

**Charter Township of Elmwood
Planning Commission
Special Meeting
ET Fire Department Truck Bay
(10086 E. Lincoln Rd.)
April 18, 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, Rick Bechtold, Jeff Aprill, Jonah Kuzma, Nate McDonald
Excused: Doug Roberts

Chief Tampa gave a brief informational and safety protocol overview.

Attorney Graham said, we are here at the special meeting to continue the deliberations on the Wellevity Special Use Permit process. When you go for your limited public comment which is required under the open meetings act, you can talk about any topic other than Wellevity because the public hearing portion is closed but yet we still want you to have the opportunity for public comment on other matters.

D. Limited Public Comment: Lauren Teichner attorney representing the Friends of Timberlee group, Rob Serrine 10555 S. Timberlee Dr., Beth Kott Timberlee Dr., Tim Wolf 7517 E. Timberwoods Dr., Duane Straubel Orchard Rd., Doug Cole Cottonwood

E. Agenda Modifications/Approval: The Chair offered for a motion to defer item H to a regular meeting.

MOTION BY COMMISSIONER MCDONALD, SECONDED BY COMMISSIONER KUZMA TO DEFER ITEM H TO A REGULAR MEETING. MOTION APPROVED 6-0.

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

F. Declaration of Conflict of Interest: None

G. a) Continued Planning Commission Deliberations on SPR/SUP 2022-06 Request by Wellevity LLC Regarding Property at 0 S. Timberlee Dr., 10901 & 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.

The Chair noted, at our last meeting we left off on 13a on p. 9 of 26, 13 reads, the proposal furthers the goals and objectives of the Master Plan.

Commissioner Luta said, the Master Plan does talk about the environmental character of Elmwood Township and ensuring that is something that is thought about thoroughly on every step of the way. We talked about that earlier in other Standards, but that's one I feel with the concerns over groundwater and peoples drinking water right there and with runoff going into Lake Leelanau, I didn't know if that was something we need to discuss.

The Chair invited the representative for the applicant up to address the process they used to look at environmental impacts.

Marc McKellar attorney for Wellevity, we went through numerous processes and I'm going to have Andy Smits come up and speak to groundwater, and in his report, we discussed not only groundwater, but we discussed runoff and what the implications are with geophysical and geotechnical relationship that property has with the wetlands down below with the creek that runs through. I think overall, the alternative, residences and the impacts despite what the opposition believes or doesn't believe, there's been great detail given to try and make it the least impactful development and you can't have no impact, you can only engineer for so much, so they certainly through this group have mitigated the best they can.

Andrew Smits licensed professional engineer in Michigan, a geological engineer by education and an environmental engineer by practice for the last 30+ years here in our community. That practice involves my experience as a state certified waste water treatment plant operator and in permitting waste water facilities in our community and other communities, as well as water supplies in our community and our region, Leelanau County. I've got a tremendous amount of experience in Elmwood Township having hydrogeological studies at the former terminal, at the Speedway gas station, at Leelanau Fruit Company, all up and down through this glacial environment. The process that will unfold if this development moves forward will include extensive review by state agencies for the development of a water supply and for waste water application to the land for its treatment and discharge. Those processes include hydrogeological studies, the drilling of monitoring wells, the testing of wells, the testing of Aquaphor's, the evaluation of available literature in the area on water quality and the effect of water production on existing natural water courses, including Lake Leelanau, tributaries to it, and in Lake Michigan. My work so far has included evaluation of various literature that's available through the lens of my experience in this community and past experience in permitting water supplies and waste water treatment facilities. The literature suggests and discussions with state officials suggests that the community water supply that services Elmwood Township is robust, it's a prolific aquifer and my evaluation is affirmed by the state officials' evaluation. The licensed engineer in Cadillac that's responsible for the mechanical and water quality oversight of the community supplies suggests that there's no concern whatsoever for the effect of a water well development at this location on the existing supply. That's affirmed by my own studies from available literature and including the review from Mr. Wilczynski report

which does not contain any meaningful evaluation of existing literature, it's mostly speculative. The literature that is available and the experienced opinion of licensed professionals that are servicing protection of our community indicate no adverse effect.

The Chair asked, with respect to the literature you mentioned a number of times, who are the authors or how was this literature created? Was this from other Engineers, or other agencies, or was it solely created by your firm?

Andrew Smits responded, it's from water well records that are available both from Leelanau County Environmental Health Department from the State of Michigan and the State Geologic Survey records and website called Wellogic, and the studies that have been prepared by the state for well head protection program. Mostly state sources of information but also from the Conservancy that sent studies and sampling of the tributaries in the area, and water quality in Lake Leelanau.

The Chair asked, with the literature, what span of time does it cover?

Andrew Smits replied, in some cases, it's quite old data, but I haven't looked specifically at the age or content or the ranges of dates of the data. But the publications information is generally readily available from public sources from the state of Michigan.

Commissioner Luta asked about runoff.

Andrew Smits replied, the evaluation of the soil survey for Leelanau County is quite old and has been renewed in the last couple decades indicate that the soil textures in this area are highly permeable. I would not expect any significant runoff in these types of soils. They would have quite a bit of capacity to absorb water. The infiltration rates that are sited in the Leelanau County soil survey are of soils capable of 10-20 inches per hour. There will be local areas where the soil types are different. Downhill from the proposed development quite some distance there's some seeps that exist that give rise to ephemeral and sometimes longer -term water courses that sourced and lead to Lake Leelanau, and those are the water courses that the Conservancy has been doing some sampling on periodically. That data is considerable and extensive in time. The water supply that is to be developed here is sourced from water that is below the elevation of which those seeps occur. Same thing with the water supply that serves this community currently, it's produced at considerable depth below the elevation of those seeps so there's no significant hydraulic communication or no source of water deprivation to those seeps and springs from those existing supplies, and those supplies that exist today, yield 3 or 4 times the volume of water per minute than the proposed development. So, the existing community demand is significantly greater and its more proximal to those springs.

Marc McKellar noted, to one of your questions, we have Cody by Zoom, he was doing Engineering Design related to the waste water treatment so in terms of saturation and

potential ground water issues, he said he'd like to follow up on the particular question you have in addition to Andy's statement.

Cody said, we're an advising Civil Engineer working very closely with Gosling, the local Civil Engineer and the firm who will be the Civil Engineer of record. One of the reasons we were selected to work on the project is for land and water stewardship. Completely in agreement with the previous comments about storm water runoff, the high infiltration capacity of the soils and the low probability that there's any runoff of significance on this property. In order to ensure that, we've taken the areas of highest concern for impacts to water quality which are typically around vehicular driveways and parking areas and built in low-impact development measures otherwise known as LID that are above and beyond the code requirements to mitigate the runoff. In terms of wastewater, what we're proposing for this project is an elective strategy above and beyond what is allowed there which would be a conventional ground disposal or a leach field system the client has as part of their water stewardship goals is to install and run an active treatment system which captures all of the sanitary sewer affluent and runs it through a membrane treatment system that treats water to the highest recognized standard currently nationally which is called tertiary treated waste water and that water is suitable for use in irrigation, even spray irrigation, drip irrigation, re-use in buildings for toilet flushing, and in some cases for laundry. This gives us the ability to overall reduce the water footprint of the project and ensure any of that water that does make it back into the soils is actually treated to a very high quality. They recognize the code requirements and tried to go above and beyond that as part of the identity of that project as being a good steward of water.

Commissioner Aprill said, I have a question of the applicant. Under 13a it specifies the objective, it states maintaining existing rural residential character, and it also says, meets the long- term needs of the community. Can you tell me how you fulfill both of those phrases?

Marc McKellar responded; in terms of meeting long term needs of the community, the Master Plan further states on the particular portion related to Timberlee, identifies the intent as to provide for rural resort at the Timberlee facility and the Zoning Ordinance provides what is encompassing of those types of uses. The Master Plan is stating that it sees fit that rural resort be at the Timberlee property, so we proposed a rural resort. That goal and objective under the Zoning Ordinance and the Master Plan is consistent with the implication that the Master Plan as a guide for the intended goals and needs of the community. We'd have a mix of uses, a mix of interacting land and activities, that's the over-arching concept of the Master Plan as a guide to construct Zoning Ordinances, the legislative act, in going forward. It would be my opinion it's an implication that if you're meeting the goals and objectives of the Master Plan through the development of your site plan, you are addressing the needs because the needs are inherent in the concept. Furthermore, there's no reason to not think that a rural resort has a need, to provide services. Every use essentially in a municipality needs to exist, that's why they have provisions in the Michigan Zoning Enabling Act that says you can't prohibit any particular

use in the community if you provide a space for it. The concept is that there's a need at some level for a mix of uses. We believe that we meet the Master Plan because that's an intended goal, objective, long-term planning and implementation of that property, it provides needs in terms of lodging, provides needs in terms of safety to get people off the road by providing trails on the land so people can walk for free.

Commissioner Aprill said, let me re-state the question. You said it provides lodging, I can't believe that there's anybody in the community that's going to stay up there, at least the local community if they have a house anywhere in the community, the lodging is irrelevant as far as I'm concerned. You haven't really addressed the question at all on how it meets the needs of the community. The community's here saying, it doesn't.

Marc McKellar responded; there are members of the community here, but there are several of the community who are not here that aren't saying they would go and not use the resort. I think there's plenty of people that would, there's tons of lodging in this community. There are short term rentals in this community, there's short term rentals in this neighborhood. The reality is, people are using lodging and they're using all kinds of other things. We have the farm market, we have activities, it's a mix of uses, event center, there's no reason that people in this community might not use it to hold a retirement party in one of the small rooms or an anniversary for grandparents, and everyone comes up and utilizes the property. The mix of use serves some need and I understand the neighbors might object to what that need is, but they don't represent all of the community. Not everyone golfs so that doesn't mean everyone needs a golf course, not everyone fishes, so you don't necessarily need a marina with charter boats. I understand that, but it's a mix of uses that does appear serves a need in the community inherently in its concept. I appreciate the local concern, but I don't think that's a positive affect that there's a need there and again, I know I got some laughs about it, but the reality is the trails that would be implemented here are free and open to the public and they would alleviate some of the activity on the roads. We're trying to seriously address what we can on the property. I believe we provided the facts to get to the needs of the community. Furthermore, maintaining existing rural residential character. This is rural resort Zoning and inherently has to have some type of mechanism to make sure it doesn't look like Crystal Mountain or Grand Traverse Resort on top of the hill there. The function of the design of that resort as proposed is low level height of the buildings, impact areas on less than 20% of the property. Those are things that are contemplated in the alternative grander use of the property. The fact that people don't want to agree with me that you can't have a resort and still have rural residence characteristics, I disagree, they exist all over the place. The reality is The Homestead is a much more impactful area but that's surrounded by exclusively low density residential or agricultural use. You can step that down; this would be less impactful. The way it was designed, the actions taken by the Engineers and Architects was to mitigate those impacts to incorporate the best it could, to make it feasible for their uses in rural resort and also try not to impact the community on a grand scale in fact I tried to mitigate that in designs of water runoff and things like that that are engineered first standards. I think there's an

attempt to do it, you can't make it not have an impact, but showing good faith and have the least impact and try to mitigate. I believe we have met it.

Sarah Keever added, as a resident of this community, when you ask the question, what is the need, it's one of those questions I kind of laugh because any community, could absolutely need everything, or it could need nothing, it could shut its doors. But as a resident of this community, Marc already mentioned, we're providing some outdoor amenities that this community doesn't have or is allowing an increased expansion of some of these outdoor activities. You may not define that as a need, but what I find interesting is, again, as a resident of this community, about a year ago, and I hope most of you in the room got the flyer in the mail. It was from the Elmwood Township Parks and Recs committee who does a lot of work and they look at this hard and in there was a survey so me as a resident, what would I like to see in this community? Would I like to see more ball parks? Would I like to see more trails? All these questions in there, absolutely, we found that out, it was a demand, our TART trail has never gotten so much activity as when it did during Covid. But then there was a question on there that also said, who do you want to have pay for this and it made me think about some of my answers maybe not so much, but just put this into perspective, is this a need, is this a want? Is it something that I know the Township has looked into providing extra dollars, extra opportunities to increase their parks, their recreation, their trails, all these amenities that the developer is offering. So just think about that and again, wanting to mesh it with the goals of your own Parks & Rec Committee and again, I know they do a lot of hard work so I think we fit in pretty well with that. The other part, does it fit into the existing rural, and Marc touched on this but when you define rural, it is to show an area out in the countryside or a large expansive area. This is a 100-acre parcel that we are going to use a very minimal part, so to be able to continue that definition of how it meets the existing rural character of this community, I think that's absolutely true, there's no question about it. Because there's opposite, we all know what could be up there instead of, it wouldn't be rural. So there in itself, take a look at the plans, how does that meet, this "development" is really insignificant and by that I feel it meets the definition of rural absolutely.

Commissioner McDonald said, on p. 21 of our Master Plan, we did do a survey that reflects on a recurring theme throughout the survey results and the community's desire to protect natural resources in the Township including forests, lakes, wetlands, farms, hills, and streams. Many respondents were also adamant about limiting commercial development within the Township and satisfied with dependence on Traverse City for their shopping and dining and other commercial needs. Furthermore, it also says in anticipation of the 2018 updated Elmwood Township Master Plan, the Planning Commission prepared a survey in 13 that was sent to occupants, property owners, and business owners, to solicit opinions on various topics important to future development, a total of 494 surveys were returned and the survey results showed that respondents would like the Township to be focused on non-motorized trails, parks, and encourage residential uses in the commercial districts. Respondents were in support of an ordinance restricting blight and noise regulations.

The Chair asked for anymore questions regarding 13a, hearing none, he moved on to 13b, p. 10 of 26.

Commissioner Aprill said, I think b is an interesting one because they talk about this ski resort area, and traditionally it was a ski resort and with such a facility, the parking was at the bottom of the hill, not at the top of the hill, and I think our Master Plan, our Zoning Ordinance never envisioned somebody going to the top of that hill with a large resort.

Commissioner McDonald said, on p. 9 of the Master Plan under Timberlee Resort it says that Timberlee was developed as a ski resort in the 1970's and is now used as a snow tubing hill. The property has remained largely in tact and under single ownership. Timberlee area is serviced with public water making it desirable and a scenic location for residential development.

The Chair said, I believe that refers to, on our Township map, the area we've identified as Timberlee, and within the area identified as Timberlee we have several different land use designations. We have R1, which is developed single family homes, R3, apartments, condos, and the rural resort, part of which is developed and part of which is undeveloped. I think that we have to take into account that we have land in the Township that is zoned rural resort, we have a definition of what a resort is, and we have a process that we're undergoing right now to see if the application before us, if the proposed project meets the conditions that are set forth in our Zoning Ordinance for rural resort, resort, and, I just want us to keep in mind that there's already an existing resort that is adjacent to the property in question that's been in operation. At the time of this addition of the Master Plan was updated, we're trying to give a historical overview of the rural resort area and the Timberlee ski hill was the only thing at that time that was there. I just want to understand, you're questioning and the identification of that, you feel as though the existing land use is not being fulfilled by this proposal? We have to get through our deliberation, and we have property set aside, specifically identified for rural resort, so we have to look at the information in that context. Granted, this particular piece of property is immediately adjacent to R1 and R3, but one of the facts is on our land use map we have this area identified as rural resort. We're trying to address the utilization of that land in relation to the proposal that is before us. Continuing with 13b, are there other questions or concerns with respect to the application? Just looking ahead to 13 c and d, it talks about the setbacks, distances between the proposed development and other existing structures, and also the amount of land that would be developed. We have 100 acres, and about 18 % of that is going to be developed. Those are things we have to consider when looking at whether or not the proposal is in conformance with the requirements that we have to address.

Commissioner Kuzma said, I don't think there's anything to discuss, it's factual right?

The Chair replied, in order to identify that information as a Finding that was taken from a certified survey or plan the applicant submitted.

Staff said, as well as the Master Plan, letter b p.10, that's a quote from the Township Master Plan that's explicitly for the Timberlee area which does include the parcels where the resort is proposed. It's not just information that's on the plans that were provided by the applicant, it's text from our Master Plan.

The Chair said, the question we need to answer is, does this proposal further the goals and objectives of the Master Plan.

Attorney Graham said, if I might provide some guidance, I see the Commission struggling on this particular Standard. When you're dealing with a Master Plan, it is a planning document. The purpose of the Master Plan is to provide guidance for future development. It's not something that is rigid by its nature, it's general in its nature. On either side of the issue that you're discussing, you can point to specific paragraphs and language of the Master Plan that will support your various positions. What you have to do in my opinion is to look at the Master Plan as a whole because that's really what the Standards are. The Standard is whether it meets the goals and objectives of the Master Plan. It doesn't say that it has to meet every particular paragraph of the Master Plan. The proposed Findings that you have would support a Finding that those goals and objectives of the Master Plan are met by this proposed development. As Staff has indicated, you're free to accept, reject, or modify those proposed Findings. If you decide you want to reject and find that the proposed development does not meet the goals and objectives of your Master Plan, then you need to be specific as to what portions of the Master Plan you're looking at once you identify those portions of the Master Plan that you want to rely on as not being satisfied, then you have to specify the facts of the proposed development that shows that portion of the Master Plan as a whole is not being met. You've received lots and lots of information, now it's your responsibility to synthesize that information, analyze the Master Plan, and decide does this proposed development meet the goals and objectives of the Master Plan as a whole.

Lauren Teichner interjected and said it appears that the difficulty comes from the fact that these proposed Findings of Fact provide sections to support that this Standard has been met, but it does not provide proposed sections from the Master Plan to support a Finding that the Standard has not been met, and I see the Commission struggling with Findings in specific sections, Mr. McDonald has suggested a few, that support a Finding that a Standard has not been met. So perhaps, Mr. Graham or Miss Clarren could provide a proposal for a second option to the Commission so you can actually have a list of the sections that support a different finding. Right now, I fear that this proposed document is extremely biased, it presents one set of sample sections and they do not support an alternative Finding, so you would have to sit here for the next hour and dig through the Master Plan if you don't support a Finding to be able to site specific sections. I believe that is the role of the

Planning Administrator and the Attorney for the Township to provide those sections if you wish to find that the Standard has not been met.

The Chair said, just so I understand you, it's your legal opinion that as a matter of basis and fact for our procedure, we have to strenuously look at elements that would support the proposal, as well as strenuously looking at elements that would not support the proposal and be able to document the facts, the information sources, and the rationale for that action. Am I understanding you correctly?

Lauren Teichner replied, that is correct, and as a Township Attorney in other Townships, I provide 2 options to my clients, one that supports, and one that does not support, so if the Planning Commission wish to go a different direction, they would have a sample set of facts on which to base an alternative Finding. Here you have been provided with only one set of Facts, so it makes it very difficult for the Commission to consider other proposed Findings. You can tell your attorney you wish to find a different way and perhaps he can find a proposed Findings of Fact that goes the other direction.

Attorney Graham responded; if you look at other Standards that are proposed, that's exactly what Staff did. She actually provided options, one to support the Standard, and one not to support the Standard. That is actually included in the draft Findings that you have. If the Planning Commission would like Staff to work on alternate Findings for the Master Plan, you could make that request and look at that at the next meeting, that's up to the Planning Commission. You could also ask the attorneys to provide proposed Findings both from the applicant and from the opposition that would relate to this particular Standard, then that's an option. It's up to the Planning Commission if you want additional proposed Findings. If in fact a majority of the Planning Commission is comfortable with the proposed Findings as presented, you can make the decision now and move on.

The Chair asked for their thoughts saying, essentially, we would put a pin in this for a while and if the Commission so directed counsels for the applicant and the community would put forth recommended Findings and Fact to support those.

Attorney Graham said, that is one of the options you have.

The Chair added, the other option is to proceed with the Facts we have. We've had Commissioner McDonald, Commissioner Aprill, and Commissioner Luta raise a concern with respect to the environment, we did receive input with respect to the environmental concerns from the experts that the applicant has used. What direction would the Commission like to go? Do we want to basically identify any of the Standards that don't have choice a) and choice b) and have those be developed and come back at another meeting or proceed with what we have.

Commissioner Aprill stated, I think that's a fair idea, I think we're subject to a lawsuit with this document as it sits. There's only a few in the very back of this document that are

proposed or show any opposition to this project and I think realistically if we're going through this document, there should be pluses and minuses all the way through it, everything that we've looked at to this point has been for the development. There's been nothing here that says maybe you shouldn't because of this verbiage. It all is pro the development, and I think we're setting ourselves up for trouble later down the road if we don't have a document in front of us that says both ways.

The Chair said, with respect to not only this application, but this would be a bit of a departure from our ordinary practice so this is something we would eventually be doing for all applications.

Commissioner Aprill replied, I would disagree with that also Mr. Chair and you know better, this is an extreme case, we have not seen a development this large in this community ever, and if somebody wants to put in a 4- house project that requires an SUP, it doesn't mean we've got to go this extent, this is a very extreme case for our Township.

The Chair responded; I guess I was just looking at consistency in our process, I wasn't suggesting if somebody wants to build 2 houses that they're going to have to do an exhaustive groundwater engineering study.

Commissioner Aprill said, I think it would be precedence setting for another multi-million-dollar project, but not for smaller projects.

The Chair said, there's no motion to do anything yet. In anticipation of a motion to either have the pluses and minuses identified in a fact-based process or proceed, if we were to look at having the alternative concerns, how much time would that take?

Staff answered, I'm going to go on record by saying it's very difficult, the way some Commissioners are now interpreting the Ordinance is new. Since I've been here the last 2 years, I prepared the draft Findings of Fact based on my understanding of how the Commission has been consistently interpreting the Ordinance, that is why I prepared the document the way I did. I'm happy to go back through the documents again and prepare additional ones, but whatever I prepare is a draft, you can add to, modify, if you don't agree with something, you can come prepared with an item to change. The Commission has had this document since February and I understand we hadn't gone into deliberations yet, but at no time did any Commissioner come up and ask me to do these things. When we got into interpretations of the environment and groundwater, I can't think of a single other case where the Commission has made Findings. I understand it's in our Ordinance, there can't be adverse impacts on the natural environment, but the Commission has consistently relied on outside agencies for those reviews and that is the reason why the Findings were prepared the way they were. If we are changing that interpretation, that's fine, I will gladly prepare that document, I do work for the Commission, I work for the public, I'm happy to do that, but again, this document was prepared on my understanding on how the Commission has consistently interpreted the Ordinance.

Commissioner Mikowski said, I find that Sarah is absolutely correct. She has done above and beyond her research for this project, and she's worked with the applicant, she's worked with the public. I feel this project is zoned rural resort, it is in our future plans for rural resort, and this kind of development, it was presented to us on November 15th and all of us said it was an exciting project. They explained their waste water system, they explained how the wetlands were going to be looked at, and environmental engineers have been up there. I feel like we keep kicking this can down the road. I'm sorry for the public, I appreciate all of what you've done to come here, but we have a certain criteria that we have to meet. This is an applicant that is asking for rural resort, this is a resort.

The Chair said, I understand the interest, the anger, the emotion going on here, but we're trying to get through this. We're having an open, transparent discussion in front of you, I've allowed your counsel a number of opportunities to make points of order, we're considering them, so I wish you would please allow us to do our job and show us the same amount of consideration that we're showing all of you by trying to do a detailed, thorough, open, and honest job of this process. Commissioners are we going to proceed with 13 or are their other facts you want introduced that would either support or not support the applicant's assertion that they meet this requirement? On the goal listed under a) to guide future growth and development in a manner that respects both the natural environment in the Township's rural atmosphere, promotes an efficient and well-ordered land use pattern, and economize community facilities. What portion of the applicant's plan does not do this?

Commissioner Aprill said, I would say efficient, well-ordered land use pattern. It doesn't meet that criteria.

Attorney Graham stated, be specific.

Commissioner Aprill said, we're putting a commercial development at the end of a private subdivision. I don't think that's efficient. If there was another way to get there, it wouldn't bother me.

Attorney Graham stated, I'm just trying to create the record.

Staff stated, they're not all subdivisions.

The Chair asked, what else?

Commissioner Aprill replied, I've said it before, objective #2, maintaining an existing rural/residential character. I don't know how a commercial development on top of the hill with lights and noises adds to the rural/ residential character. Is that specific enough?

Attorney Graham responded; that's exactly what I'm looking for. I'm just trying to avoid conclusory comments, based on factual statements which is what you're doing now.

Commissioner McDonald said, to add to that, referring back to the Master Plan, on p. 22, residents were in support of Ordinances restricting noise. That's out of 494 surveys.

The Chair said, looking at the second goal, protect environmentally sensitive areas such as agricultural and orchard lands, wetlands, bodies of water, steep slopes, and groundwater recharge areas. In the applicant's proposal, did they identify how they would avoid impacting sensitive areas of the property?

Commissioner Luta said, they're not going to be developing directly on the slopes which we don't actually have anything in our Ordinance saying you can't do that. I think the fact they're not doing that is commendable. I've seen other proposals come through that were not commendable.

Attorney Graham said, if I might offer a suggestion, right now you have proposed Findings that Staff has prepared. I'm curious to know whether the Commissioners individually, you may want to do a poll, are willing to accept the proposed Findings that's in your document. If a majority of the Commissioners are willing to accept those Findings, then you can reach your ultimate conclusion by majority. If not, if a majority of the Commissioners are not satisfied with the proposed Findings as presented, then you can discuss what you need to do next to prepare other proposed Findings that will meet the majority of the Commissioners. If we're talking about lots of details now, and a majority of the Commissioners are willing to accept the proposed Findings that are in your documents, then talking about other possibilities is a moot point.

The Chair asked, is everyone clear on what counsel is suggesting?

Commissioner Kuzma asked, are you proposing moving past this to 9.3 because we haven't even got there yet. correct?

The Chair said, I think what counsel was suggesting, is do the individual Commissioners feel as though these Findings of Fact are adequate enough to proceed.

Attorney Graham said, correct, you're only talking about Standard #13. I'm trying to get you over the hump.

The Chair polled Commissioners.

Commissioner Kuzma-no, based on what Commissioner Aprill and Commissioner McDonald outlined and what you wrote down, those 3 points. I'd like to see more information, not less.

Commissioner Luta-no, I think there's been a lot offered, but I think because there are other areas on both sides of it, I think it would be helpful for everybody to see what's happening on both sides.

Commissioner Mikowski-yes, I think it's been met.

Commissioner Aprill-no, it's not been met. There are definitely things throughout that are not in there.

Commissioner McDonald-no.

Chairman Bechtold-yes.

The Chair stated, we have 4 no which means the information currently listed in 13 a-f is not sufficient and additional information is requested.

Attorney Graham said, it's clear you have a consensus of the Commission that wants to see draft Findings on the opposite side of that Standard. The question you need to then decide, is, do you want Staff to work on those alternative Findings, do you want to offer to the attorneys the abilities to draft proposed Findings then submit them within a time frame so you then can consider those from various perspectives how you want to proceed to get the additional proposed Findings the Commission has decided it wants to review.

Staff said, if we are requesting additional information, I would remind the Commission that the public hearing is closed.

Attorney Graham interjected, we're really not talking about information, we're talking about proposed Findings. We're talking about proposed Findings that would conclude that Standard was not met.

Staff said, those Findings would be based on the information we currently have, not new information.

Attorney Graham said, that is correct.

Commissioner Kuzma said, just to be clear Sarah, didn't you provide that? I think all of us have gone through this several times. Down past 9.3 there are several options like counsel said.

Attorney Graham said, there was not alternative Findings on this particular Standard, but later Standards Staff has provided you options that would go either way.

Staff noted, in the past the Commission has looked at the Master Plan and has not gone through page by page and itemized what has been met and what has not been met, so again, the Findings were based on my understanding of the Commission.

The Chair asked, what are the Commissioners thoughts on me requesting the counsel for the applicant and counsel for the community prepare Findings of Fact.

Commissioner Aprill said, I think that's a good idea to take the burden off from Staff. I think that we need to focus on getting the facts straight and keep them fairly brief. I don't want new Findings of Fact in there, I want just a consolidation of what's out there.

The Chair said, if I assign that to counsel, the community is going to base their Findings on the information in their possession, and the counsel for the applicant would be basing their recommended Findings based on the information in their possession.

Attorney Graham said, that's exactly right, and then the Commission will have both competing Facts in front of them, and then you choose which one you want to adopt.

MOTION BY COMMISSIONER MCDONALD TO AUTHORIZE THE CHAIR TO REQUEST BOTH COUNSELS DRAFT FINDINGS OF FACT FOR SECTION 13 A-F .

Attorney Graham asked, assuming you assign that to the attorneys, is there a desire to limit it strictly to Standard 13 on page 9 of 26, or would you like them to prepare proposed Findings on all the remaining Standards that you have not decided on yet?

The Chair said, the Standards we have not addressed are, Section 8.5 b2, b3, b4, and b6.

Commissioner McDonald said, I would re-do that motion.

MOTION BY COMMISSIONER MCDONALD, SECONDED BY COMMISSIONER KUZMA TO AUTHORIZE THE CHAIR TO REQUEST OF THE COUNSEL FOR THE APPLICANT AND THE COUNSEL FOR THE COMMUNITY TO PREPARE DRAFT FINDINGS BASED ON THE STANDARDS IDENTIFIED IN ADDITION TO STANDARD 13 THROUGH THE END OF THE DOCUMENT.

Staff pointed out, the counsel said around 100 residents of the neighboring area, they've already submitted Findings of Fact that have been provided to the Commission in the packet of information, so would they be revising those?

Commissioner Aprill said, no, they would just be on this document.

Attorney Graham added, they would submit their proposed Findings to Staff, and Staff would then incorporate them into a single document.

Commissioner Luta asked, would they be the ones they already submitted then?

The Chair said, yes. Just to make sure they're all clear, the motion would be a request to authorize the Chairperson to request of the counsel for the applicant and the counsel for the community to prepare draft Findings, the draft Findings would be submitted to Staff and be incorporated into the draft document we have been using, and the date on the draft document is February 24, 2023 and I would imagine on the heading there would be a date of the additional information.

Commissioner Luta asked, would they be able to add things to the ones they submitted, they have 3, but they don't have 2 and 4. Would they be able to submit information on that as well even if it wasn't something that wasn't already submitted?

The Chair said, if it is on this document, they could submit their draft Findings.

Commissioner Aprill said, I would say as long as a member of the community has submitted that information.

The Chair called the vote.

Commissioner Mikowski-no

Commissioner Kuzma-yes

Commissioner Luta-yes

Commissioner Aprill-yes

Commissioner McDonald-yes

Chairman Bechtold-no

The Chair stated, we have 4 in favor, 2 no, so **the motion is passed.**

Lauren Teichner asked, may I submit a new document? That was what I submitted on February 3rd, there was a subsequent public hearing, more information was enlisted by the public, I didn't address every single one of the Standards you've requested so, I would like the opportunity to submit a new document, layout the facts very clearly in the proposed Findings in a way that matches how the document is currently written.

The Chair answered, let me provide some guidance to both counsels. It is the request of the Commission that you take the draft document that was compiled by the Zoning Administrator, look at the sections that have NOT been approved, we don't need your opinion on the ones that have been approved, we need factual recommendations on the ones we have not addressed.

Lauren Teichner said, yes, I would like to submit a new proposed Findings of Fact.

Attorney Graham said, I think it's appropriate to give her the opportunity to do a new document because the applicant's attorney will be providing a new document as well.

The Chair said, what I would like to suggest in the format is take this document in the way that Sarah designed it and set it up and you make your Findings fit within those sections, and what I'm going to do is, all of your will be identified as community, and the applicant's will be identified as applicant.

Marc McKellar said, for purpose of the record, because I think this is going to get appealed one way or another, I'd be remiss if I didn't say this is an irregularity that probably violates equal protection related to some due process, I don't think this has ever been treated by a

Special Use Permit has ever required this additional information. I'm just getting it out there because I want it on the record. I want some clarification, I'm happy to do a new Findings of Fact, I think it's appropriate that she has the opportunity to do a new Findings of Fact, that's exclusively her and I that are preparing those for our respective clients. I think given the fact we are going to be preparing these Findings of Fact for those 5 conditions, I'm going to request that the Township Attorney and Zoning Administrator review those Facts to determine if they're appropriately identified in the record that was presented and if they're Facts and not statements of conjecture, and that goes for both of us. The concern I have is we want to make sure the items are of the record. I don't think Lauren or I would be the appropriate gate keeper in a neutral position, I think at least to the Facts as presented that Sarah and the Township Attorney have the opportunity to say, ok well there's these 16 things that Marc has identified, we find 14 and 15 are outside of the record or they're not really Facts or vice versa. I think that adds some clarity so when you're looking at these documents you know that the identified numerated Facts are in fact appropriate record Facts. I don't have any reason to believe that Lauren would do anything other than be the utmost professional and the same here, but I want to make sure it gets bifurcated at that level of the Township, that they identify the appropriate record, I think that's fair for everybody.

Commissioner McDonald asked, would we need to amend our motion?

The Chair replied, no, I see that as a process handled by the Township counsel and the Zoning Administrator.

Attorney Graham said, obviously we're not going to proceed tonight any further so you have to look at a date for when the Planning Commission will come back to review the proposed Findings. Once you determine a date when the Commission can meet, then we need to provide some deadlines to the attorneys so that those proposed Findings can be provided to Sarah sufficiently in advance to give her the chance to put them in the document and also to review the record to determine whether the proposed Findings are supported by the evidence.

The Commission discussed a date to return for deliberations.

Staff noted, we might want to talk about deadlines for this information and to clarify it's just going to be the attorney for the community to provide Findings of Fact, not all members of the public to submit information.

Attorney Graham said, it's the attorney for the Timberlee organization and the applicant's attorney.

Staff added, and to confirm that both those parties will be able to be present May 24th.

Marc McKellar said the applicant can make the meeting date work. I propose Friday, May 12th for our submittal.

The Chair said, let's say the submittals will be received at the Township Office May 12th, 2023 no later than 5:00 p.m. Sarah, do you prefer electronic, paper, or both?

Sarah replied, both.

Commissioner Kuzma asked, when will we receive those documents?

Attorney Graham noted, she has to review the record to be sure the Findings are based on evidence that was presented at the public hearing.

Sarah said, I'll have to work over the weekend, but I can make that work.

The Chair clarified the meeting will be at 6:30 p.m.

MOTION BY COMMISSIONER MCDONALD, SECONDED BY COMMISSIONER KUZMA TO ADJOURN DELIBERATIONS FOR THE SPECIAL MEETING COVENED ON APRIL 18, 2023 AND TO RECONVENE ON MAY 24TH, 2023 AT 6:30 PM AT THE ELMWOOD TOWNSHIP FIRE DEPARTMENT TRUCK BAY AT 10086 E LINCOLN RD. MOTION APPROVED UNANIMOUSLY.

H. Discussion on Zoning Ordinance: Deferred

I. Comments from the Chair: Chairman Bechtold said, thank you Commissioners for your research and thoroughness and good questioning and lively, respectful debate, and thank you to the community for showing up and presenting your interest to us and thank you to the applicant and to the community for your participation in this matter and your thoroughness.

J. Comments from Planning Commissioners: Commissioner Luta said, I would like to thank Chief Tampa and the Fire Department for lending us their place.

K. Comments from Staff: None

N. Public Comment: Jeff Dorsch

O. Adjourn: MOTION BY COMMISSIONER APRILL, SECONDED BY COMMISSIONER LUTA TO ADJOURN MEETING AT 8:25 PM. MOTION PASSED UNANIMOUSLY.