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**ATTORNEYS FOR APPELLANT
CITIZENS FOR PENNSYLVANIA’S
FUTURE**

**IN THE COURT OF COMMON PLEAS
MONROE COUNTY, PENNSYLVANIA**

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

NOTICE OF LAND USE APPEAL

PARTIES

1. Appellant Citizens for Pennsylvania’s Future (“PennFuture”) is a Pennsylvania-based 501(c)(3) nonprofit environmental advocacy organization with an office at 1539 Cherry Lane Road, East Stroudsburg, PA 18301. PennFuture’s mission includes protecting Pennsylvania’s air, land, and water through outreach and advocacy, including litigation.

2. Appellee, the Board of Supervisors of Paradise Township (“Board”), is the governing body of Paradise Township, Monroe County, a Township of the Commonwealth of Pennsylvania, organized pursuant to the Second Class Township Code, 53 P.S. § 65101, et seq., with offices at 5912 Paradise Valley Road, Cresco, PA 18326.

PROCEDURAL BACKGROUND

3. On August 15, 2022, JSPA Realty, LLC, a Pennsylvania limited liability company with a mailing address of 175 Tillman Street, Staten Island, NY, 10314 (“Applicant”) submitted an

Application for Conditional Use Approval for a Master Development Plan consisting of a resort and commercial shopping center in the Township’s Resort Development Overlay District (“Application”). (Conditional Use Decision pp. 1, 2 ¶ 1, attached hereto as Exhibit A).

4. The Board held nine hearings on the Application, on January 30, 2023, February 23, 2023, March 9, 2023, March 16, 2023, April 27, 2023, May 23, 2023, June 8, 2023, June 22, 2023, and August 14, 2023. (Exhibit A p. 2 ¶ 4).

5. The Board granted PennFuture party status at the hearing on January 30, 2023 following *voir dire* on standing. (Exhibit A p. 4 ¶ 16).

6. At the hearing on August 14, 2023, the Board approved the Application, subject to conditions. (Exhibit A p 8 ¶ 28).

7. The Board issued a written decision of approval on September 27, 2023. (Exhibit A).

JURISDICTION

8. This Court has jurisdiction over the instant land use appeal under Section 1002-A of the Pennsylvania Municipalities Planning Code, 53 P.S. § 11002-A.

THE PROPOSED DEVELOPMENT

9. Applicant seeks to develop a 240-acre property situated off State Route 611 located primarily in Paradise Township, with portions in neighboring Pocono Township and Mount Pocono Borough (the “Property”). (Exhibit A p. 9 ¶ 2).

10. The Property consists of seven parcels, having parcel identification numbers 11636400219565, 11636500221351, 11636500403397, 11636500100937, 12636500001679, 12636500108111, and 10636517016178. (Exhibit A p. 1).

11. The Property is bisected roughly from northeast to southwest by an existing residential neighborhood consisting of Rock Ridge Road, Wicasset Road, and Goldfinch Place

(“Rock Ridge Neighborhood”). (Exhibit A p. 10 ¶ 8, p. 58 ¶ 13).

12. Applicant proposes two distinct uses on the Property, a “resort area” consisting of 96 villas/cabins, a 94-unit hotel, a lodge building with three (3) restaurants and banquet facilities, a pool area, and other amenities (“Resort”) and a separate commercial area consisting of a variety of retail and other commercial uses (“Shopping Center”) (collectively, the “Project”). (Exhibit A pp. 7 ¶ 25, 9 ¶ 4).

13. The Resort and Shopping Center are separated by the Rock Ridge Neighborhood, with the Resort located on the portion of the Property to the northwest of the neighborhood and the Shopping Center on that portion to the southeast. (Exhibit A p. 10 ¶ 8).

14. There is no on-site vehicular connection between the Resort and the Shopping Center. (Exhibit A p. 12 ¶ 24).

15. The only connection between the two sides of the Property within Paradise Township is a strip of land approximately forty (40) feet wide that passes through the Rock Ridge Neighborhood and encompasses portions of Rock Ridge Road and Wiscasset Road. (Exhibit A p. 12 ¶ 24–26).

RULES OF ORDINANCE INTERPRETATION AND STANDARD OF REVIEW

Ordinance Interpretation

16. The fundamental objective of a tribunal faced with the task of interpreting a zoning ordinance “is to determine the intent of the legislative body in enacting the ordinance.” *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d 886, 899 (Pa. 2019); *Bailey v. Zoning Bd. of Adjustment*, 801 A.2d 492, 502 (Pa. 2002); *Kissane v. Town Council of McCandless*, 133 A.3d 127 (Pa. Cmwlth. 2016); *see* 1 Pa. C.S. § 1921.

17. “When the words in an ordinance are not explicit, the legislative body’s intent may

be ascertained by considering, among other things, the ordinance’s goal, the consequences of a particular interpretation of the ordinance, and interpretations of the ordinance by an administrative agency.” *Bailey*, 801 A.2d at 495; 1 Pa. C.S. § 1921(c).

18. Undefined terms must be construed “in a sensible manner” and given “their plain, ordinary meaning.” 1 Pa. C.S. § 1903; *Adams Outdoor Advert., L.P. v. Zoning Hearing Bd.*, 909 A.2d 469, 483 (Pa. Cmwlth. 2006).

19. To ascertain this meaning, a tribunal may consult a law dictionary or standard dictionary. *Cogan House Twp. v. Lenhart*, 197 A.3d 1264, 1268 (Pa. Cmwlth. 2018) (emphasis added).

20. “[A]ppellate courts reviewing a governing body’s adjudication of a conditional use application generally should defer to the [ordinance] interpretation rendered by the governing body” because “as the entity charged with administering a zoning ordinance, the governing body possesses knowledge and expertise regarding the ordinance.” *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1213 (Pa. Cmwlth. 2014); *see also Slice of Life*, 207 A.3d at 902.

Standard of Review

21. In considering a municipality’s conditional use decision, a court’s review is “limited to determining whether the municipality abused its discretion, or committed an error of law.” *EQT Prod. Co. v. Borough of Jefferson Hills*, 208 A.3d 1010, 1024 (Pa. 2019).

22. In matters of factual determination, the governing body has “exclusive province over matters of credibility and weight to be afforded the evidence” and “may reject even uncontradicted testimony if it finds it lacking in credibility.” *In re AMA/American Mktg. Ass’n*, 140 A.3d 99 (Pa. Cmwlth. 2016).

23. Therefore, an abuse of discretion occurs only when the findings of the governing body are not supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *EQT Prod. Co.*, 208 A.3d at 1024-25.

24. As with all such determinations, a court’s review of whether the governing body committed an error of law is conducted *de novo*, and courts are not bound by the legal conclusions of the governing body. *Id.* at 1025.

THE BOARD CORRECTLY INTERPRETED THE ZONING ORDINANCE AND CORRECTLY CONCLUDED THAT THE PROJECT DOES NOT SATISFY THE REQUIREMENTS FOR A MASTER DEVELOPMENT.

25. To be entitled to conditional use approval, the applicant has the burden of proving that the proposed use meets the threshold definition of what is authorized as a conditional use and that the use complies with all specific requirements or standards in the zoning ordinance applicable to the use. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014); *In re Thompson*, 896 A.2d 659, 671 (Pa. Cmwlth. 2006).

Applicant Failed to Show Integration of Uses in a Master Development

26. The portion of the Property in Paradise Township is located in the Resort Development Area (“RDA”) Overlay District, which overlays the R-2 Moderate-Density Residential District. (Exhibit A p. 14 ¶ 1, p. 58 ¶ 14).

27. A developer of property in the RDA Overlay District is at liberty to proceed under the requirements of the underlying R-2 Residential District or the RDA Overlay District. (Paradise Township Zoning Ordinance (“ZO”) §§ 160-71(A), 160-71(C); Exhibit A p. 60 ¶ 27)).

28. Applicant elected to proceed under the requirements of the RDA Overlay District.

29. Land developed under the RDA Overlay District requirements must constitute a “Master Development.” (ZO §§ 160-71(E), 160-12(43.B)(a); Exhibit A p. 73).

30. Master Developments are unique to the RDA Overlay District; they are not permitted

in any other zoning district in the Township. (ZO § 1-16, 160-71(E)).

31. Unlike resorts, which are permitted as conditional uses in the underlying R-2 Residential District, shopping centers are not permitted in the R-2 Residential District unless incorporated into a Master Development in the RDA Overlay District. (ZO Schedule 1; Exhibit A p. 61 ¶ 31).

32. The Zoning Ordinance defines a Master Development as “a combination of land uses, consisting of a resort and additional uses.” (ZO § 1-16).

33. A shopping center is among the additional uses that may be combined with a resort use to create a Master Development. (ZO § 160-12(A)(43.B)(h); Exhibit A p. 60 ¶ 29).

34. The stated purposes of the Resort Development Overlay District include providing “an opportunity for integrated development of a variety of uses according to a Master Development Plan.” (ZO § 160-71(B)(1); Exhibit A p. 59 ¶ 18).

35. Similarly, the Paradise Township Comprehensive Plan identifies “*integrated development*” as an objective of the RDA Overlay District. (Exhibit A p. 76) (emphasis in original).

36. Applying the rules of statutory interpretation, the Board concluded that the purpose of the RDA Overlay District and the requirements for a Master Development are symbiotic and must be read *in pari materia*. (Exhibit A p. 73).

37. In other words, the Board concluded that a Master Development must meet the specific criteria of the Zoning Ordinance “while attaining the purpose of the authorizing ordinance.” (Exhibit A p. 77).

38. Identifying the concept of integration as the “lynchpin in understanding the melding of this concept,” the Board concluded that “[i]ntegration is a necessary basis for approving the requested use as a Conditional Use” and that “Applicant must demonstrate integration of uses.”

(Exhibit A pp. 73, 77, 78).

39. The Zoning Ordinance does not define “integrated development,” “integrated,” “integration,” or “combination of land uses.”

40. Accordingly, the Board interpreted the term “integrated,” guided by the “polestar” of legislative intent and assisted by definitions offered by parties at the hearing. (Exhibit A p. 68, 77–78).

41. The Board first considered and rejected the definition of “integrated” suggested by Applicant—“something with various parts or aspects linked or coordinated.” (Exhibit A p. 78).

42. The Board concluded that the Applicant’s proffered definition was a “truncated definition” that “misses the point of the interaction between § 161-71 and § 160.A(43.B)” because it “lacks the concept of unifying various coordinated elements of a Master Development by blending or combining into a whole.” (Exhibit A p. 78).

43. The Board instead adopted Merriam-Webster’s definition of “integrated,” offered at the hearing by party Paul Houle—“to form, coordinate, or blend into a functioning or unified whole”—as the definition “best suited for this Ordinance provision and as used in the Comprehensive Plan.” (Exhibit A p. 60 ¶ 25, p. 78).¹

44. Having identified the appropriate definition, the Board went on to find “there was scant testimony or evidence provided on how the [Shopping Center] would work with the Resort component.” (Exhibit A p. 80).

45. Specifically, the Board rejected Applicant’s proffered bases for finding integration:

- a. Guests can drive from Route 611 from one use to another;
- b. Water and sewer facilities are being planned together;

¹ The Board also found that Black’s Law Dictionary’s definition of “integration”—“the process of making whole or combining into one”—supports the Board’s chosen definition. (Exhibit A p. 78).

- c. The Shopping Center is consistent with Applicant's casino and resort²; and
- d. Guests can walk between the two uses using pathways.³

46. The Board held that, while these facts may be true, they are insufficient to prove the degree and kind of integration required by the ordinance. (Exhibit A p. 78).

47. The Board reasoned that, if these facts alone are sufficient to demonstrate integration, the entire Borough of Mount Pocono or the City of Philadelphia could be considered integrated, as "all have coordinated water and sewer, all are walkable with sidewalks, and all can be accessed by driving on Route 611." (Exhibit A p. 78).

48. The Board also rejected Applicant's assertion that it "coordinated the design and layout for both" the Resort and Shopping Center. (Exhibit A p. 79).

49. "This is simply not true," the Board found. "The Applicant went out of its way to provide as [sic] little information about the [Shopping Center], its design, its use and the symbiotic relationship between the two components." (Exhibit A p. 79).

50. In the Board's opinion, "the paucity of evidence provided regarding the [Shopping Center] component compared to the plethora of evidence provided on the Resort raises concerns as to the true intent of the Project." (Exhibit A p. 80).

51. In fact, "the two components are so segregated that . . . Applicant's architect opined that:

The Resort Property, not inclusive of the Commercial component, is designed so that a guest coming to stay at the Resort will have everything they need at the Resort to

² The Board here appears to misconstrue Applicant's argument. Applicant entered into evidence a memorandum by planner John Varaly (attached hereto as Exhibit B) in which Varaly compares the Project to the existing Mount Airy Resort and Casino, another development in the RDA Overlay District. Applicant submitted no evidence that Applicant owns Mount Airy or any other casino and resort or that Applicant intends to develop a casino as part of the Project.

³ The Board also rejected another proffered basis for integration: that Applicant elected to proceed under the RDA Overlay District and selected uses permitted in that district. This, the Board opined, is irrelevant to the question. "The fact that uses are authorized in the Overlay District and the Applicant chose the uses have nothing to do with integration. Rather, integration is a necessary basis for approving the requested use as a Conditional Use." (Exhibit A. p. 78).

function and enjoy their time without leaving the Property, including a bathing suit or towel.

(Exhibit A p. 79).

52. Ultimately, “applying the definition [of integration] to the facts at hand,” the Board concluded that “it is clear that Applicant did not provide enough evidence as to how the two components work together.” (Exhibit A p. 79).

53. The Board’s interpretation of the meaning and import of the term “integrated” in its own ordinance is consistent with the intent of the Zoning Ordinance and the plain, ordinary meaning of the term as evinced by legal and standard dictionaries.

54. The Board’s interpretation is also consistent with its conclusion that the purpose of the RDA Overlay District must be read *in pari materia* with requirements for a Master Development, which is defined to be a “combination of uses.”

55. The Board’s interpretation of its own ordinance is entitled to deference.

56. The Board did not err in concluding that the Applicant failed to satisfy its burden of producing evidence sufficient to demonstrate integration between the Resort and Shopping Center of a degree and kind required by the Zoning Ordinance.

Applicant Failed to Prove Access to a Road Controlled by PennDOT

57. Master Developments must have frontage along and direct access to a road or highway controlled by the Pennsylvania Department of Transportation (“PennDOT”). (ZO § 160-12(43.B)(e)).

58. The Board interpreted this provision as requiring all components of a Master Development to have vehicular access to a PennDOT-controlled roadway so as to remove the “increased traffic, congestion, and potential hazards of the Master Development” from rural roads. (*see* Exhibit A pp. 86–88).

59. This interpretation is consistent with the objectives of the Zoning Ordinance, which

include ensuring careful coordination of development, accommodating the physical limitations of the existing road system, and minimizing hazards caused by high volume traffic. (Exhibit A p. 88 (citing ZO §§ 160-2(E), (I), (K); 160-71(B)(8) (development in RDA Overlay District to be consistent with goals and objectives of § 160-2)).

60. It is also consistent with the requirement that conditional uses “shall be designed and constructed such that vehicular . . . traffic does not create undue congestion.” (ZO § 160-10(A)(7)).

61. The Shopping Center has direct access to southbound Route 611, a highway controlled by PennDOT, but access to the Resort is only through Trinity Hill Road, a local road owned and maintained by Paradise Township. (Exhibit A p. 11 ¶ 17, p. 61 ¶¶ 33–34).

62. Vehicular traffic to or from the Resort cannot access Route 611 via the Shopping Center because there is no vehicular connection between the Resort and Shopping Center. (Exhibit A p. 12 ¶ 24).

63. The Board concluded that “Trinity Hill Road is not a road or highway controlled or occupied by [PennDOT] and therefore does not meet the requirements of [Zoning Ordinance] §§ 160-12.A(43.B)(e) and 160-12.A(54.A)(a).” (Exhibit A p. 62 ¶ 37, p. 87).

64. Applicant’s “preferred recommendation” for providing access to the Resort from a PennDOT-controlled roadway is a roundabout at the intersection of Trinity Hill Road and Route 611. (Exhibit A p. 45 ¶ 1–2).

65. The roundabout would provide direct access from the Resort to a PennDOT-controlled roadway (Route 611), as required by the Zoning Ordinance. (Exhibit A p. 45 ¶ 3).

66. However, Applicant “provided little testimony and virtually no documentation” other than a sketch drawing to demonstrate how this might be accomplished. (Exhibit A p. 107).

67. The Board found that Applicant “could not demonstrate constructability of a

roundabout or that PennDOT would approve the roundabout.” (Exhibit A p. 46 ¶ 14).

68. “Whether the roundabout actually works” will depend on the results of a traffic impact assessment that Applicant has not yet performed. (Exhibit A p. 89, 90).

69. Given the lack of evidence, the Board concluded it is unknown whether Applicant can meet the access requirement for the Resort component. (Exhibit A p. 89).

70. The Board’s interpretation of the Zoning Ordinance’s requirement that a Master Development have access to a PennDOT-controlled roadway is consistent with the plain language of the provision and the intent of the Zoning Ordinance and is entitled to deference.

71. The Board did not err in concluding that the Project lacks the required road access to satisfy the ordinance when the only access to the Resort is on a township-owned road and Applicant provided little testimony and virtually no documentation of a feasible alternative.

Applicant Proposes to Build Within Primary Conservation Areas in Contravention to the Master Development Requirements

72. “In order to achieve the greatest conservation of natural resources,” Master Developments must delineate and dedicate greenway lands in accordance with Zoning Ordinance Section 160-21-C(D), (E) and (F). (ZO § 160-12.A(43.B)(d) (cross-referencing § 160-21-C(D), (E) and (F)); Exhibit A p. 63 ¶ 48).

73. Greenway land must be set aside for conservation and is not part of a Master Development’s developable area. (ZO §§ 1-16 (definitions of “Greenway Land” and “Development Area”); 160-21-C(C)(5), (D)(1)(a)).

74. Greenway land “shall be laid out in general accordance with the Township’s Map of Potential Conservation Areas” and shall consist of “a mixture of Primary Conservation Areas, all of which must be included, and Secondary Conservation Areas.” (ZO §§ 1-16, 160-21-C(D)(1)(a)).

75. Primary conservation areas include areas in excess of 2,000 square feet with 25%

slope or greater as measured over a minimum vertical distance of six feet, or three contiguous contour segments at two-foot contour interval (“Steep Slopes”). ZO §§ 1-16, 160-12(43.B)(c), (d), 160-21-C(C)(5).

76. Applicant testified that the greenway land for the Project will be located in Paradise Township, will be owned and maintained by the Resort, will not be open to the public, and “may include passive recreation such as walking trails.” (Exhibit A p. 49).

77. Beyond this, Applicant “provided no additional information regarding establishing greenway lands or location of greenway lands.” (Exhibit A p. 49).

78. The Board found that there are various steep slopes of 25 percent or greater throughout the Property, particularly on the Shopping Center component. (Exhibit A p. 108).

79. The plans submitted with the Application, a portion of which is attached hereto as Exhibit C, show that a substantial portion of the proposed Shopping Center is located within Steep Slope areas. (Exhibit C).

80. The Board did not err in concluding that a conservation plan detailing the location, size, and nature of primary conservation areas in the Master Development and the location of all secondary conservation areas to be conserved is necessary to establish compliance with Zoning Ordinance Section 160-21-C(D). (*see* Exhibit A p. 108).

81. The Board did not err in concluding that Applicant has not provided such a conservation plan. (*see* Exhibit A pp. 49, 108).

82. The Board did not err in concluding that the Zoning Ordinance prohibits construction of improvements in Steep Slope areas. (*see* Exhibit A p. 108).

83. The Board did not err in finding the Application shows proposed improvements in Steep Slope areas, in contravention of the ordinance requirements. (*See* Exhibit A p. 109).

THE BOARD ERRED IN APPROVING THE APPLICATION WHEN IT FOUND THAT APPLICANT FAILED TO COMPLY WITH THE ZONING ORDINANCE AND FURTHER ERRED IN RELYING ON CONDITIONS TO ATTEMPT TO CURE THIS FAILURE

84. The standard applied to conditional use applications is whether the plan submitted complies with all zoning requirements.” *Appeal of Richboro CD Partners, L.P.*, 89 A.3d 742, 749 (Pa. Cmwlth. 2014).

85. A conditional use applicant has both the presentation burden and the burden of proof to show that this requirement is met. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1204 (Pa. Cmwlth. 2014) (citing *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 910 (Pa. Cmwlth. 1980)).

86. To satisfy its burden, a conditional use applicant “must come forward with evidence detailing its compliance with the necessary requirements.” *Elizabethtown/Mt. Joy Assocs., L.P. v. Mount Joy Twp. Zoning Hearing Bd.*, 934 A.2d 759, 768 (Pa. Cmwlth. 2007).

87. This showing must be made “**when** the application is submitted.” *In re Thompson*, 896 A.2d 659, 680 (Pa. Cmwlth. 2006) (emphasis in original).

88. An applicant who fails to satisfy this burden does not qualify for conditional use approval. *See In re Appeal of Deemed Approved Conditional Use*, 975 A.2d 1193, 1200 (Pa. Cmwlth. 2009).

89. Accordingly, “the standard to be observed by the Board is whether the plan as **submitted** complies with specific ordinance requirements **at the time the plan comes before it.**” *Edgmont Twp. v. Springton Lake Montessori Sch.*, 622 A.2d 418, 420 (Pa. Cmwlth. 1993) (emphasis added).

90. “A promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application.” *In re Thompson*, 896 A.2d 659, 680 (Pa. Cmwlth. 2006);

Edgmont Twp. 622 A.2d at 420.⁴

91. The function of a condition imposed upon a conditional use is to reduce the adverse impact of an allowed use, **not** to enable the applicant to meet his burden of showing that that use is allowed in the first place. *In re Baird*, 537 A.2d 976, 978 (Pa. Cmwlth. 1988).

92. As set forth in detail above, here the Board clearly and correctly held that Applicant failed to satisfy its burden to demonstrate compliance with several ordinance requirements, including:

- a. The requirement that the components of a Master Development be integrated into a single, unified whole;
- b. The requirement that a Master Development have direct access to a roadway controlled by PennDOT; and
- c. The requirement that Steep Slopes be set aside as greenway land.

93. The Board itself acknowledges that the lack of evidence as to how the requirements of the Zoning Ordinance will be met justifies denial of the Application. (Exhibit A p. 107).

94. However, despite finding that the Application as submitted did not satisfy the requirements of the Zoning Ordinance, the Board nevertheless approved the Application, in violation of the rule set forth above.

95. The Board did so because it erroneously concluded that Applicant's failure to demonstrate compliance can be remedied through conditions to approval. (*See* Exhibit A p. 70 ¶ 73, pp. 81, 85).

96. For example, the Board concluded that it's finding that Applicant did not prove

⁴ It is noted that *Thompson* and *Edgemont Township* and other cases cited herein address special exceptions, not conditional uses. Their application to this matter is nevertheless appropriate. "[A] conditional use is nothing more than a special exception which falls within the jurisdiction of the municipal legislative body, rather than the zoning hearing board." *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324, 1326 (Pa. Cmwlth. 1997) "In recognition of the similarity between special exceptions and conditional uses, courts apply the same standards of proof to both types of applications." *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014).

integration between the Resort and Shopping Center “does not require that the Board of Supervisors reject Applicant’s request for Conditional Use approval” because Applicant “can provide the necessary integration between the Resort and Commercial components by adhering to the Conditions set by the Board of Supervisors.” (Exhibit A p. 81; see also Exhibit A p. 70 ¶ 73, p. 85 (“The Board of Supervisors believes that the lack of integration evidence may be remedied by the application of additional conditions.”)).

97. The Board made clear that, unless and until numerous conditions are satisfied, the Application does **not** comply with the Zoning Ordinance. (*See* Exhibit A p. 100 (conditions are “critical” to Applicant’s ability to demonstrate compliance with the requirements for conditional use approval), p. 101 (“Applicant can establish compliance with all criteria necessary for Conditional Use approval regarding traffic by imposing the conditions set forth herein”), p. 106 (Applicant “must meet the Conditions set forth below for its stormwater facilities” in order to satisfy conditional use criteria), p. 111 (Applicant’s testimony “enhanced with the attached Conditions of approval” establishes compliance with the applicable Zoning Ordinance requirements)).

98. The Board erred as a matter of law in approving the Application when Applicant failed to satisfy its burden to demonstrate compliance with the applicable requirements of the Zoning Ordinance at the time the Application was submitted.

99. The Board’s attempt to “cure” Applicant’s deficient application through the imposition of conditions was an error of law.

WHEREFORE, Appellant PennFuture respectfully requests that this Court reverse the decision of the Paradise Township Board of Supervisors approving the conditional use application of JSPA Realty, LLC.

Respectfully submitted,

CITIZENS FOR PENNSYLVANIA'S FUTURE

Date: October 26, 2023

By: /s/ Brigitte Meyer
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Abigail M. Jones, Esquire, I.D. # 323921