in ZO Section 13.1(B)(a)(14). Again, the information provided in Leelanau Pines’ impact statement was too general to for the PC and ZBA to truly assess the impact of the development on the natural environment of the site.

The ZBA also hereby incorporates its concerns raised above regarding the location of utilities found in ZO Section 13.1(B)(b)(13).

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15. For all these reasons, the ZBA affirms the PC's finding that Standard #2 has not been met.

❖ **Standard #5 (ZO Section 13.1(G)(a)(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.

[Recommendation: Affirm the PC's determination regarding this standard.]

1. The ZBA finds that this standard was discussed in detail at the October 2, November 6 and December 4, 2023 PC meetings, and in the PC's Final FOF denying the SPA. (See approved minutes from the October 2, 2023 PC meeting, ROA2000437-461; approved minutes from the November 6, 2023 PC meeting, ROA2000747-751; approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.)
2. At the October 2, 2023 meeting, the PC requested additional information from the Applicant regarding the perimeter buffer in order to be able to assess it. It indicated that the impacts to be assessed under this standard include noise and visual impacts to current and future adjacent land uses, including shoreline. The PC stated that it would like to see the dimensions of the buffer – its depth, width and composition (is it a berm, trees, shrubs, etc). And the PC requested to see specifics about each of these elements that are to be incorporated into the plan. The PC also asked for information regarding events that may be held at the property that involve amplification of music, significant lighting, and in particular music that may be held at the water-side pavilion or water front facility. The PC asked the Applicant to please define what such events may consist of (type of entertainment, DJ, themed party, other attraction amenities), the schedule of such events for the season, and the impact of such events to the community in terms of noise levels, traffic, etc. The PC further asked the Applicant to define their vision for the property in terms of events and include how that vision will impact the neighboring community. (See approved minutes from the October 2, 2023 PC meeting, ROA2000437-461.)
3. Leelanau Pines provided additional information to the PC on October 16 and November 27, 2023 in response to these questions. (See Leelanau Pines' summary response and updated drawings dated October 16, 2023, ROA2000477-560; Leelanau Pines Memo dated November 27, 2023, ROA2000768-773 (and related "tabs," ROA2000411-415).)
4. At the December 4, 2023 meeting, the PC continued deliberating on this issue and revisited this standard. Some PC members considered how sound travels over adjacent parcels and expressed wanting more assurances for sound buffering from the campground. (See Leelanau Pines' summary response and updated drawings dated October 16, 2023, ROA2000477-560.)

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5. The ZBA finds that the only other information provided by Leelanau Pines in response to the question of sound and events was the following:
 - a. “The pavilion is intended for guest use only and will not be rented to outside third parties or the general public. The campground anticipates the pavilion uses will be family friendly (picnics, crafts, shade, etc.) and in compliance with the campground rules during non-quiet hours. No loud, disruptive, unsightly activity will be permitted.” (See Leelanau Pines’ summary response and updated drawings dated October 16, 2023, ROA2000477-560.)
 - b. “The Township also has a noise ordinance and the ability to police violations from any property owner within the Township. There is no evidence on the record of any historical problems with noise complaints. Leelanau Pines has committed to maintaining strict quiet hours, and explained why quiet hour enforcement is beneficial to the campground’s business model of creating great family experiences.” (See Leelanau Pines Memo dated November 27, 2023, ROA2000768-773 (and related “tabs,” ROA2000411-415).)
6. The PC ultimately voted 2-1 that this standard had not been met. One PC member articulated that he did not believe sound traveling across lake should be included in this standard’s considerations. He also stated his opinion that any noise issues could be dealt with through noise ordinances or police complaints. (See approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.)
7. **The ZBA affirms the PC’s determination that Standard #5 was not met by Leelanau Pines’ SPA.**
8. The ZBA finds that this standard is “discretionary in nature, allowing a more substantive analysis.” See *Northgate Leelanau Pines, LLC v Centerville Township & Planning Commission*, File No. 2023010986AA, (Grand Traverse County Circuit Court, January 29, 2024).
9. Leelanau Pines claims that there will not be any problems related to noise along boundaries with adjacent parcels – the main issue that this Standard #5 relates to – because the campground has been in operation for several decades without any noise complaints. (Brief, page 21, ROA2000952.) Additionally, most of the proposed expansion and amenities fall in the center of the property to maximize distance from adjacent properties. And there is an existing landscape buffer which will be enhanced by the proposed development to reduce any perceived visual or noise impact. (*Id.*). Leelanau Pines also points out that Paragraph 12 of the Mediation Agreement addresses any complaints that might occur, which undercuts any concerns the PC had regarding future noise or related impacts. (*Id.*, page 20 fn. 1, ROA2000951.) And Leelanau Pines argues it provided the PC with detailed information about possible public events and activities, although not required to, which sufficiently addressed this question and which the PC ignored when it made its determination. (*Id.*, pages 20-22, ROA2000951-953.)

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10. The ZBA questions Leelanau Pines' assertions that it plans to maintain trees and landscape buffers along Rice Creek, given that large stormwater retention ponds are planned in some of the same locations. Those retention pools do not create a sound or visual barrier. (See September 12 and September 13, 2023 Site Plan Revisions, ROA 2000381-410.)
11. Even beyond that, the ZBA finds there are obvious issues with the development's placement at the edge of the southwestern side of the property line along Rice Creek, as described above. Alternatives exist that would provide more reasonable sound and visual privacy, including shrinking the number of sites and moving their location more into the center of the property away from the adjacent properties. Efforts could have been made to do so, but it does not appear that effort was made. The nature of the activities that are proposed at the site will generate a significant amount of noise and light.
12. The ZBA finds that Leelanau Pines provided inadequate information to the PC in response to its questions regarding what events will likely occur at the development (type of entertainment, DJ, themed party, other attraction amenities), the schedule of such events for the season, the impact of such events to the community in terms of noise levels, traffic, etc., and the Applicant's vision for the property in terms of events (including how that vision will impact the neighboring community). Due to the insufficient information in the record on these questions, the PC and the ZBA have been unable to fully assess the visual and sound privacy of the development, and whether it fits the intent of the Zoning Ordinance and the Master Plan. *This is especially true given the Applicant's experience with programming at sites all over the country.*
13. The ZBA again finds that it is empowered and obligated to consider public comment. There have been many concerns expressed by local residents regarding noise at the campground, including but not limited to one comment requesting more detail on noise and hours of operation for events and activities (see approved minutes from October 2, 2023 PC meeting, in-person comment from John Stoller, ROA2000437-461); one comment providing an architecture and planning perspective on improvements that could be made to the site plan that would mitigate the noise and visual effects of the development, including more vegetative buffers and moving most of the noise and pollution generating activities and shared spaces and artificial light away from the water's edge (see written public comment from Cary Weed, ROA2000635-636); and one comment emphasizing the impacts of noise and light on the natural environment and neighbors sharing the shoreline and the lake (see written public comment from Cary Weed, ROA2000813).
14. Finally, the ZBA also hereby incorporates its concerns raised above regarding the inadequate project impact information submitted as per the application requirement found in ZO Section 13.1(B)(a)(14). Again, the information provided in Leelanau Pines' impact statement was too general to for the PC and ZBA to truly assess the visual and sound impact of the development on the adjacent parcels and broader community, in light of its focus on preserving the Township's rural character.

~~16.~~ 15. For all these reasons, the ZBA affirms the PC's finding that Standard #5 has not been met.

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❖ **Standard #16 (ZO Section 13.1(G)(a)(16)):**
Site plans shall fully conform to all applicable state and federal statutes.

[Recommendation: Affirm the PC's determination regarding this standard.]

1. The ZBA finds this standard was discussed in detail at the November 6 and December 4, 2023 PC meetings, and in the PC's Final FOF denying the SPA. (See approved minutes from the November 6, 2023 PC meeting, ROA2000747-751; approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.)
2. At its December 4, 2023 meeting, the PC considered the applicability of the Michigan Environmental Protection Act ("MEPA"), Part 17 of NREPA, MCL 324.1701 *et seq.* – a Michigan state statute – to this standard on the advice of Township legal and the Township Planner. (See approved minutes from the December 4, 2023 PC meeting, ROA2000820-835.)
3. MEPA was enacted in 1970 by the Michigan State Legislature to implement the State's constitutional commitment to the protection of its natural resources. See Const 1963, art. 4 § 52. MEPA requires any local government to consider the potential pollution, impairment, or destruction of air, water, or other natural resources, or the public trust in those resources, when deciding whether to permit or not permit conduct. See *Committee for Sensible Land Use v Garfield Twp*, 124 Mich App 559, 563 (1983) ("Without question, the township and its zoning administrator . . . could be subject to the MEPA . . ."). Pursuant to MEPA, no conduct shall be approved if it is likely to have such a polluting or impairing or destructive impact on natural resources and if there is some other feasible and prudent alternative to the proposed conduct. See MCL 324.1705(2).
4. In evaluating whether the SPA conforms to MEPA's requirements, two members of the PC found that this standard has not been met because of the likely destruction of the natural lakeshore through hardening of the seawall, and the related negative impacts on flooding, erosion, and the ingress and egress of wildlife, as well as concerns regarding the SPA's likely impairment of the natural activity of Rice Creek. The other member of the PC found that this standard had been met, but expressed his opinion that there probably are alternatives to the proposed campground layout that could move the development further from Rice Creek and the lakeshore. Ultimately, the PC denied this standard by a 2-1 vote. (See approved minutes from the December 4, 2023 PC meeting, ROA2000820-835; Final FOF, ROA2000885-899.)
5. **The ZBA affirms the PC's determination that Standard #16 was not met by Leelanau Pines' SPA.**
6. Leelanau Pines claims that the PC's determination regarding this standard was based on conjecture and speculation without any detail or record evidence, which was improper: "No concrete or specific violation of any federal or state statute was ever alleged by the Planning Commission." (Brief, pages 22-23, ROA2000953-954.)

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7. However, the ZBA finds ample support in the record for the PC's determination that the SPA is not consistent with MEPA, and therefore does not meet this ZO standard. The ZBA finds that the proposed development is likely to have a polluting or impairing or destructive impact on natural resources, and that there are other feasible and prudent alternatives to the SPA as proposed.
8. In particular, ZBA is deeply concerned about likely impairment on natural resources from the proposed hardening of the lakeshore; lakeside swimming pools, decks, and other impervious surfaces; the new campsites and other infrastructure (including stormwater basins) very close to Rice Creek; many new boats and boaters being introduced to the lake; critical habitat loss; missing needed vegetative buffers; a lack of information regarding impacts to the area from the future wastewater treatment system (for which details have not yet been provided); likely wastewater nutrient runoff into the watershed from the introduction of many more campers; noise from the many campers and events; the lightening of the dark sky in the area; smoke from campfires; and, overall, the scale of the project and the intensity of use at this environmentally-sensitive site – especially in light of the large number, density and location of new proposed campsites and other structures on the outer edges of the site (near fragile resources) as opposed to being directed more in the center. *Moreover, other feasible and prudent alternatives could include relocating amenities, campsites and infrastructure*
9. The ZBA again finds that it is empowered and obligated to consider public comment. The ZBA finds that a majority of the public comments in the record share these concerns regarding environmental impact, including but not limited to the following: one that discusses hard surfaces that are incompatible with the natural environment, as well as habitat and water quality of Lake Leelanau issues, due to “dissolved oxygen / invasives / dramatic boat traffic increase,” destructive runoff, habitat loss, and solon swamp (*see* written public comment to ZBA from Randy Karfonta, ROA2001533-1564; one describing the 16 permanent conservation easements currently in place that protect 780 acres in the Lake Leelanau watershed, with approximately ¼ of that (193 acres, 4 conservation easements) lying in the Rice Creek subwatershed, and explaining that these permanent easements help prevent nutrient inflows, sedimentation and critical habitat loss, all of which are identified as pollutants that threaten to degrade the designed and desired uses identified in the Lake Leelanau Watershed Protection Plan, and further detailing that DEQ/EGLE has provided \$1,484,794 of Clean Michigan Initiative Funding to such efforts to protect parcels integral to maintaining high water quality in the Lake Leelanau Watershed (*see* written public comment from Bill Rastetter, ROA2001525-1532); one commenting on the potential impacts of lakeside swimming pools, as well as structures and hardscapes on the shoreline, and noise and hours of operation for activities (*see* approved minutes from October 2, 2023 PC meeting, in-person comment from John Stoller, ROA2000437-461); one expressing concern regarding runoff from substantial rain events, including impact on site sewage management (*id.*, in-person comment from Sharon Rudy, ROA2000437-461); one commenting on the impacts of the shoreline development, impervious surfaces, and risks to Lake Leelanau and Rice Creek (*id.*, in-person comment from Nancy Popa, President of the Lake Leelanau Lake Association); one providing professional planning concerns regarding permeability and project impacts on the shoreline and Creekside (*see* written public comment from Cary Weed, ROA2000617); one

away from sensitive areas of the property. The site plan shows that much of the property is undeveloped.

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commenting on the real risk of significant irreversible damage due to (among other things) development near the shoreline of the lake and Rice Creek, hardened seawalls, and needed vegetative buffers (*see* Memorandum from the Lake Leelanau Lake Association Board of Directors, ROA2000639-647); one explaining efforts that have already been taken to protect Rice Creek and its watershed and expressing fears that the development will put in jeopardy Rice Creek and Lake Leelanau through hardscaping runoff and pollution due to increased traffic and inadequate planning, and asking the PC to consider their financial and personal investments in protecting shared natural resources (*see* written public comment from Tom Price & Cynthia Carlson, ROA200652); one from a local lake biologist for Lake Leelanau expressing his concerns regarding the impact of this many people on Lake Leelanau (*see* approved minutes from October 25, 2023 PC meeting, in-person comment from Rob Reimik, ROA2000567-577); one from a professional planner stressing the impacts of the development along a valuable riparian stream corridor, which, upstream, includes many acres of minimally developed and conserved land (*see* written public comment from Cary Weed, ROA2000633-634); one describing concerns regarding additional boat traffic, introduction of invasive species into the lake, and additional car traffic (*see* written public comment Susan O'Connor, ROA2000620); one from the former lake biologist for Lake Leelanau and the long-time Executive Director of the Leelanau Conservancy expressing support for the LLLA's comments, and suggesting that the PC pay attention to the "relatively undisturbed and most sensitive parts of the property – the wetlands and shore riparian corridor, the Rice Creek corridor, and the bottomlands of Lake Leelanau adjacent to the wetlands" (*see* written public comment from Brian Price, ROA2000621); one raising the potential impact of the development on the area's dark sky (*see* written public comment from Sue Downs, ROA2000629); among others in the record.

10. The ZBA is, again, aware of the limitations created by Paragraph 8 of the Mediation Agreement, requiring that any approval of the revised site plan shall be conditioned on obtaining all necessary regulatory approvals. (*See* Mediation Agreement, ROA2000249-254.) At the same time, the ZBA finds that the Mediation Agreement does not foreclose the PC and the ZBA from independently considering whether the application meets whether the application meets this Standard #16, which (through the application of MEPA) is an environmentally focused land use ordinance standard, even if EGLE will also consider similar environmental issues as part of a state permitting process. The Township retains authority to consider environmental and natural resources issues that affect land use so long as it is not doing so in a way that conflicts with state authority. *See Fredericks v Highland Twp*, 228 Mich App 575; 579 (1998); *Divergilio v Charter Twp of West Bloomfield*, 2006 Mich App LEXIS 3268 (Mich Ct App Nov 2, 2006).
11. The ZBA is also taking into account guidance from the January 29, 2024 Decision and Order on Appeal in the *Northgate Leelanau Pines, LLC v Centerville Township & Centerville Township Planning Commission* case, which is attached hereto as Appendix A (for reference), in which the Grand Traverse County Circuit Court determined that the Centerville Township Planning Commission properly withheld approval of the site plan application at issue in that case where standards pertained to "environmental health and public safety." (page 7) The court further opined that "[t]he ZBA noted that inhabitants of Centerville have a legitimate interest in limiting over development so as to protect the

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environmental features and natural resources in the Township and to preserve creeks, wetlands and swamps in the area. Given that the stated purpose of the [Zoning] Ordinance is to promote the legitimate interests of the inhabitants, the ZBA properly found that the Site Plan directly conflicted with 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.” (page 10)

12. The ZBA further finds that the ZO is based upon the Master Plan. The Master Plan came into being from a questionnaire sent out to Township residents. (See Master Plan “Introduction” and Section 1.1 “Plan Development Process”, ROA2000138.) The ZBA is tasked with serving the community, according to the principles in those planning documents. To that end, the ZBA is considering the SPA in the context of the pertinent sections and requirements of both the Master Plan and ZO. See MCL 125.3501(4). The ZBA finds that the stated purpose of the ZO is “to promote the health, safety and general welfare of the inhabitants of the Township . . .” (ZO “Purpose,” ROA2000022.) And the Master Plan states that “The review of the natural resources in Centerville Township indicates that the natural features and agricultural resources are relatively unimpaired at this time; however, these resources are extremely vulnerable. As indicated in the 2011 Survey, residents highly value the natural resources and scenic features of the township. The environmental features of the township are an important asset to the community, and need continued protection.” (Master Plan, Section 3.8 Summary, ROA200160.) Moreover, the Master Plan’s “Vision Statement” explains: “According to the results of the 2011 Survey, the residents of Centerville Township value and want to maintain the peaceful rural character and the scenic beauty of their township. Most citizens wants to maintain the township’s . . . natural environment without the burden of uncontrolled growth and its associated impacts.” (Master Plan, Section 7.1 Vision Statement, ROA 2000170.) All of this language reinforces the validity of the PC’s and ZBA’s concerns regarding likely impairment on natural resources resulting from this proposed development. The SPA, as proposed, is at a scale that is too big and could damage the site’s fragile natural areas.
13. Finally, the ZBA also hereby incorporates its concerns raised above regarding the inadequate project impact information submitted as per the application requirement found in ZO Section 13.1(B)(a)(14), as well as regarding the inadequate wastewater treatment system information submitted as per the application requirement found in ZO Section 13.1(B)(b)(13).
 - a. Again, the information provided in Leelanau Pines’ impact statement (as per ZO Section 13.1(B)(a)(14)) was too general to for the PC and ZBA to truly assess the impact of the development on the natural environment of the site.
 - b. And the lack of information regarding Leelanau Pines’ updated wastewater treatment system (as per ZO Section 13.1(B)(b)(13)) also prevented the PC and ZBA from being able to assess environmental impacts on water quality in the Lake Leelanau and Rice Creek watershed, as well as to fully assess lot coverage concerns.

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14. For all these reasons, the ZBA affirms the PC's finding that Standard #16 has not been met.

❖ **Standard #17 (ZO Section 13.1(G)(a)(1))**

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.

[Recommendation: Reverse the PC's determination regarding this standard and find that it has NOT been met.]

1. The ZBA finds this standard was discussed at the PC's October 2, 2023 meeting, and the PC reached consensus at that time that Standard #17 had been conditionally met. (*See* approved minutes from October 2, 2023 PC meeting, ROA2000437-461.). The standard was then addressed again at the November 6, 2023 meeting, and again consensus was reached that this standard had been conditionally met. (*See* approved minutes from November 6, 2023 PC meeting, ROA2000747-751.)
2. **The ZBA hereby reverses the PC's determination and finds that Standard #17 has not been met by Leelanau Pines' SPA.**
3. The ZBA finds that, akin to Standard #16, this Standard #17 contains the same requirements of conformance with the applicable requirements of *state statutes*. An applicable state statute to Standard #17 is the Michigan Environmental Protection Act ("MEPA"), Part 17 of NREPA, MCL 324.1701 *et seq.* The ZBA hereby incorporates its previous findings regarding MEPA from Standard #16 above.
4. The ZBA finds that Standard #17 also requires conformance with all applicable requirements of *local statutes*. An applicable local statute to Standard #17 is the ZO. (*See* ZO, ROA 2000017-132.) The ZBA finds that the ZO is based upon the Master Plan. The Master Plan came into being from a questionnaire sent out to Township residents. (*See* Master Plan "Introduction" and Section 1.1 "Plan Development Process", ROA2000138.) The ZBA is tasked with serving the community, according to the principles in those planning documents. To that end, the ZBA is considering the SPA in the context of the pertinent sections and requirements of both the Master Plan and ZO. *See* MCL 125.3501(4). The ZBA finds that the stated purpose of the ZO is "to promote the health, safety and general welfare of the inhabitants of the Township . . ." (ZO "Purpose," ROA2000022.) And the Master Plan states that "The review of the natural resources in Centerville Township indicates that the natural features and agricultural resources are relatively unimpaired at this time; however, these resources are extremely vulnerable. As indicated in the 2011 Survey, residents highly value the natural resources and scenic features of the township. The environmental features of the township are an important asset to the community, and need continued protection." (Master Plan, Section 3.8 Summary, ROA200160.) Moreover, the Master Plan's "Vision Statement" explains: "According to the results of the 2011 Survey, the residents of Centerville Township value and want to maintain the peaceful rural character and the scenic beauty of their township.

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Most citizens wants to maintain the township's . . . natural environment without the burden of uncontrolled growth and its associated impacts." (Master Plan, Section 7.1 Vision Statement, ROA 2000170.) All of this language reinforces the validity of the PC's and ZBA's concerns regarding likely impairment on natural resources resulting from this proposed development. The SPA, as proposed, is at a scale that is too big and could damage the site's fragile natural areas.

5. The ZBA again finds that it is empowered and obligated to consider public comment. Many of the public comments in the record from local residents share concerns regarding environmental impact and irreparable harm to the Township and its welfare on the whole. These concerns are based on their "local knowledge." The ZBA is therefore giving particular weight to public comment in considering this standard, as this standard incorporates the ideas expressed by the Master Plan for the community. These comments include but are not limited to the following: one that discusses hard surfaces that are incompatible with the natural environment, as well as habitat and water quality of Lake Leelanau issues, due to "dissolved oxygen / invasives / dramatic boat traffic increase," destructive runoff, habitat loss, and solon swamp (*see* written public comment to ZBA from Randy Karfonta, ROA2001533-1564; one describing the 16 permanent conservation easements currently in place that protect 780 acres in the Lake Leelanau watershed, with approximately ¼ of that (193 acres, 4 conservation easements) lying in the Rice Creek subwatershed, and explaining that these permanent easements help prevent nutrient inflows, sedimentation and critical habitat loss, all of which are identified as pollutants that threaten to degrade the designed and desired uses identified in the Lake Leelanau Watershed Protection Plan, and further detailing that DEQ/EGLE has provided \$1,484,794 of Clean Michigan Initiative Funding to such efforts to protect parcels integral to maintaining high water quality in the Lake Leelanau Watershed (*see* written public comment from Bill Rastetter, ROA2001525-1532); one commenting on the potential impacts of lakeside swimming pools, as well as structures and hardscapes on the shoreline, and noise and hours of operation for activities (*see* approved minutes from October 2, 2023 PC meeting, in-person comment from John Stoller, ROA2000437-461); one expressing concern regarding runoff from substantial rain events, including impact on site sewage management (*id.*, in-person comment from Sharon Rudy, ROA2000437-461); one commenting on the impacts of the shoreline development, impervious surfaces, and risks to Lake Leelanau and Rice Creek (*id.*, in-person comment from Nancy Popa, President of the Lake Leelanau Lake Association); one providing professional planning concerns regarding permeability and project impacts on the shoreline and Creekside (*see* written public comment from Cary Weed, ROA2000617); one commenting on the real risk of significant irreversible damage due to (among other things) development near the shoreline of the lake and Rice Creek, hardened seawalls, and needed vegetative buffers (*see* Memorandum from the Lake Leelanau Lake Association Board of Directors, ROA2000639-647); one explaining efforts that have already been taken to protect Rice Creek and its watershed and expressing fears that the development will put in jeopardy Rice Creek and Lake Leelanau through hardscaping runoff and pollution due to increased traffic and inadequate planning, and asking the PC to consider their financial and personal investments in protecting shared natural resources (*see* written public comment from Tom Price & Cynthia Carlson, ROA200652); one from a local lake biologist for Lake Leelanau

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expressing his concerns regarding the impact of this many people on Lake Leelanau (*see* approved minutes from October 25, 2023 PC meeting, in-person comment from Rob Reimik, ROA2000567-577); one from a professional planner stressing the impacts of the development along a valuable riparian stream corridor, which, upstream, includes many acres of minimally developed and conserved land (*see* written public comment from Cary Weed, ROA2000633-634); one describing concerns regarding additional boat traffic, introduction of invasive species into the lake, and additional car traffic (*see* written public comment Susan O'Connor, ROA2000620); one from the former lake biologist for Lake Leelanau and the long-time Executive Director of the Leelanau Conservancy expressing support for the LLLA's comments, and suggesting that the PC pay attention to the "relatively undisturbed and most sensitive parts of the property – the wetlands and shore riparian corridor, the Rice Creek corridor, and the bottomlands of Lake Leelanau adjacent to the wetlands" (*see* written public comment from Brian Price, ROA2000621); one raising the potential impact of the development on the area's dark sky (*see* written public comment from Sue Downs, ROA2000629); among others in the record.

6. The ZBA is, again, aware of the limitations created by Paragraph 8 of the Mediation Agreement, requiring that any approval of the revised site plan shall be conditioned on obtaining all necessary regulatory approvals. (*See* Mediation Agreement, ROA2000249-254.) At the same time, the ZBA finds that the Mediation Agreement does not foreclose the PC and the ZBA from independently considering whether the application meets this Standard #17, which (through the application of MEPA, the ZO and the Master Plan) is an environmentally focused land use ordinance standard, even if EGLE will also consider similar environmental issues as part of a state permitting process. The Township retains authority to consider environmental and natural resources issues that affect land use so long as it is not doing so in a way that conflicts with state authority. *See Fredericks v Highland Twp*, 228 Mich App 575; 579 (1998); *Divergilio v Charter Twp of West Bloomfield*, 2006 Mich App LEXIS 3268 (Mich Ct App Nov 2, 2006).
7. The ZBA is also taking into account guidance from the January 29, 2024 Decision and Order on Appeal in the *Northgate Leelanau Pines, LLC v Centerville Township & Centerville Township Planning Commission* case, which is attached hereto as Appendix A (for reference), in which the Grand Traverse County Circuit Court determined that the Centerville Township Planning Commission properly withheld approval of the site plan application at issue in that case where standards pertained to "environmental health and public safety." (page 7) The court further opined that "[t]he 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 the stated purpose of the [Zoning] Ordinance is to promote the legitimate interests of the inhabitants, the ZBA properly found that the Site Plan directly conflicted with 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." (page 10)

8. For all these reasons, the ZBA reverses the PC's and finds that Standard #17 has not been met.

Decision:

Based on the record on appeal, and upon a motion, seconded and passed, the Zoning Board of Appeals hereby finds that the Planning Commission's decision dated December 4, 2023 and adopted February 5, 2024 is hereby **reversed in part and affirmed in part**. The Applicant's site plan application is **denied**.



Michelle Dub

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APPENDIX A

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.

Brion B. Doyle (P67870)
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Attorneys for Intervenor

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 approved 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