IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bluetriton Brands, Inc.	:	
	:	
v.	:	No. 581 C.D. 2025
	:	Argued: April 13, 2026
Washington Township Zoning Hearing Board and Weis Markets, Inc.	:	
	:	
Appeal of: Weis Markets, Inc.	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER FILED: November 10, 2026

Weis Markets, Inc. (Weis) appeals from the April 3, 2025 Order of the Court of Common Pleas of Northampton County (common pleas) that reversed the decisions of the Washington Township (Township) Zoning Hearing Board (Board) approving Weis's site plan and granting, with conditions, Weis's request for a special exception to add a Weis Gas-N-Go fuel station (Gas-N-Go or proposed use) to its supermarket located in a planned development in a Commercial District (C District). On appeal, Weis argues that the Board lacked subject matter jurisdiction because no special exception was required to allow for the proposed use, which is permitted by right in the C District by the Washington Township Zoning Ordinance (Ordinance), WASHINGTON TOWNSHIP, PA., ZONING ORDINANCE (2014) (ORDINANCE).[1] Weis further argues that when all the provisions of the Ordinance are considered, no site plan was required for the proposed use because the use

[1] The Ordinance is available at https://www.washington-township.com/forms/zoning-ordinance-rev2014.pdf (last visited Nov. 9, 2026).

constituted "land development" under the Washington Township Subdivision and Land Development Ordinance, THE WASHINGTON TOWNSHIP SUBDIVISION AND LAND USE ORDINANCE (2020) (SALDO).[2] Finally, Weis asserts that even if a special exception was required, there are no specific requirements for the proposed use, meaning there was nothing for it to prove before the burden shifted to Bluetriton Brands, Inc. (Objector), whose evidence was insufficient for it to meet its heavy burden under the law. Upon careful review, we reverse common pleas' Order because Weis did not have to submit a site plan given the ambiguous language as to that requirement. However, because common pleas did not address all of Objector's arguments in its appeal challenging the Board's Decision granting Weis a special exception, we remand for common pleas to issue a new opinion addressing Objector's remaining arguments.

I. BACKGROUND

A. First Proceeding Before the Board

Weis operates a grocery store via a lease within the Bangor Plaza, a 20.3-acre planned development consisting of multiple uses located within the Township's C District (Property). (February 16, 2023 Board Decision (Board 2023 Decision), Findings of Fact (2023 FOF) ¶¶ 13-14, 23.[3]) Planned developments are a special exception use in the C District. (*Id.* ¶ 25 (citing Section 3.10.C.11 of the Ordinance, ORDINANCE, § 3.10.C.11).) Weis submitted an application for a special exception (Application) on June 17, 2022, to construct the Gas-N-Go on the Property that would be subordinate to its grocery store use and replace a previously approved bank use that was now vacant. (*Id.* ¶¶ 15, 26, 28; Supplemental Reproduced Record

[2] The SALDO is available at https://www.washington-township.com/forms/saldo.pdf (last visited Nov. 9, 2026).

[3] The Board's 2023 Decision is found at pages 7a to 31a of the Reproduced Record.

(S.R.R.) at 111b.[4]) Weis provided a sketch plan for the project. (S.R.R. at 6b.) On July 5, 2022, Weis filed an application for a zoning permit for the proposed use, which was denied the same day by the Township's zoning officer on the basis that a special exception was needed. (*Id.* at 1b, 111b.) There is no indication in the record that an appeal of this determination was filed. On July 25, 2022, Weis submitted a site plan to the Planning Commission, along with a cover letter. (*Id.* at 11b-14b.)

The Township's Engineer, Domenick DiPaolo of Ott Consulting Inc., issued a letter on September 8, 2022, following the review of the site plan that identified various deficiencies where the site plan did not meet the Ordinance's requirements (Ott Letter). (2023 FOF ¶ 17; S.R.R. at 7b-10b.) Weis presented the site plan to the Township Planning Commission on September 20, 2022, for its review and recommendation, but the Planning Commission did not issue a recommendation following the hearing nor request resubmission. (2023 FOF ¶¶ 18-19.) The Board held hearings over multiple days, at which Weis presented evidence in support of its Application and Objector, which operates a commercial water extraction business on property adjacent to and downstream from the Property and whose spring it claimed could be negatively affected, presented evidence and argument in opposition thereto.

Weis's engineer, William Swanick, testified as follows. The proposed Gas-N-Go use would have six fueling positions at three pumps under a canopy. (*Id.* ¶ 28.) Auto service stations are permitted as a by right use in the C District, and the proposed use constitutes a "land development" under the SALDO. (*Id.* ¶¶ 29-30.) Weis was not seeking a variance, and the proposed use would comply with the

[4] The Board found that Weis filed its Application on July 26, 2022; however, Weis's Application is dated June 17, 2022. (S.R.R. at 111b.) Weis filed its site plan with the Planning Commission on July 25, 2022. (*Id.* at 11b-14b.)

comments in the Ott Letter and all other Township requirements. (*Id.* ¶ 27.) The proposed Gas-N-Go complies with the applicable federal, state, and local standards and regulations. (*Id.* ¶ 35.) Mr. Swanick explained that Objector's arguments are based on its belief that there is an inherent negative environmental impact of the proposed use, even if all regulations are met. (*Id.* ¶ 37.) He posited that Objector's position was that the proposed use had to meet Objector's requested modifications, but Objector nevertheless acknowledged that there was nothing unusual about Weis's proposal. (*Id.* ¶ 36.)

Objector's Mid-Atlantic Natural Resources Manager, Eric Andreus, testified regarding its operations and concerns about the proposed use, as follows. Objector has spring water withdrawal facilities in the Township and withdraws groundwater from the Greenwaltz Spring as the primary source for its Deer Park brand, and it or its predecessors have been operating in the Township for more than 20 years. (*Id.* ¶ 51a-c.) Objector has property interests in 15 parcels of land in the Township, including a Conservation Easement or Watershed Protection Agreement in 2 parcels that directly abut the location of the proposed Gas-N-Go. (*Id.* ¶ 51e.) Surface waters and groundwater flow southward from the Property down to Objector's properties and the source of the Greenwaltz Spring. (*Id.* ¶ 51g.) Objector is concerned that leaks and spills, both underground and surface, from the proposed use will contaminate its spring source and cause significant economic damage. (*Id.* ¶ 51h-i.)

Objector also offered the expert testimony of Matthew Reynolds, a licensed professional geologist who testified about the hydrology of the relevant area based on his numerous investigations since 2013. (*Id.* ¶ 52.) Mr. Reynolds described the aquifer that underlies the area, including the Property and Objector's properties, the flow of water in the area, and how Greenwalk Creek, which flows through a pipe

that runs under the Property and into two stormwater basins on either side of the Property, ultimately infiltrates the groundwater just north of Objector's properties and the Greenwaltz Spring, among other springs. (*Id.* ¶ 53a-f.) The reclamation of the Slate Hills Quarry site increased the amount of total dissolved solids, sulfate concentrations, and calcium in the pit water, which discharged into Greenwalk Creek and were detected in Objector's sentinel wells, resulting in the Pennsylvania Department of Environmental Protection (DEP) ordering the cessation of that reclamation, but the impact on the water quality lingered. (*Id.* ¶ 53h-i.) The proposed use is located "within feet of [] Greenwalk Creek, along the same surface water flow pathway as from the Slate Hills Quarry." (*Id.* ¶ 53j.) Weis intends to discharge effluent from its oil-water separator, which would capture fuel spills and contaminated water runoff, into the stormwater basin that forms an actual segment of Greenwalk Creek itself, and that effluent will either infiltrate into the aquifer directly and/or flow toward Greenwaltz Spring through Greenwalk Creek. (*Id.* ¶ 53k-m.) Gasoline contains chemicals that are known to be carcinogens that can contaminate drinking water. (*Id.* ¶ 53n-p.) Mr. Reynolds opined that the operation of the proposed use in the fashion that Weis intends from the Application

> would create a significant threat of (a) adverse environmental impact on surrounding areas by reason of water run-off and groundwater pollution, and (b) adverse effects on the use and value of [Objector's] properties and other properties in the area that rely on the aquifer as a water source.

(*Id.* ¶ 54.)

Finally, Objector offered the expert testimony of Marcel Moreau about petroleum storage and dispensing systems, the frequent violation of regulations, spills and releases from those systems, and the mitigation measures needed to reduce the environmental risks associated therewith. (*Id.* ¶ 55.) Mr. Moreau testified as

follows. DEP's regulations do not require site-specific review prior to installing these systems, take a "one-size-fits all" approach to release prevention and detection requirements, and establish a floor for the environmentally protective measures for these systems. (*Id.* ¶ 56a-b.) DEP, in 2021, inspected only about 30% of the facilities with these systems, which is consistent with the regulations, and only 55% were found to be in "significant operational compliance" with the applicable requirements. (*Id.* ¶ 56c-d.) DEP's website showed that DEP issued Weis notices of violations of the storage tank program requirements for approximately one half of its Gas-N-Go locations in the Commonwealth, and those violations included failure to comply with release detection, containment, and operational requirements, failure to investigate and/or report suspected releases, failure to have trained operators, and spill and overfill control violations. (*Id.* ¶ 56g.) Based on Weis's compliance record, and that of the entire industry, Mr. Moreau believed there was "a meaningful chance that Weis's proposed Gas-N-Go facility will experience a significant release of gasoline to the environment over its lifetime," and Weis's suggested protections were not specific, failed to capture contaminants like benzene and ethanol, which are dissolved in water, and/or failed to protect from direct contact with precipitation. (*Id.* ¶ 56i-k, p-s.) Mr. Moreau offered alternatives, which would address Objector's concerns, like those implemented by other gas station developers, but Weis had not offered any alternatives. (*Id.* ¶ 56n-o, t.) In Mr. Moreau's professional opinion, it was unreasonable to develop the proposed use without the suggested water quality protective measures and that the proposed Gas-N-Go was not suitable for the location, created a significant threat of adverse environmental impact due to the water run-off and groundwater pollution, and could affect the use and value of surrounding properties negatively. (*Id.* ¶¶ 57-58.)

Weis also offered the rebuttal testimony of Jason Floyd, P.G., a licensed hydrologist, to rebut Objector's claim that the proposed use's stormwater runoff would impact Objector's water source. (*Id.* ¶ 41.) He testified as follows. Based on his requests for records from DEP relating to Objector's water extraction business, Mr. Floyd concluded that the aquifer from which Objector obtained its water is "confined" and is not susceptible to contamination from surface spills or tank releases. (*Id.* ¶¶ 42, 44.) Objector had not communicated with DEP or any other agency having authority over its commercial water extraction operation about Weis's proposed Gas-N-Go, and Objector's evidence before the Board contradicted Objector's regulatory record with DEP. (*Id.* ¶¶ 47-48.)

Upon its review of the evidence, the Board held that Weis met its burden of proving the General Standards for a Special Exception and Specific Standards for an Auto Service Station set forth in Sections 3.13.D and 3.13.E(6) of the Ordinance, ORDINANCE §§ 3.13.D and 3.13.E(6), respectively. (2023 Decision, Conclusions of Law (COL) ¶¶ 60-63.) Relevantly, the Board concluded that, notwithstanding that Weis's Application materials did not include all that was required, Weis met, or would meet, all other provisions of the Ordinance, and any remaining issues could be addressed in the land development stage of review. (*Id.* ¶ 61b.) It further held that the planned use was suitable for the particular location as it would not increase the number of approved uses on the Property because it is replacing a previously approved use, there is sufficient ingress and egress, there was no evidence that there will be a significant increase in traffic, and any negative impact on the stormwater basin, Greenwalk Creek, and Objector's spring source would be mitigated by the conditions imposed and the fact that the proposed use is heavily regulated. (*Id.* ¶ 61e.)

The Board also noted Objector's argument that Weis's site plan had to be reviewed by the Planning Commission and approved by the Board. (*Id.* ¶ 64.) However, it explained that the Planning Commission had not acted on the site plan that Weis had presented and that this non-action could not prevent the Board from hearing and deciding the Application. (*Id.* ¶¶ 65-66.) Finally, the Board set forth Objector's burden of proof to show that the proposed use had a high probability of generating adverse impacts not normally generated by this type of use and would pose a substantial threat to the safety and health of the community. The Board explained that Objector's concerns would be resolved by the conditions imposed and the regulatory oversight by state and federal agencies. (*Id.* ¶¶ 61, 68 (citing *Oasis v. Zoning Hearing Bd. of S. Annville Twp.*, 94 A.3d 457 (Pa. Cmwlth. 2014)).)

Therefore, the Board granted the Application with conditions. (*Id.* ¶ 69; Order). Those conditions required continued compliance with the Ordinance's standards for special exceptions, and for Weis to implement protections regarding stormwater runoff and collection, spill prevention and remediation, and to retain a qualified, experienced emergency response contractor to provide a 24-hour quick response. (Order.)

B. First Appeal to Common Pleas

Objector appealed to common pleas, arguing, among other reasons, that the Board erred and abused its discretion in granting the Application without independently reviewing and approving Weis's site plan. Objector asserted that, under the Ordinance, Weis had to file a site plan as it was seeking a special exception, and the Board was required to independently review and approve the site plan, notwithstanding the Planning Commission's failure to act. Common pleas agreed with Objector, explaining that

> [t]he gas station is an "auto service station" within the meaning of the . . . [O]rdinance, and the shopping center is a "planned development" within the meaning of that [O]rdinance. All parties are in agreement that the alteration of the "planned development" to include the "auto service station" required [Weis] to obtain a "special exception" from the Board. . . . . The [O]rdinance sets forth a procedure by which a "special exception" may be approved by the Board. . . . That procedure includes . . . a requirement that "a [s]ite [p]lan **shall** be required for review by the Planning Commission **and** approved by the . . . Board." ([ORDINANCE] § 3.13.A (emphasis added).) We note that [O]rdinance provides, with respect to interpretation thereof: "The word 'shall' is always mandatory[.]" ([ORDINANCE] § 2.1.A.)

(Common Pleas' Jan. 16, 2024 Opinion (2024 Op.) at 3 (emphasis added).[5]) This plain language, common pleas held, required the Board to independently review and approve the site plan submitted by Weis, which it had not. (*Id.* at 3-4.) Common pleas rejected the Board's position, asserted in Objector's appeal, that no site plan was required because "the proposed use is a 'land development,'" concluding that such interpretation would render multiple provisions of the Ordinance useless, an absurd result, and was contrary to "the Board's own referral of the site plan to the Planning Commission for review" and the Ott Letter. (*Id.* at 5.) Accordingly, common pleas remanded the matter and did not address the remainder of Objector's arguments.

C. Remand Proceeding Before the Board

The Board held an additional hearing on remand, at which Mr. Swanick and Alex Ororbia, Weis's Director of Land Development, testified in favor of the Application, and Mr. Moreau, Mr. Reynolds, and Mr. Andreus testified in opposition. Tasha Stout, who owns the Green Walk Trout Hatchery with her husband, also objected and testified regarding their concerns regarding the possible

[5] Common pleas' 2024 Opinion is found at pages 32a to 36a of the Reproduced Record.

contamination of the hatchery. No new exhibits were admitted, but Weis attempted to present a new site plan (second or new site plan). (R.R. at 699a-703a, 709a.) However, upon questioning by Objector, Weis's witness agreed that the second site plan had never been formally submitted for the Board's review and indicated that Weis was moving forward with its initial plan. (*Id.* at 710a-14a.)

Mr. Swanick, Weis's engineer, testified as follows. He considered the submitted site plan "'conceptual' in nature because plans on projects such as this typically change once it proceeds through the land development phase after receipt of zoning approval." (Board May 28, 2024 Decision (Board 2024 Decision) Findings of Fact (2024 FOF) ¶ 23.[6]) The proposed use would use the stormwater collection and conveyance system in place and would not disturb the setbacks, landscaping, and buffering that existed as part of the existing planned development. (*Id.* ¶¶ 24-25, 34.) The proposed interior landscaping for the project was not depicted on the site plan, but there is landscaping proposed for the island areas of the parking lot. (*Id.* ¶ 28.) The Gas-N-Go would meet all setback, dimensional, building height, and impervious coverage requirements, and it would not cause a significant increase in traffic, as will be reflected in a "final traffic memorandum" that is to be submitted at the land development phase. (*Id.* ¶¶ 27, 29-30.) The elimination of the bank use will affect the traffic analysis and result in a gain of additional parking spaces, which would decrease the nonconformity in the number of parking spaces for the Property. (*Id.* ¶¶ 30-33.) The new site plan addressed the Ott Letter. (*Id.* ¶ 34.)

Objector's witnesses reiterated their testimony from the proceedings regarding water flow, the potential for water contamination from having the

[6] The Board's 2024 Decision is found at pages 41a to 52a of the Reproduced Record.

proposed use at this particular location, and the problems with Weis's planned storage and dispensing systems. Mr. Reynolds additionally stated that Weis's site plans do not address or evaluate the area's hydrology fully and that Mr. Floyd, Weis's hydrologist, relied on outdated studies and data and that more recent evidence indicated that the aquifer was not protected and could be contaminated by upstream sources. (*Id.* ¶ 41.) Mr. Moreau similarly testified that the site plans did not adequately address the potential of water pollution or detail sufficiently how Weis intended to mitigate the risk of pollution. (*Id.* ¶ 44.) Mr. Moreau acknowledged that Weis's proposed systems, the installation and implementation of which were imposed as conditions on the Application's approval, met Pennsylvania's standards but not those desired by Objector. (*Id.* ¶ 45.) According to Mr. Moreau, Weis should implement a Spill Prevention, Control and Countermeasures (SPCC) program through the federal Environmental Protection Agency. (*Id.* ¶ 46.)

Weis's rebuttal witness, Mr. Ororbia, explained that the SPCC program was for fuel transfer stations and the proposed use was smaller than such stations making an SPCC plan unnecessary. (*Id.* ¶ 48.) Mr. Ororbia explained that the entire system would shut down if a leak is detected, could only be restarted after an engineer inspection by a certified maintenance worker, and could not be started by a Gas-N-Go operator. (*Id.* ¶ 50.)

The Board issued a new decision, setting forth similar background facts as its original decision. (*Id.* ¶¶ 12-18.) The Board concluded that Weis's "[s]ite [p]lan and supporting testimony and documentation demonstrate that [Weis] has met its burden for approval of the site plan." (Board 2024 Decision, COL ¶ 54.) It further held that Weis's "plans and testimony adequately reflect that it will comply with all

aspects of Section 3.13 and has addressed the concerns set forth in the Ott . . . Letter." (*Id.* ¶ 56.) The Board also concluded that Weis's "[s]ite [p]lan and the testimony presented meet the requirements of Section 3.13[.]D" and that "[p]lans may change during the land development phase with the Township." (*Id.* ¶¶ 57-58.) As before, the Board concluded that any negative impacts of the proposed use, and the concerns of Objector and Green Walk Hatchery, would be mitigated by the conditions imposed, the regulatory protections of the state and federal agencies specializing in water and natural resource protection, and the Board's belief that if "any legitimate threat or danger to the environment" or Objector's operations would occur, those agencies' responses would adequately address the concerns. (*Id.* ¶¶ 60-62, 65.) Accordingly, the Board approved "the [s]ite [p]lans submitted in conjunction with the appeal" on the conditions that Weis "implement all recommendations from the Ott . . . Letter . . . and any future recommendations made by the Township Engineer." (Board 2024 Decision, Order.)

D. Appeal to Common Pleas on Remand

Objector again appealed to common pleas. Objector argued the Board erred in approving Weis's site plan where: the Board did not sufficiently determine whether the site plan complies with Section 4.8.C of the Ordinance; the site plan does not comply with that provision; the approval of the site plan was conditioned on future, not current, compliance with the Ott Letter and Ordinance; and the Board did not seriously consider Objector's evidence regarding developing the proposed use on the Property. (Common Pleas' April 3, 2025 Opinion (2025 Op.) at 7.) Objector further argued that other Ordinance provisions, applicable to all uses, were

not met by Weis. Common pleas[7] agreed with Objector that the Board erred in approving the site plan and granting Weis a special exception.

Common pleas explained it was bound by its prior determination that the proposed use was not "land development" exempt from the special exception requirements, including the submission of a compliant site plan. (2025 Op. at 14-15.) Examining the language of the Ordinance and the SALDO, common pleas held a site plan meeting all the requirements of Section 4.8.C of the Ordinance had to be filed for every special exception pursuant to the plain language of Sections 3.13.A and 4.8.C of the Ordinance. It further held that precedent required that the site plan, as submitted, had to comply with the Ordinance's requirements and the Board could not approve the site plan, or special exception, based on future compliance with those requirements. (2025 Op. at 13-14 (citing, e.g., *Elizabethtown/Mt. Joy Assocs., L.P. v. Mount Joy Twp. Zoning Hearing Bd.*, 934 A.2d 759, 768-69 (Pa. Cmwlth. 2007)).) Reviewing the Board's findings and conclusions, common pleas concluded that "the Board did not properly determine whether Weis's site plan complies with the requirements of Section 4.8.C. of the [] Ordinance." (*Id.* at 15.) Common pleas held that the Board's discussion of the site plan, in relation to complying with Section 4.8.C of the Ordinance, was conflicting in that the Board stated Weis's site plan both had met and will meet the Ordinance's requirements. (*Id.* at 15-16 (citing 2024 FOF ¶¶ 54, 56-57).) This contradiction indicates, common pleas explained, that the Board either granted the special exception based on future compliance with the Ordinance's site plan requirements or Weis's new site plan, which had not been submitted to the Planning Commission for its review and approval, either of which was an error of law. (*Id.* at 16.)

[7] A different common pleas judge heard Objector's appeal from the Board's remand decision.

Common pleas further explained that Weis's initial site plan, which was the only one presented to the Planning Commission as required by the Ordinance, was deficient as set forth in the Ott Letter. (*Id.* at 16-18.) Common pleas stated that, under the Ordinance, the word "shall" is mandatory and a site plan for a special exception shall comply with all the requirements of Section 4.8.C, and the operative site plan here does not. (*Id.* at 18-20.) Accordingly, common pleas concluded that "[w]here, as here, the applicant fails to meet all the ordinance requirements for a special exception, the Board must deny the application." (*Id.* at 20 (citing, e.g., *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113 (Pa. Cmwlth. 2002); *In re Appeal of Neill*, 634 A.2d 749 (Pa. Cmwlth. 1993)).) Common pleas observed that because Weis did not meet its burden of proof on the Application, the burden never shifted to Objector, and, consequently, the issue of whether the proposed use has a potential adverse effect on Objector or "creates a health and safety risk to the community, [was] not at issue before th[e] Court." (*Id.* at 20 n.4.) Therefore, common pleas reversed the Board's Order.

Weis appealed and filed a Concise Statement of Errors Complained of on Appeal in accordance with Pa.R.A.P. 1925(b). (Original Record (O.R.), Item 38.) Common pleas issued a responsive statement, relying on its earlier opinions. (*Id.*, Item 39.)

II. DISCUSSION

A. Whether the Board and Common Pleas Lacked Subject Matter Jurisdiction.

1. Parties' Arguments

Weis first argues the Board and common pleas lacked subject matter jurisdiction because, contrary to the Township's position, no special exception was needed where the proposed Gas-N-Go, an automobile service station, is permitted

by right in the C District.[8] An issue of subject matter jurisdiction can be raised at any time, it argues, and because the Board lacked subject matter jurisdiction, the courts do as well. *Martin v. Zoning Hearing Bd. of W. Vincent Twp.*, 230 A.3d 540 (Pa. Cmwlth. 2020). As a permitted use that is being swapped for another permitted use, a bank, Weis asserts, the Gas-N-Go is not subject to any conditions or site plan requirements notwithstanding its location within a special exception shopping center. Therefore, the Township should not have required a special exception and the Board lacked jurisdiction to address the issue.

Objector responds that Weis's jurisdictional argument, raised for the first time in this appeal, should be rejected because Weis itself invoked the Board's jurisdiction by applying for a special exception for the proposed use, which was needed due to the use's location within a planned development. According to Objector, Bangor Plaza is unquestionably a "planned development" under the Ordinance, such developments are permitted by special exception in C Districts, and it is reasonable to interpret the Ordinance's provisions as requiring additions or changes to a planned development to also comply with the special exception requirements. Objector further argues that Weis has forfeited its jurisdictional argument because it did not appeal from the Township's denial of Weis's parallel Zoning Permit Application, filed on the basis that the proposed use was permitted by right, based on the conclusion that a special exception was needed for that use. Having not appealed that denial, Objector asserts, the Township's decision that a special exception was needed became final and conclusive. *E&R Partners, LP v. Robinson Twp. Zoning Hearing Bd.*, 311 A.3d 1191, 1198 (Pa. Cmwlth. 2024); *Schoepple v. L. Saucon Twp. Zoning Hearing Bd.*, 624 A.2d 699, 704-05 (Pa.

[8] The Board joins in Weis's Brief.

Cmwlth. 1993). Weis's argument that its belated jurisdictional argument can be raised at any time, even in situations where the Board resolved Weis's own Application, does not change the fact, Objector maintains, that Weis failed to appeal the finding that the proposed use was not permitted by right and cannot be developed as such.

2. Analysis

It is well-settled law that

> [t]he issue of subject matter jurisdiction may be raised by the parties at any stage of the proceedings or by the court *sua sponte*. Lack of subject matter jurisdiction of a court or administrative tribunal to act in a matter is an issue that neither can be waived by the parties, nor can the parties confer subject matter jurisdiction on a court or tribunal by agreement or stipulation.

Greenberger v. Pa. Ins. Dep't, 39 A.3d 625, 629 n.5 (Pa. Cmwlth. 2012). We have held that subject matter jurisdiction is so fundamental that "such jurisdiction cannot be obtained by consent of the parties, or by waiver or estoppel." *In re Borough of Valley-Hi*, 420 A.2d 15, 17 (Pa. Cmwlth. 1980).

Weis's jurisdictional argument is premised on its contention that no special exception was required for the proposed use. Objector essentially argues that Weis is estopped from asserting that no special exception was required due to its failure to appeal the denial of its zoning permit, making that determination final. We agree with Objector.

Weis applied for a zoning permit for the Gas-N-Go, as a permitted use by right, and the Township's zoning officer **denied** the permit on the basis that a special exception was required. Had Weis wanted to advance its arguments that the Gas-N-Go was permitted by right and no special exception was needed, Weis should have

appealed that decision. There is **no** indication in the record that Weis appealed this denial. Accordingly, the determination that a special exception is required is a **final** decision on that issue and is **binding** on Weis. *See* Section 914.1(b) of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10914.1(b)[9] (stating that "[a]ll appeals from determinations[10] adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued"); *In re Provco Pinegood Sumneytown, LLC*, 216 A.3d 512, 518 (Pa. Cmwlth. 2019) (holding that "[f]ailure to appeal a **zoning officer's** determination within 30 days results in the determination becoming binding and unappealable" (emphasis added)); *Schoepple*, 624 A.2d at 704-05 (providing that failure to appeal a decision of a zoning officer within 30 days renders any challenge to it waived). Thus, it has been fully and finally determined that a special exception is required to construct the Gas-N-Go here, and Weis's current argument is effectively an untimely attempt to revive an argument that should have been brought in an appeal from the denial of the zoning permit and was not.

B. Whether Weis Had to File a Site Plan Under the Ordinance.

1. Parties' Arguments

Weis next asserts that no site plan needed to be filed, or independently reviewed and approved by the Board, because the proposed Gas-N-Go constitutes "land development" as defined by the SALDO. Under a proper interpretation of all the provisions of the Ordinance and SALDO, including Section 4.8 of the Ordinance,

[9] Act of July 31, 1968, P.L. 805, added by Section 95 of the Act of December 21, 1988, P.L. 1329.

[10] A "determination" is a "final action by an officer, body or agency charged with the administration of any land use ordinance." Section 107(b) of the MPC, 53 P.S. § 10107(b). Section 615 of the MPC provides that "[a]ll appeals from decisions of the **zoning officer** shall be taken in the manner set forth in [the] act." 53 P.S. § 10615 (emphasis added).

and recognition that the Gas-N-Go is a permitted by right use, Weis maintains it is apparent that no site plan had to be submitted, let alone approved by the Board. If the language regarding whether the proposed use is land development or whether a site plan is needed is ambiguous, Weis asserts the ambiguity should be resolved in its favor. *City of Clairton v. Zoning Hearing Bd. of City of Clairton*, 246 A.3d 890 (Pa. Cmwlth. 2021).

Objector argues Weis's interpretation of the Ordinance and SALDO is contrary to the language of the Ordinance itself. Under that language, Objector asserts, Weis had to comply with the procedures of Sections 3.13.A and 3.13.B of the Ordinance, including the submission and approval of a site plan, to be successful on its special exception. Objector contends the exception Weis relies upon in Section 4.8 for land development is inapplicable to uses permitted by special exception.

2. Analysis[11]

The parties' arguments require review and interpretation of several provisions of the Ordinance and SALDO. We are mindful that

> [l]ike statutes, the primary objective of interpreting ordinances is to determine the intent of the legislative body that enacted the ordinance. *See* [Section 1921 of the Statutory Construction Act of 1972 (SCA),] 1 Pa.C.S. § 1921; *Bailey v. Zoning Bd. of Adjustment of City of Phila.*, . . . 801 A.2d 492 ([Pa.] 2002); *Malt Beverages Distribs. Ass'n v. Pa. Liquor Control Bd.*, 918 A.2d 171 (Pa. Cmwlth. 2007) (en banc), *aff'd*, 974 A.2d 1144 ([Pa.] 2009). In pursuing that end, we are mindful that

[11] "Where the trial court does not take additional evidence, we are limited to determining whether the [Board] committed an error of law or manifestly abused its discretion." *Coal Gas Recovery, L.P., v. Franklin Twp. Zoning Hearing Bd.*, 944 A.2d 832, 837-38 (Pa. Cmwlth. 2008) (citation omitted). "An abuse of discretion occurs when the findings are not supported by substantial evidence in the record." *Id*. at 838 n.9 (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id*. (citation omitted).

> a statute's plain language generally provides the best indication of legislative intent. *Id.* Thus, statutory construction begins with examination of the text itself. *Id.*
>
> In reading the plain language of a statute, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage." [Section 1903(a) of the SCA,]1 Pa.C.S. § 1903(a). Further, every statute shall be construed, if possible, to give effect to all its provisions so that no provision is "mere surplusage." 1 Pa.C.S. § 1921(a). Where 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. 1 Pa.C.S. § 1921.
>
> Thus, if we determine the ordinance provision at issue is unambiguous, we must apply it directly as written. *Bowman v. Sunoco, Inc.*, . . . 65 A.3d 901 ([Pa.] 2013); *see* 1 Pa.C.S. § 1921(b). However, if we deem the language of the ordinance ambiguous, we must then ascertain the legislative body's intent by statutory analysis, wherein we may consider numerous relevant factors. *Id.* An ambiguity exists when language is subject to two or more reasonable interpretations and not merely because two conflicting interpretations may be suggested. *Adams Outdoor Advert., L.P. v. Zoning Hearing Bd. of Smithfield Twp.*, 909 A.2d 469 (Pa. Cmwlth. 2006).

Tri-County Landfill, Inc. v. Pine Twp. Zoning Hearing Bd., 83 A.3d 488, 509-10 (Pa. Cmwlth. 2014). "[B]ecause restrictions imposed by zoning ordinances are in derogation of a landowner's property rights, they **must** be **strictly construed**," and "**all doubts**" in an ordinance's language should be **resolved in the landowner's favor**. *Newtown Square E., L.P. v. Township of Newtown*, 101 A.3d 37, 51-52 (Pa. 2014) (citations omitted) (emphasis added); *see also* Section 603.1 of the MPC, 53 P.S. § 10603.1[12] (providing that the language of a zoning ordinance "shall be interpreted, **where doubt exists** as to the intended meaning of the language written and enacted by the governing body, **in favor of the property owner** and against any implied extension of the restriction" (emphasis added)).

[12] Added by Section 48 of the Act of December 21, 1988, P.L. 1329.

Article 3 of the Ordinance sets forth the Township's "Zoning Districts and Use Regulations." Section 3.10.B identifies numerous uses permitted by right in the C District, including an auto service station. It also identifies for which of those uses "[s]ite [p]lan [r]eview [is] required (see Section 4.8 [of the Ordinance]). ORDINANCE, § 3.10.B. An **auto service station** is a use **subject to site plan review**. *Id.* Section 3.10.C states that the principal use of a planned development and its accessory uses are **special exceptions** "permitted in the C[] District by the . . . Board in accordance with the standards contained in Section 3.13 of this Ordinance." ORDINANCE, § 3.10.C.

Section 3.13 of the Ordinance provides:

> A. **Purpose**
> Before a zoning permit is granted for any use listed as a special exception use in this Ordinance, **a [s]ite [p]lan shall be required for review by the Planning Commission and approved by the . . . Board**. This procedure is provided **because of the considerable impact that these uses tend to have on a community**.
>
> B. **Procedure**
> 1. The Zoning Officer shall deny a zoning permit for the proposed development until written approval from the . . . Board is obtained.
>
> 2. All applicants for a special exception use shall submit twelve (12) sets of [s]ite [p]lans for the proposed use to the . . . Board as part of the application for a zoning permit. . . .
>
> **3. All [s]ite plans shall contain the information required in Section 4.8.C.**
>
> 4. The . . . Board shall forward one (1) copy of the [s]ite [p]lan to the Zoning Officer and five (5) copies to the Planning Commission within five (5) days of receiving the submission.
>
> 5. The Zoning Officer shall, prior to the next regularly scheduled . . . Board meeting, review the Plan to determine compliance with this Ordinance and submit a written report to the . . . Board.

6. The Planning Commission shall, prior to the next regularly scheduled . . . Board meeting, review the Plan to determine compliance with this Ordinance and submit a written recommendation to the . . . Board.

7. The Board shall not decide the case without reviewing the reports received from the Zoning Officer and the Planning Commission. Failure of either the Zoning Officer or the Planning Commission to submit a written report prior to the next regularly scheduled meeting shall not prevent the Board from hearing and deciding the request.

8. The Board shall hear and decide such request for special exception use under the procedures of Article 8 within sixty (60) days from the date an application has been properly submitted.

9. The decision of the Board shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than the date following its date of final decision.

ORDINANCE, § 3.13.A & .B (emphasis added). Accordingly, Section 3.13 requires site plan review for special exceptions.

Section 4.8.A of the Ordinance sets forth the scope of Section 4.8, entitled "[s]ite [p]lan [r]eview," and that provision states:

1. **Before a zoning permit is issued for any use designated in Article 3** or 5 **as requiring [s]ite [p]lan [r]eview**, **the procedures of this Section shall be followed** in order to more effectively administer, enforce, and implement the purposes, intent, and requirements of this Ordinance.

2. **Any proposed development which constitutes a "Land Development" (as defined in the [SALDO]) shall not be required to follow the procedures of this Section.**

ORDINANCE, § 4.8.A (emphasis added). Section 2.1.B(29) of the SALDO relevantly defines "Land Development" as including "any of the following activities, unless such definition is revised by a later amendment of the [MPC]: . . . . 3) Any

nonresidential development of land." SALDO, § 2.1.B(29). Finally, Section 4.8.B of the Ordinance sets forth the procedure for obtaining a Site Plan Review under Section 4.8.

Weis argues it was not required to file a site plan because the proposed use is land development as it is the "nonresidential development of land," SALDO, § 2.1.B(29), and, therefore, is "not . . . required to follow the procedures of [] Section" 4.8 of the Ordinance. ORDINANCE, § 4.8.A(2). It notes that a special exception and the by right auto service stations use are both "use[s] designated in Article 3 . . . as requiring [s]ite [p]lan [r]eview," Ordinance, § 4.8.A(1), and, accordingly, fall within the scope of Section 4.8. Alternatively, it asserts there is ambiguity in the Ordinance's language on whether a site plan is required in these circumstances and that ambiguity should be read in its favor. Consequently, Weis asserts it is of no legal moment that its site plan may not have contained all of the information required in Section 4.8.C, the Board properly granted it a special exception, and common pleas' contrary conclusion must be reversed.

Objector asserts Weis's arguments based on Section 4.8.A(2) are misplaced because the requirement for the site plan, and the procedure for reviewing and approving that plan, are set forth in Section 3.13 itself, rendering the procedures in Section 4.8 inapplicable. This interpretation is consistent with the actions in this matter, namely that the Board required Weis to submit a site plan to the Planning Commission for review and, ultimately, held that the site plan met the requirements, not that no site plan was required.

In sum, Weis argues that it did not have to file a site plan at this time because it is exempt from that requirement under Section 4.8.A(2) or the Ordinance is ambiguous as to whether a site plan is required, and Objector asserts Section 3.13

requires a site plan and Section 4.8, and the exclusion found at Section 4.8.A(2), is not implicated. Examining the pertinent provisions of the Ordinance, and the parties' reasonable interpretations of those provisions that reach different results, we conclude these provisions are ambiguous. *Adams Outdoor Advert., L.P.*, 909 A.2d at 483 (ambiguity exists when language is subject to two or more reasonable interpretations).

Initially, we note that at the hearing, Objector, through its counsel, did not dispute that the Gas-N-Go would constitute "land development" for purposes of the SALDO and will undergo review under that ordinance. (R.R. at 99a-101a.) This directly implicates Section 4.8.A(2), which excludes land developments under the SALDO from the site plan requirements of Section 4.8. It is the potential applicability of Section 4.8, and the exclusion found therein, that the parties dispute.

Relevantly, Section 4.8.A(1) indicates that "the procedures of [] Section [4.8] **shall be** followed" for any **use** "designated **in Article 3** . . . as **requiring [s]ite [p]lan [r]eview**." ORDINANCE, § 4.8.A(1) (emphasis added). Multiple uses are found in Article 3, including auto service stations and special exception uses. ORDINANCE, §§ 3.10.B, 3.10.C. Site plan review is required for **both** types of uses. ORDINANCE, §§ 3.10.B, 3.10.C, 3.13. Objector relies on Section 3.13 in support of its arguments that site plan review is required independent of Section 4.8. Section 3.13 provides that a site plan "shall be required" for special exception uses and sets forth a separate procedure for reviewing such site plans, which invokes, at least in part, Section 4.8. ORDINANCE, § 3.13. However, Section 3.13 is **also found in Article 3**, making it subject to Section 4.8.A under that section's terms. Both Sections 3.13 and 4.8.A(1) use the word "shall," and the Ordinance **expressly** defines "shall" as "always [being] mandatory." ORDINANCE, § 2.1.A. But Section 4.8.A(2) also uses "shall" to state

that a land development under the SALDO "shall **not** be required to follow the procedures of" Section 4.8. ORDINANCE, § 4.8.A(2) (emphasis added). A reasonable reading of Section 4.8.A(1) and (2) and Section 3.13 of the Ordinance, and the parties' arguments based on those provisions' language, reveal uncertainty and ambiguity as to what site plan review, if any, a special exception use that is also land development under the SALDO is subject.

Because the Ordinance must be strictly construed and the provisions at issue are ambiguous as to whether a site plan is required under these circumstances, we must resolve the doubts in that language in Weis's favor. *Newtown Square E., L.P.*, 101 A.3d at 51-52; 53 P.S. § 10603.1. Doing so, we agree with Weis that it was not required to file a site plan at this time and that any reliance on the lack of a compliant site plan to deny it relief, as Objectors argue and common pleas held, must be reversed. Therefore, common pleas' Order overturning the Board's Decision on this basis is reversed.

C. Whether Weis Met its Burden of Proof for a Special Exception and Objector Failed to Meet its Burden of Proof.

1. Parties' Arguments

Weis next argues that, even if it was required to obtain a special exception for the proposed use, Section 3.13.E of the Ordinance does not contain any specific requirements for a "planned development" or automobile service station in a C District, as the latter use is permitted by right in that district. Therefore, there was nothing that Weis had to establish to meet its burden of proof, and, consequently, the burden shifted to Objector, whose evidence did not meet its heavy burden to preclude the grant of the special exception. Accordingly, Weis asserts the Board did not err in granting it special exception relief.

Objector[13] responds that, as set forth in its arguments to common pleas, the Board erred in granting the special exception because Weis also failed to meet several of the Ordinance's objective requirements, including those applying to special exceptions and to all uses in the Township generally as required by *Bray v. Zoning Board of Adjustment*, 410 A.2d 909, 910-11 (Pa. Cmwlth. 1980). This includes, Objector asserts, Ordinance requirements related to buffer yards, traffic impact, noise control, and uses in areas that have a high water table. (Objector's Br. at 47-49 (citing, e.g., Sections 4.4.D, 4.10.B, 5.4, and 5.12 of the Ordinance, ORDINANCE §§ 4.4.D, 4.10.B, 5.4, and 5.12).) Objector maintains that Weis did not even attempt to establish compliance with these requirements at the hearings, notwithstanding that the deficiencies were set forth in the Ott Letter. As for Weis's challenge to Objector's evidence as being insufficient, Objector argues the Board abused its discretion in finding that Weis established that the proposed use was "suitable for the particular location in question" and "not detrimental to the public welfare," ORDINANCE § 3.13.D(5)-(6), because those findings are not supported by substantial evidence. In this regard, Objector asserts its evidence, which the Board failed to seriously consider, showed clearly that the impact of this particular proposed use at this particular location would be significantly greater than normally expected from that type of use, thereby meeting its burden of proof under *Amerikohl Mining, Inc. v. Zoning Hearing Board of Wharton Township*, 597 A.2d 219, 223-24 (Pa. Cmwlth. 1991). In merely adopting the conditions that Weis agreed to implement and leaving any future issues that may arise concerning water quality to the environmental agencies, Objector asserts the Board "shirked its obligation under [the] Ordinance to independently assess and render a considered judgment regarding

[13] Because we conclude no site plan was required at this time, we set forth only those arguments by Objector that are not related to the lack of a compliant site plan.

whether [the] proposed gas station facility is suitable for the particular location in question and not detrimental to the public welfare." (Objector's Brief at 57.)

2. Analysis

The standards applicable to special exceptions are well-settled, and we have explained them as follows.

> [A] special exception is not an exception to a zoning ordinance but, rather, is a conditionally permitted use, allowed by the legislature if specifically listed standards are met. *Bray v. Zoning Board of Adjustment*, . . . 410 A.2d 909 ([Pa. Cmwlth.] 1980). Application for a special exception is to be granted or denied by the [Board] pursuant to the express standards and criteria set forth in the applicable zoning ordinance. *In re Brickstone Realty Corp.*, 789 A.2d 333 (Pa. Cmwlth. 2001) . . . . Thus, what an applicant must demonstrate to obtain a special exception is determined on a case-by-case basis and will vary among municipalities based upon the use requested and the language in the ordinance. *In re Thompson*, 896 A.2d 659 (Pa. Cmwlth. 2006) . . . . Once the applicant for a special exception meets his initial burden of showing compliance with all the objective requirements of the zoning ordinance, it is presumed that the proposed use is consistent with the promotion of local concerns relating to general health, safety and welfare, *Brickstone*, and, normally, the burden then shifts to any objectors to prove that the proposed use is, in fact, detrimental to the health, safety and general welfare of the community.[] *Id.*

Elizabethtown/Mt. Joy Assocs., 934 A.2d at 764 (footnote omitted). Moreover,

> the applicant must bring the proposal within specific requirements expressed in the ordinance, including "[s]pecific requirements applicable to such kind of use even when not a special exception-e.g., setback limits or size maximums or parking requirements applicable to that type of use whenever allowed, as a permitted use or otherwise."

Sheetz, 804 A.2d at 115 (quoting *Bray*, 410 A.2d at 911).

Both Objector and Weis present arguments to this Court regarding whether the other met their respective burdens of proof as set forth above that were raised as

a part of Objector's appeal from the Board's Order.[14] Common pleas, however, did not address the issues of whether the Board erred in finding that Weis met its initial burden of proving the specific requirements of the Ordinance for obtaining relief and abused its discretion in not adequately considering Objector's evidence of detriment, as Objector argues. Nor did it consider whether Objector had failed to meet its burden, as Weis argues. Instead, it relied on the lack of a compliant site plan to reverse the Board's decision. Having concluded this was not a reason to reverse the Board's decision, we remand for common pleas to address the remainder of Objector's arguments that the Board erred in granting Weis a special exception. *See, e.g.*, *In re Chacon* (Pa. Cmwlth., No. 1134 C.D. 2023, filed Jan. 29, 2025) (remanding for common pleas to render a supplemental opinion to address issues not resolved in common pleas' prior decision);[15] *Marshall v. E. Bradford Twp. Bd. of Supervisors* (Pa. Cmwlth., No. 102 C.D. 2020, filed Feb. 17, 2021), slip op. at 21 (remanding matter to common pleas to review the remaining issues raised in the landowner's land use appeal); *Zoning Hearing Bd. of Sadsbury Twp. v. Bd. of Supervisors of Sadsbury Twp.*, 804 A.2d 1274 (Pa. Cmwlth. 2002) (same); *Cricklewood Hill Realty Assocs. v. Zoning Bd. of Adj. of City of Pittsburgh*, 558 A.2d 178, 181 (Pa. Cmwlth. 1989) (same).[16]

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[14] We note that Weis's argument to common pleas as to why it met its burden of proof on the specific requirements of a special exception differs from that presented to the Court in its appeal. Before common pleas, it argued that it met the specific requirements for an auto service station special exception. (O.R., Item 16 at 5.)

[15] An unreported panel opinion may be cited as persuasive authority pursuant to Pennsylvania Rule of Appellate Procedure 126(b), Pa.R.A.P. 126(b), and Section 414(b) of the Court's Internal Operating Procedures, 210 Pa. Code 69.414(b).

[16] Although Objector asks the Court to address its arguments notwithstanding common pleas' failure to do so, the Court is mindful that this is Weis's appeal and Weis's arguments are presented in that context, not in response to Objector's arguments raised before common pleas, which are left unaddressed. Thus, this matter differs from situations where the parties have fully

(Footnote continued on next page…)

III. CONCLUSION

For the foregoing reasons, common pleas erred in reversing the Board's Decision based on Weis's failure to file a compliant site plan for its special exception, and, therefore, we reverse common pleas' Order. However, because common pleas did not address the remainder of Objector's arguments in Objector's appeal from the Board's Decision granting Weis a special exception, we remand for common pleas to render a new opinion doing so. Cognizant of the lengthy nature of this matter, we direct common pleas to issue that opinion within 60 days.

_____

RENÉE COHN JUBELIRER, President Judge

addressed the alternative issues sought to be resolved, and this Court, therefore, did not remand for common pleas to do so. *See Omatick v. Cecil Twp. Zoning Hearing Bd.*, 286 A.3d 413, 420 (Pa. Cmwlth. 2022) (declining to remand for common pleas to address previously raised issues where the record was complete, the issues remaining were ones of law, and both parties fully addressed the remaining issues in their briefs to this Court).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bluetriton Brands, Inc.	:	
	:	
v.	:	No. 581 C.D. 2025
	:	
Washington Township Zoning Hearing Board and Weis Markets, Inc.	:	
	:	
Appeal of: Weis Markets, Inc.	:	

O R D E R

NOW, November 10, 2026, the Order of the Court of Common Pleas of Northampton County (common pleas), entered in the above-captioned matter, is hereby **REVERSED**, and the matter is **REMANDED** in accordance with the foregoing opinion for common pleas to render a new opinion within 60 days of the exit date of this order.

Jurisdiction relinquished.

RENÉE COHN JUBELIRER, President Judge