

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Formation Energy LLC,	:	
Appellant	:	
	:	No. 591 C.D. 2025
v.	:	
	:	Submitted: July 24, 2026
South Union Township	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: September 25, 2026

Formation Energy (Formation) appeals from the order entered by the Court of Common Pleas of Fayette County (Common Pleas) on April 9, 2025, through which *inter alia* Common Pleas sustained preliminary objections filed by South Union Township (Township) and dismissed Formation’s procedural validity challenge to a Township ordinance. Upon review, we affirm.

I. BACKGROUND¹

In November 2021, the Township’s Board of Supervisors (Board) enacted Ordinance No. 7-2021, which amended the Township’s Zoning Ordinance² to specifically regulate solar photovoltaic systems³ and to allow such systems to be

¹ We draw the bulk of this section’s substance from the opinion Common Pleas issued in response to Formation’s appeal to our Court. *See generally* Common Pleas Op., 7/14/2025.

² The Zoning Ordinance of South Union Twp., Fayette Cnty., Pa., *as amended* (1974).

³ This piece of municipal legislation defined a “solar photovoltaic system” as:

(Footnote continued on next page...)

installed as an accessory use in all of the Township's zoning districts.⁴ Formation subsequently entered into an agreement with the Free Methodist Church of North America of Uniontown, Pennsylvania (Church), effective August 4, 2022. Through this agreement, Formation secured an option to lease approximately 37.45 acres of residentially zoned, largely unimproved land from the Church for the purpose of constructing a solar farm; the term of this option was three years in length, with the ability to extend the option's duration for two additional, successive year-long periods. *See generally* Option to Solar Energy Lease Agreement; Land Use Appeal from Ordinance Pursuant to 42 Pa.C.S.A. § 5571.1 (Land Use Appeal).

Thereafter, in January 2025, the Board enacted Ordinance No. 2-2025. Of relevance to this matter, Ordinance No. 2-2025 amended Ordinance No. 7-2021 to allow photovoltaic power generation facilities as a primary use via special exception in light industrial-zoned areas of the Township.

On February 4, 2025, Formation filed a land use appeal in Common Pleas, along with a writ of *certiorari*, through which it asserted that Ordinance No. 2-2025 was void *ab initio*. Formation claimed that this was so because the Township

[a] solar collection system consisting of one or more building and/or ground-mounted systems, solar voltaic cells, panels or arrays and solar[-]related equipment that rely upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation. A solar [photovoltaic] system is a generation system with a nameplate capacity of not greater than 50 kilowatts if installed as a residential service or not larger than 3,000 kilowatts at other customer service locations and does not produce excess on-site energy greater than currently permitted by Pennsylvania Public Utility Commission [(Commission)] guidelines.

Ordinance No. 7-2021.

⁴ These systems were not specifically regulated via the Zoning Ordinance prior to the enactment of Ordinance No. 7-2021.

had failed to strictly comply with the Pennsylvania Municipalities Planning Code's (MPC)⁵ notice requirements when enacting that ordinance. The Township responded on February 13, 2025, by filing preliminary objections in which it argued that Formation lacked standing to challenge the validity of Ordinance No. 2-2025, as well as that Formation's writ of *certiorari* was legally invalid. On April 9, 2025, Common Pleas sustained the Township's preliminary objection to Formation's standing and, on that basis, dismissed Formation's appeal and struck the writ of *certiorari*. Formation then appealed Common Pleas' order to our Court.

II. DISCUSSION⁶

Formation presents several arguments for our consideration, which we condense and summarize as follows. First, Formation asserts that Common Pleas erroneously concluded that it lacked standing because the lease option agreement vests Formation with a proprietary interest in the at-issue property and confers landowner status to Formation pursuant to Section 107 of the MPC.⁷ Second, in the alternative, Formation maintains that it was aggrieved by Ordinance No. 2-2025's enactment and that Common Pleas' determination that Formation lacked standing

⁵ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101-11202.

⁶ "In a land use appeal, where the trial court does not take additional evidence, this Court's . . . review is limited to determining whether the local governing body committed an error of law or an abuse of discretion. . . . The governing body abuses its discretion when its findings of fact are not supported by substantial evidence." *Residents Against Matrix v. Lower Makefield Twp.*, 845 A.2d 908, 910 (Pa. Cmwlth. 2004) (cleaned up). "Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Eureka Stone Quarry, Inc. v. Dep't of Env't Prot.*, 957 A.2d 337, 344 (Pa. Cmwlth. 2008) (cleaned up). Where, as here, the issue is whether the appellant lacked standing to pursue the underlying action, the question constitutes a matter of law over which our scope and standard of review are respectively plenary and *de novo*. *Johnson v. Am. Standard*, 8 A.3d 318, 326 (Pa. 2010).

⁷ "Landowner" is defined in Section 107 as "the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land." 53 P.S. § 10107.

was consequently incorrect, because that ordinance extinguished Formation’s ability to obtain a special exception that would allow it to build a solar farm as a primary use on the optioned property. Finally, Formation contends that Common Pleas improperly dismissed Formation’s petition and writ of *certiorari* because the record reflects that the Township failed to strictly comply with the MPC’s pertinent notice requirements, as well as because the MPC mandates that the Township file with Common Pleas all materials relevant to the Board’s enactment of Ordinance No. 2-2025. Formation’s Br. at 11-26.

Formation’s first argument is without merit. In Pennsylvania, litigants may establish their standing in a matter through a statute that “expressly prescribes the individuals who have standing to pursue a particular action thereunder[.]” *Budai v. Country Fair, Inc.*, 296 A.3d 20, 24 (Pa. Super. 2023).⁸ “In the absence of [such] a statutory prescription, [however,] our traditional standing doctrine applies[.]” *Id.* at 25; *accord Press-Enter., Inc. v. Benton Area Sch. Dist.*, 604 A.2d 1221, 1223 (Pa. Cmwlth. 1992) (“[T]raditional standing requirements are applicable only where a specific statutory provision for standing is lacking.”).

In this instance, it is true that the MPC once expressly and specifically imbued landowners with standing to challenge the procedural validity of a land use ordinance. *See Davis-Haas v. Exeter Twp. Zoning Hr’g Bd.*, 166 A.3d 527, 553 (Pa. Cmwlth. 2017) (discussing Section 913.3 of the MPC⁹). However, in 2008, the General Assembly amended Section 1002-A of the MPC¹⁰ to provide a different, exclusive path for such challenges, via appeal to the appropriate Court of Common

⁸ “In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analogous issues.” *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

⁹ Added by the Act of December 21, 1988, P.L. 1329, *as amended*, 53 P.S. § 10913.3.

¹⁰ Added by the Act of December 21, 1988, P.L. 1329, *as amended*, 53 P.S. § 11002-A.

Pleas pursuant to Section 5571.1 of the Judicial Code.¹¹ Act of July 4, 2008, P.L. 319;¹² *see Streck v. Lower Macungie Twp. Bd. of Comm’rs*, 58 A.3d 865, 870 (Pa. Cmwlth. 2012) (noting that the General Assembly “enacted Section 1002-A(b) of the MPC to provide that a procedural challenge to a land use ordinance be presented to a court of common pleas and not to a zoning hearing board”); *see also* Section 1002.1-A(a), (c) of the MPC¹³ (specifically stating that a person must be “aggrieved” in order to challenge the procedural validity of a land use ordinance). Unlike Section 913.3 of the MPC, Section 5571.1 of the Judicial Code is entirely silent regarding the prerequisites for standing to file an appeal thereunder. *See* 42 Pa.C.S. § 5571.1. Therefore, Formation must establish that it has standing in the traditional sense in order to challenge the procedural validity of Ordinance No. 2-2025, regardless of whether the aforementioned lease option agreement renders it a “landowner” for purposes of the MPC. *See Press-Enter.*, 604 A.2d at 1223.

This brings us to Formation’s second argument, which is also unpersuasive. A party must be “aggrieved” to have standing in the traditional sense, such that the party must have an interest in a given matter that is substantial, direct, and immediate. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282-83 (Pa. 1975). “A substantial interest . . . is one that surpasses the common

¹¹ 42 Pa.C.S. § 5571.1.

¹² This Act added a new subsection to Section 1002-A, which reads as follows:

Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption shall be raised by appeal taken directly to the court of common pleas of the judicial district in which the municipality adopting the ordinance is located in accordance with 42 Pa.C.S. § 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.).

53 P.S. § 11002-A(b).

¹³ Added by the Act of December 21, 1988, P.L. 1329, *as amended*, 53 P.S. § 11002.1-A(a), (c).

interest of all citizens in procuring obedience to the law[, a] direct interest requires a causal connection between the asserted violation and the harm complained of[, and an] interest is immediate when the causal connection is not remote or speculative.” *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Cmwlth. 2018) (cleaned up).

As noted above, Formation insists that it has traditional standing to contest the procedural validity of Ordinance No. 2-2025 because, in Formation’s reading, this ordinance removed its ability to potentially secure the approval of a solar farm project via special exception. *See* Formation’s Br. at 15-20.

We disagree. Formation bases its argument upon the fact that a “public service facility” is allowed as a primary use by special exception in all of the Township’s residentially zoned districts. *See id.*; *see also* Zoning Ordinance § 400. This use is specifically defined in the Ordinance as follows:

The erection, construction, alteration, operation or maintenance of buildings, power plants or substations, water treatment plants or pumping stations, sewage disposal or pumping plants and other similar public service structures by a utility, whether publicly or privately owned, or by a municipal or other governmental agency, including the furnishing of electrical, gas, communication, water supply and sewage disposal services.

Zoning Ordinance § 201. Formation maintains that it would have been eligible to seek a special exception pursuant to these provisions prior to the enactment of Ordinance No. 2-2025 because its theoretical solar farm would constitute a “power plant” and could thus qualify as a public service facility under Section 201. *See* Formation’s Br. at 16-20. However, this ignores the contingent language used in this definition, which plainly establishes that a power plant constitutes a public service facility *only* in the event it is erected, constructed, altered, operated, or

maintained by either “a utility . . . or by a municipal or other governmental agency[.]” Zoning Ordinance § 201. Formation satisfies neither of these requirements, as it is obviously not a municipal or governmental agency and, furthermore, has not asserted at any point during this litigation that it is either currently regulated as a utility or that its intended solar farm operations on the option property would cause it to be regulated as such.¹⁴ *See generally* Land Use Appeal; Formation’s Resp. to Prelim. Objs.; Formation’s Br.

Furthermore, even if Formation had asserted that its potential solar farm would constitute a utility, it remains that Ordinance No. 2-2025 did not deprive Formation of the ability to seek its approval as a public service facility. Ordinance No. 7-2021, by its plain language, “applies to all solar photovoltaic systems installed and constructed after [its] effective date [of November 8, 2021]” and permits “[a]ll types of solar photovoltaics systems . . . in all zoning districts as an accessory use.” Ordinance No. 7-2021 §§ IV-V, XVII. Ordinance No. 7-2021 thus foreclosed upon the possibility that the Township’s Zoning Hearing Board could currently authorize a solar farm pursuant to Section 400 of the Zoning Ordinance, because it only allowed solar photovoltaic systems of any kind to be installed or constructed as an *accessory* use, rather than as a primary use. In other words, even assuming *arguendo* that Formation could have theoretically secured approval of its solar farm as a public service facility at some point in the past, that potential was eliminated by the

¹⁴ We also note Formation has ignored the likelihood that such operations would cause the Commission to treat it as a customer-generator, rather than as a utility, pursuant to both Section 2 of the Alternative Energy Portfolio Standards Act, Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. § 1648.2, and the Commission’s administrative regulations. *See Penn Renewables, LLC v. Pa. Pub. Util. Comm’n*, --- A.3d ---, 2026 WL 1466224, at *1 (Pa. Cmwlth. 2026).

enactment of Ordinance No. 7-2021, *not* Ordinance No. 02-2025. Given this, Formation was not aggrieved by the enactment of Ordinance No. 02-2025.

III. CONCLUSION

In light of the foregoing analysis, we conclude that Formation does not have standing to challenge the procedural validity of Ordinance No. 02-2025 and therefore affirm Common Pleas' April 9, 2025 order.¹⁵

LORI A. DUMAS, Judge

¹⁵ Given our disposition of this matter, we need not address Formation's remaining argument.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Formation Energy LLC,	:	
Appellant	:	
	:	No. 591 C.D. 2025
v.	:	
	:	
South Union Township	:	

ORDER

AND NOW, this 25th day of September, 2026, it is hereby ORDERED that the order entered by the Court of Common Pleas of Fayette County on April 9, 2025, is AFFIRMED.

LORI A. DUMAS, Judge