WESTTOWN TOWNSHIP
PLANNING COMMISSION MEETING AGENDA
Wednesday, October 9, 2024 – 7:00 pm

Stokes Assembly Hall – Township Administration Building
1039 Wilmington Pike, West Chester, PA

For general inquiries or questions about any of the items on this agenda, please contact the Township office either by phone (610) 692-1930 or via e-mail at administration@westtown.org.

Call to Order and Pledge of Allegiance

Adoption of Agenda

Approval of Minutes

1. Planning Commission Meeting September 18, 2024

Announcements

Public Comment – Non-Agenda Items

New Business

1. **Pennsylvania Supreme Court Case – Environmental Rights Amendment (ERA)**
   Jack Embick will provide a summary of a case recently decided by the Pa. Supreme Court: Shirley v. Pa. Leg. Ref. Bureau, No. 85 MAP 2022 (Pa, July 18, 2024) and the majority opinion. The case involves an analysis of standing and intervention requirements, which confirms standing of associations based on injury to members and clarifies when courts are required to permit third party intervention.

Old Business

1. **Land Development Application – 1506 West Chester Pike**
   The applicant, Westtown AM West TIC, LLC, has submitted a revised land development application for construction of a one-story 3,294 square feet bank with drive-up ATM, 12 parking spaces, lighting, landscaping, signage and underground stormwater basin at the northeastern corner of the Westtown Marketplace shopping center. The applicant also proposes to install painted crosswalk, concrete sidewalk, and ADA complaint ramp to connect the existing pedestrian walkway along the front of the main building across the parking lot to the current bus stop located at West Chester Pike.

2. **Ordinance Amendments – Digital Displays**
   The draft amendments to zoning regulations, Article XVIII Signs, pertaining to signs located on lots with institutional uses and general regulations on sign illumination options, including digital displays, have been prepared based on the previous feedback from the Planning Commission.

Public Comment

Reports

1. Board of Supervisors Meeting October 7, 2024 – Russ Hatton/Jack Embick

Adjournment

Next PC Meeting:

- **October 23, 2024, 7:00 PM**

PC Representative at next Board of Supervisors Meeting:

- **Monday October 21, 2024, 7:30 PM** – Kevin Flynn/Brian Knaub

[J-30B-2023 and J-30C-2023] [MO: Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JESSICA SHIRLEY, INTERIM ACTING SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ACTING CHAIRPERSON OF THE ENVIRONMENTAL QUALITY BOARD v. PENNSYLVANIA LEGISLATIVE REFERENCE BUREAU, VINCENT C. DELIBERATO, JR., DIRECTOR OF THE LEGISLATIVE REFERENCE BUREAU, AND AMY J. MENDELSOHN, DIRECTOR OF THE PENNSYLVANIA CODE AND BULLETIN APPEAL OF: CITIZENS FOR PENNSYLVANIA'S FUTURE, SIERRA CLUB, AND CLEAN AIR COUNCIL Possible Intervenors	:	No. 85 MAP 2022 Appeal from the Order of the Commonwealth Court at No. 41 MD 2022 dated June 28, 2022 ARGUED: May 24, 2023
JESSICA SHIRLEY, INTERIM ACTING SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ACTING CHAIRPERSON OF THE ENVIRONMENTAL QUALITY BOARD v. PENNSYLVANIA LEGISLATIVE REFERENCE BUREAU, VINCENT C. DELIBERATO, JR., DIRECTOR OF THE LEGISLATIVE REFERENCE BUREAU, AND AMY J. MENDELSOHN, DIRECTOR	:	No. 87 MAP 2022 Appeal from the Order of the Commonwealth Court at No. 41 MD 2022 dated July 8, 2022 ARGUED: May 24, 2023

OF THE PENNSYLVANIA CODE AND BULLETIN

APPEAL OF: CITIZENS FOR PENNSYLVANIA'S FUTURE, SIERRA CLUB, AND CLEAN AIR COUNCIL

Possible Intervenors

CONCURRING OPINION

JUSTICE DONOHUE **DECIDED: July 18, 2024**

I join the Majority in full and write only to speak to the role the Nonprofits' assertion of the Environmental Rights Amendment ("ERA"), found in Article I, Section 27 of the Pennsylvania Constitution, plays in resolving the intervention question before the Court. The ERA provides:

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

PA. CONST. art. I, § 27.

The ERA "establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries." *Pa. Env't Def. Found. v. Commonwealth*, 161 A.3d 911, 931–32 (Pa. 2017). Nonprofits' members, as residents of this Commonwealth, are beneficiaries under this trust. *See* Application for Leave to Intervene, 4/25/2022, ¶¶ 40-42, 58. The ERA imposes upon all agencies and entities of our government, in their role as trustee, the duty to prohibit the degradation, diminution, and depletion of the public natural

resources, as well as the duty to act affirmatively through legislative action to protect the environment. *Id.* at 933. This Court has previously established that the ERA trust is governed by the principles applicable to private trusts. *Id.* at 932-33; *see also Pa. Env't Def. Found. v. Commonwealth*, 255 A.3d 289, 308 n.12 (Pa. 2021).

Fundamentally, a trust is a "relation between" persons, wherein one (the trustee) holds property for the benefit of others (the beneficiaries). *In re Passarelli Fam. Tr.*, 242 A.3d 1257, 1269 (Pa. 2020). While a trustee holds legal title to the property of which the trust is comprised, the beneficiaries hold an equitable interest in the trust property. *Jones v. Jones*, 25 A.2d 327, 329 (Pa. 1942) (holding that a beneficiary has equitable in rem interest in trust property). For instance, an income beneficiary possesses an equitable right in the trust property that generates the income, although she has no legal right to that property at all. *Tr. Under Will of Augustus T. Ashton*, 269 A.3d 81, 91 (Pa. 2021).

This equitable interest is legally enforceable. We long ago held that "in addition to rights against the trustee, the beneficiary also has rights in rem, an actual property interest in the subject-matter of the trust, an equitable ownership of the trust res." *Jones*, 25 A.2d at 329. The equitable interest in the trust res entitles a beneficiary to enforce the trust, to have a breach of trust enjoined, and to obtain redress for a breach of trust. *Id.*; *see also Commonwealth v. Stewart*, 12 A.2d 444, 447 (Pa. 1940), *aff'd sub nom*. *Stewart v. Commonwealth*, 312 U.S. 649 (1941) ("By virtue of th[e equitable interest in the trust property] he was entitled to enforce the trust, to have a breach of trust enjoined and to obtain redress in case of breach."). We reaffirmed this principle more recently in *Trust Under Will of Augustus T. Ashton*, 269 A.3d 81, 91 (Pa. 2021) (explaining that beneficiaries have equitable interest in "entire trust res" and that interest allows beneficiaries to enforce the trust in addition to rights against a trustee).

Pursuant to their status as beneficiaries of the public trust established by the ERA, Nonprofits' members possess a legally enforceable interest in the trust res: the natural resources of our Commonwealth. In my view, this legally enforceable interest in the existing natural resources which, according to Nonprofits, stand to be altered, if not diminished or destroyed, as a result of the efforts to enjoin the RGGI Regulation, suffices to establish a right to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(4).[1] *See Citimortgage, Inc. v. Comini,* 184 A.3d 996, 998 (Pa. Super. 2018) (holding that proposed intervenors' right to first refusal was "an interest legally enforceable pursuant to standard principles of contract construction" thereby establishing a right to intervene pursuant to Pa.R.C.P. 2327(4)). Nonetheless, as explained by the Majority, even when a petitioner establishes a legally enforceable interest that would permit intervention, a court may deny intervention if the petitioner's interest is already adequately represented. Pa.R.C.P. 2329(2). Here, where DEP has failed to assert the ERA and its obligations thereunder in defense of the RGGI regulations, it is difficult, if not impossible, to conclude that it is representing the beneficiaries' interests at all, let alone to a standard that could be called "adequate."

Justice Brobson concludes that Nonprofits have failed to establish a legally enforceable interest in this litigation that would warrant their intervention pursuant to Rule 2327(4). Although he acknowledges that Nonprofits pursued intervention to assert their rights as beneficiaries under the ERA, Justice Brobson ignores the import of this status, resting his conclusion that Nonprofits lack a legally enforceable interest on his view that they seek only to advance policies that align with their interests. Concurring & Dissenting

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[1] This conclusion is in harmony with then-Judge Brobson's pronouncement that "[t]he [ERA's] protections may be enforced by citizens bringing suit in the appropriate forum, including the courts." *Feudale v. Aqua Pa., Inc.*, 122 A.3d 462, 468 (Pa. Commw. 2015), *aff'd*, 135 A.3d 580 (Pa. 2016).

Op. at 11-12 (Brobson, J). This non sequitur misses the significance of beneficiary status, as it is by virtue of the trustee/beneficiary relationship that Nonprofits (by way of their members' rights)[2] possess a legally enforceable interest that provides the basis for intervention. *See Ashton*, 260 A.3d 81, 91 (Pa. 2021) (explaining that beneficiaries have equitable interests in "entire trust res" and that interest allows beneficiaries to enforce the trust to obtain redress, in addition to in personam rights against a trustee); *Jones*, 25 A.2d at 329; *Commonwealth v. Stewart*, 12 A.2d 444, 446-47 (Pa. 1940). Whether Nonprofits have preferred environmental policies plays no part in determining whether they may intervene in this litigation as beneficiaries seeking to vindicate the rights granted to them under the trust.

Chief Justice Todd joins this concurring opinion.

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[2] The Majority explains that Nonprofits have associational standing as representatives of their members. Majority Opinion at 30 (citing *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 922 (Pa. 2013)).

Shirley v. Pa. Legislative Reference Bureau

Decided Jul 18, 2024

85 MAP 2022 87 MAP 2022 J-30B-2023 J-30C-2023

07-18-2024

JESSICA SHIRLEY, INTERIM ACTING SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND INTERIM ACTING CHAIRPERSON OF THE ENVIRONMENTAL QUALITY BOARD v. PENNSYLVANIA LEGISLATIVE REFERENCE BUREAU, VINCENT C. DELIBERATO, JR., DIRECTOR OF THE LEGISLATIVE REFERENCE BUREAU, AND AMY J. MENDELSOHN, DIRECTOR OF THE PENNSYLVANIA CODE AND BULLETIN APPEAL OF: CITIZENS FOR PENNSYLVANIA'S FUTURE, SIERRA CLUB, AND CLEAN AIR COUNCIL, Possible Intervenors JESSICA SHIRLEY, INTERIM ACTING SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND INTERIM ACTING CHAIRPERSON OF THE ENVIRONMENTAL QUALITY BOARD v. PENNSYLVANIA LEGISLATIVE REFERENCE BUREAU, VINCENT C. DELIBERATO, JR., DIRECTOR OF THELEGISLATIVE REFERENCE BUREAU, AND AMY J. MENDELSOHN, DIRECTOR OF THE PENNSYLVANIA CODE AND BULLETIN APPEAL OF: CITIZENS FOR PENNSYLVANIA'S FUTURE, SIERRA CLUB, AND CLEAN AIR COUNCIL, Possible Intervenors

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DOUGHERTY JUSTICE.

ARGUED: May 24, 2023

Appeal from the Order of the Commonwealth Court at No. 41 MD 2022 dated June 28, 2022.

Appeal from the Order of the Commonwealth Court at No. 41 MD 2022 dated July 8, 2022.

2 TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ. *2

OPINION

DOUGHERTY JUSTICE.

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among eleven eastern states of the United States to reduce carbon dioxide (CO2) emissions by electric power plants.[1] The Pennsylvania Department of Environmental Protection (DEP) developed a rulemaking package (RGGI Regulation) to effectuate Pennsylvania's membership in RGGI. The RGGI Regulation sparked substantial, ongoing litigation. Presently before us are two direct appeals from the Commonwealth Court. Specifically, three nonprofit environmental corporations, Citizens for Pennsylvania's Future, Clean Air Council, and Sierra Club (Nonprofits), appeal the denial of their application to intervene in this litigation. Nonprofits also appeal from the grant of a preliminary injunction of the RGGI Regulation. As explained below, we reverse the denial of intervention, and we dismiss as moot the appeal from the preliminary injunction.

[1] The RGGI states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New

Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

3 **I. Background** *3

Broadly speaking, RGGI applies to fossil-fuel-fired electric power plants located in RGGI states that have a capacity of 25 megawatts or greater. Under RGGI, regulated power plants within RGGI states must buy "allowances" in order to emit CO2. An allowance represents a limited authorization issued by a participating state to emit one short ton of CO2 from a regulated source. Regulated power plants purchase allowances at quarterly auctions or on the secondary market. Proceeds from the auction purchases go to the RGGI states. A regulated plant can use allowances issued by any RGGI state to demonstrate compliance with RGGI in any state. Together, the RGGI states have established a regional cap on CO2 emissions, which sets an overall limit on the total emissions from regulated power plants within the RGGI states. The regional emissions cap amount declines over time so that permissible CO2 emissions decrease in a planned and predictable way. For example, in 2016, the regional cap was 86,506,875 CO2 allowances; in 2017, the cap decreased to 84,344,203 allowances; and in 2018, it was reduced to 82,235,598 allowances. To join RGGI, a state must enact a CO2 Budget Trading Program based on RGGI's model rule.[2]

2 *See generally Elements of RGGI, https://www.rggi.org/program-overview-and*design/elements (last visited Mar. 15, 2024); *About the Regional Greenhouse Gas Initiative, https://www.rggi.org/sites/default/files/Uploads/Fact%20Sheets/RGGI_101_*Factsheet.pdf (last visited Mar. 15, 2024).

In 2019, former Governor of Pennsylvania Tom Wolf issued an executive order directing DEP to develop a rulemaking package to join RGGI. Pursuant to the Governor's order, DEP developed the RGGI Regulation, which was adopted by the Environmental Quality Board (EQB), and then approved by the Independent Regulatory Review Commission. The Pennsylvania State Senate Environmental Resources and Energy Committee reported out of committee a concurrent resolution disapproving the RGGI Regulation, and the concurrent resolution was subsequently adopted by the full Senate. Thereafter, the Senate concurrent resolution was reported from the Pennsylvania State *4 House Environmental Resources and Energy Committee to the full House chamber. DEP twice requested the Pennsylvania Legislative Reference Bureau (LRB) to publish the RGGI Regulation in the Pennsylvania Bulletin. *See* 45 Pa.C.S. §724(a) (requiring preliminary publication of regulations in Pennsylvania Bulletin). LRB, however, denied the requests. The full House adopted the concurrent resolution disapproving the RGGI Regulation, but on January 10, 2022, Governor Wolf vetoed it.

On February 3, 2022, then-Secretary of DEP and Chairman of EQB, Patrick McDonnell,[3] filed a petition for review in the Commonwealth Court's original jurisdiction. The named respondents were LRB; Vincent C. DeLiberato, Jr., Director of LRB; and Amy Mendelsohn, Director of the Pennsylvania Code and Bulletin (LRB Respondents). The petition claimed the RGGI Regulation should be deemed approved by the General Assembly because the House did not adopt the concurrent resolution disapproving the RGGI Regulation within the deadlines set forth in Section 7(d) of the Regulatory Review Act (RRA).[4] Accordingly, the petition sought a writ of mandamus compelling LRB to *5 publish the RGGI Regulation in the Pennsylvania Bulletin. The petition also sought a declaratory judgment that LRB's prior refusal to publish the RGGI Regulation was unlawful, and the RGGI Regulation had been deemed approved by the General Assembly as a matter of law. In addition to its petition for review, DEP filed an application for expedited special and summary relief.

3 Interim Acting Secretary of DEP and Interim Acting Chairperson of EQB Jessica Shirley has been substituted as a party in this Court. *See* Pa.R.A.P. 502(c). For ease of discussion, we simply refer to this party as DEP.

4 Section 7(d) provides:

Upon receipt of the commission's order pursuant to subsection (c.1) or at the expiration of the commission's review period if the commission does not act on the regulation or does not deliver its order pursuant to subsection (c.1), one or both of the committees may, within 14 calendar days, report to the House of Representatives or Senate a concurrent resolution and notify the agency. During the 14-calendar-day period, the agency may not promulgate the final-form or final-omitted regulation. If, by the expiration of the 14-calendar-day period, neither committee reports a concurrent resolution, the committees shall be deemed to have approved the final-form or final-omitted regulation, and the agency may promulgate that regulation. If either committee reports a concurrent resolution before the expiration of the 14-day period, the Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, from the date on which the concurrent resolution has been reported, to adopt the concurrent resolution. If the General Assembly adopts the concurrent resolution by majority vote in both the Senate and the House of Representatives, the concurrent resolution shall be presented to the Governor in accordance with section 9 of Article III of the Constitution of Pennsylvania. If the Governor does not return the concurrent resolution to the General Assembly within ten calendar days after it is presented, the Governor shall be deemed to have

> approved the concurrent resolution. If the Governor vetoes the concurrent resolution, the General Assembly may override that veto by a two-thirds vote in each house. The Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, to override the veto. If the General Assembly does not adopt the concurrent resolution or override the veto in the time prescribed in this subsection, it shall be deemed to have approved the final-form or final-omitted regulation. Notice as to any final disposition of a concurrent resolution considered in accordance with this section shall be published in the Pennsylvania Bulletin. The bar on promulgation of the final-form or final-omitted regulation shall continue until that regulation has been approved or deemed approved in accordance with this subsection. If the General Assembly adopts the concurrent resolution and the Governor approves or is deemed to have approved the concurrent resolution or if the General Assembly overrides the Governor's veto of the concurrent resolution, the agency shall be barred from promulgating the final-form or final-omitted regulation. If the General Assembly does not adopt the concurrent resolution or if the Governor vetoes the concurrent resolution and the General Assembly does not override the Governor's veto, the agency may promulgate the final-form or final-omitted regulation. The General Assembly may, at its discretion, adopt a concurrent resolution disapproving the final-form or final-omitted regulation to indicate the intent of the General Assembly but permit the agency to promulgate that regulation.

71 P.S. §745.7(d).

On February 24, 2022, three members of the Pennsylvania House of Representatives — then-Speaker Bryan Cutler, then-Majority Leader Kerry Benninghoff, *6 and then-Chairman of the House Environmental Resources and Energy Committee Daryl Metcalfe (Representatives) — filed an application for leave to intervene in DEP's lawsuit. Attached to their intervention application were preliminary objections and an answer in opposition to DEP's application for relief.

The next day, four members of the Pennsylvania Senate — then-President Pro Tempore Jake Corman, then-Senate Majority Leader Kim Ward, Senate Environmental Resources and Energy Committee Chair Gene Yaw, and then-Senate Appropriations Committee Chair Pat Browne (Senators) — also filed an application for leave to intervene. Attached to their intervention application was an answer with new matter and five counterclaims: (1) DEP violated Article II, Section 1 and Article III, Section 9 of the Pennsylvania Constitution,[5] as well as Section 7(d) of the RRA, by sending the RGGI Regulation to LRB for publication before it was approved or deemed approved; (2) the RGGI Regulation exceeds DEP's authority under the Air Pollution Control Act (APCA), 35 P.S. §§4001-4015; (3) the RGGI Regulation violates the General Assembly's exclusive authority to enter into interstate compacts; (4) the RGGI Regulation violates the General Assembly's exclusive authority to impose taxes; and (5) the RGGI Regulation is void *ab initio* because DEP did not follow the public notice and comment procedures required by the Commonwealth Documents Law, 45 P.S. §§1201-1208, and the APCA. Also attached to Senators'

intervention application was an answer to DEP's application for *7 relief. Senators requested that the court accept these attached pleadings if they were granted permission to intervene. *See* Senators' Application for Leave to Intervene, 2/25/22 at ¶81.

5 Article II, Section 1 states: "The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives." Pa. Const. art. II, §1. Article III, Section 9 provides: "Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the questions of adjournment or termination or extension of a disaster emergency declaration as declared by an executive order or proclamation, or portion of a disaster emergency declaration as declared by an executive order or proclamation, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill." Pa. Const. art. III, §9.

DEP filed written consents to intervention by Senators and Representatives. Accordingly, on March 3, 2022, the Commonwealth Court, per Judge Wojcik sitting as a single judge, granted the applications to intervene and accepted for filing the attached pleadings.

On March 25, 2022, Senators filed an application for a preliminary injunction of the RGGI Regulation. Representatives joined in the application. DEP filed a reply to new matter and answer to Senators' counterclaims. DEP also filed an answer to Senators' application for a preliminary injunction.

On April 4, 2022, the full Pennsylvania Senate held a vote to override Governor Wolf's veto of the General Assembly's concurrent resolution disapproving the RGGI Regulation but was two votes short of the required two-thirds majority. Thereafter, on April 20, 2022, producers of carbon-free energy, Constellation Energy Corporation and Constellation Energy Generation LLC (Constellation) filed an application to intervene in the ongoing litigation, to support DEP and the legality of the RGGI Regulation.

On April 25, 2022, Nonprofits filed an application to intervene in the litigation. Specifically, Nonprofits sought to defend the RGGI Regulation under the Environmental Rights Amendment (ERA).[6] *See* Nonprofits' Application for Leave to Intervene, 4/25/22 at ¶¶6-7, 9, 56-58, 65. *8

6 The ERA provides:

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

Pa. Const. art. I, §27.

Also on April 25, 2022, in a separate action brought in the Commonwealth Court's original jurisdiction, a collection of nine corporate, nonprofit, and union entities, which we refer to collectively as Bowfin,[7] filed a petition for review requesting the court declare the RGGI Regulation invalid and null and void, and enjoin DEP and EQB from implementing, administering, or enforcing it. Bowfin also separately applied for a preliminary injunction enjoining DEP and EQB from implementing, administering, or enforcing the RGGI Regulation during the pendency of Bowfin's action. Subsequently, the Nonprofits and two additional nonprofit organizations, Natural

Resources Defense Council and Environmental Defense Fund, applied to intervene in the Bowfin case, as did Constellation.[8]

[7] The specific entities are Bowfin Keycon Holdings, LLC; Chief Power Finance II, LLC; Chief Power Transfer Parent, LLC; Keycon Power Holdings, LLC; Genon Holdings, Inc.; Pennsylvania Coal Alliance; United Mine Workers of America; International Brotherhood of Electrical Workers; and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.

[8] For ease of discussion, the nonprofit organizations involved in the Bowfin case are referred to herein as Nonprofits, together with those in DEP's case.

Because the original case initiated by DEP and the later Bowfin case involved overlapping issues, the Commonwealth Court held a joint hearing for both cases, on May 10 and May 11, 2022, regarding the applications for preliminary injunction. The court permitted Nonprofits and Constellation to participate in the hearing subject to its future disposition of their pending applications to intervene. The court also held a joint hearing on June 24 and June 27, 2022, regarding the intervention applications filed in both cases. DEP did not raise arguments based on the ERA, but Nonprofits did. On June 28, 2022, *9 the Commonwealth Court denied intervention to Constellation and Nonprofits in both cases.

The RGGI Regulation was finally codified in the July 2022 edition of the Pennsylvania Code Reporter, and then at 25 Pa. Code §§145.301-145.409. On July 8, 2022, the Commonwealth Court issued separate orders granting preliminary injunctions of the RGGI Regulation in this case and the Bowfin case. The court required Bowfin to file a bond in the amount of $100,000,000 to secure the injunction in its case.[9]

[9] The court held Senators were not required to file a bond pursuant to *Lewis v. City of Harrisburg*, 631 A.2d 807, 812 (Pa. Cmwlth. 1993) (holding District Attorney was exempt from bond requirement for preliminary injunction under Pa.R.C.P. 1531(b)(1)).

The Commonwealth Court filed a joint opinion in support of its June 28, 2022 orders denying intervention. The court recognized a person "shall be permitted to intervene" in an action if "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." *Ziadeh v. Pa. Legis. Ref. Bureau*, 41 MD 2022 & 247 MD 2022, slip op. at 10 (Pa. Cmwlth., July 8, 2022) (unpublished memorandum) (Wojcik, J.), *quoting* Pa.R.C.P. 2327. The court further observed "an application for intervention may be refused" if "the interest of the petitioner is already adequately represented[.]" *Id.* at 11, *quoting* Pa.R.C.P. 2329. The court determined Nonprofits "failed to prove a legally enforceable interest or injury to . . . themselves." *Id.* at 19. The court also ruled, however, that Nonprofits "provided sufficient credible evidence to establish that they have a legally enforceable interest by virtue of injury to their members." *Id.* at 21.[10] Nevertheless, the court decided Nonprofits' interests were adequately represented by DEP. The court *10 explained that under the ERA and APCA, "the protection of our air resources is of the highest priority" for DEP. *Id.* at 22. It noted "[n]one of the [Nonprofits'] member witnesses could articulate any reason why the DEP is not adequately protecting their interests." *Id.* The court also dismissed as "speculative" Nonprofits' claims that DEP's settlement of the litigation could impact the use of auction proceeds or change the RGGI Regulation. *Id*. at 22-23. In any event, the court opined Nonprofits lack a legally enforceable interest in how the auction proceeds are spent "so long as they are used consistent with the APCA[,]" and any changes to the RGGI Regulation would have to undergo the

rulemaking process once again, where Nonprofits would have a say in the proceedings. *Id.* at 23. Finally, the court determined the testimony of Nonprofits' witnesses concerning "poor experiences with government officials" was not indicative of DEP's lack of commitment to defending the RGGI Regulation. *Id.* Accordingly, the Commonwealth Court concluded Nonprofits were not entitled to intervene.

10 The court excluded the Natural Resources Defense Council from this ruling. *See id.* at 21 n.13 ("[W]e cannot conclude that the Natural Resources Defense Council presented evidence of an injury to one of its members."). The Natural Resources Defense Council applied to intervene in the Bowfin case only, and did not appeal the denial of intervention.

On July 20, 2022, Nonprofits filed the present appeals from the denial of intervention (85 MAP 2022) and the grant of the preliminary injunction (87 MAP 2022). While these appeals were pending in this Court, proceedings continued in the Commonwealth Court. Notably, on November 1, 2023, the Commonwealth Court held the RGGI Regulation "constitutes a tax that has been imposed by DEP and EQB in violation of the Pennsylvania Constitution." *Ziadeh v. Pa. Legis. Ref. Bureau*, 41 MD 2022, 2023 WL 7170737, at *5 (Pa. Cmwlth., Nov. 1, 2023) (unpublished memorandum); *Bowfin Keycon Holding, LLC v. Pennsylvania Dep't of Env't Prot.,* 247 MD 2022, 2023 WL 7171547, at *4 (Pa. Cmwlth., Nov. 1, 2023) (unpublished memorandum). Accordingly, the Commonwealth Court issued orders in this case and the Bowfin case declaring the RGGI Regulation void and permanently enjoining DEP from enforcing it. On December 18, 2023, this Court ordered supplemental briefing regarding whether the *11 permanent injunction rendered these appeals moot. The parties complied with our order, and we now address Nonprofits' appeals.[11]

11 There have been numerous other related appeals to this Court: 79 MAP 2022 (DEP's appeal from preliminary injunction in this case) (discontinued); 80 MAP 2022 (DEP's appeal from preliminary injunction in Bowfin case) (dismissed as moot); 81 MAP 2022 (Constellation's appeal from denial of intervention in this case) (quashed); 82 MAP 2022 (Constellation's appeal from denial of intervention in Bowfin case) (quashed); 83 MAP 2022 (Constellation's appeal from preliminary injunction in this case) (quashed); 84 MAP 2022 (Constellation's appeal from preliminary injunction in Bowfin case) (quashed); 86 MAP 2022 (Nonprofits' appeal from denial of intervention in Bowfin case) (reversed via contemporaneously filed order); 88 MAP 2022 (Nonprofits' appeal from preliminary injunction in Bowfin case) (dismissed as moot); 89 MAP 2022 (Bowfin's appeal of amount of preliminary injunction bond in Bowfin case) (affirmed by equally divided Court); 106 MAP 2023 (DEP's appeal from permanent injunction in this case) (pending); 107 MAP 2023 (DEP's appeal from permanent injunction in Bowfin case) (pending); 110 MAP 2023 (Nonprofits' appeal from permanent injunction in this case) (pending); 111 MAP 2023 (Nonprofits' appeal from permanent injunction in Bowfin case) (pending); 113 MAP 2023 (Constellation's appeal from denial of intervention in this case) (pending); 114 MAP 2023 (Constellation's appeal from denial of intervention in Bowfin case) (pending); 115 MAP 2023 (Constellation's appeal from permanent injunction in this case) (pending); and 116 MAP 2023 (Constellation's appeal from permanent injunction in Bowfin case) (pending).

II. Intervention (85 MAP 2022)

First, we consider Nonprofits' appeal from the Commonwealth Court's order denying their application for leave to intervene in this case.

Nonprofits insist the denial is an immediately appealable collateral order under Pa.R.A.P. 313(b). They assert the issue of intervention is separable from the underlying challenges to the RGGI Regulation. In addition, they maintain their right to intervene is too important to be denied review because they aim to protect their members' health, safety, property rights, and the constitutional right to clean air and preservation of the environment under the ERA. Nonprofits also argue their right will be irreparably lost if review is postponed because a party must appeal a denial of intervention within thirty days or lose the right to appeal the order entirely. *See* Nonprofits' Brief at 3-5. *12

As to the merits of the intervention question, Nonprofits argue their members have rights under the ERA, these rights are implicated by this case, and DEP is not adequately protecting these rights. They contend this Court has looked to trust law in addressing questions arising under the ERA, and trust law supports their intervention here. Specifically, they assert private trust law permits beneficiaries to intervene when their interests diverge from those of the trustee, charitable trust law allows for parties with special interests to enforce charitable trusts, and public trust law supports the rights of beneficiaries to intervene in litigation affecting the trust. Nonprofits insist DEP, in its role as trustee under the ERA, has an interest in narrowly interpreting its obligations under the ERA so as not to take on additional trustee duties, which can lead to a divergence in interests. They contend this divergence of interests would be evident if there is a settlement of this case. Indeed, they argue the present record reflects DEP is not adequately representing their interests. Nonprofits emphasize DEP's creation of set-aside accounts, the separate rulemaking petition submitted to DEP by Citizens for Pennsylvania's Future and the Clean Air Council urging adoption of an economy-wide greenhouse gas budget trading program, DEP's failure to present expert evidence regarding environmental harms at the preliminary injunction hearing, its failure to raise arguments under the ERA, and prior disagreements with how funds were disbursed from the Clean Air Fund. *See* Nonprofits' Brief at 16-39.

In response, Senators initially contend the order denying intervention to Nonprofits is interlocutory and unappealable, and therefore Nonprofits' appeal from it should be dismissed. They argue the order is not appealable as collateral because Nonprofits' interests are already adequately represented by DEP, and thus are not important enough to justify appellate review. Moreover, on the merits, Senators allege Nonprofits lack a legally enforceable interest permitting intervention. According to Senators, Nonprofits *13 seek only to defend their preferred policy while simultaneously injecting political and policy considerations that are wholly inapposite to Senators' counterclaims concerning the separation of powers. They reject Nonprofits' position this case implicates the ERA, but submit that any purported interests under the ERA are indistinguishable from the interests of the public at large, and are already adequately represented by DEP. They contend Nonprofits have not shown their interests diverge from those of DEP, and they are in fact one and the same: to defend the RGGI Regulation. Senators insist the ERA and attendant trust principles do not create any divergence because the ERA is not implicated in the first place, the separate rulemaking and past disagreements do not reflect diverging interests in this case, the prospect of settlement is speculative, and the environmental evidence and arguments Nonprofits fault DEP for failing to present are entirely irrelevant to Senators' counterclaims. Senators allege as well that Nonprofits' own witnesses did not identify any inadequacy in DEP's defense of the RGGI Regulation. Instead, they assert, Nonprofits' witnesses merely recalled past disagreements regarding separate and irrelevant matters, or offered speculation concerning DEP's future defense of the RGGI Regulation. *See* Senators' Brief at 13-41.

Representatives likewise contend the order denying leave to intervene is not an appealable collateral order. In their view, Nonprofits lack a right too important to be denied review. Moreover, Representatives take the position Nonprofits lack a claim that will be irreparably lost if review is postponed to final judgment because they have not alleged any claims against them or Senators, nor have they raised any defenses to Senators' counterclaims. Regarding the substance of the intervention issue, Representatives maintain the Commonwealth Court was correct to conclude Nonprofits' interests are adequately represented by DEP. They argue Nonprofits posit three areas where their interests supposedly diverge from DEP: the distribution of auction proceeds, *14 the separate rulemaking related to greenhouse gas emissions, and application of the ERA. However, Representatives submit DEP has not yet determined how the auction proceeds will be spent, any eventual spending plan will be subject to public input, and Nonprofits have no legally enforceable interest in how the money is spent so long as it is spent consistently with the APCA. In addition, they assert Nonprofits' interest in a completely different rulemaking is not sufficient to show that their interest in the RGGI Regulation is inadequately represented by DEP. Further, Representatives argue DEP is adequately representing Nonprofits' rights under the ERA since DEP is a trustee with a duty to protect the Commonwealth's public natural resources. They insist this appeal does not involve a question of harm under the ERA, but rather exclusively centers on DEP's disregard of separation of powers. *See* Representatives' Brief at 19-25.

In their reply brief, Nonprofits argue Senators and Representatives have waived any challenge to the Commonwealth Court's finding that Nonprofits, by virtue of injury to their members, have legally enforceable health and environmental interests, by failing to dispute it in their briefing. They claim they are not seeking intervention merely to defend the RGGI Regulation or to further a particular policy preference, but also to protect their rights under the ERA. Nonprofits assert the possibility that the rights of a putative intervenor are adequately represented by an existing party goes to the substance of the intervention question, not the preliminary jurisdictional issue of whether the collateral order doctrine is satisfied. They contend a party seeking appeal through the collateral order doctrine need not be a plaintiff raising a claim, but can be any party presenting an important question for resolution. Nonprofits submit this case implicates the ERA and also involves a separation of powers issue. *See* Nonprofits' Reply Brief at 2-16.

In Nonprofits' supplemental brief, they contend their appeal was not rendered moot by the permanent injunction. They claim this Court can still provide meaningful relief by *15 allowing them to participate in DEP's appeal from the permanent injunction, as well as their own appeal from the permanent injunction. They argue an appeal of an order denying intervention is not rendered moot by the entry of final judgment in the underlying action pursuant to *Atticks v. Lancaster Township Zoning Hearing Board*, 915 A.2d 713, 716 (Pa. Cmwlth. 2007) ("Neighbors did not choose to pursue an appeal from the interlocutory order; instead, they waited until the trial court issued its final order and then appealed that part of the order denying their Petition. We reject the Atticks' argument that Neighbors' decision to postpone their appeal rendered that appeal moot."). Alternately, Nonprofits insist their appeal of the permanent injunction subsumes their challenge to the denial of intervention under the merger rule, which treats any prior interlocutory orders as merging into the final judgment. Finally, they submit a decision finding their appeal moot would violate their state constitutional rights to appeal and to procedural due process. *See* Nonprofits' Supplemental Brief at 2-8, 17-23.[12]

[12] In addition to addressing mootness, Nonprofits argue their appeals at 110 MAP 2023 and 111 MAP 2023 should not be

quashed, and that their present appeal at 85 MAP 2022, as well as their appeal at 86 MAP 2022, should be consolidated with the appeals at 106 MAP 2023, 107 MAP 2023, 110 MAP 2023, and 111 MAP 2023. *See id.* at 8-17.

Senators maintain the appeal is moot. They claim Pa.R.C.P. 2327 permits intervention in a pending action only, and the underlying action is no longer pending as a result of the Commonwealth Court's grant of a permanent injunction. Thus, they argue, any decision by this Court regarding the propriety of the denial of intervention would have no effect. They assert *Atticks* conflicts with *In re Barnes Foundation*, 871 A.2d 792 (Pa. 2005), and should not be followed. *See Barnes,* 871 A.2d at 794 ("[A] common pleas court's order denying intervention is one type of order which must be appealed within thirty days of its entry under Rule of Appellate Procedure 903, or not at all, precisely because the failure to attain intervenor status forecloses a later appeal."). Senators emphasize Nonprofits have not suggested any of the limited exceptions to the mootness *16 doctrine apply. They contend dismissing their appeal as moot would not violate Nonprofits' rights because there is no constitutional right to appeal in the absence of a live case or controversy. They likewise dispute Nonprofits' claim of a due process violation, arguing a prerequisite to such a claim is the deprivation of a right, and Nonprofits have no right to a substantive decision on the intervention issue where there is no case or controversy. *See* Senators' Supplemental Brief at 8-14.

Representatives also take the position Nonprofits' appeal is moot. They submit there is no case or controversy in which Nonprofits have a stake in the outcome; Nonprofits thus lack a legally enforceable interest in the case. Additionally, Representatives claim a decree authorizing Nonprofits' participation could have no practical effect because Nonprofits did not raise any claim or defense under the ERA in the Commonwealth Court and instead mirrored the advocacy of DEP. As such, Representatives contend Nonprofits have no claim that is irreparably lost if the appeal is dismissed. They also note Nonprofits can raise their ERA arguments in *amicus curiae* briefs to this court. *See* Representatives' Supplemental Brief at 7-10.

A. Appealability

Preliminarily, we address whether the order denying intervention is appealable. *See Commonwealth v. Kennedy*, 876 A.2d 939, 943 (Pa. 2005) (holding appealability of order "is an issue of this Court's jurisdiction to entertain an appeal of such an order."). Whether an order is appealable "is a question of law." *Rae v. Pa. Funeral Dirs. Ass'n*, 977 A.2d 1121, 1126 n.8 (Pa. 2009). "As such, our standard of review is *de novo* and our scope of review is plenary." *Id.* Pennsylvania law "allow[s] for an appeal as of right from an order denying intervention in circumstances that meet the requirements of the collateral order doctrine as embodied in [Pa.R.A.P.] 313." *Barnes*, 871 A.2d at 794. Rule 313 provides: *17

> **(a) General Rule.** An appeal may be taken as of right from a collateral order of a trial court or other government unit.
>
> **(b) Definition.** A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Pa.R.A.P. 313. Thus, a party may appeal as of right from an interlocutory order denying intervention "if the order satisfies the three requirements set forth in Rule 313(b) - separability, importance, and irreparability." *Shearer v. Hafer*, 177 A.3d 850, 858 (Pa. 2018). "[A]n order is separable from the main cause of action if it is entirely distinct from the underlying

issue in the case and if it can be resolved without an analysis of the merits of the underlying dispute." *K.C. v. L.A.*, 128 A.3d 774, 778 (Pa. 2015) (quotation marks and citation omitted). A right is important if "the interests that would potentially go unprotected without immediate appellate review . . . are significant relative to the efficiency interests sought to be advanced by adherence to the final judgment rule." *Ben v. Schwartz*, 729 A.2d 547, 552 (Pa. 1999) (citation omitted). "Further, the right[ ] involved must implicate interests deeply rooted in public policy [and] going beyond the particular litigation at hand." *Shearer*, 177 A.3d at 859 (quotation marks and citation omitted, alteration in original). Finally, the irreparability prong is met if the "claim . . . will be irreparably lost if appellate review is postponed until final judgment." *Brooks v. Ewing Cole, Inc.*, 259 A.3d 359, 372 (Pa. 2021). "We construe the collateral order doctrine narrowly, and insist that each one of its three prongs be clearly present before collateral appellate review is allowed." *Commonwealth v. Pownall*, 278 A.3d 885, 903 (Pa. 2022) (quotation marks and citation omitted). "This approach avoids undue corrosion of the final order rule and prevents delay resulting from piecemeal review of trial court decisions." *Id.* *18

Here, each of the three requirements of the collateral order doctrine is established. First, the issue of whether Nonprofits are entitled to intervene in the litigation is distinct from, and can be decided without intruding into, the underlying dispute concerning the legality of the RGGI Regulation. As detailed below, the question of Nonprofits' intervention involves consideration of whether they are entitled to party status pursuant to Pa.R.C.P. 2327 and Pa.R.C.P. 2329. This analysis does not overlap with an assessment of the lawfulness of the RGGI Regulation. The first prong of the collateral order doctrine is met. *See K.C.*, 128 A.3d at 779 (order denying petition to intervene in child custody matter separable from main cause of action).

Second, Nonprofits claim the right to intervene to protect, *inter alia*, environmental well-being. *See* Nonprofits' Brief at 4. This interest is significant and shared by the public at large. *See Franklin Twp. v. Pa. Dep't of Env't Res.*, 452 A.2d 718, 720 (Pa. 1982) ("Aesthetic and environmental well-being are important aspects of the quality of life in our society[.]"). Hence, the importance prong is satisfied here.

Third, a party who is denied intervention and who satisfies the requirements of Rule 313 must appeal from the order denying intervention within thirty days of its entry or lose the right to appeal the order entirely. *See K.C.*, 128 A.3d at 780; *Barnes*, 871 A.2d at 794. Consequently, Nonprofits' claim to intervention will be lost forever if they are not permitted to appeal from the decision denying intervention.

Appellees' arguments in opposition to application of the collateral order doctrine are unpersuasive. Whether DEP is adequately representing Nonprofits' interests is irrelevant to the importance inquiry. Simply because an existing party may satisfactorily represent a putative intervenor's interests does not mean those interests are not significant. Shared interests may nonetheless be important ones. Similarly, whether Nonprofits have raised unique claims or defenses against appellees is not relevant to the *19 irreparability prong. The pertinent "claim" in this context is Nonprofits' claim to intervention, and this claim will be irretrievably lost if they are not permitted to appeal from the denial of intervention. *See K.C.*, 128 A.3d at 780.

We are likewise not persuaded by the arguments raised in Justice Mundy's concurring and dissenting opinion (Mundy CDO). Regarding the importance prong, Justice Mundy emphasizes there are other important interests at stake in this litigation besides "the environment," such as "the availability of affordable electricity for low-income citizens and the presence of jobs in Pennsylvania's energy sector." Mundy CDO at 3.

We don't disagree, but we fail to see how this undermines Nonprofits' satisfaction of the importance prong. Nonprofits' important environmental interests are not rendered any less so by the presence of other significant concerns. In addition, Justice Mundy "would . . . conclude there is no important right, deeply rooted in public policy and shared by the public at large, to have the government require that Pennsylvania's electricity producers participate in RGGI through the administrative regulation challenged in this matter." *Id.* at 4. However, the importance prong simply requires the appellant to have an important interest, not necessarily a meritorious claim to relief. In *Ben*, for instance, this Court held an interlocutory appeal from an order dismissing a motion to quash a subpoena on privilege grounds "met" "[t]he importance criterion" (as well as the two other prongs of the collateral order standard) but ultimately concluded there was "no merit to the . . . claim of privilege[.]" 729 A.2d at 552-53.

Regarding the irreparability prong, Justice Mundy insists the relevant "claim" under this prong is not Nonprofits' claim to intervention; rather, the "claim" under the third prong "substantially overlap[s]" with the "right" under the importance prong. Mundy CDO at 6. This is contrary to the basic rule of construction that when a rule or statute uses different words, it is presumed the words have different meanings. *See, e.g.*, *HTR Restaurants, Inc. v. Erie Insurance Exchange*, *20 307 A.3d 49, 67 (Pa. 2023). If the "claim" under the third prong were synonymous with the "right" under the second prong, Rule 313 would not have used distinct words to refer to the same thing.[13] Similarly, because the pertinent "claim" for purposes of the irreparability prong is the claim to intervention, not the underlying right or interests sought to be validated thereby, Justice Mundy's assertion Nonprofits' "environmental interests are fully vindicable through the legislative process" is inapt. Mundy CDO at 7. Any conceivable redress via the legislative process obviously cannot possibly include an order granting Nonprofits' claim to intervene in this case. Their claim to intervention, the sole focus of the analysis under the irreparability prong, is vindicable solely through the judicial process.

13 Neither of the cases cited by Justice Mundy — *Commonwealth v. Harris*, 32 A.3d 243 (Pa. 2011), and *Commonwealth v. Wright*, 78 A.3d 1070 (Pa. 2013) — holds the "right" under the second prong and the "claim" under the third prong are one and the same. *See* Mundy CDO at 6 n.2. On the contrary, these decisions reiterate the diverging language employed by the Rule itself. *See Harris*, 32 A.2d at 248 ("Pennsylvania Rule of Appellate Procedure 313(b) permits a party to take an immediate appeal as of right from an otherwise unappealable interlocutory order if the order meets three requirements: (1) the order must be separable from, and collateral to, the main cause of action; (2) the right involved must be too important to be denied review; and (3) the question presented must be such that if review is postponed until after final judgment, the claim will be irreparably lost.") (emphasis added); *Wright*, 78 A.3d at 1077 ("[A] non-final ruling is appealable where three conditions are satisfied: (1) it is separable from and collateral to the main cause of action; (2) the right involved is too important to be denied review; and (3) if review is postponed, the claim will be irreparably lost.") (emphasis added).

Justice Brobson's Concurring and Dissenting Opinion (Brobson CDO) also contends the "right" under prong two and the "claim" under prong three are coextensive. However, in contrast to Justice Mundy, who argues both prongs require consideration of the underlying interests at stake, Justice Brobson insists these separate requirements each involve the claim to intervention. *See* Brobson CDO at 3 ("[A]s with all orders denying intervention, the 'right involved' is the right, under Rule 2327 of the Pennsylvania Rules of Civil Procedure, to intervene."). This

21 argument too contravenes the fundamental *21 interpretive principle that the choice of distinct words in Rule 313 indicates distinct meanings. *See, e.g.*, *HTR Restaurants*, 307 A.3d at 67. As each of the three elements of the collateral order doctrine is satisfied here, the Commonwealth Court's denial of intervention is appealable as of right under Rule 313, and we have jurisdiction over the appeal.

B. Mootness

We turn to the issue of mootness. Mootness is a prudential rather than jurisdictional concern, but " [t]his Court generally will not decide moot questions." *Pap's A.M. v. City of Erie*, 812 A.2d 591, 599 (Pa. 2002). "An issue before a court is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Yount v. Pa. Laws. Fund for Client Sec.*, 291 A.3d 349, 354 (Pa. 2023), *quoting Commonwealth v. Holt*, 273 A.3d 514, 549 (Pa. 2022); *see also Burke ex rel. Burke v. Indep. Blue Cross*, 103 A.3d 1267, 1271 (Pa. 2014) ("The claim of mootness . . . stands on the predicate that a subsequent change in circumstances has eliminated the controversy so that the court lacks the ability to issue a meaningful order, that is, an order that can have any practical effect."). "[A]n issue may become moot during the pendency of an appeal due to an intervening change in the facts of the case[.]" *Pilchesky v. Lackawanna Cnty.*, 88 A.3d 954, 964 (Pa. 2014). We have recognized exceptions to the mootness doctrine "for issues that are of great public importance or are capable of repetition while evading review." *Burke,* 103 A.3d at 1271, *quoting Commonwealth ex rel. Kearney v. Rambler*, 32 A.3d 658, 663 (Pa. 2011). Also, we have indicated mootness may not preclude review "where a party will suffer some detriment without a court decision." *Pilchesky*, 88 A.3d at 964-65; *accord Commonwealth, Dep't of Env't Prot. v. Cromwell Twp., Huntingdon Cnty.*, 32 A.3d 639, 652 (Pa. 2011); *Pub. Def's Off. of Venango Cnty. v.* 22 *Venango Cnty. Ct. of Common Pleas,* *22 893 A.2d 1275, 1279-80 (Pa. 2006).

Presently, this Court's decision regarding Nonprofits' intervention can have a practical effect on the existing controversy. If we determine the Commonwealth Court abused its discretion in denying intervention, then Nonprofits should be parties with standing to pursue their appeal of the permanent injunction docketed at 110 MAP 2023. On the other hand, if we conclude Nonprofits were properly denied intervention, their appeal of the Commonwealth Court's final judgment would have to be quashed. "[T]he general rule is that only parties may appeal a decision." *Barnes,* 871 A.2d at 794; *see* Pa.R.A.P. 501 ("Except where the right of appeal is enlarged by statute, any **party** who is aggrieved by an appealable order, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom.") (emphasis added). A putative intervenor "unsuccessful in [its] effort to intervene in the [trial court] proceedings[has] no greater rights than would be available to any other non-party[.]" *Barnes,* 871 A.2d at 794. Because our resolution of Nonprofits' appeal from the denial of their motion to intervene will impact ongoing litigation, the appeal is not moot. *See Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 69 F.4th 588, 593 (9th Cir. 2023) ("Generally, if the underlying litigation is complete, an appeal of a denial of intervention is moot and must be dismissed. . . . But if we could permit the proposed intervenors to participate in ongoing district court proceedings or in an appeal of a district court's merits decision, that would amount to 'effectual relief,' so the intervention dispute would remain alive."); *CVLR Performance Horses, Inc. v. Wynne*, 792 F.3d 469, 475 (4th Cir. 2015) ("[D]ismissal of the underlying action does not automatically moot a preexisting appeal of the denial of a motion to intervene."); *Alt. Rsch. and Dev. Found. v. Veneman*, 262 F.3d 406, 410 (D.C. Cir. 2001) ("[O]ur jurisdiction to review th[e] denial [of intervention] is not affected by the fact

23 that the *23 district court denied intervention after the stipulated dismissal was entered; the dismissal does not render the appeal moot. . . . If this court were to conclude that [appellant] was entitled to intervene in the litigation, [appellant] would have standing to appeal the district court's denial of the Rule 60(b) motion attacking the stipulated dismissal, and we would review that Rule 60(b) denial.") (emphasis omitted); *Purcell v. BankAtlantic Fin. Corp.*, 85 F.3d 1508, 1511 n.3 (11th Cir. 1996) (holding appeal from denial of intervention was not mooted by subsequent final judgment because "[i]f we conclude that [appellant] is entitled to intervene as of right, then [appellant] has standing as a party to appeal the district court's judgment based on the approved settlement agreement, and we would review that judgment.").

It is of course true, as Senators note, that the Commonwealth Court issued a final order permanently enjoining the RGGI Regulation. Yet, this does not mean there is no live controversy remaining. Nonprofits appealed the permanent injunction (110 MAP 2023), as did DEP (106 MAP 2023) and Constellation (115 MAP 2023). The litigation is not over, and we can still practically affect the case by resolving the intervention question. *Cf. West Coast Seafood Processors Ass'n v. Nat. Res. Def. Council, Inc.*, 643 F.3d 701, 704 (9th Cir. 2011) ("[Appellant] appeals from the denial of its motion to intervene in a case that the district court has since decided, . . . from which neither party has appealed. Because the underlying litigation is over, we cannot grant [appellant] any 'effective relief' by allowing it to intervene now. The appeal is therefore moot."). Moreover, Representatives' contention Nonprofits lack a legally enforceable interest incorrectly conflates the mootness issue with the distinct question of intervention. *See* Representatives' Supplemental Brief at 7-8. A legally enforceable interest is a requirement for intervening in a civil case, not a component of the mootness inquiry. *See* Pa.R.C.P. 2327(4). Whether a claim will be

24 "irreparably lost" in the absence of an appeal *24 is likewise not a part of the mootness inquiry. *See* Representatives' Supplemental Brief at 9. Rather, this is an element of the collateral order doctrine. *See* Pa.R.A.P. 313(b). We are not convinced by appellees' arguments the appeal is moot.

C. Merits

Turning to the merits of the intervention issue, "[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.'" *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 947 (Pa. 1986), *quoting Darlington v. Reilly*, 69 A.2d 84, 86 (Pa. 1949). Discretion is abused "if, in reaching a conclusion, [the] law is overridden or misapplied, or the judgment exercised is manifestly unreasonable or lacking in reason[.]" *In re Deed of Tr. of Rose Hill Cemetery Ass'n Dated Jan. 14, 1960*, 590 A.2d 1, 3 (Pa. 1991).

Unless our appellate rules prescribe otherwise, the practice relating to pleadings in cases arising in the Commonwealth Court's original jurisdiction pursuant to a petition for review are governed by the appropriate Rules of Civil Procedure. *See* Pa.R.A.P. 1517 ("Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied."); *see also* Pa.R.A.P. 106 ("Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied."). Pursuant to Pa.R.C.P. 2327, "[a]t any time during the pendency of an action, a person not a party thereto shall be permitted to intervene

25 therein" if: *25

> (1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or
>
> (2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or
>
> (3) such person could have joined as an original party in the action or could have been joined therein; or
>
> (4) **the determination of such action may affect any legally enforceable interest of such person** whether or not such person may be bound by a judgment in the action.

Pa.R.C.P. 2327 (emphasis added).

Whether a potential party has a legally enforceable interest permitting intervention under Rule 2327(4) "turns on whether they satisfy our standing requirements." *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016); *see also See Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, 309 A.3d 808, 843 (Pa. 2024) ("To intervene, the prospective intervenor must first establish that she has standing."). "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 Twp. 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 of Com.*, 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.* An association has standing as a representative of its members, even in the absence of injury to itself, if it establishes at least one of its members has standing individually. *See Robinson*, 83 A.3d at 922; *Pa. Med. Soc'y*, 39 A.3d at 278. *26

Under Pa.R.C.P. 2329, an application for intervention satisfying Rule 2327(4) or falling within one of the other classes enumerated in the rule "may be refused" if:

> (1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or
>
> (2) the **interest of the petitioner is already adequately represented**; or
>
> (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa.R.C.P. 2329 (emphasis added). The word "adequately" in Rule 2329(2) means representation "to a satisfactory or acceptable extent."[14] Thus, the mere fact an existing party may align with the putative intervenor's legally enforceable interests "is not determinative of whether such representation is adequate so as to support the refusal of intervention, where it is also shown that such party is not effectively representing the [intervenor's] interests." 7 Goodrich-Amram 2d §2329:7. In other words, " [t]he phrase 'adequately represented'" calls for "both an inquiry whether there is of record a [party] who technically represents the interests of the [intervenor] and also an inquiry whether such representatives are in fact performing their function of representation in a proper and efficient manner." *Id.* "Reading Rule 2329 in conjunction with Rule 2327, . . . the effect of Rule 2329 is that if the petitioner is a person coming within one of the classes described in Rule 2327, the allowance of intervention is not discretionary, but is mandatory, unless one of the grounds for refusal of intervention enumerated in Rule 2329 is

present." *In re Pa. Crime Comm'n*, 309 A.2d 401, 408 n.11 (Pa. 1973) (quotation marks and citation omitted). *27

[14] *Adequately*, Google Dictionary, *https://www.google.com/search?q=adequately&rlz=* 1C1CHBF_enUS941US941&oq=adequately&gs_lcrp=EgZjaHJvbWUyCQgAEEUYORiA BDIHCAEQABiABDIHCAIQABiABDIHCAMQABiABDIHCAQQABiABDIHCAUQABiABDI HCAYQABiABDIHCAcQABiABDIHCAgQABiABDIHCAkQABiABKgCCLACAQ&sourceid =chrome&ie=UTF-8 (last visited Apr. 2, 2024).

Presently, Nonprofits established "a substantial, direct and immediate interest in the outcome of the litigation" entitling them to intervention under Rule 2327(4). *Robinson*, 83 A.3d at 917. They presented the testimony of individual members regarding alleged harms they are suffering due to CO2 emissions from fossil-fuel-fired power plants. Specifically, Margaret Church testified she is a member of Citizens for Pennsylvania's Future and the Environmental Defense Fund who has lived in Bethlehem, Pennsylvania for over fifty years. Ms. Church claimed that in the last twenty-five years, the heat, rain, and flooding in her area have all gotten worse, changes she attributed to climate change. She alleged that as a "senior[,]" the hotter temperatures cause her to worry about dehydration and overheating. Accordingly, she monitors the weather and does not go outside to do yard work if it is too hot. She also monitors the air quality because if it is not good, she experiences breathing difficulties and is unable to do what she wants to do outside. She testified that on poor air quality days, she must stay inside, which leaves her feeling sluggish and depresses her mood. In addition to these personal impacts, Ms. Church expressed concern about the adverse effects of climate change on the lives of her children and grandchildren, especially her young grandson with asthma. *See* N.T. Intervention Hearing, 6/24/22 at 156-59, 161-68.

Echo Alford testified she is a member of the Clean Air Council who lives in Boothwyn, Pennsylvania, two miles from the Marcus Hook Energy Center, a fossil-fuel-fired power plant. She averred the plant causes poor air quality, which can exacerbate her asthma and allergies and prevent her from spending time outdoors. She checks the air quality to determine whether it is safe for her to go outside. She also stated the plant produces "strange" smells, which can cause stomach aches, dizziness, lightheadedness, and headaches. She noted too that her fourteen-year-old son likewise suffers from breathing issues, as well as frequent bloody noses. She asserted she is "most definitely" *28 concerned about pollution from the plant, and her concerns are "often at the forefront of [her] mind[.]" *See* N.T. Intervention Hearing, 6/27/22 at 14-18, 21.

Laura Jacko testified she is a member of the Sierra Club who lives in Verona, Pennsylvania. Ms. Jacko recounted that her husband, like many people in their region, suffers greatly from asthma, and his flare-ups often coincide with poor air quality days. She stated that when her husband is ill with asthma, he is unable to be productive at work or to handle household responsibilities. He is also unable to join her and her four-year-old son in outdoor activities. She noted her son was born prematurely, which she believes may have been caused by the region's poor air quality, and also suffers from weak lungs, which could progress to asthma in the future. She suffers from eco-anxiety related to climate change and has sought care from a therapist to help her regulate her anxiety. *See id.* at 79-80, 85-88.

Nonprofits also adduced expert testimony concerning the environmental and health impacts of CO2 emissions and the RGGI Regulation. Dr. Raymond Najjar, a professor of oceanography at Pennsylvania State University, testified that CO2

emissions, by enhancing the greenhouse effect, are causing the Earth to warm, and Pennsylvania conditions correspond very closely to the global trend of warmer weather. He also explained the release of CO_2 into the atmosphere causes people to become sick from heat-related problems and "makes people die[.]" Indeed, he referenced studies showing the emission of every 5,000 tons of CO_2 leads to one death. Dr. Najjar opined Pennsylvania's implementation of the RGGI Regulation would reduce the amount of CO_2 in the atmosphere and therefore reduce the amount of warming. *See* N.T. Preliminary Injunction Hearing, 5/11/22 at 291, 298-301, 305-06, 313.

In addition, Dr. Deborah Gentile, an allergy and immunology physician and researcher, testified air pollution triggers a variety of ailments, including asthma, *29 cardiovascular disease, heart attacks, strokes, and congestive heart failure. She explained that children and older individuals are at higher risk for the adverse health effects of air pollution. She stated fossil-fuel-fired power plants emit air pollutants and lead to increased levels of PM2.5, a very small air pollutant that can lodge in individuals' breathing tubes and cause tissue damage, asthma and chronic obstructive pulmonary disease. Dr. Gentile opined: "The RGGI [Regulation] would . . . decrease the ambient air pollution that we're exposed to, and that would translate to decreased asthma attacks, decreased asthma deaths, decreased hospitalizations, increased life spans meaning decreased premature death." Similarly, she stated: "I think that [with] incorporation of the RGGI [Regulation] we are definitely going to see the reductions in these pollutants, and we're definitely going to see these improvements in health outcomes." Conversely, she expressed the view that if the RGGI Regulation is not implemented, "we aren't going to see those health benefits. We're putting people at risk of having these health risks, asthma attacks, hospitalizations, even death." *See id.* at 356, 360-61, 364-65, 369, 373-74.

This evidence sufficed to establish the individual members of Nonprofits - Church, Alford, and Jacko - each have standing. First, their interests in the outcome of the litigation are substantial. The members claim specific harms to their well-being, including hotter and wetter weather, poor air quality, breathing difficulties, forced time inside, exacerbated asthma symptoms, worsened allergies, odd smells, dizziness, lightheadedness, headaches, ill loved ones, and eco-anxiety. These specific interests in the outcome of the litigation go beyond the general interest shared by all Pennsylvanians in procuring obedience to the law. At stake for these individuals is not just fidelity to the law but the quality of their lives. Furthermore, their interests in the outcome of this *30 injunction litigation are direct: an injunction deprives them of the RGGI Regulation's purported environmental and health benefits, and their ongoing injuries persist or worsen.

Finally, Nonprofits showed their members' interests in the outcome of this litigation are immediate. The causal connection between the RGGI Regulation and the benefits to the members is neither remote nor speculative for standing purposes. Dr. Gentile testified implementation of the RGGI Regulation would "definitely" cause improvements in the environment and better health outcomes. *Id.* at 374. Because the benefits of the RGGI Regulation are not purely conjectural, neither are the harms members will experience if these benefits are denied them. As members of Nonprofits have evidence-based standing individually, it follows Nonprofits have associational standing as representatives of their members. *See Robinson*, 83 A.3d at 922; *Pa. Med. Soc'y*, 39 A.3d at 278. Thus, Nonprofits perforce have legally enforceable interests entitling them to intervention under Rule 2327(4). *See Allegheny Reprod. Health Ctr.*, 309 A.3d at 844; *Markham*, 136 A.3d at 141.

However, while the Commonwealth Court correctly determined Nonprofits satisfied Rule 2327(4), we hold it erred in concluding

Nonprofits' interests are adequately represented by DEP, such that their intervention should be denied under Rule 2329(2). The lower court's analysis of the adequate representation question unreasonably omits the fact DEP has never once invoked the ERA in support of the RGGI Regulation. *See Ziadeh*, slip op. at 21-23 (Pa. Cmwlth., July 8, 2022). Although DEP raised other arguments in support of the RGGI Regulation, it made none whatsoever premised upon the ERA. Nonprofits sought intervention, *inter alia*, to fill this void and defend the RGGI Regulation under the ERA. *See* Nonprofits' Application for Leave to Intervene, 4/25/22 at ¶¶6-7, 9, 56-58, 65. Specifically, Nonprofits argued the ERA itself refutes Senators' claim the RGGI Regulation intrudes upon the General Assembly's exclusive authority to *31 impose taxes. Nonprofits observed that, under Pennsylvania law, a tax is for the purpose of raising general revenue for the government, but under *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911 (Pa. 2017), proceeds from the sale of public natural resources under the ERA must be devoted to the conservation and maintenance of those resources, and cannot be appropriated for general budgetary items. Hence, they maintained, this "Court's interpretation of the ERA . . . precludes the possibility that the [RGGI] auction proceeds could somehow be construed as a tax." Nonprofits' Brief in Response to Senate Intervenors' Application for Preliminary Injunction at 21-22 (attached as Exhibit A to application to intervene); *see also* Nonprofits' Brief at 46 ("RGGI auction proceeds are not general revenue and cannot, under the ERA, be treated as general revenue, making one of the hallmark characteristics of taxes inapplicable."); Nonprofits' Reply Brief at 16-20.

Nonprofits' ERA defense is hardly "irrelevant" to this case. Senators' Brief at 36. On the contrary, whatever its ultimate merit, this defense presents a salient and nonfrivolous argument regarding the central question in this litigation of whether the RGGI Regulation is an unconstitutional tax. The argument could benefit Nonprofits and DEP alike. Yet, DEP has never raised it. To be sure, as Justice Brobson correctly notes, not every failure on the part of an existing party to raise an argument favored by a potential intervenor necessarily constitutes inadequate representation warranting intervention. *See* Brobson CDO at 13. Otherwise, putative parties with legally enforceable interests would effectively be able to intervene at will since it is virtually always possible to articulate some new theory in support of a particular outcome. However, under the specific circumstances present here, involving the omission of an obvious, possibly meritorious, and potentially beneficial argument regarding the pivotal issue in the case, we hold adequate representation of Nonprofits by DEP, for purposes of Rule 2329(2), is lacking. *32 *See Ackerman v. North Huntingdon Twp.*, 228 A.2d 667, 668 (Pa. 1967) (Bielskis were not adequately represented by existing party Crestview where "Crestview's defense to the [ ] action was different from the one presented by the Bielskis"); *see also Jones v. Prince George's Cnty.*, 348 F.3d 1014, 1019-20 (D.C. Cir. 2003) ("an existing party who is ineffectual, incompetent, or unwilling to raise claims or arguments that would benefit the putative intervenor may qualify as an inadequate representative in some cases"); *Daggert v. Comm'n on Governmental Ethics & Election Pracs.*, 172 F.3d 104, 112 (1st Cir. 1999) ("Of course, the use of different arguments as a matter of litigation judgment is not inadequate representation *per se*[,] . . . [b]ut one can imagine cases where . . . a refusal to present obvious arguments could be so extreme as to justify a finding that representation by the existing party was inadequate.") (citation omitted); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) ("[I]t may be enough to show [inadequate representation] that the existing party who purports to seek the same outcome will not make all of the prospective intervenor's arguments.").[15]

15 To be clear, a pertinent argument is not necessarily a winning one. Nothing we say here should be construed to decide the ultimate question of the legality of the RGGI Regulation, which we need not (and accordingly do not) reach in these appeals.

Senators' arguments that Nonprofits' lack legally enforceable interests miss the mark.[16] Senators focus on disputing whether Nonprofits themselves have legally enforceable interests. *See* Senators' Brief at 20-31. However, standing suffices to prove a legally enforceable interest, *see Markham*, 136 A.3d at 141, and as stated above, an association's standing may be premised on the standing of at least one of its individual *33 members, even if it lacks standing itself. *See Robinson*, 83 A.3d at 922; *Pennsylvania Med. Soc'y*, 39 A.3d at 278. Accordingly, Nonprofits come within Rule 2327(4), irrespective of whether they also have legally enforceable interests in their own right.

16 Representatives do not appear to dispute Nonprofits have legally enforceable interests under Rule 2327(4). *See* Representatives' Brief at 19 ("[S]ome of the interests asserted by the Nonprofits are not legally enforceable[.]") (emphasis added); *see also id.* at 20 ("[T]he Commonwealth Court correctly concluded that, to the extent Nonprofits asserted a legally enforceable interest under Rule 2327, those interests were adequately represented by DEP[.]").

Justice Mundy maintains our "approach to intervention in this matter is difficult to reconcile with our prior cases," namely *Crossey v. Boockvar*, 108 MM 2020, and *Allegheny Reproductive Health Center v. DHS*, 309 A.3d 808 (Pa. 2024). *See* Mundy CDO at 12-15. However, *Crossey* involved a *per curiam* order, which granted intervenor status to Republican legislators but denied intervention to Republican organizations.[17] As such, it carries no precedential weight. *See In re Avery*, 286 A.3d 1217, 1228 (Pa. 2022) ("highlighting the well-settled, general principle that this Court's *per curiam* orders carry no precedential value"). Moreover, *Allegheny* involved the distinct question of "individual legislator intervention" and therefore is distinguishable from this case involving the intervention of nonprofit environmental organizations. *Allegheny*, 309 A.3d at 844. Indeed, Justice Mundy herself notes "legislative standing . . . is its own topic[.]" Mundy CDO at 12.

17 *See Crossey*, 108 MM 2020, *Per Curiam* Order (filed Aug. 21, 2020) ("AND NOW, this 21st day of August, 2020, the petitions of Proposed Intervenors President Pro Tempore Joseph B. Scarnati, III, and Majority Leader of the State Senate Jake Corman; Speaker of the House of Representatives Mike Turzai and Majority Leader of the House Bryan Cutler (subsequently substituted by Speaker of the House of Representatives Bryan Cutler and Majority Leader of the House Kerry Benninghoff) to intervene in this matter are GRANTED; the petitions of Proposed Intervenors Republican Party of Pennsylvania, the Republican National Committee, and the National Republican Congressional Committee are DENIED, without prejudice to their ability to file briefs as amicus curiae pursuant to Pa.R.A.P. 531.").

Justice Brobson believes "Nonprofits have no right to the RGGI Regulation[.]" Brobson CDO at 11. But, whether there is a "right to the RGGI Regulation," *i.e.*, whether the RGGI Regulation must be accorded legal effect, is the ultimate issue in this case. Nonprofits do not have to demonstrate their entitlement to relief on the merits in order to *34 establish their standing to intervene. In addition, Justice Brobson contends there are no harms to Nonprofits' members "because the absence of the RGGI Regulation is simply the *status quo*." On the contrary, the *status quo* is that the RGGI Regulation is codified in the Pennsylvania Code. *See* 25 Pa. Code §§145.301-

145.409. Although currently subject to an injunction, the RGGI Regulation is not a mere "proposed . . . regulation[]" absent from our present laws. Brobson CDO at 11. Justice Brobson also insists our "view on standing essentially takes the position that an individual or organization that has an interest in the subject matter has standing to intervene in litigation seeking to challenge any proposed regulation or legislation that advances that interest." *Id.* at 12. But this is not so. As we specified above and now reiterate to forestall any possible confusion, standing requires more than a mere "policy or advocacy interest[]" in the outcome of the litigation, Brobson CDO at 8; the interest must be substantial, direct, and immediate. *See Robinson*, 83 A.3d at 917. Nonprofits' significant evidentiary presentation demonstrating environmental, health, and quality-of-life harms to their individual members established such an interest. Finally, regarding adequate representation, Justice Brobson claims "DEP may have had legitimate reasons not to advance [the ERA] argument[,]" and, in any case, Nonprofits can raise the argument as "amicus." Brobson CDO at 13. However, we find it telling that DEP has never actually offered a rationale for ignoring the ERA. Moreover, "[a]n *amicus curiae* is not a party and cannot raise issues that have not been preserved by the parties." *Commonwealth v. Cotto*, 753 A.2d 217, 224 n.6 (Pa. 2000). Accordingly, we reverse the Commonwealth Court's decision denying Nonprofits' application to intervene.[18] *35

[18] At this juncture, when there are no longer pending proceedings in the Commonwealth Court in which to intervene, remand to the Commonwealth Court is not appropriate, as Nonprofits appear to acknowledge. *See* Nonprofits' Supplemental Brief at 3 ("If this Court determines that the Commonwealth Court erred in denying Nonprofit Intervenors' application for intervention, then Nonprofit Intervenors will immediately be able to participate as parties in the pending merits appeals of the November 1 [o]rders.").

III. Preliminary Injunction (87 MAP 2022)

Nonprofits also separately appeal the Commonwealth Court's grant of the preliminary injunction of the RGGI Regulation. However, the Commonwealth Court's November 1, 2023 permanent injunction of the RGGI Regulation superseded the preliminary injunction, rendering any appeal from the preliminary injunction moot. *See Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999) ("Generally, an appeal from the grant of a preliminary injunction becomes moot when the trial court enters a permanent injunction, because the former merges into the latter."); *PG Publ'g Co., Inc. v. Pittsburgh Typographical Union #7 (CWA Local 14827)*, 304 A.3d 1227, 1231 n.1 (Pa. Super. 2023) (holding that because trial court granted permanent injunction "any claims arising from the issuance of the preliminary injunction are moot"); *PA Energy Vision, LLC v. South Avis Realty, Inc.*, 120 A.3d 1008, 1012 (Pa. Super. 2015) ("South Avis argues the trial court erred in granting a preliminary injunction. This issue, however, is now moot because the trial court issued a final, permanent injunction."); *Sasinoski v. Cannon*, 696 A.2d 267, 270 (Pa. Cmwlth. 1997) ("[A] preliminary injunction is superseded by a decision on the merits and terminates upon the issuance of the permanent injunction."); *Izenson v. Izenson*, 418 A.2d 445, 446 (Pa. Super. 1980) ("Where a preliminary injunction is in force, the issuance of a permanent injunction terminates the preliminary injunction. . . . Thus, we cannot reach appellant's contention that the preliminary injunction was improperly issued because that injunction is no longer in effect.") (citation and footnote omitted). Indeed, Nonprofits "agree that their appeal of the preliminary injunction at 87 MAP 2022 is moot." Nonprofits' Supplemental Brief at 2.

None of the exceptions to the mootness doctrine applies. Because the preliminary injunction of the RGGI Regulation has been supplanted by the permanent injunction and is no longer in effect,

the preliminary order does not carry great public importance, nor *36 does it risk ongoing detriment to any party. Moreover, although the grant of preliminary injunctive relief in this particular case has evaded review, this is not the norm and preliminary injunctions are not likely to avoid review as a general matter. This Court has repeatedly had the opportunity to review the propriety of preliminary injunctions. *See, e.g.*, *Marcellus Shale Coal. v. Dep't of Env't Prot.*, 185 A.3d 985 (Pa. 2018); *Brayman Const. Corp. v. Com., Dep't of Transp.*, 13 A.3d 925 (Pa. 2011); *Fischer v. Dep't of Pub. Welfare*, 439 A.2d 1172 (Pa. 1982); *Shanaman v. Yellow Cab Co. of Phila.*, 421 A.2d 664 (Pa. 1980); *New Castle Orthopedic Assocs. v. Burns*, 392 A.2d 1383 (Pa. 1978). We decline to consider Nonprofits' admittedly moot appeal from the defunct preliminary injunction.

IV. Mandate

For the foregoing reasons, in the appeal docketed at 85 MAP 2022, the order of the Commonwealth Court is reversed, and the appeal docketed at 87 MAP 2022 is dismissed as moot.

Chief Justice Todd and Justices Donohue and Wecht join the opinion.

Justice Donohue files a concurring opinion in which Chief Justice Todd joins.

Justice Mundy files a concurring and dissenting opinion.

Justice Brobson files a concurring and dissenting opinion. *37

CONCURRING OPINION

DONOHUE JUSTICE.

I join the Majority in full and write only to speak to the role the Nonprofits' assertion of the Environmental Rights Amendment ("ERA"), found in Article I, Section 27 of the Pennsylvania Constitution, plays in resolving the intervention question before the Court. The ERA provides:

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

Pa. Const. art. I, § 27.

The ERA "establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries." *Pa. Env't Def. Found. v. Commonwealth*, 161 A.3d 911, 931-32 (Pa. 2017). Nonprofits' members, as residents of this Commonwealth, are beneficiaries under this trust. *See* Application for Leave to Intervene, 4/25/2022, ¶¶ 40-42, 58. The ERA imposes upon all agencies and entities of our government, in their role as trustee, the duty to prohibit the degradation, diminution, and depletion of the public natural *38 resources, as well as the duty to act affirmatively through legislative action to protect the environment. *Id.* at 933. This Court has previously established that the ERA trust is governed by the principles applicable to private trusts. *Id.* at 932-33; *see also Pa. Env't Def. Found. v. Commonwealth*, 255 A.3d 289, 308 n.12 (Pa. 2021).

Fundamentally, a trust is a "relation between" persons, wherein one (the trustee) holds property for the benefit of others (the beneficiaries). *In re Passarelli Fam. Tr.*, 242 A.3d 1257, 1269 (Pa. 2020). While a trustee holds legal title to the property of which the trust is comprised, the beneficiaries hold an equitable interest in the trust property. *Jones v. Jones*, 25 A.2d 327, 329 (Pa. 1942) (holding that a beneficiary has equitable in rem interest in trust property). For instance, an income beneficiary possesses an equitable right in the trust property that generates the income,

although she has no legal right to that property at all. *Tr. Under Will of Augustus T. Ashton*, 269 A.3d 81, 91 (Pa. 2021).

This equitable interest is legally enforceable. We long ago held that "in addition to rights against the trustee, the beneficiary also has rights in rem, an actual property interest in the subject-matter of the trust, an equitable ownership of the trust res." *Jones*, 25 A.2d at 329. The equitable interest in the trust res entitles a beneficiary to enforce the trust, to have a breach of trust enjoined, and to obtain redress for a breach of trust. *Id.*; *see also Commonwealth v. Stewart*, 12 A.2d 444, 447 (Pa. 1940), *aff'd sub nom*. *Stewart v. Commonwealth*, 312 U.S. 649 (1941) ("By virtue of th[e equitable interest in the trust property] he was entitled to enforce the trust, to have a breach of trust enjoined and to obtain redress in case of breach."). We reaffirmed this principle more recently in *Trust Under Will of Augustus T. Ashton*, 269 A.3d 81, 91 (Pa. 2021) (explaining that beneficiaries have equitable interest in "entire trust res" and that interest allows beneficiaries to enforce the trust in addition to rights against a trustee). *39

Pursuant to their status as beneficiaries of the public trust established by the ERA, Nonprofits' members possess a legally enforceable interest in the trust res: the natural resources of our Commonwealth. In my view, this legally enforceable interest in the existing natural resources which, according to Nonprofits, stand to be altered, if not diminished or destroyed, as a result of the efforts to enjoin the RGGI Regulation, suffices to establish a right to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(4).[1] *See Citimortgage, Inc. v. Comini,* 184 A.3d 996, 998 (Pa. Super. 2018) (holding that proposed intervenors' right to first refusal was "an interest legally enforceable pursuant to standard principles of contract construction" thereby establishing a right to intervene pursuant to Pa.R.C.P. 2327(4)). Nonetheless, as explained by the Majority, even when a petitioner establishes a legally enforceable interest that would permit intervention, a court may deny intervention if the petitioner's interest is already adequately represented. Pa.R.C.P. 2329(2). Here, where DEP has failed to assert the ERA and its obligations thereunder in defense of the RGGI regulations, it is difficult, if not impossible, to conclude that it is representing the beneficiaries' interests at all, let alone to a standard that could be called "adequate."

[1] This conclusion is in harmony with then-Judge Brobson's pronouncement that "[t]he [ERA's] protections may be enforced by citizens bringing suit in the appropriate forum, including the courts." *Feudale v. Aqua Pa., Inc.*, 122 A.3d 462, 468 (Pa. Commw. 2015), *aff'd*, 135 A.3d 580 (Pa. 2016).

Justice Brobson concludes that Nonprofits have failed to establish a legally enforceable interest in this litigation that would warrant their intervention pursuant to Rule 2327(4). Although he acknowledges that Nonprofits pursued intervention to assert their rights as beneficiaries under the ERA, Justice Brobson ignores the import of this status, resting his conclusion that Nonprofits lack a legally enforceable interest on his view that they seek only to advance policies that align with their interests. Concurring & Dissenting Op. at 11-12 (Brobson, J). *40 This non sequitur misses the significance of beneficiary status, as it is by virtue of the trustee/beneficiary relationship that Nonprofits (by way of their members' rights)[2] possess a legally enforceable interest that provides the basis for intervention. *See Ashton*, 260 A.3d 81, 91 (Pa. 2021) (explaining that beneficiaries have equitable interests in "entire trust res" and that interest allows beneficiaries to enforce the trust to obtain redress, in addition to in personam rights against a trustee); *Jones*, 25 A.2d at 329; *Commonwealth v. Stewart*, 12 A.2d 444, 446-47 (Pa. 1940). Whether Nonprofits have preferred environmental policies plays no part in determining whether they may

intervene in this litigation as beneficiaries seeking to vindicate the rights granted to them under the trust.

[2] The Majority explains that Nonprofits have associational standing as representatives of their members. Majority Opinion at 30 (citing *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 922 (Pa. 2013)).

Chief Justice Todd joins this concurring opinion. 41 *41

CONCURRING AND DISSENTING OPINION

MUNDY JUSTICE

I agree with the majority that this appeal is moot to the extent it seeks review of a preliminary injunction that has been superseded by a permanent injunction. I respectfully dissent, however, from the majority's holding that the Commonwealth Court abused its discretion in denying Appellants' application to intervene.

I. Appealability

Initially, I offer a few thoughts on the immediate appealability of an order denying intervention, and how they apply to this case. As the majority develops, for an interlocutory trial court order to be immediately appealable under the collateral-order doctrine, it must satisfy three elements: separability, importance, and irreparable loss. Thus, it must be true that (1) the order is separable from the main cause of action, (2) the right involved is too important to be denied review, and (3) the claim will be lost if review is postponed until final judgment in the case. *See* Majority Op. at 17 (quoting Pa.R.A.P. 313(b)). As the majority additionally recognizes, this standard is to be applied "narrowly" because the collateral-order doctrine comprises an exception to the final-order rule with its aim to prevent delay stemming from piecemeal review of interlocutory trial court orders. *See id*. at 17. Even under a narrow construction, it seems to me prong (1) will generally be true of an intervention-denial order. Such an order would appear almost always to be 42 *42 separate from the main cause of action. With that said, I believe the majority has not applied prongs (2) and (3) narrowly.

First, as for prong (2), the importance prong, the majority's analysis is limited to stating that Appellants wish to intervene to protect their "environmental well-being," and those interests are shared by the public. *See* Majority Op. at 18. I believe this description glosses over some important details. The issues before the Commonwealth Court were whether the RGGI regulation effectuated an unconstitutional tax in violation of the separation of powers principle, whether it was *ultra vires* under the Air Pollution Control Act, and whether DEP complied with the Commonwealth Documents Law.[1] There is little doubt the challenged regulation amounts to a major new direction in energy policy for Pennsylvania that has the potential to affect, not only the environment, but the availability of affordable electricity for low-income citizens and the presence of jobs in Pennsylvania's energy sector. It thus involves an examination of social policy issues and a balancing of competing goals and factors, which is ordinarily the task of the General Assembly. *See Rice v. Diocese of Altoona-Johnstown*, 255 A.3d 237, 256 (Pa. 2021) (citing *Lance v. Wyeth*, 85 A.3d 434, 454 n.26 (Pa. 2014)). Under these circumstances, the interests of Pennsylvania citizens affected by the claims before the Commonwealth Court include, most centrally, their interest in having new taxes levied 43 by the General Assembly and not *43 by an administrative agency - and, more generally, their interest in having major energy policy decisions made in compliance with statutory law, or alternatively, made by their elected representatives rather than an entity whose members they cannot hold accountable at the ballot box.

[1] *See Ziadeh v. Pa. LRB*, Nos. 41 M.D. 2022, *slip op*. at at 8-9 (Pa. Cmwlth. July 8, 2022) (summarizing the Senate

Intervenors' five counterclaims). The counterclaims are set forth in *McDonnell v. Pa. LRB*, No. 41 M.D. 2022, Intervenor Respondents' Answer with New Matter & Counterclaims at ¶¶ 153-228 (Pa. Cmwlth. filed March 3, 2022). The Senate Intervenors claimed the regulation was, in effect, a tax because the auction proceeds would generate $443 million, nearly tripling DEP's entire budget, and only six percent of those proceeds would be consumed by the cost of administering and overseeing the CO2 trading program. The Commonwealth Court eventually cited these factors in crediting the Senate Intervenors' position and permanently enjoining the Secretary from enforcing the regulation's provisions. *See Ziadeh v. Pa. LRB*, No. 41 M.D. 2022, *slip op*. at 11-12, 2023 WL 7170737, at *5-*6 (Pa. Cmwlth. Nov. 1, 2023).

Appellants clearly agree with the specific policy goals underlying Pennsylvania's RGGI participation, but it seems attenuated to say they accordingly have an enforceable "right" that is too important to be denied review to have such regulations be enacted by an administrative agency instead of the legislative body. The majority avoids such difficulties by simply taking Appellants' word for it that their right should be characterized solely in terms of their environmental objectives without any reference to the issues raised before the trial court, and that those goals are shared by the public at large and go beyond the litigation at hand. To my mind this departs from the "narrow" approach we have endorsed for collateral review, and our requirement that every element of the collateral order doctrine be "clearly present before collateral appellate review is allowed," so as to avoid "undue corrosion of the final order rule." *Shearer v. Hafer*, 177 A.3d 850, 858 (Pa. 2018) (internal quotation marks and citations omitted). I would, instead, critically examine Appellants' contention, as we have done relative to other litigants, *see, e.g.*, *Geniviva v. Frisk*, 725 A.2d 1209, 1213-14 (Pa. 1999); *Shearer*, 177 A.3d at 859, and conclude there is no important right, deeply rooted in public policy and shared by the public at large, to have the government require that Pennsylvania's electricity producers participate in RGGI through the administrative regulation challenged in this matter.

Relying on *In re Barnes Foundation*, 871 A.2d 792 (Pa. 2005), and *K.C. v. L.A.*, 128 A.3d 774 (Pa. 2015), the majority also concludes prong (3) is satisfied here because if the order is not reviewed right now, Appellants' "right to intervene" will be lost forever. Majority Op. at 18 (citing *K.C.*, 128 A.3d at 780; *Barnes*, 871 A.2d at 794). This raises *44 some questions. Should *Barnes* (and derivatively, *K.C.*) be read to encompass such a "lost forever" precept? Even if it should, does that mean the claim at issue will be lost forever every time intervention is denied, if such denial is not made immediately appealable? And while the majority does all of this in an attempt to assess jurisdiction first, followed by merits review, is it really possible for an appellate court to evaluate jurisdiction to entertain an immediate appeal of an intervention-denial order without at least some consideration of the merits of that order?

To proffer brief answers to these questions, it seems to me, first, that *Barnes* does not rule out the possibility that a party whose interlocutory appeal of an intervention-denial order was quashed might try a second time to appeal that order after the trial court issues a final order. *Barnes* indicated that an intervention-denial order "must be appealed within 30 days of its entry . . ., or not at all," *Barnes*, 871 A.2d at 794, but it said nothing about what would happen if the person *did* appeal within 30 days and the appeal was quashed. One possibility is for this Court to construe *Barnes* to allow merits review after a final trial court order issues, so long as the party preserved its appellate rights by at least trying to take an appeal within 30 days of the intervention-denial order. Such allowance would arguably

prevent all such orders from being deemed collateral orders on the grounds that, then, prong (3) of the collateral order doctrine would never be met. The benefit would be avoiding piecemeal review and the delay it entails, but such a rule could necessitate a do-over of the trial level proceedings if it turns out intervention was improperly denied, thereby rendering the first time through a mere dress rehearsal and causing even greater delay. *See generally Jackson v. Hendrick*, 46 446 A.2d 226, 230 (Pa. 1982) (noting belated intervention prejudices both the prevailing party and the adjudicatory process). Although this precise issue is not raised in the instant appeal, it will have to be addressed in another phase of this litigation. *See, e.g.*, *Shirley v. Pa. Legislative Reference Bureau*, 113 MAP 2023, Order (Pa. 45 June 7, 2024) *45 (deferring jurisdictional review of Constellation Energy's appeal of an intervention-denial order to the merits briefing stage, where Constellation had previously tried to appeal such order under the collateral order doctrine, but that appeal was quashed).

Here, though, the majority's cursory treatment seems to go to the other extreme and suggest prong (3) is always met in the intervention-denial context. This would mean that, as long as the importance prong is satisfied, appellate jurisdiction is always secure. The majority offers a two-sentence analysis of this topic as follows:

> Third, a party who is denied intervention and who satisfies the requirements of Rule 313 must appeal from the order denying intervention within thirty days of its entry or lose the right to appeal the order entirely. Consequently, Nonprofits' right to intervene will be lost forever if they are not permitted to appeal from the decision denying intervention.

Majority Op. at 18 (citations omitted). The majority reaches this conclusion by framing the "claim" under prong (3) as the "right to intervene." I find this framing in tension with other cases in which the "right" under prong (2) and the "claim" under prong (3) have been viewed as substantially overlapping.[2] Further, I am not as certain as the majority that in an intervention-denial setting, prong (3) is always met. For example, even if the ability to intervene will be lost forever, there may be other ways the party can vindicate its asserted rights. *See, e.g.*, *Mortg. Elec. Registration Sys. v. Malehorn*, 16 A.3d 1138, 1143 (Pa. Super. 2011) (finding prong (3) unmet where the disappointed intervenor had other *46 forums in which she could protect her property rights). This would mean the claim will not be "irreparably lost" for Rule 313(b) purposes.

[2] *See, e.g.*, *Commonwealth v. Harris*, 32 A.3d 243, 249 (Pa. 2011) (important right not to disclose material covered by psychologist-client privilege would be destroyed if review of discovery order awaited appeal after final judgment); *see also Commonwealth v. Wright*, 78 A.3d 1070, 1078 (Pa. 2013) (finding the importance of the right to waive counsel and act *pro se* under prong (2) overlapped with the irreparability inquiry under prong (3) because an erroneous denial of that right would harm society's interests in the finality of criminal proceedings that were considered in connection with the importance prong).

Here, it seems to me Appellants' environmental interests are fully vindicable through the legislative process in which they face no barriers to participation. In this sense, the present controversy is qualitatively different from one in which the government has affirmatively acted in a way that is alleged to infringe upon the challenger's constitutional rights. In that type of setting, it would be unsatisfactory to relegate the challenger to the legislative process: Pennsylvania's courts stand open to protect its citizens' civil rights from governmental overreach. But in this matter the government has taken no action that is claimed to violate Appellants' rights. To the contrary, Appellants *favor* the action the

government has taken; they seek to intervene only so they can be another voice in defending the government from the present legal challenge - all while the government is already "vigorously defending" its own actions. *Ziadeh v. Pa. LRB*, Nos. 41 & 247 M.D. 2022, *slip op*. at 20 (Pa. Cmwlth. July 8, 2022). And there is no impediment to their having that voice as *amici curiae*. Because, as developed above, it is far from clear Appellants have any enforceable right to force Pennsylvania electricity producers to participate in RGGI - or at least to do so via the regulations promulgated by DEP - it is hard to conclude they have asserted any right too important to be denied review that will be irreparably lost if they are not permitted to intervene.

To the extent the above embraces factors that impact upon the merits of the intervention-denial order while evaluating its appealability, as previously noted I question whether the two can be strictly separated. In fact, this Court has issued decisions that are difficult to reconcile. In *Pennsylvania Association of Rural & Small Schools v. Casey*, 613 A.2d 1198 (Pa. 1992), we quashed an appeal from an intervention-denial order on the basis that the litigant's interests were adequately represented by another party. *See id.* at 1201. *47 But adequate representation by another has nothing to do with the collateral order doctrine; it relates only to a permissible basis for the trial court to deny intervention under Pa.R.A.P. 2329 where a prospective intervenor satisfies one of the initial grounds for intervention under Pa.R.A.P. 2327. At the other end of the spectrum, in *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016), we implied in a footnote that all intervention-denial orders are automatically appealable as collateral orders in light of the holding in *Barnes*. *See id*. at 138 n.4.

Under my reading of our decisional law on this topic, an intervention-denial order may or may not be appealable, largely depending on the appellate court's evaluation of the importance of the right the prospective intervenor seeks to vindicate - an evaluation that overlaps with a merits assessment of whether the trial court's order should be affirmed. In this respect, our intermediate court explained in an earlier case that

> the merits of the petition to intervene necessarily are considered as part of the analysis to determine whether the claim asserted is "too important to be denied review" [under the collateral-order doctrine]. . . . The appellant must at a minimum show actual entitlement to intervene under the applicable Rules of Civil Procedure in order to meet this test.

Cogan v. County of Beaver, 690 A.2d 763 (Pa. Cmwlth. 1997). The upshot, in my view, is that the appealability of an order denying intervention cannot be assessed without some consideration of its validity. From a purist's point of view, this mixes two distinct issues - appealability and correctness. But short of making intervention-denial orders categorically appealable as collateral orders, there would appear no other way to remain true to the wording of Rule 313(b) and the concept that exceptions to the final order doctrine are to be narrowly applied. Moreover, refusing to engage in some review along these lines could fail to uphold each litigant's constitutional right to take at least one appeal. *See* Pa. Const. art. V, § 9. *48

II. Merits

A. Standing to intervene

As recounted by the majority, on the question of whether Appellants had standing to intervene under Rule 2327, *see* Pa.R.Civ.P. 2327(4) (providing a person may intervene who establishes that the outcome of the action may affect a legally-enforceable interest of that person), the trial court held Appellants as organizations lacked standing, but they attained associational standing because at least one of their individual members testified concerning alleged harms they suffered, which they attributed to emissions from power

generation using fossil fuels. *But cf. FDA v. Alliance for Hippocratic Medicine*,___ U.S.___,___, 2024 WL 2964140, at *15-*19 (U.S. June 13, 2024) (Thomas, J., concurring) (offering a critique of the concept of associational standing and arguing it cannot be supported under Article III). These alleged harms, which are deemed by the majority to affect legally-enforceable interests, stem from, *inter alia*, the individuals' responses to perceived changes in the air and weather. They include such mental impressions as concerns that the weather has worsened over the past 25 years, apprehensions about dehydration and overheating, and "eco-anxiety" - all of which they attribute to the climate and their perceptions about climate change. *See* Majority Op. at 27-28.

In terms of expert evidence, the majority relies on the intervention hearing testimony of Dr. Deborah Gentile, an allergy and immunology physician, who testified on behalf of the Clean Air Council. *See id*. at 28-30. The trial court qualified Dr. Gentile as an expert in the health effects of air pollution generated by power plants, but her testimony was broader than that, as it covered matters of public policy including her predictions concerning the environmental impact of the challenged regulation - a topic in which she had no expertise. *See, e.g.*, N.T., May 11, 2022, at 373-74 (reflecting Dr. Gentile's testimony that the RGGI rules will reduce air pollution in Pennsylvania). She admitted on *49 cross-examination that the EPA's air-quality standards were already being met at all monitoring sites in Pennsylvania, *see id*. at 379, and that she had no knowledge of whether "leakage" from other states would offset prospective air improvements in Pennsylvania attributable to RGGI participation.[3] She noted, in this regard, that she was "not an expert on that at all." *Id*. at 380-81; *see also id*. at 381 ("I'm not an expert in how power is generated and moved across the grid.").

[3] For purposes of the hearing, leakage was stated to mean that fossil-fuel-fired plants in neighboring states would produce more electricity and more emissions due to operational reductions by Pennsylvania power plants attributable to this state's participation in RGGI. *Id*. at 380. Presumably, some of the emissions and electricity generated in those states would travel across state lines into Pennsylvania.

Dr. Raymond Najjar, an expert in atmospheric science, climate change, and climate modeling, also testified for Appellants regarding the connection between carbon emissions and a warming atmosphere. Although he confessed to having only "basic" familiarity with RGGI, *id*. at 313, he stated without qualification that it "will reduce the amount of carbon dioxide in the atmosphere" - although it was unclear how he arrived at that conclusion or whether he had any specialized knowledge concerning the electricity-generation industry or regulatory policy. He appeared to support RGGI on the basis that "we all have to do our part" while acknowledging carbon emissions from elsewhere can affect Pennsylvania just as much as Pennsylvania emissions. *See id*. at 314 (explaining it "doesn't really matter where [carbon dioxide] comes from").[4] The Commonwealth Court nonetheless characterized all of Appellants' evidence as "insufficient" and found it was unclear from the record how RGGI participation would affect air quality in Pennsylvania: *50

[4] As the majority recites, Dr. Najjar did testify that an elevated carbon level "makes people die," but he clarified that 5,000 tons of carbon dioxide "will lead to one death between now and [the year] 2100." *Id*. at 306. He also did not address the topic of leakage, *see supra* note 3, as he appeared to assume carbon reductions in Pennsylvania would not be offset by increased carbon output in neighboring states.

> No party presented evidence as to the number of CO2 allowances that will be available for auction if the Commonwealth joins RGGI . . . and how that translates to lower emissions at this time. There was no evidence of how many sources are subject to emissions limitations and how those limitations would affect Pennsylvania covered sources.

Ziadeh v. Pa. LRB, No. 41 M.D. 2022, *slip op*. at 19 (Pa. Cmwlth. July 8, 2022).

As the majority develops, intervention under Rule 2327(4) requires an interest that is substantial, direct, and immediate. *See Markham*, 136 A.3d at 140. In other words, a prospective intervenor must have standing. *See Application of Beister*, 409 A.2d 848, 850-51 & n.2 (Pa. 1979). A substantial, direct, and immediate interest is one where the interest surpasses that of all citizens in procuring obedience to the law, the challenged action is the cause of party's harm, and the causal connection is neither remote nor speculative. *See Trust Under Will of Ashton*, 260 A.3d 81, 88 (Pa. 2021). As well, standing impliedly presumes the judicial relief sought can remedy the alleged harm. Without that predicate, Pennsylvania's judicial resources would be wasted on litigation where the requested relief will have no beneficial effect. Thus, standing in this jurisdiction has been phrased in terms of an ability to seek "judicial redress," *Sears v. Wolf*, 118 A.3d 1091, 1102 (Pa. 2015), to seek "civil redress," *Morrison Informatics v. Members 1st Fed. Credit Union*, 139 A.3d 636, 640 (Pa. 2016), and the like, *see generally Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 492 (Pa. 2021) (Wecht, J., concurring) ("At its core, standing is a flexible construct that enables judicial redress when the government has engaged in conduct or enacted laws that infringe the rights held by the citizenry."), and this is quite consistent with the redressability facet of Article III standing in the federal system.[5] Finally, standing requires not only a substantial, direct, and immediate interest, *51 it requires an interest the law protects. *See S. Bethlehem Assocs. v. Zoning Hearing Bd. of Bethlehem Twp.*, 294 A.3d 441, 447 (Pa. 2023) (denying standing where the litigant's interest in maintaining market share and pricing free from market competition was substantial, direct, and immediate, but it was not one the law protects).

[5] *See, e.g., Hein v. Freedom From Religion Found.*, 551 U.S. 587, 598 (2007) (observing Article III standing involves an injury fairly traceable to the defendant's conduct which is likely to be redressed by the relief sought); *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 45-46 (1976) (standing requires a "substantial likelihood" that prevailing in the litigation will result in the plaintiffs receiving the benefit they seek); *see also Alliance for Hippocratic Medicine*, ___U.S. at___ n.1, 2024 WL 2964140, at *6 n.1 (observing that, even if a plaintiff was harmed by state action, redressability "can still pose an independent bar" if the case is not "of the kind 'traditionally redressable in federal court'") (quoting *United States v. Texas*, 599 U.S. 670, 676 (2023)).

The majority presently endorses the trial court's finding that Appellants' individual members have a legally enforceable interest in the outcome of this litigation. This appears to reflect a shift by this Court to a more lenient standard than it used in the past relative to standing to intervene in litigation that calls into question a statute's constitutionality. Recently, in *Allegheny Reproductive Health Center v. DHS*, 309 A.3d 808 (Pa. 2024), the plaintiffs challenged a statute that prevented taxpayer dollars from being used to pay for abortions. This Court denied an application to intervene filed by legislative parties seeking to uphold the provision. Although that issue involved legislative standing, which is its own topic, this Court added that denial of intervention was especially appropriate because the prospective intervenors' "interest is merely defending the constitutionality of the Coverage Exclusion,

making their interests no greater than that of the general citizenry." *Id*. at 846. Here, too, Appellants are seeking to vindicate an interest shared by "the general citizenry" - their interest in a clean environment. *See* Pa. Const. art I, § 27 (requiring the Commonwealth to conserve and maintain natural resources "for the benefit of all the people"). Allowing Appellants to bootstrap their members' individualized concerns about the weather and climate change into associational standing in this context appears particularly generous on the part of this Court. *52

To see just how generous, consider that only four years ago we resolved a dispute in which certain parties filed a petition challenging an Election Code provision requiring mail-in ballots to be received by election day. One such challenger, the Pennsylvania Alliance for Retired Americans, was described by the Associated Press as a "major Democratic political group," and "the main super PAC supporting . . . presidential nominee Joe Biden." *Crossey v. Boockvar*, 108 MM 2020, Concurring and Dissenting Statement of Chief Justice Saylor, at 2 (filed Aug. 21, 2020) (quoting Jonathan Tamari, *A Key Democratic Group is Suing to Ease Pennsylvania's Vote-By-Mail Laws*, The Philadelphia Inquirer (Apr. 22, 2020)). When Republican organizations sought to intervene as additional respondents, this Court denied the request notwithstanding that they presented "numerous reasons why they ha[d] particularized interests" in the matter, including assertions that they devoted substantial resources toward voter education and turnout. *Id*. at 1. This Court denied relief in spite of the high public importance of the issues raised, which, if anything, should have counseled in favor of a liberal approach to intervention.

As developed above, presently several of Appellants' members testified to their perceptions concerning air quality, the weather, and changes in the weather, as well as their lay opinions that such perceived changes are caused by climate change more broadly. In this latter respect, they also testified about their own anxiety concerning the environment, which they termed "eco-anxiety," and which the majority presently credits as a basis for standing. *See* Majority Op. at 29.[6] While these witnesses' desire for a healthy environment and a stable climate are, as noted, shared by all Pennsylvanians, on this record any suggestion that implementation of the challenged RGGI regulation will, in fact, redress those harms is speculative. Yet, in the context of this case, these witnesses *53 are deemed to have a sufficient, legally-enforceable interest in the outcome such that their lay beliefs and personal anxieties comprise a valid basis for associational standing on the part of Appellants. And this is true even though the salient challenge to the RGGI regulation is based on the dual contentions, not directly related to Article I, Section 27, that it violates separation of powers and comprises an unconstitutional tax. The conclusion seems inescapable, then, that this Court is now broadening the foundation for standing to intervene beyond the comparatively narrow confines applied in the earlier controversies mentioned above.

6 If a person's individual anxiety over the climate and government policy regarding the environment constitutes a basis for standing, this could call into question the precept that harm to ideological interests is insufficient to confer standing.

B. Adequate representation by another party

The majority also faults the trial court for denying intervention pursuant to Rule 2329(2). *See* Pa.R.Civ.P. 2329(2) (permitting the court to deny intervention where "the interest of the petitioner is already adequately represented"). The majority reasons that a person who thinks up a new, "nonfrivolous argument," Majority Op. at 31, may not be denied intervention under that rule, whereas intervention may be denied to someone who

forwards essentially the same arguments as the existing party or whose new arguments are frivolous. *See id*. at 30-32.

This line of reasoning does have the benefit of giving meaning to the "adequately" qualifier in Rule 2329(2). But on this issue as well, the majority's present stance signals that the Court is now prepared to offer prospective intervenors more latitude than it did in the past. Referencing *Crossey* again, the political organizations who sought to intervene and argue in favor of enforcing the Election Code were denied that opportunity notwithstanding that the only named respondent, the Secretary of the Commonwealth, had by that time withdrawn her preliminary objections and affirmatively aligned her position with that of the petitioners, expressly favoring the judicial relief they sought and disfavoring enforcement of the law. *See Crossey v. Boockvar*, 108 MM 2020, Praecipe *54 to Withdraw Certain of Respondents' Preliminary Objections Based on United States Postal Service's Announcement of Statewide Mail Delays Affecting General Election, at 7 (filed Aug. 13, 2020). A similar dynamic was evident in *Allegheny Reproductive*, where the sole party defendant was on record as disagreeing with the very statute it was charged with defending on remand against the strictest level of judicial scrutiny. *See Allegheny Reproductive*, 309 A.3d at 998 n.1 (Mundy, J., dissenting from denial of intervention). In both of those circumstances, this Court denied intervention to persons who actually *favored* upholding and applying the statute in question when no existing party in the case supported that result.

Here, by contrast, not only is Appellants' core position - that the challenged RGGI regulation is valid and should be implemented - identical to that of DEP, Appellants seek no other relief beyond what DEP is already requesting. Yet, because they are advancing their own argument in favor of the same relief, they cannot be denied intervention. In prior disputes, the fact a prospective intervenor forwarded its own arguments as to why the challenged legislation was valid was of no moment; here it is dispositive. In prior disputes, the fact the governmental entity charged with enforcing the law disagreed with the law or sought to avoid enforcing it did not move this Court to allow intervention by parties who wished to defend the law and have it enforced; here, intervention is granted although the governmental agency involved is already "vigorously defending" the challenged regulation. *Ziadeh v. Pa. LRB*, Nos. 41 & 247 M.D. 2022, *slip op*. at at 20 (Pa. Cmwlth. July 8, 2022).

III. Conclusion

Because the majority's extraordinarily lenient approach to intervention in this matter is difficult to reconcile with our prior cases, I respectfully dissent from its present holding that the Commonwealth Court abused its discretion in denying Appellants' *55 application to intervene. Nevertheless, this Court is evidently making a fresh start and I would hope that in future cases it will evenhandedly apply its newfound liberality with respect to entities seeking to intervene in important constitutional litigation. *56

CONCURRING AND DISSENTING OPINION

BROBSON, JUSTICE.

To facilitate Pennsylvania's participation in the Regional Greenhouse Gas Initiative (RGGI), the Department of Environmental Protection (DEP) developed, and the Environmental Quality Board (EQB) adopted, a rulemaking package, which, like the Majority, I will refer to as the RGGI Regulation. The Secretary of the DEP and Chairman of the EQB commenced this litigation by filing a petition for review in the Commonwealth Court's original jurisdiction, challenging the refusal of the Legislative Reference Bureau (LRB) to publish the RGGI Regulation. The focus of the action morphed after the Commonwealth Court permitted various members of the General Assembly to intervene in

the matter, as intervenors from the Pennsylvania Senate (Senate Intervenors) presented counterclaims alleging that the DEP violated the law in several respects by promulgating and attempting to publish the RGGI Regulation.

Various entities also applied to intervene in this litigation. Most important for present purposes, three nonprofit environmental corporations requested intervenor status-namely, Citizens for Pennsylvania's Future, Clean Air Council, and Sierra Club (Nonprofits). The Commonwealth Court denied Nonprofits' application to intervene, and they appealed to this Court. Nonprofits also appealed a Commonwealth Court order that *57 preliminarily enjoined the implementation of the RGGI Regulation. The Majority reverses the Commonwealth Court order that denied Nonprofits' application to intervene and dismisses as moot the appeal from the preliminary injunction order.

I agree with several aspects of the Majority Opinion. Specifically, I agree with the Majority that: (1) the Commonwealth Court's order denying Nonprofits' request to intervene qualifies as an immediately appealable collateral order; (2) the issue regarding Nonprofits' intervention is not moot; and (3) Nonprofits' appeal concerning the Commonwealth Court's preliminary injunction order was rendered moot by the Commonwealth Court's subsequent order permanently enjoining the DEP from enforcing the RGGI Regulation, which was codified in July of 2022. On the first point-appealability as a collateral order-my reasoning differs from that of the majority, particularly with respect to the second prong of the collateral order inquiry. (Majority Opinion at 18.) This prong asks whether "the right involved is too important to be denied review." Pa. R.A.P. 313. To me, the Majority conflates Nonprofits' environmental interests with the "right involved" in the Commonwealth Court's order denying intervention, which is the order under review. Here, as with all orders denying intervention, the "right involved" is the right, under Rule 2327 of the Pennsylvania Rules of Civil Procedure, to intervene. *See K.C. v. L.A.*, 128 A.3d 774, 779-80 (Pa. 2015) (holding that decision regarding claimed right to standing to intervene has direct effect on appellants' ability to participate in proceeding, satisfying second prong of collateral order doctrine). Moreover, this Court has counseled would-be intervenors that the failure to seek an immediate appeal from an order denying intervention would adversely affect their ability to later seek appellate review of a later merits decision below. *See In re Barnes Found.*, 871 A.2d 792 (Pa. 2005). Accordingly, an order denying intervention not only implicates a right to intervene under our procedural rules but also a right to appeal under Article V, Section 9 *58 of the Pennsylvania Constitution. It is because of these rights-*i.e.*, the right to intervene under our procedural rules and the right to appeal under the Pennsylvania Constitution- that I believe Nonprofits satisfy the second prong of the collateral order three-part inquiry. I thus concur with the Majority's conclusion set forth in Part II.A. I join in full Parts I, II.B., and III of the Majority Opinion.

I disagree, however, with Part II.C. of the Majority Opinion, wherein the Majority reverses the Commonwealth Court's decision denying Nonprofits' application to intervene. To establish their right to intervene in this matter, Nonprofits had to establish that they fell within one of the categories of persons entitled to intervene under

Pennsylvania Rule of Civil Procedure 2327, which provides:

> At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if
>
> (1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or

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

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

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

Pa.R.Civ.P. 2327 (emphasis added). If Nonprofits satisfied this burden, then the Commonwealth Court had the discretion to deny Nonprofits' request to intervene under any one of the circumstances set forth in Pennsylvania Rule of Civil Procedure 2329, which provides:

Upon the filing of the petition and after hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have

59 *59

been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if

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

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

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

Pa.R.Civ.P. 2329; *see In re Pa. Crime Comm'n*, 309 A.2d 401, 408 n.11 (Pa. 1973).

The Majority agrees with the Commonwealth Court's determination that Nonprofits presented sufficient evidence to qualify to intervene under paragraph (4) of Rule 2327- *i.e.*, "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." The Majority concludes, however, that the Commonwealth Court abused its discretion under Rule 2329(2) by finding that the DEP is adequately representing Nonprofits' interests and, for this reason, denied them intervention. For the reasons that follow, I disagree with the Commonwealth Court and the Majority that Nonprofits qualify to intervene under Rule 2327(4). Moreover, even if Nonprofits were entitled to intervene under Rule 2327(4), unlike the Majority, I do not believe that the Commonwealth Court abused its discretion in denying intervention under Rule 2329(2).

Whether an applicant should be permitted to intervene under Rule 2327 generally presents a question of law. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 843 (Pa. 2024). Consequently, "our scope of review is plenary, and our standard of review is de novo." *Id.* As the Majority aptly explains, in deciding whether a potential intervenor has demonstrated that it is entitled to intervene pursuant to Rule 2327(4), a court must examine as a threshold matter whether the potential intervenor has standing. (*See* Majority Opinion at 23 (stating that

60 "[w]hether a potential *60 party has a legally enforceable interest in permitting intervention under Rule 2327(4) 'turns on whether they satisfy our standing requirements'") (quoting *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016)).) To determine whether a potential intervenor is aggrieved and, therefore, has standing to intervene in litigation, a court should consider whether the potential intervenor has a substantial, direct, and immediate interest in the matter being litigated. *Wolf*, 136 A.3d at 140. As to these requirements, this Court has stated:

> To have a substantial interest, the concern in the outcome of the challenge must surpass the common interest of all citizens in procuring obedience to the law. An interest is direct if it is an interest that mandates demonstration that the matter caused harm to the party's interest. Finally, the concern is immediate if that causal connection is not remote or speculative.

Id. (citations and quotation marks omitted). Important to this matter, this Court also has explained:

> [A]n association, as a representative of its members, has standing to bring a cause of action even in the absence of injury to itself if the association alleges that at least one of its members is suffering immediate or threatened injury *as a result of the challenged action* and the members of the association have an interest in the litigation that is substantial, direct, and immediate.

Pa. Med. Soc'y v. Dep't of Pub. Welfare, 39 A.3d 267, 278 (Pa. 2012) (emphasis added) (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)); *see Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 922 (Pa. 2013) ("Under Pennsylvania law, an association has standing as representative of its members to bring a cause of action even in the absence of injury to itself, if the association alleges that at least one of its members is suffering immediate or threatened injury *as a result of the action challenged*.") (emphasis added). Thus, if an association, like the various Nonprofits, wishes to establish standing by way of the status of one of its members, the association must prove, *inter alia*, that at least one of its members is suffering an immediate or threatened injury *as a result of the* *61 *challenged action*.[1] Our precedent establishes that, for purposes of associational standing, "the challenged action" typically is the act that prompted the litigation.

1 *See Robinson Twp.*, 83 A.3d at 922-23 (concluding that non-profit environmental group had standing to challenge legislation where, *inter alia*, environmental group demonstrated that some of its individual members were likely to suffer considerable harm as result of enactment of legislation that prompted litigation); *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481-88 (Pa. 2021) (determining that non-partisan political action committee had standing because it alleged that its members were harmed by enactment of ordinance challenged in litigation); *S. Whitehall Twp. Police Serv. v. S. Whitehall Twp.*, 555 A.2d 794 (Pa. 1989) (holding that police collective bargaining agent had standing because it demonstrated that its members were harmed by alleged quota system instituted by township and chief of police, where quota system was focus of litigation).

The Majority explains that, here, Nonprofits "presented the testimony of individual members regarding alleged harms they are suffering due to CO_2 emissions from fossil-fuel-fired power plants." (Majority Opinion at 27.) In addition, they "adduced expert testimony concerning the environmental and health impacts of CO_2 emissions and the RGGI Regulation."[2] (*Id.* at 28.) Based upon the testimony that Nonprofits offered at the evidentiary hearing concerning their application to intervene, the Commonwealth Court concluded that Nonprofits "provided sufficient credible evidence to establish that they have a legally enforceable interest by virtue of injury to their members." (Commonwealth Court Opinion at 21.) The Majority reaches the same conclusion.

2 This expert testimony was offered at the hearing on the Senate Intervenors' application for a preliminary injunction, not at the hearing dedicated to Nonprofits' application to intervene. Thus, the expert testimony did not concern Nonprofits' contention that they are entitled to intervene in this litigation.

Specifically, the Majority finds that one member of each of the various Nonprofits established that she has standing to intervene. In making this finding, the Majority first concludes that the members' "interests in the outcome of the litigation are substantial." (Majority Opinion at 29.) In support, the Majority states: "The members claim specific harms to their well-being, including hotter and wetter weather, poor air quality, breathing *62 difficulties, forced time inside, exacerbated asthma symptoms, worsened allergies, odd smells, dizziness, lightheadedness, headaches, ill loved ones, and eco-anxiety." (*Id.*) The Majority then reasons that "[t]hese specific interests in the outcome of the litigation go beyond the general interest shared by all Pennsylvanians in procuring obedience to the law. At stake for these individuals is not just fidelity to the law but the quality of their lives." (*Id.*)

The Majority also finds that the members' "interests in the outcome of this injunction litigation are direct: an injunction deprives them of the RGGI Regulation's purported environmental and health benefits, and their ongoing injuries persist or worsen." (*Id.* at 29-30.) Lastly, according to the Majority, the members' interest in the outcome of this litigation is immediate, as one of Nonprofits' experts testified at the preliminary injunction hearing that the RGGI Regulation would improve the environment and cause better health outcomes, moving the benefits of the RGGI Regulation outside of the realm of pure conjecture. In my view, the analyses offered by the Commonwealth Court and the Majority are not aligned with this Court's precedent regarding associational standing.

On almost a daily basis, individuals and organizations advocate for legislative and executive action that advances their favored policy interests. While individuals and organizations may seek to influence executive and legislative decision-making, we have never recognized any legally enforceable right to the implementation of favorable policies or the enactment of particular laws. Nonprofits, here, are advocates for "clean air and a stable climate." (Nonprofits' Application for Intervention ¶ 8.) The threshold question raised in this matter is whether those types of policy or advocacy interests become "legally enforceable interests"[3] such that their proponents have standing to intervene in litigation *63 challenging government action that promotes the proponents' interests rather than infringes upon them. Such a circumstance is strikingly inapposite to the circumstances under which this Court traditionally has determined standing to be proper in the face of a challenge to an ordinance, regulation, or statute.

3 Pa.R.Civ.P. 2327(4).

Our decision in *Firearm Owners Against Crime* presents a traditional standing analysis when an ordinance, regulation, or statute is challenged as unconstitutional. In that case, we considered whether Firearm Owners Against Crime (FOAC) had standing to challenge-on a pre-enforcement basis-an ordinance that regulated various aspects of possessing and discharging firearms in the City of Harrisburg. We concluded that FOAC had standing for the following reasons:

> The individual [a]ppellees' interest is substantial because they, as lawful possessors of firearms and concealed carry licenses, seek a determination of the validity of the City's Discharge, Parks, and Lost/Stolen Ordinances, which criminalize aspects of their ability to carry and use firearms within the City and impose reporting obligations for lost or stolen firearms. This exceeds the "abstract interest of all citizens in having others comply with the law." *William Penn Parking Garage, Inc. v. City of Pittsburgh*, . . . 346 A.2d 269, 282 (1975) (defining substantial interest). Their interest is direct because the challenged ordinances allegedly infringe on their constitutional and statutory rights to possess, carry, and use firearms within the City. *See id.* (stating a direct interest "simply means that the person claiming to be aggrieved must show causation of the harm to his [or her] interest by the matter of which he [or she] complains."). Their interest is immediate because they are currently subject to the challenged ordinances, which the City is actively enforcing, and must presently decide whether to violate the ordinances, forfeit their rights to comply with the ordinances, or avoid the City altogether. This alleged harm to their interest is not remote or speculative. *See* [*Off. of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014)]. Because the individual [a]ppellees, who are all members of FOAC, have standing to challenge the Discharge, Parks, and Lost/Stolen Ordinances, FOAC has standing as an associational representative of these members to challenge the ordinances. *See Robinson Twp.*, 83 A.3d at 922.

Firearm Owners Against Crime, 261 A.3d at 487-88. *64

Applying a similar analysis here, we must first examine the claims or challenges raised in this action. As this action now stands, the Senate Intervenors, through their counter-claims to the petition for review, seek to enjoin the publication of the RGGI Regulation on the basis that it constitutes an unconstitutional violation of the separation of powers doctrine because it: (1) interferes with the General Assembly's legislative authority to consider a regulation under Section 7(d) of the Regulatory Review Act;[4](2) constitutes an *ultra vires* action beyond the authority granted to the executive branch under the Air Pollution Control Act (APCA);[5] (3) usurps the General Assembly's authority to enter into interstate compacts or agreements, and (4) usurps the General Assembly's authority to levy taxes. The Senate Intervenors also seek to enjoin the regulation on the basis that it violates the APCA and what is commonly referred to as the Commonwealth Documents Law for failure to hold public hearings.[6]

4 Act of June 25, 1982, *as amended*, 71 P.S. § 745.7(d).

5 Act of January 8, 1960, P.L. (1959) 2119, *as amended*, 35 P.S. §§ 4001-4015.

6 Act of July 31, 1968, *as amended*, P.L. 769, 45 P.S. §§ 1101-1611.

As our precedent above makes clear, to have standing the would-be intervenor must establish interests that are adversely impacted-*i.e.*, harmed-by the challenged action. Here, Nonprofits make clear that their only desire is to intervene to assist the DEP in fending off challenges by the Senate Intervenors. When the Secretary of the DEP and Chairman of the EQB initiated this litigation, "the challenged action" was the LRB's refusal to publish the RGGI Regulation. In their application to intervene, Nonprofits expressly stated that they did not wish to intervene "on that narrow issue[.]" (Nonprofits' Application for Leave to Intervene, 4/25/2022, at 3, ¶5.) As noted, however, after the Commonwealth Court allowed various members

of the Legislature to intervene, "the challenged action" morphed into the DEP's alleged violation of the law in promulgating and attempting to *65 publish the RGGI Regulation. Nonprofits unequivocally desired to intervene to supplement the DEP's advocacy in favor of the validity of the RGGI Regulation. The question, then, is what "legally enforceable interest" of the Nonprofits may be harmed by the challenged action?

Although the Senate Intervenors' counterclaims are varied, the core of their position is that the DEP and the EQB violated the law, including constitutional principles concerning the separation-of-powers doctrine, by promulgating and attempting to publish the RGGI Regulation. Thus, the action challenged by the Senate Intervenors is the creation of the RGGI Regulation. Although Nonprofits would like this Court to view Senate Intervenors' challenge of the RGGI Regulation as infringing on their rights under the Environmental Rights Amendment (ERA),[7] the fact is that Nonprofits do not have a legally enforceable interest or right to executive or legislative action establishing the RGGI Regulation. Simply put, because Nonprofits have no right to the RGGI Regulation, none of the claims raised by Senate Intervenors in this litigation infringe upon any constitutional or other right currently enjoyed by Nonprofits. Furthermore, it is worth noting that the harms suffered by Nonprofits' members-*i.e.*, injuries suffered from existing environmental conditions, pollution, and their associated impacts-are similar to harms suffered by many if not all Pennsylvanians. If the RGGI Regulation does not become an enforceable regulation in this Commonwealth, its absence does not harm Nonprofits' members any more than they are already harmed. This is because the absence of the RGGI Regulation is simply the *status quo*. Again, Nonprofits have no right, let alone a "legally enforceable interest," to particular proposed policies, regulations, or statutes[8] that *66 advance their interests. For this reason, I disagree with the Majority's conclusion that Nonprofits have established a substantial, direct, and immediate interest in the litigation that would confer standing on them for purposes of intervention under Rule 2327(4).

[7] Pa. Const. art. I, § 27.

[8] The Majority takes issue with my conclusion that the absence of the RGGI Regulation is simply the status quo, claiming that the RGGI Regulation is not, as I suggest, a "proposed" regulation because it has been codified in the Pennsylvania Code. While that (continued…) may be true, the RGGI Regulation is, as the Majority concedes, "currently subject to an injunction" and, therefore, is not and has never been in effect in the Commonwealth. (Majority Opinion at 34.)

The Majority's view on standing essentially takes the position that an individual or organization that has an interest in the subject matter has standing to intervene in litigation seeking to challenge any proposed regulation or legislation that advances that interest. This Court, however, has never held that an interest in the subject matter of litigation alone creates a "legally enforceable interest" sufficient to establish standing for intervention purposes, particularly when dealing with challenges to proposed legislative or administrative action. Put another way, standing is not afforded to would-be intervenors who profess to have only an interest in the subject matter or the outcome of the litigation. To allow otherwise means that we must recognize standing for all individuals or organizations to intervene if they can establish a "mere" interest-*i.e.*, less than a "legally enforceable" interest-in the litigation.

Furthermore, I disagree with the Majority's conclusion that the Commonwealth Court abused its discretion by finding that the DEP is adequately representing Nonprofits' interest in this matter. *See* Pa.R.Civ.P. 2329(2). The only new dimension that Nonprofits add to this litigation is

an argument that the money generated from the RGGI Regulation is not an unauthorized tax but, rather, a fee. Nonprofits highlight that, unlike the DEP, their members are beneficiaries of the trust created by the ERA. Nonprofits believe that this status establishes that they have a special interest in this litigation. Nonprofits insist that their members' beneficiary status places Nonprofits in the unique position to argue that the RGGI Regulation is not a tax but, rather, a permissible fee, as the ERA mandates *67 that the proceeds from this regulation cannot be treated as general revenue. Instead, Nonprofits argue that, in line with trust principles, the RGGI Regulation proceeds must be dedicated to conserving the environment. According to Nonprofits, "[t]his nexus with the public trust precludes the General Assembly from appropriating the fee proceeds to become part of the General Fund of the Commonwealth, and limits [the] DEP's ability to expend the fee monies to protecting the trust asset from which they derive." (Nonprofits' Brief at 47.) While the Majority concludes that such an argument is "nonfrivolous," (Majority Opinion at 31), DEP may have had legitimate reasons not to advance that argument.[9] Moreover, failure to advance every possible argument does not render the DEP's representation inadequate. Regardless, Nonprofits need not have party status to advance their argument on this point. This argument can be raised by an amicus. To become a party intervenor requires more under our rules.

[9] Assuming *arguendo* that any proceeds from the Commonwealth's participation in RGGI must be directed to matters of environmental conservation, this does not necessarily answer the question of which branch of our state government-the executive or legislative-makes the ultimate determination of which environmental initiatives should benefit from the RGGI proceeds. This seems to me to be the central point of the "fee v. tax debate" currently before the Court.

Having failed to demonstrate that at least one member of each of the entities that make up Nonprofits have standing to intervene in this matter, Nonprofits have not established that they have a legally enforceable interest in the outcome of this litigation, as required by Pennsylvania Rule of Civil Procedure 2327(4). Thus, Nonprofits necessarily do not have associational standing to intervene. Consequently, I would affirm the Commonwealth Court's order denying Nonprofits' application to intervene, albeit for reasons that differ from those that led the Commonwealth Court to deny Nonprofits' application to intervene.

LAND DEVELOPMENT APPLICATION SUMMARY

Date: August 2, 2024 (revised October 4, 2024)
From: Liudmila Carter, Director of Planning & Zoning

PROJECT: Chase Bank at Westtown Marketplace
APPLICANT: Westtown AM West TIC, LLC
ADDRESS: 1506 West Chester Pike (previous - 1502 West Chester Pike)
UPI: 67-2-42.4

APPLICATION

This application calls for construction of a one-story 3,294 square feet bank with drive-up ATM, 12 parking spaces (including 2 ADA complaint spaces), bicycle rack, lighting, landscaping and signage at the northeastern corner of the Westtown Marketplace shopping center. The bank will be served by public water and sewer. The stormwater management facilities will include an underground basin located within the southern portion of the site.

In addition to improvements associated with a new bank, the applicant proposes to install painted crosswalk, concrete sidewalk and ADA complaint ramp with railing to connect the existing pedestrian walkway along the front of the main building across the parking lot area to the current bus stop located at West Chester Pike.

LOCATION AND DESCRIPTION OF SITE

1502 West Chester Pike is located on West Chester Pike in the northeastern portion of the Township between Manley Road and S Chester Road. The property address per County records is 1502 West Chester Pike and the mailing address is 120 N. Pointe Blvd, Suite 301, Lancaster, PA 17601. The property is located in the C-1 Neighborhood and Highway Commercial Zoning District and consists of 18.45 acres. The property is improved with a 1-story building with grocery store, retail stores, restaurants, retail bakery, shops for personal service, including barber shop, and a 1-story freestanding masonry building (occupied by Burger King), parking areas in the front and rear of the building, and stormwater management facility. The property includes sanitary sewer easement. Banks and similar financial institutions are permitted by right in the C-1 Zoning District.

SUBMISSION

The applicant submitted the preliminary/final land development application on July 16, 2024. The following items were included with the submission on July 16, 2024:

1. Letter from Kaplin Stewart dated July 16, 2024;
2. Preliminary Application form dated July 16, 2024;
3. Westtown Township Subdivision and Land Development information Sheet;
4. Chester County Subdivision/Land Development Information Form;
5. Act 247 County Referral;
6. Stormwater Management Plan Narrative prepared by Dynamic Engineering dated July 2024;
7. Email from Aqua America with supplemental information dated April 17, 2024;
8. Parking Assessment prepared by Dynamic Traffic, LLC dated January 23, 2019;
9. Preliminary/Final Land Development Plan for Westtown AM West TIC, LLC Proposed Chase Bank (sheets 1 to 21) prepared by Dynamic Engineering dated July 12, 2024.

The following items were provided between July 16, 2024 and September 29, 2024:

1. Parking Assessment prepared by Dynamic Traffic, LLC dated March 16, 2023;
2. Traffic Assessment prepared by Dynamic Traffic, LLC dated August 23, 2024;
3. Site Plan Rendering prepared by Dynamic Engineering dated September 11, 2024;
4. Pedestrian Path Exhibit prepared by Dynamic Engineering dated September 10, 2024;
5. Transportation Impact Assessment prepared by Dynamic Traffic dated September 13, 2024;
6. Waiver Request letter prepared by Dynamic Engineering dated September 18, 2024.

The following items were provided/resubmitted with the revised submission on September 30, 2024:

1. Letter from Dynamic Engineering dated September 30, 2024;
2. Waiver Request letter prepared by Dynamic Engineering dated September 18, 2024;
3. Parking Assessment prepared by Dynamic Traffic, LLC dated March 16, 2023;
4. Transportation Impact Assessment prepared by Dynamic Traffic dated September 13, 2024;
5. ALTA/NSPS Land Title Survey prepared by ASM American Surveying and Mapping Inc. dated May 10, 2021 last revised May 14, 2021;
6. Preliminary Opinion of Probable Construction Cost prepared by Dynamic Engineering dated September 30, 2024;
7. Stormwater Basin Area Investigation Report prepared by Dynamic Earth dated September 26, 2024;
8. Partial Topographic Survey prepared by Dynamic Survey, LLC dated September 26, 2024;
9. Stormwater Management Plan Narrative prepared by Dynamic Engineering dated September 2024;
10. Preliminary/Final Land Development Plan (sheets 1 to 25) prepared by Dynamic Engineering Consultants dated July 12, 2024 last revised September 20, 2024.

RELEVANT APPROVALS

On May 8, 2023, the Zoning Hearing Board has granted the approval for parking in the front yard as and only as shown on the proposed plan and determined that the variance sought to permit parking stall to be nine feet by eighteen feet is unnecessary in that the configuration has previously been approved generally throughout the center and the spaces are permitted consistent with the other spaces in the center. A variance sought for diminution of the mandated number of parking spaces and a variance sought to permit the trash receptacle to be placed within the side yard and 9.2 feet from the property line was denied.

On February 20, 2024, the Board of Supervisors approved amendments to Chapter 170, Zoning, Article XVII, Off-Street Parking and Loading, including allowable reductions to the number of parking spaces for an existing shopping center.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission has previously reviewed the application as a part of the Zoning Hearing Board process. The Planning Commission reviewed the land development application at their August 7th meeting and will continue the discussion at their October 9th meeting.

ARTICLE XVIII
Signs
[Amended 5-1-1995 by Ord. No. 95-1; 5-3-1999 by Ord. No. 99-2; 3-3-2003 by Ord. No. 2003-2; 5-2-2005 by Ord. No. 2005-4; 9-15-2008 by Ord. No. 2008-1; 6-20-2011 by Ord. No. 2011-4; 3-5-2012 by Ord. No. 2012-3; 3-16-2020 by Ord. No. 2020-03]

§ 170-1800. Applicability.

Any sign erected, altered, or maintained after the effective date of this article shall conform to the following regulations.

§ 170-1801. Purpose and intent.

The purpose of this article is to develop a comprehensive system of sign regulations to:

A. Promote the safety of persons and property by providing that signs:

(1) Do not create traffic hazards by distracting or confusing motorists, or impairing motorist's ability to see pedestrians, other vehicles, obstacles or to read traffic signs.

(2) Do not create a hazard due to collapse, fire, collision, decay or abandonment.

(3) Do promote the aesthetic quality, safety, health, and general welfare and the assurance of protection of adequate light and air within the Township by regulation of the posting, displaying, erection, use and maintenance of signs.

B. Promote the efficient transfer of information through the use of signs and to permit such use, but not necessarily in the most profitable form or format available for such use.

C. Protect the public welfare and enhance the overall appearance and economic value of the landscape, while preserving the unique natural and historic environment that distinguishes the Township and consistent with Article I, § 27, of the Pennsylvania Constitution.

D. Set standards and provide uniform controls that permit reasonable use of signs and preserve the character of Westtown Township.

E. Prohibit the erection of signs in such numbers, sizes, designs, illumination, and locations as may create a hazard to pedestrians and motorists.

F. Avoid excessive conflicts from large or multiple signs, so that permitted signs provide information while minimizing clutter, unsightliness, and confusion.

G. Establish a process for the review and approval of sign permit applications.

H. Address billboard signs in the C-2 District along Route 202.

~~H.~~ Refine definitions of message center signs, digital displays and changeable copy signs and their uses.

§ 170-1802. Definitions.

Words and terms used in this article shall have the meanings given in this section. Unless expressly stated otherwise, any pertinent word or term not part of this listing, but vital to the interpretation of this article, shall be construed to have its legal definition, or in absence of a legal definition,

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its meaning as commonly accepted by practitioners including civil engineers, surveyors, architects, landscape architects, and planners.

AMBIENT LIGHT CONDITIONS – A natural or artificial light that exists in an environment without any additional lighting specifically directed at a subject. Ambient light conditions include illumination from sources like sunlight, moonlight, street lights, or interior lighting that fills a space.

SIGN — Any permanent or temporary structure or part of a structure, or any device attached, represented, projected or applied by paint or otherwise, or any structure or other surface used to communicate information, a message or advertisement, or to attract the attention of the public to a subject or location. The term "sign" shall include, but not be limited to, flat or curved surfaces, all support and/or assembly apparatus, flags, banners, streamers, pennants, insignias and medals with or without words or pictures. Signs on vehicles shall be subject to the provisions of this chapter when the vehicle is owned and located or parked on or in front of a lot under the control of an occupant of the lot.

A. The following shall not be defined as signs under this chapter:

(1) Any surface not exceeding one square foot in area that is required by a federal, state, county or municipal law or regulation, or by the United States Post Office to identity a property by number, post box number or name(s) of occupants of the property.

(2) Flags and insignia of any municipal, state or federal government.

(3) Legal notices, identification information, or wayfinding information provided by governmental or legislative authorities.

(4) Integral, decorative or architectural features of buildings.

(5) Actual produce and merchandise displayed for sale that appear in store windows.

(6) Grave markers of all types.

(7) Memorial markers.

B. Sign types and definitions:

(1) ABANDONED SIGN — A sign which has not been used to provide information for a period of at least 180 days.

(2) ANIMATED SIGN — A sign that incorporates action, motion, or light or color changes through electrical or mechanical means.

(3) AWNING — A cloth, plastic, or other nonstructural covering that projects from a wall for the purpose of shielding a doorway or window. An awning is either permanently attached to a building or can be raised or retracted to a position against the building when not in use.

(4) AWNING SIGN — Any ~~sisgn~~sign painted on, or applied to, an awning.

(5) BALLOON SIGN — A sign painted on or affixed to a lighter-than-air, gas-filled balloon.

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(6) BANNER — Any cloth, bunting, plastic, paper, or similar non-rigid material attached to any structure, staff, pole, rope, wire, or framing which is anchored on two or more edges or at all four corners. Banners are temporary in nature and do not include flags.

(7) BEACON LIGHTING — Any source of electric light, whether portable or fixed, the primary purpose of which is to cast a ~~concentracted~~concentrated beam of light generally skyward as a means of attracting attention to its location rather than to illuminate any particular sign, structure, or other object.

(8) BILLBOARD — An outdoor sign with a sign area that is between 60 square feet and 300 square feet.

(9) BUILDING FRONTAGE — The maximum linear width of a building measured in a single straight line parallel, or essentially parallel, with the abutting public street or parking lot.

(10) CANOPY — A structure other than an awning made of fabric, metal, or other material that is supported by columns or posts affixed to the ground and may also be connected to a building.

(11) CANOPY SIGN — Any sign that is part of, or attached to, a canopy.

(12) CHANGEABLE COPY SIGN — A sign or portion thereof that allows for manual modifications of its displayed message mounted in or on a track system, which consists of removable letters, numbers, or symbols. ~~on which the copy or symbols change either automatically through electrical or electronic means, or manually through placement of letters or symbols on a panel mounted in or on a track system. The two types of changeable copy signs are "manual changeable copy signs" and "electronic changeable copy signs," which include: message center signs, digital displays, and tri-vision boards.~~

(13) CHANNEL LETTER SIGN — A sign consisting of fabricated or formed three-dimensional letters, individually applied to a wall, which may accommodate a light source.

(14) CLEARANCE — The distance above the walkway, or other surface if specified, to the bottom edge of a sign. This term can also refer to a horizontal distance between two objects.

(15) DIGITAL DISPLAY — A sign or ~~The~~ a portion of a sign face in a form of an electronic device that presents information in a visual format using digital technology, which involves the use of pixels or segments to show text, images, or graphics.~~made up of internally illuminated components capable of changing the message periodically~~. Digital displays may include but are not limited to LCD (liquid crystal display), LED (light –emitting diode), OLED (organic light-emitting diode), mini-LED, microLED, or plasma displays.

(16) FESTOON LIGHTING — A type of illumination comprised of either: a) a group of light bulbs hung or strung overhead or on a building or other structure; or b) light bulbs not shaded or hooded or otherwise screened to prevent direct rays of light

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from shining on adjacent properties or rights-of-way.

(17) FLAG — Any sign or image printed or painted on cloth, plastic, canvas, or other like material attached to a pole or staff and anchored along only one edge or supported or anchored at only two corners in such a way that it forms an angle of not more than 45 degrees when hanging freely.

(18) FLASHING SIGN — A sign whose artificial illumination is not kept constant in intensity at all times when in use and which exhibits changes in light, color, direction, or animation. This definition does not include ~~electronic~~ message center signs or digital displays that meet the requirements set forth herein.

(19) FREESTANDING SIGN — A sign supported by structures or supports that are placed on, or anchored in, the ground; and that is independent and detached from any building or other structure. The following are subtypes of freestanding signs:

(a) GROUND SIGN — A sign permanently affixed to the ground at its base, supported entirely by a base structure, and not mounted on a pole or attached to any part of a building (also known as "monument sign").

(b) POLE SIGN — A freestanding sign that is permanently supported in a fixed location by a structure of one or more poles, posts, uprights, or braces from the ground and not supported by a building or a base structure.

(20) GAS STATION CANOPY — A freestanding, open-air structure constructed for the purpose of shielding service station islands from the elements.

(21) GAS STATION CANOPY SIGN — Any sign that is part of, or attached to, the vertical sides of the gas station canopy roof structure. For the purposes of this article, gas station canopy signs shall be considered wall signs.

(22) GOVERNMENT SIGN — Any sign constructed and/or installed by a federal, state, county or municipal government or authorized unit or department thereof.

(23) ILLUMINATED SIGN — A sign with electrical equipment installed for illumination, either internally illuminated through its sign face by a light source contained inside the sign or externally illuminated by a light source aimed at its surface.

(24) ILLUMINATION — A source of any artificial or reflected light, either directly from a source of light incorporated within, or indirectly from an artificial source.

(a) EXTERNAL ILLUMINATION — Artificial light, located away from the sign, which lights the sign, the source of which may or may not be visible to persons viewing the sign from any street, sidewalk, or adjacent property.

(b) INTERNAL ILLUMINATION — A light source that is concealed or contained within the sign and becomes visible in darkness through a translucent surface. Message center signs, digital displays, and signs incorporating neon lighting shall not be considered internal illumination for the purposes of this article.

(c) HALO ILLUMINATION — A sign using a three-dimensional message, logo,

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etc., which is lit in such a way as to produce a halo effect (also known as "backlit illumination").

(25) INCIDENTAL WINDOW SIGN — Signs displayed in the window of a commercial, retail or other business establishment, which are no larger than one square foot individually or three square feet in the aggregate.

(26) INFLATABLE SIGN — A sign that is an air-inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or structure and equipped with a portable blower motor that provides a flow of air into the device.

(27) INTERACTIVE SIGN — An electronic or animated sign that reacts to the behavior or electronic signals of motor vehicle drivers.

(28) LIMITED DURATION SIGN — A nonpermanent sign that is displayed on private property for more than 30 days, but not longer than one year.

~~(29) MANUAL CHANGEABLE COPY SIGN — A sign or portion thereof on which the copy or symbols are changed manually through placement or drawing of letters or symbols on a sign face.~~

~~(30)~~(29) MARQUEE — A permanent structure, other than a roof or canopy, attached to, supported by, and projecting from a building.

~~(31)~~(30) MARQUEE SIGN — Any sign attached to a marquee.

~~(32)~~(31) MECHANICAL MOVEMENT SIGN — A sign having parts that physically move rather than merely appear to move as might be found in a digital display. The physical movement may be activated electronically or by another means, but shall not include wind-activated movement such as used for banners or flags. Mechanical movement signs do not include digital signs ~~that have changeable, programmable displays~~.

~~(33)~~(32) MENU SIGN — A permanent sign not greater than 32 square feet located at, on or in the window of a restaurant, or other use serving food, or beverages.

~~(34)~~(33) MESSAGE CENTER SIGN — A type of electronic device that uses technologies like LED (light-emitting diode), LCD (liquid crystal display), matrix displays, or incandescent bulbs to display static or scrolling text that conveys information, or announcements, similar to those ~~illuminated, changeable copy sign that consists of electronically changing text~~ located on a lot with a gas station, ~~or an~~ athletic fields, or parks.

~~(35)~~(34) MESSAGE SEQUENCING — The spreading of one message across more than one sign structure.

~~(36)~~(35) MULTI-TENANT SIGN — A freestanding sign located on lot on which a shopping center or complex with multiple tenants is located.

~~(37)~~(36) MURAL (or MURAL SIGN) — A large picture/image which is painted, constructed, or affixed directly onto a vertical building wall, which may or may not contain text, logos, and/or symbols.

~~(38)~~(37) NEON SIGN — A sign illuminated by a neon tube, or other visible light-

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emanating gas tube, that is bent to form letters, symbols, or other graphics.

~~(39)~~(38) NONCONFORMING SIGN — A sign that was legally erected and maintained at the effective date of this article, or amendment thereto, that does not currently comply with sign regulations of the district in which it is located.

~~(40)~~(39) PENNANT — A triangular or irregular piece of fabric or other material,

commonly attached in strings or strands, or supported on small poles intended to flap in the wind.

~~(41)~~(40) PERMANENT SIGN — A sign attached, affixed or painted to a building, window, or structure, or to the ground in a manner that enables the sign to resist environmental loads, such as wind, and that precludes ready removal or movement of the sign and whose intended use appears to be indefinite.

~~(42)~~(41) PORTABLE SIGN — A sign designed to be transported or moved and not permanently attached to the ground, a building, or other structure.

(a) SANDWICH BOARD SIGN — A type of freestanding, portable, temporary sign consisting of two faces connected and hinged at the top (also known as "A-frame sign").

(b) VEHICULAR SIGN — A sign affixed to a vehicle located on the same lot as a business and which sits or is otherwise not incidental to the vehicle's primary purpose.

~~(43)~~(42) PRIVATE DRIVE SIGN — A sign located at an intersection of a street or drive which is not publicly owned and maintained and used only for access by the occupants of the property and their guests.

~~(44)~~(43) PROJECTING SIGN — A building-mounted, double-sided sign with the two faces generally perpendicular to the building wall, not to include signs located on a canopy, awning, or marquee (also known as "blade sign").

~~(45)~~(44) PUBLIC RIGHT-OF-WAY — The area between the outer edge of a paved street, road or highway and the closer of an abutting property line or a line parallel to such outer edge to be measured from the center line of such street, road or highway to the following distance:

(a) Sixty feet for Routes 202 and 3.

(b) Forty feet for Routes 926 and 352.

(c) Thirty feet for collector streets.

(d) Twenty-five feet for a minor street.

~~(46)~~(45) PUBLIC SIGN — A sign erected or required by government agencies or utilities.

~~(47)~~(46) REFLECTIVE SIGN — A sign containing any material or device which has the effect of intensifying reflected light.

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~~(48)~~(47) REVOLVING SIGN — A sign which revolves in a circular motion; rather than remaining stationary on its supporting structure.

~~(49)~~(48) ROOF SIGN — A building-mounted sign erected upon, against, or over the roof of a building.

~~(50)~~(49) SCOREBOARD — A sign contained within an athletic venue.

~~(51)~~(50) SECURITY SIGN — A sign located on a premises on which no trespassing, hunting, and/or soliciting are permitted (also known as "warning sign").

~~(52)~~(51) SHIELDED — The description of a luminaire from which no direct glare is visible at normal viewing angles, by virtue of its being properly aimed, oriented, and located and properly fitted with such devices as shields, barn doors, baffles, louvers, skirts, or visors.

~~(53)~~(52) SIGN AREA — The total dimensions of a sign surface used to display information, messages, advertising, logos, or symbols. See § 170-1805C for standards for measuring sign area.

~~(54)~~(53) SIGN FACE — The part of the sign that is or can be used for the sign area. The sign area could be smaller than the sign face.

~~(55)~~(54) SIGN HEIGHT — The vertical dimension of a sign as measured using the standards in § 170-1805D.

~~(56)~~(55) SIGN SUPPORTING STRUCTURE — Poles, posts, walls, frames, brackets, or other supports holding a sign in place.

~~(57)~~(56) SNIPE SIGN — A sign tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, benches, streetlights, or other objects, or placed on any public property or in the public right-of-way or on any private property without the permission of the property owner (also known as "bandit sign").

~~(58)~~(57) STOREFRONT — The exterior facade of a building housing a commercial use visible from a street, sidewalk, or other pedestrian way accessible to the public and containing the primary entrance to the commercial establishment.

~~(59)~~(58) STREAMERS — A display made of lightweight, flexible materials, consisting of long, narrow, wavy strips hung individually or in a series and typically designed to move in the wind.

~~(60)~~(59) STREET FRONTAGE — The side or sides of a lot abutting on a public street or right-of-way.

~~(61)~~(60) STREET POLE BANNER — A banner suspended above a public street or right- of-way, sidewalk and/or parking area and attached to a single street pole.

(61) TEMPORARY SIGN — A nonpermanent sign that is located on private property that can be displayed for no more than 30 consecutive days at one time.

(62) TRI-VISION BOARD SIGN – An outdoor sign that uses a series of rotating triangular blades to display multiple messages on a single sign structure with each blade rotating to reveal a different face, allowing the sign to showcase different information.

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(63) URBAN EXPERIENTIAL DISPLAYS (UEDs) — An outdoor sign that projects its message in three-dimensional (3-D) space.

(64) WALL SIGN — A building-mounted sign which is either attached to, displayed on, or painted on an exterior wall in a manner parallel with the wall surface. A sign installed on a false or mansard roof is also considered a wall sign (also known as: "fascia sign," "parallel wall sign," or "band sign").

(65) WINDOW SIGN — Any sign that is applied, painted, or affixed to a window, or placed inside a window, within three feet of the glass, facing the outside of the building, and easily seen from the outside.

§ 170-1803. Prohibited signs.

The following signs are unlawful and prohibited:

A. Abandoned signs.

B. Snipe signs. Signs shall only be attached to utility poles in conformance with state and utility regulations and the requirements of this chapter.

C. Mechanical movement signs, including revolving signs.

D. Pennant strings and streamers, except when located inside a stadium, arena, or temporary fairground during a special event.

E. Animated signs, urban experiential displays, flashing signs, or signs that scroll or flash text or graphics or use sound or full-motion video.

F. Inflatable devices or balloon signs, with the exception of balloons used in temporary situations.

G. Signs which interfere with, imitate, or resemble any public sign, signal, or device within 75 feet of a public right-of-way or within 200 feet of a traffic control device, whichever is greater.

H. Any signs located within a public right-of-way and/or which obscure or interfere with the line of sight at any street intersection or traffic signal, or at any other point of vehicular access to a street.

I. Signs which prevent free ingress or egress from any door, window, fire escape, or that prevent free access from one part of a roof to any other part. No sign shall be attached to a standpipe or fire escape that creates confusion or interferes with its use and operation.

J. Signs which emit smoke, visible vapors, particulate matter, sound, odor or contain open flames.

K. Reflective signs or signs containing mirrors, excluding those as approved by the Township or PennDOT for traffic use.

L. Interactive signs.

M. Signs incorporating beacon or festoon lighting.

N. Any banner or sign of any type suspended across a public street, without the permission of the owner of the property and road.

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O. Roof signs, or any portion thereof, which extends above the roofline of any building.

P. Signs erected without the permission of the property owner, with the exception of those authorized or required by local, state, or federal government.

Q. Any sign having content that is not subject to the protections of the First Amendment to the United States Constitution or Article I, Section 7, of the Pennsylvania Constitution, including, but not limited to, the following:

(1) Obscenity/pornography.

(2) Fighting words.

(3) Incitement to imminent lawless action.

(3)R. Any sign mounted on a fence or a wall that is not a part of the building.

§ 170-1804. Signs exempt from permit requirements.

The following signs shall be allowed without a sign permit and shall not be included in the determination of the type, number, or area of permanent signs allowed within a zoning district, provided such signs comply with the regulations in this section, if any. All owners of such signs must still comply with all applicable standards of this chapter, including the responsibility for maintenance of signs in good and safe repair.

A. Government signs constructed and/or installed by the federal, state, county or municipal government or an agency or department thereof and to include the United States Postal Service.

B. Signs inside a building, or other enclosed facility, which are not meant to be viewed from the outside, and are located greater than three feet from the window.

C. Address signs: Up to two signs required by the federal, state, county or municipal government or a department or agency thereof, including, but not limited to, the United States Post Office, located on the following uses and conforming with the dimensions set forth below as well as the specifications for street address number posting set forth in § 61-5.

(1) Residential uses: signs not to exceed one square foot in area.

(2) Nonresidential uses: signs not to exceed five square feet in area.

D. Public signs: Signs erected or required by government agencies or utilities, including those located in the public right-of-way, at railroad crossings, on buildings that have restrooms, telephones, or similar public convenience available, but not to exceed two square feet.

E. Private drive signs: one sign per driveway entrance, not to exceed four square feet in area.

F. Security and warning signs: These limitations shall not apply to the posting of signs on premises where no trespassing, hunting and/or soliciting is permitted.

(1) Residential uses: signs not to exceed four square feet in area.

(2) Nonresidential uses: maximum of one large sign per property, not to exceed five square feet in area. All other posted security and warning signs may not exceed four square feet in area.

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G. Flags:

(1) Location. Flags and flagpoles shall not be located within any right-of-way.

(2) Height. Flagpoles shall have a maximum height of 30 feet in all residential districts.

(3) Number. No more than two flags per lot in residential districts; no more than three flags per lot in all other districts.

(4) Size. Maximum flag size is 24 square feet in residential districts.

(5) Flags may be used as permitted freestanding or projecting signs, and, if so used, the area of the flag shall be included in, and limited by, the computation of allowable area for signs on the property.

H. Legal notices.

I. Permanent architectural features of a building or structure, such as a cornerstone or carving or embossment on a building, provided that the letters are not made of a reflective material nor contrast in color with the building.

J. Signs within four feet of a crop growing in a field. Such signs shall not exceed four square feet and shall be removed after the field has been harvested.

K. Incidental signs, including incidental window signs when the total area of any such sign or all signs together does not exceed two square feet.

L. Street pole banners, located outside public rights-of-way, interior to a campus, institutional or commercial use, provided they comply with the following:

(1) Area: a maximum area of 12.5 square feet and a maximum width of three feet. Up to two street pole banners are permitted per street pole.

(2) Height:

(a) When the street pole banner's edge is less than 18 inches from the curb, the lowest edge of the street pole banner shall be at least 14 feet above the finished grade.

(b) When the street pole banner's edge is greater than 18 inches from the curb, the lowest edge of the street pole banner shall be at least eight feet above the finished grade.

(3) Location:

(a) No street pole banner shall extend beyond the curbline.

(b) Street pole banners shall maintain a minimum of three-foot vertical clearance below any luminaries located on the pole measured from where the ballasts connect to the poles.

(c) Street pole banners shall not interfere with the visibility of traffic signals or signs.

(d) No street pole banner shall be located on a pole that has traffic or pedestrian control signals.

M. Temporary signs in accordance with § 170-1808, Regulations by sign type (limited duration, temporary and portable signs).

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N. Any canopy or awning, as defined herein, which does not have any lettering, logos or symbols printed, painted or otherwise affixed thereto.

§ 170-1805. General regulations.

A. Sign location.

(1) No sign shall be placed in such a position as to endanger pedestrians, bicyclists, or traffic on a street by obscuring the view or by interfering with government street signs or signals by virtue of position or color.

(2) Except for those classified as exempt under § 170-1804, no sign may be located within any public right-of-way and/or occupy a clear sight triangle of 75 feet (as measured from the center-line intersections of two streets) which shall be provided at all intersections. The minimum clear sight triangle shall be increased to 100 feet if either street is a collector street and to 150 feet if either street is an arterial highway. **[Amended 11-16-2020 by Ord. No. 2020-04]**

(3) Signs and their supporting structures shall maintain clearance and noninterference with all surface and underground utility and communications lines or equipment.

B. Sign materials and construction: Every sign shall be constructed of durable materials, using noncorrosive fastenings; shall be structurally safe and erected or installed in strict accordance with the Pennsylvania Uniform Construction Code; and shall be maintained in safe condition and good repair at all times, consistent with this section, so that all sign information is clearly legible.

C. Sign area.

(1) The "area of a sign" shall mean the area of all lettering, wording, and accompanying designs, logos, and symbols. The area of a sign shall not include any supporting framework, bracing or trim which is incidental to the display, provided that it does not contain any lettering, wording, or symbols.

(2) Where the sign consists of individual letters, designs, or symbols attached to a building, awning, wall, or window, the area shall be that of the smallest rectangle which encompasses all of the letters, designs, and symbols.

(3) Signs may be double-sided.

(a) Only one side shall be considered when determining the sign area, provided that the faces are equal in size, the interior angle formed by the faces is less than 45°, and the two faces are not more than 18 inches apart.

(b) Where the faces are not equal in size, but the interior angle formed by the faces is less than 45° and the two faces are not more than 18 inches apart, the larger sign face shall be used as the basis for calculating sign area.

(c) When the interior angle formed by the faces is greater than 45°, or the faces are greater than 18 inches apart, all sides of such sign shall be considered in calculating the sign area.

(4) Signs that consist of, or have attached to them, one or more three-dimensional or irregularly shaped objects, shall have a sign area of the sum of two adjacent vertical sign

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faces of the smallest cube encompassing the sign or object.

(5) If elements of a sign are movable or flexible, such as a flag or banner, the measurement is taken when the elements are fully extended and parallel to the plane of view.

(6) The permitted maximum area for all signs is determined by the sign type and the use of the property where the sign is located.

D. Sign height.

(1) Sign height shall be measured as the distance from the highest portion of the sign to the mean finished grade of the street closest to the sign. In the case of a sign located greater than 100 feet from a public street, height shall be measured to the mean grade at the base of the sign.

(2) Clearance for freestanding and projecting signs shall be measured as the smallest vertical distance between finished grade and the lowest point of the sign, including any framework or other structural elements.

(3) The permitted maximum height for all signs is determined by the sign type and type and the use of the property where the sign is located.

E. Sign spacing: The spacing between sign structures shall be measured as a straight-line distance between the closest edges of each sign.

F. Sign illumination.

(1) Signs may be illuminated, unless otherwise specified herein, consistent with the general standards for outdoor lighting as outlined in § 170-1514 and those listed below:

(a) Light sources to illuminate signs shall neither be visible from any street right-of-way, nor cause glare which is hazardous or distracting to pedestrians, vehicle drivers, or adjacent properties.

(b) Hours of operation:

[1] Signs on nonresidential properties may be illuminated from 6:00 a.m. prevailing time until 11:00 p.m. prevailing time, or 1/2 hour past the close of business of the facility located on the same lot as the sign, whichever is later.

[2] Signs shall provide an automatic timer to comply with the intent of this subsection.

[3] The above hours of operation standards shall not apply to a use operating 24 hours a day.

(c) Brightness: Message center signs and digital displays are subject to the following brightness limits:

[1] The illumination of the sign shall be set so as not to be more than 0.3 footcandle above ambient lighting conditions, measured using a footcandle meter at 75 feet perpendicular to the sign's display.

~~[1]~~[2] Between sunrise and sunset, luminance shall be no greater than 5,000 nits. At all other times, luminance shall be no greater than 250 nits. Luminance

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shall be measured utilizing a luminance meter (photometer) or colorimeter positioned perpendicular to the digital display surface at a distance of no more than 3 feet.

[3] Each sign must have a light-sensing device or ambient light monitor that continuously monitor and will automatically adjust the brightness of the ~~display~~ sign to appropriate levels for ~~as~~ the existing ~~natural~~ ambient light conditions ~~change~~ to comply with the limits set herein.

~~[2]~~[4] Each sign shall be equipped with an automatic shutoff in case of failure or error that would result in the sign projecting a full intensity all-white image for an extended period of time.

(d) Message duration: The length of time each message may be displayed on a message center sign, digital display, or tri-vision board sign shall be static and nonanimated and shall remain fixed for a minimum of 30 seconds.

(e) Message transition: The length of time when a message is transitioned on a message center sign, digital display, or tri-vision board sign shall be accomplished in one second or less with all moving parts or illumination changing simultaneously and in unison.

(f) Default design: Any message center sign, digital display, or tri-vision board shall contain a default design which shall freeze the sign message in one position if a malfunction should occur or, in the alternative, shut down.

(2) Types of illumination: Where permitted, illumination may be:

(a) External: Externally illuminated signs, where permitted, are subject to the following regulations:

[1] The source of the light must be concealed by translucent covers.

[2] External illumination shall be by a steady, stationary light source, shielded and directed solely at the sign. The light source must be static in color.

(b) Internal: Internally illuminated signs, where permitted, are subject to the following regulations:

[1] Internal illumination, including neon lighting, must be static in intensity and color.

[2] Message center signs are permitted in accordance with the regulations contained in § 170-1805F(3).

[3] Digital displays are permitted in accordance with the regulations contained in § 170-1805F(4).

(3) Message center signs are subject to the following regulations, in addition to all other illumination requirements established in this section.

(a) Sign type: Message center signs are permitted in the form of freestanding, monument, and wall signs, in accordance with the regulations established in §§ 170-1806 and 170-1807.

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(b) Height: A message center sign shall have the same height limits as other permitted signs of the same type and location.

(c) Area:

[1] When used other than as a billboard, message center signs shall not exceed 50% of the sign area for any one sign, and shall not exceed more than 30% of the total area for all signs permitted on a property.

[2] When used as billboard, message center signs may be used for the full permitted sign area.

(d) Maximum number: Where permitted, one message center sign is permitted per street frontage, up to a maximum of two message center signs per property.

(e) Message display:

[1] No message center sign may contain text which flashes, pulsates, moves, or scrolls.

[2] The transition of a message center sign must take place instantly (e.g., no fade-out or fade-in).

[3] Default design: The sign shall contain a default design which shall freeze the sign message in one position if a malfunction should occur or, in the alternative, shut down.

(f) Conversion of a permitted non-message center sign to a message center sign requires the issuance of a permit pursuant to § 170-1815.

(g) The addition of any message center sign to a nonconforming sign is prohibited.

(h) Message center signs, except when used other than as billboard, shall not be used for off-premises advertising.

~~(g)~~(i) Message center signs shall coordinate and permit access for local, regional, state and national emergency services during emergency situations. Such messages are not required to conform to message sign standards listed herein.

(4) Digital display signs are subject to the following regulations in addition to all other requirements established in this section.

(a) Sign type: Digital displays are permitted in the form of freestanding, monument, and wall signs, in accordance with the regulations established in §§ 170-1806 and 170-1807.

(b) Height: A digital display shall have the same height limits as for other permitted signs of the same type and location.

(c) Area:

[1] When used other than as a billboard, digital displays shall not exceed more than 30% of the total sign area permitted on the site.

[2] When used as a billboard, digital displays may be used for the full permitted

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sign area.

(d) Maximum number per property: Where permitted, one digital display sign is permitted per property.

(e) Message display:

[1] Any digital display containing animation, streaming video, or text or images which flash, pulsate, move, or scroll is prohibited.

[2] One message/display may be brighter than another, but each individual message/display must be static in intensity and otherwise compliant with § 170-1805F(1)(c).

[3] The content of a digital display must transition by changing instantly, with no transition graphics (e.g., no fade-out or fade-in).

[4] Default design: The sign shall contain a default design which shall freeze the sign message in one position if a malfunction should occur or, in the alternative, shut down.

(f) Conversion of a permitted nondigital sign to a digital sign requires the issuance of a permit pursuant to § 170-1815.

(g) The addition of any digital display to a nonconforming sign is prohibited.

(h) Digital displays, except when used other than as billboard, shall not be used for off-premises advertising.

~~(g)~~(i) Digital displays shall coordinate and permit access for local, regional, state and national emergency services during emergency situations. Such messages are not required to conform to message sign standards listed herein.

(5) Electrical standards.

(a) Permits for illuminated signs will not be issued without an approved electrical permit, if required. Applications for electrical permits shall be filed at the same time as the sign permit application.

(b) All work shall be completed in full compliance with the Westtown Township Electrical Code as set forth in the Pennsylvania Uniform Construction Code.

(c) The electrical supply to all exterior signs, whether to the sign itself or to lighting fixtures positioned to illuminate the sign, shall be provided by means of concealed electrical cables. Electrical supply to freestanding signs shall be provided by means of underground cables.

(d) The owner of any illuminated sign shall arrange for a certification showing compliance with the brightness standards set forth herein by an independent contractor and provide the certification documentation to the Westtown Township as a condition precedent to the issuance of a sign permit.

(6) Glare control: Glare control shall be achieved primarily through the use of such means as cutoff fixtures, shields, and baffles, and appropriate application of fixture mounting height, wattage, aiming angle, and fixture placement. Vegetation screens shall not be

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employed to serve as the primary means for controlling glare.

§ 170-1806. Regulations by sign type: generally.

A. Wall signs.

(1) No portion of a wall sign shall be mounted less than 10 feet above the finished grade or extend out more than eight inches from the building wall on which it is affixed. If the wall sign projects less than three inches from the building wall on which it is affixed, the ten-foot height requirement need not be met.

(2) More than one sign shall be permitted per wall, except that the total area of all signs on one wall shall not exceed 10% of the facade.

(3) No wall sign shall extend above the top of the wall upon which it is mounted or beyond the edges of same.

B. Canopy or awning signs.

(1) Canopy or awning signs must be centered within or over architectural elements such as windows or doors.

(2) No awning or canopy sign shall be wider than the building wall or tenant space it identifies.

(3) Sign placement.

(a) Letters or numerals shall be located only on the front and side vertical faces of the awning or canopy.

(b) Logos or emblems are permitted on the top or angled portion of the awning or canopy up to a maximum of three square feet. No more than one emblem or logo is permitted on any one awning or canopy.

(4) Sign height.

(a) The lowest edge of the canopy or awning sign shall be at least eight feet above the finished grade.

(5) Awnings above the ground floor may be fixed, provided they do not project more than four feet from the face of the building.

(6) Multi-tenant buildings. If the awning or canopy sign is mounted on a multi-tenant building, all awning or canopy signs shall be similar in terms of height, projection, and style across all tenants in the building.

C. Projecting signs.

(1) No portion of a projecting sign shall project more than four feet from the face of the building.

(2) The outermost portion of a projecting sign shall not project into any public right-of-way.

(3) Sign height. The lowest edge of a projecting sign shall be at least 10 feet above the finished grade and shall not extend above the top of the wall upon which it is mounted.

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D. Window signs.

(1) Incidental window signs shall be excluded from area calculations for window signs.

(2) Multiple window signs shall be permitted per building, provided that all window signs at any one time do not exceed 25% of the total glass area on the side of the building where they are placed. For grocery stores, food markets, and pharmacies, the total glass area covered by window signs shall not exceed 35%.

(3) Window signs may be internally lit when located on a lot within a commercial, multiuse or planned office campus zoning district.

E. Marquee signs.

(1) Such signs shall be located only above the principal public entrance of a building facing a public street or parking lot.

(2) No marquee shall be wider than the entrance it serves, plus two feet on each side thereof.

(3) Sign height.

(a) No portion of a marquee sign shall extend vertically above the eave line.

(b) The lowest edge of the marquee sign shall be at least 10 feet above the finished grade.

F. Freestanding signs.

(1) On any tract, the total number of freestanding signs shall not exceed one per street frontage, regardless of location.

(2) Freestanding ground signs shall be supported and permanently placed by embedding, anchoring, or connecting the sign in such a manner as to incorporate it into the landscape or architectural design scheme.

(3) Sign height. Unless otherwise specifically allowed, height standards for freestanding signs are as follows:

(a) Ground signs shall have a maximum height of 3.5 feet, except for those located along Route 202 or Route 3, which shall have a maximum height of 4.5 feet.

(b) Pole signs shall have a maximum height of 15 feet. The minimum distance between the ground surface and the bottom of the sign face shall be four feet.

(4) Sign placement.

(a) All freestanding signs shall be located outside the public right-of-way, except for government signs. Where compliance with this standard would nonetheless create an obstruction of view, further setback may be required. **[Amended 4-4-2022 by Ord. No. 2022-02]**

(b) No freestanding sign may occupy an area designated for parking, loading, walkways, driveways, fire lane, easement, cartway of the right-of-way or other areas required to remain unobstructed.

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(c) All freestanding signs shall be located no closer to any adjacent residential lot line, public park, church, school, or public playground than the minimum setback or separation distance required for any other adjacent structure or building, as regulated by this chapter.

G. ~~Manual c~~Changeable copy signs, digital displays and message center signs: ~~Manual c~~Changeable copy signs, digital displays and message center signs are permitted only when integrated into a freestanding, marquee, wall, or portable sign.

§ 170-1807. Regulations by sign type: billboards.

A. Locations permitted.

(1) Billboard signs are permitted in the following location as a conditional use:

(a) C-2, Highway Commercial District.

B. Sign size. A billboard sign is subject to the following size restrictions according to the posted speed limit of the road which the billboard sign faces.

	Posted Speed Limit (MPH)				
	Less Than or Equal to 35	**36 to 45**	**46 to 55**	**56 to 65**	**Limited Access**
Maximum sign area (square feet)	60	100	150	300	300

C. Height and location of sign.

(1) The height of a billboard sign shall be measured from the average grade based on the area found within a fifty-foot radius of the outer limit of the sign structure.

(2) The lowest edge of a billboard sign shall be at least seven feet above the finished grade.

(3) Billboard signs shall have a maximum height of 24 feet.

D. Spacing. Billboard signs shall be:

(1) Set back a minimum of five feet from the ultimate street right-of-way.

(2) Set back a minimum of 40 feet from any abutting lot.

(3) Located no closer than 50 feet from any building, structure, or non-billboard sign located on the same property.

(4) Located no closer than 500 feet from any other billboard sign on either side of the road measured linearly. Such separation distance shall be increased, where as needed, to ensure that no more than one billboard sign shall be visible to a driver at any one time.

(5) Not attached to the external wall or otherwise affixed to any part of any building and shall not extend over any public property or right-of-way.

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(6) Not located on sewer rights-of-way, or water, electric, or petroleum pipelines and set back a minimum of 24 feet from any easement.

(7) Not located on a bridge.

E. Number of signs per lot. There shall be no more than one billboard sign per lot. Vertically or horizontally stacked signs shall not be permitted.

F. Double-sided billboard signs. Signs may be double-faced, provided that the two faces are the same size and are positioned as mirror images that are parallel and not offset from each other in any direction.

G. Message sequencing. Message sequencing across more than one sign is prohibited.

H. Construction and maintenance.

(1) All plans for billboard signs shall be certified by a licensed engineer registered in Pennsylvania.

(2) All billboard signs shall be constructed in accordance with industry-wide standards established by the Outdoor Advertising Association of America and the Institute of Outdoor Advertising, or their successor organizations. All billboard signs shall be structurally sound and maintained in good condition and in compliance with the Pennsylvania Uniform Construction Code.

(3) The rear face of a single-face, billboard sign shall be painted and maintained with a single neutral color as approved by Westtown Township.

(4) Every three years, the owner of the billboard shall have a structural inspection made of the billboard by a licensed engineer registered in Pennsylvania and shall provide to Westtown Township a certificate certifying that the billboard is structurally sound.

(5) All maintenance, cleaning and repair, including repair of torn or worn advertising copy and removal of graffiti, shall be performed promptly. In the event the Township notifies the owner or lessee of any damage, vandalism, or graffiti on the billboard sign, the owner or lessee shall repair or correct the problem within 48 hours of such notification. If repairs and corrections are not timely, the Township shall have the right, but not the obligation, to make repairs or corrections and be reimbursed the cost thereof by the owner or lessee.

(6) A billboard sign shall be properly and adequately secured to prevent unauthorized access.

(7) A bond or other security acceptable to the Township, in the form and amount satisfactory to the Township, shall be posted with the Township to ensure that the billboard sign will be properly removed after the termination of use for a period of one year.

I. Identification of sign owner. All billboard signs shall be identified on the structure with the name, address, and phone number of the owner of such sign.

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J. Landscaping and screening requirements.

(1) Landscaping shall be provided at the base of all billboard signs. Trees and shrubbery, including evergreen and flowering trees, of sufficient size and quantity shall be used to achieve the purpose of this section.

(2) Trees having a breast height diameter ("BHD") greater than four inches, which are removed for construction of the sign, shall be replaced on site at a ratio of one replacement tree for each removed tree using native species with a BHD of no less than three inches.

(3) Billboard signs shall be screened from any abutting property used or zoned for residential use. Such screening shall consist of evergreen trees of at least 15 feet in height at the time of planting that form a continuous visual buffer along or near the property line abutting the residential use or lot.

(4) If at the time of planting the evergreens do not provide for adequate screening, a temporary, nonvegetative screen may be required at the discretion and approval of the Township. This screening shall not exceed the height of the existing sign and shall be removed at the expense of the sign owner or lessee owner at such time the evergreens provide for adequate screening as determined by the Township.

K. Additional regulations. All billboard signs shall comply with any and all applicable state and/or federal regulations. In the event any other applicable regulation is in conflict with the provisions of this section, the more stringent regulation shall apply.

L. Application/plan requirements. Plans submitted for billboard signs shall show the following:

(1) The location of the proposed sign on the lot with the required sign setbacks from the property line and ultimate right-of-way.

(2) The location and species of existing trees.

(3) The distance to the nearest existing billboard sign.

(4) The distance to the nearest right-of-way, property line, building, structure, non-billboard sign, billboard sign, intersection, interchange, safety rest area, bridge, residential district, or institutional use, sewer rights-of-way, and water, electric or petroleum pipelines.

(5) Site plan containing all of the applicable requirements set forth in the Westtown Township Zoning Code, as amended.

(6) Certification under the seal by a licensed engineer that the billboard sign, as proposed, is designed in accordance with all federal, state, and local laws, codes, and professional standards.

M. Illumination ~~and changeable copy~~ of billboard signs. Lighting shall comply with the Illuminating Engineering Society of North America's (IESNA) recommended practices and criteria in the IESNA Lighting Handbook, including but not limited to criteria for full-cutoff fixtures.

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(1) Billboard signs may incorporate ~~manual~~ changeable copy signs.

(2) Billboard signs may be illuminated, provided that:

(a) All light sources are designed, shielded, arranged, and installed to confine or direct all illumination to the surface of the billboard sign and away from adjoining properties.

(b) Light sources are not visible from any street or adjoining properties.

(3) The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) Message center sign.

(b) Digital display.

(c) External illumination.

(d) Internal illumination.

(4) Billboard signs may incorporate tri-vision boards.

(a) The length of time each message of the tri-vision board may be displayed before changing is based upon the visibility and posted speed limit unique to individual signs and adjacent road conditions. The message duration for tri-vision boards shall be calculated using the method described in § 170-1805F(1)(d), Message duration.

N. Safety. In applying for conditional use, the applicant bears the burden of proof to establish that the proposed billboard sign will not create a public health or safety hazard in the manner and location that it is proposed and in the manner by which it is to be operated.

§ 170-1808. Regulations by sign type: limited duration, temporary and portable signs.

A. Limited duration, temporary and portable signs, as defined in this article, located on private property are subject to the regulations set forth below. Limited duration, temporary and portable signs that comply with the requirements in this section shall not be included in the determination of the type, number, or area of signs allowed on a property. Unless otherwise stated below, the requirements listed below shall apply to signs in both commercial and noncommercial zoning districts.

B. Size and number.

(1) Nonresidential zones:

(a) Large limited duration and temporary signs. One large sign is permitted per property in all nonresidential zones. If a property is greater than five acres in size and has at least 400 feet of street frontage or has more than 10,000 square feet of floor area, one additional large limited duration sign may be permitted so long as there is minimum spacing of 200 feet between the two large limited duration signs.

[1] Type:

[a] Freestanding sign.

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[b] Window sign.

[c] Wall sign.

[d] Banner sign.

[2] Area:

[a] Each large sign shall have a maximum area of 24 square feet.

[b] Each large banner shall have a maximum area of 32 square feet.

[3] Height:

[a] Signs that are freestanding shall have a maximum height of eight feet.

[b] Banners shall hang at a height no greater than 24 feet when attached to an existing structure.

(b) Small limited duration and temporary signs. In addition to the large sign(s) outlined above, one small sign is permitted per property in all nonresidential zones. If a property is greater than five acres in size and has at least 400 feet of street frontage or has more than 10,000 square feet of floor area, one additional small sign may be permitted so long as there is a minimum spacing of 200 feet between both sets of small temporary signs.

[1] Type:

[a] Freestanding sign.

[b] Window sign.

[c] Wall sign.

[2] Area. Each small sign shall have a maximum area of six square feet.

[3] Height. Small signs that are freestanding shall have a maximum height of six feet.

(c) Portable signs.

[1] Hours of display.

[a] Signs shall not be displayed on any premises before 6:00 a.m. prevailing time and shall be removed each day at or before 10:00 p.m. prevailing time. However, all portable signs must be taken in during hours of nonoperation of the business located on the property.

[b] All portable signs must be taken in during inclement weather.

[2] Sandwich board or A-frame signs. Sandwich board signs that comply with the requirements in this section shall not be included in the determination of the

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type, number, or area of signs allowed on a property.

[a] Number. One sandwich board sign is permitted per establishment. For the purposes of this subsection, a parking garage or parking lot shall be considered an establishment.

[b] Area. Each sign shall have a maximum area of seven square feet per sign face.

[c] Height. Signs shall have a maximum height of 3.5 feet.

[3] Sign placement.

[a] If a sign is located on a public or private sidewalk, a minimum of 36 inches of unobstructed sidewalk clearance must be maintained between the sign and any building or other obstruction.

[b] The sign must be located on the premises, and within 12 feet of the primary public entrance, of the establishment placing the sign. For the purposes of this subsection, a public entrance includes a vehicular entrance into a parking garage or parking lot.

[c] Portable signs shall be weighted, temporarily secured, or strategically placed so as to avoid being carried away by high winds.

[4] ~~Manual c~~Changeable copy signs.

[a] ~~Manual c~~Changeable copy signs are permitted when integrated into a sandwich board sign.

[5] Vehicular signs. Vehicular signs are subject to the regulations found in Chapter 162 of the Westtown Township Code for vehicles and traffic.

(2) Residential zones:

(a) Large limited duration and temporary signs. One large sign is permitted per property so long as the property is greater than five acres in size and has at least 400 feet of street frontage or has more than 10,000 square feet of floor area.

[1] Type:

[a] Freestanding sign.

[b] Window sign.

[c] Wall sign.

[d] Banner sign.

[2] Area:

[a] Each large sign shall have a maximum area of 16 square feet.

[b] Each large banner shall have a maximum area of 32 square feet.

[3] Height:

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[a] Large limited duration signs that are freestanding shall have a maximum height of eight feet.

[b] Banners shall hang at a height no greater than 24 feet when attached to an existing structure.

(b) Small limited duration and temporary signs. One small sign is permitted per property.

[1] Type:

[a] Freestanding sign.

[b] Window sign.

[c] Wall sign.

[2] Area. Each small sign shall have a maximum area of six square feet.

[3] Height. Small signs that are freestanding shall have a maximum height of six feet.

C. Permit requirements.

(1) Limited duration signs.

(a) A permit for a limited duration sign is issued for one calendar year effective January 1 and may be renewed annually.

(b) An applicant may request up to two permits per address, but is subject to the size and number requirements set forth in this section.

(c) An application for a limited duration sign permit must include:

[1] A description of the sign indicating the number, size, shape, and dimensions of the sign, and the expected length of time the sign will be displayed;

[2] A schematic drawing of the site showing the proposed location of the sign in relation to nearby building and streets;

[3] The number of signs on the site.

(2) Temporary signs.

(a) Temporary signs are exempt from the standard permit requirements, but the date of erection of a temporary sign must be written in indelible ink on the support for the sign. Signs without a date of erection or legible date of erection placed on the sign support shall be removed by the Township or the owner of the sign.

(b) Temporary signs may be displayed up to a maximum of 90 consecutive days, two

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times per year.

(c) Westtown Township or the property owner where the sign is placed may confiscate signs installed in violation of this chapter. Neither Westtown Township nor the property owner is responsible for notifying sign owners of confiscation of an illegal sign. The party posting the temporary sign is solely responsible for obtaining the permission of the property owner before posting their temporary sign.

D. Installation and maintenance.

(1) All signs must be installed such that, in the opinion of the Westtown Township Zoning Officer, they do not create a safety hazard.

(2) All signs must be made of durable materials and shall be well-maintained.

(3) Signs that are frayed, torn, broken, or are otherwise in a failing physical condition will be deemed unmaintained and required to be removed.

E. Illumination. Illumination of any limited duration, temporary or portable sign is prohibited.

§ 170-1809. Signs located on lots with agricultural use.

In addition to the exempt signs described in § 170-1804, Signs exempt from permit requirements, the following numbers and types of signs may be erected on properties with active agricultural uses, subject to the conditions specified here.

A. Any limited duration and temporary signs as defined and regulated in § 170-1808, Regulations by sign type (limited duration, temporary and portable signs).

B. Freestanding signs shall be permitted subject to the following regulations:

(1) Number: one sign at each street access, up to a maximum of two signs per lot.

(2) Area: Each sign shall have a maximum area of 15 square feet per sign face.

(3) Height: Signs shall have a maximum height of six feet unless located along Route 926 or Route 352 where the height can be increased to eight feet.

(4) Illumination. These signs shall not be ~~non~~illuminated.

C. Window signs for uses customarily associated with agricultural uses shall be permitted subject to the following regulations.

(1) Area: A maximum of 15% of the total window area of any single building frontage may be used for signs.

(2) Illumination. Illumination of these signs is prohibited.

§ 170-1810. Signs located on lots with parks and open space.

In addition to the exempt signs described in § 170-1804, Signs exempt from permit requirements, the following numbers and types of signs may be erected on properties serving as parks and open

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space, subject to the conditions specified here.

A. Any limited duration and temporary signs as defined and regulated in § 170-1808, Regulations by sign type (limited duration, temporary and portable signs).

B. Freestanding signs shall be permitted subject to the following regulations:

(1) Number: one sign per street access to a park or open space facility.

(2) Area: Each sign shall have a maximum area of 24 square feet per sign face.

(3) Height: Signs shall have a maximum height of 10 feet.

(4) Illumination: External and internal illumination shall be permitted subject to the regulations in § 170-1805F, Sign illumination. **[Amended 11-16-2020 by Ord. No. 2020-04]**

C. Signs located on the interior of the site, the sign face of which is not larger than 1.5 square feet, are exempt from permit requirements.

D. Signs for recreation and sporting facilities shall be allowed provided that the following criteria is met:

(1) A maximum of 20 signs on the interior walls or fence of an open stadium or field shall be permitted and no sign shall be greater than 24 square feet in size and shall not be ~~non~~illuminated and shall not visible from any public rights-of-way.

(2) One freestanding scoreboard, not to exceed 200 square feet in area and 20 feet in height, is permitted per playing field.

(a) The face of all scoreboards, including any attached signs and panels, shall be permanently oriented toward the recreation and spectator area.

(b) Illumination: External and internal illumination shall be permitted subject to the regulations in § 170-1805F, Sign illumination. **[Amended 11-16-2020 by Ord. No. 2020-04]**

§ 170-1811. Signs located on lots with residential use.

In addition to the exempt signs described in § 170-1804, Signs exempt from permit requirements, the following numbers and types of signs may be erected on properties utilized for residential purposes, subject to the conditions specified here.

A. Any limited duration sign as defined and regulated in § 170-1808, Regulations by sign type (limited duration, temporary and portable signs).

B. Signs on a lot on which a major home occupation is located shall comply with § 170-1605G(2)(m).

C. Freestanding signs on a lot on which residential developments or apartment buildings containing more than 10 units are located shall be permitted subject to the following regulations:

(1) Number: A maximum of two signs are permitted at primary entrance(s) utilized to access the development.

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(2) Area: freestanding sign, 15 square feet; projecting or wall sign, 10 square feet.

(3) Height: freestanding sign, 3.5 feet; projecting or wall sign, 12 feet.

(4) Illumination: External and internal illumination shall be permitted subject to the regulations in § 170-1805F, Sign illumination. **[Amended 11-16-2020 by Ord. No. 2020-04]**

(5) For signs proposed for a location under the ownership of a private landowner, a deed of easement or an affidavit from the property owner where the sign is proposed shall be required as part of any sign permit application.

(6) A maintenance agreement shall be submitted as part of the sign permit application that states the responsible party(s) for the ongoing maintenance of the sign.

§ 170-1812. Signs located on lots with institutional use.

In addition to the exempt signs described in § 170-1804, Exempt signs, the following numbers and types of signs may be erected for institutional uses, including schools, religious institutions, municipal buildings, hospitals, clubs, or permitted uses of a similar nature subject to the conditions specified here.

A. Any limited duration, temporary or portable sign as defined and regulated in § 170-1808, Regulations by sign type (limited duration, temporary and portable signs), subject to the following regulations:

(1) One large sign with a maximum area of 24 square feet shall be permitted on a lot with a principal educational or school use at any time.

(2) No more than four small signs with a maximum area of six square feet shall be permitted on a lot with a principal educational or school use at any time.

(3) Small signs on a lot with a principal educational or school use shall be no closer than 50 feet to another small sign measured as a straight-line distance between the closest edges of each sign.

B. The total area of all wall, awning/canopy, freestanding, and projecting signs shall not exceed an area equal to two square feet for every one linear foot of building wall parallel to, and facing, any particular street. The sign area for each street frontage shall be computed separately, and any allowable sign area not used on one frontage may not be used on another street frontage.

C. Signs on a lot with a park or open space use in an institutional district shall comply with § 170-1810.

D. Freestanding signs on a lot with an institutional use, other than parks and open space, shall be permitted subject to the following regulations:

(1) Number: one ground sign is permitted per street upon which the property has direct frontage.

(2) Area: ground sign, 24 square feet except on lots with a principal educational or school use, which shall have a maximum area of 50 square feet.

(3) Height: ground sign, six feet except for lots with a principal educational or school use,

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which shall have a maximum height of 15 feet.

(4) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) Internal illumination.

(b) External illumination.

(c) Message center sign.

(d) Digital display on lots with ~~a principal educational or school use.~~frontage on arterial highway.

E. Freestanding signs located on the interior of the site at least 25 feet from the nearest property boundary line are exempt from permit requirements, subject to the following:

(1) Area: Each sign shall have a maximum area of 10 square feet.

(2) Height: Each sign shall have a maximum height of six feet.

(3) Illumination. Illumination of these signs shall be prohibited.

F. Wall signs shall be permitted subject to the following regulations:

(1) Number: one sign per street frontage, up to a maximum of two signs. Where an educational use has entrances facing both a street and a parking lot, a second sign is permitted to face the parking lot.

(2) Area: The total area for all wall signs is subject to the regulations in § 170-1806A(2).

(3) Height: Signs shall have a maximum height equal to the eave line of the structure where it is placed.

(4) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) Internal illumination.

(b) External illumination, lit from above.

(c) Halo illumination or backlit letters.

G. Awning or canopy signs shall be permitted subject to the following regulations.

(1) Height: Signs shall have a maximum height equal to the eave line.

(2) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) External illumination, lit from above.

H. Projecting signs on lots with an educational use shall be permitted subject to the following regulations.

(1) Number: one sign per building entrance.

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(2) Area: Each sign shall have a maximum area of 20 square feet per sign face.

(3) Height: Signs shall have a maximum height equal to the eave line.

(4) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) External illumination, lit from above.

§ 170-1813. Signs located on lots with commercial and industrial uses.

Except as noted below, the following numbers and types of signs may be erected on any lot with a principal commercial or industrial use subject to the conditions specified here:

A. Any limited duration, temporary or portable sign as defined and regulated in § 170-1808, Regulations by sign type (limited duration, temporary and portable signs).

B. The total area of all wall, awning/canopy, freestanding, and projecting signs on lots with nonresidential uses shall not exceed an area equal to two square feet for every one linear foot of building wall parallel to, and facing, any particular street. The sign area for each street frontage shall be computed separately, and any allowable sign area not used on one frontage may not be used on another street frontage.

C. Wall signs on lots with commercial and industrial uses shall be permitted subject to the following regulations.

(1) Number: one sign per tenant per street frontage, up to a maximum of two signs per tenant. Where a store has entrances facing both a street and a parking lot, a second sign is permitted to face the parking lot.

(2) Area: The total area for all wall signs are subject to the regulations in § 170-1806A(2).

(3) Height: Signs shall have a maximum height equal to the eave line of the structure where it is placed.

(4) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) Internal illumination.

(b) External illumination, lit from above.

(c) Halo illumination or backlit letters.

(d) Neon lighting.

D. Awning or canopy signs on lots with commercial and industrial uses shall be permitted subject to the following regulations.

(1) Height: Signs shall have a maximum height equal to the eave line.

(2) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) External illumination, lit from above.

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E. Projecting signs on lots with commercial and industrial uses shall be permitted subject to the following regulations.

(1) Number: one sign per ground floor establishment, plus one sign per building entrance serving one or more commercial tenants without a ground floor entrance.

(2) Area: Each sign shall have a maximum area of 20 square feet per sign face.

(3) Height: Signs shall have a maximum height equal to the eave line.

(4) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) External illumination, lit from above.

(b) Neon lighting.

F. Window signs on lots with commercial and industrial uses shall be permitted subject to the following regulations.

(1) Area: A maximum of 25% of the total window area of any single storefront may be used for permanent signs that are etched, painted, or permanently affixed to the window. A maximum of 35% of the total window area of any single storefront may be covered by a combination of permanent and temporary window signs.

G. Marquee signs on lots with commercial and industrial uses shall be permitted subject to the following regulations.

(1) Number: one marquee sign per building.

(2) Area: The total area of signs on a single marquee structure shall not exceed 200 square feet in area.

(3) Height: Signs shall have a maximum height equal to the eave line.

(4) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) Internal illumination.

(b) Message center sign.

(c) Digital display.

H. In addition to building signs, freestanding signs on lots with commercial and industrial uses shall be permitted subject to the following regulations.

(1) Number: one sign per street frontage, up to two signs per property held in single and separate ownership.

(a) For permitted gas stations, one additional freestanding sign per street frontage shall be permitted, up to two additional signs per property.

(b) For permitted drive-through establishments, one additional freestanding sign shall be permitted next to the drive-through lane only.

(2) Area: Each sign shall have a maximum area of 50 square feet plus an additional 10

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square feet per tenant up to a maximum of 100 square feet.

(3) Height: Signs shall have a maximum height of 15 feet.

(4) Illumination. The following illumination types shall be permitted subject to the regulations in § 170-1805F, Sign illumination:

(a) Internal illumination.

(b) Message center sign.

(c) Digital display.

I. The following additional requirements shall apply to signs located in the Planned Office Campus (POC) District.

(1) Area: ground sign, 24 square feet; wall sign, 40 square feet.

(2) Height: ground sign, 3.5 feet.

§ 170-1814. Removal of unsafe, unlawful, or abandoned signs.

A. Unsafe or unlawful signs.

(1) Whenever a sign becomes structurally unsafe and/or poses a potential threat to the safety of a building or premises or endangers the public safety, and such condition becomes known to the Zoning Officer, he/she shall give written notice to the owner of the premises on which the sign is located that such sign must be made safe within five days, unless the Zoning Officer shall deem appropriate a more extended period for compliance.

(2) Where in the opinion of the Zoning Officer upon careful inspection by him/her and the Township building official, any sign as described above constitutes an imminent hazard to public safety necessitating immediate action, he/she shall be empowered to take those measures he/she deems appropriate to secure, stabilize, or remove such sign without the written notice to the owner of the premises otherwise required by that section. Any expense directly incurred to secure, stabilize, or remove such sign shall be charged to the owner of the property. Where the owner fails to pay, Westtown Township may file a lien upon the property on which such sign was situated in the amount of the costs incurred by the Township to secure, stabilize, or remove the sign.

(3) Failure of the Zoning Officer to remove, or require the removal of, any unsafe sign as described in this section shall create no liability upon, nor any cause of action against, the Zoning Officer or any other Township official or employee for damage or injury that may occur as a result of such sign.

B. Abandoned signs.

(1) It shall be the responsibility of the owner of any property upon which an abandoned sign is located to remove such sign within 180 days of the sign becoming abandoned as defined in this section. Removal of an abandoned sign shall include the removal of the entire sign including the sign face, supporting structure, structural trim, and all associated electrical components when applicable.

(2) Where the owner of the property on which an abandoned sign is located fails to remove

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such sign in 180 days, Westtown Township may remove such sign after the Zoning Officer gives written notice to the sign owner. Any expense directly incurred in the removal of such sign shall be charged to the owner of the property. Where the owner fails to pay, Westtown Township may file a lien upon the property for the purpose of recovering all reasonable costs, including reasonable attorney fees incurred by the Township, associated with the removal of the sign.

§ 170-1815. Permits and applications.

A. It shall be unlawful for any person, firm, or corporation to erect, alter, repair, or relocate any sign within Westtown Township without first obtaining a sign permit, unless the sign is specifically exempt from the permit requirements as outlined in § 170-1804, Exempt signs.

B. In order to apply for a sign permit, the applicant must provide the following information, in writing, to Westtown Township:

(1) Name of organization and location.

(2) Name, address, and telephone number of the property owner, and the signature of the property owner or duly authorized agent for the owner.

(3) Contact person and contact information.

(4) Description of the activities occurring on the site where the sign will be installed.

(5) Description of any existing signage that will remain on the site.

(6) Identification of the type of sign(s) to be erected by the applicant.

(7) Site plan depicting the locations of proposed signage and existing remaining signage.

(8) Two copies of a plan drawn to scale depicting:

(a) Lot dimensions, building frontage, and existing cartways, rights-of-way and driveways.

(b) The design of each sign face and sign structure, including dimensions, total area, sign height, depth, color scheme, structural details, materials, lighting scheme and proposed location.

(c) Building elevations, existing and proposed facades, parapet walls, eave line and the location and size of all proposed and existing permanent signage.

(d) Current photographs showing existing signs on the premises and certifying the date on which photographs were taken.

(9) In case of message center sign and digital display, contact information for controller/operator of the sign and a copy of an annual maintenance contract.

~~(9)~~(10) A permit fee, to be established from time to time by resolution of Westtown Township, shall be paid.

C. Westtown Township shall have 15 business days from the receipt of a complete application to review the application.

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D. A permit shall be issued on or before the end of the fifteen-business-day review period if the application for a new sign or renewal complies with the regulations contained herein.

E. If Westtown Township does not issue a determination within the fifteen-business-day period, the sign permit is deemed approved.

F. An application for a sign permit may be denied by Westtown Township within the fifteen-business-day review period if the application fails to comply with the standards contained herein. Westtown Township shall inform the applicant of the reasons for denying the application for sign permit by certified mail.

G. Upon denial of an application for a sign permit, the applicant has 30 business days to revise and resubmit the application for review by Westtown Township. In the alternative, the applicant may also appeal the decision of Westtown Township to the Zoning Hearing Board within the thirty-business-day time period.

H. With the exception of lighting permits for digital signs, these permits shall not expire provided that such signs are not abandoned or destroyed. In the instance that substantial repair or replacement becomes necessary (i.e., repairs that cost more than 50% of the replacement cost of the damaged sign), the organization must apply for a new sign permit, and pay an additional fee, if required.

§ 170-1816. Nonconforming signs.

A. Signs legally in existence at the time of the adoption of this article, which do not conform to the requirements of this article, shall be considered nonconforming signs.

B. All permanent signs and sign structures shall be brought into conformance with the sign regulations when and if the following occurs:

(1) The sign is removed, relocated, or significantly altered. Significant alterations include changes in the size or dimension of the sign. Changes to the sign copy or the replacement of a sign face on a nonconforming sign shall not be considered a significant alteration.

(2) If more than 50% of the sign area is damaged, it shall be repaired to conform to this article.

(3) The property on which the nonconforming sign is located submits a subdivision or land development application requiring municipal review and approval.

(4) The property on which the nonconforming sign is located undergoes a change of land use requiring the issuance of either a use and occupancy permit or a change of use and occupancy permit by Westtown Township.

C. To determine the legal status of existing signs in each of the cases listed in § 170-1816B, the applicant shall submit the following information to the Westtown Township Zoning Officer:

(1) Type(s) of existing sign(s) located on the property.

(2) The area and height of all signs.

(3) For freestanding signs, the distance between the curbline or shoulder and the nearest portion of the sign.

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(4) Type of sign illumination.

(5) The material of which the sign is constructed.

(6) The building frontage.

(7) If a billboard sign, the applicant shall also submit the plan requirements listed in § 170-1807M.

D. Prior to the events listed in § 170-1816B, nonconforming signs may be repainted or repaired up to 50% of the replacement cost of the sign, the sign copy may be changed, and sign faces may be replaced provided that these actions do not increase the dimensions of the existing sign, and do not in any way increase the extent of the sign's nonconformity.

E. Nonconforming signs shall be exempt from the provisions of § 170-1816B under the following conditions:

(1) The nonconforming sign possesses documented historic value.

(2) The nonconforming sign is of a unique nature or type by virtue of its architectural value or design, as determined by the National Park Service, Pennsylvania Historical and Museum Commission, or local historical commission.

(3) When a nonconforming sign is required to be moved because of public right-of-way improvements.

F. All nonconforming temporary signs, portable signs, and banners must be permanently removed within 90 days of the effective date of this article, unless specific approval is granted as provided for herein.

§ 170-1817. Signs located on lot with legally nonconforming uses.

A. Signs on the premises of legally nonconforming uses (such as an office in a residential area) may remain until the existing use of the premises is discontinued.

B. If a sign wears out or is damaged (including rust, faded colors, discoloration, holes, or missing parts or informational items), or is changed for any other reason, the number, size, and area of all signs relating to the premises shall not be increased beyond the characteristics of the sign or signs that existed on that property at the time this article was adopted.

§ 170-1818. Substitution clause.

Notwithstanding any provision of this chapter to the contrary, to the extent that this chapter allows a sign containing commercial copy, it shall allow a noncommercial sign to the same extent. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited and the sign continues to comply with all requirements of this chapter.

§ 170-1819. Violations and penalties.

The placement of a sign that requires a sign permit without a sign permit shall be unlawful. Violations of this article shall be treated as prescribed within Article XXIII of the Zoning

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Ordinance for Violations Remedies; Fees; Liability.

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Westtown Township

Memo

To: Westtown Township Planning Commission

From: Liudmila Carter, Director of Planning & Zoning

Date: September 16, 2024

Re: Proposed ordinance amendments re: digital displays for institutional uses

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In Westtown, digital displays are only permitted for lots with commercial or industrial uses or on lots with principal educational or school use. The Township staff reviewed the information supplied by the signage industry, materials provided by the Chester County Planning Commission, and the existing regulations pertaining to ground, freestanding digital signs across local municipalities, and summarized these findings into discussion items for the Planning Commission's considerations.

Definitions

- When describing a digital display, the following terms are used, including "digital display", "changeable display sign", "electronic sign", "LED sign", "flashing and message sign", "animated sign", "digital changeable copy sign", "changing image sign" and "electronic message center". They have some similarities in their definitions and some distinct features.
- Majority of municipalities defined "billboard" as digital sign for off-premises advertising. Several regulate digital displays the same way as billboards.
- The standard definition is as follows: "*A digital display is an electronic device that presents information in a visual format using digital technology, which typically involves the use of pixels or segments to show text, images, or graphics. Digital displays are used to provide a clearer and more precise presentation of information compared to analog displays. These displays operate using electronic signals and can include technologies like LCD (liquid crystal display), LED (light-emitting diode), and OLED (organic light-emitting diode)*."
- Recommendation to evaluate and revise existing definitions for "digital sign" and "message sign" to clarify their purpose and use.

Message versus Digital Displays

Both message signs and digital displays convey information and engage viewers, but digital signs generally offer more advanced features, higher resolution, and greater versatility in the content:

- Message signs use technologies like LED or incandescent bulbs to display static or scrolling text. They often display text or symbols, but have many limitations:
    - Static text or simple graphics and may be limited in their ability to show complex or dynamic content, including videos, animations, or high-resolution images.
    - Text and images might not be as clear or detailed.
    - Lack interactive features or ability to provide real-time data updates like digital signs can.
    - Need for more frequent maintenance and higher potential for failure.
    - Limited color options to basic colors or monochrome displays.
    - Less adaptable to design changes or upgrades compared to digital signs.

    - More likely to be affected by environmental conditions like weather, glare, or dust, which can impact readability.

- Digital Signs use advanced technologies like LCD, LED, or OLED screens to display dynamic content. They can produce high-resolution graphics, videos, and animations offering greater flexibility and interactivity. They can be updated remotely, display complex content, and provide real-time information. However, there are several concerns pertaining to installation of these signs in communities, such as:
    - Distraction of drivers and pedestrians, which can lead to safety concerns, as the constantly changing content may divert attention from the road or surroundings. There is no firm data to show the extent of distracted driving in relation to digital signs.
    - Aesthetic impacts on surrounding community where some residents might consider them visually unappealing or intrusive or as an obstruction of scenic views.
    - Content appropriateness, which might not be deemed suitable for all audiences and aligned with community standards.
    - Impact on property values making the area less desirable to potential buyers or renters.
    - Privacy issues in instances where there are cameras or sensors.
    - Maintenance which might become an issue due to the potential for malfunctioning screens or need for frequent repairs, which can affect the appearance and functionality.
    - Environmental impacts: Light pollution, which can affect residential comfort and sleep quality. Glare and brightness from digital signs can also be disruptive during nighttime hours. Noise pollution in cases where sound system is used.

<u>Overall Placement</u>

- Due to community concerns, many municipalities only allow digital signage as an accessory use within specified zoning districts, primarily commercial, business and/or industrial, or limit such use to properties with frontage along state roadways or major highways.
- Use of digital displays are generally prohibited in residential districts or within a certain distance from residential dwelling units (between 50 and 200 feet).
- Other considerations are the sign rotation in relevance to adjacent roadway (for example, perpendicular) and distance from another digital sign. Rotation of the sign is important to ensure the least amount of glare for the travelling public, but also to avoid potential distractions and impacts on adjacent properties. Distance between digital signs is determined based on several factors, including functional classification of roadway, traffic flow, sign purpose, sign size and content, and visual impact on the community. Recommended distance between digital signs is 1,000 to 2,000 feet for major roadways or 500 to 1,000 feet for local roads.
- Recommendation to consider limiting digital displays to properties with frontage along major roadways, limiting their placement in relation to residential properties, setting a distance requirement for similar signs and potentially requiring a visibility study (in some cases) to be provided to assess overall impacts on community.

<u>Setbacks</u>

- Few municipalities require a specific setback from right-of-ways (ROWs) and/or side property lines for sign placement, which varies from 5 to 20 feet or 1.1 times the height of the sign from the ROWs or 10 to 20 feet from the side property lines. The numbers are arbitrary; however, the recommended standard to avoid obstructing drivers' views and to avoid glare, is a distance of 15 to 30 feet from the edge of the roadway, depending on the road's functional classification, curvature and visibility.

- Recommendation to require digital signage not to encroach into easement areas, ultimate and future right-of-ways and to consider an additional setback. Section 1511 of the Zoning Ordinance reserves the following ROWs for future dedication: 120 feet for Route 202 and Route 3 and 80 feet for Routes 926 and 352.

Height

- Height limitations vary greatly across local municipalities, which is dependent on provisions within applicable zoning districts. That variation is from 3 feet to 18 feet with lower height allowance in residential areas and along local roadways and higher in commercial and industrial areas or along the frontage of major roads and highways.
- Roadway functional classification, traffic movement patterns, point of access to the property, and its use are recommended to be considered when determining limitations on height. For example, the recommended height for digital displays along major roadways is 12 feet, but for local roadways, it is less than 12 feet. If the area is accessible to pedestrians, the recommended height is no more than 6 feet.
- The speed limit on both roadways through Westtown (both are classified as arterial highways), Wilmington Pike (Route 202) and S Chester Road, is 45 mph. Typically, for such speeds, the recommended height of a digital sign is between 6 to 12 feet, and the width is recommended to be proportional to the height, maintaining a good aspect ratio.
- Recommendation to set height limitations based on digital sign placement in relation to roadway functional classification and presence of pedestrian facilities.

Sign Area

- Many municipalities regulate sign area based on its applicable zoning district, type of sign (wall, ground, temporary, identification, and etc.). Others allow such signs to be 10 to 60 square feet.
- Similar to height considerations, roadway functional classification, traffic movement patterns, point of access to the property, and its use are important when determining limitations on sign areas. The best practice is to evaluate what is the most appropriate for a specific roadway and location. For a digital sign intended to be viewed from a 45 mph roadway, an area of around 6 to 10 feet in height and 4 to 20 feet in width is most common. This size allows for clear visibility and readability without overwhelming drivers.
- Recommendation to consider revising the existing regulations to permit signage based on roadway classification, height limitations and presence of pedestrian facilities to maintain human scale.

Technical Specifications

- Message duration – dependent on functional classification of roadway, content and industry's best practices. For major roadways, recommended duration is 8 to 12 seconds, while for local roads 4 to 6 seconds seem to be a norm.
- Message transition interval – not more than 1 second, which is a typical standard utilized by majority of municipalities and best practice in the industry.
- Brightness – there are several ways to measure brightness of digital display, with a luminance meter (photometer) that quantifies light intensity in terms of nits (cd/m²) or colorimeter that measures color and brightness and can provide data on color accuracy and luminance. A nit is a unit of luminance, which measures the amount of light emitted per unit area of a surface, and commonly used to measure the brightness of displays. Many municipalities require luminance of digital signs to be limited to 100 to 250 nits during nighttime hours, but that number varies greater for daytime hours between 5,000 and 7,000 nits. Recommended daytime brightness is between 4,000 to 7,000 nits and nighttime brightness between 300 to 1,000 nits.
- In addition to luminance requirements, several municipalities require digital signs to be compliant with footcandle provisions. A footcandle is a unit of illuminance, which measures the amount of

light falling on a surface area (lumens per square foot) with a light meter. Several municipalities set a limit not to exceed 0.2 to 0.3 footcandles within 150 to 250 feet from the surface of the sign.

- Recommendation to require reports on brightness with detailed records of measurements, including date, time, measurement points, and device settings on as needed basis to ensure that compliance is met.

Additional considerations

- Automatic shutoff in case of failure or error that would result in the sign projecting a full intensity all-white image for an extended period of time.
- Ambient light monitor, which continuously monitor and automatically adjust the brightness of the sign to appropriate levels for the existing ambient light conditions.
- Not to be used for off-premises advertising.
- Coordinate/permit message access for local, regional, state and national emergency services during emergency situations.
- Prohibit message sequencing.
- Prohibit the use of animation, sound and full-motion video.
- ADA compliant content.
- Contact information for controller/operator or main point of contact.
- Annual maintenance contract and inspection reports.
- Monitoring system to detect malfunctions.
- Permit renewal on a scheduled basis to ensure compliance and alignment with industry standards.

September, 2024

LOCAL DIGITAL DISPLAY REGULATIONS – SUMMARY[1]

Municipality	Summarized details	Digital Signs for rel. use (Y/N)	Summary (specific to ground signs)
Atglen https://atglen.org/images/pdf/zoningordmap51314.pdf	DIGITAL SIGN - An advertising sign that utilizes digital or video light emitting diodes (LEDs) or similar electric methods to create an image display area. ELECTRONIC CHANGING MESSAGE SIGN - A digital sign or portion thereof displaying frequent message changes that are rearranged electrically without physically altering the face or surface of such signs. ILLUMINATED SIGN - A sign designed to project or reflect artificial light from an internal or external source. Illumination may occur through an external source which may directly or indirectly illuminate a sign, an internal source which may provide illumination through transparent or translucent materials, or digitally through light emitting diodes (LEDs) or similar technology.	Yes	Height – 4 feet Area – 20 SF (or larger) Max number – 1 per lot (R district) or 2 (B and C) Message display – animation, sound, video, or full-motion is prohibited Content transition – no fading/dissolving/overlapping Hours of operation – 6am-11pm (unless 24hrs) Brightness - Automatic day/night dimming from 1 hr. after sunset to 1 hr. prior to sunrise Message duration – 6 seconds Message transition – 1 second Automatic shut off
Avondale https://ecode360.com/37862351	ILLUMINATED SIGNS: A sign that is lit by a source that is attached to or otherwise a part of the sign.	No	Illuminated and animated signs are prohibited.
Birmingham https://ecode360.com/9025725	BILLBOARD SIGN: A sign which directs attention to a person, business, profession, product, activity or event not conducted on the premises where the sign is located.	No	Digital displays are only permitted as billboard.

[1] Zoning regulations for all 73 municipalities in Chester County) have been reviewed for any requirements pertaining to digital display signs on lots with religious use. Due to repetitions, only municipalities with variety in requirements are included in the table.

	ILLUMINATED SIGN: A sign which has characters, letters, figures, designs or outlines illuminated by direct or indirect electric lighting or luminous tubes as part of the sign.		
Caln https://ecode360.com/9321748	ANIMATED SIGN: A sign or any device designed to attract attention by visual means through the movement or semblance of movement by mechanical, electrical or natural means. CHARITABLE or COMMUNITY SERVICE SIGN: An on-premises sign identifying the charitable or community service organization, including religious facilities, volunteer fire companies or other nonprofit organization. All such signs may include supplemental information concerning hours, events, activities or messages. ILLUMINATED SIGN: A sign designed to project or reflect artificial light from an internal or external source, which may be directly or indirectly illuminated, or through transparent or translucent material. Illuminated signs may include, billboards, freestanding signs, ground signs or signs affixed to a building or structure, as permitted under the provisions of this chapter of the Code.	No specific provisions for digital displays	Height – 18 feet Area – 60 SF Max number – 1 per street frontage Setback – 5 ft. from ROW and 20 ft. from property lines. The use of red, green or amber lights on any sign within 200 feet of a street intersection is prohibited. The use of intermittent, flashing or animated lighting within 50 feet of a street right-of-way line and 200 feet from specific residential districts is prohibited. The use of illuminated signs within specific residential districts is prohibited unless the illuminated sign is specifically related to emergency management uses, medical facilities, municipal uses, institutional uses and other similar uses.
East Bradford https://ecode360.com/27273435	DIGITAL SIGN Any sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.	No Business signs accessory to commercial uses	Hours of operation – not past 11pm Message content – message or image (static) Message duration - no fewer than eight seconds Message transition – maximum 1 second; no blending Brightness – automatic reduction during hours of darkness not to exceed 100 nits when set to an all-white display Default design is required
East Brandywine https://ecode360.com/11883615	SIGN, CHANGEABLE DISPLAY: A sign displaying letters, numbers, and/or graphics that are designed to be readily changed electronically. A sign with changes made less frequently than once per 24 hours shall not be deemed a changeable display sign, nor shall any sign where changes to the content are effected by mechanical or manual means.	Yes, only on property fronting on Horseshoe Pike in specific	Height – 3 ft. 6 in. Max number – 1 Content transition – not scroll/flash/oscillate/blink; entire display Hours of operation – 6am to 11pm Brightness – not to exceed 0.1 footcandle measured at the boundary of any abutting property; between sunrise and

	LED specific provisions.	zoning districts	sunset, luminance shall be no greater than 5,000 nits. At all other times, luminance shall be no greater than 250 nits. Message transition – once every 5 seconds Setback – 5 ft. from ROW Ambient light monitor, which continuously monitor and automatically adjust the brightness of the sign to appropriate levels for the existing ambient light conditions is required. A nonconforming sign shall not be converted to, adapted, repurposed, or otherwise approved as a changeable display sign unless it is modified to conform to the applicable regulations
East Caln https://ecode360.com/10742706	CHANGEABLE DISPLAY SIGN Any sign capable of changes in the signage display without physical alteration of the sign, including without limitation, LED displays.	No, only for commercial uses	Height – 8 feet Area – 20 SF Setback – 10 feet from side property lines; sign height from the street line Message content – limited to text (letters and numbers) and one image Message transition – not less than 60 seconds (6am-10pm) or static (10pm – 6am) or turned off Illumination – limited to 7,000 nits between sunrise and sunset and 250 nits during nighttime hours Shall not be used for off-premises advertising Required to coordinate/permit message access for local, regional, state and national emergency services during emergency situations
East Fallowfield	ELECTRONIC SIGN: An on-site sign capable of displaying text, graphics, symbols, or images that can be electronically or mechanically changed by remote or automatic means; or with content that may be changed by electronic process through the	Yes, within MU district via special exception and with	Height – 12 feet Location – perpendicular to adjacent roadway Message transition – not more than 3 times per day Transition interval – 1 second Hours of operation – 7am to 10pm

https://ecode360.com/31345572	use of light or lights, including, but not limited to, light emitting diodes (LED), liquid crystal display and plasma image display. MESSAGE SEQUENCING: A single message or advertisement for a product, event, commodity, or service that is divided into segments and presented over two or more successive display phases of a sign, or across two or more individual signs.	frontage on state roads	Illumination – not to exceed 100 cd/m2 with a full-white board face after sunset Setbacks – 15 feet or 1.1 times the height from ROWs Shall not shine or reflect light into adjacent residences. Message sequencing is prohibited.
East Goshen https://ecode360.com/7253764	LED sign: A type of animated sign which uses light-emitting diodes, liquid crystal displays, or similar technologies to change the message of the sign. Places of worship or religious institutions permitted by conditional use in C-1 District.	Yes, but only those located in C-1 district.	Height – 5 ft. Area – 10 SF Max number – 1 per property for street frontage Message duration – static and nonanimated; min. 10 seconds; no audio Content transition - not display any message that moves, appears to move, scrolls, or changes in intensity during the fixed display period Message transition – one second or less Brightness – brightness control to reduce the intensity of the light based on outside light levels.
East Marlborough https://ecode360.com/30533657	DIGITAL DISPLAY: The portion of a sign message made up of internally illuminated components capable of changing the message periodically. Digital displays may include but are not limited to LCD, LED, or plasma displays. Places of worship are only permitted in R-1 or Institutional overlay via special exception	No In specified commercial or industrial districts	Number – 1 per street frontage Area – 50 SF Height – 20 feet Brightness – daytime at 5,000 nits and nighttime at 250 nits Sign area (total) – 30% of total sign area on site
East Whiteland https://ecode360.com/6758323	FLASHING AND MESSAGE SIGN: A sign which permits light to be turned on or off intermittently, or any illuminated sign on which such illumination is not kept stationary or constant in intensity or color at all times when such sign is in use, including an LED (light-emitting diode) or digital sign. A flashing or message sign occurs whenever such signs include lights or messages which change, flash, blink or turn on and off intermittently, with the exception of	No	Prohibited animated, flashing and message signs, and intermitted signs except for off-premises signs.

	such signs which are limited exclusively to time and temperature displays, with no other text or image. INTERMITTENT SIGN: A sign which permits light to be turned on or off intermittently more frequently than once every 12 hours or which is operated in a way whereby light is turned on or off intermittently more frequently than once every 12 hours, including any illuminated sign on which such illumination is not kept stationary or constant in intensity or color at all times when such sign is in use, including an LED or digital sign which varies in intensity or color more frequently than once every 12 hours.		
Easttown https://ecode360.com/15297460	ANIMATED SIGN: A sign with action or motion, flashing, color changes requiring electrical energy, light-emitting diodes (LED) or other light sources as part of the sign or sign face, electronic or digital sign face, electronic manufactured sources of supply, but not including static LED fuel price signs or wind-actuated elements such as flags, banners, or specialty items. PLACE OF WORSHIP: A building used for public worship by a congregation, excluding buildings used exclusively for residential, educational, burial, recreational or other uses not normally associated with worship. PBO Zoning District - Animated signs shall be permitted when authorized as a conditional use, subject to specific provisions. Places of worship are permitted by conditional use in all districts.	Not in residential districts. In business district with restrictions	Height – 8 ft. Max Area – 10 SF Number – 1 per individual lot Setback – 10 to 35 feet from property boundary with ROW or street whichever is closer to the center point of property; not less than 15 feet from any neighboring property boundary. Message duration – minimum 5 seconds Message transition – less than 1 second Brightness – controls with ability to respond to changes in the outside light levels No animated sign shall be erected within 200 feet of any other animated sign. Animated signs are prohibited within 100 feet of a traffic control device.
Elverson	Digital sign: An advertising sign that utilizes digital or video light-emitting diodes (LEDs) or similar electric methods to create an image display area.	Yes	Area - 1/3 of the size of the sign or 12 square feet, whichever is less. Duration - minimum of six seconds Transition - within one second

https://ecode360.com/34090751	Electronically changing message sign: A digital sign or portion thereof displaying frequent message changes that are rearranged electrically without physically altering the face or surface of such signs. Illuminated sign: A sign designed to project or reflect artificial light from an internal or external source. Illumination may occur through an external source which may directly or indirectly illuminate a sign; an internal source which may provide illumination through transparent or translucent materials; or digitally through light-emitting diodes (LEDs) or similar technology.		Content transition - No visual scrolling, movement, fading or dissolving is permitted and messages shall not overlap. Automatic day/night dimming to reduce the illumination intensity of the sign from one hour after sunset to one hour prior to sunrise Automatic shutoff in case of failure or error that would result in the sign projecting a full intensity all-white image for an extended period of time. The use of animation, sound and full-motion video is prohibited.
Kennett Square https://library.municode.com/pa/kennett_township/codes/code_of_ordinances?nodeId=PTIIGELE_CH240ZOAR_ARTXXISI	CHANGEABLE COPY: copy containing or displaying letters, numbers, or graphics, which is designed to be readily changed, either manually, electronically, or through mechanical means, including but not limited to illumination types such as LED, HID, LCD, fluorescent, incandescent, neon, plasma and digital.	Not in residential districts	
Malvern https://ecode360.com/31447648	DIGITAL SIGN: any pixel-based or like technology used to display and/or change the image and/or copy on a sign by electronic, digital, LED, video or similar technological means.	Yes, only in commercial districts	Display area – 8 SF Duration – 8 seconds minimum Transition – 1 second or less Ambient light monitor to adjust brightness Brightness – not to exceed 0.2 footcandles within 150 feet

Pennsbury https://ecode360.com/13084984	DIGITAL SIGN: An advertising sign that utilizes digital or video light-emitting diodes (LEDs) or similar electronic methods to create a changeable image display area. ELECTRONICALLY CHANGING MESSAGE SIGN: A freestanding or ground sign or portion thereof designed to accommodate frequent message changes composed of characters or letters that can be changed or rearranged electronically without altering the face or surface of such sign. ILLUMINATED SIGN: A sign which has characters, letters, figures, designs or outlines illuminated by direct or indirect electric lighting or luminous tubes as part of the sign.	No	Digital, electronically changing message, or flashing signs, and internal illumination of signs are prohibited.
Sadsbury https://sadsburytwp.org/wp-content/uploads/2022/09/Sadsbury-Township-Zoning-Ordinance-combined.pdf	Electronic Sign/Billboard – A sign and/or billboard capable of displaying text, graphics, symbols, or images that can be electronically or mechanically changed by remote or automatic means; or with content that may be changed by electronic process through the use of light or lights, including, but not limited to, light emitting diodes (LED), liquid crystal display and plasma image display. A Billboard is defined as a form of a Ground sign that exceeds the area and height regulations set forth elsewhere in this Part. Illuminated Sign: A sign that has characters, letters, figures, designs, or outlines illuminated by direct or indirect electric lighting or luminous tubes as part of the sign.	Yes, with restrictions and only on properties with frontage on the Route 30 Bypass. Special Exception	Sign face – 50 SF Location – min 500 feet from other such sign; 100 feet from residential unit; No fading, flashing, modulating, scrolling, moving lights, text or graphics, any fullmotion video, or any visible change during the Change Interval period. Not in location that will cause any danger to pedestrians or vehicular traffic. All light source shall be shielded and screened from adjoining residential properties.
Schuylkill https://ecode360.com/13606522	SIGN, DIGITAL: A sign that can change content of text or images which may utilize LED (light-emitting diode) technology or other technology.		

	SIGN, STATIC: A sign that is not digital and does not have changeable copy.		
Thornbury https://ecode360.com/36853174	CHANGEABLE COPY SIGN: A sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means, or manually through placement of letters or symbols on a panel mounted in or on a track system. The two types of changeable-copy signs are manual changeable copy signs and electronic changeable copy signs, which include: message center signs, digital displays, and tri-vision boards. DIGITAL DISPLAY: The portion of a sign face made up of internally illuminated components capable of changing the message periodically. Digital displays may include but are not limited to LCD, LED, or plasma displays.	Yes, only those located in commercial zoning districts, and with conditions.	
Tredyffrin https://ecode360.com/7117407	CHANGEABLE-COPY SIGN, DIGITAL: A sign on which the copy on the sign face is composed of light-emitting-diode (LED), halogen, compact fluorescent, incandescent or similar lamps or bulbs which may be changed remotely with no greater frequency than once per hour so as not to be distracting to motorists. No digital changeable-copy sign shall be permitted to project light onto a street or neighboring property. A digital changeable-copy sign shall not be considered to be an animated sign. Digital changeable-copy signs shall only be as specifically set forth in Article XXV. BILLBOARD: A freestanding outdoor sign with a sign area that is between 60 square feet and 300 square feet. Signs in C-1 and C-2 Districts: A manual changeable-copy or digital changeable-copy sign is permitted as part of or in conjunction with a freestanding sign and may be no more than 10 square feet of the total permitted sign area.	Yes, within commercial districts and with restrictions. Religious institutions permitted via conditional use (Institutional overlay)	Hours of operation – dusk to midnight Equipped with devices which automatically extinguish the lighting at 12:00 midnight. Internally illuminated and digital changeable-copy sign billboards are prohibited.

Valley https://ecode360.com/34335270	SIGN, DIGITAL: An advertising sign that utilizes digital or video light-emitting diodes (LEDs) or similar electric methods to create an image display area. SIGN, ELECTRONICALLY CHANGING MESSAGE: A digital sign or portion thereof displaying frequent message changes that are rearranged electrically without physically altering the face or surface of such sign.	Yes	Message duration - minimum of 10 seconds Message transition - within three seconds. No visual scrolling, movement, fading, or dissolving is permitted, and messages shall not overlap. Automatic day/night dimming to reduce the illumination intensity of the sign from one hour after sunset to one hour prior to sunrise. Automatic shutoff in case of failure or error that would result in the sign projecting a full-intensity all-white image for an extended period of time. The use of animation, sound, and full-motion video is prohibited.
West Brandywine https://ecode360.com/7992300	ELECTRONIC SIGN: An on-site sign capable of displaying text, graphics, symbols, or images that can be electronically or mechanically changed by remote or automatic means; or with content that may be changed by electronic process through the use of light or lights, including, but not limited to, light emitting diodes (LED), liquid crystal display and plasma image display. RELIGIOUS USE: A nonprofit use of land or a building or buildings as a place of worship, convent, monastery or similar religious institution, including rectory and parish houses for an organization organized solely or primarily as a religious institution.	Yes, only within industrial and medical services institutional districts with frontage on state roads via special exception within	Height – 12 feet Brightness – dimming capability for local ambient conditions Setbacks – 15 feet or 1.1 times of height from ROW Duration – 12 seconds Transition – 1 second maximum Hours of operation – 7am to 11pm (unless 24 hrs use) Brightness – not to exceed 100 cd/m^2 nits with exceptions Programmable controller Contact information for operator/controller
West Goshen	CHANGING IMAGE SIGN: Any sign, display, device, or portions thereof which is designed to have the capability of movement or give the semblance of movement of the whole or any part of the	Yes, except for	Duration – 6-8 hours

https://ecode360.com/10797410	sign or that displays any artificial light which is not maintained stationary or constant in intensity and color at all times when such signs are in use or, through some other automated method, results in movement, the appearance of movement or change of sign image or text. Such signs include but are not limited to electronic signs including LED, LCD, video or other automatic changeable display, rotating and revolving signs, readerboard signs, flashing signs, and wind driven signs including flags, pennants, and streamers. INSTITUTIONAL: A sign identifying a club, association, school, hospital, church, nursing home, firehouse, care facility, boarding- or rooming house, institution, cemetery or similar use. Institutional signs: two per institution.	residential districts	
West Whiteland https://ecode360.com/11704047	SIGN, BULLETIN BOARD: A permanent sign which identifies an institution or organization on the premises on which it is located and which may contain the name of the institution or organization, the names of individuals connected with it and general announcements of events or activities occurring at the institution or general messages. Such a sign may contain movable letters, words or numerals. SIGN, CHANGEABLE COPY: A sign that is designed so that the message on the sign can be easily and periodically altered. VISUAL COMMUNICATION TECHNOLOGY (VCT): Lighting elements designed and constructed for the purpose of expressing a message. VCT includes, but is not necessarily limited to, dual in-line packaged light-emitting diodes (LEDs), surface-mounted LEDs, chip-on-board LEDs, fiber optic LEDs, internally illuminated acrylic plastic (such as plexiglas or Lucite) and polycarbonate plastic (such as Lexan), intense pulsed-light technology, outdoor projection	No Prohibited in residential districts	Number – 1 per lot, per street frontage Duration – 10 seconds minimum Transition – 1 second or less, seamless, imperceptible transition from one image to the next. Message content - static images, no moving or animated words or images Illumination - automatically adjust the light to not more than 0.3 footcandle above the ambient light level as measured at a perpendicular distance of 250 feet from the surface of the sign when displaying a completely white color; technology to minimize light from the sign falling on property beyond the area of the intended audience (louvers or shades adjacent to the individual lighting elements) Data log to document the performance of the automatic dimming function.

	technology, outdoor projection video-mapping technology, holographic technology, and 3-D holographic technology.		Automatic default function that, in the event of a malfunction, will either freeze the image in one position or shut down the VCT element entirely. Public emergency announcements and applicable protocol
Willistown https://ecode360.com/11715762	ELECTRONIC SIGNS: all electronic signs [including but not limited to the lighting or illuminating of signs, or light-emitting-diode (LED) signs, high-intensity displays (HID), electronic variable-messaging signs (EVMS), changeable-display signs (CDS), digital signs, fluorescent lighting signs, or incandescent lighting signs].	Yes, in specific commercial and industrial zoning districts and not within 400 feet of a residential use. Via conditional use	Illumination - not exceed 500 initial lumens per square foot of sign face per side Hours of operation – sunrise to 11pm within 400 feet of residential use Message transition – not more than once every 20 seconds; static images only Ambient light sensors or photometric cells to automatically reduce the intensity of illumination during daytime dark periods (e.g., cloudy or rainy days) and during the dawn or twilight hours of permitted use. Automatically adjust the light emitted to not more than 0.3 footcandle above the ambient light level as measured at a perpendicular distance of 250 feet from the surface of the sign when displaying a completely white color. Automatic default function that, in the event of a malfunction, will either freeze the image in one position or shut down the image entirely. Data log to document the performance of the automatic dimming function. Public emergency announcements and applicable protocols