

**CHARTER TOWNSHIP OF ELMWOOD
PLANNING COMMISSION
SPECIAL MEETING
WEDNESDAY, May 24, 2023 at 6:30PM
Location: Elmwood Township Fire Station (Fire Bays)
(10086 E. Lincoln Road, Traverse City, MI)**

**Commission
Members:**

Rick Bechtold, Chair
Jeff Aprill, Vice-
Chair
Jonah Kuzma,
Secretary
Doug Roberts
Kendra Luta
Nathan McDonald
Chris Mikowski

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Limited Public Comment- **Only on Agenda Items with no Public Hearing Process-** See Rules on Agenda
- E. Agenda Modifications/Approval
- F. Declaration of Conflict of Interest
- G. Purpose of the Special Meeting
 - a. Continued 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.
- H. Discussion on Zoning Ordinance
- I. Comments from the Chair
- J. Comments from the Planning Commissioners
- K. Comments from the Staff
- L. Public Comment
- M. Adjourn

Public Comment Rules:

This is an input option. The Commission will not comment or respond to presenters. Silence or non-response from the board should not be interpreted as disinterest or disagreement by the board.

- Speakers are asked, but not required, to identify themselves by name and address
- Limit comments to 3 minutes for limited public comment and 2 minutes for public comment at the end of the agenda
- Comments shall be addressed to the chair, not individual board members or others in the audience

CHARTER TOWNSHIP OF ELMWOOD
NOTICE OF SPECIAL PLANNING COMMISSION MEETING

PLEASE TAKE NOTE that the Planning Commission of the Charter Township of Elmwood will hold a special meeting on Wednesday May 24, 2023 at 6:30pm at the Elmwood Township Fire Station (Fire Bays) at 10086 E Lincoln Rd, Traverse City, MI 49684.

The purpose of said meeting is:

- a. Continued 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.

The public is invited to attend this Special meeting.

Individuals with disabilities who are planning to attend and require reasonable auxiliary aids should contact the Township Clerk by calling 231-946-0921

Posted: May 17, 2023
 9:30 am
 Elmwood Township Hall
 Connie Preston, Clerk



May 17, 2023

VIA EMAIL

Elmwood Township
c/o: Ms. Sarah Clarren
Planning Commission
10090 E. Lincoln Road
Traverse City, MI 49684

Re: *Wellevity Resort*
SU/SPR 2022-07 – Request to Postpone Application

Dear Commissioners,

As you know this process has been time consuming for all parties involved. My client started this process last summer with the Township. As you can imagine after roughly 10 months of working on the project there have been countless conversations with township staff, members of the community, and the great team of professionals supporting the applicant. Additionally, there has been a lot of public involvement in the process. Many of the questions raised or conjecture offered by opposition has been just that, and not facts. Notwithstanding, the applicant has been listening to the individuals in the surrounding neighborhood and the commissioners while continuing to strive to be a good neighbor and work in good faith.

To that end at the May 24, 2023 planning commission meeting, the applicant is requesting the first agenda item be its request to postpone a decision on the current application. Specifically, the applicant wishes to propose a major amendment to the current application. At this time the applicant does not wish to withdraw its current application, but postpone it until the amended application has been processed. This allows the applicant to move forward with the current version should the amended version not be approved. The amended version is in part designed to address certain concerns raised by the neighbors. Essentially, it's an effort to offer a more palatable proposal in the alternative. Should the amended proposal be approved the applicant agrees to have its current applications automatically withdrawn.

The applicant understands that any major amendment may require a new public hearing process. Similarly, the applicant understands that should the current application be brought back from postponement that there should be no further public hearings or additional record.

As always, we thank you for your time and consideration in this matter and we look forward to providing you an amended application.

KUHN ROGERS PLC

May 17, 2023
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Sincerely,



Marc S. McKellar II

MSM/bls

To: Elmwood Township Planning Commission
From: Sarah Clarren, Planner/Zoning Administrator
Date: 5/17/2023
RE: SU/SPR 2022-06, Wellevity Resort – Draft Findings of Fact

As the Commission knows, once the public hearing is concluded, the Commission undertakes its deliberations and make a decision during a public meeting. During its deliberations, Commission members may ask questions of any person in attendance. Of course, anyone asked a question is not required to answer any question, but answering could be helpful to the Commission. Any such questions and answers do not reopen public comment. The matter may be tables or continued if more information is needed to make an informed decision. If the zoning ordinance allows the Commission to make a decision, then the matter may be approved, denied or approved with conditions. The decision may be delayed or postponed for cause as determined by the Commission members.

Based on a 4-2 vote by the Planning Commission on 4/18/23, the previously prepared DRAFT findings of fact document has been revised to incorporate proposed findings as presented by Mark McKellar, on behalf of the applicant and Lauren Teichner, on behalf of the 'Friends of Timberlee.' This document also incorporates revisions made by the Planning Commission on 4/11/23.

Staff and Attorney Graham have gone through the submittal from Teichner and McKellar and incorporated much of the proposed text into the below DRAFT findings of fact. Items that were not incorporated from Teichner within the below document include findings that do not support denial of the application, language in each proposed finding 'A' stating 'This Standard is not met,' references to the Leelanau County Master Plan that were not submitted as part of the record, references to construction impacts, statements on what the Commission's role is, and references to the intent of the road. In some instances, McKellar requested clarification on proposed findings; as those clarifications were not proposed findings, they are not incorporated in this document. Regardless, the Commission has been provided with copies of the documents as provided by Teichner and McKellar; said documents will also be incorporated in the Commission's epacket which is posted online.

It should go without saying, but the following document is only meant to assist the Commission in deliberation and should, by no means, be construed as a final document or decision. Any proposed Finding of Fact can be amended, removed, added to, etc until a motion to approve or deny the project is made and a decision is rendered.

AS THIS DOCUMENT WILL BE AVAILABLE ONLINE (AS OF 5/17/2023 BY 5PM), THE TOWNSHIP WILL ONLY HAVE A HANDFUL OF COPIES AVAILABLE AT THE 5/24/2023 MEETING. IF YOU WISH TO HAVE A COPY ON 5/24/2023, IT IS RECOMMENDED YOU PRINT YOUR OWN COPY.

**ELMWOOD CHARTER TOWNSHIP
PLANNING COMMISSION**

FINDINGS OF FACT, DECISION AND ORDER
SPR/SUP 2022-06, Wellevity Resort

Property Owner: Steven L. Brock Applicant: Wellevity, LLC
21440 19 Mile Road 330 W Spring Street St 330
Big Rapids, MI 49307 Columbus OH, 43215

Engineer: Environment Architects Surveyor: Gosling Czubak
10241 E Cherry Bend Road 1280 Business Park Drive
Traverse City, MI 49684 Traverse City, MI 49684

Hearing Date: December 20, 2022
February 28, 2023 (LIMITED Hearing Date*), adjourned to March 22, 2023 due
to capacity issues.

Case Number: SPR/SUP 2022-06, Wellevity Resort

PROPERTY DESCRIPTION

Parcel ID # 004-113-014-26 (0 S Timberlee Dr, 40.05acres)
004-113-014-16 (10901 S Cottonwood Dr, 9.40acres)
004-113-014-29 (10800 S Cottonwood Dr, 41.75acres)
004-113-014-51 (0 E Timberwoods Dr, 8.98acres)

The above referenced parcels are located in a Rural-Resort Zoning District. The parcels are located in Section 13 and 24 of Elmwood Township.

APPLICATION

Wellevity, LLC is requesting a Special Use Permit (SUP)/Site Plan Review (SPR) for a Resort on multiple properties owned by Steven Brock. According to the application, Wellevity, LLC and Brock entered into an Option Agreement to purchase parcels 113-14-16-16, 113-014-26, 113-014-29, and 113-014-15. Within the application there is a signed document from Brock stating that Wellevity has Brock's authority to file the application.

All four parcels are zoned Rural Resort (RR). Resorts are a permitted use through SPR/SUP within said district. As defined by Elmwood's Zoning Ordinance, a Resort is "Resort. A full-service lodging facility that provides access to or offers a range of amenities and recreation facilities. Resorts may provide services for meetings, business, and events." The proposed resort includes a variety of amenities including a spa, restaurant, fitness center, kid's club, outdoor pavilions, etc.

After having held public hearings with due notice as required by law, the Planning Commission having heard the statements of the applicant and agents, the Planning Commission having considered documents and testimony submitted by members of the public, the Planning Commission having considered all exhibits and the Planning Commission having reached a decision on this matter, state that the below Findings are based on the entire record regardless of whether a specific exhibit is not listed under a

specific Finding or Standard. In addition, the Planning Commission recognizes that, pursuant to law, the applicant has the burden of establishing that applicable standards and requirements have been met.

* The above referenced project had the required public hearing on 12/20/22. At that meeting, the Commission opened the public hearing, allowed the applicant to present the project, then opened public comment, then allowed the applicant to address concerns that had been raised, gave the public another opportunity to comment, and upon no further comment, closed the public hearing. At the request of the applicant, the Commission agreed to begin deliberations at a subsequent special meeting, which was scheduled for 1/18/23. The motion to adjourn deliberations included the specific time, date, and place where the matter would be discussed, so no mailed notices are required by law.

On 1/18/2023, the Commission was scheduled to begin deliberations on the project. However, since the public hearing had been closed, a few additional comments were received, including a 39page document submitted via email late afternoon the day of the scheduled meeting. This document included information regarding private deed restrictions (that, generally speaking, townships are unable to enforce) but also, claims that certain standards of the Zoning Ordinance had not been met. Because the public hearing in the matter had been opened and closed on 12/20/22, the recent documents that were submitted could not be taken into consideration by the Planning Commission in making its decision.

However, in order to allow for further transparency and to allow staff, members of the public, and the applicant to submit documents that can be considered in the Commission's review of the project, the Township's Attorney provided a recommended motion to reopen *limited* public comment at a later date (February 28, 2023, adjourned to March 22, 2023 at the Elmwood Township Fire Station (10086 E Lincoln Rd) due to exceeding capacity) on two items included within four separate special land use standards. Any matters that are not related to items specified within said motion could not be considered in the decision on the matter; public comment closed on all other matters not referenced within the Motion on December 20, 2022. The motion to adjourn deliberations included the specific time, date, and place where the matter would be discussed, so no mailed notices are required by law. The limited reopening of the public hearing was open and closed on March 22, 2023. At that meeting, the Commission moved to adjourn deliberations to April 11, 2023 at the Elmwood Township Fire Station.

SECTION 8.4 REQUIREMENTS FOR SITE PLAN APPROVAL

1. Applicant's name, address, and telephone number. **Provided (Application).**
2. Property owner's name, address, telephone number, and signature. **Provided (Application).**
3. Proof of property ownership, and whether there are any options or liens on the property. **Provided (Deed and 8/8/22 Notarized Letter)**
4. A signed and notarized statement from the owner of the property that the applicant has the right to act as the owner's agent. **Provided (8/8/22 Notarized Letter).**
5. The address and/or parcel number of the property, complete legal description and dimensions of the property, width, length, acreage, and frontage. **Provided (Various, including but not limited to: Application, Written Impact Statements and Standards of Approval (Last rev. 11/8/22), Sheet G1.1).**
6. Seal of the registered engineer, architect, and landscape architect who prepared the plan, as well as their names, addresses, and telephone numbers. **Seal not yet provided; can be conditioned.**
7. Project title or name of the proposed development. **Provided (Written Impact Statements and Standards of Approval (Last rev. 11/8/22))**

8. Statement of proposed use of land, project completion schedule, and any proposed development phasing. *Per application: "Proposed use of land is recreational wellness. This project is to be constructed in one phase, anticipated to begin construction in Summer 2023 and completion estimated within two years."* **Verbally relayed that construction of all buildings would be simultaneously; provided.**
9. Statements regarding the project impacts on existing infrastructure, including traffic, schools, existing utilities, and the natural environment on and adjacent to the site. **Provided (Written Impact Statements and Standards of Approval)**
10. Total number of units, employees, bedrooms, offices, total and usable floor area, amount and type of recreation or open space proposed, and similar information required to evaluate compliance with the Ordinance. **Sheet A1.0 notes 50 employees; provided.**
11. A vicinity map showing the area and road network surrounding the property. **Provided (Sheet G1.1).**
12. The gross and net acreage of the parcel. **Provided (Sheet G1.1).**
13. Land uses, zoning classification, and existing structures on the subject parcel and adjoining parcels. **Provided (Sheet G1.1; G1.2; G1.3)**
14. Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines, and monument locations. **Provided (Sheet G1.1 & Timberlee ALTA/NSPS Survey)**
15. Existing topographic elevations at two (2) foot intervals, except at five-foot intervals where slopes exceed 18%. **Provided on various sheets, including but not limited to Sheet G1.2.**
16. The location and type of existing soils on the site, and any certifications of borings. **Provided (Sheet L4.0).**
17. Location and type of significant existing vegetation. **Provided (Sheet L4.0).**
18. Location and elevations of existing water courses and water bodies, including county drains and man-made surface drainage ways, floodplains, wetlands, and sand dunes. **Provided (Shown on multiple sheets, including Sheet L1.0 and L3.0; see 10/3/22 TriTerra Report for further information).**
19. Location of existing and proposed buildings and intended uses thereof, as well as the length, width, and height of each building or building envelope. **Provided (Sheet A1.0).**
20. Proposed location of all proposed structures, buildings, equipment, and uses. **Provided (Sheet A1.0).**
21. Elevation drawings of typical proposed structures and accessory structures. **Provided (sheets A2.1-A2.5)**
22. Location of existing public roads, rights-of-way, easements of record, and abutting streets. **Provided (Sheets G1.1, G1.2).**
23. Location and dimensions of proposed streets, drives, curb cuts, and access easements, as well as acceleration, deceleration, and passing lanes, including those within 100 feet of the property. **Provided (Sheet C1.0)**
24. Location, design, and dimensions of existing and/or proposed curbing, barrier-free access, carports, parking areas (including indication of all spaces and method of surfacing), fire lanes, and all lighting thereof. **Provided (Sheet L6.0 and A1.1 (lighting); (Sheet L1.0 received 12/14/22 and Revised Parking Table received 12/14/22) (Parking)**
25. Location, size, and characteristics of all loading and unloading areas. **Provided (Sheet L1.2)**
26. Location and design of all sidewalks, walkways, bicycle paths, and area for public use. **Provided**

(Sheet L1.2)

27. Location of water supply lines and or wells, including fire hydrants and shut off valves; and the location and design of storm sewers, retention or detention ponds, waste water lines, and clean-out locations; and connection points and treatment systems (including septic system if applicable). **Provided (Sheet C1.0, C2.1-C2.4)**
28. Location of all other utilities on the site, including, but not limited to, natural gas, electric, cable TV, telephone, and steam. **Provided (Sheet C2.3 and C2.4)**
29. Proposed location, dimensions, and details of common open spaces, and common facilities such as community buildings or swimming pools, if applicable. **Provided.**
30. Location, size, and specifications of all signs and advertising features, including cross- sections. **Provided (Sheet L1.0), but note that Ordinance prohibits signs placed or painted on trees, rocks, or natural features. Compliance can be conditioned.**
31. Exterior lighting locations, with area of illumination illustrated as well as the type of fixtures and shielding to be used. **Provided (Sheets L6.0 and A1.1)**
32. Location and specifications for all fences, walls, and other screening features, with cross sections shown. **Provided (Sheet L1.0 (landscaping) and A2.1)**
33. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. The proposed sizes of landscape materials (not previously existing) must be indicated. All vegetation to be retained on site must also be indicated, as well as its typical size by general location, or range of sizes as appropriate. **Provided (Sheet L1.0, L5.0-L5.3).**
34. Location, size, and specifications for screening of all trash receptacles and other solid waste disposal facilities. **Provided (Sheet A2.1)**
35. Location and specifications for any existing or proposed (above or below ground) storage facilities for any chemicals, salts, flammable materials, or hazardous materials. Include any containment structures or clear zones required by county, state, or federal government authorities. **Provided (Sheet A1.0).**
36. Identification of any significant site amenities or unique natural features, and whether they will be preserved. **Note that ZA had questioned if two creeks extend onto property as indicated on EGLE map; applicants had Triterra conduct a site investigation and “found no evidence of any water feature. One stream of approximately 150 feet long was observed in a wetland area. See...report for details about the site features observed.” ; Provided (Various sheets and Triterra Report)**
37. North arrow, scale, and date of original submittal and last revision. **Provided (various sheets)**

SECTION 8.5 REVIEW AND APPROVAL (For Site Plan Review)

B. Standards for Site Plan Approval. The Planning Commission shall make a finding that the following standards are met prior to approving a site plan:

1. All required site plan and application information has been provided as specified in this Article. The Commission makes the following finding(s) concerning this standard:
 - A. On their application, the applicants indicate that “Yes, see Site Plans provided.”
 - B. The Zoning Administrator has indicated where the required site plan and application information is located, which the Commission has confirmed.

The Commission finds that this standard has been met.

2. All required permits and approvals from outside agencies have been secured, or have been made a condition of site plan approval.

The Commission makes the following finding(s) concerning this standard:

- A. The Commission recognizes that this Standard is nearly the same as Standard 8.5.B.4 which states: "All applicable standards of agencies including, but not limited, to the Township Fire Department, Michigan Department of Transportation, Leelanau County Road Commission, Leelanau County Drain Commission, Health Department, and the Michigan Department of Environmental Quality (MDEQ) have been met." And Standard 9.3.A.8 which states "The proposed special land use has met or will meet all requirements of other Township, County, State, and Federal ordinance and code requirements."

As these standards are essentially the same and therefore findings for these standards would be the same, the Commission will defer making findings on this standard until later in this decision under Standard 9.3.A.8.

- B. [McKellar] Consistent with the Township's historical practices and that of nearly all municipalities, the applicant has acquired all pertinent approvals, and all remaining third-party approvals shall be conditions of the issuance of the land use permit. It should be noted that the county health department and county road commission are not applicable to this site. After approval, the applicant will submit to the EGLE for water and sewer.

The Commission finds that this standard has / has not been met.

3. Adequate essential facilities and services including highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools are available, or the provision of such facilities and services has been assured.

The Commission makes the following finding(s) concerning this standard:

OPTION 1

- A. The Commission recognizes that this Standard is nearly the same as Standard 9.3.A.4 which states "The proposed special land use will be served adequately by essential public utilities, facilities, and services such as water supply, wastewater disposal, highways, roads, police and fire protection, drainage structures, and refuse disposal. Alternatively, such services, if adequate to serve the proposed special land use, may be provided privately or by a combination of public and private providers."

As these standards are essentially the same and therefore findings for the two standards would be the same, the Commission will defer making findings on this standard until later in this decision under Standard 9.3.A.4.

The Commission finds that this standard has / has not been met.

OPTION 2 (Presented by Teichner)

- A. [The Planning Commission notes that this Standard is substantially similar to Standards 9.3.A.4, and 9.3.A.7, and 9.3.A.9.]
- B. The Planning Commission finds that the proposed development will not be adequately served by available essential facilities and services for highways, streets, fire protection, drainage structures, and water and sewage facilities (and that the provision of such facilities and services has not been assured), for the following reasons:

- C. First, the Planning Commission finds that applicant's plans fail to show availability of adequate facilities and services for highways and streets:
- a. The application proposes using a private road (East Timberwoods Drive) as the only access road to the resort. East Timberwoods Drive is the longest private road in the Timberlee area. It is currently used for residential use only (along with any other necessary non-commercial vehicles, including ambulances and fire trucks). The road has 14 winding curves, many going up, down and around substantial hills, often in the middle of a curve. In some spots it has 20 feet of paved, limited depth surface, and it narrows to 18 feet in other spots, with little to no shoulders. The edge of the road is often immediately adjacent to steep ditches or large trees. Area residents report that they are often challenged by winter weather (even in four-wheel drive vehicles) to get up and down the hills, valleys, and numerous curves of East Timberwoods Drive. This private road was never used as, , a main entry road for the former Timberlee Mountain ski area. Rather, the ski area was historically accessed by Timberlee Drive (a county road). (This background information is drawn from the following documents in the record: Gary Bergstrom's written public comment dated February 3, 2023; Lynch Law's written submission dated January 18, 2023 on behalf of the East Timberwoods Drive Association; Doug Cole's written public comment dated February 3, 2023; Tim Wolf's written public comments dated December 20, 2022 and February 3, 2023, as well as his oral public comments at the Planning Commission's March 22, 2022 special hearing; Jeff Dorsch's written public comment dated February 3, 2023; and Charles F. Green's written public comment dated February 2, 2023).
 - b. Numerous residents who live on this private road have submitted written and oral public comments indicating to the Planning Commission that the private road is full of tight turns, does not have an appropriate width, has little to no gravel shoulders, and is difficult to traverse during wet and snowy conditions. And members of the local community have also asserted that they are older (some in their 50s, 60s, and beyond, many now retired) or families with small children who use the private road everyday to walk their dogs, ride bikes, hike, visit with their neighbors, and enjoy the scenic surroundings. These residents traverse on the narrow, winding, and hilly road, where there is little to no shoulder. (For example, *see* Jessica Bogart's written public comment dated February 3, 2023 ("I drive, and walk (with my dog), this road daily and have for over 5 years. I do drive this road daily and even so, I have been stuck in the ditch and needed to be towed out by helpful neighbor. I do not allow any visitors to my home in the winter without AWD or 4WD . . . [also] take into account downed trees . . . I fear for the safety of myself, my family and my dog with the increased traffic of those unfamiliar with the tight, winding roads."); Max and Meghan Arbury's written public comment dated February 3, 2023 ("Not having sidewalks means there are children and adults out walking and biking in the road on a regular basis."); Megan Gilger's written public comment dated February 1, 2023 (describing her young children who desire to ride bikes, skateboard and more on the road); Rob and Dorothy Sitrine (and children)'s written public comment dated February 2, 2023; Kelsey Zaryczny's written public comment dated February 2, 2023; John Thiry's written public comment dated February 3, 2023 (President of Sun Perch Condominium Association); Lenny Allgaier's written public comment dated February 3, 2023 (local business owner of Peninsula Pavers and resident, attaching photos to demonstrate the small size of the private road); Dennis and Elizabeth Dorsch's written public comment dated February 2, 2023 ("Out of area drivers do not follow the speed limits and we have put up speed signs, etc. for the safety of [] activities and especially for the children walking to school on the roads."); and the following residents who made related oral public comments during the Planning Commission's March 22, 2023 special meeting and December 20, 2022 special meeting: John Thiry (speaking for all 31 condominiums at Sun Perch in opposition to the project

based on road concerns), Jeff Dorsch, Beth Kott, Michelle Kuffer, Carolyn Swift (she is one of several people who walks the route daily and has done so for the last 11 years, many of them walk there, and with their animals, in addition to children), Kevin Gillespie, Lynn Francomb (she's a walker on the road, and says if you have to get off the road now, you get in a ditch, in the grass, in the sticks), Duane Straubel, Abby Robinson (there are no shoulders, no sidewalks, no safe alternatives for walkers, especially unsafe given likely alcohol consumption at the resort), Nick Thiesen (business owner of Loma Farm and Farm Club, stands to gain financially from the project but is opposed to it for many reasons including the traffic. He explains Farm Club has far more traffic than he ever anticipated, and he believes Wellevity will too – but Wellevity will be on a private road, not a public road like Farm Club), Cindy Armbruster, Krista Allagier, Ansel Bowden, Tim Wolf, Chris Thiebaut, and Doug Cole). One resident described two wedding events that were hosted on the top of Timberlee hill in the past few years (in addition to numerous holiday parties on Memorial Day, the 4th of July, and Labor Day over many years). His letter explained that “guests pay no heed to speed on our road and the traffic noise day and night and . . . road glare is not something that any residents should have to deal with when residing in this rural neighborhood zoned residential. Mix in alcohol from weddings, events and bar patrons and the safety issues increase substantially.” (See Doug Cole’s written public comment dated February 3, 2023).

- c. For all these reasons, the Planning Commission finds that sufficient concern has been raised regarding the inadequacy of the private road as the sole access point for the proposed development, given the grave safety risks that such a plan poses to pedestrians on the road.
- d. The Planning Commission also finds that the private road is physically not adequate as the sole means of access to the proposed resort because the road itself cannot handle such heavy traffic, from both construction and regular operations. The application estimates that it will take two years to construct the proposed resort (p. 14), with (as common sense dictates) heavy commercial and construction vehicles, equipment, and delivery of building and other materials using the private road during that time. The private road is insufficient for such purposes. (See Dan O’Brien’s written public comment dated February 2, 2023 (“Being in the construction profession for about 24 years and specifically as a commercial construction manager for +16 years, I can attest to the damage and strain a long term construction project has on the surrounding neighborhoods. The roads leading to the Wellevity development at the top of Timberlee cannot withstand 2+ years of construction. The excessive vehicular traffic required to enter the project includes trade vehicles, dump trucks, equipment delivery, material delivery, concrete trucks, cranes, dumpster roll offs, etc.”). Again, applicant’s supplemental submission from Sherwood Design Engineers dated February 10, 2023 acknowledges that roads are subject to wear due to construction (as well as weather (freeze/thaw) and drain conditions).
- e. The applicant provided a traffic study (see Fishbeck Memo dated November 8, 2022). But the Planning Commission finds that this trip generation study cannot be relied upon for the following reasons: (1) the study asserts that “the proposed land uses will generate less than 50 directional trips during the am and pm peak hours of the adjacent road network” (p. 3), but the Planning Commission has a difficult time imagining how a proposed 100 acre resort containing 147,500 square feet of buildings and amenities (see Sheet A1.0), and approximately 300 parking spaces (see Required Parking Spaces chart, submitted by applicant November 8, 2022 [NOTE BY ZA: THIS DOCUMENT WAS SUPERSEDED BY THE 12/14/22 PARKING TABLE]), would even manage to stay in business with the

minimal increase in traffic suggested by the traffic study, and thus the Planning Commission rejects the study's findings; (2) the study's additional assertion that "the wellness resort would not have any significant impact on traffic operations on the area road networks and intersections" (p.3) is so absurd (contrary to the size of the proposed development, anticipated construction efforts, and the many proposed amenities at the resort) as to undercut the study's credibility on the whole; (3) the study does not address the anticipated occupancy of the resort, even though "Land Use: 330 Code" within the study states (in bold and italics) that "[f]or all lodging uses, it is important to collect data on occupied rooms as well as total rooms in order to accurately predict trip generation characteristics for the site"; (4) the spa is not incorporated within some of the resort hotel assumptions made in the study, giving an inaccurate picture of associated traffic; and lastly, (5) the study's conclusion that "no improvements to the study area road network nor intersections are expected to be necessary" (p. 3) is so incredible as to undermine the overall study. Tellingly, the applicant distances itself from this unrealistic conclusion in its supplemental submission from Sherwood Design Engineers dated February 10, 2023 ("Road maintenance will increase during periods of higher frequency traffic carrying heavier loads typically associated with construction equipment and deliveries.").

f. The applicant also provided a supplemental Fishbeck Memo dated February 10, 2023 which provides additional detail regarding the proposed development's use of the private road as the sole means of access. The Planning Commission cannot rely upon this supplemental memo either. The memo states in part: "The applicant recognizes that there is existing pedestrian use of the local road network, and that off-street path / sidewalk does not exist adjacent to these local roads. The applicant further recognizes that this project will add vehicular traffic to the local road network; however, the development is not expected to significantly increase the occurrence of vehicle / vehicle or pedestrian / vehicle conflicts." (p. 1) The Planning Commission finds that these conclusions defy logic, and instead heeds the warnings of the public, which again has raised sufficient concern regarding the dangers for pedestrians on this private road in the face of both construction and eventual resort traffic (as explained above in 8.5.B.3(C)(b) and (d)). A member of the public writes, and the Planning Commission agrees, that "[a]nyone familiar with this area can, from firsthand experience, do a far better job of predicting the anticipated traffic flow and the potential peril to home owners." (See Doug Cole's written public comment dated February 3, 2023). Another member of the public ran some simple searches on Google and discovered that there have been 63 crashes involving 116 people within a 720 foot radius of the Bugai and Fouch Intersection from 2004-2021, several of which resulted in major injuries and one fatality. This member of the public also witnessed a rollover and a broad side collision at this same intersection. As that member of the public writes, "it is illogical that the increased traffic from the Wellevity development would not have an impact on traffic and pedestrian safety." (See Rob and Dorothy Serrine (and children)'s written public comment dated February 2, 2023). The Planning Commission agrees. This picture differs wildly from the unrealistic picture painted by Fishbeck on page 3 of its February 10, 2023 supplemental memo ("Evaluation of historical crash data indicates no pattern of crashes on these roadways in the vicinity of the subject site") [ZA NOTE: THIS QUOTE DOESN'T EXIST IN THE 2PG 2/10/23 FISHBECK MEMO]. The Planning Commission rejects the self-serving logic of the traffic memos presented by the applicant.

g. During the March 22, 2023 special meeting of the Planning Commission, Timberlee resident Greg Thomas presented photographs of East Timberwoods Drive, which demonstrated that: (1) the road is narrow, only 18 feet wide from curb to curb in places,

revealing that the road was not constructed to be a two-way commercial thoroughfare; (2) there will only be 12 inches of passing space between large trucks on the road, which is insufficient and dangerous; (3) there are multiple curves and turns in the road, and the grades are quite significant; and (4) larger trucks cannot pass each other in curvy spots without pulling off onto the shoulder or side of the road, or without crossing the center line, creating highly dangerous conditions for drivers and pedestrians alike. These photographs were submitted into the Planning Commission's record from the meeting. The Planning Commission finds that these photographs are reliable indicators of the conditions on the road.

- h. Resident Tim Wolf, a licensed professional engineer, explained in his written public comments dated December 20, 2022 and February 3, 2023, and his oral public comment at the March 22, 2023 special meeting that: the current road is narrow, has no shoulder, and can barely fit two cars passing each other; the road has sharp curves and heavy slopes; the road's asphalt thickness is 1.5 inches - which is insufficient for the added traffic; children will have to dodge over two additional cars per minute on the road in each direction if the development is built; the road does not contain a two-foot shoulder as required by current county road standards; and the road contains two blind corners that cannot be safely navigated by a semi or delivery truck without driving on the shoulder or crossing the centerline. Tim also referenced a study performed by the Federal Highway Administration in his February 3, 2023 letter, explaining that the data from this study showed that "low-volume roads [have] a higher percentage of nighttime, no-lighting accidents (39.0 vs. 31.1%) and a slightly higher percentage of snow and ice accidents (13.1 vs. 10.6%) compared to rural roads in the full sample." He interpreted this to mean that "with a greater volume of traffic comes greater volume of accidents The applicant has failed to prove their traffic study, which focuses on rural county roads (Mann Road, Cherry Bend Road, and Bugai Road) with standard land widths, that the site is adequately served by E. Timberwoods Drive, a narrow width residential road." (internal quotations omitted). The Planning Commission accepts Tim Wolf's concerns as valid and reliable.
- i. During the March 22, 2023 special meeting, Planning Commissioner Jonah Kuzma asked applicant's counsel: "Would you like to address any of the safety concerns that at least half of the public brought up . . . regarding road adequacy, pedestrian safety . . . ?," and in response applicant's attorney Mr. McKellar discounted the potential traffic impact on pedestrians, stating: "people walking in the road is not necessarily, you know, permitted, I can't just walk my dogs freely on the road. It's a road right of way, it's meant for the traversing of vehicles . . . we understand those issues, but you can't design for people utilizing the surface of the actual right of way for those issues, that's anywhere." The Planning Commission finds that this response – which is clearly out of touch with the reality of pedestrian use of the private road, and ignores the risks to pedestrians who will continue to walk along the side of this private road, as they have always done (as evidenced by the public's written and oral comments cited in 8.5.B.3(C)(b) above) – is further evidence that the applicant has failed to demonstrate the adequacy of the road for this project.
- j. Additionally, the Planning Commission herein incorporates its detailed findings from paragraph 8.5.B.3(D) below regarding the need for *two separate and approved fire apparatus access roads*. The proposed resort only has one. This Standard is not met for this reason as well.

k. Lastly, Section 503.2 of the *International Fire Code* requires that fire apparatus access roads (which this private road would need to be, as the sole means of access to the proposed resort) “shall have an unobstructed width of not less than 20 feet . . . exclusive of shoulders.” Again, public comments, including the photographs submitted by resident Greg Thomas at the March 22, 2023 special meeting, demonstrate that the paved road is only 18 feet wide in many places, and is therefore inadequate to serve as a fire apparatus access road to the resort.

D. Second, the Planning Commission finds that applicant’s plans fail to show availability of adequate facilities and services for fire protection:

- a. The Planning Commission finds that the proposed project cannot proceed with only *one emergency access road* to the resort, as currently proposed. Such a proposal is inadequate for fire protection purposes, for the following reasons:
- b. Elmwood Township does not have its own adopted Fire Code, nor does the Township’s Private Road Ordinance (“PRO”) apply to Wellevity’s application, as East Timberwoods Drive existed before the PRO was enacted. For these reasons, Fire Chief Tampa instead chose to use the *International Fire Code* (“IFC”) as the Standard for reviewing Wellevity’s application because “[the IFC] is referenced within the Michigan Building Code.” (See Fire Chief Tampa’s Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023; see also Michigan Building Code Section 901.2 (“Fire protection systems shall be installed, repaired, operated and maintained in accordance with this code and the *International Fire Code*.” [ZA NOTE: Unable to locate this section of MI building code within the submitted documents]). Chief Tampa also adopted and used the IFC when he recommended that the project’s “vehicle access [be] constructed and maintained in accordance with the International Fire Code.” (See Fire Chief Tampa’s memo dated December 20, 2022). And Chief Tampa cited to and applied Appendix D of the IFC in his January 2023 memo regarding minimum grades for the road. (See Fire Chief Tampa’s Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023).
- c. For these same reasons, the Planning Commission will also rely on and apply the requirements of the IFC to Wellevity’s application. The Planning Commission believes that reliance on the IFC is reasonable and essential, given the lack of any other applicable fire safety standards.
- d. Specifically, the Planning Commission finds that Chapter 503 (“Fire Service Features: Fire Apparatus Access Roads”) and Appendix D (“Fire Apparatus Access Roads”) apply to Wellevity’s application.
 - i. The Planning Commission acknowledges that even though Appendix D states that “the provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance,” it is important to note, again, that the Township *does not have its own* adopted Fire Code or ordinance. In the absence of any other guiding fire safety standards, the Planning Commission finds that Appendix D – and all other IFC standards – are applicable to Wellevity’s application, particularly in light of Appendix D’s Section D101.1 (“Scope”) which states that “[f]ire apparatus access roads *shall* be in accordance with this appendix and all other applicable requirements of the *International Fire Code*.” (p. 483 of the IFC, emphasis added [ZA NOTE: CANNOT FIND THIS WITHIN SUBMITTED DOCUMENTS]). Otherwise,

the Planning Commission is concerned that the IFC will be randomly “cherry-picked” to serve the needs of the applicant, rather than applied as a whole to serve the essential fire safety needs of the Township. Moreover, Chief Tampa himself relied on Appendix D in his January 2023 memo. (*See Fire Chief Tampa’s Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023*).

- e. The Planning Commission finds that the proposed resort is in a remote location, which will be difficult for any emergency response teams to access, particularly in heavy winter snow conditions. The Planning Commission finds that Chief Tampa himself expressed the same concerns about the proposed resort in his first memo dated December 20, 2022. He wrote: “The rural nature of this project requires rapid notification of any fire and the ability to address a fire immediately, within the incipient stage. The greatest concern is the delay in response created by the remoteness of the project. It is imperative that the developer place focus on early notification systems, automatic fire suppression, maintained access, and the availability of onsite water.” (*See Fire Chief Tampa’s memo dated December 20, 2022*).
- f. Section D104.2 of Appendix D of the IFC requires that “buildings or facilities having a gross building area of more than 62,000 square feet shall be provided with ***two separate and approved fire apparatus access roads***.” It further provides for an “exception” for projects with a gross building area of up to 124,000 square feet that are equipped throughout with an approved automatic sprinkler. According to sheet A1.0 of the Applicant’s plan, the total proposed building area is 147,500 sq feet, which is well beyond (indeed, more than 23,000 square feet beyond) even the exception square footage. Thus, the Planning Commission finds that two separate and approved fire apparatus access roads are required under the IFC for the proposed resort.
- g. Additionally, the Planning Commission herein incorporates its findings in paragraph 8.5.B.3(C)(k) above regarding the inadequate width (less than 20 feet) of the single proposed vehicle access road, which violates the minimum requirements of Section 503.2 of the IFC.
- h. Moreover, the proposed resort will require sizeable “fire water” needs from local groundwater (*see p. 11, Sheet C1.0 of the application showing multiple 40,000 gallon tanks, and Andrew Smits’ letter dated February 10, 2023 citing the use of 120,000 gallons of fire water*), which could potentially deplete the public water supply for neighboring residents and also negatively impact surrounding natural water resources. (*See Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023; Pangea Environmental LLC’s letter dated February 3, 2023; Pangea Environmental LLC’s letter dated February 28, 2023, which was read into the record at the Planning Commission’s March 22, 2023 special meeting; and Phillip Hartman’s written public comment dated February 2, 2023 (resident and hydrogeologist for Piteau Associates, a TetraTech Company, explaining that a “long-term pumping test should be performed at the location of the supply well listed in the SUP,” which “could alert officials, planners, and citizens in the Timberlee community to possible problems that may arise from the supply of water to the Wellevity project through time” including “pump cavitation,” “lowering the water table,” and “[rendering] the municipal supply well . . . useless.” All of these problems are described in more detail in the letter*). While Mr. Smits’ letter asserts on behalf of the applicant that “the production of groundwater will not affect off-site users of groundwater” (p. 5), the Planning Commission cannot accept this assertion at face value; this is because Mr. Smits’ evaluation is not based on any on-site environmental studies or testing that he himself conducted – instead it is based (as he explains) on his “physical observations,” “comprehensive review of public records, and “convers[ation]”

with an engineer employed by EGLE (p. 1). The Planning Commission finds that applicant has failed to perform a “pumping test” (as recommended by Pangea Environmental LLC in its February 28, 2023 letter, and by Phillip Hartman in his written public comment dated February 2, 2023), which can be used to predict the potential lowering of the water table at various times and distances. Without such on-the-ground testing, the Planning Commission cannot determine the viability of a fire protection system reliant on such a high quantity of water being installed at the top of the Timberlee property.

- E. Finally, applicant’s plans fail to show availability of adequate facilities and services for drainage structures and water and sewage facilities:
- a. Specifically, the Planning Commission finds that applicant’s plans fail to present adequate details regarding (1) its proposed drainage structures for stormwater runoff, (2) the significant quantity of groundwater that such a large resort will require, which will potentially divert water from the nearby community well that provides residents with all of their drinking water, as well as from nearby natural water resources, including fragile wetlands and vernal ponds; and (3) its proposed sewage facilities. These findings are explained in more detail here:
 - b. *Drainage structures:* The Planning Commission finds sufficient concern has been raised regarding the adequacy of the proposed resort’s drainage structures. The proposed development will add 147,5000 square feet of buildings and structures, and 300 parking spaces, to the top of Timberlee hill (*see* Sheet A1.0; Required Parking Spaces chart, submitted by applicant November 8, 2022 [ZA NOTE: DOCUMENT SUPERSEDED BY DOCUMENT SUBMITTED 12/14/22]). These constitute a large area of impermeable surface, which requires increased storm water management measures. Moreover, erosion is already occurring on and around the steep Timberlee property. (*See* Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023). It is common sense that stormwater naturally moves down-gradient and off-site. The Planning Commission cannot determine based on the application whether the site may be safely built upon to accommodate stormwater runoff, given the likely presence of highly erodible, sandy soils at the development site (*see* Exhibit D to Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023; Pangea Environmental LLC’s letter dated February 3, 2023; Ansel Bowden’s written public comment dated February 3, 2023 (resident on a property immediately adjacent to the proposed project, and the only property surrounded on three sides by land that would be affected by the proposed development, expressing his fears regarding the impact of drainage during and after construction)). The applicant has failed to perform any environmental studies – including a wetlands delineation and a geological cross-section that includes a description of the geological material and an assessment of water levels (*see* Pangea Environmental LLC’s letter dated February 28, 2023, which was read into the record at the Planning Commission’s March 22, 2023 special meeting) – which would be essential in assessing the ability of the resort’s water drainage and retention system to contain large amounts of stormwater, as well as the possible impacts of the resort’s drainage system (at the top of the hill) onto neighboring properties that sit below it, off-site. Any claims made by Andrew Smits in his February 10, 2023 letter regarding the lack of concern due to the permeability of the soil are undermined due to the lack of environmental testing at the site. What’s more, the applicant has failed to provide the Planning Commission with any information or testing regarding whether the proposed stormwater detention basins and retention systems can withstand two one-hundred year twenty-four hour storm events, as contemplated and required by the Leelanau County Soil Erosion, Sedimentation, and Stormwater Runoff Control (SESSRC) Ordinance Guidelines, Section B.15. These types of storms have become more frequent in recent years. (*See* Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023). Indeed, the

application simply states that planned stormwater management facilities are designed “for capturing and treating the 90th percentile annual non-exceeding storms” (Sheet C1.0), which is insufficient to meet these ordinance guidelines.

- c. *Large quantity of groundwater:* The Planning Commission finds that the application fails to demonstrate that adequate water resources are available for the proposed resort. The resort sits at the top of Timberlee hill, where there is no public water supply. For that reason, the project “will include a private, Type IIa potable well with storage and distribution of domestic, irrigation, and fire water to meet the new special land use’s demands” (p. 7 of the application). These new demands will involve sizeable quantities of water to supply the proposed facilities: lodge with guestrooms, restaurant and bar, retail market, childcare center, spa and pools, event spaces, laundry facilities, cabins and cottages that house additional guests, and landscape irrigation (pp. 7-11 of the application). The proposed resort’s potable well will necessarily draw on the local groundwater supply and will utilize underground storage tanks (Sheet C1.0). The local groundwater also supplies public water to many residences located downhill from the proposed resort, who rely on a county-run community well for their daily drinking and household water needs. The well serves approximately 500 Elmwood Township residents, many of whom are members of the Friends of Timberlee group, which is vocally opposed to any project that would negatively impact available groundwater resources that are necessary for their daily household needs. (See Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023 (attaching photos of the community well, and minutes from Township Board meetings held in May, June, and July 2022 which discuss the fact that the community well system requires critical repairs and upgrades at this time, and that the community well itself does not currently store water for any of its own future fire suppression needs); and written public comments from the following members of the local community expressing concerns regarding water usage: Phillip Hartman (as mentioned above, a resident and hydrogeologist describing the potential problems that could arise from the large water supply for the proposed project), Linda DiClimente, Megan Gilger, Chris Barber, Dennis Pike, Renae Barber, Bethany Betzler, Lynn Francomb, Elizabeth Kott, Michael Kott, Carla Benson, Jerry Young, Karen Easterling, Fred Cepela, Laura Siladke, Nathan Siladke, Chuck Moser, Robert Kinrock, Colleen Thommas, Paul and Patti Strong, Scott Addis, Jerry Raymor, Jonathan Recor, Nick Thiesen, Len and Krista Allgaier, Barbara Young, Mallory Recor (“Our neighborhood is all on wells for our water. I fear what will happen when Wellevity uses the same well water we are using for our family of four and dries up the water table quickly. The massive pull of water from our one source will be detrimental. Will we need to re-drill for a deeper well, and if so who will be responsible for that cost?”), Terry Griffin and John Matz, Doug Cole, Rob and Dorothy Serrine, Kirk Corolan, Jessica Bogar, Jennifer Hartman, Philip Hartman, Dan O’Brien, Jerry Raymor, Jeff Dungan, Cheri Buchbinder, Eugene Biondo (retired Chief of Fire-fighting Operations for City of Detroit, expressing that “our water aquifer is vital to the residents of the area” and “we have known issues that exist with our community well”), and Adriana Simmons). The applicant attempts through Andrew Smits’ letter dated February 10, 2023 to assure the Planning Commission that “The aquifer is of sufficient saturated thickness and transmissivity that high yielding wells are easily developed” and “Narrow capture zones indicate reduced potential for groundwater production to affect other users” (p. 5). But the Planning Commission acknowledges that the geological attributes that make production of water possible are different than the capacity / quantity of water available from the aquifer, which is the Planning Commission’s concern here. The applicant has failed to provide on-site environmental studies – including a pumping test – to demonstrate whether the local aquifer has the ability to adequately support the proposed resort’s large water needs. (See Pangea Environmental LLC’s letters dated February 3, 2023 and

February 28, 2023, read into the record at the Planning Commission's March 22, 2023 special meeting; Phillip Hartman's written public comment dated February 2, 2023 (again, a resident and hydrogeologist, emphasizing the need for a pumping test)). According to Pangea Environmental LLC, EGLE requires any "Type II community well that will produce over 70 gpm to undergo a pumping test to demonstrate that the pumping rate can be sustained for 100 days A 24 to 72 hour pumping test would provide invaluable information to predict water level changes from the proposed development." (See Pangea Environmental LLC's letter dated February 28, 2023, read into the record at the Planning Commission's March 22, 2023 special meeting). Without a pumping test, the Planning Commission cannot determine the impact of the project on the community well, and whether the local aquifer can actually supply the needed water for the resort.

- d. Moreover, the Planning Commission has important concerns regarding the creeks, wetlands and potential of a vernal ponds near the proposed resort that could be destructively impacted by the resort's use of such a large quantity of groundwater. The Planning Commission acknowledges that much surface water begins as groundwater. Lowering the groundwater could reduce the water available for the neighboring water resources. (See Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023; and Pangea Environmental LLC's letter dated February 3, 2023 (attachment 4 is from the USGS and indicates potential surface water and wetlands in the area) and letter dated February 28, 2023, read into the record at the Planning Commission's March 22, 2023 special meeting). The Elmwood Township Master Plan describes wetlands as "working landscapes whose ecosystem meets a variety of needs. They support a rich variety of wildlife, purify water, help contain flooding, and provide scenic and natural vistas" (p. 18). While Wellevity submitted a report from Triterra dated October 3, 2022 identifying some of the wetlands on the property, the issue of the resort's groundwater usage adversely impacting water resources is ignored in the application. The applicant has failed to provide on-site environmental studies – including the pumping test previously described, a wetlands delineation, and geological cross-sections – to demonstrate that the resort's water usage will not impact fragile water resources. Pangea Environmental LLC explains that "a wetland delineation should be performed during the growing season, as it looks at soils and vegetation types, the vegetation cannot be identified in winter months." (Pangea Environmental LLC letter dated February 28, 2023, read into the record at the Planning Commission's March 22, 2023 special meeting). Notably, the Master Plan itself calls for a "wetlands delineation" to be done before a development moves forward (p. 19). And a geological cross-section is also needed "in order to understand the geology beneath the surface of the proposed development site, and the relationship to any wetlands and / or inland water that may be impacted by the proposed groundwater withdrawal." (See Pangea Environmental LLC letter dated February 28, 2023, read into the record at the Planning Commission's March 22, 2023 special meeting). Without these on-site studies, the Planning Commission cannot determine the adequacy of the water facilities for the resort.
- e. The Planning Commission herein incorporates all of its findings in paragraph 8.5.B.3(D)(j) above regarding the resort's sizeable "fire water" needs and the potential adverse impact of those needs on the surrounding residents' public water supply and natural water resources.
- f. *Sewage facilities:* Moreover, applicant's plans fail to present adequate details regarding its proposed sewage facilities. Without these details, the Planning Commission cannot be assured that the project's sewage facilities will not contaminate fragile water resources in the surrounding area. (See Olson, Bzdok & Howard, P.C. letter dated February 3, 2023; see also comments from the public regarding local groundwater contamination concerns, for

example, Laura and Nathan Siladke’s written public comment dated February 3, 2023 (“We have not seen any detailed study of the water run off, septic run off or greenhouse run off from the proposed project and its impact on fresh water supply We would think that after water issues in Flint and the PFAS areas in the state, this would be of utmost concern to the Planning Commission.”)). The applicant does not provide adequate specifications for its “advanced wastewater treatment system” (pp. 7 & 11). Again, while Andrew Smits’ letter dated February 10, 2023 claims that he has no concerns about wastewater quality from the proposed resort, those claims fall short in the absence of any on-site environmental testing or studies – including a wetlands delineation and geological cross-sections – which are essential for all the reasons already outlined above in 8.5.B.3.(E)(d). These tests would shed more light on potential complicating factors for the sewage system, including its position at the top of a hill, its specific location at the site, the soil quality at that location, and the site’s (and surrounding area’s) subsurface geology. Without these tests, the Planning Commission cannot determine the adequacy of the treatment system and its capacity, or the potential for local groundwater and surface water to be contaminated by the resort’s septic system.

4. All applicable standards of agencies including, but not limited, to the Township Fire Department, Michigan Department of Transportation, Leelanau County Road Commission, Leelanau County Drain Commission, Health Department, and the Michigan Department of Environmental Quality (MDEQ) have been met.

The Commission makes the following finding(s) concerning this standard:

OPTION A

- A. The Commission recognizes that this Standard is nearly the same as Standard 8.5.B.2 which states: “All required permits and approvals from outside agencies have been secured, or have been made a condition of site plan approval.” And Standard 9.3.A.8 which states “The proposed special land use has met or will meet all requirements of other Township, County, State, and Federal ordinance and code requirements.”

As these standards are essentially the same and therefore findings for these standards would be the same, the Commission will defer making findings on this standard until later in this decision under Standard 9.3.A.8.

- B.
- C.

OPTION B

- A. [The Planning Commission notes that this Standard is substantially similar to Standard 9.3.A.8].
- B.
- C. The Planning Commission finds that the standards of the *Township Fire Department* have not been met. The Planning Commission herein incorporates all findings made in Section 8.5.B.3(D) above regarding the inadequacy of the proposed resort’s fire protection measures. The Planning Commission does not believe that the proposed resort meets the requirements of the *International Fire Code*.
- D. The Planning Commission finds that the standards of the *Michigan Department of Environment, Great Lakes, and Energy (formerly MDEQ, now EGLE)* have not been met [ZA NOTE: STANDARDS HAVE NOT BEEN PROVIDED IN ENTIRETY TO COMMISSION]. As part of its permitting process, EGLE is tasked with evaluating whether a proposed project meets the standards

of the Michigan Environmental Protection Act (“MEPA”), MCL 324.1701 et seq. MEPA considers whether an action has the potential to pollute, impair, or destroy the air, water, or other resources, or the public trust in those resources, and, if so, whether there are any feasible and prudent alternatives to that action. (See Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023). The Planning Commission herein incorporates its findings from 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project’s potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that natural resources in the surrounding area (including fragile water features, and endangered or threatened species such as the Michigan monkey-flower (see Rosemary Hagan’s written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.

- E. The Planning Commission finds that Section B.15 of the Leelanau County Soil Erosion, Sedimentation, and Stormwater Runoff Control (SESSRC) Ordinance Guidelines has not been met. The Planning Commission hereby incorporates its related findings from paragraph 8.5.B.3(E)(b). The applicant has failed to provide the Planning Commission with any information or testing regarding whether the proposed stormwater detention basins and retention systems can withstand two one-hundred year twenty-four hour storm events.

The Commission finds that this standard has / has not been met.

- 5. Compliance with all non- zoning ordinances adopted by the Township, including, but not limited to the private road ordinance.

The Commission makes the following finding(s) concerning this standard:

- A. On their application, the applicant indicates: “None applicable”
- B. The Applicant has indicated in their application that the amenities will be owned and operated by one entity and therefore there will be one business on the parcel and therefore the Private Road Ordinance is not applicable.

The Commission finds that this standard has been met.

- 6. All buildings and structures shall be designed, constructed, operated, and maintained so as to be harmonious, compatible, and appropriate in appearance with the existing or intended character of the general vicinity.

The Commission makes the following finding(s) concerning this standard:

OPTION A

- A. On their application, the applicant indicates: “Each structure has been carefully placed within the natural topography and vegetation on the Timberlee property. The design and operation are integral to the wellness resort’s methodology and will be harmonious to nature. The central placement and existing and proposed vegetative screening further expand the compatibility of this project with the community.”

- B. Many structures are clustered and located on the interior of the parcel. The closest structure (a cabin) to a residential home is approximately 450'. Both the 'spa' and 'lodge' buildings, which both contain accommodations, are located over 675' from a residential home. The location of all proposed structures exceeds the required setbacks.
- C. In between the structures and residential properties, there are a variety of plantings proposed in addition to existing vegetation. Screening that meets the requirements of the Ordinance is proposed; in part, due to existing vegetation as well as additional plantings.
- D. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres (81.9%) of the site will not be developed.
- E. Much of the above referenced open space will be situated between the resort structures and abutting parcels.
- F. According to sheet L2.0, the proposed development on undisturbed land is 2.4 acres.
- G. [in McKellar's 5/18 submittal] The Applicant adopts the findings as drafted by the zoning administrator. The Applicant affirms that it has ensured that all buildings and structures shall be designed, constructed, operated, and maintained so as to be harmonious, compatible, and appropriate in appearance with the existing or intended character of the general vicinity. Notably, the Applicant conducted its due diligence to find a property properly zoned for a rural resort. These parcels are properly zoned for a rural resort. The zoning map, when it contemplates transitional zoned districts it is meant to be understood that in planning the location of transition of zoning districts (those areas where differing zoning areas intersect) are presumably harmonious with each other because they were selected to be consistent with the master plan to be located where they are. In this case, rural resort zoning adjacent to residential was clearly contemplated in the master plan and necessarily incorporated into the zoning ordinance. Put simply, the planners sought fit to allow rural resort activities on this property, knowing it was adjacent to residential property. It should be noted that of the 99.9 acres, the proposed developed area encompasses in total 18.1 acres. Furthermore, the property previously operated on 43.3 acres, which is identified in the Site Plan as the disturbed lands. Of the 18.8 acres, only 2.4 acres are proposed to be on previously undisturbed land. Of the previously disturbed lands being 43.3 acres, 26.7 acres will be returned to undisturbed land. Therefore, the Applicant clearly meets the intended criteria of the general vicinity.

OPTION B

- A. The Planning Commission hereby looks to relevant sections of the Elmwood Township Master Plan in order to determine the "appearance" of "the existing or intended character of the general vicinity," as stated in this Standard:
 - a. The Master Plan contains two sections that reference the "existing or intended character" of the surrounding Timberlee area (on pages 9 and 42). The first highlights that the "Timberlee area is serviced with public water making it a desirable and scenic location for residential development." (p. 9) And the second explains that "[a]lthough many lands have been platted, not all have been developed. The topography and availability of a central water system should make this area desirable for residential, recreational, and commercial land uses. To take advantage of the extremes in elevation, the area lends itself naturally to both outdoor recreation and residential land uses. Non-residential uses, including

restaurants, shops and services geared toward the local market are recommended to support the primary uses.” (p. 42)

- b. The Planning Commission finds that when taken together, these two Master Plan sections describe the Timberlee area as having an appearance and character that is scenic, geared towards residential and outdoor recreational uses, and generally allowing only for commercial development that is secondary to those other uses and that is geared towards the local market.

B. [ZA NOTE: TECIHNER DOCUMENT REFERENCED MULTIPLE SECTIONS OF COUNTY MASTER PLAN THAT ZA CANNOT CONFIRM AS PROVIDED AND WERE REMOVED; IF THE COMMISSION DISAGREES, SEE TEXT IN TEICHNER’S DOCUMENT] The Planning Commission also hereby looks to a relevant section of the Leelanau County General Plan as included in Hagan’s 2/3/23 written public comment:

- a. In particular, the Plan discourages “ridge top development” by stating: “The visual character of a community is important. It is more than just what buildings or landscapes look like. Visual character ‘sticks’ in people’s minds. It is a very important part of what attracts people to an area to live, invest, or vacation. ***Because the ridges are highly visible, they need to be considered as sensitive visual environments.*** Development can easily change them.” (Chapter 2) (emphasis added). “Ridges . . . must be protected.” (Chapter 2).

C. Lastly, the Planning Commission hereby looks to the oral and written public comments of local residents and business owners to determine if the proposed resort is compatible in “appearance” with the “existing or intended character of the general vicinity,” as stated in the Standard. (For example, *see* Sara Theisen’s written public comment dated February 3, 2023 (she is both a resident and business owner of Farm Club on Lake Leelanau Drive, and expresses her total opposition to the proposed resort because it “[a] development of this scale . . . will violate the ‘appearance of the character of existing or future neighborhood uses’” and “threatens the rural and agricultural character of Elmwood Township and Leelanau County If we don’t actively work to monitor development and preserve our township and county, we will lose the very thing that is essential to driving tourism dollars and creating jobs: the rolling hills, open spaces, vineyards and farms that draw visitors and help fuel our rural economy.”); Nick Theisen’s oral public comment at the Planning Commission’s March 22, 2023 special meeting (also a resident and fellow business owner of Farm Club and Loma Farm, who is opposed to the development because he believes Timberlee hill “stands as a beacon of the beautiful, natural environment that we all call home” and that a “development of this scope and magnitude would thoroughly change the character of the land and the neighborhoods that surround Timberlee. He believes that Wellevity “belongs [like Farm Club] on a public road designed to handle traffic with utilities to service such a large development and in a valley where it blends in with nature and doesn’t stand on a hill reigning above us.”); Rosemary Hagan’s oral public comment at the Planning Commission’s March 22, 2023 special meeting (explaining that “Timberlee Hill sits at 1,056 feet above sea level); Cheri Buchbinder’s written public comment dated February 1, 2023 (“The hotel etc on top of the hill would be clearly visible for miles around . . . We can see Timberlee hill when out sailing on West Bay.”); Linda Seder & Shane Wyatt’s written public comment dated January 24, 2023 (“Once the top is cleared for the buildings – it will be noticeable from many miles away. It will change the entire landscape.”); and John Royster’s written public comment dated February 3, 2023 (expressing that the development proposal is “so large in scale that [it will] overwhelm the pristine wilderness setting that me and my family friends and neighbors have enjoyed for 44+ years that I have owned the 17+ acre parcel . . . sharing lot lines with the proposed development property, and hope to enjoy for

years far into the future. For a project of this enormity to be profitable assuming that is the goal, the burdens on infrastructure on the site, and the [sheer] volume of patrons required to support a venture like this directly affecting the surrounding areas in ways I shouldn't need to express will overwhelm the area. [The original intent] was not to scalp the top of the mountain and put in parking lots, hotel store building cottages day care center etc... the original subdivision requirements were for homes to be nestled into the hillsides and hardwoods and is desirable and a beautiful setting for rural living, recreation, seclusion, and privacy.”).

- D. Taking all of these perspectives – from the Elmwood Township Master Plan, , and the public – into account, the Planning Commission finds that the proposed resort is not harmonious, compatible, and appropriate in appearance with the existing or intended character of the general vicinity. The proposed resort sits on 100 acres at the very top of Timberlee hill, the highest elevation point in the area, and contains approximately 147,500 square feet of buildings and amenities (Sheet A1.0). The proposal includes a multi-use space for large outdoor events, as well as overnight lodging, and myriad other amenities, as described elsewhere in these findings. The Planning Commission finds that this proposed resort will have a significant discordant visual presence at the top of the hill, resulting from the alteration to the pristine ridgeline, from the physical presence of the resort buildings and their hundreds of guests, from light and noise associated with the many indoor and events at the resort, and from related traffic (both construction and regular business traffic). Indeed, the Planning Commission finds that the proposed resort will visually and experientially adversely dominate the Timberlee area for these reasons. The uniquely rural character of the area – which is surrounded by quiet residential neighborhoods and pristine natural environments – will be impermissibly overwhelmed by this development, as it towers over them. Moreover, these impacts will only secondarily serve the local market, as the resort's amenities are predominantly geared towards non-local guests – making the visual impacts even less compatible with the existing or intended character of the vicinity.

The Commission finds that this standard has/ has not been met.

7. The buildings, structures, and entryway thereto proposed are situated, designed, and screened/buffered so as to minimize any adverse effects upon owners and occupants of adjacent properties and the neighborhood.

The Commission makes the following finding(s) concerning this standard:

- A. On their application, the applicant indicates: “Screening is essential to the project. With the existence of heavy natural vegetation, the campus has been created to make that the advantage point to both the adjacent neighbors and Wellevity. Further vegetation is proposed (see Landscape plans) to provide further buffering from view and sound.”
- B. Many structures are clustered and located on the interior of the parcel. The closest structure (a cabin) to a residential home is approximately 450’. Both the ‘spa’ and ‘lodge’ buildings, which both contain accommodations, are located over 675’ from a residential home. The location of all proposed structures exceeds the required setbacks.
- C. In between the structures and residential properties, there are a variety of plantings proposed in addition to existing vegetation. Screening that meets the requirements of the Ordinance is proposed; in part, due to existing vegetation as well as additional plantings.

- D. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres (81.9%) of the site will not be developed.
- E. Much of the above referenced open space will be situated between the resort structures and abutting parcels.

The Commission finds that this standard has been met (4-2 vote by Commission; Aprill and McDonald dissenting).

8. All buildings and structures are accessible to emergency vehicles.

The Commission makes the following finding concerning this standard:

- A. On their application, the applicant indicates: "Yes. Plans have been submitted to the Elmwood Township Fire Chief."
- B. The Commission received a Letter from Keith Tampa, Fire Chief, dated 12/20/2022 regarding the project. Said letter includes 10 'Fire Department Access / Water Supply' Recommendations and 3 'Facilities' Recommendations. The Commission received a second letter from Tampa dated January 27, 2023 which revises one recommendation which is hereby incorporated into the Commission's Findings.

The Commission finds that this standard has been met. (Unanimous by Commission).

9. Complete and safe pedestrian, non-motorized and vehicular circulation is provided.

The Commission makes the following finding(s) concerning this standard:

- A. On their application, the applicant indicates: "Provided through a low-speed network of private drive and sidewalks, guests are able to safely navigate the campus. Carts are used to transport individuals within the resort, as well."

The Commission finds that this standard has been met. (Unanimous by Commission).

10. The percentage of impervious surface has been limited on the site to the extent practicable.

The Commission makes the following finding(s) concerning this standard:

- A. On their application, the applicant indicates: "Yes, see Site Plans provided."
- B. The Commission has an email dated 11/17/2022 from the Soil Erosion Department to the applicant which indicates "The proposed work appears to follow existing grades wherever possible and the property is large enough to accommodate any stormwater generated from the structures and drives/parking areas we discussed. We see no major issues with the plans as discussed and look forward to reviewing the final plan, making any suggestions for necessary changes then."
- C. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres (81.9%) of the site will not be developed.

The Commission finds that this standard has been met. (Unanimous by Commission).

11. Efforts have been made to protect the natural environment to the greatest extent possible.

The Commission makes the following finding concerning this standard:

- A. On their application, the applicant indicates: “Site programming was developed with the natural environment as the top priority. Previously cleared areas from the days of Timberlee Resort are the same areas that will be used for Wellevity. Other small structures are nestled throughout the existing vegetation and terrain, with minimal impact to the environment. Preservation and restoration are key components that are found throughout the campus.”
- B. Multiple plan sheets are dedicated to a comprehensive planting plan and tree protection plan.
- C. No structures are proposed near the wetlands onsite; proposed trails circle the wetlands.
- D. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres (81.9%) of the site will not be developed.
- E. Although not required within the Zoning Ordinance, slopes greater than 18% are preserved and identified in the Site Plan packet.
- F. The Applicant appears to have oriented the proposed structures for the development based, in part, on the elevations of the site. This is evident when comparing Sheet G1.3 (Slope Analysis) to Sheet L2.0 (Disturbed Land Diagram).

The Commission finds that this standard has been met. (Unanimous by Commission).

- 12. There exists within the site plan sufficient protection to accommodate storm water runoff on the site location.

The Commission makes the following finding(s) concerning this standard:

- A. On their application, the applicant indicates: “Plans have been prepared to meet the Leelanau County Soil Erosion, Sedimentation and Stormwater Runoff Control (SESSRC) Ordinance and are subject to review and permitting by Leelanau Conservation District.”
- B. The Commission has an email dated 11/17/2022 from the Soil Erosion Department to the applicant which indicates “The proposed work appears to follow existing grades wherever possible and the property is large enough to accommodate any stormwater generated from the structures and drives/parking areas we discussed. We see no major issues with the plans as discussed and look forward to reviewing the final plan, making any suggestions for necessary changes then.”

The Commission finds that this standard has been met. (Unanimous by Commission).

- 13. The proposal furthers the goals and objectives of the Master Plan.

The Commission makes the following finding(s) concerning this standard:

OPTION A:

- A. On their application, the applicant indicates:
“Elmwood Township Master Plan (Page 23) – Planning and Growth Management
Goal: To guide future growth and development in a manner that respects both the natural environment and the Township’s rural atmosphere, promotes an efficient and well-ordered land use pattern, and economized community facilities.
Objective: Accommodate future growth within the Township while maintaining its existing rural/residential character Guide development in a manner that conserves natural features and environmentally sensitive areas and meets the long-term needs of the community.”

The ethos of our project is rejuvenation, restoration, and appreciation for nature. Our landscape architect is highly experienced with adding natural vegetation to enhance the natural beauty of the land as well as promote native species to inhabit our land.

The architectural aesthetic of the buildings is designed to minimize the visual interruption from the beautiful natural setting.

Elmwood Township Master Plan (Pages 24 – 25) – Environmental Features and Agricultural Land

Goal: protect environmentally sensitive area such as agricultural and orchard lands, wetlands, bodies of water, steep slopes, and groundwater recharge areas.

Strategies: Encourage the retention of productive agricultural and forest lands through available mechanisms such as open space and farmland agreements, forest stewardship programs, and conservation easements, as well as local zoning incentives. Discourage development on slopes greater than 18%. Encourage development to conserve scenic views.

Working with the forested topography, each structure has been placed primarily in areas where the land was already disrupted from past development uses. A large portion of the site will remain untouched.

Slopes greater than 18% are preserved and identified in the Site Plan packet.

Elmwood Township Master Plan (Page 42) Timberlee

This area has historically been used as a resort area and should be planned for the continued use as such. To take advantage of the extremes in elevation, the area lends itself naturally to both outdoor recreation and residential land uses. Non-residential uses, including restaurants, shops and services geared toward the local market are recommended to support the primary uses.

Welleivity is a full-service resort with outdoor recreation (outlined in the narrative), restaurants, and retail geared toward the local market and tourists. When building our programming, we are looking at opportunities, with community support, to create a place that enhances the wellness environment of the area. The foundation of Welleivity is built on the belief that with the right support, education, resources, and facilities, we can all live happier and healthier lives. That is what we want to provide for the citizens of Elmwood Township.”

- B. Elmwood Township’s Master Plan has a section devoted to Timberlee. This section states, in part “This area has historically been used as a resort area and should be planned for the continued use as such. This area has developed over the years as a mix of residential and commercial uses. Not surprisingly, some ventures in this area have proven successful, while others have not. Currently there are a number of plats, not all developed, and a restaurant operating in the Timberlee area. Although many lands have been platted, not all have been developed. The topography and availability of a central water system should make this area desirable for residential, recreational, and commercial land uses. To take advantage of the extremes in elevation, the area lends itself naturally to both outdoor recreation and residential land uses. Non-residential uses, including restaurants, shops and services geared toward the local market are recommended to support the primary uses. Site design for commercial establishments should follow the recommendations stated in the Greilickville Service Area of this Plan and the and New Designs for Growth Development Guidebook. In addition, non-residential uses should be located toward the center of the development and all future development should be planned with attention to the natural features of the area.” Emphasis added.
- C. The Master Plan indicates that non-residential uses are recommended to support the primary use. This is the case with the proposed development. Further, many structures are clustered and located on the interior of the parcel. The closest structure (a cabin) to a residential home is approximately 450’. Both the ‘spa’ and ‘lodge’ buildings, which both contain accommodations, are located over 675’ from a residential home. In between the structures and residential properties, there are a variety of plantings proposed in addition to existing vegetation.
- D. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres of the site will not be developed.

- E. Although not required within the Zoning Ordinance, slopes greater than 18% are preserved and identified in the Site Plan packet.
- F. The Applicant appears to have oriented the proposed structures for the development based, in part, on the elevations of the site. This is evident when comparing Sheet G1.3 (Slope Analysis) to Sheet L2.0 (Disturbed Land Diagram).
- G. McKellar's 5/18 submittal: The Applicant adopts the findings as the zoning administrator's findings. However, the Applicant offers a quick synopsis of legislative drafting and statutory interpretation regarding more specific provisions are necessary. Commonly a more specific provision takes precedence over general provisions. This is true in regard to the master plan. Significantly, the master plan provides specific goals and objective criteria for the subject property, specifically to be utilized as a resort area. The proposal was nearly word for word developed around this concept. And undoubtedly and without question, it meets the master plan intended for the property. Inherently, the zoning map reflects this planning goal, and its location, as mentioned before, is harmonious in its very nature, as indicated in the zoning map. The more general goals and objectives of the ordinance, where contradictory or inapplicable with the Timberlee provisions of the master plan, are simply not applicable by its very nature. If the project meets the Timberlee specific master plan and objectives, the analysis is complete. It is obvious and inherent that it meets the master plan if it meets that specific criteria. As referenced in the master plan, page 42, Timberlee.

OPTION 2 (presented by Teichner):

- A. The Master Plan explains that its own "... goals and objectives must reflect the type of community desired and the kind of lifestyle its citizens wish to follow" (p. 21).
- B. The Planning Commission finds that the Master Plan is unambiguous that the Township places *enormous value on protecting its natural features and resources*, both for their own sake and for the sake of Township residents' health and welfare. Indeed, the Master Plan contains a multi-page section defining and describing the "Natural Features" of the area (starting on p. 15). Numerous goals and objectives are articulated in the Master Plan that revolve around a combination of accommodating future growth while also respecting and conserving the natural environment (pp. 23-29). The Master Plan emphasizes that future development in the Township "should be planned with attention to the natural features of the area" (p. 42). The Master Plan explains that a "reoccurring theme throughout the survey results" underlying the formation of the Master Plan "is the community's desire to protect the 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 depending on Traverse City for their shopping, dining, and commercial needs" (p. 21). An updated survey in 2018 [2013] revealed that "respondents would like the Township to focus on non-motorized trails and parks and encourage residential uses in the commercial district. Respondents were in support of ordinances restricting blight and noise, and regulations regarding septic and stormwater" (p. 22).
- C. One of the specific goals articulated in the Master Plan is to "[p]rotect the quality of *surface and groundwater resources* in the Township from development related impacts" (see page 24). Accordingly, the Master Plan advises that "individual on-site study and testing should be conducted prior to site design and construction due to the fact that many of the soils in the Township may have limitations either because of wetness in low soil areas, steepness of the slopes, or because of seepage or potential of poor filtering problems for septic systems" (pp.

16-17). The Master Plan even goes so far as to recommend that on-site investigations be conducted to “delineat[e] wetland boundaries,” which will ensure that proposed development projects do not negatively impact local water resources in particular (pp. 18-19).

- D. The Master Plan also touts the *public water supply* in the Timberlee area, and stresses how important it is for encouraging residential land uses (pp. 9 & 42). The Master Plan contains a section on “Wellhead Protection,” emphasizing the limited access to public drinking water and sanitary sewer facilities in the Township, and the related “need to include in this Plan protection measures for private and shared water systems” (p. 35-36).
- E. The Master Plan is also very concerned with *protecting the residential and rural character of areas so designed*. These concerns come through in the Master Plan’s recommendations that Traverse City should be maintained as the commercial focal point for residents of Elmwood Township (p. 27), that commercial development should be discouraged from spreading outside of the established M-22 vicinity (p. 27), and that only limited commercial development should be encouraged “that satisfies local market needs without compromising the Township’s rural / residential character” (p. 26).
- F. For all these reasons, the Planning Commission acknowledges that the welfare of Township residents (in particular, those in the Timberlee area), as reflected in the Master Plan, relies on (1) conservation of the Township’s natural features, (2) the availability of a public water supply, and (3) preservation of the residential and rural character of areas so designed.
- G. The Planning Commission finds that the stated goals and objectives of the Master Plan are not furthered by Wellevity’s application for the following reasons:
- a. The Planning Commission finds that the application does not go far enough to protect the Township’s natural features – including surface and ground water resources – in line with the Master Plan’s goals. The Planning Commission herein incorporates its findings from paragraphs 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution), and 9.3.A.6 (adverse effect on the natural environment). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project’s potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that the natural environment in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see* Rosemary Hagan’s written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.
 - b. The Planning Commission finds that the resort’s significant water needs have the potential to deplete the public water supply, in direct contravention to the Mater Plan’s goal of protecting the private and shared water system. The Planning Commission herein incorporates its findings in paragraph 8.5.B.3(E) (impacts involving water). The applicant has failed to perform on-site testing, such as a 24 to 72 hour pumping test, which would predict water level changes from the proposed development. (*See* Pangea Environmental LLC’s letter dated February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting; *see also* Phillip Hartman’s written public comment dated February 2, 2023 (again, a resident and hydrogeologist, emphasizing the need for a

pumping test)). Additionally, the Planning Commission acknowledges that the community well system already requires critical repairs and upgrades at this time (*see* Exhibits A, B, and C to Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023), and declines to place additional stressors on this vital community well without more information (such as the results of a pumping test) from the applicant.

- c. And the Planning Commission finds that the application is not in harmony with the residential and rural character of the surrounding area, also in contrast to the Master Plan's goals, as the resort will visually and experientially adversely dominate the Timberlee area as stated in paragraph 8.5.B.6(E); the Planning Commission herein incorporates those findings. Moreover, the Planning Commission finds it significant that the public has come out in such high numbers to oppose the project, claiming that the project will be incompatible with the perceived residential and rural character of the area. Of the hundreds of pages of written public comment submitted about the application, and the dozens of people who have spoken in person at Planning Commission meetings on this topic, it is noteworthy that ***less than ten total written and in-person comments have been made in support of the development.*** The Planning Commission also finds it significant that the vocal opposition includes local business owners (including the owners of Farm Club) who even stand to gain financially from the approval of the development. These public comments go to the heart of the goals and objectives of the Master Plan, as they "reflect the type of community desired and the kind of lifestyle its citizens wish to follow" (p. 21).

The Commission finds that this standard has / has not been met.

SECTION 9.2 GENERAL PROVISIONS (*Special Use Requirements*)

B. Application. Application for any special land use permit permissible under the provision of this Ordinance shall be made to the Planning Commission through the Zoning Administrator by filing an official special use permit application and submitting a site plan in accordance with Article 8. In addition to information or documents required by Article 8, the applicant shall provide the following information:

1. Location of all proposed special land uses and activities to be conducted on the parcel(s); **Provided in Site Plans / revised parking calculations.**
2. Height and footprint of all structures and improvements; **provided.**
3. Adjacent land uses and their corresponding zoning districts; **provided.**
4. Need for the proposed special land use in the specific area of the Township. **Provided (Written Impact Statements and Standards of Approval)**
5. Compatibility with the listed permitted uses in the zoning district where the proposed special land use is requested to be located; **Permitted use**
6. Such additional information or documents that will assist the Planning Commission in determining whether the proposed special land use meets the General Standards and Specific Requirements as provided in Section 9.3.

SECTION 9.3 STANDARDS, REQUIREMENTS AND FINDINGS (*for Special Use Approval*)

ZA NOTE: The Commission must determine if the below standards have been met. The applicant indicated their response to the standards in their application.

A. General Standards.

1. The proposed special land use meets the objectives, intent, and purposes of this Article and the zoning district in which the proposed special land use is to be located.

The Commission makes the following finding(s) concerning this standard:

OPTION 1:

- A. On their application, the applicant indicates: “Wellevity, a proposed wellness resort, is to be located on a 100-acre parcel within the Rural Resort zoning district. This wellness focused campus has focused on protecting the area’s atmosphere by keeping with the essential character of the area. The critical component of the master design plan of Wellevity is to have all the structures seamlessly blend with the existing environment and to focus on an ecologically sound balance between the activities within the Wellevity campus and the surrounding environment. The plan has been created to eliminate disturbance to neighboring properties, yet incorporating a mix of uses that complement the Elmwood Township character. We have carefully curated the services that Wellevity will offer to satisfy the needs of the community and guests to the area. Our programming focuses on improving modifiable lifestyle factors that affect our health, wellness, and happiness. We have identified those factors as: nutrition & hydration, movement & fitness, sleep & restoration, and connections & relationships. This project was created to maximize the ability to analyze and modify all of those factors. It is our strong belief that the only way to achieve optimal health is to connect with nature, therefore our resort will be primarily focused on outdoor activities. Please see the narrative for our complete program.”
- B. The parcels are zoned Rural Resort and a resort with amenities is proposed.
- C. According to Section 4.3 of Elmwood Township’s Zoning Ordinance, the Intent of the Rural Resort Zoning District is to seek “...to maximize protection of the Township’s rural atmosphere and its natural environment and by complementing the character of surrounding neighborhoods. This is accomplished by permitting resorts with limited commercial development near the Agricultural-Rural (A-R) zoning district that satisfy market needs of the local community, including seasonal residents and tourists. Such resorts must help maintain a local sense of community by integrating a mix of land uses that are of a size, character, function, and location suitable to the needs of Elmwood Township and are sited so as to minimize impacts on, and views from, adjacent properties and roads. They are intended to have primarily an outdoor orientation so that they complement the open, rural character of the Township.”
- D. The parcels are located less than a mile from parcels zoned Agricultural-Rural and is adjacent to 77.10 acres zoned Agricultural-Conservation (Solon Township) and 18.32 acres zoned Residential Agricultural-2 (Solon Township).
- E. The parcels are adjacent to a variety of different zoning districts including those zoned Rural-Resort (one with an active resort, two undeveloped, one residential), Residential-1, and Residential-3.
- F. The applicant has indicated that the resort, which includes a mix of amenities (land uses) will be open to overnight and day guests.
- G. The Commission recognizes that the proposed resort is commercial and the proposed use program is lengthy, but amenities are allowed within the definition of resort. The Commission notes that the ‘Required Parking Spaces’ document submitted on 12/14/22 includes the approximate square footage of each amenity, which shows that the amenities are of varying sizes, the majority of which being open to tourists, as well as the community at-large.

- H. The largest proposed amenity, other than the walking trails, is the spa at 12,925 sq ft. In perspective, the footprint of the Township Fire Station is approximately 11,300 sq ft and the Township Hall (meeting room) is approximately 1,690 sq ft.
- I. Screening is proposed which will minimize impacts on and views from adjacent properties and roads.
- J. The Commission recognizes that the intent of the Rural Resort zoning district does indicate that resorts are "...intended to have primarily an outdoor orientation so that they complement the open, rural character of the Township." But there are no requirements or percentage needed. Further, the Commission recognizes that outdoor activities such as skiing, tubing, horseback riding, golf courses, etc. would involve the clear cutting of large areas which could impact the surrounding area.
- K. The resort contains a mix of indoor and outdoor amenities.
- L. The applicant's representatives have stated, during the public hearing on 12/20/2022, that the trails will be open to the public, for no fee.
- M. Outdoor amenities include walking trails, sports court, outdoor baths, etc.
- N. Many structures are clustered and located on the interior of the parcel. The closest structure (a cabin) to a residential home is approximately 450'. Both the 'spa' and 'lodge' buildings, which both contain accommodations, are located over 675' from a residential home. In between the structures and residential properties, there are a variety of plantings proposed in addition to existing vegetation.
- O. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres of the site will not be developed.
- P. Much of the above referenced open space will be situated between the proposed resort structures and abutting parcels.
- Q.
- R.

OPTION 2 (presented by Teichner):

- A. First, the Planning Commission finds that *the intent and purpose of Article 9 of the Zoning Ordinance* is described in Section 9.1 ("Special Land Uses": "Intent and Purpose") as "[T]o establish procedures and criteria" to evaluate "special land use" applications, which are defined as those which require "individual review and consideration" due to their potential "incompatibility with the natural environment of the site, the character of the surrounding area, existing or planned public services and facilities, and adjacent uses of land" (Page 9-1). The Planning Commission finds that the proposed resort does not meet this Standard as the application is incompatible with the natural environment of the site, the character of the surrounding area, existing or planning public services and facilities, and adjacent uses of land – for the following reasons:

- a. Natural environment of the site: The Planning Commission herein incorporates its findings from paragraph 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), and 9.3.A.5(E) (light pollution). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project's potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that the natural environment in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see* Rosemary Hagan's written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.
 - b. Character of the surrounding area: The character of the surrounding area is rural and residential. The Planning Commission herein incorporates its findings from Standards 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area). The Planning Commission finds that the sizeable development and its needs are incompatible with the uniquely rural character of its surroundings: quiet residential neighborhoods, a pristine ridgeline, and fragile natural environments.
 - c. Existing or planned public services and facilities: The Planning Commission herein incorporates its findings from paragraph 8.5.B.3(C) (the road), 8.5.C.3(D) (fire protection services), and 8.5.B.3(E) (the public water supply). The Planning Commission finds that the application fails to show that it will be compatible with existing public services and facilities, including the single access road to the proposed resort, available fire protection services, and the community well which supplies drinking water to the neighboring residential community.
 - d. Adjacent uses of land: The adjacent uses of land are residential. The Planning Commission herein incorporates its findings from Standards 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area). Again, the Planning Commission finds that the sizeable development and its needs are incompatible with the uniquely rural character of its surroundings: quiet residential neighborhoods, a pristine ridgeline, and fragile natural environments.
- B. Second, the Planning Commission finds that *the intent and purpose of the RR zoning district* (in which the proposed resort is located) is found in the "Intent" section on Page 4-5 of the Zoning Ordinance:
- a. "**Intent.** The RR District seeks to maximize protection of the Township's rural atmosphere and its natural environment and by complementing the character of surrounding neighborhoods. This is accomplished by permitting resorts with limited commercial development near the Agricultural-Rural (A-R) zoning district that satisfy market needs of the local community, including seasonal residents and tourists. Such resorts must help maintain a local sense of community by integrating a mix of land uses that are of a size, character, function, and location suitable to the needs of Elmwood Township and are sited so as to minimize impacts on, and views from, adjacent properties and roads. They are intended to have primarily an outdoor orientation so that they complement the open, rural character of the Township."

The Planning Commission finds that the proposed resort does not meet this intent and purpose because it does not maximize protection of the Township's rural atmosphere and its natural environment, nor does it complement the character of surrounding neighborhoods, which are rural and residential. Again, the Planning Commission herein incorporates its findings from Standards 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area). Moreover, the resort will be open to overnight and day guests, many (if not most) of which likely live *outside* of the Township. The resort will not be marketed to Township residents, and therefore does not "satisfy market needs of the local community" as the RR district intends. The facility will offer a mix of amenities that go beyond a "resort" to include a "multi-use space," which includes a large outdoor area with intended uses of business conventions, retreats, family reunions, weddings, DJs, amplified bands, etc. (pp. 2 & 4). And the largest proposed amenity is the spa, at 12,925 square feet (pp. 3-4 and "Required Parking Spaces" chart). By primarily focusing on business, events, and spa elements, Wellevity does not have a "primarily . . . outdoor orientation" that "complement[s] the open, rural character of the Township," as the RR district intends. Instead, Wellevity is a commercial enterprise with a mission to make money. The Planning Commission finds that public comments (both written and oral) serve to highlight the disconnect between the project and the character of the surrounding neighborhoods and Township on the whole.

The Commission finds that this standard has/ has not been met.

2. The proposed special land use is designed, and is intended to be constructed, operated, maintained, and managed so as to be consistent with the existing or intended character of parcels within the zoning district.

The Commission makes the following finding(s) concerning this standard:

OPTION 1:

- A. On their application, the applicant indicates: "The Wellevity campus has been developed in keeping with the essential character of the area. A critical component of our master design plan is to have the buildings blend into the environment around them, to focus on an ecologically sound balance between the activities within the Wellevity campus and the surrounding environment, and to reduce both the resident capacity and the disturbance to neighboring properties and the natural surroundings."
- B. The property is zoned Rural Resort and a Resort is a permitted use with SPR/SUP approval.
- C. The Commission recognizes that although the site is zoned Rural-Resort, there are adjacent parcels zoned R-1, R-3, and R-R.
- D. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres (81.9%) of the site will not be developed.
- E. The Commission recognizes that this standard is related to multiple standards within Section 8 and Section 9 and therefore multiple findings found in previous and subsequent sections are relevant to this standard. Therefore, the Commission hereby incorporates the findings for Section 8.5.B.6, Section 8.5.B.7, Section 8.5.B.11, Section 9.3.A.1, Section 9.3.A.3, Section 9.3.A.5, Section 9.3.A.6, Section 9.3.A.9.
- F.

G.

OPTION 2 (Presented by Teichner)

- A. The Planning Commission notes that this Standard is substantially related to Standards 8.5.B.6, and 8.5.B.13, and 9.3.A.1, and 9.3.A.3, and 9.3.A.5..
- B. The Planning Commission finds that the intent of the RR zoning district (in which the proposed resort is located) is found in the “Intent” section on Page 4-5 of the Zoning Ordinance, as cited in paragraph 9.3.A.1(C) above, which is incorporated herein.
- C. The Planning Commission finds that the proposed development is not designed, nor intended to be constructed, operated, maintained, and managed so as to be consistent with the existing or intended character of parcels within the RR district, for all the same reasons as paragraph 9.3.A.1(C) above, which is incorporated herein.
- D. The Planning Commission also herein incorporates its findings from Standards 8.5.B.3 (facilities and services), 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area).

The Commission finds that this standard has/ has not been met.

- 3. The proposed special land use meets or exceeds the minimum requirements for the zoning district in which it is requested to be located.

The Commission makes the following finding(s) concerning this standard:

OPTION 1:

- A. On their application, the applicant indicates: “The proposed plan exceeds the minimum requirements for the R-R zoning district. The parcel(s) combined contain 100 acres. (5 acre is the minimum) The width exceeds 235 feet and all setbacks exceed the minimums and are noted on the submitted site plan. All buildings are less than 35’ in height (accessory building limited to 25’) as defined in Elmwood Township zoning ordinance (page 5-10 and 5-11). Wellevity will create approximately 50 full-time and part-time jobs for both seasonal and year-round employees for the entire operation.”
- B. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 (81.9%) acres of the site will not be developed.
- C.
- D.

OPTION 2 (Presented by Teichner)

The Commission makes the following finding(s) concerning this standard:

- A. Although the applicant indicates that its plan “exceeds the minimum requirements for the R-R zoning district,” (p.10) the Planning Commission finds that the *intent* of the RR district is not fulfilled by the project, as described in paragraphs 9.3.A.1(C) and 9.3.A.2 above, which are all incorporated herein.

- B. The Planning Commission also herein incorporates its findings from Standards 8.5.B.3 (facilities and services), 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area).

The Commission finds that this standard has/ has not been met.

4. The proposed special land use will be served adequately by essential public utilities, facilities, and services such as water supply, wastewater disposal, highways, roads, police and fire protection, drainage structures, and refuse disposal. Alternatively, such services, if adequate to serve the proposed special land use, may be provided privately or by a combination of public and private providers.

The Commission makes the following finding(s) concerning this standard:

OPTION 1

- A. The Commission recognizes that this Standard is nearly the same as Standard 8.5.B.3 which states “Adequate essential facilities and services including highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools are available, or the provision of such facilities and services has been assured.

As these standards are essentially the same and findings for the two standards would be the same, the Commission makes the below findings for both standards.

- B. On their application, the applicant indicates:

[Same response for Standard 8.5.B.3 and 9.3.A.4]: “Water Supply: The project will include a private, Type Iia potable well with storage and distribution of domestic, irrigation and fire water to meet the new special land uses demands.”

[Standard 8.5.B.3 Response] “Wastewater Disposal: The project will include an onsite advanced wastewater treatment system with a combination of low-pressure soils disposal and drip irrigation disbursal systems. This system will be permitted through the Michigan Department of Environment, Great Lakes and Energy (EGLE).”

[Standard 9.3.A.4 Response]: “Wastewater Disposal: Due to the anticipated wastewater flows greater than 10,000 gallons/day, the project will include an onsite advanced wastewater treatment system to achieve EBNR (Effluent-Based Nitrogen Removal) treatment levels with a combination of low-pressure soils disposal and drip irrigation disbursal systems. This system will be permitted through the Michigan Department of Environment, Great Lakes and Energy (EGLE).”

[Same response for Standard 8.5.B.3 and 9.3.A.4]: “Access: Deeded access through Cottonwood and Timberwoods Drive to existing deeded entrance at the South side of the property, which will accommodate all emergency, site operational and guest vehicles.”

[Same response for Standard 8.5.B.3 and 9.3.A.4]: “Drainage: Grading will be conducted in a manner that maintains the existing drainage patterns where possible, incorporating a decentralized stormwater management strategy to maximize infiltration across the site, while allowing for adequate landscape-based detention and snow management measures.”

[Same response for Standard 8.5.B.3 and 9.3.A.4]: “Refuse: Will be managed carefully and discreetly, with refuse containment that is protected from the elements and from view of guests.”

[Standard 8.5.B.3 Response] “Police and Fire Protection: The property is located in the Leelanau County Sheriff’s Department jurisdiction and Elmwood Township Fire and Rescue Department provides service to the area.”

- C. The Merriam-Webster online dictionary defines the term “adequate” as follows: “sufficient for a specific need or requirement; good enough: of a quality that is good or acceptable.” When this standard is viewed in its entirety, the adjective “adequate” modifies the specified facilities and services from a physical and functional perspective. It does not deal with the legalities of the facilities and services. Legal issues are not within the authority of the Planning Commission when judging whether a private road or easement is adequate in terms of site plan

approval. The Township recognizes concerns raised surrounding the use of the private road, the use of the private road for a commercial use, the condition of the road, and the road maintenance agreement / obligations for maintenance. However, as Counsel has indicated, the Planning Commission is unable to take such legal issues into consideration.

- D. The Commission recognizes the concern that has been raised regarding the condition of the Private Road and the multiple comments received from the public about how such a project could impact the road. Although the Commission cannot and will not base any decisions off of private restrictions or agreements as doing so would be outside of the Commission's purview, the Commission recognizes that a copy of the Road Improvement and Maintenance Agreement was included in documentation provided by Lynch Law on February 2, 2023. On page 2 of said Agreement, there is a section that speaks to the Assessment of Costs. Among other things, this Agreement states "A Property owner, their guests or invitees who cause damage to East Timberwoods Drive shall be responsible for the cost of repairing such damage and failure to pay to repair this damage will subject the Property Owner's property to a lien in favor of the Association." The Commission cannot require that this private agreement be followed. However, the Commission wants the public to know that there is an avenue to have damages paid by any road user who damages the road.
- E. The applicant has provided a traffic study (Fishbeck Memo dated 11/08/2022). This trip generation forecast was "...based on the land uses that are proposed to comprise the development. This forecast was completed using the data and methodologies published in the latest version of the Institute of Transportation Engineers (ITE) *Trip Generation, 11th Edition*. Trip forecasts were calculated for the typical weekday a.m. and p.m. peak periods of adjacent street traffic (7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.) as well as the peak hours of the generator (site)."
- F. Five key findings were made under this Trip Generation Report and include:
1. The proposed land uses will generate less than 50 directional trips during the a.m. and p.m. peak hours of the adjacent road network. If all proposed uses peak during the same hour, conservatively the site is forecast to generate a maximum of 69 directional trips.
 2. The former ski resort is estimated to have generated over 100 directional trips during the peak hours of the site, with a maximum of 205 directional trips.
 3. Comparison of the proposed site trip generation forecast versus the former resort and versus the available roadway capacity indicates that the wellness resort would not have any significant impact on traffic operations on the area road network and intersections.
 4. Evaluation of historical crash data indicates no pattern of crashes on these roadways in the vicinity of the subject site. This condition is not expected to change based on the relatively low volume of traffic forecast to be generated by the site versus the available network capacity.
 5. The order of magnitude for traffic volumes expected to be generated by the proposed resort use are consistent with the rural-resort zoning and environment of the subject site.
- Based on these findings, no improvements to the study area road network nor intersections are expected to be necessary to facilitate the proposed wellness resort."
- G. Although Timothy Likens of Fishbeck has indicated that no improvements to the study area road network nor intersections are expected to be necessary to facilitate the proposed wellness resort, the Commission recognizes that use, including construction, can impact roads. Although Timothy Likens of Fishbeck has indicated that no improvements to the study area road network nor intersections are expected to be necessary to facilitate the proposed wellness resort, the Commission recognizes that use, including construction, can impact roads. With the Applicant's February 10, 2023 submittal, Sherwood Design Engineers submitted a letter regarding the existing road conditions. This letter, in part states:
- "Asphalt, a flexible paving material, is subject to wear associated with traffic volume and loading,

weather (freeze/thaw) and drainage conditions. Well designed and constructed roads with properly constructed base sections still require periodic maintenance, including pothole repair, resurfacing or sealing cracks as part of normal operations. Road maintenance will increase during periods of higher frequency traffic carrying heavier loads typically associated with construction equipment and deliveries. For properly constructed roads, wear during these periods is usually limited to the asphalt section of the road, evidenced by subsidence, cracking and potholing over time. The base section of the road usually remains unaffected or minimally impacted, unless it was improperly constructed or has been consistently saturated with ground or surface water.

Construction impacts to shared roads (public and private) is typically managed during periods of active construction through ongoing maintenance—filling potholes and patching cracks to maintain a safe and stable driving surface. Based on review of existing conditions, the November 8, 2022 traffic report prepared by Fishbeck Engineering, and substantial experience working with similar types of development, our conclusion is that the existing roads, with adequate maintenance during and after construction, are adequate to serve both existing and proposed development.”

- H. The Zoning Ordinance does not have a required width for roads utilizing commercial properties. The Private Road Ordinance (regulations first adopted in 1996 and then superseded by a new Private Road Ordinance in 2007) do have a required width for roads servicing commercial parcels. However, the Private Road in question was in existence prior to the adoption of regulations regarding Private Roads.
- I. In reference to the above two findings, the Commission recognizes that Section 6 of Elmwood Township’s Private Road Ordinance states:

“Existing Private Roads. Private roads that have been approved by formal action of the Township Board pursuant to a prior private road ordinance which do not conform to the design standards of this Ordinance and private roads that have been in existence prior to the adoption of this Ordinance, which do not conform to the design standards of this Ordinance, may continue to be used as long as all current of future lots or parcels served by the pre-existing private road or any extensions of such a private road always are accessible by emergency vehicles. Private roads that meet the requirements of this section shall be deemed to be “approved roads” for purposes of the Elmwood Township Zoning Ordinance. Any extension of a “grandfathered” pre-existing private road shall be of a width and composition which equals or exceeds the width and composition of the “grandfathered” private road to which it is an extension.”
- J. “The Commission recognizes that the former ski resort did not utilize the private roads to the extent that the proposed project would. However, comparisons clarify historic activity.
- K. The Commission received a Letter from Keith Tampa, Fire Chief, dated 12/20/2022 regarding the project. Said letter includes 10 ‘Fire Department Access / Water Supply’ Recommendations and 3 ‘Facilities’ Recommendations. The Commission received a second letter from Tampa dated January 27, 2023 which revises one recommendation which is hereby incorporated into the Commission’s Findings.
- L. Multiple members of the public have pointed out that Section D104.2 of the International Fire Code requires that buildings or facilities having a gross building area of more than 62,000 sq ft shall have be provided with two separate and approved fire apparatus access roads and an exception of projects having a gross building area of up to 124,000 sq ft with a single fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems. According to Sheet A1.0, the total building area is 147,500 sq ft. However, the caption for Appendix D specifically states “The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.” The Township has not adopted said appendix and therefore the Commission is unable to base its decision on this appendix within the International Fire Code.

- M. The Commission recognizes that although the Ordinance requires this standard be met, this standard has consistently been made a condition of approval as Stormwater Management, Well permits, and Wastewater Treatment Systems are reviewed and approved by outside agencies. Although members of the public have expressed desire for the Commission to require more detail on the proposed private utility systems / stormwater system and outside peer reviews on the proposed systems, these systems are not approved by the Commission, but instead are approved by outside agencies.
- N. The Commission recognizes that comments have been made regarding the public water system in the Timberlee area and its needed improvements. The proposed resort will not be tied to the public water system. The improvements to the public system are recommended and ultimately required by EGLE, not the Township Board, nor the Planning Commission. EGLE reviews water systems and conformance with standards set forth by EGLE. These improvements are not required due to flow, but due to EGLE's concern regarding the existing tank being at the end of its design life and operating above its pressure rating.
- O. [ADDED BY ZA BASED ON 3/22/23 MEETING] As stated by Marc McKellar, representative of the project at the public meeting held on 3/22/2023, they offer the following as a condition of the project: "The applicant will replace and repair any damage created by the road as part of its construction at its sole expense...the applicant will pay for those repairs."
- P.
- Q.

OPTION 2 (Presented by Teichner)

- A. The Planning Commission notes that this Standard is substantially similar to Standards 8.5.B.3, and 9.3.A.7, and 9.3.A.9.]
- B. The Planning Commission finds that the proposed development will not be adequately served by available essential public utilities, facilities, and services (nor by a combination of public and private providers) for water supply, wastewater disposal, highways, roads, police and fire protection, and drainage structures – for all the same reasons articulated in Standard 8.5.B.3, which are incorporated herein.

OPTION 3 (Previously presented to Commission as OPTION 2)

- A. The Merriam-Webster online dictionary defines the term "adequate" as follows: "sufficient for a specific need or requirement; good enough: of a quality that is good or acceptable." When this standard is viewed in its entirety, the adjective "adequate" modifies the specified facilities and services from a physical and functional perspective. It does not deal with the legalities of the facilities and services. Legal issues are not within the authority of the Planning Commission when judging whether a private road or easement is adequate in terms of site plan approval. The Township recognizes concerns raised surrounding the use of the private road, the use of the private road for a commercial use, the condition of the road, and the road maintenance agreement / obligations for maintenance. However, as Counsel has indicated, the Planning Commission is unable to take such legal issues into consideration.
- B. Regardless, numerous users of the Private Road have submitted statements indicating that the private road is full of tight turns, does not have an appropriate width, little to no gravel shoulders, and is difficult to traverse during wet and snowy conditions. The Commission recognizes that it cannot require the applicant to upgrade the road. However, sufficient concern over its adequacy has been raised. [SEE MCKELLAR'S 5/12 SUBMITTAL FOR A REQUESTED CLARIFICATION].

- C. The Fishbeck Memo dated November 8, 2022 does not address S Slope Dr nor S Timberlee Dr which would service the site. Further, both service the existing, immediately adjacent resort. [SEE MCKELLAR'S 5/12 SUBMITTAL FOR A REQUESTED CLARIFICATION]
- D. Table 1 within the Fishbeck Memo dated November 8, 2022 indicates that "business/event space accounted for by overall resort calculations. However, in reviewing the Land Use: 330 Code within the report, it indicates that "It is recognized that some resort hotels cater to convention business as well as the tourist and vacation industry. The sites in the database do not have convention facilities. A resort hotel with convention facilities is likely to have a different level and pattern of trip generation than is presented in the data plots." Although the proposed event space is only 3,425 sq ft, including outdoor programming area per the required parking spaces table, an appropriate code should be utilized for determining traffic for the proposed event use. [SEE MCKELLAR'S 5/12 SUBMITTAL FOR A REQUESTED CLARIFICATION]
- E. Further, in reviewing the Land Use: 330 Code within the Fishbeck Memo, it states "For all lodging uses, it is important to collect data on occupied rooms as well as total rooms in order to accurately predict trip generation characteristics for the site." Anticipated occupancy is not referenced within the report. The report should be clarified on if Tables 2-4 (Trip Generation Tables) assumes 100% occupancy. [SEE MCKELLAR'S 5/12 SUBMITTAL FOR A REQUESTED CLARIFICATION]
- F. In reviewing the Land Use: 392 Code within the Fishbeck Memo it states: "A health/fitness club is a privately-owned facility that primarily focuses on individual fitness or training. It typically provides exercise classes, fitness equipment, a weight room, spa, lockers rooms, and a small restaurant or snack bar. This land use may also include ancillary facilities, such as a swimming pool, whirlpool, sauna, limited retail, and tennis, pickle ball, racquetball, or handball courts. These facilities are membership clubs that may allow access to the general public for a fee. Racquet/tennis club (Land Use 491), athletic club (Land Use 493), and recreational community center (Land Use 495) are related uses." The ITE Rate Description for Hotel Resort (392 Code) makes no reference to spas. However, when calculating trip generation for the proposed development, only 10,000sq ft is utilized when calculating the trip generation for the spa. Table 1 (Proposed Land Uses and ITE Land Use Codes) indicates that the Spa, excluding guestrooms is 24,975sq ft and the assumption used states "ITE trip generation inherently includes many of the supporting services. Assume open to guests and public; 60%/40% split = 10,000 sq. ft. external trips." As a spa is not incorporated within the Land Use 330 (Resort Hotel), using this assumption does not give an accurate representation of the traffic for the Land Uses utilized in generating the Traffic Study. [SEE MCKELLAR'S 5/12 SUBMITTAL FOR A REQUESTED CLARIFICATION]
- G. Without a formal analysis of existing conditions of the roads that would service the proposed resort, the Commission is unable to determine the adequacy of the private roads that would be utilized by the proposed project.
- H. Multiple members of the public have pointed out that Section D104.2 of the International Fire Code requires that buildings or facilities having a gross building area of more than 62,000 sq ft shall have be provided with two separate and approved fire apparatus access roads and an exception of projects having a gross building area of up to 124,000 sq ft with a single fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems. According to Sheet A1.0, the total building area is 147,500 sq ft. However, the caption for Appendix D specifically states "The provisions contained in this appendix are not mandatory

unless specifically referenced in the adopting ordinance.” The Township has not adopted said appendix and therefore the Commission is unable to base its decision on this appendix within the International Fire Code.

- I.
- J.

The Commission finds that this standard has/ has not been met.

- 5. The proposed special land use will not adversely impact existing or future neighboring uses. For example, but without limitation, the proposed special land use shall be designed as to location, size, intensity, site layout, and periods of operation to eliminate any possible conflicts. Additionally, it shall not be detrimental to any persons, property, or the general welfare by reason of excessive smoke, fumes, glare, noise, vibration, and odors, nor have adverse environmental impacts and detrimental effects on the general aesthetics or appearance of the character of existing or future neighborhood uses.

The Commission makes the following finding(s) concerning this standard:

OPTION 1

- A. On their application, the applicant indicates: “The ethos of the Wellevity project is about rejuvenation, restoration, and appreciation for nature. As such, we intend to maintain a peaceful and serene environment on campus. The site has established vegetation throughout the 100 acres and each proposed structure is located carefully to preserve the natural environment. The overall distances to surrounding neighbors will exceed the zoning district minimums and each structure will be significantly screened from neighboring views. These distances and significant vegetation protect the area from adverse impacts. Sound emanating from the campus is minimal; screening of existing and proposed vegetation will assist in noise attenuation.”
- B. The site is zoned Rural Resort and the proposed use is a resort.
- C. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. According to the plan, only 2.4 acres of development are proposed on undisturbed land. Disturbed land includes areas that had been previously clear cut.
- D. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres of the site will not be developed.
- E. Multiple plan sheets are dedicated to a comprehensive planting plan.
- F. Many structures are located on the interior of the parcel. The closest structure (a cabin) to a residential home is approximately 450’. Both the spa and lodge are located over 675’ from a residential home. In between the structures and residential properties, there are a variety of plantings proposed.
- G. The Commission recognizes comments have been made about the proposed use and is aware that there is some public desire for the site to be residential as there are adjacent residential properties (and an adjacent resort). On behalf of adjacent property owners, Lynch Law has identified that there are private deeded restrictions suggesting that the site must be residential. The Commission cannot base its decision on private restrictions. However, the Commission should note that the property owner *by-right* could construct 19 homes. If rezoned to match other adjacent parcels zoned R-1 (using the minimum lot size of 12,500sq ft), the property owner *by-right* could construct 348 homes. If rezoned to match other adjacent parcel zoned R-

3 (using the minimum lot size of 6,250sq ft), the property owner, *by-right* could construct 696 homes. The Commission recognizes that from aerials of the surrounding area, including an adjacent subdivision, parcels with residential homes appear to have cleared much of the parcel(s) for structures, lawn, and driveways. The Commission recognizes that the proposed project preserves over 80 acres. Taking the alternatives into consideration, the proposed use may ultimately have less impact on the surrounding area (traffic, environment, construction, utilities, etc.).

- H. The Commission recognizes concerns raised surrounding the use of the private road, the use of the private road for a commercial use, the condition of the road, and the road maintenance agreement / obligations for maintenance. However, as the Applicant's attorney has indicated and the Township's Attorney has concurred with, the Planning Commission is unable to take such legal issues into consideration when rendering a decision on the SPR/SUP application.
- I. The parcels surrounding the 99.99 acres are zoned R-1, R-3, Rural Resort, Agricultural-Conservation (Solon Township) and Residential Agricultural-2 (Solon Township).
- J. The applicant has provided a traffic study (Fishbeck Memo dated 11/08/2022). This trip generation forecast was "...based on the land uses that are proposed to comprise the development. This forecast was completed using the data and methodologies published in the latest version of the Institute of Transportation Engineers (ITE) *Trip Generation*, ¹*1th Edition*. Trip forecasts were calculated for the typical weekday a.m. and p.m. peak periods of adjacent street traffic (7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.) as well as the peak hours of the generator (site)."

Five key findings were made under this Trip Generation Report and include:

1. The proposed land uses will generate less than 50 directional trips during the a.m. and p.m. peak hours of the adjacent road network. If all proposed uses peak during the same hour, conservatively the site is forecast to generate a maximum of 69 directional trips.
2. The former ski resort is estimated to have generated over 100 directional trips during the peak hours of the site, with a maximum of 205 directional trips.
3. Comparison of the proposed site trip generation forecast versus the former resort and versus the available roadway capacity indicates that the wellness resort would not have any significant impact on traffic operations on the area road network and intersections.
4. Evaluation of historical crash data indicates no pattern of crashes on these roadways in the vicinity of the subject site. This condition is not expected to change based on the relatively low volume of traffic forecast to be generated by the site versus the available network capacity.
5. The order of magnitude for traffic volumes expected to be generated by the proposed resort use are consistent with the rural-resort zoning and environment of the subject site.

Based on these findings, no improvements to the study area road network nor intersections are expected to be necessary to facilitate the proposed wellness resort."

- K. The applicant had Fishbeck submit a supplemental Memo dated February 10, 2023 which provides further detail on whether the private roads leading to the proposed special land use will be adequate to safely accommodate the traffic that will be generated by the proposed special land use. This Memo indicates that
- "The applicant recognizes that there is existing pedestrian use of the local road network, and that offstreet path/sidewalk does not exist adjacent to these local roads. The applicant further recognizes that this project will add vehicular traffic to the local road network; however, the development is not expected to significantly increase the occurrence of vehicle/vehicle or pedestrian/vehicle conflicts. This conclusion is drawn based on the following information, which is largely presented in the Trip Generation Study by Fishbeck:
1. Even under conservative assumptions, the volume of traffic expected to be generated by this project does not exceed accepted traffic engineering thresholds that would require further evaluation. This forecast is based on data and guidelines published by the Institute of Transportation Engineers and MDOT, not the applicant.

2. During the a.m. and p.m. peak hours of adjacent street traffic, this expected traffic increase on the local road network is less than one vehicle in each direction per minute over the course of 60 minutes. This would not substantially alter the adequacy of gaps in the traffic stream for vehicles and pedestrians to safely maneuver within the local road network.
3. When the proposed development peaks (circa 10AM, 4PM), traffic volumes on the local road network are typically lower. The combination of peak development traffic during off-peak roadway time results in lower impacts and less likelihood of conflict.
4. There have been zero reported pedestrian-vehicle crashes in the last 10 years in this area. The nearest bicycle-vehicle crashes (2 in 10 years) occurred at the TART trail crossing of Lake Leelanau Drive (both cyclists failed to stop and entered roadway at fault). This demonstrates that vehicles and pedestrians are safely able to see, perceive, and react to potential conflict.

- L. The applicant has indicated that “We will align our outdoor music hours with other venues in Elmwood Township.”
- M. Although requirements regarding Special Event Facilities are no longer within the Zoning Ordinance, facilities that were permitted under the use ‘Special Event Facility’ had to meet the following operational limitation: “All activities relating to the special event shall be moved inside a building or tent by 9 PM, Sunday through Thursday and by 10 PM, on Friday, Saturday, and federal holidays, unless the Planning Commission determines that different hours are more appropriate to meet the standards in Section 9.3.”
- N. Further, facilities permitted under the use ‘Special Event Facility’ had included a maximum number of events that were allowed within a calendar year. Approvals in the A-R Zoning District included “1. Maximum of 52 events in a calendar year. 2. Maximum of 2 events in a week unless there is a federal holiday in the week than up to 3 events may be held in that week. For this section of the Ordinance, a week shall be a calendar week, Sunday to Saturday.”
- O. [ZA SUGGESTED BASED ON 3/22/23: As stated by Marc McKellar, representative of the project at the public meeting held on 3/22/2023, they offer the following as a condition of the project: “The applicant will replace and repair any damage created by the road as part of its construction at its sole expense...the applicant will pay for those repairs.”
- P.
- Q.

OPTION 2 (Presented by Teichner)

- A. The Planning Commission finds that the proposed resort will adversely impact existing or future neighboring uses (specifically residential uses), as well as persons, property, and the general welfare, due to the following impacts: (1) commercial traffic on East Timberwoods Drive as the only access road to the resort; (2) noise; (3) light; and (4) other adverse environmental impacts, as follows:
- B. Commercial Traffic: The Planning Commission finds that the design of the proposed resort involving the single access road (and the project’s plans for commercial traffic on that road) will significantly adversely impact the surrounding residential uses, for all the same reasons articulated in paragraph 8.5.B.3(C) above, which is incorporated herein.
- C. Noise: The Planning Commission finds that the proposed resort is sited at the top of Timberlee hill (an “extreme elevation,” according to the Master Plan p. 42). Sufficient concern has been raised about the noise impact of a proposed resort at this location, such that this Standard is not met. The applicant has only provided limited information regarding its plans to minimize noise at the

proposed resort. The applicant merely states: “We will align our outdoor music hours with other venues in Elmwood Township” (p. 4), “sound emanating from the campus is minimal” (p. 11), “proposed vegetation will assist in noise attenuation,” (p. 11) and “there will be no fireworks allowed on the property” (p. 4). The Planning Commission finds that this limited information is insufficient to meet this Standard. The proposed resort will accommodate hundreds of people at any given time, and will likely host numerous events, including weddings and family reunions, many of which will be held outside. The application itself mentions that “musical options, such as a DJ, acoustic or amplified bands may be offered” in the event spaces, including on the lawn, greenhouse, and pavilion (p. 4). Given these many loud events, in combination with the proposed location at the top of Timberlee hill, towering above neighboring residences, noises will be heard far and wide. Moreover, the application does not address the noise impacts on the surrounding residential area from the proposed two years of construction and construction-related traffic (p. 14), which will be significant. Nor does it address the noise impacts from increased resort traffic generally on the single proposed access road, which will also be significant given the size of the proposed resort.

- a. The Planning Commission notes that numerous neighboring residents have expressed similar concerns – for many, these concerns are based prior experience with noise in the area. (*See*, for example, Krista Alguier’s oral public comment at the Planning Commission’s December 20, 2022 special meeting; and oral public comments at the Planning Commission’s March 22, 2023 special meeting from: Beth Kott, Kristen Selle and her daughter Willa, Kevin Gillespie (resident who lives adjacent to the proposed development, describing the top of the hill as an “amphitheater . . . with south winds, west winds, all that sound just carries across the valley,” and explaining that he hears music from the current owner of the proposed development property “all summer long”), Nick Theisen (again, resident and owner of Farm Club, voicing that “Wellecity belongs on a public road . . . and in a valley where it blends in with nature and doesn’t stand on a hill reigning above us”), John Melichar (“Our property is located across the valley. The one gentleman [referring to Kevin Gillespie] spoke to noise that gets produced in the summer and the winter. It’s going to affect us across the valley 24/7/365 with all the noise, the events. We hear it now, it’s only going to get worse . . . if it’s truly about wellness, the thing would be put in the valley somewhere in tune with nature, not on top of a hill projecting . . . noise pollution everywhere”); as well as Cheri Buchbinder’s written public comment dated February 1, 2023 (“I have no idea how they can control noise pollution in a valley that has echos. I can hear my neighbors talking who are a quarter of a mile away as if they were in my front yard. I can’t imagine the noise of construction for three years; the racket of air conditioning units day and night; having a wedding venue all summer long . . . Will we not be able to enjoy hearing the birdsong and breezes through the trees, the crickets and owls at night?”); Jeff Dorsch’s written public comment dated February 2, 2023 (explaining that during the project construction period of two years, there will be increased noise levels, and there are no estimates for this impact in the application); Lenny Alguire’s written public comment dated February 2, 2023 (highlighting that “last year . . . there were five weddings held on top of Timberlee Hill where the proposed resort will be. From our residence at 11369 S. Fox Valley Lane we could hear the music and celebrations clearly into the night. I chose this area to build my house because of the quiet. I do not believe that Wellecity will be completely quiet nor do I think it is practical that there will be no sound from the increased traffic . . . [Wellecity] fail[s] to take into account how sound carries like an amphitheater from the top of the hill through the surrounding communities.”); Ansel and Catlin Bowden’s written public comment dated February 3, 2023; Kelsey Zacyzny’s written public comment dated February 2, 2023 (“For perspective, when I am standing in the parking lot of the current Timberlee lodge, directly below where the main multi-use space is proposed, I can hear individuals conversing at

the top of the hill as if they were only feet away.”)). The application is insufficient to address all these noise concerns.

D. Light: The Planning Commission again finds that the proposed resort is sited at the top of Timberlee hill (an “extreme elevation,” according to the Master Plan p. 42), and sufficient concern has been raised about the lighting impact of a proposed resort at this location, such that this Standard is not met. The applicant’s architectural drawings addressing lighting simply describe bollards and other exterior sconces that Wellevity plans to install (Sheets A1.1 and L6.0), with no additional information. The Planning Commission finds that light emanating from the development’s proposed structures (despite sitting at the interior of the parcel) will be visible for great distances, given the elevation. The application fails to assure the Planning Commission that the proposed development will adequately protect the dark night sky, which is of such great value to the Township, its residents, and its wildlife – as evidenced by the Zoning Ordinance, the Leelanau General Plan, and public comments:

- a. Zoning Ordinance Section 6.5.1 “Lighting: Intent,” states that its goals are: “To preserve the character of Elmwood Township, the dark night sky, and the restful quality of nighttime by eliminating intrusive artificial light and glare. To prevent unwanted / undesirable illumination of neighboring properties. To maintain safe nighttime vehicular and pedestrian traffic.”
- b. And numerous residents raised their concerns in both written and oral public comment regarding light pollution from the proposed resort at such a high elevation, immediately next to the surrounding residential community. (See, for example, oral public comments at the Planning Commission’s March 22, 2023 special meeting from: Beth Kott (“light pollution is inevitable”), Kristen Selle and her daughter Willa (“Willa wants to say that she’s very concerned about this project and the potential for . . . light, and all the activity that will happen at the top of the hill right next to her woods, and her playground, and her place where she enjoys being out there by herself and with her sister and her brother”), Rosemary Hagan (explaining that “Timberlee Hill sits at 1,056 feet above sea level . . . lighting from the proposed [resort] will increase the light dome, negatively impacting the dark sky of the Timberlee area and will significantly impact dark sky viewing around the county. Evidence-based research supports the positive impact of a rural dark sky upon both human and wildlife well-being”), Nick Theisen (again, a local resident and owner of Farm Club, expressing his concerns that “it can be seen from miles around, it stands as a beacon of the beautiful, natural environment that we all call home,” and the “30 new structures . . . will increase light pollution . . . and will be a scar on our landscape for generations to come”; as well as Cheri Buchbinder written public comment dated February 1, 2023 (“The hotel etc on top of the hill would be clearly visible for miles around with light pollution . . . I call this extremely adverse to my peaceful life. To control light pollution the development would need to turn off all outdoor lighting at sunset. They are at the top of a hill that is visible for miles around. We can see Timberlee hill when out sailing on West Bay. Will we not be able to stargaze as we have done here for three generations?”); Ansel and Catlin Bowden’s written public comment dated February 3, 2023; Sara Theisen’s written public comment dated February 3, 2023 (again, a resident and owner of Farm Club, expressing her concerns that the amount of light from the bar, restaurant, indoor and outdoor venues for receptions and gatherings, along with at least 58 overnight quarters, will use far more light than permitted in the Zoning Ordinance); and Gary Jonas’s written public comment dated February 2, 2023 (a resident and owner of Farm Club, and stating that from his property he “can see when Timberlee Tubing has parties with strobing lights. This will absolutely be the case if Wellevity is allowed to have weddings. Lighting is a very large concern for me.”). The Planning Commission shares these same concerns.

E. Adverse Environmental Impacts: The Planning Commission finds that the proposed resort will have adverse environmental impacts overall. The Planning Commission herein incorporates its findings from paragraph 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution), and 9.3.A.6 (adverse effect on the natural environment). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project's potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that the natural environment in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (see Rosemary Hagan's written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.

OPTION 3 (previously presented to Commission as OPTION 2)

- A. The applicant has indicated that “We will align our outdoor music hours with other venues in Elmwood Township.” However, the applicant has not provided further detailed / specific language nor agreed to condition(s) that would require outdoor music to align with other venues in Elmwood Township. The Commission recognizes that the definition of Resort allows resorts to provide services for meetings, business, and events, but without documented conditions of operation, there may be adverse impacts to existing or future neighboring uses
- B.
- C.

The Commission finds that this standard has/ has not been met.

- 6. The proposed special land use shall not have an adverse effect on the natural environment beyond the normal impacts of permitted principal uses in the same zoning district, and shall not result in impairments, pollution or destruction of the air, surface, ground water, vegetation, and other natural resources. The Commission makes the following finding(s) concerning this standard:

OPTION 1

- A. On their application, the applicant indicates:
 - “Environment: - Conservation design, sustainability, and habitat preservation/restoration is the primary focus of Wellevity. Building placement will be selected to minimize existing vegetation loss. Native vegetation will be added to encourage wildlife. An onsite advanced wastewater treatment system to achieve EBNR (Effluent-Based Nitrogen Removal) treatment levels with a combination of low-pressure soils disposal and drip irrigation disbursal systems will be implemented to limit any impact to ground-water.
 - Building materials: - Will be vetted to confirm they are ethically sourced and produced. Materials selected will have been audited to reduce impacts on human and environmental health.
 - Minimize VOCs - Less hazardous cleaning products will be used.
 - Waste Management: - A plan will be created and executed (during construction and operation) that optimizes the safe management and minimization of wastes associated with hazardous chemicals present in commonly used products.”
- B. Other than a few residential related uses, the permitted principal uses for properties zoned Rural Resort are Planned Developments, Wind Energy Conversion System, Non-commercial, and Resorts.

- C. The site is zoned Rural Resort and the proposed use is a resort.
- D. According to Sheet L2.0, the proposed development area is 18.1 acres whereas the overall acreage is 99.99 acres. This means that 81.89 acres of the site will not be developed.
- E. The only exterior lighting proposed are bollard lighting (see Sheet L6.0) exterior wall sconces [ZA CORRECTED SPELLING] and exterior down lights (see Sheet A1.1). The conceptual lighting included on the proposed appears to be consistent with Section 6.5 of the Zoning Ordinance.
- F.
- G.

OPTION 2 (Presented by Teichner)

- A. According to Section 5.4 (“Land Use and Zoning District Table”) of the Zoning Ordinance, “permitted principal uses” in the RR zoning district (in which the proposed resort is located) include the following: accessory buildings and uses customarily incidental to permitted uses; wind energy conversion system, non-commercial; AFC Family Home; Family Child Care Home; Foster Family Care; Foster Family Group Home; Residential-Single Family; and Short Term Rentals (pp 5-2 to 5-5).
- B. The Planning Commission finds that the proposed resort – with 147,500 square feet of buildings and structures, and a variety of planned amenities and events – has a much greater environmental footprint than these much smaller permitted principal uses in the RR district, and may very well have a greater adverse effect on the natural environment, resulting in impairments to air, surface, ground water, vegetation, and other natural resources. But for all the reasons listed in paragraph 9.3.A.6(E) below, the Planning Commission does not have enough information – without the results of on-site environmental testing – to assure itself that this Standard is met. (See more below)
- C. The Planning Commission finds that this Standard appears to be the Township’s effort to incorporate some of the environmental protections of the Michigan Environmental Protection Act (“MEPA”), MCL 324.1701 et seq. into the Zoning Ordinance itself, affirming the Township’s concern for the natural environment, as expressed in the Master Plan (and discussed above in more detail in the Planning Commission’s findings for Standard 8.5.B.13).
 - a. The Planning Commission notes that MEPA considers whether an action has the potential to pollute, impair, or destroy the air, water, or other resources, or the public trust in those resources, and, if so, whether there are any feasible and prudent alternatives to that action. (See Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023).
- D. The Planning Commission finds that the application fails to provide answers to critical questions regarding the adverse effect of such a large resort on the natural environment, as demanded by this Standard. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that natural resources in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see*

Rosemary Hagan’s written public comment dated February 3, 2023 on this topic)) will not be adversely impacted by the proposed resort. These critical questions are already addressed in the Planning Commission’s findings in paragraphs 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution), and 9.3.A.5(F) (adverse environmental impact), which are all incorporated herein.

The Commission finds that this standard has/ has not been met.

7. The proposed special land use will not create excessive additional requirements or costs for public facilities, utilities and services.

The Commission makes the following finding(s) concerning this standard:

OPTION 1

A. On their application, the applicant indicates: “The project will provide all of its own utilities (water and sewer) and the demand for energy will be supplemented through the design and construction as well as sustainable resources. The low impact nature of the project and its programming will not increase the demand for public services.”

B.

C.

OPTION 2 (Presented by Teichner)

A. The Planning Commission notes that this Standard is substantially similar to Standards 8.5.B.3, and 9.3.A.4, and 9.3.A.9.

a. Regarding the road, the Planning Commission herein incorporates its findings in paragraphs 8.5.B.3(C) and 9.3.A.5(C) above. The Planning Commission finds that the added construction and commercial traffic will cause damage to the private road – which was not built to withstand heavy commercial traffic, and given its width and shallow depth simply cannot accommodate such traffic, particularly given the local weather conditions – and will require excessive maintenance and repair costs in the future. (See Gary Bergstrom’s written public comment dated February 3, 2023; Lynch Law’s written submission dated January 18, 2023 on behalf of the East Timberwoods Drive Association; Doug Cole’s written public comment dated February 3, 2023; Tim Wolf’s written public comments dated December 20, 2022 and February 3, 2023, as well as his oral public comments at the Planning Commission’s March 22, 2022 special hearing; Jeff Dorsch’s written public comment dated February 3, 2023; and Charles F. Green’s written public comment dated February 2, 2023).

b. Regarding the public water supply, the Planning Commission herein incorporates its findings in paragraph 8.5.B.3(E) above. The Planning Commission finds that the resort’s significant water needs have the potential to deplete the available local groundwater supply, which provides drinking water to the residential community via a community well. If the aquifer is depleted, the existing community well would have to be placed deeper underground, a cost for which local residents will likely have to pay. (See Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023). The applicant has failed to perform on-site testing, such as a 24 to 72 hour pumping test, which would predict water level changes from the proposed development. (See Pangea Environmental LLC’s letter dated February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting; and Phillip Hartman’s written public comment dated February 2, 2023 (again, a resident and hydrogeologist, emphasizing the need for a pumping test)). Additionally, the Planning Commission acknowledges that the community well system already requires

critical repairs and upgrades at this time (*see* Exhibits A, B, and C to Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023), and declines to place additional stressors on this vital community well without more information (such as the results of a pumping test) from the applicant.

The Commission finds that this standard has/ has not been met.

8. The proposed special land use has met or will meet all requirements of other Township, County, State, and Federal ordinance and code requirements.

The Commission makes the following finding(s) concerning this standard:

OPTION 1:

- A. The Commission recognizes that this Standard is nearly the same as Standard 8.5.B.2 which states "All required permits and approvals from outside agencies have been secured, or have been made a condition of site plan approval." And Standard 8.5.B.4 which states: "All applicable standards of agencies including, but not limited, to the Township Fire Department, Michigan Department of Transportation, Leelanau County Road Commission, Leelanau County Drain Commission, Health Department, and the Michigan Department of Environmental Quality (MDEQ) have been met."

As these standards are essentially the same and findings for these standards would be the same, the Commission makes the below findings for the above referenced standards.

- B. On their application, the applicant indicates: [Section 8.5.B.2 and Section 8.5.B.4]: "All local and state agency reviews will be provided and shall be a condition of approval." [Section 9.3.B.8]: "All applicable ordinances and code requirements will be met and shall be a condition of approval."
- C. The Commission has an email dated 11/17/2022 from the Soil Erosion Department to the applicant which indicates "The proposed work appears to follow existing grades wherever possible and the property is large enough to accommodate any stormwater generated from the structures and drives/parking areas we discussed. We see no major issues with the plans as discussed and look forward to reviewing the final plan, making any suggestions for necessary changes then."
- D. The Commission received a Letter from Keith Tampa, Fire Chief, dated 12/20/2022 regarding the project. Said letter includes 10 'Fire Department Access / Water Supply' Recommendations and 3 'Facilities' Recommendations. The Commission received a second letter from Tampa dated January 27, 2023 which revises one recommendation which is hereby incorporated into the Commission's Findings.
- E. The Commission recognizes that multiple agencies will not review or issue permits without the project going before the Township and receiving approval. Therefore, in order to meet this standard, the Commission will make the following condition: The property owner is responsible for obtaining all other applicable permits. This shall be done prior to obtaining a Land Use Permit.
- F.
- G.

OPTION 2 (Presented by Teichner)

- A. The Planning Commission notes that this Standard is substantially similar to Standard 8.5.B.4.

- B. The Planning Commission finds that the standards of the *Township Fire Department* have not been met. The Planning Commission herein incorporates all findings made in Section 8.5.B.3(D) above regarding the inadequacy of the proposed resort's fire protection measures. The Planning Commission does not believe that the proposed resort meets the requirements of the *International Fire Code*.
- C. [LISTED AS F IN TEICHNER DOCUMENT, BUT THERE IS NO 'D' OR 'E'] The Planning Commission finds that the standards of the *Michigan Environmental Protection Act ("MEPA")*, MCL 324.1701 et seq., have not been met. MEPA considers whether an action has the potential to pollute, impair, or destroy the air, water, or other resources, or the public trust in those resources, and, if so, whether there are any feasible and prudent alternatives to that action. (See Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023). The Planning Commission finds that the application fails to provide answers to critical questions regarding the effect of the proposed resort on the natural environment, as demanded by MEPA. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that natural resources in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (see Rosemary Hagan's written public comment dated February 3, 2023 on this topic)) will not be adversely impacted by the proposed resort. These critical questions are already addressed in the Planning Commission's findings in paragraphs 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution), 9.3.A.5(F) (adverse environmental impact), and 9.3.A.6(C) (adverse effect on natural environment), which are all incorporated herein.

The Commission finds that this standard has / has not been met.

9. The following specific requirements shall be met to the extent applicable to the proposed special land use:
- a. Ingress and egress for the special land use shall be controlled to ensure maximum vehicular and pedestrian safety, convenience, and minimum traffic impact on adjacent roads and highways, drives, and nearby uses including, but not limited to:
 - i. Minimization of the number of ingress and egress points through elimination, minimization, and consolidation of drives and curb cuts;
 - ii. Proximity and relation of driveway to intersections;
 - iii. Minimization of pedestrian and vehicular traffic conflicts;
 - iv. Adequacy of sight distances between road and driveway intersections as specified in Section 6.2, Access Management.
 - v. Location and accessibility of off-street parking, loading, and unloading for automotive vehicles, including buses and trucks;
 - vi. Location and potential use of ingress and egress drives to access special land use parcels for the purpose of possibly reducing the number of access points necessary to serve the parcels.
 - vii. Adequate maneuverability and circulation for emergency vehicles.

The Commission makes the following finding(s) concerning this standard:

OPTION 1

A. On their application, the applicant indicates: “The intent of this wellness resort is to bring guests to the campus, to use the facilities, to stay overnight and/or hike the trails and attend a wellness class or two. Frequent ingress and egress are limited due to the length of time spent by visitors. In addition, to reduce the traffic coming to and from the property, electrically powered courtesy vehicles will be provided to all guests of Wellevity. On-demand shuttles running to Traverse City, the airport and surrounding communities are available and will be encouraged, greatly reducing ingress and egress to the property. Access is centrally located to allow for overnight and day guests to a streamlined ingress and egress to the site. Internal parking lots and spaces are located contiguous to the structures they service, with overflow parking available if needed. Bikes and electrical carts will also be provided on the property to reduce the amount of vehicular traffic.”

B. Fishbeck’s 2/10/2023 Memo includes additional responses to this standard including:

“The Wellevity development will be accessed at a single connection to Cottonwood Drive. This is not a commercial establishment seeking multiple driveways... The Wellevity development will be accessed via an extension of Cottonwood Drive. Driveway spacing to intersections does not apply in this instance.... The applicant recognizes that there is existing pedestrian use of the local road network, and that offstreet path/sidewalk does not exist adjacent to these local roads. The applicant further recognizes that this project will add vehicular traffic to the local road network; however, the development is not expected to significantly increase the occurrence of vehicle/vehicle or pedestrian/vehicle conflicts. This conclusion is drawn based on the following information, which is largely presented in the Trip Generation Study by Fishbeck:

1. Even under conservative assumptions, the volume of traffic expected to be generated by this project does not exceed accepted traffic engineering thresholds that would require further evaluation. This forecast is based on data and guidelines published by the Institute of Transportation Engineers and MDOT, not the applicant.

2. During the a.m. and p.m. peak hours of adjacent street traffic, this expected traffic increase on the local road network is less than one vehicle in each direction per minute over the course of 60 minutes. This would not substantially alter the adequacy of gaps in the traffic stream for vehicles and pedestrians to safely maneuver within the local road network.

3. When the proposed development peaks (circa 10AM, 4PM), traffic volumes on the local road network are typically lower. The combination of peak development traffic during off-peak roadway time results in lower impacts and less likelihood of conflict.

4. There have been zero reported pedestrian-vehicle crashes in the last 10 years in this area. The nearest bicycle-vehicle crashes (2 in 10 years) occurred at the TART trail crossing of Lake Leelanau Drive (both cyclists failed to stop and entered roadway at fault). This demonstrates that vehicles and pedestrians are safely able to see, perceive, and react to potential conflict...

... The development will be accessed via an extension of Cottonwood Drive. Access points within the site will be engineered with proper site distance during detailed design... All parking / loading will occur on-site. Given the length of roadway within the site providing internal access to the proposed uses, parking/loading activities will not overflow beyond the property... The development will be accessed at a single connection to Cottonwood Drive. This is not a commercial establishment seeking multiple driveways... Turning movement paths for emergency vehicles will be engineered during detailed design in consultation with first responder departments.”

C. The Commission received a Letter from Keith Tampa, Fire Chief, dated 12/20/2022 regarding the project. Said letter includes 10 ‘Fire Department Access / Water Supply’ Recommendations and 3 ‘Facilities’ Recommendations. The Commission received a second letter from Tampa dated January 27, 2023 which revises one recommendation which is hereby incorporated into the Commission’s Findings.

D.

E.

The Commission finds that this standard has/ has not been met.

OPTION 2 (Presented by Teichner)

The Commission makes the following findings concerning Standard 9.3.A.9(a):

- A. [The Planning Commission notes that this Standard is substantially similar to portions of Standards 8.5.B.3 (highways and streets), and 9.3.A.4, and 9.3.A.7].
- B. The Planning Commission finds that the proposed project has not addressed minimizing pedestrian and vehicle traffic conflicts on adjacent roads and highways, drives, and nearby uses. There is only one access road to the proposed site. This singular entryway proposed to a 100-acre site is located at the base of a hill and can only be accessed after traversing over 1 mile of private roads through a residential area having no sidewalks to ensure pedestrian safety. This situation leads to serious safety risks and significant traffic impacts on the local community. These critical issues are already addressed in the Planning Commission's findings in paragraph 8.5.B.3(C) above, where are incorporated herein.
- C. Additionally, with regard to adequate maneuverability and circulation for emergency vehicles, the Planning Commission finds that the proposed single emergency access road is inadequate for all the reasons outlined in paragraph 8.5.B.3(D) above, which is incorporated herein.

The Commission makes the following findings concerning Standard 9.3.A.9(b):

- A. The Planning Commission finds that screening and / or buffering for the proposed for the resort will be inadequate to address the traffic impact, and noise and light pollution emanating from the project. The site sits at the top of Timberlee hill, at an "extreme elevation" (Master Plan, p. 42). The Planning Commission herein incorporates its findings from paragraphs 8.5.B.3(C) (traffic), and 9.3.A.5(D) (noise pollution), and 9.3.A.5(E) (light pollution) above.

OPTION 3 (Previously presented to Commission as OPTION 2)

- A. Although this standard seeks to reduce egress and ingress points to the site, there is only one access to the site.
- B. This singular entryway proposed to the 100-acre site (18.1 acre development) is located at the base of a hill and can only be accessed after traversing over 1 mile of private roads and through property zoned R-1 and R-3 [ADDED BY ZA] and Rural Resort
- C. Multiple members of the public have pointed out that Section D104.2 of the International Fire Code requires that buildings or facilities having a gross building area of more than 62,000 sq ft shall have be provided with two separate and approved fire apparatus access roads and an exception of projects having a gross building area of up to 124,000 sq ft with a single fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems. According to Sheet A1.0, the total building area is 147,500 sq ft. However, the caption for Appendix D specifically states "The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance." The Township has not adopted said appendix and therefore the Commission is unable to base its decision on this appendix within the International Fire Code.
- D. The proposed project has not addressed minimizing pedestrian and vehicular traffic conflicts on adjacent roads and highways, drives, and nearby uses.
- E.
- F.

PROPOSED MOTIONS

Findings of Fact

Motion by _____, seconded by _____, to adopt the findings of fact as a specified in the Decision and Order, that is attached hereto and incorporated herein by reference.

Decision

Option 1

Motion by _____, seconded by _____, that based on the findings of fact previously adopted the Applicant's special use permit and site plan for a resort on the property described in the Decision and Order Is hereby APPROVED, subject to the following express conditions:

1. [list conditions]
- 2.

Option 2

Motion by _____, seconded by _____, that based on the findings of fact previously adopted the Applicant's special use permit and site plan for a resort on the property described in the Decision and Order Is hereby DENIED.

OR

Should the Planning Commission require additional information in order to render a decision:

Motion to adjourn deliberations on this SPR/SUP until [insert date, time, and location] in order to receive the following:
[insert requested items]

PROPOSED CONDITIONS

1. The 13 Recommendations proposed by the Fire Chief in his 12/20/2022 letter will be made a condition of approval. The Commission received a second letter from Tampa dated January 27, 2023 which revises one recommendation which is hereby incorporated into the Commission's Findings and conditions.
2. The applicant's representatives have stated, during the public hearing on 12/20/2022, that the trails will be open to the public, for no fee. In order to ensure this will remain the case, the Commission will make it a condition of approval
3. Prior to applying for a land use permit, the parcels shall be combined.
4. The only exterior lighting proposed are bollard lighting (see Sheet L6.0) exterior wall sconces and conceptual exterior down lights (see Sheet A1.1). The conceptual lighting included on the proposed appears to be consistent with Section 6.5 of the Zoning Ordinance. Regardless, in order to ensure this standard is met, the Commission shall make the following condition: The project shall conform with Section 6.5 (Lighting) of the Zoning Ordinance including but not limited to the following:
All light sources and light lenses shall be shielded and down-facing. Lighting from exposed, bare light bulbs or from bare luminous tubes shall not be permitted.
Lighting shall not be directed off one's property.
All non-residential outdoor lighting fixtures, including display lighting, shall be turned off after close-of-business unless needed for safety or security, in which case the lighting shall be reduced to the minimum level necessary or an infrared sensor security fixture is used.

Any installed parking lot lighting shall comply with the following requirements: 1. All pole-mounted lighting of parking or display areas shall be fully shielded, and in no case shall the light be permitted to extend above the horizontal plane of ninety (90) degrees. 2. Pole mounting height for any outdoor lighting shall not exceed twenty-five (25) feet. Lighting for a parking area shall be installed so that the light is directed into the parking area only. Parking lot lights shall be extinguished after working hours or shall be placed on an infrared sensor.

5. In order for the Private Road Ordinance to not be applicable, the resort shall be owned and operated by one entity.
6. Prior to issuance of a Land Use Permit, an existing condition report of the private roads that will be utilized for access to the site (E Timberwoods Dr, S Slope Dr, S Cottonwood Dr) shall be provided to the Township. After construction is completed, an updated road condition report shall be submitted. Although the Township cannot interfere with private restrictions, including the existing road maintenance agreement which includes information regarding the assessment of costs, the Township can review the impacts of the roads and ensure said roads are accessible by emergency vehicles.
7. During construction and operation, the existing private roads shall remain accessible by emergency vehicles.
8. The property owner is responsible for obtaining all other applicable permits. This shall be done prior to obtaining a Land Use Permit.
9. In order to ensure that the applicant will align their outdoor music hours with other venues within Elmwood Township:
 - a. All activities relating to the events as allowed within the definition of a resort shall be moved inside a building by 9 PM, Sunday through Thursday and by 10 PM on Friday, Saturday, and federal holidays. This includes any amplified noise.
 - b. A Maximum of 52 events in a calendar year is permitted, with a maximum of 2 events in a week unless there is a federal holiday in the week than up to 3 events may be held in that week. For this section of the Ordinance, a week shall be a calendar week, Sunday to Saturday. This limitation does not seek to limit classes or activities that do not typically generate significant noise (i.e. meditation, yoga, outdoor contemplation spaces, bird watching, foraging, etc.) as identified within the narrative. This limitation also would not apply to educational conferences.
10. The Site Plans call for multiple outdoor pavilions throughout the site. Although accessory structures are permitted, the Commission recognizes that the require parking spaces table indicates that the approximate square footage for the proposed event space (Described as 'community recreation') is 3,425sq ft. This square footage includes the area within the lodge for events as well as the multi-use lawn area directly adjacent to the 'lodge.' With that understanding, the Commission is not granting approval for the pavilions surrounding the spa area nor the areas designated on the site plan as 'optional to be used for large special events.' However, these structures can be used for classes or activities that do not typically generate significant noise (i.e. meditation, yoga, outdoor contemplation spaces, bird watching, foraging, etc.) as identified within the narrative.

11. In connection with any outdoor event occurring on the property, there shall not be any loud noise or sound, including but not limited to, playing or using a radio, phonograph, compact disc player, tape player, television, musical instrument, sound amplifier, or other electronic or mechanical sound-producing device in such a manner or with such volume that it unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivities on any adjacent property.
12. The landscape buffer between the parking lot and the abutting parcel 010-014-015-00 as well as the landscape buffer between the 'overflow' parking lot and 004-113-014-50, 004-113-014-60, 004-113-014-65, and 7347 E Timberwoods Dr, shall be maintained in accordance with Section 6.4.3 of the Ordinance, including, but not limited to maintaining a minimum opacity of at least 80%. Further, the overflow parking lot shall meet the requirements for overflow parking as stated within the Ordinance; "For uses that require additional parking for special events on an infrequent basis, an auxiliary overflow parking area may be designated on the site plan. The overflow parking area shall be landscaped or otherwise improved with a mowed, graded, porous, and/or permeable surface." This overflow parking area is not approved for other uses.
13. Use of any cleaning products – or other liquids, materials, or substances – containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) chemicals is prohibited.
14. The applicant's representatives have stated, during the public hearing on 12/20/2022, that the trails will be open to the public, for no fee. In order to ensure this will remain the case, the Commission will make it a condition of approval.
15. A performance guarantee shall be required in conformance with Section 11.8 of the Zoning Ordinance. This performance guarantee shall be reviewed by the Township Attorney and shall be required to be executed prior to issuance of a Land Use Permit.
16. The Planning Commission is not approving any signage under this Site Plan Review. Any proposed signage will need to comply with the Zoning Ordinance and the property owner shall obtain a sign permit from the Zoning Administrator.
17. Landscaping shall be maintained in a healthy, growing condition. Diseased or dead materials shall be replaced within the current or next planting season.
18. Once the project has been completed, the property owner or their representative shall submit As-Built plans in accordance with Section 8.6 of the Zoning Ordinance.
19. The project shall comply with all requirements of the Zoning Ordinance in effect at the time of approval (XXXXX, XX, 2023).
20. [ADDED BASED ON PC DELIBERATIONS ON 4/18/23] Prior to issuance of a Land Use Permit, plans containing a Seal from the registered professional(s) shall be provided.
- 21.
- 22.
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DRAFT



May 12, 2023

VIA EMAIL & HAND DELIVERY

Elmwood Township
c/o: Ms. Sara Clarren
Planning Commission
10090 E. Lincoln Road
Traverse City, MI 49684

Re: *Wellevity Resort*
SU/SPR 2022-07 – Applicant Attorney’s Drafted Findings of Fact

Dear Sara,

Below please find the Applicant's supplemental findings for the requested items in Sections 8.5(B) (2,3,4,6) and 13(A-F). As a cursory matter, the Applicant recognizes the Township’s zoning administrator’s substantial effort to develop the draft findings. In an effort to be efficient, the Applicant wishes to incorporate the findings in favor of the project as presented by the zoning administrator, as supplemented below. Further, it should be noted that the PC is obliged to review the record and incorporate its own factual findings. The entire properly submitted record should form the decision, and the Applicant’s response herein should not be deemed as the exclusive universe of findings on which the PC should make their decision.

8.5(B)(2)- Consistent with the Township’s historical practices and that of nearly all municipalities, the applicant has acquired all pertinent approvals, and all remaining third-party approvals shall be conditions of the issuance of the land use permit. It should be noted that the county health department and county road commission are not applicable to this site. After approval, the applicant will submit to the EGLE for water and sewer.

8.5 (B)(3)- The Applicant adopts the findings as drafted by the zoning administrator in Section 9.3.A.4 Option 1. With regard to the statements in Option 2, the following findings must be clarified and the Applicant’s responses to the applicable findings are below:

Option 2:

B. “The Commission recognized that it cannot require the applicant to upgrade the road” The fact is that despite neighbors raising questions about the sufficiency of the road, they have provided no evidence in the record to support their statements. Further, as stated in the Township attorney Memo, dated January 26, 2023, by Bryan Graham, “None of the standards contained in Section 9.3 of the zoning ordinance requires compliance with private deed restrictions.” Therefore, it does not disqualify Special Use approval.

C. The use of S. Slope Drive is impossible because the Applicant's land is not granted with the right to utilize it. Additionally, S. Slope Drive is barely in two-track condition and would require substantial improvements to which the Applicant has no authority to undertake. Furthermore, access through S. Slope Drive would do nothing to negate any alleged impacts to any neighbors that would be located prior to the intersection of S. Slope Drive. Not only is it not applicable because it is not possible, it is not beneficial because it does little to negate any alleged impacts. It would also be impractical and nearly impossible since the slopes to utilize an entrance to Slope Road would be far in excess of what is required and would likely impact wetlands. The use of S. Timberlee Drive would require the use of S. Slope Drive and as stated above would not be an option whatsoever. Furthermore, even if the allegations of impacts were true, it would only serve to shift the impacts from Timberwood to S. Timberlee Drive. It should also be noted that the title documentation provided shows that the bank who owned the Applicant's property was granted a 75 foot wide easement to service its commercial property and that is the access from Mann Road, which the applicant seeks to utilize. It cannot be understated that this is the only access provided to this property.

D. As defined by ITE, "A resort hotel (Land Use 330) is similar to a hotel (Land Use 310) in that it provides sleeping accommodations, full-service restaurants, cocktail lounges, retail shops, and guest services. The primary difference is that a resort hotel caters to the tourist and vacation industry, often providing a wide variety of recreational facilities/programs (e.g., golf courses, tennis courts, beach access, or other amenities) rather than convention and meeting business." The proposed multi-use space will serve as an amenity for the resort and its patrons. Consistent with this ITE definition of resort hotel and the associated data, trip generation potential for the multi-use space is inherently represented by the number of rooms provided at the resort. Furthermore, the person-capacity of this multi-purpose room will cap the potential size of any special event. The simultaneous use of outdoor space may occur; however, all patrons must be able to be accommodated indoors within the multi-use space, thereby governing the size of any potential gathering.

E. The full number of rooms proposed at the resort were used to develop the study forecast. The ITE dataset referenced in the forecast reflects an average occupancy rate of 88%, which reflects typical peak season occupancy on a given day for the proposed resort. Additional 12% occupancy would not change the findings of the traffic study. *[The ITE trip generation language that was referenced regarding room occupancy is speaking to the collection of trip generation data for existing uses to be useful in forecasting traffic for unbuilt uses. As such, this language is not applicable to the application as referenced.]*

F. The distinction is that there is a 60% onsite guest use and 40% offsite guest use i.e. non-over-night guests. 40% of the overall spa area (10,000 sf) would be attributed to the offsite guests. The remaining 60% area is attributed to overnight guests, calculated in the Land Use category of Spa and Lodge Guestrooms. This is consistent with industry standards when applying the ITE land use codes.

8.5(B)(4) – The Applicant adopts the findings as drafted by the zoning administrator in Section 9.3.A.8.

8.5(B)(6)– The Applicant adopts the findings as drafted by the zoning administrator. The Applicant affirms that it has ensured that all buildings and structures shall be designed, constructed, operated, and maintained so as to be harmonious, compatible, and appropriate in appearance with the existing or intended character of the general vicinity. Notably, the Applicant conducted its due diligence to find a property properly zoned for a rural resort. These parcels are properly zoned for a rural resort. The zoning map, when it contemplates transitional zoned districts it is meant to be understood that in planning the location of transition of zoning districts (those areas where differing zoning areas intersect) are presumably harmonious with each other because they were selected to be consistent with the master plan to be located where they are. In this case, rural resort zoning adjacent to residential was clearly contemplated in the master plan and necessarily incorporated into the zoning ordinance. Put simply, the planners sought fit to allow rural resort activities on this property, knowing it was adjacent to residential property. It should be noted that of the 99.9 acres, the proposed developed area encompasses in total 18.1 acres. Furthermore, the property previously operated on 43.3 acres, which is identified in the Site Plan as the disturbed lands. Of the 18.8 acres, only 2.4 acres are proposed to be on previously undisturbed land. Of the previously disturbed lands being 43.3 acres, 26.7 acres will be returned to undisturbed land. Therefore, the Applicant clearly meets the intended criteria of the general vicinity.

(13)(A-F)– The Applicant adopts the findings as the zoning administrator’s findings. However, the Applicant offers a quick synopsis of legislative drafting and statutory interpretation regarding more specific provisions are necessary. Commonly a more specific provision takes precedence over general provisions. This is true in regard to the master plan. Significantly, the master plan provides specific goals and objective criteria for the subject property, specifically to be utilized as a resort area. The proposal was nearly word for word developed around this concept. And undoubtedly and without question, it meets the master plan intended for the property. Inherently, the zoning map reflects this planning goal, and its location, as mentioned before, is harmonious in its very nature, as indicated in the zoning map. The more general goals and objectives of the ordinance, where contradictory or inapplicable with the Timberlee provisions of the master plan, are simply not applicable by its very nature. If the project meets the Timberlee-specific master plan and objectives, the analysis is complete. It is obvious and inherent that it meets the master plan if it meets that specific criteria. As referenced in the master plan, page 42, Timberlee.

Consequently, the record could not be more clear that the application is sufficient for site plan approval and the record supports same. Furthermore, the opposite is not true as the record is nearly devoid of any factual evidence to support a finding that the conditions have not been met.

Sincerely,



Marc S. McKellar II

MSM/bls



May 12, 2023

VIA EMAIL & HAND DELIVERY

Elmwood Township
c/o: Ms. Sara Clarren
Planning Commission
10090 E. Lincoln Road
Traverse City, MI 49684

Re: *Wellecity Resort*
SU/SPR 2022-07 – Applicant Attorney’s Drafted Findings of Fact

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B. “The Commission recognized that it cannot require the applicant to upgrade the road” The fact is that despite neighbors raising questions about the sufficiency of the road, they have provided no evidence in the record to support their statements. Further, as stated in the Township attorney Memo, dated January 26, 2023, by Bryan Graham, “None of the standards contained in Section 9.3 of the zoning ordinance requires compliance with private deed restrictions.” Therefore, it does not disqualify Special Use approval.

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Sincerely,



Marc S. McKellar II

MSM/bls



UPDATED PROPOSED FINDINGS OF FACT

SECTION 8.5 REVIEW AND APPROVAL

B. STANDARDS FOR SITE PLAN APPROVAL. THE PLANNING COMMISSION SHALL MAKE A FINDING THAT THE FOLLOWING STANDARDS ARE MET PRIOR TO APPROVING A SITE PLAN:

....

2. All required permits and approvals from outside agencies have been secured, or have been made a condition of site plan approval.

Friends of Timberlee is not providing any alternative proposed findings of fact for this Standard.

3. Adequate essential facilities and services including highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools are available, or the provision of such facilities and services has been assured.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met. [The Planning Commission notes that this Standard is substantially similar to Standards 9.3.A.4, and 9.3.A.7, and 9.3.A.9.]
- B. The Planning Commission finds that the proposed development will not be adequately served by available essential facilities and services for highways, streets, fire protection, drainage structures, and water and sewage facilities (and that the provision of such facilities and services has not been assured), for the following reasons:
- C. First, the Planning Commission finds that applicant's plans fail to show availability of adequate facilities and services for highways and streets:
 - a. The application proposes using a private road (East Timberwoods Drive) as the only access road to the resort. East Timberwoods Drive is the longest private road in the Timberlee area. It is designed for residential use only (along with any other necessary non-commercial vehicles, including ambulances and fire trucks). The road has 14 winding curves, many going up, down and around substantial hills,

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Submitted on behalf of the Friends of Timberlee
RE: Wellevity LLC's Special Use Permit Application
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often in the middle of a curve. In some spots it has 20 feet of paved, limited depth surface, and it narrows to 18 feet in other spots, with little to no shoulders. The edge of the road is often immediately adjacent to steep ditches or large trees. Area residents report that they are often challenged by winter weather (even in four-wheel drive vehicles) to get up and down the hills, valleys, and numerous curves of East Timberwoods Drive. This private road was never used as, nor was it intended to be, a main entry road for the former Timberlee Mountain ski area. Rather, the ski area was historically accessed by Timberlee Drive (a county road). (This background information is drawn from the following documents in the record: Gary Bergstrom's written public comment dated February 3, 2023; Lynch Law's written submission dated January 18, 2023 on behalf of the East Timberwoods Drive Association; Doug Cole's written public comment dated February 3, 2023; Tim Wolf's written public comments dated December 20, 2022 and February 3, 2023, as well as his oral public comments at the Planning Commission's March 22, 2022 special hearing; Jeff Dorsch's written public comment dated February 3, 2023; and Charles F. Green's written public comment dated February 2, 2023).

- b. Numerous residents who live on this private road have submitted written and oral public comments indicating to the Planning Commission that the private road is full of tight turns, does not have an appropriate width, has little to no gravel shoulders, and is difficult to traverse during wet and snowy conditions. And members of the local community have also asserted that they are older (some in their 50s, 60s, and beyond, many now retired) or families with small children who use the private road everyday to walk their dogs, ride bikes, hike, visit with their neighbors, and enjoy the scenic surroundings. These residents traverse on the narrow, winding, and hilly road, where there is little to no shoulder. (For example, *see* Jessica Bogart's written public comment dated February 3, 2023 ("I drive, and walk (with my dog), this road daily and have for over 5 years. I do drive this road daily and even so, I have been stuck in the ditch and needed to be towed out by helpful neighbor. I do not allow any visitors to my home in the winter without AWD or 4WD [also] take into account downed trees I fear for the safety of myself, my family and my dog with the increased traffic of those unfamiliar with the tight, winding roads."); Max and Meghan Arbury's written public comment dated February 3, 2023 ("Not having sidewalks means there are children and adults out walking and biking in the road on a regular basis."); Megan Gilger's written public comment dated February 1, 2023 (describing her young children who desire to ride bikes, skateboard and more on the road); Rob and Dorothy Serrine (and children)'s written public comment dated February 2, 2023; Kelsey Zaryczny's written public comment dated February 2, 2023; John Thiry's written public comment dated February 3, 2023 (President of Sun Perch Condominium Association); Lenny Allgaier's written

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public comment dated February 3, 2023 (local business owner of Peninsula Pavers and resident, attaching photos to demonstrate the small size of the private road); Dennis and Elizabeth Dorsch's written public comment dated February 2, 2023 ("Out of area drivers do not follow the speed limits and we have put up speed signs, etc. for the safety of [] activities and especially for the children walking to school on the roads."); and the following residents who made related oral public comments during the Planning Commission's March 22, 2023 special meeting and December 20, 2022 special meeting: John Thiry (speaking for all 31 condominiums at Sun Perch in opposition to the project based on road concerns), Jeff Dorsch, Beth Kott, Michelle Kuffer, Carolyn Swift (she is one of several people who walks the route daily and has done so for the last 11 years, many of them walk there, and with their animals, in addition to children), Kevin Gillespie, Lynn Francomb (she's a walker on the road, and says if you have to get off the road now, you get in a ditch, in the grass, in the sticks), Duane Straubel, Abby Robinson (there are no shoulders, no sidewalks, no safe alternatives for walkers, especially unsafe given likely alcohol consumption at the resort), Nick Thiesen (business owner of Loma Farm and Farm Club, stands to gain financially from the project but is opposed to it for many reasons including the traffic. He explains Farm Club has far more traffic than he ever anticipated, and he believes Wellevity will too – but Wellevity will be on a private road, not a public road like Farm Club), Cindy Armbruster, Krista Allagier, Ansel Bowden, Tim Wolf, Chris Thiebaut, and Doug Cole). One resident described two wedding events that were hosted on the top of Timberlee hill in the past few years (in addition to numerous holiday parties on Memorial Day, the 4th of July, and Labor Day over many years). His letter explained that "guests pay no heed to speed on our road and the traffic noise day and night and . . . road glare is not something that any residents should have to deal with when residing in this rural neighborhood zoned residential. Mix in alcohol from weddings, events and bar patrons and the safety issues increase substantially." (See Doug Cole's written public comment dated February 3, 2023).

- c. For all these reasons, the Planning Commission finds that sufficient concern has been raised regarding the inadequacy of the private road as the sole access point for the proposed development, given the grave safety risks that such a plan poses to pedestrians on the road.
- d. The Planning Commission also finds that the private road is not adequate as the sole means of access to the proposed resort because the road itself cannot handle such heavy traffic, from both construction and regular operations. The application estimates that it will take two years to construct the proposed resort (p. 14), with (as common sense dictates) heavy commercial and construction vehicles,

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equipment, and delivery of building and other materials using the private road during that time. The private road is insufficient for such purposes. (See Dan O'Brien's written public comment dated February 2, 2023 ("Being in the construction profession for about 24 years and specifically as a commercial construction manager for +16 years, I can attest to the damage and strain a long term construction project has on the surrounding neighborhoods. The roads leading to the Wellevity development at the top of Timberlee cannot withstand 2+ years of construction. The excessive vehicular traffic required to enter the project includes trade vehicles, dump trucks, equipment delivery, material delivery, concrete trucks, cranes, dumpster roll offs, etc.")). Again, applicant's supplemental submission from Sherwood Design Engineers dated February 10, 2023 acknowledges that roads are subject to wear due to construction (as well as weather (freeze/thaw) and drain conditions).

- e. The applicant provided a traffic study (see Fishbeck Memo dated November 8, 2022). But the Planning Commission finds that this trip generation study cannot be relied upon for the following reasons: (1) the study asserts that "the proposed land uses will generate less than 50 directional trips during the am and pm peak hours of the adjacent road network" (p. 3), but the Planning Commission has a difficult time imagining how a proposed 100 acre resort containing 147,500 square feet of buildings and amenities (see Sheet A1.0), and approximately 300 parking spaces (see Required Parking Spaces chart, submitted by applicant November 8, 2022), would even manage to stay in business with the minimal increase in traffic suggested by the traffic study, and moreover this number does not appear to take into account trips from the construction phase, which will likely involve hundreds of additional trips per day from trade workers, deliveries, inspectors, and meetings (see Dan O'Brien's written public comment dated February 2, 2023 (resident and construction professional with about 25 years of experience highlighting this missing fact)), and thus the Planning Commission rejects the study's findings; (2) the study's additional assertion that "the wellness resort would not have any significant impact on traffic operations on the area road networks and intersections" (p.3) is so absurd (contrary to the size of the proposed development, anticipated construction efforts, and the many proposed amenities at the resort) as to undercut the study's credibility on the whole; (3) the study does not address the anticipated occupancy of the resort, even though "Land Use: 330 Code" within the study states (in bold and italics) that "[f]or all lodging uses, it is important to collect data on occupied rooms as well as total rooms in order to accurately predict trip generation characteristics for the site"; (4) the spa is not incorporated within some of the resort hotel assumptions made in the study, giving an inaccurate picture of associated traffic; and lastly, (5) the study's conclusion that "no improvements to the study

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area road network nor intersections are expected to be necessary” (p. 3) is so incredible as to undermine the overall study. Tellingly, the applicant distances itself from this unrealistic conclusion in its supplemental submission from Sherwood Design Engineers dated February 10, 2023 (“Road maintenance will increase during periods of higher frequency traffic carrying heavier loads typically associated with construction equipment and deliveries.”).

- f. The applicant also provided a supplemental Fishbeck Memo dated February 10, 2023 which provides additional detail regarding the proposed development’s use of the private road as the sole means of access. The Planning Commission cannot rely upon this supplemental memo either. The memo states in part: “The applicant recognizes that there is existing pedestrian use of the local road network, and that off-street path / sidewalk does not exist adjacent to these local roads. The applicant further recognizes that this project will add vehicular traffic to the local road network; however, the development is not expected to significantly increase the occurrence of vehicle / vehicle or pedestrian / vehicle conflicts.” (p. 1) The Planning Commission finds that these conclusions defy logic, and instead heeds the warnings of the public, which again has raised sufficient concern regarding the dangers for pedestrians on this private road in the face of both construction and eventual resort traffic (as explained above in 8.5.B.3(C)(b) and (d)). A member of the public writes, and the Planning Commission agrees, that “[a]nyone familiar with this area can, from firsthand experience, do a far better job of predicting the anticipated traffic flow and the potential peril to home owners.” (See Doug Cole’s written public comment dated February 3, 2023). Another member of the public ran some simple searches on Google and discovered that there have been 63 crashes involving 116 people within a 720 foot radius of the Bugai and Fouch Intersection from 2004-2021, several of which resulted in major injuries and one fatality. This member of the public also witnessed a rollover and a broad side collision at this same intersection. As that member of the public writes, “it is illogical that the increased traffic from the Wellevity development would not have an impact on traffic and pedestrian safety.” (See Rob and Dorothy Sitrine (and children)’s written public comment dated February 2, 2023). The Planning Commission agrees. This picture differs wildly from the unrealistic picture painted by Fishbeck on page 3 of its February 10, 2023 supplemental memo (“Evaluation of historical crash data indicates no pattern of crashes on these roadways in the vicinity of the subject site”). The Planning Commission rejects the self-serving logic of the traffic memos presented by the applicant.
- g. During the March 22, 2023 special meeting of the Planning Commission, Timberlee resident Greg Thomas presented photographs of East Timberwoods Drive, which

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demonstrated that: (1) the road is narrow, only 18 feet wide from curb to curb in most places, revealing that the road was never intended to be a two-way commercial thoroughfare; (2) there will only be 12 inches of passing space between large trucks on the road, which is insufficient and dangerous; (3) there are multiple curves and turns in the road, and the grades are quite significant; and (4) larger trucks cannot pass each other in curvy spots without pulling off onto the shoulder or side of the road, or without crossing the center line, creating highly dangerous conditions for drivers and pedestrians alike. These photographs were submitted into the Planning Commission's record from the meeting. The Planning Commission finds that these photographs are reliable indicators of the conditions on the road.

- h. Resident Tim Wolf, a licensed professional engineer, explained in his written public comments dated December 20, 2022 and February 3, 2023, and his oral public comment at the March 22, 2023 special meeting that: the current road is narrow, has no shoulder, and can barely fit two cars passing each other; the road has sharp curves and heavy slopes; the road's asphalt thickness is 1.5 inches - which is insufficient for the added traffic; children will have to dodge over two additional cars per minute on the road in each direction if the development is built; the road does not contain a two-foot shoulder as required by current county road standards; and the road contains two blind corners that cannot be safely navigated by a semi or delivery truck without driving on the shoulder or crossing the centerline. Tim also referenced a study performed by the Federal Highway Administration in his February 3, 2023 letter, explaining that the data from this study showed that "low-volume roads [have] a higher percentage of nighttime, no-lighting accidents (39.0 vs. 31.1%) and a slightly higher percentage of snow and ice accidents (13.1 vs. 10.6%) compared to rural roads in the full sample." He interpreted this to mean that "with a greater volume of traffic comes greater volume of accidents The applicant has failed to prove their traffic study, which focuses on rural county roads (Mann Road, Cherry Bend Road, and Bugai Road) with standard land widths, that the site is adequately served by E. Timberwoods Drive, a narrow width residential road." (internal quotations omitted). The Planning Commission accepts Tim Wolf's concerns as valid and reliable.
- i. During the March 22, 2023 special meeting, Planning Commissioner Jonah Kuzma asked applicant's counsel: "Would you like to address any of the safety concerns that at least half of the public brought up . . . regarding road adequacy, pedestrian safety?," and in response applicant's attorney Mr. McKellar discounted the potential traffic impact on pedestrians, stating: "people walking in the road is not necessarily, you know, permitted, I can't just walk my dogs freely on the road. It's a road right of way, it's meant for the traversing of vehicles . . . we understand those

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issues, but you can't design for people utilizing the surface of the actual right of way for those issues, that's anywhere." The Planning Commission finds that this response – which is clearly out of touch with the reality of pedestrian use of the private road, and ignores the risks to pedestrians who will continue to walk along the side of this private road, as they have always done (as evidenced by the public's written and oral comments cited in 8.5.B.3(C)(b) above) – is further evidence that the applicant has failed to demonstrate the adequacy of the road for this project.

- j. Additionally, the Planning Commission herein incorporates its detailed findings from paragraph 8.5.B.3(D) below regarding the need for ***two separate and approved fire apparatus access roads***. The proposed resort only has one. This Standard is not met for this reason as well.
- k. Lastly, Section 503.2 of the *International Fire Code* requires that fire apparatus access roads (which this private road would need to be, as the sole means of access to the proposed resort) "shall have an unobstructed width of not less than 20 feet . . . exclusive of shoulders." Again, public comments, including the photographs submitted by resident Greg Thomas at the March 22, 2023 special meeting, demonstrate that the road is only 18 feet wide in many places, and is therefore inadequate to serve as a fire apparatus access road to the resort.

D. Second, the Planning Commission finds that applicant's plans fail to show availability of adequate facilities and services for fire protection:

- a. The Planning Commission finds that the proposed project cannot proceed with only ***one emergency access road*** to the resort, as currently proposed. Such a proposal is inadequate for fire protection purposes, for the following reasons:
- b. Elmwood Township does not have its own adopted Fire Code, nor does the Township's Private Road Ordinance ("PRO") apply to Wellevity's application, as East Timberwoods Drive existed before the PRO was enacted. For these reasons, Fire Chief Tampa instead chose to use the *International Fire Code* ("IFC") as the Standard for reviewing Wellevity's application because "[the IFC] is referenced within the Michigan Building Code." (See Fire Chief Tampa's Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023; see also Michigan Building Code Section 901.2 ("Fire protection systems shall be installed, repaired, operated and maintained in accordance with this code and the *International Fire Code*."). Chief Tampa also adopted and used the IFC when he recommended that the project's "vehicle access [be] constructed and maintained in accordance with the International Fire Code." (See Fire Chief Tampa's memo dated December 20,

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2022). And Chief Tampa cited to and applied Appendix D of the IFC in his January 2023 memo regarding minimum grades for the road. (*See* Fire Chief Tampa's Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023).

- c. For these same reasons, the Planning Commission will also rely on and apply the requirements of the IFC to Wellevity's application. The Planning Commission believes that reliance on the IFC is reasonable and essential, given the lack of any other applicable fire safety standards.
- d. Specifically, the Planning Commission finds that Chapter 503 ("Fire Service Features: Fire Apparatus Access Roads") and Appendix D ("Fire Apparatus Access Roads") apply to Wellevity's application.
 - i. The Planning Commission acknowledges that even though Appendix D states that "the provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance," it is important to note, again, that the Township *does not have its own* adopted Fire Code or ordinance. In the absence of any other guiding fire safety standards, the Planning Commission finds that Appendix D – and all other IFC standards – are applicable to Wellevity's application, particularly in light of Appendix D's Section D101.1 ("Scope") which states that "[f]ire apparatus access roads *shall* be in accordance with this appendix and all other applicable requirements of the *International Fire Code*." (p. 483 of the IFC, emphasis added). Otherwise, the Planning Commission is concerned that the IFC will be randomly "cherry-picked" to serve the needs of the applicant, rather than applied as a whole to serve the essential fire safety needs of the Township. Moreover, Chief Tampa himself relied on Appendix D in his January 2023 memo. (*See* Fire Chief Tampa's Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023).
- e. The Planning Commission finds that the proposed resort is in a remote location, which will be difficult for any emergency response teams to access, particularly in heavy winter snow conditions. The Planning Commission finds that Chief Tampa himself expressed the same concerns about the proposed resort in his first memo dated December 20, 2022. He wrote: "The rural nature of this project requires rapid notification of any fire and the ability to address a fire immediately, within the incipient stage. The greatest concern is the delay in response created by the remoteness of the project. It is imperative that the developer place focus on early notification systems, automatic fire suppression, maintained access, and the

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availability of onsite water.” (See Fire Chief Tampa’s memo dated December 20, 2022).

- f. Section D104.2 of Appendix D of the IFC requires that “buildings or facilities having a gross building area of more than 62,000 square feet shall be provided with **two separate and approved fire apparatus access roads.**” It further provides for an “exception” for projects with a gross building area of up to 124,000 square feet that are equipped throughout with an approved automatic sprinkler. According to sheet A1.0 of the Applicant’s plan, the total proposed building area is 147,500 sq feet, which is well beyond (indeed, more than 23,000 square feet beyond) even the exception square footage. Thus, the Planning Commission finds that two separate and approved fire apparatus access roads are required under the IFC for the proposed resort.
- g. Moreover, even if the Planning Commission does not apply Appendix D to the proposed resort (which, again, it is choosing to do in light of the lack of any other existing fire safety standards), the Planning Commission wishes to highlight that Section 503.1.2 of the IFC (“Additional access”) states that “the fire code official [here, referring to Fire Chief Tampa] **is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of the terrain, climatic conditions, or other factors that could limit access.**” The Planning Commission finds that while Chief Tampa did not require more than one fire apparatus road while reviewing Wellevity’s application, he had the ability and discretion to do so under this section of the IFC, and should have done so, for the reasons listed in paragraphs 8.5.B.3(D)(i), (j), and (k) below.
- h. Additionally, Section 104.7.2 (“Technical assistance”) gives “the fire code official” [again, here, Fire Chief Tampa] the authorization to “**require the owner or owner’s authorized agent provide, without charge to the jurisdiction, a technical opinion and report.**” The opinion and report shall be prepared by a qualified engineer, specialist, laboratory, or fire safety specialty organization acceptable to the fire code official and shall analyze fire safety properties of the design, operation or use of the building or premises and the facilities and appurtenances situated thereon, to recommend necessary changes.” The Planning Commission finds that Chief Tampa had the ability and discretion under this section of the IFC to require a technical opinion and report be issued by a qualified fire safety specialist at the expense of the applicant. The Planning Commission finds that given the complexity and size of the proposed resort, Chief Tampa should have exercised his authority to require such a third-party technical opinion and report. Chief Tampa himself, while a

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qualified and valued Fire Chief, is not a certified fire plan examiner. Indeed, none of the Township Fire Department staff carries the credentials of certified fire inspector or site plan examiner. (See Greg Thomas' written public comment dated February 1, 2023 (a retired Fire Marshal for the 8th largest municipality in Michigan, where he served for 26 years, who holds many fire safety certifications detailed in his letter, including currently a certification from the National Fire Protection Administration ("NFPA") to examine fire plans. He states that he spoke to Chief Tampa by phone on January 27, 2023, and Chief Tampa confirmed the lack of such credentials by himself or anyone on his staff)). Without an additional third-party technical opinion and report, the Planning Commission cannot adequately assess the fire safety properties of the proposed resort (including the fact that it only proposes a single fire apparatus access road) based on the information it currently has, given the serious public safety concerns at stake, as detailed further in 8.5.B.3(D)(i) below.

- i. The Planning Commission recognizes that Chief Tampa did consult with Ken Schwerdt of Wade Trim, the Township's engineering firm, before drafting his January 27, 2023 memo (*see* Fire Chief Tampa's Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023), but notes that Mr. Schwerdt did not provide any "technical opinion and report" for the Planning Commission to consider in its deliberations.

- i. The Planning Commission believes that two fire access roads are essential for the proposed resort to address the following public safety concerns: The potential for large-scale life safety incidents at the resort (for example, fire, carbon monoxide poisoning, vehicle accidents, or police incidents) is heightened by the large number of people who will be at the resort at any given time, including construction workers, resort staff, guests of the resort, and attendees at resort events. Moreover, many of the resort's events (including family reunions, business conventions, retreats, and weddings – as listed on p. 4 of the application) will likely involve consumption of alcohol. The Township Fire Department is small; any such large-scale life safety incident may require the Township utilizing mutual aid from other municipalities or departments, all of which could result in delays bringing emergency assistance. If the single access road is compromised by any additional factors – including weather or climate related events, changing conditions of the terrain leading up to the property, vehicle accidents or congestion, or pedestrian accidents, to name a few – any emergency at the resort could prove to be highly injurious, and could result in potential serious liability for the Township.

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- j. Additionally, the Planning Commission herein incorporates its findings in paragraph 8.5.B.3(C)(k) above regarding the inadequate width (less than 20 feet) of the single proposed vehicle access road, which violates the minimum requirements of Section 503.2 of the IFC.
- k. The Planning Commission also notes that Appendix D Section D103.2 "Grade" requires that fire apparatus access roads do not "exceed 10 percent in grade." [That same section does also provide an "exception" that grades steeper than 10 percent can be "approved by the fire chief."] Chief Tampa relied on the exception to Section D103.2 in granting Wellevity's requests for a steeper grade – first, for 11% and then later for 11.3%. (See Fire Chief Tampa's memo dated December 20, 2022 and Fire Chief Tampa's Fire Department Site Plan Review – Supplemental Review, dated January 27, 2023). The Planning Commission needs more information from either Chief Tampa or a third-party fire safety expert (pursuant to IFC¹ Section 104.7.2) assuring the Planning Commission that the 11.3% grade is safe for the single proposed fire apparatus access road in all weather conditions (including snowy, icy and wet conditions).
- l. Moreover, the proposed resort will require sizeable "fire water" needs from local groundwater (see p. 11, Sheet C1.0 of the application showing multiple 40,000 gallon tanks, and Andrew Smits' letter dated February 10, 2023 citing the use of 120,000 gallons of fire water), which could potentially deplete the public water supply for neighboring residents and also negatively impact surrounding natural water resources. (See Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023; Pangea Environmental LLC's letter dated February 3, 2023; Pangea Environmental LLC's letter dated February 28, 2023, which was read into the record at the Planning Commission's March 22, 2023 special meeting; and Phillip Hartman's written public comment dated February 2, 2023 (resident and hydrogeologist for Piteau Associates, a TetraTech Company, explaining that a "long-term pumping test should be performed at the location of the supply well listed in the SUP," which "could alert officials, planners, and citizens in the Timberlee community to possible problems that may arise from the supply of water to the Wellevity project through time" including "pump cavitation," "lowering the water table," and "[rendering] the municipal supply well . . . useless." All of these problems are described in more detail in the letter). While Mr. Smits' letter asserts on behalf of the applicant that "the production of groundwater will not affect off-site users of groundwater" (p. 5), the Planning Commission cannot accept this assertion at face value; this is because Mr. Smits' evaluation is not based on any on-site environmental studies or testing that he himself conducted – instead it is based (as he explains) on his "physical

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observations,” “comprehensive review of public records, and “convers[ation]” with an engineer employed by EGLE (p. 1). The Planning Commission finds that applicant has failed to perform a “pumping test” (as recommended by Pangea Environmental LLC in its February 28, 2023 letter, and by Phillip Hartman in his written public comment dated February 2, 2023), which can be used to predict the potential lowering of the water table at various times and distances. Without such on-the-ground testing, the Planning Commission cannot determine the viability of a fire protection system reliant on such a high quantity of water being installed at the top of the Timberlee property.

E. Finally, applicant’s plans fail to show availability of adequate facilities and services for drainage structures and water and sewage facilities:

- a. Specifically, the Planning Commission finds that applicant’s plans fail to present adequate details regarding (1) its proposed drainage structures for stormwater runoff, (2) the significant quantity of groundwater that such a large resort will require, which will potentially divert water from the nearby community well that provides residents with all of their drinking water, as well as from nearby natural water resources, including fragile wetlands and vernal ponds; and (3) its proposed sewage facilities. These findings are explained in more detail here:
- b. *Drainage structures*: The Planning Commission finds sufficient concern has been raised regarding the inadequacy of the proposed resort’s drainage structures. The proposed development will add 147,5000 square feet of buildings and structures, and 300 parking spaces, to the top of Timberlee hill (*see* Sheet A1.0; Required Parking Spaces chart, submitted by applicant November 8, 2022). These constitute a large area of impermeable surface, which requires increased storm water management measures. Moreover, erosion is already occurring on and around the steep Timberlee property. (*See* Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023). It is common sense that stormwater naturally moves downgradient and off-site. The Planning Commission cannot determine based on the application whether the site may be safely built upon to accommodate stormwater runoff, given the likely presence of highly erodible, sandy soils at the development site (*see* Exhibit D to Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023; Pangea Environmental LLC’s letter dated February 3, 2023; Ansel Bowden’s written public comment dated February 3, 2023 (resident on a property immediately adjacent to the proposed project, and the only property surrounded on three sides by land that would be affected by the proposed development, expressing his fears regarding the impact of drainage during and after construction)). The applicant has failed to perform any environmental studies –

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including a wetlands delineation and a geological cross-section that includes a description of the geological material and an assessment of water levels (*see* Pangea Environmental LLC's letter dated February 28, 2023, which was read into the record at the Planning Commission's March 22, 2023 special meeting) – which would be essential in assessing the ability of the resort's water drainage and retention system to contain large amounts of stormwater, as well as the possible impacts of the resort's drainage system (at the top of the hill) onto neighboring properties that sit below it, off-site. Any claims made by Andrew Smits in his February 10, 2023 letter regarding the lack of concern due to the permeability of the soil are undermined due to the lack of environmental testing at the site. What's more, the applicant has failed to provide the Planning Commission with any information or testing regarding whether the proposed stormwater detention basins and retention systems can withstand two one-hundred year twenty-four hour storm events, as contemplated and required by the Leelanau County Soil Erosion, Sedimentation, and Stormwater Runoff Control (SESSRC) Ordinance Guidelines, Section B.15. These types of storms have become more frequent in recent years. (*See* Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023). Indeed, the application simply states that planned stormwater management facilities are designed “for capturing and treating the 90th percentile annual non-exceeding storms” (Sheet C1.0), which is insufficient to meet these ordinance guidelines.

- c. *Large quantity of groundwater:* The Planning Commission finds that the application fails to demonstrate that adequate water resources are available for the proposed resort. The resort sits at the top of Timberlee hill, where there is no public water supply. For that reason, the project “will include a private, Type IIa potable well with storage and distribution of domestic, irrigation, and fire water to meet the new special land use's demands” (p. 7 of the application). These new demands will involve sizeable quantities of water to supply the proposed facilities: lodge with guestrooms, restaurant and bar, retail market, childcare center, spa and pools, event spaces, laundry facilities, cabins and cottages that house additional guests, and landscape irrigation (pp. 7-11 of the application). The proposed resort's potable well will necessarily draw on the local groundwater supply and will utilize underground storage tanks (Sheet C1.0). The local groundwater also supplies public water to many residences located downhill from the proposed resort, who rely on a county-run community well for their daily drinking and household water needs. The well serves approximately 500 Elmwood Township residents, many of whom are members of the Friends of Timberlee group, which is vocally opposed to any project that would negatively impact available groundwater resources that are necessary for their daily household needs. (*See* Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023 (attaching photos of the community well, and minutes

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from Township Board meetings held in May, June, and July 2022 which discuss the fact that the community well system requires critical repairs and upgrades at this time, and that the community well itself does not currently store water for any of its own future fire suppression needs); and written public comments from the following members of the local community expressing concerns regarding water usage: Phillip Hartman (as mentioned above, a resident and hydrogeologist describing the potential problems that could arise from the large water supply for the proposed project), Linda DiClimente, Megan Gilger, Chris Barber, Dennis Pike, Renae Barber, Bethany Betzler, Lynn Francomb, Elizabeth Kott, Michael Kott, Carla Benson, Jerry Young, Karen Easterling, Fred Cepela, Laura Siladke, Nathan Siladke, Chuck Moser, Robert Kinrock, Colleen Thommas, Paul and Patti Strong, Scott Addis, Jerry Raymor, Jonathan Recor, Nick Thiesen, Len and Krista Allgaier, Barbara Young, Mallory Recor (“Our neighborhood is all on wells for our water. I fear what will happen when Wellevity uses the same well water we are using for our family of four and dries up the water table quickly. The massive pull of water from our one source will be detrimental. Will we need to re-drill for a deeper well, and if so who will be responsible for that cost?”), Terry Griffin and John Matz , Doug Cole, Rob and Dorothy Serrine, Kirk Corolan, Jessica Bogar, Jennifer Hartman, Philip Hartman, Dan O’Brien, Jerry Raymor, Jeff Dungan, Cheri Buchbinder, Eugene Biondo (retired Chief of Firefighting Operations for City of Detroit, expressing that “our water aquifer is vital to the residents of the area” and “we have known issues that exist with our community well”), and Adriana Simmons). The applicant attempts through Andrew Smits’ letter dated February 10, 2023 to assure the Planning Commission that “The aquifer is of sufficient saturated thickness and transmissivity that high yielding wells are easily developed” and “Narrow capture zones indicate reduced potential for groundwater production to affect other users” (p. 5). But the Planning Commission acknowledges that the geological attributes that make production of water possible are different than the capacity / quantity of water available from the aquifer, which is the Planning Commission’s concern here. The applicant has failed to provide on-site environmental studies – including a pumping test – to demonstrate whether the local aquifer has the ability to adequately support the proposed resort’s large water needs. (See Pangea Environmental LLC’s letters dated February 3, 2023 and February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting; Phillip Hartman’s written public comment dated February 2, 2023 (again, a resident and hydrogeologist, emphasizing the need for a pumping test)). According to Pangea Environmental LLC, EGLE requires any “Type II community well that will produce over 70 gpm to undergo a pumping test to demonstrate that the pumping rate can be sustained for 100 days A 24 to 72 hour pumping test would provide invaluable information to predict water level

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changes from the proposed development.” (See Pangea Environmental LLC’s letter dated February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting). Without a pumping test, the Planning Commission cannot determine the impact of the project on the community well, and whether the local aquifer can actually supply the needed water for the resort.

- d. Moreover, the Planning Commission has important concerns regarding the creeks, wetlands and vernal ponds near the proposed resort that could be destructively impacted by the resort’s use of such a large quantity of groundwater. The Planning Commission acknowledges that much surface water begins as groundwater. Lowering the groundwater could reduce the water available for the neighboring water resources. (See Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023; and Pangea Environmental LLC’s letter dated February 3, 2023 (attachment 4 is from the USGS and indicates potential surface water and wetlands in the area) and letter dated February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting). The Elmwood Township Master Plan describes wetlands as “working landscapes whose ecosystem meets a variety of needs. They support a rich variety of wildlife, purify water, help contain flooding, and provide scenic and natural vistas” (p. 18). While Wellevity submitted a report from Triterra dated October 3, 2022 identifying some of the wetlands on the property, the issue of the resort’s groundwater usage adversely impacting water resources is ignored in the application. The applicant has failed to provide on-site environmental studies – including the pumping test previously described, a wetlands delineation, and geological cross-sections – to demonstrate that the resort’s water usage will not impact fragile water resources. Pangea Environmental LLC explains that “a wetland delineation should be performed during the growing season, as it looks at soils and vegetation types, the vegetation cannot be identified in winter months.” (Pangea Environmental LLC letter dated February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting). Notably, the Master Plan itself calls for a “wetlands delineation” to be done before a development moves forward (p. 19). And a geological cross-section is also needed “in order to understand the geology beneath the surface of the proposed development site, and the relationship to any wetlands and / or inland water that may be impacted by the proposed groundwater withdrawal.” (See Pangea Environmental LLC letter dated February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting). Without these on-site studies, the Planning Commission cannot determine the adequacy of the water facilities for the resort.

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- e. The Planning Commission herein incorporates all of its findings in paragraph 8.5.B.3(D)(l) above regarding the resort's sizeable "fire water" needs and the potential adverse impact of those needs on the surrounding residents' public water supply and natural water resources.

- f. *Sewage facilities:* Moreover, applicant's plans fail to present adequate details regarding its proposed sewage facilities. Without these details, the Planning Commission cannot be assured that the project's sewage facilities will not contaminate fragile water resources in the surrounding area. (*See* Olson, Bzdok & Howard, P.C. letter dated February 3, 2023; *see also* comments from the public regarding local groundwater contamination concerns, for example, Laura and Nathan Siladke's written public comment dated February 3, 2023 ("We have not seen any detailed study of the water run off, septic run off or greenhouse run off from the proposed project and its impact on fresh water supply . . . We would think that after water issues in Flint and the PFAS areas in the state, this would be of utmost concern to the Planning Commission.")). The applicant does not provide adequate specifications for its "advanced wastewater treatment system" (pp. 7 & 11). Again, while Andrew Smits' letter dated February 10, 2023 claims that he has no concerns about wastewater quality from the proposed resort, those claims fall short in the absence of any on-site environmental testing or studies – including a wetlands delineation and geological cross-sections – which are essential for all the reasons already outlined above in 8.5.B.3.(E)(d). These tests would shed more light on potential complicating factors for the sewage system, including its position at the top of a hill, its specific location at the site, the soil quality at that location, and the site's (and surrounding area's) subsurface geology. Without these tests, the Planning Commission cannot determine the adequacy of the treatment system and its capacity, or the potential for local groundwater and surface water to be contaminated by the resort's septic system.

4. All applicable Standards of agencies including, but not limited, to the Township Fire Department, Michigan Department of Transportation, Leelanau County Road Commission, Leelanau County Drain Commission, Health Department, and the Michigan Department of Environmental Quality (MDEQ) have been met.

The Commission makes the following finding(s) concerning this Standard:

- A. This Standard is not met. [The Planning Commission notes that this Standard is substantially similar to Standard 9.3.A.8.].

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- B. The Planning Commission recognizes that this Standard (and others in the Zoning Ordinance) references other local and state agencies. However, the Planning Commission finds that its own job is to apply this Standard in the same way it applies all applicable Standards in the Zoning Ordinance – through a robust fact-finding process. As such, the Planning Commission sees itself as the equivalent of a “gatekeeper” before potentially sending a development off for the next stage of review by these other agencies.
- C. The Planning Commission finds that the standards of the Township Fire Department have not been met. The Planning Commission herein incorporates all findings made in Section 8.5.B.3(D) above regarding the inadequacy of the proposed resort’s fire protection measures. The Planning Commission does not believe that the proposed resort meets the requirements of the *International Fire Code*.
- D. The Planning Commission finds that the standards of the Michigan Department of Environment, Great Lakes, and Energy (formerly MDEQ, now EGLE) have not been met. As part of its permitting process, EGLE is tasked with evaluating whether a proposed project meets the standards of the Michigan Environmental Protection Act (“MEPA”), MCL 324.1701 et seq. MEPA considers whether an action has the potential to pollute, impair, or destroy the air, water, or other resources, or the public trust in those resources, and, if so, whether there are any feasible and prudent alternatives to that action. (See Olson, Bzdok & Howard, P.C.’s letter dated February 3, 2023). The Planning Commission herein incorporates its findings from 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project’s potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that natural resources in the surrounding area (including fragile water features, and endangered or threatened species such as the Michigan monkey-flower (see Rosemary Hagan’s written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.
- E. The Planning Commission finds that Section B.15 of the Leelanau County Soil Erosion, Sedimentation, and Stormwater Runoff Control (SESSRC) Ordinance Guidelines has not been met. The Planning Commission hereby incorporates its related findings from paragraph 8.5.B.3(E)(b). The applicant has failed to provide the Planning Commission with any information or testing regarding whether the proposed stormwater detention

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basins and retention systems can withstand two one-hundred year twenty-four hour storm events.

6. All buildings and structures shall be designed, constructed, operated, and maintained so as to be harmonious, compatible, and appropriate in appearance with the existing or intended character of the general vicinity.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met.
- B. The Planning Commission hereby looks to relevant sections of the Elmwood Township Master Plan in order to determine the “appearance” of “the existing or intended character of the general vicinity,” as stated in this Standard:
 - a. The Master Plan contains two sections that reference the “existing or intended character” of the surrounding Timberlee area (on pages 9 and 42). The first highlights that the “Timberlee area is serviced with public water making it a desirable and scenic location for residential development.” (p. 9) And the second explains that “[a]lthough many lands have been platted, not all have been developed. The topography and availability of a central water system should make this area desirable for residential, recreational, and commercial land uses. To take advantage of the extremes in elevation, the area lends itself naturally to both outdoor recreation and residential land uses. Non-residential uses, including restaurants, shops and services geared toward the local market are recommended to support the primary uses.” (p. 42)
 - b. The Planning Commission finds that when taken together, these two Master Plan sections describe the Timberlee area as having an appearance and character that is scenic, geared towards residential and outdoor recreational uses, and generally allowing only for commercial development that is secondary to those other uses and that is geared towards the local market.
- C. The Planning Commission also hereby looks to the relevant sections of the Leelanau County General Plan for more insight on the “appearance” of “the character” of the area surrounding the proposed resort, as stated in this Standard:

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- a. The Leelanau County General Plan talks about “visual character ethic” for the county: “***It is most desirable for the rural visual character of the landscape to remain*** after growth accommodates increases in population and development . . . Protection of the unique rural character of the County needs to become a fundamental part of all future planning and development decisions.” It includes a “strategy” for achieving this protection, which includes “placing development where it has the minimum visual impact.” It emphasizes that “at night, the stars should be visible in the sky.” (Pages 2-9 and 2-10) (emphasis added).
- b. The Plan also explains that “[f]uture quality of life on the County will depend to a great extent on the degree to which the particular rural character of the County has been protected The sense of satisfaction of residents have with their community will depend on it. Protective measures are not incompatible with additional growth because the issue is not whether or not to grow, it is where and how. It is most important to focus efforts on encouraging new development in and adjacent to existing villages, protection of existing village character, while protecting agricultural lands and other open spaces. ***Protection of the visual character of these areas will provide both long term economic benefits and quality of life benefits to both residents and visitors now and for many years to come.***” (Pages 2-9 and 2-10) (emphasis added).
- c. In particular, the Plan discourages “ridge top development” by stating: “The visual character of a community is important. It is more than just what buildings or landscapes look like. Visual character ‘sticks’ in people’s minds. It is a very important part of what attracts people to an area to live, invest, or vacation. ***Because the ridges are highly visible, they need to be considered as sensitive visual environments.*** Development can easily change them.” (Page 2-2) (emphasis added). “Ridges . . . must be protected.” (Page 2-9).
- d. The Plan further describes county “character” as: “The existing natural and people-made features in the County that make up its rural character are interdependent with the activities that comprise its economic base. It is important therefore, that future land use change in the County enhance, not undermine, the character of the area around it, and in so doing contribute to protection of the unique rural character of the entire Leelanau County.” (p. 7).
- e. And the Plan calls for development that is “1) in locations with public services adequate to meet its needs, 2) environmentally friendly, 3) consistent with the character of development in the area, 4) consistent with local plans and regulations, and 5) compatible with the guidelines of this General Plan.” (p. 7).

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- f. In sum, the Planning Commission finds that this General Plan describes the appearance and character of the county as rural, focused on the natural environment (particularly in terms of wanting to preserve the rural visual character of the landscape, including ridge tops and the dark night sky), desiring to minimize the visual impact of any developments, and allowing for development that complements the rural character.
- D. Lastly, the Planning Commission hereby looks to the oral and written public comments of local residents and business owners to determine if the proposed resort is compatible in “appearance” with the “existing or intended character of the general vicinity,” as stated in the Standard. (For example, *see* Sara Theisen’s written public comment dated February 3, 2023 (she is both a resident and business owner of Farm Club on Lake Leelanau Drive, and expresses her total opposition to the proposed resort because it “[a] development of this scale . . . will violate the ‘appearance of the character of existing or future neighborhood uses’” and “threatens the rural and agricultural character of Elmwood Township and Leelanau County If we don’t actively work to monitor development and preserve our township and county, we will lose the very thing that is essential to driving tourism dollars and creating jobs: the rolling hills, open spaces, vineyards and farms that draw visitors and help fuel our rural economy.”); Nick Theisen’s oral public comment at the Planning Commission’s March 22, 2023 special meeting (also a resident and fellow business owner of Farm Club and Loma Farm, who is opposed to the development because he believes Timberlee hill “stands as a beacon of the beautiful, natural environment that we all call home” and that a “development of this scope and magnitude would thoroughly change the character of the land and the neighborhoods that surround Timberlee. He believes that Wellevity “belongs [like Farm Club] on a public road designed to handle traffic with utilities to service such a large development and in a valley where it blends in with nature and doesn’t stand on a hill reigning above us.”)); Rosemary Hagan’s oral public comment at the Planning Commission’s March 22, 2023 special meeting (explaining that “Timberlee Hill sits at 1,056 feet above sea level); Cheri Buchbinder’s written public comment dated February 1, 2023 (“The hotel etc on top of the hill would be clearly visible for miles around . . . We can see Timberlee hill when out sailing on West Bay.”); Linda Seder & Shane Wyatt’s written public comment dated January 24, 2023 (“Once the top is cleared for the buildings – it will be noticeable from many miles away. It will change the entire landscape.”); and John Royster’s written public comment dated February 3, 2023 (expressing that the development proposal is “so large in scale that [it will] overwhelm the pristine wilderness setting that me and my family friends and neighbors have enjoyed for 44+ years that I have owned the 17+ acre parcel . . . sharing lot lines with the proposed development property, and hope to enjoy for years far into the future. For a project of this enormity to be profitable assuming that is the goal, the burdens on infrastructure on the

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site, and the [sheer] volume of patrons required to support a venture like this directly affecting the surrounding areas in ways I shouldn't need to express will overwhelm the area. [The original intent] was not to scalp the top of the mountain and put in parking lots, hotel store building cottages day care center etc... the original subdivision requirements were for homes to be nestled into the hillsides and hardwoods and is desirable and a beautiful setting for rural living, recreation, seclusion, and privacy.”).

- E. Taking all of these perspectives – from the Elmwood Township Master Plan, the Leelanau County General Plan, and the public – into account, the Planning Commission finds that the proposed resort is not harmonious, compatible, and appropriate in appearance with the existing or intended character of the general vicinity. The proposed resort sits on 100 acres at the very top of Timberlee hill, the highest elevation point in the area, and contains approximately 147,500 square feet of buildings and amenities (Sheet A1.0). The proposal includes a multi-use space for large outdoor events, as well as overnight lodging, and myriad other amenities, as described elsewhere in these findings. The Planning Commission finds that this proposed resort will have a significant discordant visual presence at the top of the hill, resulting from the alteration to the pristine ridgeline, from the physical presence of the resort buildings and their hundreds of guests, from light and noise associated with the many indoor and events at the resort, and from related traffic (both construction and regular business traffic). Indeed, the Planning Commission finds that the proposed resort will visually and experientially adversely dominate the Timberlee area for these reasons. The uniquely rural character of the area – which is surrounded by quiet residential neighborhoods and pristine natural environments – will be impermissibly overwhelmed by this development, as it towers over them. Moreover, these impacts will only secondarily serve the local market, as the resort's amenities are predominantly geared towards non-local guests – making the visual impacts even less compatible with the existing or intended character of the vicinity.

13. The proposal furthers the goals and objectives of the Master Plan.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met.
- B. The Master Plan explains that its own “goals and objectives must reflect the type of community desired and the kind of lifestyle its citizens wish to follow” (p. 21).
- C. The Planning Commission finds that the Master Plan is unambiguous that the Township places *enormous value on protecting its natural features and resources*, both for their

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own sake and for the sake of Township residents' health and welfare. Indeed, the Master Plan contains a multi-page section defining and describing the "Natural Features" of the area (starting on p. 15). Numerous goals and objectives are articulated in the Master Plan that revolve around a combination of accommodating future growth while also respecting and conserving the natural environment (pp. 23-29). The Master Plan emphasizes that future development in the Township "should be planned with attention to the natural features of the area" (p. 42). The Master Plan explains that a "reoccurring theme throughout the survey results" underlying the formation of the Master Plan "is the community's desire to protect the 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 depending on Traverse City for their shopping, dining, and commercial needs" (p. 21). An updated survey in 2018 revealed that "respondents would like the Township to focus on non-motorized trails and parks and encourage residential uses in the commercial district. Respondents were in support of ordinances restricting blight and noise, and regulations regarding septic and stormwater" (p. 22).

- D. One of the specific goals articulated in the Master Plan is to "[p]rotect the quality of *surface and groundwater resources* in the Township from development related impacts" (see page 24). Accordingly, the Master Plan advises that "individual on-site study and testing should be conducted prior to site design and construction due to the fact that many of the soils in the Township may have limitations either because of wetness in low soil areas, steepness of the slopes, or because of seepage or potential of poor filtering problems for septic systems" (pp. 16-17). The Master Plan even goes so far as to recommend that on-site investigations be conducted to "delineat[e] wetland boundaries," which will ensure that proposed development projects do not negatively impact local water resources in particular (pp. 18-19).
- E. The Master Plan also touts the *public water supply* in the Timberlee area, and stresses how important it is for encouraging residential land uses (pp. 9 & 42). The Master Plan contains a section on "Wellhead Protection," emphasizing the limited access to public drinking water and sanitary sewer facilities in the Township, and the related "need to include in this Plan protection measures for private and shared water systems" (p. 35-36).
- F. The Master Plan is also very concerned with *protecting the residential and rural character of areas so designed*. These concerns come through in the Master Plan's recommendations that Traverse City should be maintained as the commercial focal point for residents of Elmwood Township (p. 27), that commercial development should be discouraged from spreading outside of the established M-22 vicinity (p. 27), and that only limited commercial

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development should be encouraged “that satisfies local market needs without compromising the Township’s rural / residential character” (p. 26).

- G. For all these reasons, the Planning Commission acknowledges that the welfare of Township residents (in particular, those in the Timberlee area), as reflected in the Master Plan, relies on (1) conservation of the Township’s natural features, (2) the availability of a public water supply, and (3) preservation of the residential and rural character of areas so designed.
- H. The Planning Commission finds that the stated goals and objectives of the Master Plan are not furthered by Wellevity’s application for the following reasons:
- a. The Planning Commission finds that the application does not go far enough to protect the Township’s natural features – including surface and ground water resources – in line with the Master Plan’s goals. The Planning Commission herein incorporates its findings from paragraphs 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution), and 9.3.A.6 (adverse effect on the natural environment). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project’s potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that the natural environment in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see* Rosemary Hagan’s written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.
 - b. The Planning Commission finds that the resort’s significant water needs have the potential to deplete the public water supply, in direct contravention to the Mater Plan’s goal of protecting the private and shared water system. The Planning Commission herein incorporates its findings in paragraph 8.5.B.3(E) (impacts involving water). The applicant has failed to perform on-site testing, such as a 24 to 72 hour pumping test, which would predict water level changes from the proposed development. (*See* Pangea Environmental LLC’s letter dated February 28, 2023, read into the record at the Planning Commission’s March 22, 2023 special meeting; *see also* Phillip Hartman’s written public comment dated February 2, 2023 (again, a resident and hydrogeologist, emphasizing the need for a pumping test)). Additionally, the Planning Commission acknowledges that the community well system already requires critical repairs and upgrades at this time (*see* Exhibits A,

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B, and C to Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023), and declines to place additional stressors on this vital community well without more information (such as the results of a pumping test) from the applicant.

- c. And the Planning Commission finds that the application is not in harmony with the residential and rural character of the surrounding area, also in contrast to the Master Plan's goals, as the resort will visually and experientially adversely dominate the Timberlee area as stated in paragraph 8.5.B.6(E); the Planning Commission herein incorporates those findings. Moreover, the Planning Commission finds it significant that the public has come out in such high numbers to oppose the project, claiming that the project will be incompatible with the perceived residential and rural character of the area. Of the hundreds of pages of written public comment submitted about the application, and the dozens of people who have spoken in person at Planning Commission meetings on this topic, it is noteworthy that *less than ten total written and in-person comments have been made in support of the development*. The Planning Commission also finds it significant that the vocal opposition includes local business owners (including the owners of Farm Club) who even stand to gain financially from the approval of the development. These public comments go to the heart of the goals and objectives of the Master Plan, as they "reflect the type of community desired and the kind of lifestyle its citizens wish to follow" (p. 21).

SECTION 9.3 STANDARDS, REQUIREMENTS AND FINDINGS

A. GENERAL STANDARDS

....

1. The proposed special land use meets the objectives, intent, and purposes of this Article and the zoning district in which the proposed special land use is to be located.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met.
- B. First, the Planning Commission finds that *the intent and purpose of Article 9 of the Zoning Ordinance* is described in Section 9.1 ("Special Land Uses": "Intent and Purpose") as

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“[T]o establish procedures and criteria” to evaluate “special land use” applications, which are defined as those which require “individual review and consideration” due to their potential “incompatibility with the natural environment of the site, the character of the surrounding area, existing or planned public services and facilities, and adjacent uses of land” (Page 9-1). The Planning Commission finds that this stated “intent and purpose” underscores the Planning Commission’s special responsibility to ensure that any special use permit applications it considers are not incompatible with the surrounding environment and welfare of residents. The Planning Commission finds that the proposed resort does not meet this Standard as the application is incompatible with the natural environment of the site, the character of the surrounding area, existing or planning public services and facilities, and adjacent uses of land – for the following reasons:

- a. Natural environment of the site: The Planning Commission herein incorporates its findings from paragraph 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), and 9.3.A.5(E) (light pollution). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project’s potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that the natural environment in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see* Rosemary Hagan’s written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.
- b. Character of the surrounding area: The character of the surrounding area is rural and residential. The Planning Commission herein incorporates its findings from Standards 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area). The Planning Commission finds that the sizeable development and its needs are incompatible with the uniquely rural character of its surroundings: quiet residential neighborhoods, a pristine ridgeline, and fragile natural environments.
- c. Existing or planned public services and facilities: The Planning Commission herein incorporates its findings from paragraph 8.5.B.3(C) (the road), 8.5.C.3(D) (fire protection services), and 8.5.B.3(E) (the public water supply). The Planning Commission finds that the application fails to show that it will be compatible with existing public services and facilities, including the single access road to the proposed resort, available fire protection services, and the community well which supplies drinking water to the neighboring residential community.

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- d. Adjacent uses of land: The adjacent uses of land are residential. The Planning Commission herein incorporates its findings from Standards 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area). Again, the Planning Commission finds that the sizeable development and its needs are incompatible with the uniquely rural character of its surroundings: quiet residential neighborhoods, a pristine ridgeline, and fragile natural environments.
- C. Second, the Planning Commission finds that *the intent and purpose of the RR zoning district* (in which the proposed resort is located) is found in the "Intent" section on Page 4-5 of the Zoning Ordinance:

"Intent. The RR District seeks to maximize protection of the Township's rural atmosphere and its natural environment and by complementing the character of surrounding neighborhoods. This is accomplished by permitting resorts with limited commercial development near the Agricultural-Rural (A-R) zoning district that satisfy market needs of the local community, including seasonal residents and tourists. Such resorts must help maintain a local sense of community by integrating a mix of land uses that are of a size, character, function, and location suitable to the needs of Elmwood Township and are sited so as to minimize impacts on, and views from, adjacent properties and roads. They are intended to have primarily an outdoor orientation so that they complement the open, rural character of the Township."

The Planning Commission finds that the proposed resort does not meet this intent and purpose because it does not maximize protection of the Township's rural atmosphere and its natural environment, nor does it complement the character of surrounding neighborhoods, which are rural and residential. Again, the Planning Commission herein incorporates its findings from Standards 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area). Moreover, the resort will be open to overnight and day guests, many (if not most) of which likely live *outside* of the Township. The resort will not be marketed to Township residents, and therefore does not "satisfy market needs of the local community" as the RR district intends. The facility will offer a mix of amenities that go beyond a "resort" to include a "multi-use space," which includes a large outdoor area with intended uses of business conventions, retreats, family reunions, weddings, DJs, amplified bands, etc. (pp. 2 & 4). And the largest proposed amenity is the spa, at 12,925 square feet (pp. 3-4 and "Required Parking Spaces" chart). By primarily focusing on business, events, and spa elements, Wellevity does not have a "primarily . . .

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outdoor orientation” that “complement[s] the open, rural character of the Township,” as the RR district intends. Instead, Wellevity is a commercial enterprise with a mission to make money. The Planning Commission finds that public comments (both written and oral) serve to highlight the disconnect between the project and the character of the surrounding neighborhoods and Township on the whole.

2. The proposed special land use is designed, and is intended to be constructed, operated, maintained, and managed so as to be consistent with the existing or intended character of parcels within the zoning district.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met. [The Planning Commission notes that this Standard is substantially related to Standards 8.5.B.6, and 8.5.B.13, and 9.3.A.1, and 9.3.A.3, and 9.3.A.5.].
- B. The Planning Commission finds that the intent of the RR zoning district (in which the proposed resort is located) is found in the “Intent” section on Page 4-5 of the Zoning Ordinance, as cited in paragraph 9.3.A.1(C) above, which is incorporated herein.
- C. The Planning Commission finds that the proposed development is not designed, nor intended to be constructed, operated, maintained, and managed so as to be consistent with the existing or intended character of parcels within the RR district, for all the same reasons as paragraph 9.3.A.1(C) above, which is incorporated herein.
- D. The Planning Commission also herein incorporates its findings from Standards 8.5.B.3 (facilities and services), 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area).

3. The proposed special land use meets or exceeds the minimum requirements for the zoning district in which it is requested to be located.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met.
- B. Although the applicant indicates that its plan “exceeds the minimum requirements for the R-R zoning district,” (p.10) the Planning Commission finds that the *intent* of the RR

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district is not fulfilled by the project, as described in paragraphs 9.3.A.1(C) and 9.3.A.2 above, which are all incorporated herein.

- C. The Planning Commission also herein incorporates its findings from Standards 8.5.B.3 (facilities and services), 8.5.B.6 (rural visual character) and 8.5.B.13 (Master Plan descriptions of the area).

4. The proposed special land use will be served adequately by essential public utilities, facilities, and services such as water supply, wastewater disposal, highways, roads, police and fire protection, drainage structures, and refuse disposal. Alternatively, such services, if adequate to serve the proposed special land use, may be provided privately or by a combination of public and private providers.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met. [The Planning Commission notes that this Standard is substantially similar to Standards 8.5.B.3, and 9.3.A.7, and 9.3.A.9.]
- B. The Planning Commission finds that the proposed development will not be adequately served by available essential public utilities, facilities, and services (nor by a combination of public and private providers) for water supply, wastewater disposal, highways, roads, police and fire protection, and drainage structures – for all the same reasons articulated in Standard 8.5.B.3, which are incorporated herein.

5. The proposed special land use will not adversely impact existing or future neighboring uses. For example, but without limitation, the proposed special land use shall be designed as to location, size, intensity, site layout, and periods of operation to eliminate any possible conflicts. Additionally, it shall not be detrimental to any persons, property, or the general welfare by reason of excessive smoke, fumes, glare, noise, vibration, and odors, nor have adverse environmental impacts and detrimental effects on the general aesthetics or appearance of the character of existing or future neighborhood uses.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met.

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- B. The Planning Commission finds that the proposed resort will adversely impact existing or future neighboring uses (specifically residential uses), as well as persons, property, and the general welfare, due to the following impacts: (1) construction and commercial traffic on East Timberwoods Drive as the only access road to the resort; (2) noise; (3) light; and (4) other adverse environmental impacts, as follows:
- C. Construction and Commercial Traffic: The Planning Commission finds that the design of the proposed resort involving the single access road (and the project's plans for construction and commercial traffic on that road) will significantly adversely impact the surrounding residential uses, for all the same reasons articulated in paragraph 8.5.B.3(C) above, which is incorporated herein.
- D. Noise: The Planning Commission finds that the proposed resort is sited at the top of Timberlee hill (an "extreme elevation," according to the Master Plan p. 42). Sufficient concern has been raised about the noise impact of a proposed resort at this location, such that this Standard is not met. The applicant has only provided limited information regarding its plans to minimize noise at the proposed resort. The applicant merely states: "We will align our outdoor music hours with other venues in Elmwood Township" (p. 4), "sound emanating from the campus is minimal" (p. 11), "proposed vegetation will assist in noise attenuation," (p. 11) and "there will be no fireworks allowed on the property" (p. 4). The Planning Commission finds that this limited information is insufficient to meet this Standard. The proposed resort will accommodate hundreds of people at any given time, and will likely host numerous events, including weddings and family reunions, many of which will be held outside. The application itself mentions that "musical options, such as a DJ, acoustic or amplified bands may be offered" in the event spaces, including on the lawn, greenhouse, and pavilion (p. 4). Given these many loud events, in combination with the proposed location at the top of Timberlee hill, towering above neighboring residences, noises will be heard far and wide. Moreover, the application does not address the noise impacts on the surrounding residential area from the proposed two years of construction and construction-related traffic (p. 14), which will be significant. Nor does it address the noise impacts from increased resort traffic generally on the single proposed access road, which will also be significant given the size of the proposed resort.
- a. The Planning Commission notes that numerous neighboring residents have expressed similar concerns – for many, these concerns are based prior experience with noise in the area. (See, for example, Krista Alguier's oral public comment at the Planning Commission's December 20, 2022 special meeting; and oral public comments at the Planning Commission's March 22, 2023 special meeting from: Beth Kott, Kristen Selle and her daughter Willa, Kevin Gillespie (resident who lives adjacent to the proposed development, describing the top of the hill as an

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“amphitheater . . . with south winds, west winds, all that sound just carries across the valley,” and explaining that he hears music from the current owner of the proposed development property “all summer long”), Nick Theisen (again, resident and owner of Farm Club, voicing that “Wellevity belongs on a public road . . . and in a valley where it blends in with nature and doesn’t stand on a hill reigning above us”), John Melichar (“Our property is located across the valley. The one gentleman [referring to Kevin Gillespie] spoke to noise that gets produced in the summer and the winter. It’s going to affect us across the valley 24/7/365 with all the noise, the events. We hear it now, it’s only going to get worse . . . if it’s truly about wellness, the thing would be put in the valley somewhere in tune with nature, not on top of a hill projecting . . . noise pollution everywhere”); as well as Cheri Buchbinder’s written public comment dated February 1, 2023 (“I have no idea how they can control noise pollution in a valley that has echos. I can hear my neighbors talking who are a quarter of a mile away as if they were in my front yard. I can’t imagine the noise of construction for three years; the racket of air conditioning units day and night; having a wedding venue all summer long . . . Will we not be able to enjoy hearing the birdsong and breezes through the trees, the crickets and owls at night?”); Jeff Dorsch’s written public comment dated February 2, 2023 (explaining that during the project construction period of two years, there will be increased noise levels, and there are no estimates for this impact in the application); Lenny Alguire’s written public comment dated February 2, 2023 (highlighting that “last year . . . there were five weddings held on top of Timberlee Hill where the proposed resort will be. From our residence at 11369 S. Fox Valley Lane we could hear the music and celebrations clearly into the night. I chose this area to build my house because of the quiet. I do not believe that Wellevity will be completely quiet nor do I think it is practical that there will be no sound from the increased traffic . . . [Wellevity] fail[s] to take into account how sound carries like an amphitheater from the top of the hill through the surrounding communities.”); Ansel and Catlin Bowden’s written public comment dated February 3, 2023; Kelsey Zacyzny’s written public comment dated February 2, 2023 (“For perspective, when I am standing in the parking lot of the current Timberlee lodge, directly below where the main multi-use space is proposed, I can hear individuals conversing at the top of the hill as if they were only feet away.”)). The application is insufficient to address all these noise concerns.

- E. Light: The Planning Commission again finds that the proposed resort is sited at the top of Timberlee hill (an “extreme elevation,” according to the Master Plan p. 42), and sufficient concern has been raised about the lighting impact of a proposed resort at this location, such that this Standard is not met. The applicant’s architectural drawings addressing lighting simply describe bollards and other exterior sconces that Wellevity plans to install (Sheets

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A1.1 and L6.0), with no additional information. The Planning Commission finds that light emanating from the development's proposed structures (despite sitting at the interior of the parcel) will be visible for great distances, given the elevation. The application fails to assure the Planning Commission that the proposed development will adequately protect the dark night sky, which is of such great value to the Township, its residents, and its wildlife – as evidenced by the Zoning Ordinance, the Leelanau General Plan, and public comments:

- a. Zoning Ordinance Section 6.5.1 "Lighting: Intent," states that its goals are: "To preserve the character of Elmwood Township, the dark night sky, and the restful quality of nighttime by eliminating intrusive artificial light and glare. To prevent unwanted / undesirable illumination of neighboring properties. To maintain safe nighttime vehicular and pedestrian traffic." These goals are not met by the proposed resort.
- b. The Leelanau County General Plan recommends that "at night the stars should be visible in the sky - not obstructed by the fuse light from the built-up environment." (p. 2-10). This recommendation is not met by the proposed resort.
- c. And numerous residents raised their concerns in both written and oral public comment regarding light pollution from the proposed resort at such a high elevation, immediately next to the surrounding residential community. (See, for example, oral public comments at the Planning Commission's March 22, 2023 special meeting from: Beth Kott ("light pollution is inevitable"), Kristen Selle and her daughter Willa ("Willa wants to say that she's very concerned about this project and the potential for . . . light, and all the activity that will happen at the top of the hill right next to her woods, and her playground, and her place where she enjoys being out there by herself and with her sister and her brother"), Rosemary Hagan (explaining that "Timberlee Hill sits at 1,056 feet above sea level . . . lighting from the proposed [resort] will increase the light dome, negatively impacting the dark sky of the Timberlee area and will significantly impact dark sky viewing around the county. Evidence-based research supports the positive impact of a rural dark sky upon both human and wildlife well-being"), Nick Theisen (again, a local resident and owner of Farm Club, expressing his concerns that "it can be seen from miles around, it stands as a beacon of the beautiful, natural environment that we all call home," and the "30 new structures . . . will increase light pollution . . . and will be a scar on our landscape for generations to come"; as well as Cheri Buchbinder written public comment dated February 1, 2023 ("The hotel etc on top of the hill would be clearly visible for miles around with light pollution I call this extremely adverse to my peaceful life. To control light pollution the development would need to turn off all outdoor lighting at sunset. They are at the top of a hill that is visible for miles around. We can see Timberlee hill when out sailing on West

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Bay. Will we not be able to stargaze as we have done here for three generations?"); Ansel and Catlin Bowden's written public comment dated February 3, 2023; Sara Theisen's written public comment dated February 3, 2023 (again, a resident and owner of Farm Club, expressing her concerns that the amount of light from the bar, restaurant, indoor and outdoor venues for receptions and gatherings, along with at least 58 overnight quarters, will use far more light than permitted in the Zoning Ordinance); and Gary Jonas's written public comment dated February 2, 2023 (a resident and owner of Farm Club, and stating that from his property he "can see when Timberlee Tubing has parties with strobing lights. This will absolutely be the case if Wellevity is allowed to have weddings. Lighting is a very large concern for me."). The Planning Commission shares these same concerns.

- F. Adverse Environmental Impacts: The Planning Commission finds that the proposed resort will have adverse environmental impacts overall. The Planning Commission herein incorporates its findings from paragraph 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution), and 9.3.A.6 (adverse effect on the natural environment). The Planning Commission finds that the application fails to provide answers to critical questions regarding the project's potential impairment of natural resources in the area. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that the natural environment in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see* Rosemary Hagan's written public comment dated February 3, 2023 on this topic)) will not be impaired by the proposed resort.

6. The proposed special land use shall not have an adverse effect on the natural environment beyond the normal impacts of permitted principal uses in the same zoning district, and shall not result in impairments, pollution or destruction of the air, surface, ground water, vegetation, and other natural resources.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met.
- B. According to Section 5.4 ("Land Use and Zoning District Table") of the Zoning Ordinance, "permitted principal uses" in the RR zoning district (in which the proposed resort is

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located) include the following: accessory buildings and uses customarily incidental to permitted uses; wind energy conversion system, non-commercial; AFC Family Home; Family Child Care Home; Foster Family Care; Foster Family Group Home; Residential-Single Family; and Short Term Rentals (pp 5-2 to 5-5).

- C. The Planning Commission finds that the proposed resort – with 147,500 square feet of buildings and structures, and a variety of planned amenities and events – has a much greater environmental footprint than these much smaller permitted principal uses in the RR district, and may very well have a greater adverse effect on the natural environment, resulting in impairments to air, surface, ground water, vegetation, and other natural resources. But for all the reasons listed in paragraph 9.3.A.6(E) below, the Planning Commission does not have enough information – without the results of on-site environmental testing – to assure itself that this Standard is met. (See more below)
- D. The Planning Commission finds that this Standard appears to be the Township's effort to incorporate some of the environmental protections of the Michigan Environmental Protection Act ("MEPA"), MCL 324.1701 et seq. into the Zoning Ordinance itself, affirming the Township's concern for the natural environment, as expressed in the Master Plan (and discussed above in more detail in the Planning Commission's findings for Standard 8.5.B.13).
- a. The Planning Commission notes that MEPA considers whether an action has the potential to pollute, impair, or destroy the air, water, or other resources, or the public trust in those resources, and, if so, whether there are any feasible and prudent alternatives to that action. (*See Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023*).
- E. The Planning Commission finds that the application fails to provide answers to critical questions regarding the adverse effect of such a large resort on the natural environment, as demanded by this Standard. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that natural resources in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see* Rosemary Hagan's written public comment dated February 3, 2023 on this topic)) will not be adversely impacted by the proposed resort. These critical questions are already addressed in the Planning Commission's findings in paragraphs 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light

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pollution), and 9.3.A.5(F) (adverse environmental impact), which are all incorporated herein.

7. The proposed special land use will not create excessive additional requirements or costs for public facilities, utilities and services.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met. [The Planning Commission notes that this Standard is substantially similar to Standards 8.5.B.3, and 9.3.A.4, and 9.3.A.9].
- B. The Planning Commission finds that the proposed development will create excessive additional requirements and costs for public facilities, utilities and services – including for the single access road (East Timberwoods Drive) and the community water supply:
 - a. Regarding the road, the Planning Commission herein incorporates its findings in paragraphs 8.5.B.3(C) and 9.3.A.5(C) above. The Planning Commission finds that the added construction and commercial traffic will cause damage to the private road – which was not built to withstand heavy commercial traffic, and given its width and shallow depth simply cannot accommodate such traffic, particularly given the local weather conditions – and will require excessive maintenance and repair costs in the future. (See Gary Bergstrom's written public comment dated February 3, 2023; Lynch Law's written submission dated January 18, 2023 on behalf of the East Timberwoods Drive Association; Doug Cole's written public comment dated February 3, 2023; Tim Wolf's written public comments dated December 20, 2022 and February 3, 2023, as well as his oral public comments at the Planning Commission's March 22, 2022 special hearing; Jeff Dorsch's written public comment dated February 3, 2023; and Charles F. Green's written public comment dated February 2, 2023).
 - b. Regarding the public water supply, the Planning Commission herein incorporates its findings in paragraph 8.5.B.3(E) above. The Planning Commission finds that the resort's significant water needs have the potential to deplete the available local groundwater supply, which provides drinking water to the residential community via a community well. If the aquifer is depleted, the existing community well would have to be placed deeper underground, a cost for which local residents will likely have to pay. (See Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023). The applicant has failed to perform on-site testing, such as a 24 to 72 hour pumping test, which would predict water level changes from the proposed

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development. (See Pangea Environmental LLC's letter dated February 28, 2023, read into the record at the Planning Commission's March 22, 2023 special meeting; and Phillip Hartman's written public comment dated February 2, 2023 (again, a resident and hydrogeologist, emphasizing the need for a pumping test)). Additionally, the Planning Commission acknowledges that the community well system already requires critical repairs and upgrades at this time (see Exhibits A, B, and C to Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023), and declines to place additional stressors on this vital community well without more information (such as the results of a pumping test) from the applicant.

8. The proposed special land use has met or will meet all requirements of other Township, County, State, and Federal ordinance and code requirements.

The Commission makes the following findings concerning this Standard:

- A. This Standard is not met. [The Planning Commission notes that this Standard is substantially similar to Standard 8.5.B.4].
- B. As explained above, the Planning Commission recognizes that this Standard (and others in the Zoning Ordinance) references other local, State and Federal requirements. However, the Planning Commission's job is to apply this Standard in the same way it applies all applicable Standards in the Zoning Ordinance – through a robust fact-finding process. As such, the Planning Commission sees itself as the equivalent of a “gatekeeper” before potentially sending a development off for the next stage of review by other agencies.
- C. The Planning Commission finds that the standards of the *Township Fire Department* have not been met. The Planning Commission herein incorporates all findings made in Section 8.5.B.3(D) above regarding the inadequacy of the proposed resort's fire protection measures. The Planning Commission does not believe that the proposed resort meets the requirements of the *International Fire Code*.
- F. The Planning Commission finds that the standards of the *Michigan Environmental Protection Act (“MEPA”)*, MCL 324.1701 et seq., have not been met. MEPA considers whether an action has the potential to pollute, impair, or destroy the air, water, or other resources, or the public trust in those resources, and, if so, whether there are any feasible and prudent alternatives to that action. (See Olson, Bzdok & Howard, P.C.'s letter dated February 3, 2023). The Planning Commission finds that the application fails to provide answers to critical questions regarding the effect of the proposed resort on the natural

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environment, as demanded by MEPA. These questions include whether the resort will cause: depletion and / or contamination of local ground and surface water; stormwater runoff; erosion; and light and noise pollution. In the absence of any on-site environmental studies – including a pumping test, a wetlands delineation, and geological cross-sections – the Planning Commission cannot be assured that natural resources in the surrounding area (including fragile natural water features, and endangered or threatened species such as the Michigan monkey-flower (*see* Rosemary Hagan's written public comment dated February 3, 2023 on this topic)) will not be adversely impacted by the proposed resort. These critical questions are already addressed in the Planning Commission's findings in paragraphs 8.5.B.3(E) (impacts involving water), 9.3.A.5(D) (noise pollution), 9.3.A.5(E) (light pollution), 9.3.A.5(F) (adverse environmental impact), and 9.3.A.6(C) (adverse effect on natural environment), which are all incorporated herein.

9. The following specific requirements shall requirements shall be met to the extent applicable to the proposed special land use:

- a. Ingress and egress for the special land use shall be controlled to ensure maximum vehicular and pedestrian safety, convenience, and minimum traffic impact on adjacent roads and highways, drives, and nearby uses including, but not limited to:**
 - i. Minimization of the number of ingress and egress points through elimination, minimization, and consolidation of drives and curb cuts;**
 - ii. Proximity and relation of driveway to intersections;**
 - iii. Minimization of pedestrian and vehicular traffic conflicts;**
 - iv. Adequacy of sight distances between road and driveway intersections as specified in Section 6.2, Access Management.**
 - v. Location and accessibility of off-street parking, loading, and unloading for automotive vehicles, including buses and trucks;**
 - vi. Location and potential use of ingress and egress drives to access special land use parcels for the purpose of possibly reducing the number of access points necessary to serve the parcels.**
 - vii. Adequate maneuverability and circulation for emergency vehicles.**
- b. Screening shall be provided along all sides and rear property lines by a buffer area, and along the front property line by a greenbelt in accordance with Section 6.4, unless it can be demonstrated that the proposed special land use can be adequately controlled through some other means, such as restrictions on the hours**

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of operation, or reducing the impact by the type and level of activity to be conducted on the site.

The Commission makes the following findings concerning Standard 9.3.A.9(a):

- A. This Standard is not met. [The Planning Commission notes that this Standard is substantially similar to portions of Standards 8.5.B.3 (highways and streets), and 9.3.A.4, and 9.3.A.7].
- B. The Planning Commission finds that the proposed project has not addressed minimizing pedestrian and vehicle traffic conflicts on adjacent roads and highways, drives, and nearby uses. There is only one access road to the proposed site. This singular entryway proposed to a 100-acre site is located at the base of a hill and can only be accessed after traversing over 1 mile of private roads through a residential area having no sidewalks to ensure pedestrian safety. This situation leads to serious safety risks and significant traffic impacts on the local community. These critical issues are already addressed in the Planning Commission's findings in paragraph 8.5.B.3(C) above, where are incorporated herein.
- C. Additionally, with regard to adequate maneuverability and circulation for emergency vehicles, the Planning Commission finds that the proposed single emergency access road is inadequate for all the reasons outlined in paragraph 8.5.B.3(D) above, which is incorporated herein.

The Commission makes the following findings concerning Standard 9.3.A.9(b):

- A. This Standard is not met.
- B. The Planning Commission finds that screening and / or buffering for the proposed for the resort will be inadequate to address the traffic impact, and noise and light pollution emanating from the project. The site sits at the top of Timberlee hill, at an "extreme elevation" (Master Plan, p. 42). The Planning Commission herein incorporates its findings from paragraphs 8.5.B.3(C) (traffic), and 9.3.A.5(D) (noise pollution), and 9.3.A.5(E) (light pollution) above.

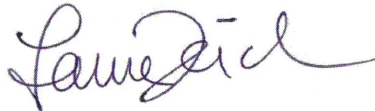
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On behalf of the Friends of Timberlee, we want to thank you for your consideration of these updated proposed Findings of Fact, which support denial of Wellevity's application. We appreciate the extensive time and energy you have dedicated to these deliberations, and your service to the community as Planning Commissioners.

Please note we are also submitting updated proposed Conditions of Approval. If you find yourselves inclined to grant the permit, then we respectfully ask that these conditions be imposed as per the requirements of Zoning Ordinance Sections 8.5(C) and 9.3(C).

Date: May 12, 2023

Yours truly,



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UPDATED PROPOSED CONDITIONS OF APPROVAL

CONDITIONS

- A. All construction, improvements, or use of the parcel of land which is the subject of the permit shall be in complete accordance with the approved special land use, the approved site plan, and the following conditions of approval herein.
- B. Given that the private road has been determined by this Planning Commission to be inadequate as a sole means of access to the resort, Wellevity shall design and construct a new primary fire apparatus access road that meets the requirements of the *International Fire Code* (as described in the Planning Commission's Findings of Fact). The private road shall be used only as a secondary emergency access road.
- i. Wellevity shall submit an updated site plan application and special use permit application describing this new primary fire apparatus access road to the resort, which shall be processed in the same way as the original site plan application and special use permit application, in accordance with Zoning Ordinance Articles 8 and 9 – with a limited focus on approval or denial of the plan for the new road.
 - ii. Any future review of the plan for the new road shall be reviewed by the Township Fire Department *in consultation with* a “qualified engineer, specialist, laboratory, or fire safety specialty organization,” who is “acceptable to the Fire Chief,” and who shall provide “an opinion and report” regarding the “fire safety properties of the design, operation or use” of the new primary fire apparatus access road, and “recommend necessary changes,” as outlined in Section 104.7.2 (“Technical assistance”) of the *International Fire Code*. The Township will review this consultant’s report as part of its deliberations regarding whether to approve or deny the plan for the new road.
- C. An existing condition report of the road(s) that will be utilized for access to the site (including, but not limited to, East Timberwoods Drive, South Slope Drive, South Cottonwood Drive, and any secondary access road) shall be provided to the Township before construction begins.
- i. After construction is completed, an updated road condition report for these same road(s) shall be submitted to the Township. The Township will review the impacts on these roads and ensure that these roads are accessible by emergency vehicles.

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- ii. If, for any reason, construction stops before completion, at that time an updated road condition report for these same road(s) shall be submitted to the Township.
- D. Wellevity agreed during the March 22, 2023 public hearing to pay any and all costs for the maintenance and / or repair of any roads needed as a result of any construction undertaken for the project, and shall do so as a condition of approval. Wellevity shall pay for any and all such costs even if construction stops before completion.
- E. Wellevity shall hire an environmental expert in hydrology, geology, and environmental engineering to assess the project and determine if any amendments need to be made to the site plan application and special use permit application in order to protect the surrounding natural environment, in particular to protect *local groundwater resources* that provide daily household water to neighboring Township residents via the community well, as well as other *natural water resources* (for example – wetlands, creeks, vernal ponds, and Lake Leelanau) in the surrounding area.
- i. This environmental expert must have sufficient expertise and credentials in hydrology, geology, and environmental engineering to perform the required environmental assessment.
 - ii. The environmental expert shall, at a minimum, perform the following three studies as described by Pangea Environmental LLC in its February 28, 2023 letter (but is not limited to the performance of these studies):
 - i. A 24 to 72 hour pumping test;
 - ii. A wetlands delineation;
 - iii. A geological cross-section.
 - iii. Any such assessment will necessarily consider the quality and nature of the soil and subsurface geology at the proposed development site and surrounding areas.
 - iv. If this expert determines that amendments must be made to the site plan application and special use permit application in order to protect the surrounding environment, Wellevity shall submit a new site plan application and special use permit application in accordance with those environmental protection recommendations, which shall be processed in the same way as the original site plan application and special use permit application, in accordance with Zoning Ordinance Articles 8 and 9.

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- v. If this expert determines that no amendments are required, then Wellevity may operate under the current permit, as issued, subject to all other Conditions of Approval herein.

- F. The project shall comply with all applicable federal, state, and local laws and ordinances, including the Michigan Environmental Protection Act (MEPA), MCL 324.1701 *et seq.*

- G. Efforts must be made to protect the natural environment at the site and in the surrounding area to the greatest extent possible.

- H. Any non-residential or intensive outdoor recreation elements must be located centrally and to the interior of the site.

- I. Quiet hours shall be 10 pm to 8 am daily. Noise during quiet hours shall be limited to conversational level.

- J. In connection with any outdoor event occurring on the property, there shall not be any loud noise or sound, including but not limited to, playing or using a radio, phonograph, compact disc player, tape player, television, musical instrument, sound amplifier, or other electronic or mechanical sound-producing device in such a manner or with such volume that it unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivities on any adjacent property.

- K. Lights shall be constructed and maintained in conformity with Zoning Ordinance Section 6.5.

- L. Fireworks are prohibited.

- M. All vegetative landscaping shall be performed in conformity with Zoning Ordinance Section 6.4.

- N. Fertilizer or other chemical treatment of lawns and vegetation is prohibited.

- O. Use of any cleaning products – or other liquids, materials, or substances – containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) chemicals is prohibited.

- P. All outdoor trails will be made open to the public, for no fee (as represented by Wellevity's representatives at the December 20, 2022 public hearing).

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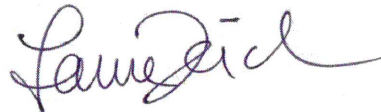
- Q. Any proposed changes to the site plan or special use permit which are determined to be “not minor” by the Planning / Zoning Administrator pursuant to Zoning Ordinance Sections 8.7 and 9.4 shall be considered an amendment to the site plan application and special use permit application, and shall be processed in the same way as the original site plan application and special use permit application, in accordance with Zoning Ordinance Articles 8 and 9. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**
- R. A violation of any of the standards of the Zoning Ordinance shall be deemed a violation of the site plan approval and the special use permit.
- S. The penalties for violations specified in condition R (above) are as stated in Articles 8, 9 and 11 of the Zoning Ordinance. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**
- T. The Township shall revoke the site plan approval and special use permit if two violations under condition R (above) occur within a twelve (12) month period. The notification, revocation, and appeal procedures provisions of Zoning Ordinance Articles 11 and 12 shall apply. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**
- U. If substantial construction has not taken place within one (1) year of the special land use approval date, the special land use shall expire, in accordance with Zoning Ordinance Section 9.5. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**
- i. The Planning Commission may, in its discretion, grant two (2) extensions of the special land use approval, of an additional one (1) year period for each extension, provided that the applicant submits an extension request prior to the one year expiration date of the special land use approval or a prior extension, in accordance with Zoning Ordinance Section 9.5. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**
 - ii. To grant an extension, the Planning Commission must find that any delays were beyond the control of the applicant, and that the applicant will complete substantial construction within the one (1) year extension period, again in accordance with Zoning Ordinance Section 9.5. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**

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- V. Similarly, the approved site plan shall be valid for a period of one (1) year from the date of approval, in accordance with Zoning Ordinance Section 8.6. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**
- i. If construction of the permitted use has not commenced and proceeded meaningfully toward completion by the end of this one (1) year period, the site plan approval shall expire, in accordance with Zoning Ordinance Section 8.6. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**
- ii. The Planning Commission may, in its discretion, extend the site plan approval for one (1) additional year, if requested to do so in writing by the applicant, and if there is good reason to believe that the applicant will, in fact, commence construction of the permitted use and proceed meaningfully toward completion by the end of the second year, again in accordance with Zoning Ordinance Section 8.6. **[Note: May need to be modified to comport with any updated version of the Zoning Ordinance in effect at the time of approval]**

Date: May 12, 2023

Yours truly,



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