

ZONING ADMINISTRATOR'S STATUS REPORT

11/12/2020

TIMBER SHORES RV RESORT SPECIAL LAND USE PERMIT APP.

LEELANAU TOWNSHIP PLANNING COMMISSION

Township Attorney Review

Leelanau Township Attorney, Rob Thall, of Bauckham, Sparks, Thall, Seeber, & Kaufman, PLC, has reviewed the Timber Shores Application and submittals and gave me his comments.

- He has reviewed the Application, Site Plans, and Revisions submitted by the Applicant.
- He has reviewed our zoning ordinance, including Article 15, Environmental Standards.
- He has reviewed the developmental agreements associated with the previous Timber Shores projects.
- He has spoken with an attorney for Fred Gordon, the property owner.

Questions posed to Mr. Thall:

- The 1999 and 2007 Timber Shores projects were approved in preliminary and final design phases. Does the zoning ordinance allow for this Application to be reviewed and approved in phases?
- Is the current Application ready for a Public Hearing and Planning Commission review?
- Does Section 15.3 of Article 15 – Environmental Standards conflict with Articles 11 & 12 as they relate to obtaining permits.

Findings:

- The previous Timber Shores projects were approved in a preliminary phase and final phase because they were Planned Unit Developments (PUD), which have a different approval process.
- As applied to this current project, which is a Special Use Permit (SUP) only, the current zoning ordinance does not contain any provision for a preliminary approval and final approval. **Therefore, the review and decision on this application will be made in one review.**
- While it is true that Section 11.11 of the zoning ordinance provides for a conditional approval of a project subject to agency approvals, this Conditional Approval does not abdicate the planning commission's responsibility to determine that standards for approval contained in the zoning ordinance have been met.
- **Mr. Thall has concerns about the lack of detail / completeness of the submitted application.** Any findings of fact and subsequent decision made by the planning commission must be made based upon the materials, data, plans, etc. available in front of

the commission. Any decision made by the planning commission must be defensible based on the facts, and lack of sufficient detail can make it difficult to defend a decision.

- The recorded Ennis Creek Conservation Easement Agreement is still valid, as is the management plan referenced in the agreement.
- In Mr. Thall's opinion, any recorded development agreement that pertains specifically to the PUD which was never built is not valid anymore.
- Mr. Thall's opinion is that, in the context of Article 15, the requirement in Section 15.3 to submit necessary Federal, State, and/or County approvals to the Zoning Administrator prior to township approval applies to a "use-by-right" approval and not a Special Use. Therefore, the township's Article 15 review should be performed in conjunction with Site Plan Review, and should be subject to and conditioned upon issuance of Federal, State, and/or County Approvals.
- Mr. Thall believes that the Owner's attorney that he spoke with understands the concerns on the completeness of the Application.

Recommendation:

Our attorney is recommending that the township work with an engineering consultant or firm with an environmental engineering background to review the application, site plans, and zoning ordinance and assist the Township Attorney and Zoning Administrator in determining what is necessary to complete the Application in sufficient detail to commence Planning Commission review.

Once the Application is completed in sufficient detail, the Application will be forwarded to the Planning Commission for a Public Hearing.