

**Charter Township of Elmwood
Planning Commission
Special Meeting
Elmwood Township Fire Department Fire Bay
April 11, 2023
6:30 PM**

A. Call to Order: Chairman Bechtold called the meeting to order at 6:30 PM.

B. Pledge of Allegiance: The Chair led the Pledge of Allegiance.

C. Roll Call: Present: Chris Mikowski, Kendra Luta, Jeff Aprill, Jonah Kuzma, Rick Bechtold
Nate McDonald (6:33 p.m.) **Excused:** Doug Roberts

The Chair announced before I get into the limited public comment, I'm going to have Chief Tampa explain the exits and any safety concerns.

Chief Tampa gave a brief overview for safety.

D. Limited Public Comment: The Chair noted, the purpose of tonight's meeting is for the Commission to enter into its deliberations based on the applicant's information submitted, public comment, everything we've received in prior meetings. So, if you wish to make a public comment now, it cannot address Wellevity. You can address the agenda, but to bring up a point about Wellevity, that will be ruled out of order because that period of public comment has been closed.

Marc McKellar asked for a matter of clarification, I want to make sure as the applicant we'll have an opportunity outside of public comment to make our initial responses, it's our burden prior to deliberations, just a short reiteration from events before, it'll just be a recap.

Attorney Graham, responded, Mr. Chairman, the public hearing is over and so the only time the applicant or a member of the public can comment on Wellevity is in direct answers to questions posed by the Commissioners. There'll be no further presentations allowed tonight because the public hearing is closed.

Marc McKellar replied, we'll respond accordingly then.

Attorney Graham added, this is intended for discussion amongst the Commissioners.

E. Agenda Modifications/Approval: MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER LUTA TO MODIFY THE AGENDA REMOVING ITEM H. MOTION APPROVED 6-0.

MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER MIKOWSKI TO APPROVE THE AGENDA AS MODIFIED. MOTION PASSED UNANIMOUSLY.

F. Declaration of Conflict of Interest: None

G. Purpose of Special Meeting: Planning Commission Deliberations on SPR/SUP 2022-06 Request by Wellevity LLC regarding property at 0 S. Timberlee Dr., 10901 and 10800 S. Cottonwood Dr., and 0 E. Timberwoods Dr., parcels 113-014-26, 113-014-16, 113-014-29, 113-014-51 for a resort.

Attorney Bryan Graham had a conversation with Commissioner Mikowski. He asked, Chris it's my understanding you were not here at the public hearing on March 22, is that correct?

Commissioner Mikowski responded, that's correct.

Attorney Graham asked, and since that time, have you reviewed the recordings and record that was made at that public hearing?

Commissioner Mikowski responded, yes, I did.

Attorney Graham asked, and you reviewed all the exhibits that were submitted?

Commissioner Mikowski responded, yes.

Attorney Graham asked, so you feel prepared to go forward in your deliberations?

Commissioner Mikowski responded, yes.

Chairman Bechtold said, we're at the point of deliberations. We have reviewed the application and the pertinent documents in support for the application. We have received a large volume of public comment both oral and written and I want to take this point to thank the public for providing public comment and thank you for your interest in this project. During deliberations, we will be starting with Section 8.4. I have asked the Zoning Administrator to prepare a draft Findings document for us to use as an outline as we go through. This will allow for an efficient use of our time and it will also make sure that we have all the items in the order that we need to consider them and we've not omitted anything.

Attorney Graham noted, it's important for not only the Commissioners to understand, but for the public to understand, that these draft Findings are only drafts. They are intended to provide assistance to the Commission when you're discussing the various standards and the various pieces of evidence that were submitted. You should feel free to change, modify, add to, subtract from, those proposed Findings. It's been my experience over the last 30 years, if you try to start with a blank sheet of paper in a meeting like this, to draft your

Findings, it's difficult, but it works to always start with a document and then modify that document as you believe is appropriate.

The draft Findings were distributed to Commissioners and the public.

Chairman Bechtold said to Commissioners, page 2 of 26 is a collection of the pertinent information regarding the property owner, the applicant, the Engineering group, the Surveyor, Hearing date, Case number, property descriptions, and there is an introduction regarding the application. Starting our deliberations, we will begin on page 3 of 26, Section 8.4, Requirements for Site Plan Approval.

Attorney Graham said Mr. Chair, before you go on to that, for page 2, I want to make sure that everyone on the Commission is comfortable with the way that language is provided in the document.

The Chair asked, is there anyone on the Commission who has a concern about the way this was organized or presented? As counsel said, there will most likely be modifications to this as we go through it, that's the purpose of our deliberations, to analyze the areas and to ascertain whether or not the Standard has been met.

Attorney Graham added, make sure the record is clear, no Commissioner wants changes on page 2 and on the top half of page 3?

Staff said, I would just propose a couple of modifications. The Hearing date is listed as February 28th. I would note that was adjourned to March 2nd due to capacity issues, and on page 3 of 26 adding adjourn to March 22nd at the Elmwood Township Fire Station due to exceeding capacity, and then a statement regarding the limited reopening of the public hearing, the hearing was opened and closed on March 22nd. At that meeting the Commission moved to adjourn deliberations to April 11th, 2023 at the Elmwood Township Fire Station.

The Chair continued, do any of the Commissioners have concerns or questions regarding the items in Section 8.4?

Commissioner Luta asked, Sarah, has the seal been provided for the engineering plans?

Sarah responded, the seal has not been provided, it can be conditioned, the Commission typically does condition that.

The Chair said, going back to page 3 of 26, any concerns with items 1-8? Hearing none, moving to page 4 of 26, items 9-27. Just to be clear, Sarah when you have in parentheses for example sheet L 4.0, that was the plate number for the large blue prints?

Sarah responded, that is correct.

Commissioner Kuzma said, 16 & 18, I know that it says provided, but wasn't there some discussion as to the adequacy of 16 & 18?

Sarah answered, the requirements in 8.4 are regarding the location, not whether or not they're adequate, that is essentially later on in the Ordinance.

The Chair said, another way to think about this particular section, it's like a checklist to make sure you have all of the elements recorded by some type of evidence one way or the other and then as we get further into the deliberation and into the process, we'll be addressing that in other Standards. Any concerns with items 9-27? Hearing none, moving to page 5 of 26 items 28-37 any concerns? Hearing none, are there any concerns with section 8.4 items 1-37? So, we're in agreement those have been met?

Commissioner Kuzma said, except for 6, right? That will be conditioned?

The Chair said, yes, that will be conditioned. Moving on to section 8.5 review and approval for Site Plan Review, item b1.

Commissioner Mikowski said, I'd say that's a yes.

The other Commissioners said yes.

The Chair said, that Standard has been met.
He moved on to section 8.5, b2.

Commissioner Luta asked, is this the one that shows up later that I mentioned? Do we address it now or wait until later?

The Chair responded we can defer it until we get into section 8.5 b4. Moving on to section 8.5 b3.

Staff noted, this is the same situation where the Standard is addressed later on, so the Commission could defer the Findings until later. I believe the first item there might be more discussion on b5, compliance with all non-zoning Ordinances adopted by the Township including but not limited to the private road Ordinance on the top of page 7 of 26.

The Chair said, we'll defer until section 9.8.a.4. 8.5 b4. This is typically one we come back to so we'll defer on this one. 8.5 b5.

Staff asked, does the Planning Commission have any questions or would like any modifications to this item?

Commissioner Luta asked, can I get some clarity on private road Ordinance and how that relates to this proposal being within a private road and the role of the Planning Commission and what we have jurisdiction over?

Attorney Graham stated, I have looked at the current language of your private road Ordinance and the way it is currently written, the Private Road Ordinance does not apply to this development, and the reason for that is that the development's going to be run as a single business entity, there's not multiple businesses, and so therefore you do not need to comply with the Private Road Ordinance the way it's written now.

Staff said, in other words the extension. It's more like a driveway, so they have access into the parcel using an existing private road, so any extension because it's all under one ownership, it's all going to be owned and operated under one ownership. The Private Road Ordinance reads the Planning Commission cannot require them to conform to the Private Road Ordinance for that extension. It's not an extension of a private road, it's essentially an extension of a driveway, it doesn't fall under a private road.

The Chair asked, how do the Commission find?

Commissioner Kuzma said, yes.

Commissioner Mikowski said, yes.

The Chair asked if there was agreement that it has been met?

Commissioner Luta said, yes.

Commissioner McDonald said, yes.

The Chair said, we'll mark this one as met.

The Chair moved to 8.5 b6

Commissioner Mikowski said, yes.

Commissioner Luta asked, do we know how much clearing there would be on top, I don't know if it would specifically pertain to this.

The Chair replied, a little bit later in our deliberations. Isn't there a reference to that? As I recall it's a 100- acre parcel.

Commissioner Kuzma interjected, doesn't (d) address that?

The Chair responded, yes.

Staff said, if you do want to modify it, this is also on sheet I 2.0, the proposed development on undisturbed land is 2.4 acres. Only 2.4 acres of the 100-acre site.

The Chair asked, you're suggesting that be inserted?

Staff replied, if the Commission wants to insert it.

Commissioner Luta said, I would like to insert that.

The Chair asked the Commissioners, would that help clarify that?

Commissioner Kuzma responded, yes, I think we should add that.

Commissioner Aprill said, it says all buildings and structures shall be designed, constructed, operated, and maintained so as to be harmonious and compatible. The roads back there are a neighborhood and I don't know how you could be harmonious and compatible with that neighborhood and have this type of structure.

The Chair said, I guess when I read this, I was looking at the buildings and structures and nothing else. The design would be appropriate or in good taste so it would not draw unnaturally from the area in appearance. I was thinking of the style and design of the buildings being compatible versus going to and from the project.

Commissioner Aprill responded, I have to read the words in the sentence and it says intended character of the general vicinity. The general vicinity is all residential and I don't know how this is compatible with that residential neighborhood.

Attorney Graham stated, what you have to understand though, the Zoning Ordinance authorizes a resort in that district, so to fulfill the requirements of the Zoning Ordinance, you have to look at the resort as being an allowed use. I think this is really intending to say if you're putting a development inside of a residential area, here we're putting it on top of a hill and the residential neighbors are neighbors of that and not within if you will.

Commissioner Aprill responded; I would disagree. The neighborhood, especially on the roads getting back there are residential, it's a residential neighborhood.

Attorney Graham said, I understand your issue with the roads is legitimate, but that's going to be coming up later.

Commissioner Aprill said, I'm not talking about the roads, I'm looking at the words in item 6.

Staff said, the Standard specifically starts off by saying all buildings and structures, so that is everything that is subsequent to that, it's important but it doesn't fall under this Standard. This is specifically, are the buildings and structures designed and constructed to be operated and maintained so as to be harmonious, compatible, and appropriate. These are the buildings and structures, not the roads, not the access.

Commissioner Aprill stated, I wasn't talking about the roads or the access, it's a residential neighborhood, how can the buildings of this nature be compatible with residential homes.

The Chair said, the way I looked at it, the area is zoned resort commercial. We have residences that are built in that area adjacent, so if we are using the identification of the zoned approval of that land, we look at the proposed buildings and structures being in harmony with the ruralness of the area.

Attorney Graham said, you must also recognize that you're dealing with 2 different zoning districts. You have a resort district where a resort is being proposed. The residential homes are in a residential district even though those districts are contiguous. The Planning Commission can make a Findings they feel is appropriate, but I'm going to tell you as the Township Attorney, I would have a difficult time defending that Finding in court if that's the Finding that you want to make. I would suggest that we hear from other Commissioners as to whether they agree or disagree with Commissioner Aprill.

Commissioner Kuzma responded to Commissioner Aprill, I understand what you're saying, I think from counsel and from what the Chair has said, I think they're looking at that in terms of the building envelope and not necessarily the character of the adjacent R1 district.

Commissioner Aprill replied, as was stated earlier, that we can't look at the roads as an issue. This one specifically says "of the general vicinity". Does it meet the character of the general vicinity? It's got to be no in my opinion.

The Chair asked, anymore discussion on this or do we want to vote whether we think this has been met or not?

Commissioner Kuzma asked, can we come back to this?

The Chair stated, we can return to this. Moving on to 8.5 b7.

Commissioner Luta said, I think this one is difficult because no matter what is up there, it's going to have an adverse effect upon the owners and occupants of the neighborhood regarding noise in particular. I know we don't have a noise Ordinance so there's not much we can do with that, but I'm just wondering how would you not have adverse effects on something that's going to have noise and events on top of the hill. I think this is a difficult one in general because you could argue either way. I think that's something to be considered when you look at adverse effects.

The Chair said, I struggle with that a little bit. It was hard for me to predict an adverse effect on something that has not yet happened. If that were to be rezoned to R1, that would support over 300 home sites.

Staff said, that is a Finding that is proposed on the bottom of 18 of 26, I know that's skipping ahead, but the Commission should note that the property owner by right could construct 19 homes, this is under current zoning, under rural resort, minimum lot size is 5 acres. If rezoned to match other adjacent parcels zoned R1 using the minimum lot size of 12,500 square feet, the property owner by right could construct 348 homes. If rezoned to match other adjacent parcels zoned R3, using the minimum lot size of 6,250 square feet, the property owner by right could construct 696 new homes. That doesn't take into consideration the access, but it would need to be an extension of a private road, it's just taking the minimum lot size, and dividing 100-acres by that minimum lot size.

Commissioner McDonald said, to me I think this is a no mainly because what it states, minimizing any adverse effects upon owners and occupants of adjacent properties. I don't see how during the construction of this or during its operational time that it wouldn't have adverse effects.

Attorney Graham responded, be more specific. Most of the comments I've heard so far, that are really opposed to this development are related to the roads and I understand that because there are good facts on the record that would support a Finding dealing with the roads. Here we are talking about buildings and structures. In the resort itself, remember you're focusing on the resort. Are the buildings and structures that are going to be built on top of the hill going to have an adverse impact on the general neighborhood. That's the real question. Not the traffic that's driving through the neighborhood. We're going to get to those issues, but not under this Standard.

Commissioner Aprill said, I think you missed out a key word in those first 3 words, it says building, structures, and entryway. I think that's probably what Commissioner McDonald was looking at. The buildings and structures, they're on top of a hill, they're beyond the neighborhood, it's the entryway that's the issue.

Commissioner McDonald added, it also does say design. So, the entryway thereto, me thinking design.

Attorney Graham said, and what facts do you want to then use to support that Finding?

Commissioner Aprill answered, the facts I would use is the entryway goes through a private neighborhood.

Attorney Graham replied, but entryway in that regard, I think you're talking about a curb cut. You're now going back to the adequacy of the roads.

Commissioner Aprill responded I think if it wanted to say curb cut, it should have said curb cut.

Commissioner Kuzma addressed counsel, the design portion of this, doesn't this speak to the people who spoke about concerns for the groundwater, the runoff, the septic, all that stuff? Aren't we at the point where we're looking at those things?

The Chair said, a little further on in our deliberations.

Commissioner Kuzma said, I just want to make sure we're not passing by something.

The Chair answered, I had this set up the way it was to look at everything very carefully and not omit anything.

Commissioner Aprill said, if you're just going to look at the buildings, structures, and entryway, then (a) shouldn't apply because that's talking about vegetation and screening.

The Chair responded, I guess I looked at entryway as the driveway up to the development.

Commissioner Kuzma said, I agree with that, I think that speaks to what we were going back and forth with on the prior one as the building envelope. Is it compatible, are the structures, buildings, and entryways situated in accordance to how they naturally fit and I think yes.

The Chair polled the Commissioners for #7.

Commissioner Mikowski-yes

Commissioner Kuzma-yes

Commissioner Luta-yes

Commissioner April-no

Commissioner McDonald-no

Chairman Bechtold-yes

Chairman Bechtold stated that Standard has been met.

The Chair moved on to #8 saying, I just want to draw your attention to Chief Tampa's subsequent letter of December 20, 2022.

Commissioner Aprill said, there was a Greg Thomas that submitted an in -depth letter and he had a pretty good list of credentials and proceeded to ask him questions.

Greg Thomas was allowed to speak and gave an overview of the letter he submitted in accordance with the timeframe for the limited reopening of the public hearing.

The Chair said, with respect to the Fire Chief's letter, it was submitted, there was ample time for the public to review it and during the public comment periods, the detail in which you spoke tonight could have been brought up earlier.

Commissioner Kuzma said, it sounds like there was a dispute on this, is this something that could be conditioned?

Attorney Graham responded; you cannot condition everything that deals with a Standard. In order for a development to be approved the applicant must establish that the Standard has been met. If you have difficulties with a Standard, you ultimately do have to make a decision yes or no whether the Standard has been met.

Commissioner Kuzma said, so if Chief Tampa said it's been met, that should be good enough.

The Chair stated, our Standard is all buildings and structures are accessible to emergency vehicles. The Chief took equipment out there and did a trial run and the .3% increase in grade over the Standard that was originally used, it was his professional opinion that he could get up there and address whatever concerns there might be. I think we have to focus on the Chief's report and his opinion based on his actually taking equipment up there.

Commissioner Kuzma responded; I agree.

Commissioner Aprill said, my only question is, more in the line of accessibility can you make that 11.3% grade in the winter time.

Commissioner McDonald asked, the water supply recommendations, are those requirements or recommendations?

Staff responded, water storage is ultimately reviewed by another agency, so we do not have detailed specs. There are fire hydrant locations shown on the plans. Location for wells are shown on the plans, but specific specs are by another outside agency.

The Chair asked the applicant to address the proposed on-site water availability for fire suppression.

Marc McKellar responded, that is correct, the application includes NFPA 22 tanks and fire suppression. That is a condition of approval. We would be obligated because we're saying we're going to do it, to do it. The amount of capacity and obligation in terms of the flow are determined by a third party, a review agency. However, having those sprinkler systems having the tank, has to be sufficient under the code and it is a condition we offered and we would be subject to getting approval. The test in January of the road, the travel, that's the current grade which is greater than the proposed grade and it's not an improved road at this point or maintained.

The Chair asked Commissioners, how do you find for #8?

Commissioner Kuzma-yes

Commissioner Mikowski-yes

Commissioner Luta wanted to hear from Chief Tampa.

Chief Tampa stated, at the time we did an on-site visit, prior to that, looking at what was submitted regarding the grade, it looked like an overall improvement, a lessening of the grade down from over 12% down to 11.3%. Having been up there a couple times with vehicles, the improvement looking at the maintenance of it, it's my belief we won't have an issue getting up there. The drive access is something I would require.

The Chair asked Chief, when you reviewed the site plan, the proposed roads and driveways, you felt were adequate based on the criteria you need to get equipment in and out and around?

Chief Tampa responded, yes, the distance out to that place is more of a concern like driving to anything far in the Township, there's going to be a delay, but what was proposed on the documents I received, the widths, the radius, our ability to get around the site, that all seemed adequate. Regarding our ambulance, we purchased a 4x4 because we know the grades and the roads in the Township aren't always perfect. I'm not too concerned about getting an ambulance up there, I'm not concerned about getting the fire truck up there provided they maintain the road.

The Chair asked Commissioner Luta, do you have any other questions or concerns with access?

Commissioner Luta responded, no and I would say it has been met.

The Chair asked Commissioner Aprill.

Commissioner Aprill said, that's a tough one, there's such mixed opinions there. I talked to other Townships, I've talked to Solon Township and they require 10% maximum grade, and you have to do that through a special use, so that's why I questioned it to start with because I know that's their standard, their standard is 7% but you can get a special permit that will allow it up to 10%, but not 11%. I have questions, I trust Chief Tampa, but I'm quite concerned because I know what those roads are and what those grades are, I know people get stuck on them everyday in the winter time. If Chief says it's good, I can't say any different, I just question.

The Chair asked, are you leaning towards it has been met based on the provided information?

Commissioner Aprill replied, yes.

Commissioner McDonald said, yes.

Chairman Bechtold said, yes.

The Chair said, we deem that Standard has been met.

The Chair moved onto #9. I'm not saying this as a statement of influence, the way I looked at that Standard addressed the site itself, the roadways, the driveways, and passageways on the proposed development.

Commissioner Aprill said, if you use that as a criterion, I would say yes.

Staff said, that's my understanding, the historical interpretation the Planning Commission has had regarding this Standard, it's about the parcel itself.

The Chair polled Commissioners.

Commissioner Mikowski-yes

Commissioner Kuzma-yes

Commissioner Luta-yes

Commissioner McDonald-yes

Chairman Bechtold-yes

The Chair said, #9 has been met.

The Chair moved onto #10.

Commissioner Aprill-yes

Commissioner Mikowski-yes

Commissioner Luta-yes

Commissioner Kuzma-yes

Commissioner McDonald-yes

Chairman Bechtold-yes

The Chair said #10 has been met.

The Chair moved onto #11.

Staff said, as you're deliberating, if there's any modifications to these Findings, please let me know and I will write those down.

Commissioner Aprill said, this particular one was addressed considerably in the stack of documents that we received, there were quite a few people concerned about the environment and its effect, and they supplied a wonderful report that gives a pretty picture of what they're hoping to do up there, but they wouldn't have submitted a report if it didn't provide that picture. Is this something we should look outside, have somebody else look at it and see if there's something there we should be concerned about?

Staff responded, if the Commission feels that what is provided is inadequate, the Commission has the ability to require a peer review however, I would not recommend it be

a general review, I would not recommend it be a review on items outside the Commission's jurisdiction like well water or ground water, all of that is indeed important but all that falls under a different agency's purview.

The Chair asked, is the question what would be developed on the 18% grade? With respect to the slopes that are graded at 18% or greater, is the question by the Commission what development would take place on such a slope or is the question the proposed placement of the resort on top of the hill?

Commissioner Kuzma responded; I don't know if that's what we were getting at. I thought maybe Commissioner Aprill was trying to speak to the concerns that most of the Township had regarding some of the underground type structures; aquaphors, depletion of the well, that kind of stuff.

The Chair said, typically it's handled by another agency.

Commissioner Kuzma asked, that's not our purview?

The Chair replied, no. We rely on EGLE.

Staff said, EGLE is the agency that permits wells and septic.

Commissioner Luta asked, just to clarify, there's a wetlands setback in the Ordinance, that is something we could get more clarity on? Is that something we have extended past what EGLE has, is that the line as far as what we would have say over and what is not in our bucket?

Staff said, yes, in the Elmwood Township Zoning Ordinance we do have a 30' setback for all structures from the edge of wetlands. If there is a question on the proximity of a structure to a wetland and you want a third-party delineation, that would be appropriate. However, I do not believe there's a structure close to being within 30' of those wetlands as shown on the plans.

Commissioner Luta asked, that does not include roads? Roads are not part of that wetland's setback?

Staff explained, a road is not a structure, a sidewalk is not a structure, a patio is not a structure as defined by the Elmwood Township Zoning Ordinance.

The Chair said, I'm looking at the Tritera report dated October 3, 2022.

Commissioner Kuzma said, can I ask a direct question to their counsel? Why do you dispute, you think it is within our purview to discuss or bring up these points?

Lauren Teichner [Olson, Bzdok & Howard] said while I think it's true EGLE is going to be reviewing the application and approving permits, I submit to the Planning Commission that your job is to look at these Standards which many of them do refer to ground water, the natural environment, all of the issues that we've raised we've provided proposed Findings of Fact that we believe are based specifically on the Zoning Ordinance which is the purview of the Planning Commission. So, to the extent that these Standards address protection of the natural environment, I believe there's a Standard that says the application must protect the natural environment to the maximum extent possible. Those are all subjective questions that to my understanding, and Mr. Graham can weigh in on this, are subjective considerations the Planning Commission can take into account. You are not bound by EGLE's later consideration, by other agencies, you as a Planning Commission have power to apply the Zoning Ordinance to the extent that the words are there, you can consider them. I believe that all of these environmental issues that we've raised in our expert report where we list out all the different environmental studies that have yet to be completed on this property. Those are all things that you have the power to order. If you don't believe the application is sufficient, you do not have to approve this Standard, just purely based on statements the applicant has made. You can demand more information. You can demand the developer pay for experts to study specific topics that you are worried about. Pumping tests, make sure there's adequate water to serve the residents of the community as well as the resort. Wetlands delineations, the Master Plan talks about and recommends a wetlands delineation be done to ensure those natural resources are not affected by developments. That has not been done here, that has to be done in warm, green weather. The third test is a geologic and surface water study, that has not been done. We need to know what natural resources exist underneath and around this propose development to make sure this development will not negatively impact those resources and you have the power to consider those details.

Attorney Graham said, you're now at the deliberation phase, and under the law, you must make Findings based on Facts presented at the public hearing. The applicant has made factual statements as to how the applicant believes these Standards are met. What the public has presented is not facts showing that the environment is being abused. What the public has raised, are questions, so if you believe that you need additional information, as you have already noted Mr. Chairman, you have the authority to request that additional information. But you must make Findings if you don't want to go through with additional studies then you must make your decision based on Facts presented, not on questions raised.

Commissioner McDonald asked, if we were to request more testing or further information, we would need to specify exactly what it is that we want further information on?

Attorney Graham responded; that is correct.

The Chair said, submitted earlier by the applicant was the Tritera report and there is a map containing the approximate wetland location and also an overlay of the national hydrology

data sheet wetlands and some national hydrology water ways so based on their Findings and the positioning of the buildings on the site plan, it seemed the buildings were set back appropriately from any of the identified wetland areas.

Commissioner Kuzma said, we've talked about wetland delineations before in previous meetings and it seems like that was pretty well handled under EGLE if I'm not mistaken.

The Chair replied, that is my understanding that EGLE is the agency that would either approve or deny an application based on the wetlands and the positioning of any development or encroachments on wetlands.

The Chair said, so with respect to #11, any other questions or concerns?

Commissioner Kuzma said, I think we should at least entertain the idea or discuss if we think it's feasible to have an outside independent agency talk about a couple of the points that were the most contentious, the Aquaphor, septic runoff. I think at the very least some additional due diligence might be appropriate.

The Chair asked, what specifically?

Commissioner Kuzma said, I can refer back to their counsel's concern of septic field discharge and how it potentially impacts down the chain. Marc McKellar had a nice appendix that disputed some of these Findings. But, the aquifer, it sounds like it's a ground water area that services the neighborhood that could be impacted from such a big development that already seems stressed from that well.

Commissioner McDonald stated, overall is it to the greatest extent possible.

Commissioner Luta responded, that is a very subjective one. You could argue for or against it. Any development is going to impact the environment in some way.

The Chair said, if we are to consider an outside agency, we need to identify a very narrow scope of points we want them to look at. There was the concern about wetland delineation. We have a document from Tritera that has identified that came in December. As far as the draw down on the aquifer, I don't think there's a well at the top so I'm not sure how that would be conducted.

Commissioner Aprill stated, there is.

Marc McKellar said, my greatest concern is that there was an opportunity to present alternative reports for several, several months, and I think most importantly is the fact that the issues related to the ground water, storm water contamination, the draw down related to the well next door, that is the preempted exclusive jurisdiction of EGLE. So, typically, what you have is where there's areas where EGLE isn't the authorizing agency to determine

whether or not it's sufficient, adequate, they can't approve by way of example, we couldn't approve this well if it were to have a detrimental impact to the existing wells around. You're supplanting authority of an agency that has preemption over this Board by getting another report to counter another report, it really, ultimately is the decision of EGLE. If it was outside of their authority then I could see the value in having competing reports but ultimately it really doesn't matter what our report says or what another report says, it's a third party is going to make the determination on whether adequacy under the law is the permitting agency. If they determine there's a well that can be permitted there, that is the final say. I think it's important to remember that if we were to get approved, our Land Use Permit would not be issued until all those agencies have signed off, submitted their science and fact-based determinations that we are in fact permitted to have, we can't go forward. This is just the land use portion; we don't even have those other approvals in hand yet and we wouldn't be permitted to go forward without them. We believe there's satisfactory evidence we can meet that criteria knowing the condition of the approval is we would have to provide a final report, they do the review and analysis to issue the permitting.

Commissioner McDonald said, but we still have the authority to proceed with that before issuing a SUP for site plan, right?

Attorney Graham responded; you have the legal authority to request additional information if you believe that is appropriate. If you decide not to request additional information, then you must base your decision on the Facts presented as opposed to the questions raised.

Commissioner McDonald said, I think we should request further information as to the direct topics per request.

Attorney Graham stated, in order to proceed, you have to be specific as to what additional information you want, otherwise you're throwing up a can of worms that's going to go on forever.

The Chair said, the applicant submitted the Tritera report that contains a wetlands map of the property in question, and their site plan has the buildings placed outside of the wetlands area and as both the counsel for the applicant and the counsel for the Township have stated, there is another agency that makes the final determination. We are looking at the land use specifically, and in the event that the application was to proceed forward, before they could get all of the permits in place, EGLE could potentially come in and say they need more information, because that's what EGLE's job is.

Teichner said, I just want to remind the Commission that we did submit a very specific expert report listing 3 tests that Mike Wilczynski, hydrogeologist, does not believe has been sufficiently addressed by the Tritera report, and it specifically states that he is very concerned, that he believes Tritera has misidentified as an intermittent stream, a fragile vernal pond that must be considered and reviewed by an environmental expert. She does

object to Mr. McKellar saying that you are preempted by EGLE. You are the first step, if you do not approve the application, EGLE will never consider it. You have the power to consider these questions.

The Chair stated, I'm aware of that and since EGLE is the regulating authority for ground water and related concerns, that is the agency that essentially has domain over the wetland's identification, ground water usage, sewage affluent dispersion, and sub surface soils and that is who we rely on. I appreciate those 3 points that were given.

Teichner said I do think the Zoning Ordinance says, specifically that if the Planning Commission would like a wetlands delineation done, that is one thing that is specifically talked about in the Zoning Ordinance is within the power of the Planning Commission.

The Chair responded; we are aware of that.

Commissioner Luta said, on that wetland's delineation, in the Tritera report it does say completed a limited scope sight recognizance to observe and record current property conditions. That isn't a legitimate wetlands delineation where you're putting the stakes in and you're doing core samples and soil samples to see where things are. I don't know if there's any water at the top of that hill, I've heard reports from people there are some springs or things like that up there, but that would directly relate to the plan if there is something that is found that there would be a 30' setback in our Zoning Ordinance. I would just hate to see it go that far and then find something and then have to come back with a new plan and start over.

Mark McKellar said, I think the applicant would be willing to agree to a full wetland's delineation report be provided to the Township Zoning Administrator to determine whether or not the delineation would impact the project. We do want to submit that as a condition of approval and have a full delineation done.

The Chair noted, just for clarification the applicant would stipulate to a wetland's delineation as a condition of approval.

Mark McKellar responded, correct.

The Chair asked, what is the Commission's thinking on the proposed condition? Can we talk about conditions as they come up?

Staff responded, I can make a note, and at the end we can go back, the ones verbally discussed we can flush out the verbiage.

Attorney Graham said, again, you have to make a Finding whether Standard #11 is met. You cannot get around making a Finding of whether the Standard is met based on a condition. What you could do is you could make a Finding based on the Facts presented as

opposed to questions raised. If Standard #11 has been met based on what the applicant has provided and then condition final approval on that full delineation of the wetlands.

Commissioner McDonald said, if we're needing more information and we're going to get that, then I'd say that Standard has not been met until we get that.

The Chair polled Commissioners noting Commissioner McDonald indicated it has not been met.

Commissioner Aprill said, I would say it has not been met. The specific conditions say the natural environment. If you read #11 it says, efforts have been made to protect the natural environment. I think that's all the environment, that's not wells, that's the whole thing. It's the trees, it's the floral, the fauna, it's all of it, that's the natural environment. I'd say no.

Commissioner Kuzma asked, can I have counsel restate what you eloquently said before about how to proceed.

Attorney Graham stated, in order to approve a development, you must find that the approval Standards are met. If you find that one of the approval Standards is not met, you cannot legally approve the development, that's the law. You must base your decision on whether a Standard is met based on the Facts presented. The only facts before you, have been submitted by the applicant. What the public has submitted to you, are questions and not facts. They're raising issues that they say should be further investigated. If you want to get the delineation or any other additional information, then you will have to postpone a decision on whether to approve the development because you don't have the facts you think you want to make that determination. You can't approve the development and then condition the applicant to provide the information you need to determine whether a Standard is met, that's circular. You have the facts in front of you to show that this Standard has been met based on the information provided by the applicant, so you can make the Finding that the Standard was met as proposed in the Findings of Fact. If you do that and you find that all of the other Standards are met, you can approve the development with the various conditions that you'll be talking about at the end, including the environmental delineation.

Commissioner Luta said, based on what we have been given, I think it has been met, but I would like to have, based on the fact that we do have a wetland on the setback in Zoning, I just want to make sure that is addressed in a condition.

The Attorney responded, you can do that, in order to get to the condition, you have to approve the development. If you're not going to approve the development, then there will be no condition. In order to approve the development, you have to find that the Standard has been met.

Commissioner Kuzma said, I'd say it has been met although I think we need to discuss the conditions at the end that have to do with what we just brought up.

Commissioner Mikowski said, I believe the conditions have been met. The proposed development is only disturbing 2.4 acres of the total 100, and only developing 18 acres out of the 100 acres and they have gone to lengths to describe where they are going to be putting these buildings, and preserving wetlands, and using paths to not disturb certain areas, to preserve the beauty of that area, and trusting EGLE to do their job, I'm saying yes, this condition has been met.

The Chair said, yes based on the information that has been presented by the applicant, and I do share the opinion of a condition for a complete wetland's delineation.

Staff said, if I understand correctly, would the Commission like to add the additional Finding that according to sheet L 2.0 the proposed development on undisturbed land is 2.4 acres.

The Chair replied, yes.

Commissioner Kuzma said, yes.

Commissioner Mikowski said, yes.

Commissioner Aprill said, I don't know why it's that specific. It's the project. You're limiting it to 2.4 acres?

Staff responded; on sheet L 2.0 it shows the disturbed land. The proposed development and the previously disturbed land. The proposed development on undisturbed land is only 2.4 acres of the 99.9 acres. If you look in your packet, this plan was submitted to the Commission in November when it went for introduction.

Commissioner Aprill said, it doesn't mean that they're not going to disturb the other acreage.

Staff said, that is correct.

Commissioner Aprill said, so you can't just say we're just worried about this 2.4 acres, we're concerned about all of the top of the hill, it doesn't matter what the little plan says, we're concerned about what happens to that whole hill.

Staff said, that is correct, you just make Findings of Fact to support approval or support denial, they are statements of fact that are found in the information that you have been provided.

Commissioner Aprill said, I'm sorry, I thought I heard you say 2.4 acres, we're worried about 2.4 acres, we're worried about the whole project.

Sarah said, that is correct. I'm not saying we're only concerned about 2.4 acres; I'm reiterating previous found Findings, incorporating it into this, a Finding for #11.

The Chair said, I think what we're referring to is the applicant is proposing additional disturbance of 2.4 acres. There's already a development area that has identified as 18.1 acres, and Staff was just wondering if we wanted additional Finding that the 2.4 acres would be included as additional development undisturbed lands. From the various site plans we have reviewed, it appears that the 18.1 is mostly cleared or would have some minor tree work where the proposed 2.4 acres is vegetation that has yet to be disturbed, and that would have to be removed in order to have the requisite area for the development. Is that what we're referring to?

Staff stated, that is correct.

Commissioner Aprill said, it's the whole project we're concerned about, it's not 2.4 acres on new disturbed land, they're going to disturb 20 acres on top of the hill, we're concerned about all of that, not just the new 2.4 acres, so I don't want that as part of the motion.

The Chair said, so we'll just drop the 2.4 acres.

Commissioner Aprill said, maybe I'm missing the point.

The Chair said, I think what we were attempting to illustrate in this particular Standard, was the efforts that have been made to protect the natural environment in terms of deforestation. They're proposing 2.4 acres and the rest of the development is on land that was either a naturally occurring clear meadow or at some earlier point in time was timbered off for other projects. I think we just wanted to pin point that the additional disturbance is only 2.4 acres. I know we're concerned about the entire project, but I was understanding we were just addressing the additional area that would be cleared. If it's too confusing, we'll just proceed to #12.

Commissioner Aprill said, I have a question for Attorney Graham on this one. Item #12 says there exists within the site plan sufficient protection to accommodate storm water runoff on the site location. Why is that even in there if we're going to rely on our County Soil Erosion Officer for that information?

Attorney Graham explained, that is a Standard for your site plan. It's still a Standard you must consider.

Commissioner Aprill said, but in so many places we just say the Soil Erosion Officer within the County and we're going to rely on his expertise, why do we have it as a standard.

Attorney Graham answered, it's a provision in your Zoning Ordinance that was enacted by the Township Board, that's the legal answer to your question. Because it's in the Zoning Ordinance, you must use it.

Commissioner Aprill stated, I agree with that. I'm questioning necessity of having #12 in there.

Attorney Graham said, that's a policy choice that you'll have to have discussions at the Planning Commission level as to the Standards and ultimately an amendment.

Commissioner Aprill said to Attorney Graham, you're our Township Attorney and you're here and present and I'd like your opinion if we just skate over this and rely on...

Attorney Graham interjected; you cannot legally do that.

Commissioner Aprill said, so this one we have to approve because the Drain Commissioner looked at it and gave his blessings.

The Chair asked Commissioners.

The all responded, yes.

Commissioner Kuzma asked, do we need an extension because it's 8:30 and it's been 2 hours?

Staff said, I would note the Commission makes a motion to consider new business after a certain time. If you're currently discussing one matter, there doesn't need to be a motion to continue.

Commissioner Mikowski requested a recess.

The Chair called for a 10-minute recess from 8:34-8:44.

The Chair resumed the meeting at 8:45 p.m. and noted they are on #13.

Commissioner Aprill said, this one is pretty long and laborious, I would like to skip this one and come back around to this one. Maybe before we even start on this, I thought we were adjourning at 9:00 p.m., and I don't think we're going to do this section justice in 15 minutes.

The Chair said, yes, we have a lot to go over and just so the people here are clear, at 9:00 p.m. I was going to propose adjourning our deliberations to be resumed at another date,

time, and place because there's been a lot we have covered tonight and there's a lot left to do.

Commissioner Luta said, I think that makes sense because I do think this one is going to take quite a bit longer and should take longer, I would love to give this one it's due diligence.

Commissioner McDonald asked, do we make a motion now to do that?

The Chair said, since we're technically not on new business, it's not necessary, but we would need a motion tonight to adjourn and reconvene at a specific date or dates, place, and time.

Attorney Graham suggested, given the pace of the Planning Commission so far, it would be my recommendation that you establish 2 nights that you could then wrap it up in 2 evenings. If everyone could get out their calendars, find out which weeks are available, you could put both dates in the motion.

The Chair said, for your consideration I propose we have 2 consecutive nights so we can roll on and keep the momentum up.

Staff proposed cancelling the regular scheduled meeting of April 18th, 2023 and scheduling a special meeting for that night.

MOTION BY COMMISSIONER MCDONALD, SECONDED BY COMMISSIONER LUTA TO ADJOURN DELIBERATIONS ON APRIL 11, 2023 AND TO RESUME ON APRIL 18TH, 2023 AT 6:30 PM IN THE ELMWOOD TOWNSHIP FIRE DEPARTMENT TRUCK BAY. MOTION APPROVED UNANIMOUSLY.

I. Comments from Chair: Thank you very much for your attendance and your interest and thank you Commissioners for the hours you put in reading and the good questions and really good discussion.

J. Comments from Commissioners: Commissioner McDonald thanked the Fire Department for allowing us to use the facility.

K. Comments from Staff: Staff thanked the Fire Department.

L. Public Comment: Jeff Dorsch, Jeff Dungan, Doug Cole

M. Adjourn: MOTION BY COMMISSIONER MCDONALD, SECONDED BY COMMISSIONER LUTA TO ADJOURN MEETING AT 8:59 PM. MOTION PASSED UNANIMOUSLY.

