

October 8, 2026

Via Electronic Mail Only

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

Re: Letter of Notification of PPL Electric
Utilities Corporation Filed Pursuant to
52 Pa. Code Chapter 57 Subchapter G,
for Approval to Build Approximately 1.1
Miles of New Parallel Double Circuit 230
kV Transmission Taps that are Needed
to Connect the Existing
Susquehanna-Harwood #1 & #2
Transmission Lines on the New
Tomhicken 230 kV Switchyard that are
Respectively Located in Luzerne County,
Pennsylvania
Docket No. A-2025-3059443

Dear Secretary Homsher,

Enclosed for filing with the Pennsylvania Public Utility Commission is the Main Brief of Erika Cook to the in the above-referenced matter.

Thank you for your time and attention regarding my filing. If you have any questions, please kindly reach out to me.

Respectfully,



Erika Cook
38 Red Rock Road
Sugarloaf, PA 18249
elcook33@gmail.com
570-233-8205

A-2025-3059443

Enclosures

Matthew L. Homsher, Secretary

October 8, 2026

cc: The Honorable Erin L. Gannon (w/enclosures; via email)

The Honorable John Coogan (w/enclosures; via email)

Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed electronically on the Commission's electronic filing system and served a true copy of the following document, the Main Brief of Erika Cook in Protest to the Application of PPL Electric Utilities Corporation ("PPL Electric"), upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 5.101 (relating to preliminary objections), in the manner and upon the persons listed below.

Dated this 8th day of October 2026.

VIA E-MAIL

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October 8, 2026

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Letter of Notification of PPL Electric Utilities :
Corporation Filed Pursuant to 52 Pa. Code Chapter :
57 Subchapter G, for Approval to Build :
Approximately 1.1 Miles of New Parallel Double :
Circuit 230 kV Transmission Taps that are Needed : A-2025-3059443
to Connect the Existing Susquehanna-Harwood :
#1 & #2 Transmission Lines on the New :
Tomhicken 230 kV Switchyard that are :
Respectively Located in Luzerne County, :
Pennsylvania :

Main Brief of Erika Cook

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Appendix A: NP Hazleton Holdings 1, LLC v. Hazle Township Board of Supervisors, Docket No. 2025-13744, Judge’s Opinion Of Record, Item List # 104, Entered 8/4/2026.

I. Introduction

My name is Erika Cook. I am a property owner and resident of Sugarloaf Township as well as a PPL Ratepayer. There are many reasons why I decided to submit a protest to this Letter of Notification, or Phase 1, of this Project. These reasons include the need/necessity of the Project, the cost to PPL rate payers, the accuracy of the Project information, the health and safety concerns of the public, environmental impacts, lack of public notification, and acts in bad faith.

II. Background

1. On November 14, 2025, the Hazle Township Board of Supervisors (BOS) denied NP Hazleton Holdings 1, LLC's land development plan.
2. On December 12, 2025, NP Hazleton Holdings 1, LLC ("NorthPoint") filed a lawsuit appealing the land development plan denial for the proposed project site.
3. On December 19, 2025, PPL Electric filed a Letter of Notification of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57 Subchapter G, for Phase 1: Approval to Build Approximately 1.1 Miles of New Parallel Double Circuit 230 kV Transmission Taps that are Needed to Connect the Existing Susquehanna-Harwood #1 & #2 Transmission Lines on the New Tomhicken 230 kV Switchyard that are Respectively Located in Luzerne County, Pennsylvania (hereinafter, the "Letter of Notification"). As noted by the OCA in their Motion for Consolidation, page 3:

According to PPL, it "will carry out the projects necessary to serve this Customer's load request in two separate phases. Phase 1, subject to this [LON], is needed to connect the Customer requesting transmission-level service." Phase 1 LON ¶ 23. Further: Phase 2 will be needed to address the Customer's future electrical needs and demands, as well as PPL Electric's system needs. Phase 2 will be submitted in a subsequent filing, which PPL Electric anticipates may necessitate a full siting application. PPL Electric notes that the phases are being submitted separately because only the first phase is required to meet the Customer's inservice request; Phase 2 will not be necessary until the Customer's load increases at a future date. Phase 1 LON ¶ 24.

4. On March 12, 2026, I, Erika Cook, pro se Protestant, filed a Protest to the Phase 1 LON.
5. On March 13, 2026, John Zola filed a Protest to the Phase 1 LON.
6. On March 18, 2026, ALJs Gannon and Coogan convened a Prehearing Conference regarding the Phase 1 LON.

7. On April 7, 2026, PPL submitted a transmission line siting application for Phase 2 requesting approval to (1) bifurcate and rebuild 4.4 miles of the existing Sunbury-Susquehanna #1 230 kV transmission line; (2) construct 0.9 miles of new transmission line tap for future 230 kV double-circuit operation; (3) raise approximately 0.5 miles of the Sunbury-Susquehanna 500 kV transmission line; and (4) construct 11.2 miles of new double-circuit 230 kV transmission line for future double-circuit 500 kV capacity, located in Black Creek, Hazle, Hollenback, Nescopeck, and Sugarloaf Townships in Luzerne County, Pennsylvania (Phase 2 Application). The Applicant's proposed project and routing are contingent upon local zoning, land use, and property rights.
8. On May 7, 2026, the OCA submitted a Protest and Public Statement to the Phase 2 Application and a Motion for Consolidation of the Phase 1 LON and Phase 2 Application proceedings.
9. On May 13, 2026 PPL Electric filed its Direct Testimony for Phase 1 Docket A-2025-3059443 with the PUC.
10. On May 19, 2026, I, Erika Cook, pro se Protestant, submitted this Motion to Deny the Applications/Zoning Exemption Petition Without Prejudice.
11. On May 26, 2026, Luzerne County court denied the land use appeal by NP Hazleton Holdings 1, LLC in Case # 202513744 remanding the matter to the Hazle Township Zoning Hearing Board for special exception or NP Hazleton Holdings 1, LLC was permitted to challenge the validity of the Hazle Township Zoning Ordinance.
12. On May 27, 2026, PPL submitted its Answer to the OCA's Motion for Consolidation of the Phase 1 LON and Phase 2 Application proceedings.
13. On June 8, 2026, the Hazle Township Board of Supervisors adopted Resolution 2026-16:

RESOLUTION #2026-16

HAZLE TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA

A Resolution of the Hazle Township Board of Supervisors declaring portions of the Hazle Township Zoning Ordinance to be Substantively Invalid, Specifying Specific Findings Regarding the Reasons for the Declared Invalidity, and Implementing a Limited Moratorium of 180 Days from the Date of this Resolution to Adopt a Municipal Curative Amendment to Cure the Declared Invalidity by Addressing Data Centers and Data Center Accessory Uses in the Hazle Township Zoning Ordinance

14. On June 8, 2026, PPL submitted its Answer to the Motion to Deny Applications/Petition Without Prejudice of Erika Cook.

15. On June 10, 2026, NP Hazleton Holdings 1, LLC appealed the land use denial issued by Luzerne County to the Commonwealth Court of Pennsylvania.
16. On June 18, 2026, ALJs Coogan and Gannon issued an Order Denying the OCA's Motion for Consolidation.
17. On June 23, 2026, ALJs Coogan and Gannon issued an Order denying the Motion to Deny Applications/Petition Without Prejudice filed by Erika Cook.
18. On June 30, 2026, the Commission held two in-person Public Input Hearings (PIH) in Hazleton, PA.
19. On July 6, 2026, the OCA submitted a Motion to Leave to Submit Supplemental Direct Testimony in the Phase 1 proceeding, which was granted, in part through ALJs Coogan and Gannon's July 10, 2026 Order.
20. Only July 8, 2026, I, Erika Cook, pro se Protestant, submitted my Direct Testimony.
21. Only July 8, 2026, John Zola, pro se Protestant, submitted Direct Testimony.
22. On July 8, 2026, the OCA submitted its Direct Testimony consisting of OCA Statement 1, the Direct Testimony of Frank Felder, and OCA Statement 2, the Direct Testimony of Rao Konidena.
23. On August 4, 2026 Luzerne County Judge Lesa Gelb issued her Order and Opinion in Case # 202513744, Docket List Item # 104.
24. On August 6, 2026, PPL submitted the Motion of PPL Electric Utilities Corporation to Dismiss Objections and Compel Responses to Requests for Admission Propounded on the Office of Consumer Advocate – Set I, Nos. 10 through 13.
25. On August 7, 2026, the OCA submitted its Renewed Motion for Consolidation of the Phase 1 LON and Phase 2 Application proceedings.
26. On August 7, 2026, PPL submitted its Rebuttal Testimony consisting of:
 - PPL Electric Statement No. 1-R – Rebuttal Testimony of Joseph Lookup
 - PPL Electric Exhibit JBL-1R
 - PPL Electric Statement No. 2-R – Rebuttal Testimony of Kyle Swartzentruber
 - PL Electric Statement No. 3-R – Rebuttal Testimony of Peter Sparhawk
 - PPL Electric Statement No. 4-R – Rebuttal Testimony of Chad Huber
 - PPL Electric Statement No. 5-R – Rebuttal Testimony of John D. Taylor
 - PPL Electric Exhibits JDT-1R
 - PPL Electric Statement No. 6-R – Rebuttal Testimony of Bethany L. Johnson
 - PPL Electric Exhibits BLJ-1R through BLJ-3R

27. On August 12, 2026, I, Erika Cook, pro se Protestant, submitted my Renewed Motion to Deny the Application (LON) Without Prejudice or Stay the Application (LON) until the land-use conflict litigation is resolved in a manner that satisfies all Commission requirements.
28. On August 21, 2026, ALJs Coogan and Gannon issued an Order Denying the Motion of PPL Electric Utilities Corporation to Dismiss Objections and Compel Responses to Requests for Admission Propounded on the Office of Consumer Advocate – Set I, Nos. 10 through 13.
29. On September 4, 2026, OCA filed its Surrebuttal Testimony Statements 1SR: Surrebuttal Testimony of Frank A. Felder, Ph.D. and 2SR: Surrebuttal Testimony of Rao Konidena.
30. On September 4, 2026, I, Erika Cook, submitted my Surrebuttal Testimony.
31. On September 4, 2026, John Zola submitted his Surrebuttal Testimony.
32. On September 8, 2026, ALJs Coogan and Gannon issued an Order Denying the OCA's Renewed Motion for Consolidation.
33. On September 8, 2026, ALJs Coogan and Gannon issued an Order denying the Renewed Motion to Deny Application Without Prejudice or Stay the Application filed by Erika Cook.
34. On September 14, 2026, PPL filed Objections and Motion to Strike Portions of the Written Direct Testimony of the Office of Consumer Advocate.
35. On September 14, 2026, PPL submitted the Affidavits and Proofs of Publication indicating that the Evidentiary Hearing Notice for the above-referenced proceeding was published in the Wilkes Barre Times Leader on August 27, 2026 and September 2, 2026, and in the Hazleton Standard Speaker and Wilkes Barre Citizens' Voice on August 28, 2026 and September 4, 2026.
36. On September 14, 2026 PPL submitted Rejoinder Testimony consisting of:
 - PL Electric Statement No. 1-RJ – Rejoinder Testimony of Joseph Lookup
 - PPL Electric Statement No. 2-RJ – Rejoinder Testimony of Kyle Swartzentruber
 - PPL Electric Statement No. 5-RJ – Rejoinder Testimony of John D. Taylor
37. On September 17, 2026, Day 1 of the Evidentiary Hearing was held in Harrisburg, PA.
38. On September 18, 2026, Day 2 of the Evidentiary Hearing was held in Harrisburg, PA.
39. On September 18, 2026, OCA submitted the Motion of the Office of Consumer Advocate (OCA) to Amend or Withdraw Expert Witnesses' Admissions Pursuant to 52 Pa. Code Section 5.350(f) in this proceeding.
40. On September 22, 2026, ALJs Coogan and Gannon issued an Order Addressing Briefs, Denying PPL's Motion to Strike Portions of the Written Direct Testimony of the Office of Consumer

Advocate, and Denying OCA's Motion to Amend or Withdraw Expert Witnesses' Admissions Pursuant to 52 Pa. Code Section 5.350(f).

41. On October 8, 2026, I, Erika Cook, submit my Main Brief.

III. Statement of the Question Involved

- A. Has PPL Electric proven that this Project is necessary for the health, safety, and welfare of the public?

Suggested Answer: No.

IV. Argument

A. Burden of Proof

PPL Electric bears the burden of proof that this service and the facilities involved are adequate, efficient, safe, and reasonable.¹ PPL must prove that the Project is paramount and necessary for the health, safety and welfare of the Public.

B. Project is for 'A Customer'

PPL has reiterated multiple times throughout the LON itself, Discovery, and Testimonies that this Project is for 'A Customer' and it is PPL's own admission that there were no planned projects or upgrades to the existing transmission lines in the Project area until this Customer connection request². Evidence has been moved into the record showing that the Customer does not have land use approval to do any earth-moving projects.

PPL has stated that that the Supplemental projects presented as network upgrades for the PJM TEAC are to support this initial Customer's interconnection request³. These Supplemental projects are the very items identified in Phase 2. They have identified only 1 Customer has signed an Electric Service Agreement (ESA) with a maximum peak demand of 965 MW's⁴. It was confirmed at the Evidentiary Hearing that no other large load request users have signed an ESA with PPL at this time.

¹ 66 Pa. C.S. § 315 (c), 332

² Direct Testimony of Erika Cook, p. 8

³ Direct Testimony of Erika Cook, p. 11

⁴ Direct Testimony of Erika Cook, p. 12

Humboldt Industrial Park was originally established in 1972. In over 50 years of industrial operation, there has never been a MW increase of this significance before. There were no planned updates to these lines if there had not been for 1 single interconnection request. If the development does not go through for Project Hazelnut, a hyperscale data center that requires much more power than traditional industrial uses in the Humboldt Industrial Park and surrounding area, there is no need for Phase 1 or Phase 2 of this Project. If warehouses are built instead of a data center campus, the power need will be significantly reduced therefore changing the entire scope of this Project. PPL has not met the burden of proof at this time that this LON Project is paramount or necessary for the health, safety and welfare of the public.

C. Lack of Customer's Underlying Land Use Approval

To quote ALJ's Farren and Haas in the Order issued on September 22, 2026 in Phase 2, Docket Number A-2026-3061547, the Customer is "no longer merely awaiting perfunctory permit approvals, but rather, is actively litigating an appeal to overturn the *denial* of NP Hazleton's land development plan. The lack of approval of NP Hazleton's land development plan is at issue in the instant case as well, since it is that land development plan that contemplates the erection of a data center by the single large-load customer PPL seeks to serve, in part, by its Phase 2 proceeding."

The Customer is not 'pending approval'. The Customer has been denied and is actively litigating an appeal. An appeal that it seems the Commonwealth may have a difficult time granting since their very own rulings were cited to justify the denial of the appeal at the County level.

In addition, Judge Gelb's Opinion⁵ issued in the appeal case by NP Hazleton Holdings 1, LLC includes multiple instances of case law cited to show the Commonwealth's own history of previous rulings on similar cases. In her brief, Appendix A, p.9, Judge Gelb explains that the Zoning Officer's four determinations were not legally binding because they did not comply with Section 10916.2 of the MPC⁶. There was no public notification of the Zoning Officer's preliminary opinion. She also explains that the Board of Supervisors did not err in their decision to deny the land development plans, they were perfectly within their right to do so. The reasons behind why the denial was upheld by Luzerne County are very straightforward and Judge Gelb's Opinion states the facts clearly.

D. Lack of Public Notification

From the start of the LON, PPL has not properly notified the Public. If anyone has been prejudiced in this case, it is the Public. PPL has violated the ALJ's Scheduling Order multiple times when

⁵ NP Hazleton Holdings 1, LLC v. Hazle Township Board of Supervisors, Docket No. 2025-13744, Opinion Of Record, Item List # 104 Entered 8/4/2026. See Appendix A.

⁶ 53 P.S. § 10916.2

it comes to public notice. Initially, PPL did not advertise the LON in the Project area's local publication to give residents directly and indirectly affected notification of the Project beginning. This impacted their ability to file a timely Protest or Comments to the LON. You can't protest something that you do not know about. While this was not a violation of the Order, it is part of why I submitted a Protest - on behalf of my fellow community members. Utilities do not see Township lines. It is the Applicant's responsibility and due diligence to provide adequate public notification.

PPL did violate the Scheduling Order's instructions for advertising both the Public Input Hearings *and* the Evidentiary Hearings. In the cover sheet in the submission of the Proofs of Publication on September 14, 2026, Mr. Shafer states "Per the August 25, 2026 email from Attorney Garrett Lent at Post & Schell to Administrative Law Judge John Coogan and Administrative Law Judge Erin Gannon, PPL Electric had inadvertently not published the Evidentiary Hearing Notice pursuant to the direction in the Scheduling Order in this proceeding." The lack of timely publication for the Evidentiary Hearings is a direct violation of 52 Pa. Code § 57.75, Hearing and notice. In fact, I believe the Commission could institute an injunction, mandamus or other appropriate legal proceeding in accordance with 66 Pa. C.S. § 502 and with multiple violations, it is my position that this should be taken into consideration by the Commission.

PPL also objected to myself and John Zola as Protestors to this LON application. I believe this was in an effort to keep the Public excluded from the process. PPL argued to have my protest summarily dismissed in its entirety *with* prejudice, stating that it was legally insufficient and I lack standing. Even in that first argument, PPL is trying to separate Phase 1 and Phase 2 as if they are not *both* required to sufficiently and safely provide power to the Customer. I am a PPL Rate Payer and to say I am not impacted by this Project when Phase 2 is mentioned multiple times and is required to service the Customer, is a stretch of the truth. As noted by OCA⁷, Phase 1 addresses the interconnection of the Customer and Phase 2 addresses the service needs of the Customer. PPL also insinuates that I am presenting myself as a representative of Hazle Township⁸ and that is not true. I am a representative of the Public, We The People, to include Rate Payers and local residents who were not aware of the LON.

E. Lack of Project Transparency

It is my personal belief that Phase 1 and Phase 2 should have been submitted as one full siting application to the PUC. While I understand the technicality that the Tomhicken switchyard and 1.1 mile transmission line portion qualifies for the simplified LON process, this really is one Project for A Customer. Filing the LON and Siting Application separately has actually caused more confusion. Everything that was presented to the Public up until the actual filing of the LON in December 2025, was presented as the Sugarloaf Project to include the Nescopeck *and* Tomhicken switchyards and all the transmission lines. This Customer cannot be served at its projected 965 MW without both Phase 1 and Phase 2 complete. This is prejudice and an injustice to the Public; Phase 1 and Phase 2 must be looked at as a cumulative project when you cannot have one without the other. It has been an inefficient use of

⁷ Answer of the OCA to the Preliminary Objects of PPL Electric regarding the Protest of Erika Cook, p. 2-3

⁸ PPL Preliminary Objection to the Protest of Erika Cook, p. 10, ¶ 49.

the Commission and all Parties' resources when clearly Phase 1 and Phase 2 are connected as they are each referenced in each others' respective applications (LON/Siting Application).

F. Funding of Project

Governor Josh Shapiro signed Executive Order 2026-05 - Protecting Pennsylvania Consumers from Data Center Impacts on August 18, 2026. Because the Customer in this Project does not have the basic land use approval to move forward, this LON should be denied and the Applicant should reapply if and when the land use approval is received. As I stated earlier, the Public has been the Party prejudiced in this LON case. In fairness to the Public, the Executive Order should be applied if and when approval is received. This Executive Order directs that the Data Center Customers must pay for the interconnection costs - this includes all of them, not portions of the Project. Why should the Rate Payers have to pay for a data center or any large load customer connection?

In addition, as per Zola Exhibit 1, NorthPoint states in the section titled:

Power We have secured the necessary power and are funding all required grid upgrades for the project. The facility's needs will be met without placing any burden on existing ratepayers.

Where has this been demonstrated in any of PPL's submissions? If this is not a NorthPoint project, why is NorthPoint claiming they are paying for it and how have they secured the necessary power already? It is yet another contradiction of information about the entire Project from both PPL and the developer.

V. Conclusion

In conclusion, I do not believe that PPL has met the burden of proving that there is a need for this Project and that the need is paramount for the health, safety and welfare of the Public. This Project is to serve A Customer and that Customer's development may not come to fruition. Moreover, PPL cannot safely provide the requested overall 965 MW load request from Customer within the scope of the LON and Phase 1 alone. I would like to reference Hazle Township's Subdivision and Land Development Ordinance, Article 3, page 3-14:

SECTION 312 COMMENCEMENT OF DEVELOPMENT AND PERMITS

A. Infrastructure may be constructed once preliminary approval has been granted and all outside agency permits that relate to construction are obtained. If a plan is granted preliminary approval with conditions by the board, infrastructure may not be constructed until all conditions of the approval have been met by the applicant. No on-lot building construction activities (including

earthmoving activities, but not including soil or percolation testing or surveying activities) shall begin until the Township Zoning Officer has received a copy of the Recorder of Deeds' receipt for recording of the final plan, or a building or driveway permit has been issued.

Hazle Township's own ordinance states that approval must be granted before infrastructure can be constructed. No on-lot building construction activities including earthmoving activities can be done without the proper approval. I believe this would include the installation of 100-140 foot tall steel monopole transmission lines, switchyard and substation.

Pennsylvania Constitution, Article 1, Section 27:

§ 27. Natural resources and the public estate.

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

(May 18, 1971, P.L.769, J.R.3)

1971 Amendment. Joint Resolution No.3 added section 27.

Every single Resident of Pennsylvania is a Trustee of our resources and the Trustees of the Commonwealth are responsible for conserving and maintaining the benefit of all the people. As a Commission of the Commonwealth, it is also Your Honors obligation to uphold and maintain this benefit of all the people including generations yet to come.

Wherefore, for the foregoing reasons, I, Erika Cook, pro se Protestant, respectfully requests that the Commission enter an Order Denying PPL Electric's Letter of Notification until PPL can prove the need for the project and that the need is paramount for the health, safety and welfare of the Public.

Respectfully,



Erika Cook
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Sugarloaf, PA 18249
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570-233-8205

VERIFICATION

I, Erika Cook, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: October 8, 2026



Erika Cook, Pro Se Protestant

Appendix A

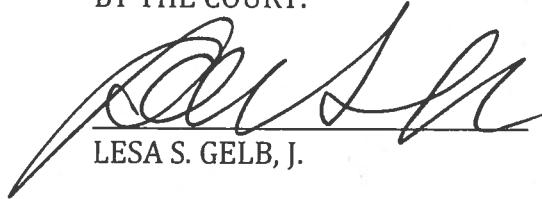
NP HAZLETON HOLDINGS, LLC,	:	IN THE COURT OF COMMON PLEAS
	:	
Plaintiff	:	OF LUZERNE COUNTY
v.	:	
	:	CIVIL ACTION LAW
THE HAZLE TOWNSHIP BOARD OF SUPERVISORS,	:	
	:	
Defendant	:	2025-13744

ORDER

AND NOW, this 4th day of August 2026, it is hereby **ORDERED** that the Clerk of Judicial Records/Prothonotary is directed to docket this Order and accompanying Opinion of record and to transmit the same to the Commonwealth Court of Pennsylvania within ten (10) days of the date of this Order.

The Clerk of Judicial Records/Prothonotary is directed to serve notice of the entry of this Order pursuant to Pa. R.C.P. 236.

BY THE COURT:


LESA S. GELB, J.

PROTHONOTARY, LUZERNE COUNTY
FILED AUG 4 2 26 PM 1:47

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NP HAZLETON HOLDINGS, LLC,	: IN THE COURT OF COMMON PLEAS
Plaintiff	:
v.	: OF LUZERNE COUNTY
THE HAZLE TOWNSHIP BOARD OF SUPERVISORS,	: CIVIL ACTION LAW
Defendant	: 2025-13744

OPINION

I. Relevant Facts and Procedural History

Before this Court is Appellant's Concise Statement of Matters Complained of on Appeal arising from this Court's denial of its Land Use Appeal (Docket Entry #98). Appellant is NP Hazleton Holdings 1, LLC, also known as NorthPoint, with a business address of 3315 North Oak Trafficway, Kansas City, Missouri 94116. Appellee is the Hazle Township Board of Supervisors (the "Board"), a municipal board of Hazle Township, Luzerne County, Pennsylvania with an address of 101 W. 27th St., Hazleton, Pennsylvania 18202. Intervenor are eighty-three persons who reside or are owners of land within the immediate vicinity of the property owned by NorthPoint in the Humboldt Industrial Park-North in Hazle Township (the "Property") (Docket Entry #4, Petition to Intervene, Appendix A).

NorthPoint plans to build a data center campus on the roughly 1,300-acre Property. (R.R. at 1759, Ex. 33, Land Development Application). The Property for the proposed data center campus is described in the Luzerne County Recorder of Deeds Office in Book 3024, at page 227555; Book 1127, at page 238; Book 3024, at page 128239; Book 1682, at page 1172; Book 1625, at page 434; Book 2208, at page 992; and Book 2341, at page 908 with County Tax Parcel Identification Nos.: 26-U6S4-001-014-000; 26-T6-00A-008-000; 26U6V6-

00A-018-000; 26-U6V6-00A-018; 26-T6-00A-001; 26-T6-001-011; AND 26-T6-00A-70C.¹

The Property is located in the Conservation (C-1) and Industrial (I-1) zoning districts. (R.R. at 1336, Ex. 31, Transcript of Proceedings of the Hazle Township Zoning Hearing Board dated September 2, 2025, p. 8, l.l. 5-9). The proposed land development project would occur only in the I-1 zoning district portion of the Property. (Id.).

Around April 24, 2025, NorthPoint submitted preliminary land development plans for the Property ("Project Hazelnut") for a data center campus consisting of fifteen data centers, a substation and switchyard facilities, four ancillary buildings, a water treatment and storage facility, and site improvements including two secured entrances, private drives, parking areas, domestic, fire, and industrial water lines, domestic and industrial wastewater lines, landscaping, stormwater management facilities, improvements of Grassy Path Road, stream crossings, and an extension of North Park Drive. (R.R. at 1755-70, Ex. 33; R.R. at 1239-55, Ex. 22, Review of RJD Engineering, Inc., dated June 17, 2025). Prior to formally submitting the preliminary land development plans to the Township for its review, NorthPoint requested preliminary opinions from the Zoning Officer in 2024 regarding whether its use of the Property as a data center campus would comply with the Zoning Ordinance. While this is not a necessary step in seeking land use plan approval, landowners may request such a preliminary opinion from a zoning officer and publish the opinion to ensure that their land use approval is free from challenge at the development application phase. 53 P.S. § 10916.2.

¹ NorthPoint noted in its Notice of Land Use Appeal that due to subdivision of the Property, these identification numbers are no longer applicable but were applicable at the time of the events described.

On June 25 and August 27, 2024, after a review of information about the land development plans that NorthPoint provided, the Zoning Officer issued preliminary opinions that the plans did comply with the Zoning Ordinance. (R.R. at 1148-49, Ex. 6, Preliminary Opinions dated June 25; R.R. at 1150-51, Ex. 7, Preliminary Opinion dated August 27, 2024). On July 16, 2024, the Township Engineer reviewed NorthPoint's sketch plan of its project and stated that the land development plan complied with I-1 zoning requirements with respect to use. (R.R. at 1256-72, Ex. 23, Review of RJD Engineering, Inc., dated July 16, 2024). The Township Engineer again issued a review letter on June 17, 2025 stating that the proposed use of a multi-phase data center campus, its accessory uses, and a new power station are permitted by right in the I-1 zoning district. (R.R. at 1239-55, Ex. 22). The Board approved a Level 4 Stormwater Management Application and Plan for Project Hazelnut on May 12, 2025 conditioned upon the comments stated in the May 8, 2025 Township Engineers Review Letter. (R.R. at 2310-12, Ex. 40, Hazle Township Board of Supervisors Minutes; May 12, 2025). On July 21, 2025, the Zoning Officer issued a determination that NorthPoint's plot plans for its data center campus project did not comply with the Ordinance due to needing a variance to reduce the required parking. (R.R. at 1152, Ex. 8, Zoning Review dated July 21, 2025). The Zoning Officer issued his final determination on August 18, 2025, stating that the plot plans did not comply with the Ordinance. (R.R. at 1153, Ex. 9, Zoning Review dated August 18, 2025).

On September 2, 2025, the Hazle Township Zoning Hearing Board (the "ZHB") held a hearing to consider NorthPoint's application for a parking variance. (*Id.* at 1335, p. 3, l.l. 12-19). The ZHB is vested with the authority to grant or deny land use variances and special exceptions. (R.R. at 1875, 1958, Ex. 35, Hazle Township Zoning Ordinance 2003-1-6-1, as

amended). The ZHB granted the variance to allow 1,022 of required minimum off-street parking spaces where 3,894 parking spaces were required under Section 1117(34) of the Hazle Township Zoning Ordinance (the "Zoning Ordinance") for the Property. (R.R. at 1329-32, Ex. 30, Decision of the Hazle Township Zoning Hearing Board dated September 3, 2025). No party filed any appeal to the parking variance grant.

At a planning meeting on October 21, 2025, the Hazle Township Planning Department recommended approval to the Board of Supervisors of NorthPoint's land development plans for the data center campus with conditions. (R.R. at 1205-12, Ex. 16, Hazle Township Planning Department Minutes; October 21, 2025; R.R. at 1213, Ex. 17, Recommendation Letter of Hazle Township Planning Department dated October 23, 2025). Under the Hazle Township Subdivision and Land Development Ordinance (SALDO), the Board of Supervisors as the Township's governing body retains the authority to approve or disapprove all major subdivisions and major land developments. (R.R. at 2049, Ex. 36, Hazle Township Subdivision and Land Development Ordinance (2.08.2010, rev. 6.13.2011); R.R. at 1822, Ex. 35 (defining "governing body" of Hazle Township as the "Board of Supervisors of Hazle Township, Luzerne County Pennsylvania").

On November 14, 2025, the Board at an advertised special meeting denied the data center land development plans after public comment. (R.R. at 2306-09, Ex. 39, Hazle Township Board of Supervisors Special Meeting Minutes; November 14, 2025). It issued its accompanying written decision on November 20, 2025. (R.R. at 1771-01, Ex. 34, Written Decision of the Hazle Township Board of Supervisors dated November 20, 2025). In its written decision, the Board denied the plans because they did not comply with the Zoning Ordinance or SALDO. (Id. at 1773). Specifically, it found that the proposed use of the

Property as a data center campus was not permitted by right or special exception under Section 505 of the Zoning Ordinance in the zoning districts where the property and proposed project are located. (Id.). The Board noted, however, that whenever a use is not specifically permitted, the property owner must apply for a special exception to the Zoning Hearing Board for approval. (Id. at 1774). NorthPoint had not at this time applied for such a special exception for its land use proposal. (Id.).

NorthPoint timely appealed the Board's decision on December 12, 2025, pursuant to 53 P.S. §10101 et seq. of the Pennsylvania Municipalities Planning Code (MPC) to the Luzerne County Court of Common Pleas (Docket Entry #1, Notice of Land Use Appeal). In its Land Use Appeal, NorthPoint claims that the Board of Supervisors' denial of the plans was an abuse of discretion and otherwise constituted an error of law. (Id. at ¶ 1). Namely, NorthPoint claimed that over an 18-month period preceding the Board's denial, NorthPoint proceeded in good faith with its land use development plan and yet at the "eleventh hour," the Board denied the application. (Id.). The submitted application to the Board for its review was the "final critical Township approval" for the plans. (Id.).

On January 12, 2026, objectors to NorthPoint's Land Use Appeal filed a Petition to Intervene Pursuant to Pa.R.C.P. 2328. On March 2, 2026, this Court granted the Petition to Intervene in accordance with Pa.R.C.P. 2324 (Docket Entry #15).

NorthPoint timely filed its Concise Statement of Matters Complained of on Appeal on June 30, 2026, pursuant to this Court's Order on June 11, 2026 (Docket Entry #94). This appeal stems from this Court's Order granting the Petition to Intervene as well as its Order on May 26, 2026 (Docket Entry #88) where the Court found as follows:

1. The Land Use Appeal is DENIED at this time;

2. This Court is remanding this matter to the Hazle Township Zoning Hearing Board to make further determinations;
3. That NP Hazleton Holdings shall be permitted to make application to the Board for a special exception and/or in addition can challenge, on substantive grounds, the validity of the Hazle Township Zoning Ordinance as applied to Applicant's proposed use of the premises, situated at Luzerne County, Pennsylvania pursuant to 53 P.A. §10916.1 et seq. The Board's proceedings shall be conducted in accordance with applicable Hazle Township Zoning Ordinance and Pennsylvania Municipalities Planning Code requirements and any agreed to by the parties; and
4. That subsequent to the receipt of the application and/or challenge by the Board, a Hearing shall be held at a location determined by the Board on a date in accordance with 53 P.S. § 10916.1.

NorthPoint's Statement of Matters contained nineteen matters (subsections A through S) complained of on appeal. They can be summarized into the following questions of whether this Court abused its discretion and erred in:

1. Declining to defer to the Hazle Township Zoning Officer's interpretations of the Ordinance and concluding that the Board had authority to deny NorthPoint's land use proposal;
2. Failing to reverse the Board of Supervisors' denial of NorthPoint's land use plans due to the proposed use of the property not being permitted under the Ordinance without special exception approval; and
3. Permitting the Intervenor to enter the case.

(See generally Statement of Matters). This Opinion cites to the Certified Record and Supplement containing exhibits 1-46 (Docket Entries #14, #81, and #80).

II. Standard of Review

When a trial court does not take additional evidence to review a zoning hearing board decision, its review is strictly limited to only determining whether the board "abused

its discretion or committed an error of law.” Weston v. Hanover Twp. Zoning Hearing Bd., 356 A.3d 972, 979 (Pa. Cmwlth. 2026) (citation omitted). Likewise, when the trial court does not take additional evidence, the zoning hearing board is the “sole judge of credibility of witnesses” and the court must give weight to their testimony. Id. The governing body abuses its discretion when its findings of fact are not supported by “substantial” evidence. Valley View Civic Ass’n v. Zoning Bd. of Adjustment, 501 Pa. 550, 555, 462 A.2d 637, 640 (1983). Substantial evidence is “relevant evidence as reasonable mind might accept as adequate to support a conclusion.” EQT Prod. Co. v. Borough of Jefferson Hills, 652 Pa. 508, 533, 208 A.3d 1010, 1017 (2019).

III. Discussion

1. This Court did not err when it declined to find the Zoning Officer’s determinations of NorthPoint’s land use plans binding on the Board or this Court.

NorthPoint argues that (1) the Zoning Officer made four separate legally binding determinations concerning NorthPoint’s land use plans of the Property in his June 25, 2024 (R.R. at 1148-49, Ex. 6) and August 27, 2024 (R.R. at 1150-51, Ex. 7) preliminary opinions and July 21, 2025 (R.R. at 1152, Ex. 8) and August 18, 2025 (R.R. at 1153, Ex. 9) zoning determinations; (2) there was adequate public notice of the Zoning Officer’s determinations; and (3) the Board of Supervisors did not have the authority to determine zoning issues including whether a use is permitted and whether relief from a zoning ordinance is warranted. (Statement of Matters at ¶¶ e, g, i, j, and k). In the June 25, 2024 Zoning Officer’s preliminary opinion, the Zoning Officer stated that the proposed use for the Property identified with Tax Parcel numbers of 26-T6-00A-001 and 26-U6V6-00A-018 as a data center campus “will comply with the use regulations set forth in Section 505.1” of the

Ordinance. (R.R. at 1148). However, the Zoning Officer noted that notwithstanding this finding, NorthPoint would have to obtain land development approval from Hazle Township for the project. (*Id.*). The August 27, 2024 preliminary opinion stated essentially the same with the addition that back-up generator use during power outages and other emergencies at the site is exempt from sound ordinances set forth in the Zoning Ordinance. (R.R. at 1150-51). The Zoning Officer issued these two preliminary opinions as requested by NorthPoint and pursuant to Section 10916.2 of the MPC. The July 21, 2025 zoning determination stated that the Zoning Officer reviewed the plot plan submitted by Design BLD for a Preliminary/Final Major Subdivision and Land Development for NorthPoint Development for the Property and that the plan was not in compliance with the Zoning Ordinance because a variance was needed for a reduction of parking spaces (R.R. at 1152). The August 18, 2025 zoning determination did not state which plot plan it reviewed but stated that the plans were not in compliance with the Ordinance without marking a reason. (R.R. at 1153).

The Zoning Officer's four determinations (R.R. at 1148-53) were not legally binding on the Board or this Court. The Ordinance defines a "determination" to include a final action by an officer, body, or agency charged with the administration of any land use ordinance or application thereunder except the governing body (the Board of Supervisors), the zoning hearing board, or the planning department under certain circumstances as further defined. (R.R. at 1819, Ex. 35). Further, the Zoning Ordinance states that determinations may only be appealed to the boards designated as having the appellate jurisdiction. (*Id.* at 1820). The Zoning Officer's four determinations were not legally binding because they did not comply with Section 10916.2 of the MPC, which provides as follows:

In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposed to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to the ordinance or map will run under section 914.1 by the following procedure:

(1) The landowner may submit plans and other materials describing his proposed use or development to the zoning officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.

(2) If the zoning officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval under section 914.1 and the time therein specified for commencing a proceeding with the board shall run from the time when the second notice thereof has been published.

53 P.S. § 10916.2 (emphasis added).

First, the Zoning Officer's preliminary opinions that stated NorthPoint's plot plans complied with the Ordinance did not comply with the MPC Section 10916.2(2) publication requirement. NorthPoint acknowledged in its initial request for a preliminary opinion from the Zoning officer that "it is the sole responsibility of NorthPoint to pay for and arrange publication of the preliminary opinion if duly issued" by Zoning Officer. (Docket Entry #80, R.R. at Ex. 46). NorthPoint claims that there was proper public notice and that there was a public hearing before the ZHB on September 2, 2025 where the ZHB approved the parking variance for the Property. (Statement of Matters at ¶ g). NorthPoint does not point to anywhere in the Certified

Record where there was proper public notice of the Zoning Officer's preliminary opinions themselves. The public hearing on September 2, 2025 makes no mention of the preliminary opinions either. (See generally R.R. at 1333-1357, Ex. 31). Rather, the September 2, 2025 public hearing concerned one matter being "the application of NP Hazleton Holdings 1, LLC, 3315 North Oak Trafficway, Kansas City, Missouri for a variance to reduce the required off-street parking spaces to 1022 where 3894 is required for a property located at 2500 North Park Drive, Hazle Township, PA that is zoned I-1 industrial." (Id. at 1335, p. 3, l.l. 12-19).

The Zoning Officer also had not issued a zoning permit to NorthPoint for its proposed project. (R.R. at 1775, Ex. 34). Had such a permit been conspicuously posted on the Property, that also could have provided the requisite adequate public notice. (Id.). Therefore, nowhere in the Certified Record does it indicate that the preliminary opinions were published in accordance with Section 10916.2(2) to provide adequate public notice. (See generally Docket). Without this publication, the window of time for any objectors, including the Board, to appeal the Zoning Officer's preliminary opinions did not start to run.

Second, the Zoning Officer's four determinations do not provide a sufficient basis for the preliminary opinions as to the compliance of NorthPoint's plans to the Zoning Ordinance. The preliminary opinions merely state the conclusion that the plans of the data center campus will comply with the use regulations set forth in Section 505.1 of the Zoning Ordinance without any interpretation of the Ordinance or other explanation. (See generally R.R. at 1148-51, Exs. 6-7). The other two zoning determinations also do not contain an interpretation of the Zoning Ordinance except

that the plans do not comply with the Ordinance and that the plans require a variance for reduction of parking spaces. (See generally R.R. at 1152-53, Exs. 8-9).

Section 10909.1 of the MPC sets forth the matters over which a zoning hearing board has exclusive jurisdiction to hear and render final adjudications as follows. As relevant to the instant case, Section 10909.1(a)(3), (6) and (8) state:

(a) The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

(3) Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application. . . , the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

(6) Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1.

(8) Appeals from the zoning officer's determination under section 916.2.

53 P.S. § 10909.1(a)(3), (6) and (8).

The Commonwealth Court of Pennsylvania provided clarity in Borough of Jenkintown v. Board of Commissioners of Abington Township on a zoning officer's authority in making determinations regarding subdivision and land development proposals under Article V of the MPC. 858 A.2d 136, 140-41. Namely, the court recognized that land developers can request the zoning officer's preliminary opinion on a land use proposal under Section 10916 of the MPC with the right to appeal his determination to the zoning hearing board. Id. at 140. This section does not confer "broad authority" on a zoning officer to provide an advisory determination on the validity of a land use proposal; meaning, a "favorable preliminary opinion does not give the landowner a substantive land use approval." Friends of Lackawanna v.

Dunmore Borough Zoning Hearing Bd., 227 A.3d 37, 44 (Pa. Cmwlth. 2020). Further, a zoning officer's preliminary opinion has no bearing on a zoning permit that the land developer has yet to request if any is needed under the ordinance. Id. at 45. The Jenkintown court noted that the MPC is silent as to "the method to challenge other determinations of a zoning officer that are made in the context of the land development review process before a governing body." Borough of Jenkintown, 858 A.2d at 141. The Supreme Court of Pennsylvania, however, has stated that "zoning issues should be resolved no later than the acceptance of the final plan by the governing body." Id. (citing Graham v. Zoning Hearing Bd. of Upper Allen Twp., 520 Pa. 526, 532, 555 A.2d 79, 81-82 (1989)).

Where a board of supervisors disagrees with a zoning officer's determination regarding a zoning matter, the board can deny the land use proposal or grant approval with the condition that the land developer must first seek the variance or special exception required under the zoning ordinance. Id.; Schultheis v. Bd. of Supervisors of Upper Bern Twp., Berks Cnty., 727 A.2d 145, 148 (Pa. Cmwlth. 1999) (noting that where land use preliminary plans fail to comply with SALDO requirements, plan rejection or conditional approval is within discretion of governing body). Courts have emphasized that the governing body does not have to give the land developer conditional approval or an opportunity to revise a noncompliant plan. Herr v. Lancaster Cnty. Planning Com'n, 155 Pa. Cmwlth. 379, 394-95, 625 A.2d 164, 172 (1993) ("where the objections concern fundamental defects in the plan, such as failure to conform to lot size requirements of the zoning ordinance, rejection is appropriate"); Schultheis, 727 A.2d at 149 n. 8. The governing

body should not deny a land use plan without conditional approval based upon the plan's failure to conform to non-SALDO requirements or where the issues with the plan are relatively minor. Herr, 155 Pa. Cmwlth. at 395, 625 A.2d at 172. Further, a land use plan that complies with all objective provisions of the applicable SALDO and regulations must be approved. Akin v. South Middleton Twp. Zoning Hearing Bd., 120 Pa. Cmwlth. 112, 114-15, 547 A.2d 883, 884 (1988); Scluffer v. Plymouth Twp., 32 Pa. Cmwlth. 394, 397, 379 A.2d 1060, 1062 (1977) (citation omitted) ("It is an error of law for the governing body to reject a plan in absence of findings that the plan violates any applicable statute or ordinance."). The plan may be rejected if the decision is "validly supported by even one of several objections." See, e.g., Cnty. Builders, Inc. v. Lower Providence Twp., 5 Pa. Cmwlth. 1, 5-6, 287 A.2d 849, 851-52 (1972). When the plan is not approved, the decision must specify the defects found in the plan and cite the specific provisions of the ordinance relied upon. Herr, 155 Pa. Cmwlth. at 387, 625 A.2d at 168; 53 P.S. § 10508(2).

Importantly, "while a governing body may interpret zoning ordinances in the land development review process, it has no authority to render final determinations resolving questions such as whether a use is permitted and whether relief from zoning ordinances is warranted or deserved." Borough of Jenkintown, 858 A.2d at 142. Should the land developer wish to appeal the governing body's determination, he may do so to the court of common pleas in accordance with the MPC. Id. at 141. The appellate court reviews findings of noncompliance made by the governing body below to determine whether they are supported by substantial evidence. Herr, 625 A.2d at 169. In reviewing the adequacy of the governing body's decision denying plan

approval, the court focuses on whether the decision “is sufficient to permit the applicant to understand the specific nature of the deficiency identified, so as to permit the applicant to take whatever further action it deems necessary or appropriate.” Kassouf v. Twp. of Scott, 584 Pa. 219, 236, 883 A.2d 463, 474 (2005). If a trial court finds that the governing body (i.e. the board of supervisors) improperly interpreted the zoning ordinance, the court “may reverse the governing body’s decision, as containing a fundamental defect, or it may reverse and remand, upon a finding that variances or special exceptions are required, viewing the governing body’s decision as conditional, and resting ultimately on whether the developer obtains the required zoning relief.” Id.

To be clear, in the instant case, the November 20, 2025 decision from the Board, which is the subject of NorthPoint’s Land Use Appeal, was not an appeal from a zoning officer’s determination under Section 10916.2 of the MPC or from the denial of a permit. The written decision was for the denial of NorthPoint’s “Preliminary Major Land Development Plans for Project Hazelnut and Final Plans for Phase I of the Development and Preliminary/Final Land Development Plans for Project Hazelnut-North Park Drive Extension & Grassy Path Road of NP Hazleton Holdings, LLC for property located at 2500 North Park Drive, Hazle Township, PA [which] proposed to be used as an Industrial Technology Campus with 15 Data Center Buildings with four ancillary buildings, parking, utilities and stormwater.” (R.R. at 1772, Ex. 34). Regarding the authority of the Board of Supervisors as the governing body to review NorthPoint’s project plans, Section 104.2(a) of SALDO states in pertinent part:

No lot in a proposed subdivision or land development may be sold, and no zoning or building permit to erect any building upon land in a subdivision or land development may be issued unless and until the following conditions are met:

A. The plans and application have been granted final approval by the Township Board of Supervisors or the Township Planning Department.

(R.R. at 2051, Ex. 36). Section 802(f) of SALDO requires that the proposed land use conforms to the Ordinance. (*Id.* at 2143). Further, Section 816.1 of SALDO requires that a non-residential subdivision or land development is subject to all site plan approval requirements of the Ordinance as well as its standards. (*Id.* at 2187).

In applying the case law, Hazle Township's Zoning Ordinance, and SALDO to the facts, the Board had the authority to reject NorthPoint's plot plan for the Property. In rejecting the plot plan, the Board appropriately cited specific sections in the Zoning Ordinance and SALDO. See Herr, 155 Pa. Cmwlth. at 387, 625 A.2d at 168; 53 P.S. § 10508(2). In its written decision, the Board stated that Section 802(f) and 816.1 of SALDO require that proposed land uses conform to the Zoning Ordinance. (R.R. at 1773, Ex. 34). It explained that the proposed use of the Property "is not permitted by right or special exception under Section 505 of the Zoning Ordinance." (*Id.*). In such an instance, the Board cited Section 320 of the Ordinance and furthered that the landowner "must make application with the zoning officer, who must then refer the application to the zoning hearing board for special exception approval." (*Id.*). The Board provided an analysis of how the proposed use of the Property as a data center campus is not a permitted use in the Zoning Ordinance. (*Id.* at 1773-75). The Board had the choice to reject the land use proposal or grant approval on the condition that the land developer must seek the variances or special exceptions

required under the Ordinance. See Borough of Jenkintown, 858 A.2d at 141; R.R. at 1776, Ex. 34. The Board chose to deny the plans because “special exception approval for the proposed use is required under the Zoning Ordinance but has not been obtained by the Applicant from the Zoning Board.” (R.R. at 1776, Ex. 34). Due to the fundamental defect in the plan and the Board’s support in deeming it as noncompliant with the Zoning Ordinance or SALDO as a permitted use, the Board’s rejection of the plan was appropriate. See Herr, 155 Pa. Cmwlth. at 394-95, 625 A.2d at 172; see also Cnty. Builders, Inc., 5 Pa. Cmwlth. at 5-6, 287 A.2d at 851-52.

Without the Board of Supervisors’ approval, the Zoning Officer and the ZHB were not permitted to issue a building permit for NorthPoint’s data center campus project. (R.R. at 2051, Ex. 36). Likewise, without the Board’s approval, the Zoning Officer’s four unpublished zoning determinations alone could not have provided NorthPoint any vested right in its land development for the Property. See Friends of Lackawanna, 227 A.3d at 44. In reviewing the land use plans, the Board of Supervisors did not consider the zoning matter of whether NorthPoint’s proposed land use would meet the standards for a special exception because that determination is for the ZHB. See Appeal of Fiori, 160 Pa. Cmwlth. 659, 663, 635 A.2d 743, 745 (1993) (noting “zoning hearing board has exclusive jurisdiction to hear and render final adjudications in applications for variances, whereas municipality’s governing body has exclusive jurisdiction to hear and render final adjudications in applications for approval of subdivisions or land developments”). Instead, the Board acknowledged that under Section 320 of its Zoning Ordinance, the ZHB would have to issue the special exception approval. (R.R. at 1774, Ex. 34). Accordingly, this Court in its May 26, 2026 Order remanded

NorthPoint's Land Use Appeal to the ZHB to make further determinations and ordered that NorthPoint was permitted to make application to the ZHB for a special exception.

2. This Court did not err when it affirmed the Board's denial of NorthPoint's data center campus plans for the Property.

a. The Proposed Use of the Property as a Data Center Campus is Not a Permitted Use Under the Zoning Ordinance and Required Special Exception Approval

NorthPoint posits that this Court committed an error when it affirmed the Board's decision that the proposed use of the Property was not permitted by right pursuant to Section 505.1 or special exception under 505.2 of the Zoning Ordinance. (Statement of Matters at ¶¶ b & d). Similarly, NorthPoint claims it was in error for this Court to affirm the Board's conclusion that NorthPoint's proposed use of the Property was a use not addressed within the Zoning Ordinance under Section 320 thereby requiring special exception approval. (*Id.* at ¶ c). Due to the Board not conditioning its denial of the land use plan upon NorthPoint obtaining special exception relief, NorthPoint states that this Court has improperly subjected NorthPoint to changes in Hazle Township's Zoning Ordinance and SALDO. (*Id.* at ¶ l). NorthPoint argues that this Court did not liberally construe the Zoning Ordinance or SALDO in favor of NorthPoint or gave effect to the plain, ordinary, and usually understood meaning of the text of the ordinances. (*Id.* at ¶ m).

Courts must liberally construe zoning ordinances to allow the broadest possible use of the property while maintaining the plain and ordinary meaning of the text. Bakerstown Container Corp. v. Richland Twp., 508 Pa. 628, 631, 500 A.2d 420, 421 (1985); Zappala Grp., Inc. v. Zoning Hearing Bd. of Town of McCandless, 810 A.2d 708, 710 (Pa. Cmwlth. 2002); 53 § 10601.1. "It is an abuse of discretion for a board to narrow the terms of an ordinance and

further restrict the use of property.” Lake Adventure Inc. v. Zoning Hearing Bd. of Dingman Twp., 64 Pa. Cmwlth. 551, 558, 440 A.2d 1284, 1288 (1982). When a court needs to define an undefined term, it may consult definitions in statutes, regulations or the dictionary, but such definitions are not controlling. H.E. Rohrer, Inc. v. Zoning Hearing Bd. of Jackson Twp., 808 A.2d 1014, 1016-17 (Pa. Cmwlth. 2002). Courts must interpret a phrase or word in context and read it together with the entire ordinance. Id. For instance, where an ordinance does not mention a specific use, the court must consider whether the proposed use is included within another use that is specifically provided for. Kratzer v. Bd. of Supervisors of Fermanagh Twp., 148 Pa. Cmwlth. 454, 460, 611 A.2d 809, 812 (Pa. Cmwlth. 1992).

Where a specified use in the zoning ordinance is broad enough to encompass the proposed use, the use should not be excluded. See Appeal of M.A. Kravitz Co., Inc., 501 Pa. 200, 212, 460 A.2d 1075, 1082 (1983); see also Bd. of Supervisors of Lower Providence Twp. v. Ford, 3 Pa. Cmwlth. 380, 383-84, 283 A.2d 731, 733 (1971) (holding board of supervisors abused its discretion when it refused to include “trucking terminal” in definition of industrial manufacturing pursuit). Additionally, courts are to afford a zoning officer’s and zoning hearing board’s interpretation of their own zoning ordinance great deference. Tri-Cnty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd., 83 A.3d 488, 510 (Pa. Cmwlth. 2014). If the interpretation is “clearly erroneous,” however, the court should disregard the interpretation. Kohl v. New Sewickley Twp. Zoning Hearing Bd., 108 A.3d 961, 968-69 (Pa. Cmwlth. 2015). Further, the court must consider the interpretations against the ordinance or SALDO in effect at the time the application for subdivision or land development was filed. In re Jaindl Land Co., 284 A.3d 1314, 1319-20 (Pa. Cmwlth. 2022) (citing 53 P.S. § 10508(4)).

In this case, none of the permitted uses either by right or special exception are broad enough to encompass the proposed use of the Property as a data center campus. The Property is within the I-1 industrial zoning district. Section 505 of the Zoning Ordinance governs permitted uses for industrial districts in Hazle Township. Section 505.1 lists permitted uses by right while Section 505.2 lists permitted uses by special exception pending ZHB approval.² NorthPoint argues that Hazle Township had already decided the

² Section 505, I-I Industrial District, "Businesses Engaged in the Following Services/Uses or Those of a Similar Nature," allows the following uses by right:

Building and construction contractors' establishments including offices and equipment storage; Building, Lumber or Plumbing Supplies; Contractors' Offices, Shops and Storage Yards (for commercial uses); Electrical, masonry, fencing and related materials; Electronic Equipment and Products; Equipment Sales and Repairs; Fabrication of metal products; Food containers and similar uses; Gasoline Service stations; Heavy equipment sales and storage yards; Industrial Parks and other large scale manufacturing developments; Laboratories; Light Industry (as defined in article 2 of this Ordinance); Lumberyards; Machine Shops and Sheet Metal Shops; Manufacture of apparel and other textile products; Manufacture of electrical and electronic equipment; Manufacture of food and related products; Manufacture of furniture and fixtures; Manufacture of glass products; Manufacture of leather products, including leather tanning and finishing; Manufacture of manufactured housing; Manufacture of paperboard containers and boxes, including sanitary; Manufacture of pottery and figurines or other similar ceramic products using only pulverized clay and kilns fired only by electricity or gas; Manufactures of small precision instruments, toys, novelties, rubber and hand stamps; Medical Marijuana Growers/Processors; Minor Solar Energy System; Newspaper or other publishing; Outdoor Storage (as defined in Article 2); Printing Shops, lithographing, type composition, ruling and binding establishments; Public Uses (including sewage treatment plants for industrial sites only); Public Utility Facilities; Public Water, Sewer and other Utilities (as defined in Article 2 of this Ordinance); Repair Garages; Research and Testing Facilities; Sale of manufactured housing; Truck and freight terminals and distribution centers; Truck Warehouse; Warehouse and Distribution Facilities; Warehousing, including Self-Storage Facilities; and Accessory Uses to the Above.

(R.R. at 1856-57, Ex. 35).

Section 505.2 allows the following uses upon special exception approval from the ZHB:

Bulk Fuel storage; Hazardous Substance; any use which utilizes and/or stores any hazardous substances as so defined in Article 2 of this Ordinance; Heavy Industry as so defined Article 2 of this Ordinance; Large Wind Energy Turbine; Machine Shops and Sheet Metal shops; Major Solar Energy System; Medium Wind Energy Turbine; Outdoor Advertising Signs; Refuse Transfer Stations; Sewage Treatment Plants; Small Structure Mounted or Tower Mounted Wind Energy Turbine; Steel Mini-Mills and such similar manufacturing uses; Stone and Monument Works Tire Re-treading and Recapping; Trucking Facilities and Terminals; and Wireless Commercial Communication Sites and Support Structures.

variance and knew the parking was for a data center campus, the ZHB therefore explicitly approved the data center campus use itself. Thus, there is no deference to be given to the ZHB's interpretation of the Zoning Ordinance with respect to this permitted use issue as the ZHB did not make such a determination. Likewise, the Zoning Officer's determination that NorthPoint's land use plans complied with Section 505.1 of the Zoning Ordinance is also not entitled to the Board's or this Court's deference as it was not a binding preliminary opinion and it was erroneous. See Kohl, 108 A.3d at 968-69.

The Zoning Officer's permitted use determination was erroneous because a plain reading of the Zoning Ordinance does not support such a determination. The Ordinance does not define "data center" so the parties as well as this Court may consult its definition in statutes, regulations or the dictionary. H.E. Rohrer, Inc., 808 A.2d at 1016-17. The Merriam-Webster dictionary defines a "data center" as a "facility for housing computer systems and related equipment used for the storage and processing of large amounts of data." The Board's written decision referenced the Federal Data Center Enhancement Act of 2023's definition that a data center is "(1) composed of permanent structures and operates in a fixed location; (2) houses equipment, including servers and other high-performance computing devices, or data storage devices; and (3) hosts information and information systems that are accessed by other systems or by users on other devices." (R.R. at 1774, Ex. 34; P.L. 118-31 § 5302). NorthPoint's Brief uses Wikipedia's definition which states that a data center is "a facility used to house computer systems and associated components, such as telecommunications and storage systems. Data centers are critical infrastructure for the storage and processing of information, and they support the global financial system, cloud services, machine learning, and artificial intelligence." (NorthPoint Brief at p. 24).

intended use of the Property as a data center campus was a permitted use when the ZHB granted NorthPoint's variance request for parking. (Docket Entry #19, Brief of Appellant, NP Hazleton Holdings 1, LLC, in Support of Land Use Appeal, hereafter "NorthPoint Brief," p. 20). Specifically, NorthPoint asserts that the ZHB determined that the land development constituted the use of "Industrial, Manufacturing, Wholesale and Warehouse Establishments, Truck Terminals, Research and Testing Facilities." (*Id.* at p. 19).

Nowhere in the ZHB September 2, 2025 hearing where it granted the variance or in the ZHB's written decision did the ZHB make a finding that the proposed use of a data center campus fit into those permitted use categories. (See generally R.R. at 1329-57, Exs. 30 & 31). The written decision merely states that the ZHB "grants the request of NP Hazleton Holdings 1, LLC, for a variance to allow 1,022 of required minimum off-street parking spaces where 3,894 parking spaces are required under Section 1117(34) of the Hazle Township Zoning Ordinance for property located at 2500 North Park Drive, Hazle Township, PA 18202 and located in the Industrial (I-1) and Conservation (I-1) Zoning Districts (with the project area being located the I-1 Zoning District) and *intended* to be used for a data center campus consisting of 15 data center buildings, a substation, switchyard facilities, four ancillary buildings and a water treatment and storage facility." (R.R. at 1330, Ex. 30) (emphasis added). The only application before the ZHB at the September 2, 2025 hearing was for the parking variance. (R.R. at 1335, Ex. 31, p. 3, l.l. 12-19). The ZHB did not consider whether a data center campus is a permitted use whether by right or special exception. NorthPoint makes an unjustified leap that because the ZHB granted the parking

(R.R. at 1857, Ex. 35).

Because “data center” is not defined in the Zoning Ordinance, NorthPoint claims its use of the Property as a data center falls under the following permitted uses in the Industrial Zoning District: Electronic Equipment and Products; Industrial Parks and other large scale manufacturing developments; Light Industry (as defined in Article 2 of the Zoning Ordinance); Warehouse and Distribution Facilities; or Warehousing, including Self-Storage Facilities. (*Id.*; R.R. at 1856-57). The Zoning Ordinance defines the following relevant terms: “light industry” as a use “engaged in the manufacture; predominantly from previously prepared materials, of finished products or parts, including processing fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing” (R.R. at 1824); a “self-service storage facility” as a “building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual compartmentalized and controlled access stalls or lockers which are leased to individuals for the storage of the individual's property , possessions or wares” (*Id.* at 1831); a “warehouse” as a “building used primarily for storage of goods and material” (*Id.* at 1834); and “warehousing and distribution” as a “use engaged in storage, wholesale and distribution of manufactured products, supplies and equipment, excluding the bulk storage of material that are inflammable, explosive, hazardous or commonly recognized as offensive.” (*Id.*). The Ordinance does not define “manufacturing,” but the Merriam-Webster dictionary defines it as “the act or process of producing something.”

In considering all the definitions above, the proposed use of a data center does not fall into any of the permitted uses in the Zoning Ordinance. All the definitions referenced for a “data center” point that data centers are structures that contain computers or computing

devices. NorthPoint argues that this idea of “containing” or “storing” or “housing” are “hallmarks” of warehousing as defined in the Zoning Ordinance. (NorthPoint Brief at p. 24). NorthPoint furthers that given that “the Zoning Ordinance also permits Electronic Equipment and Products within the Industrial (I-1) district, it would be very challenging to assert that a building storing computer systems – exactly as was proposed by the plans – does not comply with the permitted uses in the Industrial (I-1) district.” (*Id.* at pp. 24-25). However, “warehousing” either as a distribution facility or as a self-storage facility as defined in the Zoning Ordinance also contemplates the additional aspects of distributing manufactured products or supplying a service like a lease to individuals for storage of their property. In liberally construing the referenced definitions of a data center and applying the plain and ordinary definitions, data centers do not contemplate such aspects of manufacturing, packaging, distributing, leasing, or selling physically manufactured products such as electronic equipment, supplies, or other goods. See Bakerstown Container Corp., 508 Pa. at 631, 500 A.2d at 421. Instead, the referenced data center definitions, including NorthPoint’s Wikipedia’s reference, contemplate the use of data centers as “hosting” or “processing” information rather than manufacturing some product. The Zoning Officer’s preliminary opinions thus were erroneous as they directly contravened the plain meaning of the Zoning Ordinance and the definition of a “data center.”

Further, the Board of Supervisors explained in its written decision that the Zoning Ordinance was adopted in 2003 with several amendments through 2020. (R.R. at 1774, Ex. 34). Neither at the Zoning Ordinance’s inception nor throughout the amendments did Hazle Township consider data centers as “awareness of such a use only recently came to light.” (*Id.*). The Board furthered that there was not a need in Hazle Township for data centers

prior to 2024 because the required infrastructure including electrical power water and sewer capacity for the data centers was lacking. (Id.). Thus, the Board of Supervisors, as the governing body enforced with creating and updating the Zoning Ordinance, has stated itself that the use of a data center was not contemplated in the Zoning Ordinance.

In such a situation where the Zoning Ordinance has not defined a use and the defined uses do not encompass it, Section 320 of the Zoning Ordinance acts as a “safe harbor” provision that allows any use not otherwise addressed in the Zoning Ordinance to be permitted by special exception approval of the ZHB. (R.R. at 1774, Ex. 34; R.R. at 1841, Ex. 35). Section 320, Uses Not Addressed Within Ordinance states:

Whenever, in any district established under this Ordinance, a use is neither specifically permitted nor denied and an application is made by a landowner to the Zoning Officer for such use, the Zoning Officer shall refer the application to the Zoning Hearing Board to hear and decide such request as a special exception. The Boards shall have the authority to permit the use or deny the use in accordance with the standards governing special exception applications. The use may be permitted if it is determined to be similar to and compatible with permitted uses in the district and in no way is in conflict with the general purposes and intent of this Ordinance. The burden of proof shall be upon the applicant to demonstrate that the proposed use would meet the standards and criteria for special exceptions as contained in Article 6 of this Ordinance and would not be substantially detrimental to the public health, safety and welfare and/or environmental features and characteristics of the site and/or surrounding areas.

(R.R. at 1841, Ex. 35). Section 816.1 of SALDO states that the land developer may pursue approval for its land use plan while simultaneously pursuing zoning approval.

(R.R. at 2187, Ex. 36).

In Dambman v. Board of Supervisors of Whitmarsh Township, the Commonwealth Court of Pennsylvania affirmed the trial court in upholding the board of supervisors’ approval of a final development plan. 171 A.3d 969, 975

(2017). Objectors to the plan argued that zoning approval was required prior to the board of supervisors' approval. Id. at 974. The court reviewed the township's SALDO noting that it did not require zoning approval prior to approval of a final land development plan but merely that the zoning officer was required to consider the land development applicant's submission and make recommendations to the township manager during the final plan stages. Id. at 975 (citing Rickert v. Latimore Twp., 960 A.2d 912, 920 (Pa. Cmwlth. 2008) ("mildly worded advice in SALDO did not authorize the [s]upervisors to weave zoning requirements into the final plan review process.")).

While like in Dambman the Hazle Township's SALDO does not require land developers to obtain zoning approval prior to applying for -land development approval, it does require that the land development plan conform to the Zoning Ordinance. See Dambman, 171 A.3d at 975; see also R.R. at 2187, Ex. 36. NorthPoint's land use plan did not conform to the Zoning Ordinance due to data centers not being a permitted use either by right or special exception. As further explained in Section III.1 of this Opinion, the Board of Supervisors had the discretion to either reject the land use plan or grant approval on the condition that NorthPoint acquire the special exception approval required under the Zoning Ordinance. See Borough of Jenkintown, 858 A.2d at 141; R. at 1776, Ex. 34. It was not an abuse of discretion for the Board to choose to reject the plan instead of conditionally approving it. See id. Likewise, because Section 320 of the Zoning Ordinance requires special exception approval by the ZHB for uses not otherwise addressed, this Court did not err when it remanded this matter to the ZHB to make further determinations and permitted

NorthPoint to make application to the ZHB for a special exception for its proposed data center land use.

b. The Board Did Not Act in Bad Faith When It Denied the Plans

NorthPoint claims that this Court erred in concluding that the Board of Supervisors acted in good faith in denying the land use plans. (Statement of Matters at ¶ n). Specifically, NorthPoint states that the Board acted in bad faith because “the record unequivocally demonstrates the Board’s extensive knowledge of the proposed use of the Property over nearly a year and a half preceding its denial of the Plans.” (*Id.*). NorthPoint points that it submitted its land use plans on April 24, 2025; the Zoning Officer had issued determinations that NorthPoint’s proposed use of the Property was permitted by right; the ZHB approved the parking variance for the Property; the Hazle Township Planning Development recommended approval of NorthPoint’s plans to the Board; and the Township Engineer indicated in his final engineering review on October 20, 2025 that NorthPoint’s plans complied with all provisions and requirements of the Zoning Ordinance and SALDO. (NorthPoint Brief at p. 27). NorthPoint states that the Board waited until the last moment to voice its concern with the proposed use of a data center when it had ample opportunity to voice it earlier. (*Id.* at p. 28). Finally, NorthPoint highlights the Board of Supervisors’ alleged lack of good faith by pointing that the Board could have approved the land use plans conditioned upon NorthPoint obtaining special exception approval instead of outright rejecting the plans. (*Id.* at pp. 28-29).

Municipalities have a duty to proceed in good faith in reviewing land development plans. Raum v. Bd. of Supervisors of Tredyffrin Twp., 29 Pa. Cmwlth. 9, 48, 370 A.2d 777, 798 (1976). This duty includes “discussing matters involving technical requirements or

ordinance interpretation with an applicant and providing an applicant a reasonable opportunity to respond to objections or to modify plans where there has been a misunderstanding or difference of opinion.” Id. When municipality officials oppose land development otherwise sanctioned “by citing trifling, over-technical, or simply reasons unrelated to the law of zoning,” they act in bad faith. PSIP JVI Krumsville Rd., LLC v. Bd. of Supervisors of Greenwich Twp., 284 A.3d 547, 555 (Pa. Cmwlth. 2022) (citing Raum, 29 Pa. Cmwlth. at 12, 370 A.2d at 781).

In Raum, the court found that the township’s board of supervisors proceeded in bad faith where the board had rejected the petitioner’s subdivision plans when no provision in the township’s ordinance supported the rejection and the board had based the rejection on obsolete specifications which it had not been applying to other similar plans. Raum, 29 Pa. Cmwlth. at 48, 370 A.2d at 798. The board recommended rejection of the plans seventy-eight days after the plans were submitted and two days prior to the last scheduled meeting of the board at which the plans could be rejected. Id. at 56, 802. The petitioner modified its plan prior to the meeting to satisfy the board’s objections and yet the board refused to consider the modified plans. Id. A township staff member even admitted that “there was no basis for the objection in the Township Subdivision Ordinance or Zoning Ordinance.” Id. at 57, 802.

In Highway Materials v. Board of Supervisors of Whitemarsh Township, the court found that the board of supervisors did not proceed in good faith when it refused to advise the landowner Highway Materials as to how to correct the defects in its land use plan and thereby did not afford Highway Materials an opportunity to cure the deficiencies. 974 A.2d 539, 545 (Pa. Cmwlth. 2009). The landowner had numerous times sought guidance from the

township regarding its plans and for interpretation of the ordinance to no avail. Id. When a municipality reviews a land use plan and does highlight the plan's deficiencies and gives the developer an opportunity to cure them, the "municipality will not be found to have abused its discretion in denying an application based on failures of the plan to comply with township ordinances." Delchester Developers, L.P. v. London Grove Twp. Bd. of Supervisors, 161 A.3d 1106, 1116 (Pa. Cmwlth. 2017) (citing Abarbanel v. Solebury Twp., 132 Pa. Cmwlth. 326, 332, 572 A.2d 862, 865 (1990)). When a court finds that the decision on a land development plan is tainted by bad faith, the decision will be set aside. PSIP JVI Krumsville Rd., LLC, 284 A.3d at 555 (citing Raum, 29 Pa. Cmwlth. at 12, 370 A.2d at 781).

The facts are dispositively distinct in this case that show the Board of Supervisors did not reject NorthPoint's project plans for the data center out of bad faith. While NorthPoint submitted the plans in April 2025, the plans were not before the Board of Supervisors until the Hazle Township Planning Department recommended approval for the land use project. (See R.R. at 1213, Ex. 17). The certified record indicates that the Board first had the land use plans on its agenda for review at the November 10, 2025 meeting. (R.R. at 2292-05, Ex. 38). At this meeting, multiple objectors expressed their concerns about the data center land development, including the concern that such a use is not permitted in the Zoning Ordinance. (Id. at 2294). The Board did not issue a decision at the November 10, 2025 meeting but instead tabled the land use review because "there's been a lot of comments and different points and maybe some things were not done correctly so [the Board needs] time to look into this." (Id. at 2300). At the special meeting on November 14, 2025, more objectors spoke against the data center project and the attorney for NorthPoint commented as well stating that the Zoning Officer said it is an allowed use. (R.R. at 2308-09, Ex. 39).

Based on these facts, it appears that the Board did not reject the plans at the last moment like the board in Raum. See Raum, 29 Pa. Cmwlth. at 56, 370 A.2d at 802. Likewise, the Board gave NorthPoint the opportunity to respond to the November 10, 2025 meeting's objectors' concern that the use was not permitted.

Most importantly, unlike in Raum and Highway Materials, the Board did not reject the plans without a fundamental reason based on the controlling Zoning Ordinance and SALDO. See Raum, 29 Pa. Cmwlth. at 12, 370 A.2d at 781; see also Highway Materials, 974 A.2d at 545. Namely, the Board rejected NorthPoint's project because it did not comply with the Zoning Ordinance or SALDO in that the proposed use of a data center was not a permitted use contemplated in the Ordinance and NorthPoint had not obtained special exception approval from the ZHB for the use. (R.R. at 1773-76, Ex. 34). This denial was not "trifling" or "over-technical" or a reason unrelated to the law of zoning; it was a fundamental noncompliant use finding with the Township's Zoning Ordinance. See PSIP JVI Krumsville Rd., LLC, 284 A.3d at 555. Lastly, it is not indicative of bad faith merely because the Board of Supervisors chose to deny the plans instead of granting approval with the condition that NorthPoint obtained the required special exception approval from the ZHB. As previously discussed, the Board had the option by law to choose denial or conditional approval. See Borough of Jenkintown, 858 A.2d at 141. To ensure that NorthPoint can seek the special exception approval, this Court ordered that NorthPoint was permitted to make its application to the ZHB.

c. NorthPoint Does Not Have a Vested Right to Land Development Approval

NorthPoint claims that "it is entitled to a vested right in and to: (i) the determinations by the Zoning Officer and Zoning Hearing Board that the proposed

use of the Property is permitted by right (which were not appealed by the Board despite full knowledge thereof); and (ii) the approval of the Plans.” (Statement of Matters at ¶ 10). By failing to recognize its vested right, NorthPoint posits that this Court erred. (*Id.*). NorthPoint points that it has followed the land development process in good faith and in obtaining necessary approvals. (NorthPoint Brief at p. 30). Further, NorthPoint states that it has expended substantial and significant sums since receiving the Zoning Officer’s June 25 and August 27, 2024 preliminary opinions, the July 21 and August 18, 2025 zoning determinations, and the September 2, 2025 decision of the ZHB granting the variance for a reduction in parking for the data center project. (*Id.*). Lastly, NorthPoint claims that no party appealed any of the Zoning Officer’s determinations and that individual property rights and the public health, safety and welfare will not be adversely affected by the proposed use. (*Id.*).

The doctrine of vested rights protects a landowner when he relied upon a zoning permit issued by a municipality and the permit was subsequently determined invalid. Rudolph v. Zoning Hearing Bd. of Cambria Twp., 839 A.2d 475, 478 (Pa. Cmwlth. 2003). Courts must weigh the following five factors in determining whether a landowner has acquired vested rights in accordance with a permit issued by a township:

1. [the landowner’s] due diligence in attempting to comply with the law;
2. his good faith throughout the proceedings;
3. the expenditure of substantial unrecoverable funds;
4. the expiration without appeal of the period during which an appeal could have been taken from the issuance of the permit;
5. the insufficiency of the evidence to prove that individual property rights or the public health, safety or welfare would be adversely affected by the use of the permit.

Petrosky v. Zoning Hearing Bd. of Upper Chichester Twp., Delaware Cnty., 485 Pa. 501, 507 402 A.2d 1385, 1388 (1979). The landowner does not need to establish all five factors, but courts have held that a vested right was not established when three of the five factors had not been met. Highland Park Cmty. Club v. Zoning Bd. of Adjustment of the City of Pittsburgh, 82 Pa. Cmwlth. 380, 384, 475 A.2d 925, 927 (1984), *aff'd*, 509 Pa. 605, 506 A.2d 887 (1986); Three Rivers Youth v. Zoning Bd. of Adjustment for the City of Pittsburgh, 63 Pa. Cmwlth. 184, 190-91, 437 A.2d 1064, 1067 (1981) (finding vested rights established when four of five factors met). Because the doctrine of vested rights requires the issuance of a permit authorizing the *desired use*, the lack of a such a permit is “fatal” to a landowner’s vested rights claim. Rylka v. Zoning Hearing Bd. of Hamilton Twp., 352 A.3d 1105, 1116 (2026) (emphasis added).

NorthPoint claims its vested right lies in the determinations that its proposed use of the Property is permitted by right and the approval of the plans. (Statement of Matters at ¶ o). Notably, it does not state that it has a vested right in a permit, which is required for a vested rights claim. See Rylka, 352 A.3d at 1116. The Township approved NorthPoint’s stormwater application with conditions and granted the variance for parking; however, none of these approvals were regarding NorthPoint having a permitted right in its data center land use proposal. Thus, these approvals from the Township did not create a vested right in NorthPoint’s land use of the Property by right or approval of the plans. The written decision of the Board of Supervisors was not a revocation or finding that the stormwater application or parking variance approvals were in error. (See generally R.R. at 1771-01, Ex. 34).

Additionally, as further discussed in Section III.1 of this Opinion, the Zoning Officer's determinations were not published to trigger an appeal period or act as the required approval from the Board of Supervisors for land development. Further, even if the favorable preliminary opinion was properly published under Section 10916 of the MPC, that would not give NorthPoint a substantive land use approval that NorthPoint could in good faith rely on. Friends of Lackawanna, 227 A.3d at 44. Notably, the Board's written decision states:

[I]t was learned that the Applicant has apparently graded the Property and begun constructing stormwater improvements under a state NPEDS permit issued by the [DEP]. Hazle Township did not issue any permits allowing the Applicant to perform this work, and the Applicant did not satisfy the conditions of its stormwater plan approval to proceed with the work. Therefore, the Applicant is cautioned that should this decision be upheld on appeal or should special exception approval for the proposed use not be granted by the Zoning Board, the Applicant is proceeding at their own risk in performing grading and stormwater improvements.

(Id. at p. 5). Thus, NorthPoint did not perform due diligence in attempting to comply with the Zoning Ordinance before it began expending funds on its unapproved land use project. See Petrosky, 485 Pa. at 507 402 A.2d at 1388. Lastly, because there was no permit issued for the land use proposal, this Court cannot determine whether sufficient evidence shows that NorthPoint's use of such a permit would adversely affect individual property rights or the public health, safety, or welfare. Id.

d. Remand to the Zoning Hearing Board is Warranted

NorthPoint states that it was in error of this Court to remand this matter to the ZHB to make further determinations. (Statement of Matters at ¶ p). When a zoning hearing board has developed a full record but had made inadequate factual findings, the "trial court should remand the matter to the board to make the essential factual determinations."

Kramer v. Zoning Hearing Bd. of Upper Saucon Twp., 163 Pa.Cmwlt. 559, 641 A.2d 685, 687 (1994). A remand is warranted even if it would be “inconvenient” or “time-consuming.” Weston, 356 A.3d at 979. In Appeal of Grace Building Company, a landowner appealed a zoning hearing board’s denial of his variance application where the board did not take sworn testimony regarding the variance. 39 Pa.Cmwlt. 552, 395 A.2d 1049, 1051 (1979). The trial court remanded the appeal to the zoning hearing board because it made no decision on the landowner’s alternative request of a special exception. Id. The board again did not make a decision on the special exception but yet on appeal after remand, the trial court took no additional testimony but decided based on facts presented by counsel that the variance denial was proper. Id. The Commonwealth Court of Pennsylvania vacated the trial court’s decision and directed another remand to the zoning hearing board due to the absence of proper evidence and lack of a decision as to a special exception from the board. Id. Similarly in Weston, the Commonwealth Court deemed the trial court was “without authority” to determine the credibility of testimony and weigh the evidence before it for a variance request. 356 A.3d at 979 (emphasizing that it is zoning hearing board’s “function to weigh the evidence before it, and it is the sole judge of the credibility of witnesses and the weight afforded their testimony”).

This Court did not err in remanding this matter to the ZHB as the ZHB must make additional findings necessary for the special exception inquiry under Section 320 of the Zoning Ordinance. This inquiry was not previously before the ZHB and so there is not a full record before this Court to consider on appeal. Without a full record, this Court does not have authority to make a substantive decision on this special exception issue. Kramer, 641 A.2d at 687.

3. This Court did not err when it granted the Petition to Intervene under Pa.R.C.P. 2328.

NorthPoint posits that this Court's March 2 Order granting the Petition to Intervene was in error because the Intervenor's lacked the interest required under Pa.R.C.P. 2327 and that Pa.R.C.P. 2329 precluded such intervention. (Statement of Matters at ¶¶ r & s).

The MPC governs certain types of intervention in land use appeals. Section 11004-A of the MPC provides:

Within the 30 days first following the land use appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same, upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.

53 P.S. § 11004-A. However, because the Intervenor's do not fall under any of the categories under Section 11004-A, the Pennsylvania Rules of Civil Procedure govern their petition to intervene in this Land Use Appeal.

In reviewing a petition to intervene under the Pennsylvania Rules of Civil Procedure, courts must determine whether the allegations in the petition have been established and whether the allegations demonstrate an interest sufficient to justify the intervention.

Bogdan v. American Legion Post 153 Home Assoc., 2021 Pa. Super. 127, 257 A.3d 751, 757

(2021). Further, Rule 2327 provides:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

(1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or

(2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa.R.C.P. 2327. Whether the petitioner has a legally enforceable interest in the action turns on whether they have standing. Markham v. Wolf, 635 Pa. 288, 136 A.3d 134, 140 (2016). To have standing, the petitioner must have demonstrated aggrievement by “establishing a substantial, direct, and immediate interest in the outcome of the litigation.” Robinson Twp. v. Commonwealth, 623 Pa. 564, 83 A.3d 901, 917 (2013) (citation omitted). The Supreme Court of Pennsylvania has explained the meaning of each of these standing factors:

[A] ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law[.] [A] ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest. An interest is immediate if that causal connection is not remote or speculative.

Pa. Med. Soc’y v. Dep’t of Pub. Welfare of Com., 614 Pa. 574, 39 A.3d 267, 278 (2012).

If the petitioner satisfies one of the categories in Rule 2327, they are permitted to intervene unless a ground for refusal under Rule 2329 exists. Larock v. Sugarloaf Twp. Zoning Hearing Bd., 740 A.2d 308, 313 (Pa. Cmwlth. 1999). Rule 2329 provides:

Upon the filing of the petition and after hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if

(1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or

(2) the interest of the petitioner is already adequately represented; or

(3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa.R.C.P. 2329. An intervenor must "take the litigation as he finds it" and can only address issues that the appellant has raised. Sell v. Douglas Twp. Zoning Hearing Bd., 149 Pa. Cmwlth. 425, 430, 613 A.2d 162, 163 (1992). For adequate representation, a party that merely may align with the putative petitioner's legally enforceable interests is not dispositive of whether such representation is adequate where it is also shown that the party is not effectively and efficiently representing the petitioner's interests. Shirley v. Pennsylvania Legislative Reference Bureau, 318 A.3d 832, 852-53 (Pa. 2024).

In the instant case, the Intervenors satisfy Rule 2327 and have standing to be a part of this action as the determination of this action may affect the Intervenors' legally enforceable interest. Pa.R.C.P. 2327(4). The Intervenors are persons who reside or are owners of land within the immediate vicinity of the property owned by NorthPoint. Appendix A to the Petition provides a full list of the petitioners and their addresses. (Petition, Appendix A). Pennsylvania courts have long held that "owners of property in the immediate vicinity of the property involved in zoning litigation have the requisite interest and status to become intervenors under Pa. R.C.P. No. 2327(4)." Twp. of Radnor v. Radnor Recreational, LLC, 859 A.2d 1, 5 (2004); Grant v. Zoning Hearing Bd. of the Twp. of Penn., 776 A.2d 356, 359 (Pa. Cmwlth. 2001); Esso Standard Oil Co. v. Taylor, 399 Pa. 324, 159 A.2d 692 (1960); Schatz v. Upper Dublin Twp. Zoning Hearing Bd., 21 Pa. Cmwlth. 112, 343 A.2d 90 (1975). Property owners in the immediate vicinity of proposed land development have a "legally enforceable interest" under Pa.R.C.P. 2327(4). See Larock, 740 A.2d at 313.

The Property is located north of Humboldt Industrial Park-North, Hazle Township, Luzerne County, Pennsylvania, being more particularly described in the Luzerne County Recorder of Deeds Office in Book 3024 at page 227555, Book 1127 at page 238, Book 3024 at page 128239, Book 1682 at page 1172, Book 1625 at page 434, Book 2208 at 992, and Book 2341 at page 908. (Petition to Intervene, Ex. 1). NorthPoint plans to develop this property as a "data center campus" which would encompass approximately 1,300 acres of the property with fifteen data center buildings and other ancillary buildings. Intervenor, as property owners within the immediate vicinity of this proposed data center campus, have a substantial interest in the outcome of this litigation which can determine whether NorthPoint is permitted to continue its development of the data center. The data center's harm to the Intervenor's direct interests is not speculative or remote. They have an immediate interest in protecting their property and themselves from harm in the form of excessive noise, objectional lighting, devaluation of property, electricity and water usage impact, and overall decreased quality of life. (Petition to Intervene at ¶ 12; R.R. at 1775, Ex. 34); Larock, 740 A.2d at 312 (noting everyone has a "right to protect one's property from harm, whether it be in the form of decreased valuation, insufficient water supply, excessive dust, noise, pollution, or some other cause"). Therefore, as Intervenor are landowners in the immediate vicinity of the property and its intended development by NorthPoint as a data center campus, Intervenor have a "legally enforceable interest" under Pa.R.C.P. 2327(4).

Turning to Rule 2329, a ground for refusal does not exist that would prohibit the Intervenor from entering this case. Pa.R.C.P. 2329. The Intervenor's claim in their Petition is in subordination and in recognition of NorthPoint's Land Use Appeal. Namely, the Intervenor "oppose in substance NorthPoint's challenge in this Court of the underlying

[Nov. 20, 2025] decision reached by the Board.” (Petition to Intervene at ¶ 29); Pa.R.C.P. 2329(1). However, NorthPoint contends that paragraphs 12 and 13 of the Petition to Intervene are not in subordination to NorthPoint’s Land Use Appeal as required under Rule 2329(1). Paragraphs 12 and 13 read as follows:

12. The data center campus, as proposed, would cause excessive noise, employ objectionable lighting, devalue nearby properties, significantly impact electricity and water usage, and have numerous negative impacts to the overall quality of life for nearby landowners.

13. The proposed use of the Property as a data center campus would be substantially detrimental to the public health, safety and welfare [and] environmental features and characteristics of the site [and] surrounding areas including the nearby land possessed by Petitioners.

(Petition to Intervene at ¶¶ 12 & 13). In arguing that it has a vested right to use its property as a data center campus in its Land Use Appeal, NorthPoint states that “there is no evidence that the proposed use of the Property – which facially complies with the plain ordinary and usually understood text of the Zoning Ordinance applicable to the Industrial (I-1) district in which it is located – presents any adverse effects to the public health, safety, or welfare.” (Notice of Land Use Appeal at ¶ 111). Northpoint further argues in its appeal that the Board of Supervisors erred in finding that the plan for the data center campus development did not conform with all applicable requirements of SALDO and the Zoning Ordinance. (*Id.* at ¶ 115(f)). The Board cited directly to Section 320 of the Ordinance in stating that NorthPoint needed to apply for a special exception for the data campus center development.

In making these findings of noncompliance, the Board stated in part that not denying the plan would otherwise “deprive the few hundred interested parties in attendance at the meetings of their opportunity to be heard on claims of potential

adverse impacts from the Project on the public health, safety and welfare of the neighborhood.” (R.R. at 1774, Ex. 34). The Board further explained, however, that the ZHB is the proper forum to hear concerns related to “excessive noise, objectionable lighting, devaluation of properties, and negative impacts to the overall quality of life.” (Id. at 1775). Despite the Board not evaluating in writing these specific complaints regarding the data center campus plan, the Board still cited to Section 320 of the Zoning Ordinance which states the burden is on the applicant to demonstrate that the use would not be “substantially detrimental to the public health, safety and welfare [and] environmental features and characteristics of the site [and] surrounding areas.” (R.R. at 1841, Ex. 35). NorthPoint’s Land Use Appeal likewise states there is no evidence the data center would cause such impact. (Notice of Land Use Appeal at ¶ 111). The public health, safety, and welfare are broad terms which may contemplate impacts like noise, lighting concerns, and devaluation of properties. Therefore, the Intervenor’s claims, including in paragraphs 12 and 13, are in subordination and in recognition of NorthPoint’s Land Use Appeal and the Board’s underlying decision which formed the basis of the appeal.

The Intervenor’s claims are not already adequately represented by the only other existing appellee being the Board of Supervisors. Pa.R.C.P. 2329(2). The Board does not adequately represent the interests of the Intervenor consisting of property owners within the immediate vicinity of NorthPoint’s proposed data center campus. The Intervenor’s goal “is to prohibit the development of the Property by NorthPoint as a data center, as the proposed use of the Property as a data center would be substantially detrimental to the public health, safety and welfare [and] environmental features and characteristics of the

site [and] surrounding area-including the nearby land possessed by [Intervenors].” In the Brief of the Hazle Township Board of Supervisors in Opposition to the Land Use Appeal (Docket Entry # 84), the Board stated that it was “not necessarily opposed to the Project” as indicated by its Chairperson of the Board making a public statement in support of the data center campus project. For its relief, the Board requests that this Court “deny and dismiss the appeal of [NorthPoint] and affirm the decision of the [Board] denying the Plans until such time as NorthPoint secures special exception approval for the proposed Data Center Use from the [ZHB].” (*Id.*). In contrast, the Intervenors requested relief makes no mention of allowing NorthPoint to have the opportunity to secure special exception approval.

The Board of Supervisors was the decisionmaker in the underlying decision that forms the basis for NorthPoint’s appeal. The Board chose to forego a significant analysis of the complaints of neighbors to the proposed data center campus including worries of “excessive noise, objectionable lighting, devaluation of properties, and negative impacts to the overall quality of life.” (R.R. at 1774-75, Ex. 34). These very concerns are part of the claims in the Intervenor’s Petition. (*See generally*, Petition to Intervene). The fact that broadly, the Board and the Intervenors want the November 20, 2025 decision affirmed, is not dispositive of whether the Board’s representation would be adequate where it is also shown that the Board is not effectively representing the Intervenors’ interests. *Shirley*, 318 A.3d at 852-53; *Larock*, 740 A.2d at 314 (explaining that interests of intervenors are not necessarily harmonious with that of government agency despite some alignment of interests). Because the Board already chose not to analyze the interests of neighboring landowners and continued to not do so in its Brief in Opposition to NorthPoint’s Land Use Appeal, the Board does not adequately represent the Intervenors’ claims in this appeal.

Lastly, the Intervenor did not delay unduly in submitting its Petition to Intervene nor will its intervention unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties. Pa.R.C.P. 2329(3). NorthPoint filed its Land Use Appeal on December 12, 2025. The Intervenor filed their Petition to Intervene on January 12, 2026. Since January 11 was a Sunday, the Intervenor duly filed within thirty days of the appeal. Likewise, the intervention would not unduly delay this case's proceedings or embarrass or prejudice NorthPoint or the Board. As this Court found, the Intervenor's claims are in subordination and in recognition of NorthPoint's Land Use Appeal based on the Board's November 20, 2025 decision. These are not new claims; they are already contemplated by NorthPoint itself as furthered in its vested rights claim as well as its overall disagreement with the Board's findings that the data center campus plan did not comply with the Zoning Ordinance or SALDO. Therefore, the petition to intervene was not unduly timely and it would not cause prejudice to any of the parties.

IV. Conclusion

For the foregoing reasons, this Court maintains its March 2, 2026 Order granting the Petition to Intervene and its May 26, 2026 Order (1) denying NorthPoint's Land Use Appeal at this time; (2) remanding this matter to the Hazle Township Zoning Hearing Board to make further determinations; (3) permitting NorthPoint to make application to the Board for a special exception and in addition can challenge, on substantive grounds, the validity of the Hazle Township Zoning Ordinance as applied to Applicant's proposed use of the Property; and (4) that subsequent to the receipt of the application or challenge by the Board, a hearing shall be held in accordance with 53 P.S. § 10916.1.

**LUZERNE COUNTY
JUDICIAL SERVICES AND RECORDS**
Paula L. Radick, Esq.



**LUZERNE COUNTY
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COUNTY *of* LUZERNE

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