

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orchard BJK Company, LLC and	:	
Pocono Mountains Industries, Inc.,	:	
Appellants	:	
	:	No. 959 C.D. 2025
v.	:	
	:	Submitted: September 14, 2026
Coolbaugh Township Board of	:	
Supervisors, Citizens for Pennsylvania's	:	
Future, Tobyhanna Creek/Tunkhannock	:	
Creek Watershed Association and	:	
Tobyhanna Conservation	:	
Association, Inc.	:	

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: October 15, 2026

Orchard BJK Company, LLC and Pocono Mountains Industries, Inc. (collectively Appellants) appeal from an order issued by the Court of Common Pleas of Monroe County (Common Pleas) and dated June 27, 2025. Through that order, Common Pleas sustained preliminary objections filed by Coolbaugh Township Board of Supervisors (Board) and dismissed Appellants' Complaint, due to Common Pleas' determination that the claims Appellants asserted therein are not yet ripe for adjudication. Upon review, we affirm.

I. BACKGROUND¹

Appellants own a number of commercially and industrially zoned properties in Coolbaugh Township (Township). In April 2023, the Board approved Appellants' application to subdivide one of those properties into two contiguous parcels: Lot 1, which covers 35.5 acres; and Lot 2, which covers 73.16 acres. The Board also contemporaneously and conditionally approved Appellants' land development plan for Lot 1, which called for the construction of an approximately 333,000-square-foot warehouse thereon and complied with the versions of the Township's Subdivision and Land Development Ordinance (SALDO)² and Stormwater Management and Earth Disturbance Ordinance (Stormwater Ordinance)³ that were in effect at the time.

Shortly thereafter, the Board embarked upon an effort to impose more stringent requirements upon stormwater management and warehouse construction in the Township. On August 2, 2023, the Board enacted amendments to the Stormwater Ordinance that increased the mandated minimum inner buffer distance for wetlands from 50 feet to 150 feet, and the mandated minimum outer buffer distance between buildings and wetlands from 100 feet to 150 feet. *See* Stormwater Ordinance § 344-21.E.-F. Notably, these amendments did not remove or alter the Stormwater Ordinance's waiver provision, which allows the Board, upon application, to modify or waive water drainage and stormwater management requirements on a development-by-development basis. *Id.* § 344-9.C.; *see id.* § 344-

¹ We draw this section's substance largely from Common Pleas' opinion for this matter. *See generally* Common Pleas Op., 6/27/25.

² Coolbaugh Township Subdivision and Land Development Ordinance, Monroe Cnty., Pa., *as amended* (2013).

³ Coolbaugh Township Stormwater Management and Earth Disturbance Ordinance, Monroe Cnty., Pa., *as amended* (2014).

19.A. (requiring the submission of a Stormwater Ordinance-compliant stormwater management plan in instances where “[a]pplicants propos[e] regulated activities in Coolbaugh Township which do not fall under the exemption criteria included in § 344-9”).

Appellants subsequently took two discrete steps in furtherance of their desire to develop Lot 2. First, on April 29, 2024, they submitted two documents to the Township: a preliminary land development plan application, through which they *inter alia* sought permission to construct an approximately 186,000-square-foot warehouse on Lot 2; and a waiver petition, through which they requested that the Board modify the applicable wetlands buffer standards, so that Appellants would need only satisfy the pre-amendment requirements, rather than the more stringent ones enacted by the Board in August 2023. *See generally* Bd.’s Prelim. Objs., Exs. A-B (Appellants’ letter regarding preliminary land development plan application for Lot 2 and Appellants’ buffer requirement modification petition; *see also* Compl., Exs. G-H (sketch plans for proposed Lot 2 warehouse development).

Second, while the plan application and waiver petition were both still pending before the Board, Appellants filed suit against the Board in Common Pleas on May 3, 2024. Therein, Appellants alleged that the Board, by enacting the buffer requirement amendments, had violated Appellants’ constitutional right to enjoy their property and had passed invalid special legislation. Compl., ¶¶60-87. Accordingly, Appellants requested that Common Pleas issue a declaratory judgment that deemed those amendments unconstitutional and void *ab initio*. *Id.*, Wherefore Clause.

The Board responded to Appellants’ Complaint by filing preliminary objections, in which it specifically asserted that Common Pleas should dismiss the complaint because (a) Common Pleas lacked jurisdiction over the matter; (b) the

Complaint failed to conform to law or rule, contained references to scandalous or impertinent matters, was insufficiently specific, and contained claims upon which no legal relief could be granted; and (c) Appellants had a pending prior action and had failed to exhaust or pursue adequate statutory and non-statutory remedies. Prelim. Objs., ¶¶10-90. Common Pleas construed several of these preliminary objections as, in essence, assertions that Appellants' claims lacked ripeness, sustained those preliminary objections, and dismissed the Complaint. This appeal to our Court followed shortly thereafter.

II. DISCUSSION⁴

Appellants present two arguments for our consideration, which we summarize as follows. First, Appellants assert that Common Pleas committed an error of law by *sua sponte* raising and addressing the ripeness of their claims.

⁴ In ruling on preliminary objections, [the trial c]ourt must “accept as true all well-pleaded material allegations in the [complaint] and any reasonable inferences that [it] may draw from the averments.” *Highley v. Dep’t of Transp.*, 195 A.3d 1078, 1082 (Pa. Cmwlth. 2018). However, [the trial court is] “not bound by legal conclusions, unwarranted inferences from facts, argumentative allegations, or expressions of opinion encompassed in the [complaint].” *Id.* . . .

“[W]here any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections.” *Pa. State Lodge, Fraternal Ord. of Police v. Dep’t of Conservation & Nat. Res.*, 909 A.2d 413, 416 (Pa. Cmwlth. 2006).

M.T. v. Pa. State Police, 298 A.3d 466, 469 n.5 (Pa. Cmwlth. 2023) (cleaned up). “Importantly, documents attached as exhibits, documents referenced in the complaint, as well as facts already of record may also be considered” by the trial court when adjudicating a party’s preliminary objections. *Fraternal Ord. of Police Lodge No. 5 by McNesby v. City of Phila.*, 267 A.3d 531, 542 (Pa. Cmwlth. 2021). Furthermore, “[i]t is well established that in reviewing a trial court’s grant of preliminary objections, this Court must determine whether the trial court committed an error of law, and in doing so, must apply the same standard as the trial court.” *Id.* at 541 (cleaned up).

Second, Appellants maintain that Common Pleas also erred on the merits because their claims are currently ripe for judicial disposition. Appellants' Br. at 23-42.

Appellants' first argument is rather mystifying, considering that the Board *did* raise the issue of ripeness when this matter was before Common Pleas. Specifically, the Board demurred to both of the complaint's counts and argued in relevant part:

41. Count I of [Appellants'] Complaint contains a declaratory judgment action asking [Common Pleas] to find the Township's Stormwater Ordinance, as amended, unlawful special legislation.

....

43. [Appellants] have no clear legal right for [their] declaratory judgment action of an unlawful special legislation claim in this case.

44. [Appellants] have failed to allege any facts in the Complaint to support a claim for declaratory judgment.

....

56. There is no actual case or controversy and the subject matter alleged in the Complaint is not yet ripe for judicial determination, nor will it be until the Board issues its decision on [Appellants'] Waiver Request.

57. There will be no actual case or controversy ripe for judicial determination until after the . . . Board . . . has an opportunity to hear, consider[,] and issue a decision on [Appellants'] above-referenced Waiver Request.

....

59. Therefore, the instant declaratory judgment action set forth within Count I of the Complaint should be dismissed.

....

61. Count II of [Appellants'] Complaint also contains a declaratory judgment action asking [Common Pleas] to find the Township's Stormwater Ordinance, as amended, constitutionally invalid.

62. As more specifically set forth above, [Appellants] have no clear legal right for [their] declaratory judgment action set forth in Count II of the Complaint.

63. [Appellants] have failed to allege any facts in the Complaint to support a claim for declaratory judgment, and in particular have failed to adequately allege the existence of an actual case or controversy that is ripe for judicial determination.

....

71. Therefore, Count II of the Complaint should similarly be dismissed for legal insufficiency.

Prelim. Objs., ¶¶41, 43-44, 56-57, 59, 61-63, 71 (emphasis added); *see* Br. in Support of Prelim. Objs. at 10-11, 13 (demurring to Counts I and II, on the basis that those claims are not ripe for adjudication). Appellants’ assertion that Common Pleas raised the issue of ripeness *sua sponte* is thus plainly incorrect.⁵

We are similarly unpersuaded by Appellants’ second argument. Generally speaking, “[t]he doctrine of ripeness concerns the timing of a court’s intervention in litigation. The basic rationale underlying the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1217 (Pa. Cmwlth. 2018) (cleaned up). The standard for determining whether a declaratory judgment action is ripe is subject to “a relatively lenient standard[.]” *Id.* at 1217-18. “An action is ripe for adjudication under the Declaratory Judgments Act where it presents the ripening seeds of a controversy.” *Id.* at 1218 (cleaned up). Even so, “[o]nly where there is a real controversy may a

⁵ It is true that Common Pleas only determined that the Board had *effectively* raised the issue of ripeness through a number of its other, non-demurrer objections to the Complaint. *See* Common Pleas Op., 6/27/25, at 3-6. This was harmless error at most, given that the Board did *specifically* demur to the Complaint on ripeness grounds and also incorporated its ripeness averments by reference into its insufficient specificity and prior pending action objections. *See* Prelim. Objs., ¶¶41, 43-44, 56-57, 59, 61-63, 71-72, 80.

party obtain a declaratory judgment. A declaratory judgment must not be employed to determine rights in anticipation of events which may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic.” *Gulnac by Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991).

With these precepts in mind, we conclude that Appellants’ lawsuit was premature, as the aforementioned buffer requirements have yet to actually harm them and, in fact, *may never do so*. Appellants asserted in their Complaint that the Stormwater Ordinance amendments effectively prevent the erection of warehouses on Lot 2 and have caused many of its other properties to decrease in value. *See* Compl., ¶¶40-64. Additionally, Appellants maintained that those amendments were designed “to prevent or restrict” the development of industrial-zoned property, due in large part to opposition in the Township to the construction of additional warehouse facilities. *See id.*, ¶¶24-39. In doing so, however, Appellants ignored the existence of the Section 344-9.C. waiver process, which remains intact and was not altered by those amendments; indeed, Appellants availed themselves of that very process when they filed their Lot 2 waiver petition on April 29, 2023, before short-circuiting it four days later via this lawsuit. The question of whether the applicable buffer requirements will impede Appellants’ development of Lot 2 (or of other properties in the Township) thus remains purely theoretical at this juncture, given that Appellants may still seek and potentially obtain relief from those requirements through this waiver process. Accordingly, we find no fault with Common Pleas’ decision to sustain the Board’s preliminary objections or with its consequent dismissal of Appellants’ Complaint, due to the fact that Appellants’ claims were (and are) not ripe for judicial adjudication.

III. CONCLUSION

In accordance with the foregoing analysis, we affirm Common Pleas' order, dated June 27, 2025.

LORI A. DUMAS, Judge

Judge Wolf did not participate in this decision.

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ORDER

AND NOW, this 15th day of October, 2026, it is hereby ORDERED that the Court of Common Pleas of Monroe County's order, dated June 27, 2025, is AFFIRMED.

LORI A. DUMAS, Judge