

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Core5 at Route 100, LLC, :
Appellant :
v. : No. 57 C.D. 2025
Lowhill Township and Lowhill :
Township Board of Supervisors :

PER CURIAM

ORDER

NOW, May 28, 2026, the Application for Reargument *En Banc* (Application) filed by Lowhill Township and Lowhill Township Board of Supervisors is DENIED to the extent it seeks reargument before the Court *en banc*. To the extent the Application could be construed as seeking reconsideration, the Application is GRANTED in limited part, as set forth more fully below.

The April 7, 2026 Opinion and Order vacated the Court of Common Pleas of Lehigh County’s order and remanded for additional factual findings based on the existing record. However, Judge Zachery J. Cohen subsequently advised the Court by letter dated May 11, 2026, that Judge Michele A. Varricchio, who issued the now-vacated order, retired and this matter was reassigned to him. He requested guidance on how to proceed in light of this development. The case law is clear that a new trial court judge cannot make factual findings including credibility determinations based on the existing record unless the parties consent. *See Wasiolek v. City of Philadelphia*, 606 A.2d 642 (Pa. Cmwlth. 1992) (holding new judge cannot make credibility determinations for witnesses who were not observed testifying); *Marnik v. Dep’t of Transp., Bureau of Driver Licensing* (Pa. Cmwlth., No. 814 C.D. 2017,

filed April 19, 2018) (same); *Hyman v. Borock*, 235 A.2d 621 (Pa. Super. 1967) (“[I]n the absence of consent thereto, the substitution of another judge for the trial judge may not be approved where the testimony has been heard without a jury and the trial judge has not yet rendered a decision on the factual issues.”). Accordingly, we grant reconsideration to clarify that, if the parties do not consent, the trial court, upon remand, must redevelop the record before making the necessary findings of fact.¹ The April 7, 2026 Opinion and Order otherwise remains in full force and effect.

¹ Core5 at Route 100, LLC in its response in opposition to the Application asks the Court to infer knowledge, intent, or motive from the existing findings or direct Judge Cohen to do so. While the Court understands its frustration, we are the appellate court and decline to act as the trial court. Moreover, we are bound by our precedent.