

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Concerned Residents of West Deer, James	:	
Shuey, Norann Shuey, Cara Randza, Jon	:	
Randza, Victoria Austin, Jeremy Koenig,	:	
Abbey Koenig, Robert Hutchinson, and	:	
Yvonne Hutchinson,	:	
Appellants	:	
	:	
v.	:	No. 1004 C.D. 2024
	:	ARGUED: March 3, 2026

Township of West Deer and Board of	:	
Supervisors of the Township of	:	
West Deer	:	
	:	
v.	:	
	:	
EQT Artemis Production, LLC	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STELLA M. TSAI, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE LEADBETTER**

FILED: September 22, 2026

Appellants, Concerned Residents of West Deer (CROWD), James Shuey, Norann Shuey, Cara Randza, Jon Randza, Victoria Austin, Jeremy Koenig, Abbey Koenig,¹ Robert Hutchinson, and Yvonne Hutchinson (collectively, CROWD), appeal from the order of the Court of Common Pleas of Allegheny

¹ After the appeal to this Court was filed, Jeremy and Abbey Koenig submitted a notice of nonparticipation pursuant to Pa.R.A.P. 908.

County, that affirmed the decision of the Board of Supervisors of the Township of West Deer granting the conditional use application of EQT Artemis Production, LLC (EQT),² subject to certain conditions. We affirm.

Factual and Procedural Background³

In October 2019, EQT submitted a conditional use application, along with supporting plans, studies and other documents, to construct an unconventional natural gas well pad (the Leto Well Pad) for operation of a Deep Well Site pursuant to Section 210-120(A)(21) of the Township’s zoning ordinance.⁴ After reviewing the application at multiple meetings over several years, the Township Planning Commission voted 2-2 on a motion recommending approval of the application with conditions, resulting in no recommendation to the Board. EQT submitted an updated project narrative at the first hearing before the Board in February 2023. The specific contents and scope of EQT’s application are relevant to this appeal.

EQT’s application form indicates that the Leto Well Pad would be located on a 48-acre parcel off Oak Road (the “principal property” or the “property,” 301 Oak Road) in the Township’s I Industrial Zoning District.⁵ The Leto Well Pad

² The application was submitted to the Board by Olympus Energy LLC. By Order issued September 4, 2025, this Court granted Olympus’s unopposed application for substitution of parties because Olympus has sold all its assets related to this appeal to EQT, and EQT has succeeded to the interests of Olympus as the proper party. *See* 9/4/2025 Order of Cmwlth. Ct. This opinion refers only to EQT to avoid confusion.

³ Unless otherwise stated, the facts and procedural background are taken from the Board’s Findings of Fact (F.F.), which can be found in the Reproduced Record (R.R.) at 1779-1850. We note that pagination of the Reproduced Record does not contain a lowercase “a” as required by Pa.R.A.P. 2173.

⁴ West Deer Township Code of Ordinances, Zoning (2012) (Zoning Ordinance), § 210-120(A)(21).

⁵ A Deep Well Site is permitted as a conditional use in the Township’s I and R-3 Zoning Districts. Zoning Ordinance § 210-10 (Authorized land uses by district).

would access Oak Road via a 24- to 34-foot wide, 1,086-foot long access drive for which EQT obtained a highway occupancy permit from PennDOT. EQT's application also proposed that a wet pond, approximately 110 feet by 150 feet, be located near the northwestern corner of the Leto Well Pad for stormwater management purposes. The wet pond indisputably crosses onto a second, 44-acre parcel (the adjacent property) located in the Township's R-3 Suburban Residential Zoning District. Both properties are owned by Tricia Gizienski.

Notably, EQT's application form only provides information pertaining to the principal property on the spaces for "Location of Property" and "Parcel Lot and Block No.," and states that the "Total Acreage of Tract" is 48 acres. Reproduced Record (R.R.) at 179.⁶ Both the initial and updated project narratives repeatedly reiterate that the Leto Well Pad will be located on the principal property, 301 Oak Road. *See, e.g.*, R.R. at 188-89, 1532-33. However, many of the maps attached to EQT's application demonstrate that a property line bisects the proposed site of the wet pond. *See* R.R. at 205-06, 215, 220-21, 238-40, 778, 825-26, 835, 1581-82.

The Board held public meetings over multiple nights at which EQT presented the testimony of the following witnesses, all of whom the Board deemed credible: Joseph Blickenderfer, P.E., technical manager for oil and gas operations site design for Michael Baker International; Scott Rasmussen, P.E., with Civil and Environmental Consultants; Manny Johnson, P.E., Vice President of Operations for Olympus; Joseph Guley, P.E., project manager with Stahl Sheaffer Engineering, overseeing highway development projects and traffic impact studies; and Tage Rosendahl, regional manager for Acoustical Control. Mr. Blickenderfer's testimony

⁶ Other forms submitted with EQT's application similarly refer only to the principal property. *See, e.g.*, R.R. at 767 (DEP Chapter 105 Water Obstructions and Encroachment General Permit Registration form), 1554 (DEP Erosion and Sediment Control General Permit-3).

regarding the wet pond is particularly notable in this appeal, as he explained: “The purpose of that [wet] pond, it has really nothing to do with the oil and gas generation or processing. Its sole intention is for stormwater management.” R.R. at 927. Mr. Blickenderfer further stated that there would be no pumps, motors, or other equipment at the wet pond that would create any noise or emissions. R.R. at 927-28.

Tim Resciniti testified and made arguments on behalf of the unincorporated association known as CROWD. The Board granted party status to CROWD and 27 individuals residing within 0.75 miles of the proposed Leto Well Pad, including the named Appellants, finding them sufficiently aggrieved to establish standing. The individual Appellants all testified in opposition to EQT’s application, and other non-party Township residents made public comments.

The Board ultimately granted EQT’s application subject to 36 conditions. *See* R.R. at 1847-50 (App’x C to Bd.’s Decision, Conditions of Approval). The Board concluded that EQT presented substantial evidence demonstrating that the proposed Leto Well Pad complies with all of the Zoning Ordinance’s specific criteria for a deep well site. Further, CROWD failed to satisfy its burden that the proposed use would be greater than would normally be expected for this type of use and would pose a substantial threat to the health, safety, and welfare of the community. As the Board explained, CROWD merely “express[ed] vague ‘concerns’ about alleged impacts of [EQT]’s proposed development” and raised complaints regarding the adverse impacts of oil and gas development generally. Conclusion of Law (COL) No. 143. *See also* COL Nos. 143-45.

In its lengthy decision, the Board rejected CROWD’s argument that the application should be denied because EQT’s form only referenced the principal

property and did not specifically identify the adjacent property on which a portion of the wet pond would be located. The Board found that “although CROWD asked questions of Mr. Blickenderfer about the [adjacent property], no objection was made by CROWD as any [sic] alleged procedural error in the advertisement or validity of the hearing and because CROWD failed to raise this argument during the public hearings, it is waived.” COL No. 14.⁷ EQT’s application delineated, in detail, all of its proposed facilities, including those on the adjacent property. COL Nos. 16, 19. Further,

[t]o the extent that CROWD’s argument was not waived, the Board finds that **the [wet] pond and related facilities are not part of the Deep Well Site for the Leto Well Pad** as these facilities are not necessary for or incidental to the preparation, construction, drilling, fracturing, production or operation of a deep well. Such facilities are not specific to a drilling or deep well operation.

COL No. 18 (emphasis added). The Board addressed and rejected multiple additional arguments asserted by CROWD, including that the proposed Leto Well Pad does not comply with the setback requirements for a Deep Well Site, and that the application should be denied because the width of the proposed access driveway where it intersects with Oak Road exceeds 30 feet.

CROWD appealed to the trial court, which affirmed without taking additional evidence. Notably, the trial court agreed with the Board that the issue of the wet pond not being authorized as either a principal or an accessory use, and the procedural issues of notice and posting with respect to the adjacent property were waived. The trial court also denied EQT’s motion to quash Count II of CROWD’s

⁷ See also COL No. 15 [“CROWD has suffered no prejudice and cannot after the hearing is closed raise this issue.” (citing *In re McGlynn*, 974 A.2d 525 (Pa. Cmwlth. 2009))].

land use appeal challenging the Board's actions in approving the wet pond on the adjacent property, in particular with respect to the Sunshine Act, 65 Pa.C.S. §§ 701-716. The appeal to this Court followed.

Issues

CROWD raises numerous issues on appeal which can be consolidated into the following groups: (1) (a) purported procedural violations given that EQT's application only listed the principal property, and proper notice and posting were not provided for the adjacent property, and (b) substantive issues pertaining to the wet pond on the adjacent property; and (2) whether the application meets the zoning ordinance's specific requirements for a deep well site as to setbacks and access road width. EQT maintains the Board properly determined that several of these issues have been waived because they were not adequately raised below.⁸

Discussion

At the outset, we note that an applicant for a conditional use has the initial "burden to demonstrate compliance with the specific criteria of the ordinance." *In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006). If that burden is satisfied, a presumption arises "that the use is consistent with the health, safety, and welfare of the community[.]" *Marr Dev. Mifflinville, LLC v. Mifflin Twp. Zoning Hearing Bd.*, 166 A.3d 479, 483 (Pa. Cmwlth. 2017). The burden then "shifts to objectors to rebut the presumption by proving that there is a high degree of probability the proposed use will adversely affect the welfare of the community in a way not normally expected from the type of use." *H.E. Rohrer, Inc. v. Zoning Hearing Bd. of Jackson Twp.*, 808 A.2d 1014, 1018 (Pa. Cmwlth. 2002). This burden on "objectors is a heavy one[.]" *Marr Dev.*, 166 A.3d at 483. Mere

⁸ Pursuant to Pa.R.A.P. 2112, the Board joined EQT's brief to this Court in full.

speculation of possible harm is not sufficient, and objectors' burden may not be satisfied with personal opinion or bald assertions. *H.E. Rohrer, Inc.*, 808 A.2d at 1018. Important here, a conditional use, like a special exception, involves the proposed use of the land, "not . . . the particular details of the design of the proposed" land development. *In re Thompson*, 896 A.2d at 670 [citing *Schatz v. New Britain Twp. Zoning Hearing Bd. of Adjustment*, 596 A.2d 294, 298 (Pa. Cmwlth. 1991)]. See also *Joseph v. N. Whitehall Twp. Bd. of Supvs.*, 16 A.3d 1209, 1215 (Pa. Cmwlth. 2011) ["A conditional use proceeding concerns only a proposed *use* of land, not particular design details of the proposed development." (emphasis in original)].

With this framework in mind, we turn to the parties' arguments, beginning with waiver and what issues have been properly preserved for appeal.

Waiver and Issues Surrounding the Adjacent Property

CROWD raises several issues on appeal related to the fact that the proposed wet pond crosses the boundary from the principal property onto the adjacent property. Specifically, CROWD asserts that EQT did not apply for, and the Board lacked the authority to approve, the wet pond because the application form did not mention the adjacent property, which is located in a residential versus an industrial zoning district. The Board can only act on an application that is properly before it, and there was no application before the Board in this matter pertaining to the adjacent property. Similarly, the public notice for the Board's hearings stated that EQT proposed to construct a Deep Well Pad on the principal property, without mention of the adjacent property, in violation of the Pennsylvania Municipalities Planning Code (MPC).⁹ According to CROWD, a wet pond also is not permitted in the R-3 Zoning District and, even if it were, the wet pond is not a principal use and

⁹ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101-11202.

has no principal use to serve on the adjacent property. CROWD's Br. at 26 [citing *Warner Jenkinson Co., Inc. v. Zoning Hearing Bd. of Twp. of Robeson*, 863 A.2d 139, 143 (Pa. Cmwlth. 2004) ("a lot without a principal use but only a use accessory to a principal use is not permitted")]. Further, the Board's conclusion that "the [wet] pond and related facilities are not part of the Deep Well Site" is contrary to law because the wet pond is an integral and necessary part of the proposed Leto Well Pad. COL No. 18. Moreover, the Board's approval of the application without following the proper subdivision process violated Article III, Section 32 of the Pennsylvania Constitution's prohibition against special laws, and the 14th Amendment to the United States Constitution because it treated EQT differently from other applicants.

EQT asserts that all of these issues have been waived because CROWD failed to raise them during the hearings before the Board or specifically object to the application on these grounds. For the most part, we agree.

It is axiomatic that issues in zoning and land use cases not raised before the governing body are not properly preserved for appeal and thus are waived. *See, e.g., BR Assocs. v. Bd. of Comm'rs of Twp. of Upper St. Clair*, 136 A.3d 548, 556 (Pa. Cmwlth. 2016) ("[o]bjector fails to point to anything in the record indicating it preserved the issue of whether [a]pplicants' amended plan lacked a post-construction maintenance plan. Accordingly, [o]bjector waived this issue"); *Poole v. Zoning Bd. of Adjustment of City of Phila.*, 10 A.3d 381, 384 n.3 (Pa. Cmwlth. 2010) [finding issue had been waived because "an issue must be raised before the [b]oard in order to preserve it for appeal" (citing Pa.R.A.P. 1551)]. This applies to both substantive as well as procedural issues like notice and posting of a property under the MPC. *In re McGlynn*, 974 A.2d 525, 531-34 (Pa. Cmwlth. 2009) (finding issues of allegedly

defective public notice and publication were waived for failure to assert them before the board); *Mack v. Zoning Hearing Bd. of Plainfield Twp.*, 558 A.2d 616, 618 (Pa. Cmwlth. 1989) (failure to raise posting issue before the board resulted in waiver).

First, our review of the record¹⁰ demonstrates that there was *no* mention before the Board of any violation of the Pennsylvania or United States Constitutions, or the Sunshine Act. Likewise, CROWD failed to argue or present any evidence that the wet pond was not permitted in the R-3 Zoning District, or that the wet pond was not a principal use and had no principal use to serve on the adjacent property.¹¹ Therefore, these arguments have been waived. *BR Assocs.; Poole*.

CROWD points to several passages from the Board hearing transcripts in support of its argument that it adequately raised the procedural issues pertaining to the application and adjacent property below, and that the Board and trial court erred in determining otherwise. Specifically, while arguing and proffering exhibits on behalf of CROWD, Mr. Resciniti stated:

Next will be 18 and CROWD 19. I submit into evidence recent prior rulings from West Deer Township and the Allegheny County Court of Common Pleas which

¹⁰ CROWD attempts to bolster its claim of issue preservation by pointing to the proposed findings of fact and conclusions of law that it submitted to the Board. However, this document is not part of the record submitted to the trial court on appeal and CROWD failed to object to the contents of the record certified to the trial court. For these reasons, and because this Court cannot consider evidence that is not part of the record, we denied CROWD's application for relief to correct the record. *See* 11/26/2024 Order of Cmwlth. Ct.

¹¹ CROWD argues that it did not waive its claims regarding the wet pond's classification as a principal or accessory use because the issue did not manifest until the Board issued its decision concluding that the wet pond was not part of the Leto Well Pad. *See* CROWD's Br. at 31-32. While CROWD cites this Court's decision in *Fuller v. Zoning Board of Adjustment of the City of Pittsburgh* (Pa. Cmwlth., No. 980 C.D. 2018, filed June 26, 2019) as support for this argument, *Fuller* is not a reported decision and therefore is not precedential, and it is distinguishable from this matter.

made and upheld certain interpretations from this same body.

This is relevant because the application has proposed to construct what they describe as facilities and events which extend onto an adjoining residential parcel.

[EQT] has only applied for the permit [sic] for the industrial parcel, and this hearing was only noticed for the industrial parcel. The wet pond and the fence extend onto an adjacent residential parcel.

R.R. at 1310 (3/7/2023 Hearing Transcript at 128) (emphasis added). Further, the following exchange took place between EQT's Counsel and Mr. Johnson during his rebuttal testimony:

Q. [EQT's Counsel] The question had been raised about a property line that kind of went down through the stormwater pad. Do you remember that?

A. [Mr. Johnson] Yes, sir.

Q. And the main track, [sic] the one that's mentioned in the application, that was County Block and Lot No. 1668-R-91, is that correct?

A. Yes.

Q. And then there was a small portion of the stormwater facility that overlapped into the adjacent parcel and that was –

MR. RESCINITI: I object.

Q. – Block and Lot No. 1218-B-150, is that correct?

A. Yes.

MR. RESCINITI: I object.

MR. ROBB [Solicitor]: Mr. Resciniti, what's your objection?

MR. RESCINITI: I object to the characterization of it being a small part of the wet pond. It's approximately half of the wet pond, for the record.

MR. ROBB: Thank you.

MR. LUCAS: It's a portion of the – we'll stipulate it's a portion of the stormwater pond.

MR. ROBB: That seems a fair resolution of the objection. Thank you, Mr. Lucas.

R.R. at 1415-16 (3/14/2023 Hearing Transcript at 101-02).¹²

Mr. Resciniti's brief argument on behalf of CROWD could arguably be considered sufficient to preserve the procedural issues that the Board lacked authority to grant the application because EQT's application form only listed the principal property as the parcel at issue, and that the notice requirements under the

¹² CROWD also points to several comments made by Township residents—**who are not named Appellants and were not granted party status**—during the public comment period. Specifically, Roth Stump asserted that EQT's application failed to follow the appropriate laws and Zoning Ordinance, stating: "We know their application submitted for a single industrial zoned parcel, but they are planning to operate outside of solely this parcel." R.R. at 1493-94 (3/14/2023 Hearing Transcript at 179-80). Resident Mary Kay Kalivoda expressed the following:

Further, the well site is situated on two different parcels of property with two different parcel numbers.

[EQT] never applied for its well site to be built on two different parcels, as is required in its application, and the second parcel, which they did not submit, is where a wet pond is going to be located.

As a result of this failure, the Township advertised the Leto site to include only one parcel.

R.R. at 1501 (3/14/2023 Hearing Transcript at 187).

MPC were not met because the notices failed to mention the adjacent property. However, we agree with the Board that CROWD's failure to assert, let alone demonstrate prejudice is ultimately fatal to its claims, especially given the *de minimis* nature of the procedural error.

Our decision in *McGlynn* is instructive as that case also involved a claim of defective notice and an argument that failure to strictly comply with the MPC renders the underlying decision void *ab initio*. 974 A.2d at 528. The applicant in *McGlynn* filed a conditional use application with the board of supervisors seeking to develop a mobile/manufactured home park. While the board advertised that it would hold a public hearing on the application at an upcoming meeting, the advertisements appeared in the local newspaper only four days apart rather than the minimum five days. *Id.* at 531 [citing Section 107 of the MPC, 53 P.S. § 10107 (defining “public notice”); Section 1909 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1909 (defining “successive weeks”)]. Following multiple hearings where objectors actively participated, the board granted the application with conditions and the trial court ultimately affirmed.

Objectors then appealed to this Court raising multiple issues, including the failure to strictly comply with the MPC. The *McGlynn* Court rejected the objectors' argument that *any* deviation in the notice provisions renders the board's decision void *ab initio* and held that reversal was not compelled because the “[o]bjectors received all process due and *asserted no claim of prejudice or harm.*” *McGlynn*, 974 A.2d at 532 (emphasis added). As the Court explained:

The statutory notice and publication requirements are to ensure the public's right to participate in the consideration and enactment of municipal land use decisions. In other words, the notice provisions protect procedural due process. The concept of due process, however, is a

flexible one and imposes only such procedural safeguards as the situation warrants. *Demonstrable prejudice is a key factor in assessing whether procedural due process was denied.*

Id. (citations omitted, emphasis added). The Court found that the objectors had actual notice of the board’s conditional use hearings, actively participated in the hearings, and failed to assert a lack of notice or defective publication before the board.¹³ The Court stressed that because the objectors and their counsel were able to call witnesses and offer documents into evidence, their interests were fully protected, and their failure to assert any prejudice incurred by the manner of publishing the hearing notices was fatal to their claim. *Id.* at 533-34.

Here, CROWD similarly has not alleged and cannot demonstrate that it suffered any prejudice due to the purported procedural deficiencies in either the application form or the notices that were issued because of that form. To the contrary, CROWD fully participated in the hearings before the Board, cross-examined witnesses, and presented testimony and exhibits, as did the unsuccessful objectors in *McGlynn*. The testimony and evidence presented by EQT during those hearings also made clear that part of the wet pond would be located on the adjacent property. Even if CROWD’s procedural issues have not been waived, it suffered no prejudice. Thus, the Board and trial court properly rejected CROWD’s procedural arguments because it’s “interests were fully protected” and its “participation with counsel . . . acted to cure any deficiency in notice” due to the omission of the adjacent property from the application form itself and the notices issued. *McGlynn*, 974 A.2d

¹³ The *McGlynn* Court also explained that by failing to raise their public notice concerns before the board, the objectors deprived the board “of an opportunity to discontinue the proceedings and start anew.” 974 A.2d at 531. Similarly, if CROWD had adequately raised before the Board its concerns regarding EQT’s application form and the public notices that were issued, those issues could have been rectified in 2023.

at 534-35. *See also Pessolano v. Zoning Bd. of Adjustment of City of Pittsburgh*, 632 A.2d 1090, 1092 (Pa. Cmwlth. 1993) (discussing procedural due process components of notice and an opportunity to be heard, and explaining: “the value and necessity of these safeguards diminish when interested parties have actual notice of legal proceedings, because actual notice serves to accomplish the same purposes that legal notice is intended to accomplish. Both forms of notice serve to make interested parties aware of the opportunity to exercise their legal rights.”).

Moreover, the *de minimis* nature of the procedural error here should not be overlooked. It is undisputed that EQT’s application form itself did not mention the adjacent property, and neither did the notices provided pursuant to the MPC. But again, the voluminous attachments to the application show that a property line bisects the site of the wet pond, and the testimony and evidence presented during the Board hearings reiterated this fact. *See* R.R. at 205-06, 215, 220-21, 238-40, 778, 825-26, 835, 1581-82. More importantly, we must examine the error from the proper perspective—that EQT’s application is for a conditional use to operate a Deep Well Site. The testimony and record establish that the wet pond is merely intended for stormwater management purposes, and is not part of the “construction, drilling, fracturing, production[,] or operation of a deep well.” COL No. 18. As the Board concluded, the wet pond is neither “specific to a drilling or deep well operation” nor a use of the property in and of itself; rather, it is merely a construction attribute incidental to many forms of development. *Id.* The specific details regarding development and construction of the Leto Well Pad, including the wet pond, should be addressed in the land development and permitting process rather than through this conditional use application. *See Quaker Valley Sch. Dist. v. Leet Twp. Zoning Hearing Bd.*, 309 A.3d 279, 291 (Pa. Cmwlth. 2024); *In re Thompson*, 896 A.2d at

670 [“conditional use proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development” (citation omitted)].

Given the *de minimis* nature of the procedural error and CROWD’s failure to show that it suffered prejudice because of this error, we decline to find that the error in and of itself necessitates reversing the Board’s decision. *McGlynn*, 974 A.2d at 534 (“Absent a showing of discernible harm, a denial of due process claim must fail.”). Such an outcome would undoubtedly result in the parties and the Township simply repeating the lengthy, expensive process before the Board and the inevitable appeals that would follow, thus giving CROWD a second bite at the apple. *Id.* (noting that vacating the board’s order could result in “the entire application process [] start[ing] anew” and that “[t]he financial and administrative burdens on the [t]ownship are obvious”).

Zoning Ordinance’s Setback and Access Road Requirements

The two substantive issues CROWD preserved by clearly raising them before the Board are that the application fails to meet the Zoning Ordinance’s setback and access road requirements. With respect to setbacks for deep well sites, the Zoning Ordinance states:

A deep well site which would be placed more than 650 feet from any preexisting building located off the property where the deep well site is sited may be permitted as a conditional use in the . . . R-3 and I Zoning Districts, provided such property upon which the oil and gas well site would be placed is 1/2 acre or more in size.

Zoning Ordinance § 210-120.A(21)(a)[1] (R.R. at 112). The Zoning Ordinance defines “building” as: “A structure that is enclosed, and portions of which are protected from the weather and are usually climate controlled (heated and/or air-

conditioned), and that is usable for habitation or as a working environment.” Zoning Ordinance § 210-6 (R.R. at 15).

CROWD argues that the Board erred in approving EQT’s application because there are three preexisting buildings within 650 feet of the proposed Leto Well Pad, located on what is referred to by the Board and parties as the Clean Streams Foundation (CSF) property. The proximity of these structures is not disputed as EQT admits that they are less than 650 feet from the proposed deep well site. Instead, CROWD maintains that the Board erred in determining that these three structures do not qualify as “buildings” under the Zoning Ordinance. Because the Leto Well Pad violates this specific, objective requirement in the Zoning Ordinance, CROWD claims that EQT failed to meet its initial burden regarding its conditional use application and the Board’s decision must be reversed. We disagree.

The extensive testimony of Mr. Rasmussen, EQT’s expert witness in the areas of mine closure and water treatment, supports the Board’s conclusion that these structures do not qualify as buildings for purposes of the Zoning Ordinance’s setback requirement. *See* F.F. Nos. 72-96, COL Nos. 25, 28-29, 33-37. The Board credited Mr. Rasmussen’s testimony in full, and as the factfinder it is “the exclusive arbiter of credibility and evidentiary weight.” *Joseph*, 16 A.3d at 1218. Mr. Rasmussen visited the CSF property and is familiar with its history, including the fact that the facility stopped operating in 2016. F.F. Nos. 73-77. His testimony demonstrates that the structures on the CSF property are empty and not in use; they lack running water, sewer service, or bathrooms; several lack heating or air conditioning; and they are rodent infested. F.F. Nos. 83-94. Given these factual findings, the Board concluded that the three structures on the CSF property that are within 650 feet of the Leto Well Pad “are not usable ‘for habitation or as a working

environment’ and therefore do not qualify as ‘buildings’ for purposes of the Zoning Ordinance and the deep well site setback requirement.” COL No. 37 (quoting Zoning Ordinance § 210-6). The Board’s interpretation of its own Zoning Ordinance “is entitled to considerable deference.” *In re AMA/Am. Mktg. Ass’n, Inc.*, 142 A.3d 923, 934 (Pa. Cmwlth. 2016).

CROWD also argues that the Board erred in approving the application because it violates the side yard setbacks in both the I and R-3 Zoning Districts. Because the property line between the principal and adjacent properties bisects the wet pond, there is effectively no side yard setback here at all. As the Board noted, both properties are owned by Ms. Gizienski and she has entered into a surface use agreement with EQT to use the properties. Thus, the Board concluded that Ms. Gizienski is the only property owner impacted by the wet pond’s location vis-à-vis the common property line and the named Appellants presented no evidence that their property is near the wet pond, immediately downstream from it, or that they would be adversely impacted in any way. COL Nos. 42-43. Thus, the named Appellants lack standing to assert this argument. *Id.* The Board further held that the Township historically “has not applied setback requirements to stormwater ponds for commercial, residential, and other developments,” citing an exhibit in a previous well pad hearing. COL No. 44 (citing EQT Ex. F). Again, the Board’s interpretation of its Zoning Ordinance is entitled to deference. *In re AMA.*

As for the access road, the Board concluded that the width “at the point where it intersects Oak Road is approximately 80 feet.” COL No. 46 (citing F.F. No. 156). CROWD claims that this violates the requirements of the Zoning Ordinance, specifically Section 210-110(H)(4) which states that “[t]he width of any entranceway leading from a public right-of-way shall not exceed 30 feet at the point

of intersection with the public right-of-way.” Zoning Ordinance § 210-110(H)(4). However, as the Board and EQT note, Section 210-110(H) is a general requirement dating back to 1997 that would apply to all uses, whereas the specific oil and gas provisions found in Section 210-120(21)(g)(1) of the Zoning Ordinance were adopted in 2012 and contain no limitation on access road width. Pursuant to the Statutory Construction Act and case law interpreting it, the oil and gas provisions control here because they were adopted later in time and the specific controls the general. *See* 1 Pa.C.S. §§ 1933 (generally, specific provisions control the general), 1934 (where several clauses are irreconcilable, the provision adopted last controls); *see e.g., Latimore Twp. v. Latimore Twp. Zoning Hearing Bd.*, 58 A.3d 883, 887 (Pa. Cmwlth. 2013) [“in resolving a conflict between provisions in a zoning ordinance, the more specific provisions control over the more general” (citation omitted)].¹⁴

Accordingly, the order of the trial court affirming the decision of the Board is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge Emerita

Judge McCullough dissents.

¹⁴ In addition, the Board found that even if the 30-foot maximum width requirement of Section 210-110(H) applied, it would be “inconsistent with and preempted by the regulations and requirements of PennDOT, the owner of Oak Road.” COL No. 53. Mr. Guley credibly testified for EQT that “PennDOT . . . requires a larger radii to allow for the anticipated vehicles that will be accessing a well site,” and “vehicles would not be able to safely maneuver in and out of the site” if the lower maximum width applied. F.F. Nos. 153, 155. EQT also demonstrated that PennDOT approved its application for a highway occupancy permit with the access road width being substantially greater than 30 feet.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Concerned Residents of West Deer, James	:	
Shuey, Norann Shuey, Cara Randza, Jon	:	
Randza, Victoria Austin, Jeremy Koenig,	:	
Abbey Koenig, Robert Hutchinson, and	:	
Yvonne Hutchinson,	:	
Appellants	:	
	:	
v.	:	No. 1004 C.D. 2024
	:	
Township of West Deer and Board of	:	
Supervisors of the Township of	:	
West Deer	:	
	:	
v.	:	
	:	
EQT Artemis Production, LLC	:	

ORDER

AND NOW, this 22nd day of September, 2026, the Order of the Court of Common Pleas of Allegheny County is AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge Emerita