

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn O. Hawbaker, Inc.,	:	
Appellant	:	
	:	
v.	:	No. 42 C.D. 2024
	:	Argued: September 11, 2025
Butler Township Board of	:	
Supervisors, David H. Rowlands and	:	
Stacy J. Rowlands	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge¹
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER

FILED: September 23, 2026

Glenn O. Hawbaker, Inc. (Hawbaker) appeals the December 12, 2023 Order of the Court of Common Pleas of Luzerne County (common pleas), which affirmed the January 23, 2023 Decision of the Butler Township (Township) Board of Supervisors (Supervisors). In the Decision, the Supervisors denied Hawbaker's substantive validity challenge and request for a curative amendment to the Butler Township Zoning Ordinance of 2014 (Zoning Ordinance)² to permit asphalt plants in the Township's Mineral Industrial District (MI District). Hawbaker argues that the Supervisors erred or abused their discretion because the Zoning Ordinance is unconstitutionally vague and *de facto* exclusionary as to where asphalt plants are

¹ This matter was reassigned to the author on February 3, 2026.

² BUTLER TWP., LUZERNE CNTY., PA., ZONING ORDINANCE §§ 101-913 (2014), *as amended*. The Zoning Ordinance is located in the Reproduced Record at pages 639a through 799a.

permitted in the Township. Hawbaker also argues that common pleas erred or abused its discretion by allowing David H. Rowlands and Stacy J. Rowlands (together, the Rowlandses), self-represented, to intervene in this land use appeal. Upon review, the Court affirms common pleas as to allowing the Rowlandses to intervene in this appeal because they have a legally enforceable interest and reverses common pleas as to affirming the Supervisors because the Zoning Ordinance is unconstitutionally vague as to where asphalt plants are permitted in the Township.

I. BACKGROUND

Hawbaker is a Pennsylvania corporation that leases part of an approximately 734-acre property owned by Centre Lime & Stone Company, Inc. and partially located within the Township (Property). In August 2022, Hawbaker filed a zoning permit application with the Township Zoning Officer to construct and operate a drum mix asphalt plant on an approximately 10-acre portion of the Property located in the MI District. The Zoning Officer denied the application in September 2022, reasoning that an asphalt plant is not permitted in the MI District pursuant to Section 310 of the Zoning Ordinance. Hawbaker subsequently filed an appeal of the denial with the Township Zoning Hearing Board (Zoning Board).³

In October 2022, during the pendency of the Zoning Board appeal, Hawbaker filed with the Supervisors a substantive validity challenge and request for a curative amendment to the Zoning Ordinance pursuant to Section 916.1 of the Pennsylvania Municipalities Planning Code (MPC).⁴ Hawbaker alleged that the Zoning Ordinance

³ The Zoning Board denied the appeal. Hawbaker's appeal of the Zoning Board's denial is the subject of *Glenn O. Hawbaker, Inc. v. Butler Township Zoning Hearing Board* (Pa. Cmwlth., No. 1142 C.D. 2024, filed September 23, 2026), which was argued seriatim with this case.

⁴ Act of July 31, 1968, P.L. 805, *as amended*, added by Section 99 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10916.1.

is unconstitutionally vague because the Table of Land Uses in Section 310 (Table), which permits asphalt plants only in the Industrial District (I District) by special exception, conflicts with the stated purposes of the MI District and the I District and the definitions of relevant terms. Hawbaker also alleged that the Zoning Ordinance is *de facto* exclusionary of the use of an asphalt plant in the Township because no property in the I District can meet the special exception requirements for such plants. Hawbaker therefore proposed a curative amendment to the Zoning Ordinance to permit an “Asphalt, Batch or Concrete Plant” by right in the MI District.

Following a pair of public hearings, the Supervisors denied Hawbaker’s challenge and curative amendment in the Decision. Applying the rules of statutory construction, the Supervisors concluded that the clear and unambiguous language of the Zoning Ordinance permits asphalt plants by special exception in the I District and prohibits such plants in the MI District. The Supervisors reasoned that there are no conflicting provisions in the Zoning Ordinance that indicate an asphalt plant is permitted by right in the MI District rather than by special exception in the I District. Although the Zoning Ordinance describes the purpose of the MI District as providing for heavy industrial uses and defines such uses to include asphalt plants, the Supervisors concluded that the MI District “provide[s] for heavy industrial uses other than asphalt, concrete, or batch plants as those uses are specially prohibited in the MI [] District under Section 310 of the Zoning Ordinance.” (Supervisors’ Decision, Conclusion of Law (COL) ¶ 18.)

Additionally, the Supervisors concluded that the Zoning Ordinance is not *de facto* exclusionary as to asphalt plants in the I District. In reaching this conclusion, the Supervisors found Hawbaker’s witness, a long-standing employee, “neither qualified¹ nor credible on its claims that one would not be able to obtain special

exception approval for an asphalt plant in the I [] District based upon namely the location and condition of the road system.” (*Id.* ¶ 28.) Instead, the Supervisors credited the testimony of the Township’s engineer, who “opined that a special exception for an asphalt plant may be difficult, but not impossible to obtain depending on the specifics of the application.” (*Id.*) Therefore, while developing an asphalt plant in the I District is possibly more difficult and costly than in the MI District, the Supervisors reasoned that they cannot conclude that the Zoning Ordinance is *de facto* exclusionary of asphalt plants in the Township.

Hawbaker timely appealed the Decision to common pleas. Subsequently, the Rowlandses filed a petition to intervene, which Hawbaker opposed. By order dated September 19, 2023, common pleas permitted the Rowlandses to intervene in the matter pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2329, Pa.R.Civ.P. 2327, 2329. Common pleas reasoned that the Rowlandses reside approximately 0.37 miles from an existing quarry that would provide source material for the proposed asphalt plant and 1.29 miles, or 6,800 feet, from the proposed asphalt plant. Accordingly, common pleas concluded that the Rowlandses “have the requisite ‘legally enforceable interest’ to become intervenors” because their residence “is situate[d] such that it would be impacted by the plant’s production of noise, dust, odors, and other emissions.” (Reproduced Record (R.R.) at 834a.)

On the merits of the land use appeal, common pleas affirmed the Decision in the Order without taking additional evidence. In an accompanying opinion, common pleas reasoned that the Zoning Ordinance is neither unconstitutionally vague nor *de facto* exclusionary as to asphalt plants. To start, common pleas opined that the Zoning Ordinance is not unconstitutionally vague because it is “of sufficient clarity such that men of common intelligence need not guess at [its] meaning.” (Common

Pleas’ Opinion at 8.) Common pleas reasoned that while Sections 202 and 305 of the Zoning Ordinance state that the purpose of the MI District is for heavy industrial uses and that an asphalt plant is a heavy industrial use, the Table explicitly provides that despite being a heavy industrial use, an asphalt plant is not permitted in the MI District and is only permitted in the I District by special exception. Common pleas thus agreed with the Supervisors that the MI District is “for heavy industrial uses *other than* asphalt, concrete, or batch plants.” (*Id.* at 9 (emphasis in original) (quoting Supervisors’ Decision, COL ¶ 18).)

In addition, common pleas opined that the Zoning Ordinance is not *de facto* exclusionary of asphalt plants in the Township. Noting that the Zoning Ordinance is presumed constitutional, common pleas explained that Hawbaker did not prove that an asphalt plant “cannot in fact be accomplished” in the I District. (*Id.* at 19 (emphasis removed) (quoting *In re Charlestown Outdoor, LLC*, 280 A.3d 948, 958 (Pa. 2022)).) Common pleas reasoned:

[Hawbaker] focuses on the [Zoning] Ordinance’s requirement in Section 602 that each of the 2 required 24-foot-wide access drives connect to a public street sufficient in size to accommodate the proposed traffic expected to be generated by the use to assert that, within the I [D]istrict, such requirement is an impossibility. Our review of the [Zoning] Ordinance reveals no provision that would serve to render impossible [Hawbaker’s] desire to operate an asphalt plant and satisfy these conditions. There is nothing in the [Zoning] Ordinance that would preclude [Hawbaker] from acquiring sufficient possessory interest in lands over which [it] could construct access drives connecting to a public street other than Prospect Road or Main Street which are, admittedly, demonstrated by the record to be insufficient in size to accommodate the type of truck traffic expected to be generated by an asphalt plant.□ The record indicates that Butler Drive runs nearby to the I [D]istrict and is a state highway of a sufficient size to accommodate the type of truck traffic attendant to the operation of an asphalt plant.□

(*Id.*) For these reasons, common pleas concluded that Hawbaker did not meet its heavy burden to establish that the Zoning Ordinance is unconstitutional and affirmed the Supervisors' Decision.

Hawbaker now appeals the Order to this Court.

II. DISCUSSION

On appeal, Hawbaker presents three principal arguments. First, Hawbaker argues that the Supervisors erred or abused their discretion in denying the substantive validity challenge and curative amendment proposal because the Zoning Ordinance is unconstitutionally vague as to where asphalt plants are permitted in the Township. Second, Hawbaker argues that the Supervisors erred or abused their discretion in failing to conclude that the Zoning Ordinance is *de facto* exclusionary as to asphalt plants because there is no property within the I District that can satisfy the special exception requirements. Third, Hawbaker argues that common pleas erred or abused its discretion by allowing the Rowlandses to intervene in the land use appeal because the Rowlandses did not establish the requisite legally enforceable interest to intervene.

A. Intervention

We begin with Hawbaker's argument that common pleas erred or abused its discretion by allowing the Rowlandses to intervene in this matter.⁵ Hawbaker asserts that to have a legally enforceable interest to intervene, a prospective intervenor must

⁵ “[I]t is well established that a ‘question of intervention is a matter within the sound discretion of the court below and unless there is a manifest abuse of such discretion, its exercise will not be interfered with on review.’” *Shirley v. Pa. Legis. Reference Bureau*, 318 A.3d 832, 851 (Pa. 2024) (citations omitted). A court abuses its discretion “if, in reaching a conclusion, [the] law is overridden or misapplied, or the judgment exercised is manifestly unreasonable or lacking in reason[.]” *Id.* (alterations in original) (citation omitted).

own or have a lien on property within the immediate vicinity—i.e., one mile—of the subject property in the land use appeal. Because their property is 1.29 miles from the proposed asphalt plant such that it is neither within the immediate vicinity of nor will it be affected by the plant, Hawbaker argues the Rowlandses lack the legally enforceable interest necessary to intervene. Hawbaker further asserts that the Rowlandses have not shown a harm unique to them to justify intervention when their property is not within the immediate vicinity of the proposed plant. Hawbaker thus argues common pleas abused its discretion in allowing the Rowlandses to intervene.

Section 1004-A of the MPC governs intervention in land use appeals, providing:

Within the 30 days first following the filing of a 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.⁶ Because the Rowlandses are not the owners or tenants of a property directly involved in this action, the Pennsylvania Rules of Civil Procedure govern whether they may intervene. *See id.* Relevantly, Rule 2327(4) 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

...

(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.

⁶ Added by Section 101 of the Act of December 21, 1988, P.L. 1329.

Pa.R.Civ.P. 2327(4). “Whether a potential party has a legally enforceable interest permitting intervention under Rule 2327(4) ‘turns on whether they satisfy our standing requirements.’” *Shirley v. Pa. Legis. Reference Bureau*, 318 A.3d 832, 852 (Pa. 2024) (citation omitted). As our Supreme Court has explained:

“Generally, the doctrine of standing is an inquiry into whether the [potential party] has demonstrated aggrievement, by establishing a substantial, direct and immediate interest in the outcome of the litigation.” *Robinson [Township] v. Commonwealth*, . . . 83 A.3d 901, 917 ([Pa.] 2013) (quotation marks and citation omitted). “[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[.]” *Pa. Med. Soc’y v. Dep’t of Pub. Welfare* [], . . . 39 A.3d 267, 278 ([Pa.] 2012). “[A] ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest.” *Id.* An interest is “immediate” if that “causal connection” is not remote or speculative. *Id.*

Id. In general, whether a potential party may intervene under Rule 2327 “presents a question of law” such that “our scope of review is plenary, and our standard of review is de novo.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 843 (Pa. 2024).

It is well settled that the owners and lienholders of property in the “immediate vicinity” of the subject property in a land use matter have the requisite legally enforceable interest to intervene under Rule 2327(4). *Esso Standard Oil Co. v. Taylor*, 159 A.2d 692, 696 (Pa. 1960); *Wexford Sci. & Tech., LLC v. Pittsburgh Zoning Bd. of Adjustment*, 260 A.3d 316, 324 (Pa. Cmwlth. 2021). It is further settled that a “property that is adjacent to or abuts the zoning area in question is in close proximity for standing purposes.” *Laughman v. Zoning Hearing Bd. of Newberry Twp.*, 964 A.2d 19, 22 (Pa. Cmwlth. 2009). While the term “immediate vicinity” is not precisely or rigidly defined, this Court has recognized that a

prospective intervenor's property need not be adjacent to the subject property in the matter for a sufficient interest to exist under Rule 2327(4). *Keener v. Zoning Hearing Bd. of Millcreek Twp.*, 714 A.2d 1120, 1123 (Pa. Cmwlth. 1998).

For example, as Hawbaker notes, the Court has generally held that landowners have standing, and thus the requisite interest to intervene, when their property is located within one mile of the subject property. In *Wexford*, this Court concluded that prospective intervenors, who included individuals that owned properties 743 feet and 0.5 miles from the subject property, had a legally enforceable interest to become intervenors “by virtue of their status as property owners in the immediate vicinity of the [p]roject.” 260 A.3d at 324-25. Similarly, in *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Board*, this Court concluded that landowners who owned properties within a quarter to a half mile from a landfill had standing to appeal a zoning decision because they lived in close proximity to the landfill. 186 A.3d 525, 534-35 (Pa. Cmwlth. 2018). In *In re Broad Mountain Development Co., LLC*, this Court likewise concluded that landowners who lived within a half mile of a proposed wind turbine project established standing to contest a zoning permit. 17 A.3d 434, 440-41 (Pa. Cmwlth. 2011).

However, one mile is not a hard and fast rule; rather, the Court considers **all** relevant circumstances to determine if a landowner has the necessary interest to participate in the matter, including the intensive nature of the proposed use of and any discernable adverse effects associated with the use that may emanate from the subject property. For example, this Court in *Friends of Lackawanna* did not base its standing conclusion solely on the fact that the landowners lived within one mile of the proposed landfill; rather, the Court concluded the landowners had standing largely because of the “discernable adverse effects” on them from landfill

operations, including “the odors, dust, bird droppings and truck traffic.” 186 A.3d at 535.⁷ Similarly, while the landowners in *Broad Mountain* lived within one mile of the proposed wind turbine, the Court held that the evidence of “continual noise issues,” “incidents of flickering,” “throwing and shedding of ice in freezing conditions,” “low-frequency vibrations,” and concerns as to “possible fires,” “potential health problems,” and “decline in property values” demonstrated that the landowners had standing. 17 A.3d at 440-41. In *Grant v. Zoning Hearing Board of Township of Penn*, this Court concluded that the landowners had standing to appeal a zoning board’s decision because “wind and sound” from a proposed electric generating facility “flow[ed] to their land,” which was 6,600 feet, or 1.25 miles, from the facility. 776 A.2d 356, 359 (Pa. Cmwlth. 2001). And without considering the distance of their properties from a proposed quarry, the Court in *Larock v. Sugarloaf Township Zoning Hearing Board* concluded that a group of residents had the necessary interest to intervene “by virtue of their status as property owners in the immediate vicinity of the proposed quarry,” explaining:

Every person has the right to the natural, proper, and profitable use of his or her own land. . . . Implicit then is the 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.

740 A.2d 308, 312-13 (Pa. Cmwlth. 1999).

Here, the Court cannot conclude that common pleas abused its discretion in permitting the Rowlandses to intervene in this matter pursuant to Rule 2327(4). The

⁷ The Court distinguished these discernible effects from merely aesthetic concerns similar to those presented in *Armstead v. Zoning Board of Adjustment of Philadelphia*, 115 A.3d 390 (Pa. Cmwlth. 2015), or *Spahn v. Zoning Board of Adjustment*, 977 A.2d 1132 (Pa. 2009), which involved objections to proposed electronic or illuminated billboards. *Friends of Lackawanna*, 186 A.3d at 535.

Rowlandses' residential property is located approximately 1.29 miles from the proposed asphalt plant, 0.37 miles from Hawbaker's stone quarry, and 0.37 miles from the road connecting the stone quarry to the asphalt plant, which runs behind and parallel to their home. (R.R. at 807a, 818a.) With materials extracted from the quarry, Hawbaker plans to manufacture 300,000 tons of asphalt each production season at the proposed plant. (*Id.* at 132a, 134a.) To meet the demand of the proposed plant, Hawbaker estimated that "on average[,] 82 truckloads of stone [must] be transported to the asphalt plant every day," requiring 328 daily truck passages between the plant and quarry. (*Id.* at 134a-35a.) Hawbaker explained that "[i]t will be most efficient to transport stone to the plant at night in order to stock the asphalt plant for the production of asphalt." (*Id.* at 134a.) The Rowlandses testified that they currently experience loud noises from crushing stone and trucks throughout the day and have "layers of white dust on [their] home" from the stone quarry. (*Id.* at 822a.) The Rowlandses further testified as to their concerns regarding noise, dust, odors, and other emissions from operations at the proposed asphalt plant and stone quarry that will exacerbate the current situation. (*Id.* at 823a.) Indeed, Hawbaker has recognized that "[h]eavy industrial uses, including asphalt plants, are more objectionable in terms of noise, fumes, odors, vibration and lights than are the light industrial uses." (*Id.* at 136a.)

Accordingly, considering the potential negative effects on the Rowlandses from, and the proximity of their home to, the proposed asphalt plant, stone quarry, and transportation route between the plant and quarry, the Rowlandses have demonstrated a substantial, direct, and immediate interest in this matter. *See Friends of Lackawanna*, 186 A.3d at 534-35; *Broad Mountain*, 17 A.3d at 440-41; *Grant*, 776 A.2d at 357-58; *Larock*, 740 A.2d at 312-13. Therefore, the Court cannot

conclude that common pleas abused its discretion in allowing the Rowlandses to intervene in this matter because the Rowlandses have established a legally enforceable interest as their residential property is located in the immediate vicinity of the proposed asphalt plant and its operations.

B. Unconstitutionally Vague

Next, Hawbaker argues that the Zoning Ordinance is unconstitutionally vague as to where asphalt plants are permitted in the Township.⁸ Hawbaker asserts that Sections 202 and 305 of the Zoning Ordinance “lead[] to only one logical conclusion—asphalt plants are to be permitted only in the MI District.” (Hawbaker’s Br. at 10, 15-16 (emphasis removed).) However, Hawbaker contends that the Table “turns this resounding logic on its head by purporting to permit asphalt plants only in the I District by special exception.” (*Id.* at 10.) Because the Table irreconcilably conflicts with the other provisions of the Zoning Ordinance, Hawbaker argues that the Zoning Ordinance is unconstitutionally vague as a person of ordinary intelligence cannot discern its intent.

The Supervisors and the Rowlandses retort that the Zoning Ordinance is sufficiently clear as to where asphalt plants are permitted in the Township. The Supervisors contend that the Zoning Ordinance makes clear that “[t]he purpose of the MI [] District is to provide for heavy industrial uses other than asphalt, concrete, or batch plants as those uses are specially prohibited in the MI [District]” pursuant to the Table. (Supervisors’ Br. at 16-17.) Similarly, the Rowlandses assert that the

⁸ Where, as here, common pleas “does not receive additional evidence, our review is limited to determining whether the Supervisors abused their discretion or committed an error of law.” *Aldridge v. Jackson Township*, 983 A.2d 247, 260 (Pa. Cmwlth. 2009) (emphasis removed). As for questions of law, the Court’s “standard of review is de novo and our scope of review plenary.” *Gorsline v. Bd. of Supervisors of Fairfield Twp.*, 186 A.3d 375, 385 (Pa. 2018).

Table is specific and, thus, “prevails and carves out an exception to the general provisions of Sections 202 and 305 [of the Zoning Ordinance].” (Rowlandses’ Br. at 9.) Therefore, the Supervisors and the Rowlandses argue that the Zoning Ordinance is not unconstitutionally vague as to where asphalt plants are permitted in the Township.

In this Commonwealth, “the constitutionality of a zoning ordinance is reviewed under a substantive due process analysis.” *Plaxton v. Lycoming Cnty. Zoning Hearing Bd.*, 986 A.2d 199, 205 (Pa. Cmwlth. 2009). Under this review, “[o]rdinances are presumed to be constitutional, and a heavy burden is placed on a party seeking to challenge the constitutionality of an ordinance.” *Boron v. Pulaski Twp. Bd. of Supervisors*, 960 A.2d 880, 886 (Pa. Cmwlth. 2008). Because “[d]ue process requires that a statute give fair warning of its prohibition,” an ordinance “may be set aside as unconstitutionally vague” if it “does not establish its prohibition in explicit terms.” *Id.* In contrast to explicit ordinances, “[v]ague ordinances ‘proscribe activity in terms so ambiguous that reasonable persons may differ as to what is actually prohibited,’ and invite arbitrary and discriminatory enforcement because they do not set reasonably clear guidelines for law officials and courts.” *Farley v. Zoning Hearing Bd. of Lower Merion Twp.*, 636 A.2d 1232, 1239 (Pa. Cmwlth. 1994) (citation omitted). Accordingly, this Court has held that “[a]n ordinance is unconstitutionally vague and violates due process when persons of common intelligence must guess at its meaning.” *Id.*

To address the issue before the Court, we must interpret the Zoning Ordinance, which presents “a question of law for which our standard of review is de novo and our scope of review is plenary.” *Weiler v. Stroud Twp. Zoning Hearing Bd.*, 300 A.3d 1121, 1126 (Pa. Cmwlth. 2023). Generally, the “governing body is

entitled to considerable deference in interpreting its own ordinance and such interpretation is accorded great weight.” *Tink-Wig Mountain Lake Forest Prop. Owners Ass’n v. Lackawaxen Twp. Zoning Hearing Bd.*, 986 A.2d 935, 941 (Pa. Cmwlth. 2009). However, the Court will not defer to the governing body’s interpretation “where such interpretation is ‘clearly erroneous.’” *Plum Borough v. Zoning Hearing Bd. of Borough of Plum*, 310 A.3d 815, 823 (Pa. Cmwlth. 2024) (citation omitted).

When interpreting zoning ordinances, the Court generally applies the principles contained in the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1501-1991. *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d 886, 899 (Pa. 2019). Pursuant to Section 1921(a), “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the [legislative body].” 1 Pa.C.S. § 1921(a). “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b). “However, when the statutory language is ambiguous, we may look to Section 1921(c) . . . for guidance.” *Weiler*, 300 A.3d at 1126. “An ambiguity exists when language is subject to two or more reasonable interpretations, not merely because two conflicting interpretations may be suggested.” *Id.* Because the best indication of the legislative intent is the plain language of the ordinance itself, we begin with the text of the Zoning Ordinance. *See id.*

Relevantly, Section 202 of the Zoning Ordinance defines “Asphalt, Batch or Concrete Plant” as

an **industrial** facility used for the production of asphalt or concrete, or asphalt or concrete products, used in building or construction, and includes facilities for the administration or management of the business,

the stockpiling of bulk materials used in the productions process or of finished products manufactured on the premises and the storage and maintenance of required equipment.

ZONING ORDINANCE § 202 (emphasis added); *see also* ZONING ORDINANCE § 602(28)(H) (“An asphalt, batch or concrete plant or processing operations shall constitute an industrial use . . .”). Section 202 further defines in detail two types of industrial uses in the Township:

“Heavy Industrial” means a use engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions. **The term includes asphalt, concrete and batch plants**, commercial hog farms, fur farms, or fertilizer plants. The term shall include any industrial use conducted in a building in excess of 40,000 square feet in total floor area, whether proposed initially or cumulatively, or with employees in excess of 100 persons, whether proposed initially or cumulatively.

“Light Industrial” means a use engaged in the manufacture, predominately 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**. The term includes the manufacture of small machine parts, small electronic equipment, and motors not in excess of 10 horsepower. Any industrial use conducted in a building in excess of 40,000 square feet in total floor area, whether proposed initially or cumulatively, or with employees in excess of 100 persons, whether proposed initially or cumulatively, shall be considered a heavy industrial use.

ZONING ORDINANCE § 202 (emphasis added).

Section 305 of the Zoning Ordinance then describes the intent and purpose of each zoning district within the Township, including the I District and the MI District.

The stated purpose of the I District “is to provide for **light industrial uses** and related activities on larger parcels of land in areas of the Township accessible to the regional highway network” ZONING ORDINANCE § 305(9) (emphasis added). In contrast, the express purpose of the MI District “is to provide for **heavy industrial uses** and mineral extraction activities while serving to buffer these uses from one another and from other uses” ZONING ORDINANCE § 305(10) (emphasis added).

Section 310 of the Zoning Ordinance sets forth the Table, indicating whether a specific use is a permitted use, a use permitted by special exception, or a non-permitted use in each zoning district. ZONING ORDINANCE § 310. Per the Table, “Asphalt, Batch or Concrete Plant” and “Heavy Industrial” uses are not permitted in the MI District; rather, these uses are only permitted in the I District by special exception. *Id.* The Table further indicates that, among other locations, “Mineral Extraction” is a permitted use in the MI District and permitted by special exception in the I District. *Id.* Additionally, the Table shows that a “Light Industrial” use is permitted in the I District and permitted by special exception in the MI District. *Id.*

Here, based on the foregoing provisions, the Court concludes that a person of common intelligence cannot discern where an asphalt plant is permitted in the Township and, consequently, the Zoning Ordinance is unconstitutionally vague. According to the definitions, an asphalt plant is a “heavy industrial” use and cannot be considered a “light industrial” use because it involves industrial processing, which is specifically excluded from the definition of “light industrial.” ZONING ORDINANCE § 202. The purpose provisions then state that the MI District is for heavy industrial uses and the I District is for light industrial uses. ZONING ORDINANCE § 305(9)-(10). Accordingly, reading the plain language of Sections 202 and 305 together, a person of common intelligence would logically conclude that an

asphalt plant, which is defined as a heavy industrial use, would be permitted in the MI District and excluded from the I District.

However, the Table “turns this resounding logic on its head.” (Hawbaker’s Br. at 10.) Rather than visually reflect and be consistent with the preceding provisions, which a person of common intelligence would expect, the Table purports to exclude heavy industrial uses and asphalt plants from the MI District and permit these uses only in the I District by special exception. ZONING ORDINANCE § 310. In doing so, the Table directly contradicts the textual provisions that precede it. *Compare id.*, with ZONING ORDINANCE §§ 202, 305(9)-(10). Consequently, the Table creates an ambiguity that makes it difficult for a person of common intelligence to discern where an asphalt plant is actually permitted in the Township.

The Supervisors attempted to resolve this ambiguity by concluding that the Table prevails over Sections 202 and 305, explaining that “[t]he purpose of the MI [] District is to provide for heavy industrial uses other than asphalt, concrete, or batch plants as those uses are specifically prohibited in the MI [District] under [the Table].” (Supervisors’ Decision, COL ¶ 18.) But as the more specific provisions, Sections 202 and 305 must prevail over Section 310. *See County of Fulton v. Sec’y of Commonwealth*, 330 A.3d 481, 509 (Pa. Cmwlth. 2024) (“When a conflict between two provisions in a statute exists, the more specific provision trumps a more general provision . . .”). Sections 202 and 305 contain multiple textual provisions with detailed definitions and explanations of the zoning districts in the Township, the purposes of those districts, and descriptions and examples of industrial uses. For example, the definition of “heavy industrial” specifies that “[t]he term includes asphalt, concrete and batch plants, commercial hog farms, fur farms, or fertilizer plants” and “any industrial use conducted in a building in excess of 40,000 square

feet in total floor area . . . or with employees in excess of 100 persons.” ZONING ORDINANCE § 202. In contrast, the Table merely provides a chart with individual boxes beneath each zoning district, containing “N,” “P,” or “SE” to designate which uses are permitted in which district without further explanation. ZONING ORDINANCE § 310. Accordingly, Sections 202 and 305 are more specific than the Table and must prevail in this conflict.

This conclusion is consistent with our precedent. In *In re Miller*, this Court addressed an inconsistency in a zoning ordinance as to whether “single family semi-detached dwellings” constituted a permitted use in the multi-family zoning district. 444 A.2d 786, 787 (Pa. Cmwlth. 1982). Although the definition of “Multi-Family Dwelling (or Building)” covered single-family semi-detached dwellings and the “Area and Design Regulations” for the multi-family district included regulations for such dwellings, the table of land uses indicated that single family semi-detached dwellings were not permitted in the multi-family district. *Id.* In resolving the conflict between the text of the zoning ordinance and the table designation, the Court concluded that the textual provisions “describing in detail the characteristics of the [multi-family] [d]istrict, including [the] regulations applicable to single[-]family semi-detached dwellings constructed in the district, must prevail over the inconsistent, and possibly inadvertent, placement of an ‘N’ under [multi-family] in one of the tables.” *Id.* at 788. Similar to *Miller*, in this case, the mere letter designation “N” under “MI” in the Table cannot be meaningfully reconciled with the more detailed, explanatory provisions of the Zoning Ordinance describing in detail that asphalt plants belong in the MI District and not the I District. Accordingly, the provisions of the Zoning Ordinance describing in detail the characteristics of the MI District must prevail over the inconsistent Table. *See id.*

The Court also disagrees that Section 602(28)(H) of the Zoning Ordinance shows that it is the clear and unambiguous intent of the Zoning Ordinance to only permit asphalt plants in the I District by special exception, as argued by the Supervisors and the Rowlandses. Titled “Mineral Extraction (and Asphalt, Batch or Concrete Plant),” Section 602(28) includes eight paragraphs regulating those uses together. ZONING ORDINANCE § 602(28). Section 602(28) therefore indicates that the Zoning Ordinance intends to treat mineral extraction and asphalt plants in the same way. Consistent with the definitions and purposes provisions of the Zoning Ordinance, the Table expressly permits mineral extraction in the MI District and permits such uses by special exception in the I District. ZONING ORDINANCE §§ 202, 305, 310. Accordingly, Section 602(28) indicates that like mineral extraction, asphalt plants should be expressly permitted in the MI District as well as by special exception in the I District.

While Section 602(28)(H) differentiates mineral extraction from asphalt plants, the provision does not purport to limit asphalt plants to the I District by special exception. Relevantly, Section 602(28)(H) provides that “[a]n asphalt, batch or concrete plant or processing operations shall constitute an industrial use and shall not be considered an accessory use, but a separate and distinct use that shall require special exception approval when located on the same lot where the mineral extraction is taking place.” ZONING ORDINANCE § 602(28)(H). In other words, Section 602(28)(H) states that mineral extraction and asphalt plants both constitute principal uses and special exception approval is required to locate these principal uses on the same lot. Because mineral extraction is permitted in the MI District, Section 602(28)(H) suggests that an asphalt plant is also permitted in the MI District, at least by special exception when on the same lot as a mineral extraction facility.

Indeed, Section 602(28)(H) is consistent with the express purpose of the MI District, which is “to provide for heavy industrial uses and mineral extraction activities while serving to **buffer** these uses from one another” ZONING ORDINANCE § 305(10) (emphasis added). Thus, Section 602(28)(H) does not support the argument that the Zoning Ordinance intends for asphalt plants to only be permitted in the I District by special exception.

In summary, because of the conflicting provisions in the Zoning Ordinance, a person of common intelligence must guess at where asphalt plants are permitted in the Township. Consequently, the Zoning Ordinance is unconstitutionally vague.⁹ *See Farley*, 636 A.2d at 1239.

III. CONCLUSION

For the foregoing reasons, common pleas did not err or abuse its discretion in allowing the Rowlandses to intervene in this matter. However, common pleas did err in affirming the Supervisors because the Zoning Ordinance is unconstitutionally vague as to where asphalt plants are permitted in the Township. Therefore, the Order of common pleas is affirmed in part and reversed in part.

RENÉE COHN JUBELIRER, President Judge

Judge Fizzano Cannon did not participate in the decision of this case.

⁹ Given this conclusion, the Court does not opine on whether the Zoning Ordinance is *de facto* exclusionary as to asphalt plants in the Township.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn O. Hawbaker, Inc.,	:	
Appellant	:	
	:	
v.	:	No. 42 C.D. 2024
	:	
Butler Township Board of	:	
Supervisors, David H. Rowlands and	:	
Stacy J. Rowlands	:	

ORDER

NOW, September 23, 2026, the December 12, 2023 Order of the Court of Common Pleas of Luzerne County is **AFFIRMED** in part and **REVERSED** in part in accordance with the foregoing memorandum opinion.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn O. Hawbaker, Inc.,	:
	:
Appellant	:
	:
v.	: No. 42 C.D. 2024
	: Argued: September 11, 2025
Butler Township Board of	:
Supervisors, David H. Rowlands	:
and Stacy J. Rowlands	:

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

CONCURRING/DISSENTING OPINION
BY JUDGE WOJCIK

FILED: September 23, 2026

I concur in the Majority's conclusion that David H. Rowlands and Stacy J. Rowlands were properly permitted to intervene. However, I depart from the Majority's holding that the Butler Township (Township) Zoning Ordinance (Zoning Ordinance) is unconstitutionally vague. The Zoning Ordinance plainly states where asphalt plants are permitted and does not require persons of common intelligence to guess at its meaning. In my view, the Majority creates ambiguity where none exists.

As the Majority properly recognizes, and I briefly restate here, in Pennsylvania, the constitutionality of a zoning ordinance is reviewed under a substantive due process analysis. *Plaxton v. Lycoming County Zoning Hearing Board*, 986 A.2d 199, 204 (Pa. Cmwlth. 2009). Ordinances are presumed constitutional, and the challenger bears a heavy burden to show that an ordinance is

unconstitutional. *Id.*; *Boron v. Pulaski Township Board of Supervisors*, 960 A.2d 880, 886 (Pa. Cmwlth. 2008). Due process requires that a statute gives fair warning of its prohibitions such that persons of common intelligence need not guess at their meaning. *Boron*, 960 A.2d at 886. An ordinance that does not establish its prohibition in explicit terms may be set aside as “unconstitutionally vague.” *Id.*

Statutory construction begins with the text itself, and the plain language of an ordinance generally provides the best indication of governing-body intent. *Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board*, 83 A.3d 488, 509 (Pa. Cmwlth. 2014). The basic tenets of statutory construction command, *inter alia*, that we give effect to all provisions of an ordinance where possible, that specific provisions control general ones when irreconcilable, and that interpretations producing absurd results be avoided. Sections 1921(a), 1922(1), and 1933 of the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa. C.S. §§1921(a), 1922(1), 1933; *see Slice of Life, LLC v. Hamilton Township Zoning Hearing Bd.*, 207 A.3d 886, 899 (Pa. 2019) (applying principles contained in the Statutory Construction Act to zoning ordinances). Courts also defer to a governing body’s interpretation of its own ordinance, given its expertise and responsibility for administering it. *Tink-Wig Mountain Lake Forest Property Owners Association v. Lackawaxen Township Zoning Hearing Board*, 986 A.2d 935, 941 (Pa. Cmwlth. 2009); *accord Aldridge v. Jackson Township*, 983 A.2d 247, 258 (Pa. Cmwlth. 2009). Of particular import here, “[w]here the words in an ordinance are free from all ambiguity, *the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit.*” *Adams Outdoor Advertising, LP v. Zoning Hearing Board of Smithfield Township*, 909 A.2d 469, 483 (Pa. Cmwlth. 2006)

(emphasis added) (citing Section 1921 of the Statutory Construction Act, 1 Pa. C.S. §1921).

Here, Section 202 of the Zoning Ordinance defines “Asphalt, Batch or Concrete Plant” as an industrial facility; “Heavy Industrial” uses as including asphalt plants; and “Light Industrial” uses as excluding basic industrial processing. Zoning Ordinance, §202; Reproduced Record (R.R.) at 650a, 661a-63a. Section 305 describes the general purpose of each district. Zoning Ordinance, §305; R.R. at 678a-80a. The purpose of the Industrial (I) District is to

provide for light industrial uses and related activities on larger parcels of land in areas of the Township accessible to the regional highway network while contributing to the economic base of the Township, but not interfering with non-similar uses, or causing adverse environmental impacts.

Zoning Ordinance, §305; R.R. at 679a. The purpose of the Mineral Industrial (MI) District is

to provide for heavy industrial uses and mineral extraction activities while serving to buffer these uses from one another and from other uses while encouraging reclamation or rehabilitation of lands for future uses compatible with uses in this Zoning District or adjacent to this Zoning District.

Id. None of these definitional or purpose provisions assign uses to districts. *See id.*

Section 602(28)(H) of the Zoning Ordinance regulates mineral extraction and asphalt plants when they are together. Zoning Ordinance, §602(28)(H); R.R. at 773a. It states that an asphalt plant is not an accessory use to extraction but is a separate principal use requiring special exception approval when located on the same lot. *Id.* Again, this does not assign either use to any district. *See id.*

Section 310 of the Zoning Ordinance is where uses are assigned to districts. Section 310's Table of Uses states that asphalt plants and heavy industrial uses are permitted only in the I District by special exception and are not permitted in the MI District. Zoning Ordinance, §310; R.R. at 685a-89a. Mineral extraction is permitted by right in the MI District and by special exception in the I District. *Id.*

Although Section 305's purpose provisions are more descriptive than Section 310's Table of Uses, they are not necessarily more specific. The purpose provisions describe the Township's general aspirational goals for land development. However, the purpose provisions do not impose regulatory restrictions or provide adequate notice to property owners or guidance to zoning officials about where uses are permitted and not permitted in the zoning districts. Conversely, the Table of Uses, a common tool used by many municipalities, specifically shows where uses are permitted and not permitted in each of the zoning districts. Asphalt plants are only permitted by special exception in the I District based upon the clear language of the Zoning Ordinance.

The Majority's approach reverses the hierarchy of zoning provisions by elevating broad purpose statements over the Ordinance's operative text. Although definitions and purpose clauses describe industrial uses categories and articulate planning goals, they do not authorize uses in any district. Section 310's Table of Uses is the Zoning Ordinance's sole operative provision identifying where a use is permitted, permitted by special exception, or prohibited. Treating general statements in Sections 202 and 305 as "the more specific" provisions that "must prevail over Section 310," Majority Op. at 17, not only inverts the standard zoning structure but disregards the Ordinance's express letter in favor of its perceived spirit,

which runs counter to the tenets of statutory interpretation. *See Adams Outdoor*, 909 A.2d at 483.

The Majority does not identify unclear language in the Zoning Ordinance as to where a use is prohibited. Instead, it concludes the Zoning Ordinance is vague and ambiguous because it considers the zoning scheme illogical, *i.e.*, that a heavy industrial use is allowed only in the I District by special exception rather than the MI District. But vagueness is not triggered by perceived policy disharmony. Unconstitutional vagueness requires unclear regulatory commands or prohibitions. *See Boron*, 960 A.2d at 886. The Table's designation of "SE" for asphalt plants in the I District and "N" in the MI District is explicit. Ordinance, §310, R.R. at 685a, 688a. No person of common intelligence would need to guess at its meaning. *See Boron*, 960 A.2d at 886.

The purpose provisions do not create enforceable standards. They simply guide the governing body's policy choices but do not alter where uses are permitted. Courts should be loath to treat purpose provisions as trumping the operative land-use matrix. Section 1921 of the Statutory Construction Act, 1 Pa. C.S. §1921; *Adams Outdoor*, 909 A.2d at 483. The Majority elevates aspirational language above binding regulatory commands.

The Majority incorrectly infers from Section 602(28)(H) of the Zoning Ordinance that asphalt plants must be permitted in the MI District because mineral extraction is permitted there. This reading stretches the provision beyond its text. Section 602(28)(H) regulates co-location of mineral extraction and asphalt production *when both uses are independently permitted* in a district; it does not authorize either use where the Table prohibits it. *See Zoning Ordinance*,

§602(28)(H); R.R. at 772a. Both uses are permitted in the I District; that is the co-location that Section 602(28)(H) contemplates. *See id.*

The Township's interpretation harmonizes the Zoning Ordinance without disregarding any provision. Asphalt plants are heavy industrial in nature, but the Township chose, as a policy matter, to permit them only by special exception in the I District. "The role of the judiciary is not to question the wisdom of the action of a legislative body, but only to see that it passes constitutional muster." *Finucane v. Pennsylvania Milk Marketing Board*, 582 A.2d 1152, 1154 (Pa. Cmwlth. 1990). That said, the record and the structure of the Zoning Ordinance indicate several rational and intentional reasons why the Township placed asphalt plants and other heavy-industrial uses only in the I District.

First, as Township Engineer Joseph Calabrese testified, the I District was chosen because it has access to public water and sewer from the Freeland Municipal Authority. R.R. at 622a-23a. He further noted that the I District is situated near East Butler Drive, a state highway capable of supporting heavier truck volumes than smaller Township roads. *Id.* at 626a. This proximity alone rationally supports locating asphalt plants in the I District, where hundreds of daily truck trips associated with production can be better accommodated and more safely managed. These facts illustrate why a governing body may legitimately determine that the siting of certain heavy-industrial uses requires infrastructure or highway access not equally available in the MI District.

Second, asphalt production is treated as a distinct principal use requiring separate, heightened review. Section 602(28)(H) of the Zoning Ordinance explicitly states that asphalt plants are not accessory to mineral extraction and require special exception approval when co-located. R.R. at 772a. This reinforces

that asphalt production warrants scrutiny independent of extraction, and placing asphalt plants in the I District accomplishes that separation.

Third, although several industrial processing uses are permitted in both the I District and the MI District by special exception, the Zoning Ordinance draws a deliberate distinction between processing uses that are compatible with mineral extraction and those that are not. *See* Zoning Ordinance §305(10); R.R. at 679a. The MI District’s purpose provision limits the district to extraction-oriented activity and industrial uses that can be buffered with an emphasis on minimizing external impacts and supporting reclamation and rehabilitation of lands for future compatible uses. *See id.* The Table reflects that policy by prohibiting asphalt plants and heavy industrial uses in the MI District while allowing them only in the I District. Zoning Ordinance §310; R.R. at 688a. Although asphalt plants may be compatible with mineral extraction in an operational sense, their emissions, noise, heat, truck traffic, safety risks, and outdoor stockpiling undermine the MI District’s buffering and reclamation objectives. This targeted, compatibility-based separation explains why asphalt plants are not permitted in the MI District.

Nothing in Sections 202 or 305 prohibits the Township from separating “heavy industrial” uses into subclasses and assigning them differently among districts. Definitions do not themselves confer permissibility. The Township reasonably concluded that the I District, given its utility access, proximity to state highways, and concentration of similarly regulated uses, is the appropriate location for asphalt production, even if asphalt plants remain “heavy industrial” in type. The Township’s interpretation gives effect to each provision without diminishing the purpose language.

Finally, the Majority contends that its conclusion is consistent with our precedent, namely, *In re Miller*, 444 A.2d 786 (Pa. Cmwlth. 1982). In *Miller*, the issue was whether a single-family semi-detached dwelling constituted a permitted use in the Multi-Family (MF-1) District. The zoning ordinance’s definition of “multi-family dwelling” encompassed all recognized architectural structures accommodating two or more dwelling units — language that, “without specifically naming single-family semi-detached dwellings, would clearly include them.” *Id.* at 787. The zoning ordinance separately defined “single-family semi-detached dwelling,” “but not in terms inconsistent with the clear inclusion of this use in the definition of multi-family dwelling.” *Id.* In addition, the MF-1 District’s “Area and Design Regulations” expressly set dimensional and development standards for single-family semi-detached dwellings within that district. However, the zoning ordinance’s “Table of Use Regulations” prohibited single-family semi-detached dwellings by placing an “N” under the MF-1 column. *Id.* at 788. We held that the detailed definitional provisions and the district-specific design regulations “describing in detail the characteristics of the MF-1 District as encompassing single-family semi-detached dwellings” must prevail over the inconsistent, and likely inadvertent, table designation. *Id.*

By contrast, here, although the definitional and purpose provisions describe industrial use categories and district intent at a high level, they do not assign uses to districts or provide MI-specific regulatory standards for asphalt plants. Section 602(28)(H) treats an asphalt plant as a separate principal use requiring special exception approval when located on the same lot as mineral extraction; but again, nothing in its text suggests asphalt plants are permitted in the MI District.

Only the Table of Uses assigns uses to districts, and it places asphalt plants, as well as other heavy industrial processing uses, solely in the I District by special exception.

Unlike in *Miller*, there are other cues in this Zoning Ordinance that the placement of asphalt plants in the I District, as opposed to the MI District, was intended by design and not inadvertence or a mistake. The Zoning Ordinance contemplates both mineral extraction and asphalt plants may be on the same lot. Zoning Ordinance, §602(28)(H); R.R. at 772a. The Zoning Ordinance makes clear that an asphalt plant is not “an accessory use, but a separate and distinct” use from a mineral extraction facility. *Id.* Per the Table of Uses, asphalt plants and mineral extraction facilities are both permitted in the I District by special exception. Zoning Ordinance, §310; R.R. at 688a. In addition, the Table of Uses places other “heavy industrial” uses in the I District, not in the MI District. *Id.* This placement supports a deliberate policy choice.

Although the definitional and purpose provisions suggest that asphalt plants, as a heavy industrial use, conceptually align with the MI District, they do not affirmatively place asphalt plants there or supply any MI-specific regulations. Section 310’s Table of Uses — the Zoning Ordinance’s sole operative provision assigning uses to zoning districts — places asphalt plants only in the I District by special exception. The Majority’s reliance on *Miller* is therefore overstated.

In sum, the Majority does not identify ambiguous statutory text, conflicting regulatory commands, or language that requires guessing. Instead, it treats policy discord as unconstitutional vagueness. This expands the vagueness doctrine far beyond its limits.

For these reasons, I concur in the portion of the Majority opinion affirming intervention. However, I respectfully dissent from the Majority’s

determination that the Zoning Ordinance is unconstitutionally vague. Rather, I would affirm the trial court's opinion in full.

MICHAEL H. WOJCIK, Judge