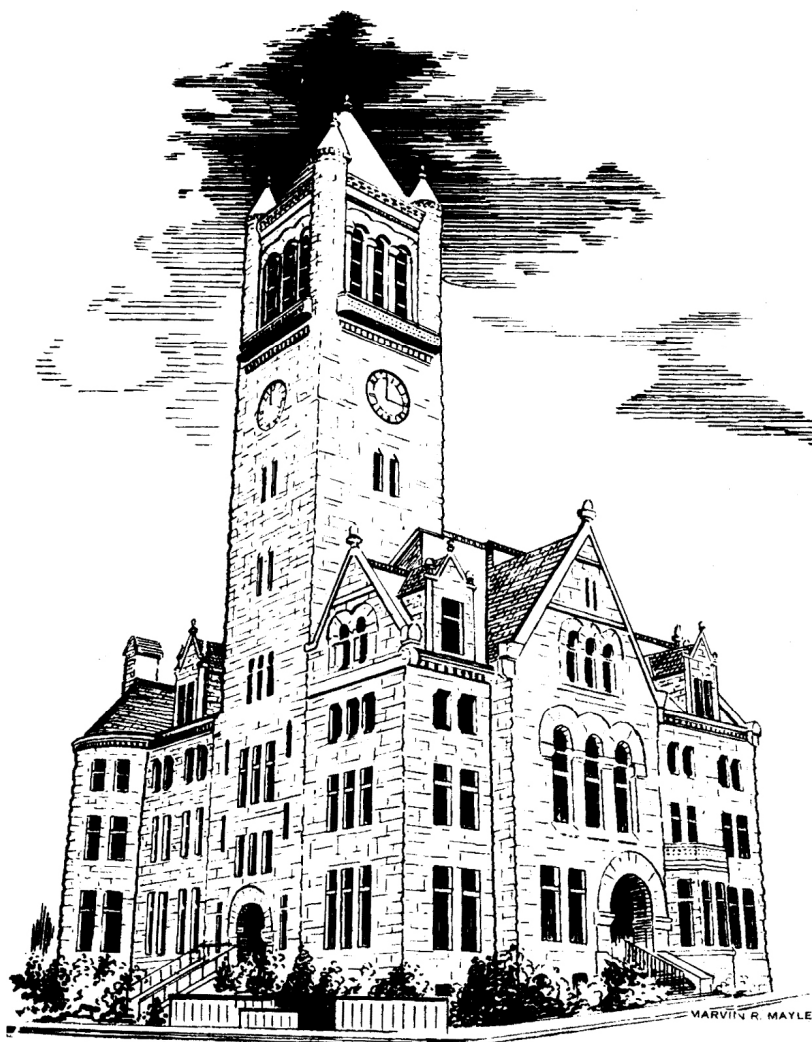


FAYETTE LEGAL JOURNAL

VOL. 89

AUGUST 29, 2026

NO. 35



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

Co-Editors: Garnet L. Gordon and Melinda Deal Dellarose

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Michelle L. Kelley
President Elect: Jeffrey S. Proden
Vice-President: Melinda D. Dellarose
Secretary: Anne N. John
Treasurer: Rachel A. Clark
Past President: Sheryl R. Heid
Executive Director: Garnet L. Gordon

Directors
Michael A. Aubele
Jennifer M. Casini
Sarah E. Connelly
James E. Higinbotham, Jr.
Sean M. Lementowski
Daniel D. Taylor

ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,
non-judgmental, safe, and effective

To talk to a lawyer today, call:
1-888-999-1941
717-541-4360

ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

**MARGARET A. BRENZY, a/k/a
MARGARET ANN BRENZY**, late of
Menallen Township, Fayette County, PA (3)

Executor: Stephen Brenzy
c/o Goodwin Como, PC
92 East Main Street, Suite 1
Uniontown, PA 15401
Attorney: Benjamin Goodwin

MARYANN KAISER, late of Fairchance
Borough, Fayette County, PA (3)

Executor: Gary K. Rhoderick
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

Second Publication

**ANTHONY REGIS ANDREWS, a/k/a
ANTHONY R. ANDREWS, a/k/a SONNY
ANDREWS**, late of Springfield Township,
Fayette County, PA (2)

Executrix: Beth Murray
c/o PO Box 463
1600 Morrell Avenue
Connellsville, PA 15425
Attorney: Richard Bower

CHERYL E. BAUGHMAN, late of South
Union Township, Fayette County, PA (2)

Administrator: James Alan Baughman
c/o Davis & Davis Attorneys at Law
107 East Main Street
Uniontown, PA 15401
Attorney: Jeremy J. Davis

**ANDREW D. BERDAR, a/k/a ANDREW
BERDAR**, late of Menallen Township, Fayette
County, PA (2)

Administrator: Andrew J. Berdar
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

**SCOTT DWAYNE CUNNINGHAM, a/k/a
SCOTT D. CUNNINGHAM**, late of
Uniontown City, Fayette County, PA (2)

Administratrix: Rebecca A. Cunningham
c/o Davis & Davis Attorneys at Law
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

**KEVIN CLARK GLOVER, a/k/a KEVIN
GLOVER**, late of North Union Township,
Fayette County, PA (2)

Administrator: Michael A. Glover
c/o Davis & Davis Attorneys at Law
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

NANCY JEAN HENRY, late of South Union
Township, Fayette County, PA (2)

Personal Representatives: Mary Anne
Coffman and Daniel Robert Coffman
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

RONALD J. HUCIK, late of North Union
Township, Fayette County, PA (2)

Executor: Frank Daniel Georgiana
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

CLYDE RONALD HUGHES, late of Dunbar
Township, Fayette County, PA (2)

Personal Representative:
Dwayne M. Hughes
c/o Watson Mundorff LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

NANCY LEONARD, late of Fayette County,
PA (2)

Administrator: Robert Chidester
c/o 946 Dayton Ave
Lexington, KY 40505

**JOHN RICHARDS, a/k/a JOHN ROBERT
RICHARDS**, late of Confluence, Fayette
County, PA (2)

Executrix: Elizabeth Ann Sandala
c/o Kuzma Law Group
200 North 2nd Avenue
Elizabeth, PA 15037
Attorney: Andrew Kuzma

GLENN W. STICKEL, late of Belle Vernon,
Fayette County, PA (2)

Executor: Glenn D. Stickel
c/o 24 East Club Drive
Pittsburgh, PA 15236

SCOTT DOUGLAS STONER, late of South
Connellsville, Fayette County, PA (2)

Administratrix: Debbra A. Stoner
c/o Davis & Davis Attorneys at Law
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

JACOB MICHAEL WOLFE, late of Redstone
Township, Fayette County, PA (2)

Administratrix: Patricia Wolfe
c/o Davis & Davis Attorneys at Law
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

First Publication

JUDITH R. FRITH, late of Smithfield, Fayette
County, PA (1)

Administratrix: Julianne Gaster
c/o Radcliffe Martin Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William M. Radcliffe

MICHAEL R. KISKO III, late of Georges
Township, Fayette County, PA (1)

Administrator: Michael R. Kisko Jr.
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401

LINDA S. SKIBO, a/k/a LINDA SKIBO, late
of Washington Township, Fayette County, PA (1)

Executor: Chad Skibo
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

GEORGE SKOVAN, late of German
Township, Fayette County, PA (1)

Executrix: Cynthia A. Holloman
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony S. Dedola Jr.

RICHARD DAVID WOLINSKI, late of
Uniontown, Fayette County, PA (1)

Administratrix: Colleen M. Wolinski
c/o PO Box 727
Uniontown, PA 15401
Attorney: Bernadette K. Tummons

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 1611 of 2026 GD

IN RE: IN THE MATTER OF PETITION
FOR CHANGE OF NAME OF
ENSLEY GRACE MARTINEZ

ORDER

AND NOW, August 3, 2026, it is hereby ORDERED and DECREED that hearing for Name Change shall be held on Monday, November 9, 2026, at 10:30 o'clock a.m. in Courtroom No. 3, Fayette County Courthouse, Uniontown, Pennsylvania.

Further, it is Ordered that a notice of the filing of the within Petition and of the aforesaid date of hearing be published in the Official Legal Journal of Fayette County and the Herald Standard Newspaper at least thirty (30) days before the hearing. Proof of publication shall be submitted at the hearing.

It is further Ordered that an official search be conducted by the County office where the minor child resided within the past five (5) years. Proper certification from the Prothonotary's Office verifying that there are no judgments, decrees of record, or any other of the like character against the minor child and proper certification from the Recorder of Deeds regarding mortgages shall be submitted to the Court at the hearing.

It is further Ordered that the petitioning parent is directed to mail a copy of the Petition and this Order by regular and certified mail, return receipt requested to the non-petitioning parent.

BY THE COURT:
MEHALOV, J.

ATTEST:
Prothonotary

Notice of Filing of Articles of Incorporation

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania for a nonprofit corporation which has been incorporated under the provisions of the Nonprofit Corporation Law of 1988. The name and address of the corporation is Uniontown Area Library Charitable Fund, 24 Jefferson Street, Uniontown, Pennsylvania.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE E&O INSURED WILL TRAVEL ACCEPTING NEW CLIENTS

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOSHUA HVIZDOS,	:
Appellant,	:
v.	:
MENALLEN TOWNSHIP ZONING	:
HEARING BOARD,	: No. 850 of 2025
Appellee.	: President Judge Steve P. Leskinen
WILLIAM WORK,	:
Appellant,	:
v.	:
MENALLEN TOWNSHIP ZONING	:
HEARING BOARD,	: No. 851 of 2025
Appellee.	: President Judge Steve P. Leskinen

OPINION AND ORDER

LESKINEN, P.J. July 28, 2026

Before the Court are the Land Use Appeals of Joshua Hvizdos ("Hvizdos"), filed at No. 850 of 2025, G.D. and William Work ("Work") filed at No. 851 of 2025, G.D., which have been consolidated for disposition, as both appeals arise from the Decision of the Menallen Township Zoning Hearing Board ("ZHB") dated March 13th, 2025 ("Decision"). Upon consideration of the record in this matter and the briefs and reply briefs submitted by the parties, the Court issues this Opinion and Order dismissing Hvizdos's Appeal and vacating the decision of the ZHB and remanding for further proceedings on Work's Appeal.

Factual and Procedural History

Work is the owner of Work Auction Solutions, LLC, a Pennsylvania company that conducts vehicle and equipment auctions, primarily through an online platform. In October of 2023, Work Auction purchased two adjacent lots ("Lots") fronting on the southerly side of State Route 40 (also known as National Pike) in Menallen Township, intending to relocate the auction business to the Lots. {1} The Lots are in Menallen Township's Mixed Use Corridor District ("MX District"), which allows business and higher density residential land uses along major roadways. Hvizdos owns a parcel of land that adjoins the parcels at issue owned by Work. These Lots were the subject of a prior Land Use Appeal at No. 1043 of 2024, G.D., ("First Appeal") in which this Court remanded the case to the ZHB for further proceedings, which proceedings ultimately produced the Decision from which these two instant appeals were taken.

Work initially sought a special exception for the residential lot to allow the structure on the lot to be used as commercial office space for the proposed business and a

special exception to use the vacant lot for the storage and sale of equipment for his equipment auction company. The ZHB entered a written decision on April 29th, 2024, denying the request for a special exception where it found that Work's auctions would involve the sale of heavy equipment, which is specifically excluded but not defined under Section 2.3 of the Ordinance. Upon consideration of the First Appeal, which involved opening the record for additional testimony, this Court held that Work's proposed use of the vacant lot is similar enough in nature to the Vehicle Sales, Rental, and Service use permitted by special exception in the MX District where it lies, that the proposed use would be permitted by special exception under Section 8.9 of the Ordinance with the attachment of reasonable conditions and safeguards, including a clear standard for the types of "heavy equipment" prohibited for sale on the Lot. The Court offered a suggestion as to a possible definition of "heavy equipment" but deferred to the ZHB to proffer its definition of the term. For the residential lot, the Court held that the conversion of a residential structure to office space and the operation of a car lot for vehicle sales would clearly fall within a use addressed by the Ordinance and should also be granted pursuant to the Ordinance with any necessary conditions. The Court remanded the matter to the ZHB to set appropriate conditions upon the special exception use of both properties and the ZHB, after an additional hearing, issued the Decision at issue here. The Decision set forth a definition of "heavy equipment" and granted both special exceptions (albeit with the property numbers reversed) with specific conditions.

Work's appeal challenges the ZHB's definition of heavy equipment, the imposition of the condition limiting the number of pieces of equipment on the property, and the erroneous application of the special exceptions to the incorrect parcels. Hvizdos's appeal specifies eleven purported errors of law spanning a variety of issues.

Standard of Review

A trial court's scope of review from a land use appeal depends on whether the court takes additional evidence on the appeal. Though this Court took additional testimony during the First Appeal, it did not take additional evidence on the instant appeals. When a trial court takes no new evidence in a land use appeal the court's scope of review is limited to determining whether the Zoning Hearing Board has committed an error of law or an abuse of discretion. *Coal Gas Recovery, L.P. v. Franklin Tp. Zoning Hearing Bd.*, 944 A.2d 832, 838 (Pa. Cmwlth. 2008).

{1} The first lot, at 7702 National Pike, has parcel ID# 22-17-0074 and consists of an unimproved vacant lot of approximately 7.7 acres. The second lot, at 7696 National Pike, has parcel ID# 22-17-0075 and consists of a single-family residential structure situated on approximately 0.8 acres. The Decision reverses the parcel numbers, granting the Special Exception intended for the parcel with the residential structure to the vacant lot and the Special Exception intended for the vacant lot to the parcel with the residential structure. This confusion appears to have originated during the application process, as a letter dated March 14th, 2024, from Attorney Rob Harper, counsel for Work, to the ZHB, which was intended to clarify the nature of Work's request, made the same error in reversing the addresses for the parcels at issue. In the interest of brevity and clarity, this Opinion shall refer to the parcels as "the residential lot" when referring to the 0.8 AC lot at 7696 National Pike and "the vacant lot" when referring to the 7.7 AC lot at 7702 National Pike.

A board imposes conditions under its discretionary power pursuant to Section 9.12.1 of the MPC. Thus, a court reviews a challenge to the reasonableness of those conditions, not the "fact standard" of whether there is substantial evidence supporting the conditions, when determining if the conditions constitute an abuse of discretion. *Leckey v. Lower Southampton Twp. Zoning Hearing Bd.*, 864 A.2d 593, 596 (Pa. Cmwlth. 2004). In an abuse of discretion review, the burden of proof is not on the board to support the imposition of conditions; rather, the burden is on the property owners to show that the imposition of conditions was an abuse of discretion." *Id.*

Discussion

The issues currently before the Court arose because Work's proposed use of the Lots for equipment auctions is not a defined use under the Ordinance. Under Section 1.6 of the Ordinance, Uses for Which No Provision is Made:

Whenever, in any district established under this Ordinance, a use is not specifically permitted and an individual makes an application to the Zoning Offer [sic] for such use, the Zoning Officer shall refer the application to the Zoning Hearing Board, which shall have the authority to permit or deny the proposed use. The use may be permitted if it is similar to, and compatible with, permitted uses in the district and in no way is in conflict with the general purpose and intent of this Ordinance or any provision permitting the same, provided that the same shall comply and follow all requirements of this Ordinance.

This Court found in the First Appeal that the proposed use of the vacant lot is similar enough in nature to the Vehicle Sales, Rental, and Service use permitted by special exception in the MX District that the grant of a special exception would be appropriate with the attachment of reasonable conditions and safeguards. This would require the ZHB to define "heavy equipment," as Section 2.3 of the Ordinance specifically excludes the sale of heavy equipment from the Vehicle Sales, Rental, and Service use, but does not define the term. One of the purposes of the conditions placed on the grant of a special exception would be to ensure that the use of the Lots is more consistent with the Vehicle Sales use, which is permitted by special exception in the MX District and not with the sale of heavy equipment, which is prohibited.

Hvizdos's Appeal and Intervention

This Court held in the First Appeal that a special exception should be granted for Work's proposed use and remanded the matter to the ZHB for the imposition of appropriate conditions and to define "heavy equipment". Five of Hvizdos's issues raised in the Notice of Land Use Appeal filed at No. 850 of 2025 focus on whether the ZHB erred in granting the special exception. {2} Work contends in his brief that the doctrine of collateral estoppel should apply here and that Hvizdos should not be permitted to revisit issues that were settled by the Court in the First Appeal and were not within the scope of the Court's remand to the ZHB that led to the Second Appeals. This Court agrees that a second appeal after remand does not open the door for Hvizdos to raise issues for the first time that should have been raised in the First Appeal. However, the reasoning for this holding lies not in the doctrine of collateral estoppel but in the question of standing to appeal and the statutory process for intervening in a land use appeal. In *Lescinsky v. Township of Covington Zoning Hearing Bd.*, 123 A.3d 379, 381 (Pa. Cmwlth. 2015),

the Commonwealth Court acknowledges that the issue of intervening in a land use appeal is a highly technical one that has repeatedly reached that Court. The Lescinsky Opinion and the Concurring Opinion, which this Court incorporates by reference, clarify the procedural process for objectors in a land use appeal.

It is well-established that in a land use appeal, a person must appear or make some objection before the ZHB to have standing to advance an objection on appeal. *Miravich v. Township of Exeter*, 6 A.3d 1076, 1078 (Pa. Cmwlth. 2010). Hvizdos testified before the ZHB and has therefore met that requirement. The question before this Court is whether Hvizdos has standing to file an appeal or to intervene in the Second Appeal when he did not participate in the First Appeal. This Court was unable to find an appellate opinion addressing a similar set of facts. As Hvizdos correctly notes in his brief, he could not file an appeal to the ZHB's original decision (dated August 14th, 2024), as that decision denied Work's requests and was therefore not adverse to Hvizdos's interests. However, as the concurrence in Lescinsky notes, the correct procedure under that scenario is for the adjoining landowner to file a petition to intervene pursuant to §11004-A of the MPC to participate at the trial court level.

The appellate courts have consistently held that even the landowner and municipality at issue in a land use appeal are required to either appeal or intervene in proceedings before the common pleas court to retain their party status. {3} *Gilchrist v. Zoning Hearing Bd. of Old Forge Borough*, 475 A.2d 1366, 1368 (Pa. Cmwlth. 1984). In addition, a person who is not a party to an action before the trial court lacks standing to appeal the trial court's decision to the Commonwealth Court. Lescinsky, at 381 and fn.4. These holdings are analogous to the situation here. An interested person must maintain their status as a party through each proceeding to have standing to participate in a subsequent proceeding. To hold otherwise would force the Court, as it would here, to relitigate issues that were already decided when a party re-enters proceedings at a later stage after not participating in an earlier stage. Therefore, Hvizdos's appeal at No. 850 of 2025 must be dismissed for lack of standing where Hvizdos did not maintain his party status in the First Appeal. {4}

{2} The paragraphs of Hvizdos's appeal referenced here are: (32) that Work's application failed to set forth any compelling reasons for the special exception; (33) that the ZHB's actions constitute "spot zoning"; (34) that the ZHB granted the special exceptions without applying the standards required by §8.9(a) of the Ordinance; (35) that the ZHB made no factual findings relating to §8.9(a); and (37) that the ZHB made its decision without expert or other relevant testimony on the issue.

{3} As the Commonwealth Court held in Lescinsky, at 380, pursuant to §11004-A of the MPC, only the municipality and the owner or tenant of a property directly involved in the action may intervene as of course by filing a notice of intervention within 30 days following the filing of a land use appeal; all other interventions, including those by an adjoining landowner, are governed by the intervention rules in the Pennsylvania Rules of Civil Procedure.

{4} There is a distinction in the case law as to whether proceedings after remand are considered a continuation of prior proceedings based on whether the court entirely relinquishes jurisdiction upon remand. Here, the Court rendered a decision on the grant of a special exception and remanded only the matters of the definition of heavy equipment and the imposition of appropriate conditions. This is clearly a continuation of the earlier proceedings rather than the remand of the entire matter to the ZHB for a re-hearing. See: *Sparacino v. Zoning Bd. Of Adjustment, City of Philadelphia*, 728 A.2d 445 (Pa. Cmwlth. 1999). Of note, the Fayette County Prothonotary assigns a new case number to every appeal after remand in land use appeals as a matter of course; the assignment of a new case number is not based on any substantive analysis of the nature of the remand order.

Even if Hvizdos had intervened in the First Appeal, his intervention in Work's Second Appeal at No. 851 of 2025 was procedurally improper as Hvizdos filed a Notice of Intervention rather than the required Petition to Intervene. The Lescinsky Court addressed the difference between a notice of intervention and a petition to intervene and the attendant consequences, most notably that the petition to intervene requires resolution by the Court and offers the opportunity for responsive pleadings by the other parties. In Lescinsky, though the adjoining property owner filed a Notice to Intervene and was permitted to participate before the trial court as if she had properly intervened and was a party, the Commonwealth Court held that she had no standing at the trial court level and was thus precluded from participating in the appeal of the trial court's decision. In Footnote 4 to the opinion, the Lescinsky Court notes this is a "highly technical and deeply troubling outcome" that is unfortunate but required by law. Similarly, this Court is bound by the rules governing standing and intervention in land use appeals and must reluctantly find that Hvizdos lacks standing for both his Appeal and his attempt at intervention in Work's Appeal.

Work's Issues on Appeal

Addressing the more straightforward of Work's issues on appeal first, it is clear the reversal of the parcel numbers for the two Lots in the ZHB's Decision was an unintentional ministerial error. As the Court is remanding this matter on other grounds, the ZHB will have an opportunity to remedy this error.

The remainder of Work's issues on appeal concern the definitions and restrictions related to "equipment" and "heavy equipment." After remand, the ZHB adopted the following definition of "heavy equipment":

Self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing 5000 pounds or more, primarily employed for construction, industrial, maritime, mining, and forestry uses, as such terms are commonly used and understood as a usage of trade. The term "heavy equipment" shall not include: motor vehicles requiring registration and certificates of title, farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers, heavy-duty vehicles, specially designed for executing construction tasks, most frequently, ones involving earthwork operations. They are also known as construction equipment, construction plant, earth movers, engineering vehicles or simply equipment. They usually comprise five equipment systems: implement, traction, structure, powertrain, control and information. (Emphasis from original text.)

The ZHB goes on to grant the special exception for vehicle sales/rental/service and storage yard subject to the enumerated conditions, including that the applicant shall not auction any equipment on the property larger than 40,000 lbs. and shall not auction in excess of fifty (50) pieces of equipment on the property at any time. {5}

This definition of heavy equipment clearly creates more problems than it solves. In addition to introducing additional undefined terms, it is not clear whether the last two sentences of the definition are intended to modify the first sentence in the definition or

{5} The Court notes multiple conditions are written in the format, "Applicant shall MTZO §[X]", referencing the Ordinance, and these conditions appear to be missing words, as the intent was most likely "Applicant shall comply with MTZO §(X)" or something similar.

the second sentence containing the exceptions to the definition. In addition, the limitation on the number of pieces of "equipment" is problematic as "equipment" is also not defined. Would this include a passenger vehicle such as a car, SUV, or light truck? Would it include smaller tools and equipment such as a power saw or a portable generator? Does a piece of equipment that includes a trailer or accessories count as one piece of equipment or multiple pieces? This Court offered a suggestion for a heavy equipment definition that referenced the standards for a transport permit in Pennsylvania. The Court was not suggesting that the ZHB needed to adopt the Court's example as the definition, but rather to provide an example of standards that are straightforward in their application. {6} The problem with attempting to build a definition based on categories of uses is the overlap between categories and the lack of standardized terms in the relevant industries. For example, the first sentence of the definition includes equipment "primarily employed for construction" but then the exceptions in the second sentence include vehicles "specially designed for executing construction tasks". The heavy equipment definition would prohibit equipment for forestry uses, but excepts equipment used in "earthwork operations."

There is too much ambiguity in both the definition of heavy equipment and the restriction on the number of pieces of equipment for a reasonable landowner to determine whether they are in compliance with the Decision, and therefore, the Court must reluctantly remand the definition of heavy equipment and the limitations on the number of pieces of equipment and weight limits back to the ZHB for resolution.

Work also challenges the limitation of fifty (50) pieces of equipment as inherently unreasonable for a combined property totaling 8.5 acres, noting that this would effectively limit the use to an average of 5.88 pieces of equipment per acre, suggesting 350 pieces as a more reasonable number. Though the Court cannot offer a definitive decision on the reasonableness of either number without clarification on the definition of equipment, the Supplemental Use Regulations in Chapter 5 of the Ordinance are instructive here. The Vehicle Sales/Rental/Service use permitted as a special exception in the MX District (Section 5.63 in the Supplemental Use Regulations) requires that vehicle sales establishments maintain a minimum of ten (10) vehicles for sale at all times and restricts vehicle sales to a maximum lot size of one acre. {7} The Truck and Heavy Equipment Rental, Sales, and Service use which is not permitted in the MX District (Section 5.61) requires a minimum of five acres for such a site. Though Work may have purchased a combined 8.5 acres of property, he is not automatically entitled to use the entire lot when the Vehicle Sales use is restricted to a maximum of one acre. The ZHB may set reasonable conditions on the size of the lot and the number of vehicles to ensure the use is more similar to the permitted Vehicle Sales use rather than the Truck and Heavy Equipment Sales use, which is not permitted.

{6} Similarly, transport of a vehicle on the Pennsylvania Turnpike requires a Special Hauling Permit if the vehicle exceeds any of the enumerated dimensions for length, weight, width, etc. (See: <https://www.paturnpike.com/commercial/permits-restrictions>) Again, the Court is not suggesting the ZHB adopt these exact dimensions as a definition but rather illustrating an example of a policy that includes and excludes vehicles based on specific dimensions rather than attempting to define categories of use.

{7} Any consideration of "reasonableness" of the 50-piece limitation must recognize that there will be a significant difference in the nature of the use between 50 passenger vehicles (a large SUV would weigh 5,000-6,000 lbs.) and 50 pieces of equipment up to a maximum of 40,000 lbs.

Conclusion

The stated purpose of the MX District, as defined by Section 3.5.01 of the Ordinance, is as follows:

The intent of the MX District intends to provide for a mixed-use environment of business and higher density residential land uses along the major roadways of the Township. Due to the variety of business types and residential dwellings permitted, critical attention should be placed on site layout, building design, vehicle circulation, and coordination of site features between adjoining properties.

The cross-appeals here reflect the inherent tension of a mixed-use district. Whatever conditions and definitions the ZHB chooses to impose are likely to result in more restrictions than Work would prefer on his commercial operations and a use that is more commercial in nature than Hvizdos would prefer adjoining his residential property. The challenge to the ZHB, on remand, is to arrive at a functional, usable definition of equipment and heavy equipment and conditions that ensures the use permitted by special exception is more in the nature of the Vehicle Sales use, as defined in the Ordinance, than the Truck and Heavy Equipment Sales Use.

WHEREFORE, the Court issues the following Order:

ORDER

AND NOW, this 28th day of July, 2026, after hearing on the cross-appeals filed by Joshua Hvizdos and William Work, which were previously consolidated for argument and consideration but maintained separate docket numbers, the Court hereby ORDERS and DIRECTS that the Appeal of Joshua Hvizdos at No. 850 of 2025 is QUASHED for lack of standing and at No. 851 of 2025, the Decision of the Menallen Township Zoning Hearing Board ("ZHB") dated March 13th, 2025, is VACATED and REMANDED to the ZHB specifically to impose appropriate conditions on the grant of a Special Exception and to define "equipment" and "heavy equipment" in accordance with the preceding Opinion. Any further filings in these matters should be made only at the docket number to which they apply.

BY THE COURT
STEVE P. LESKINEN
PRESIDENT JUDGE

ATTEST:
PROTHONOTARY

