



Green Amendment Victories
How Green Amendments Are
Recognizing & Protecting
Environmental Rights



GREEN AMENDMENTS
FOR THE GENERATIONS
Pure Water. Clean Air. Healthy Environment.

Pennsylvania, Montana, New York, are the only three states in the U.S. that currently promise, protect and respect constitutional environmental rights protected on par with other fundamental human, civil and political rights we hold as inviolate, inherent, inalienable and inalienable rights protected from government infringement and transgression. In this series we share the varied ways that constitutional recognition is providing meaningful and transformative protection in the states where they exist, thereby making the case for constitutional Green Amendments in states across our nation and ultimately at the federal level.

Carnahan v. Slippery Rock Twp. Zoning Hearing Bd.
Commonwealth Court of Pennsylvania
November 8, 2023, Decided
305 A.3d 211

HEI-WAY Premium Asphalt company filed an application with the Slippery Rock Township Board of Supervisors to rezone a 14.52 acre parcel of land from Rural Conservation to Light Development. HEI-WAY wanted to construct an asphalt operation on the site.

After receiving a recommendation from the Township Planning Commission to rezone the property, and the Township Board of Supervisor's public hearing on the rezoning request, the Township Board of Supervisors enacted Ordinance No. 2020-1 which rezoned the property as requested. Four community members challenged the decision to the Township Zoning Board which held a hearing and denied the challenge. The community members appealed the Zoning Board's denial to the Court of Common Pleas which affirmed the Zoning Board decision. That decision was then appealed to the Commonwealth Court of Pennsylvania.

The appeal challenged the ordinance on multiple grounds, including that it violated the Pennsylvania Green Amendment; amounted to spot zoning; contravened the development objectives laid out in the

Learn More About The Green Amendment Movement: www.GreenAmendment.org

Township's Zoning Ordinance and the county's comprehensive plan; would harm the public health, safety and welfare; and would potentially create a private nuisance.

With regards to the environmental rights claims and the violation of Pennsylvania's Green Amendment found in Article 1, Section 27 of the state constitution, the court began by reiterating settled law regarding the rights and obligations created by the Amendment language:

This constitutional provision grants two separate rights to the people of this Commonwealth. The first right is contained in the first sentence, which is a prohibitory clause declaring the right of citizens to clean air and pure water, and to the preservation of natural, scenic, historic and esthetic values of the environment. This clause places a limitation on the state's power to act contrary to this right, and while the subject of this right may be amenable to regulation, any laws that unreasonably impair the right are unconstitutional.

The second right reserved by [the Amendment], set forth in its second sentence, is the common ownership by the people, including future generations, of Pennsylvania's public natural resources.

....

The third clause of [the Amendment] 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.

[T]he Commonwealth, as trustee, has a fiduciary obligation to comply with the terms of the trust and with standards governing a fiduciary's conduct. The explicit terms of the trust require the government to "conserve and maintain" the corpus of the trust. The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust—the public natural resources—with prudence, loyalty, and impartiality.

The court affirmed that these constitutional obligations must be fulfilled by the Township's governing bodies, reiterating settled law in the state that the term 'Commonwealth,' "encompasses all agencies and entities of the Commonwealth government, both statewide and local,' meaning that each one has 'a fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality.'"

In addition, quoting Pennsylvania Supreme Court precedent, the court reaffirmed that the Pennsylvania Green Amendment creates both a limitation on government authority that would infringe upon environmental rights, while also creating an affirmative duty to protect natural resources:

"[The Pennsylvania Green Amendment] imposes two basic duties on the Commonwealth as the trustee. First, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties. Second, the Commonwealth must act affirmatively via legislative action to protect the environment. Although a trustee is empowered to exercise discretion with respect to the proper treatment of the corpus of the

trust, that discretion is limited by the purpose of the trust and the trustee's fiduciary duties, and does not equate to mere subjective judgment."

Applying these settled legal principles to the case at hand, the court made clear that the Township is obligated to fulfill its "duties as a trustee of the environment and the public natural resources within its domain." In addition, the Township "[m]ust pursue 'not only reactive but also anticipatory protection of the environment [and public natural resources] for the benefit of current and future generations.'"

The court ultimately rejected the constitutional challenge to the Ordinance, finding that the challengers had not provided any substantive or scientific evidence that environmental harm would result from the zoning change, explaining their claims were instead based upon conjecture and personal opinions based on life experience.

Regarding the non-Green Amendment claims:

- With regards to spot zoning the court found: "the Zoning Board did not abuse its discretion or commit an error of law when it rejected [the challenger]s' spot zoning challenge. There is substantial evidence to support its determinations that Ordinance No. 2020-1 did not treat the Property differently than similar, surrounding parcels of land[.]"
- With regards to potential harm to the public health, safety and welfare: the court determined that while evidence had been presented to the Zoning Board regarding the challengers' fears that the asphalt plant would pollute the nearby creek and release harmful pollutants into the environment, there was no scientific or substantive evidence presented that these outcomes would in fact manifest. The court found "[t]here [wa]s substantial evidence to support [the Zoning Board's] determination[] that Ordinance No. 2020-1 . . . did not pose a threat to the public health, safety, and welfare."
- With regards to the development objectives conflict: the court found the zoning change comported with part of the Township's Zoning Ordinance, and Appellants' provided no legal support for the alleged conflict. The court also determined that a substantive validity challenge cannot be brought against a zoning ordinance based in alleged incompatibility with a comprehensive plan.
- With regards to private nuisance: the court found that the community members "raise[d] *prospective* concerns about the *potential* harm that *might* result if a cold-mix asphalt plant is built on the Property" and did not demonstrate the nuisance was actually threatened and practically certain to occur, not merely anticipated or merely probable. The court also found that "[e]ven if a private nuisance eventually comes into existence, it would not be directly attributable to the Property's rezoning; rather, any such nuisance would be spawned by the precise manner in which the Property is or will be used, not by the predicate zoning change." As a result, the standards for demonstrating a private nuisance had not been met.