

I. OPENING

CALL TO ORDER: The Environmental Advisory Council meeting of Lower Saucon Township Council was called to order on Tuesday, April 7, 2009 at 7:02 P.M., at 3700 Old Philadelphia Pike, Bethlehem, PA, with Sandra Yerger, Chairman, presiding.

ROLL CALL: Members: Sandra Yerger, Chairman; Tom Maxfield, Vice Chairman; Laura Ray, Secretary; Allan Johnson, Dennis Aranyos, Hazem Hijazi, EAC Members. Absent: Ted Beardsley

Associate Members: Tom McCormick, Glenn Kaye & Chihara Tokura; Absent: Bob Davis

Hellertown Liaison: Absent: Terry Boos

Jr. EAC Member: Jessica Null arrived at 7:06 PM.

Planner: Kevin Kochanski – Boucher & James

PLEDGE OF ALLEGIANCE

II. NEW BUSINESS

A. DISCUSSION ON “NO MOW” SIGNS FROM PLANNER

Mrs. Yerger said she hopes everyone is aware that we are having some naturalized areas in Polk Valley Park. We are going to be naturalizing some areas along the headwaters by Cloverview and the east branches of the Saucon. By naturalizing, we are going to restoring meadows, natural vegetation, trees, and we are going to be remediating some of the detention basins in the park as well as a half constructed detention basin up in Cloverview where we purchased the four (4) lots for headwater protection. Mr. Kochanski has sent along some signs. They didn't print very well.

Mr. Kochanski said speaking with Mr. Cahalan, there was some concern expressed about the appearance and what the public conception would be of these areas, especially in the initial stages of them growing from their current condition into a naturalized meadow area. Mr. Cahalan had asked us to take a look at some examples of signs that would inform the general public as to what we're going to do in these areas. It's not just being left unkempt. There's a reason these areas are not cut. The first email that was initially sent out, we did some quick research of the different types of signs and different examples of lettering. After some discussions with Jack, we were asked to prepare some different examples of what a sign would look like, utilizing the different areas. Mr. Cahalan took this to Park and Recreation and they came up with a recommendation which was 4a. The sign is a 12x18 and he showed an example of the size of the sign. It's a standard handicapped size. Mr. Hijazi said these signs are intended for whom? Mrs. Yerger said the public. Mr. Hijazi said who does the mowing on the public park? Mrs. Yerger said we outsource it and it depends on the park. Usually, it's through an outside firm, and we just took the bids last week. Mr. Hijazi said the concern is because we outbid the services out, the guys come out to do some maintenance work where they play? Mr. Kochanski said that's not the main reason for the sign. The main reason is the public will see these unmowed areas and initially just think they are unkempt. This is to alert the public to the fact that there is a reason between these certain areas being left unmowed. Mr. Maxfield said we've gotten calls to the township where there is a fence, and there's some grass growing up the fence, and they want us to invoke the weed ordinance. Mr. Hijazi said from what you are saying, a sign that would say "naturalized meadow" as opposed to "no mow", would help. Mr. Kochanski said these were the first four signs he came up with and then they were looking at very basic signs. The one that was chosen was the "naturalized meadow, 4a". It says, "this area has been intentionally left unmown to promote sustainability and environmental awareness. This also helps reduce erosion, encourages infiltration, provides a valuable habitat for wildlife, slows

Environmental Advisory Council
April 7, 2009

floodwaters, filters out chemical pollutants and litter, and improves overall water quality.” Mrs. Yerger said it’s an education process. She’s been involved, through her work, with some meadow restorations and she can’t tell you how excited some people get, and not in a good sense, about unmowed areas. Mr. Hijazi said he likes the concept that explains the reason behind it as opposed to No Mow. Mr. McCormick said he thinks 4a is a good choice also. The only thing he would add is sometimes signs in themselves are pollution. If it’s a park where there are signs and fences, where there are baseball fields, he thinks a sign is great. If it’s a out in the middle of nowhere concerned area, he wouldn’t favor that, like in the headwaters of Cloverview. He would say no signs. Mr. Maxfield said one of the places we were most worried about complaints was Cloverview because there is half built, half unbuilt houses and we were worried about what the neighbors would think. Mr. McCormick said that’s a great example with the two houses there. Mrs. Yerger said there are two more to be built. Mr. McCormick said that’s an example where a letter to the homeowner would make more sense than installing a sign. In Polk Valley Park, the sign is great. Mr. Kochanski said the lettering was something we really wanted to portray the environmental aspects of it. It helps reduce the overall costs for the township, but the environmental component was something we really wanted to work in there. The signs really started to evolve when we got to the last one and it expressed to show you we had prepared a place for the signs at Polk Valley Park and Cloverview which were about every 300 feet, having one of these signs as you were coming into the naturalized area. It’s about 30 parking spaces. For Cloverview, we were looking for a total of five. Three along the lots on the one side and then you have down to the cul-de-sac, then one in the parking lots. Mr. McCormick said there are two homes occupied in Cloverview, and these people are going to drive up, and see four signs. He’d feel the block would be littered with the signs, and it’s only 100 feet long, telling you it’s a naturalized meadow. Mr. Kochanski said we wanted to look at the size of the sign which is why we chose a smaller sign, so we felt a 12x18 was a good size. Looking at the font and the size, that’s what he was envisioning so it wasn’t completely overpowering.

Mr. Johnson said he likes the idea on the sign that it says you do not want it mowed or sprayed. It doesn’t have to be as big as that, but he doesn’t want to leave it up to chance that someone will cut it. These contractors, sometimes they don’t give good instructions to their workers. We should have on the sign, “Do Not Mow or Spray”, then you can put other things on there if you want to. Mrs. Yerger said one of the things, we might do, is the “Do Not Mow or Spray” might be especially important right in the beginning when the meadow is establishing itself. It will be roped off after all the current vegetation is eliminated so people aren’t tromping around in there. Mr. Johnson said that’s another thing, he doesn’t see any problem with anyone walking around. Mrs. Yerger said that came on the recommendation of the people who are going to be implementing the meadow restoration, so that’s usually the procedure. Mr. Johnson said who are they? Mrs. Yerger said right now it has been proposed by Heritage Conservancy as they were part of the grant to implement this because they have done this down in Doylestown. There’s usually a standard procedure that you go through for a meadow restoration. Mr. Kochanski said when you are establishing the meadow, you are going to eradicate all the existing vegetation and it’s usually through some sort of herbicide so you make sure you get all of the seed bank and the weeds. Mr. Johnson said you can put signs up initially until it gets established, but he doesn’t think it should be a no visit area as time goes on. Mr. Kochanski said the four signs he has, the only difference between 2a and 4a, was it was just vertical versus a horizontal layout. The wording has not changed. These four are more of conveying the message of what we are trying to accomplish as a township with different aspects. Every one of them has some aspect of “Do Not Mow”. From that same point, 4a, versus 3, where it says no mowing, picking, cutting, walking or picnicking in this area, either one of those, 3 and 4 were trying to convey the message of the township. Mr. Johnson said he likes No. 2. You could remove the walking and picnicking. Mrs. Yerger said this is going to be adjacent to designed walking trails so there will be areas where they will have access to it, but not straight through it. Mr. Kochanski showed an overall view of the meadows area in Polk Valley Park. The red dots would equate to the location of the potential signs. Mr. Johnson said he doesn’t

Environmental Advisory Council
April 7, 2009

know if they need that many. Mr. Kochanski said there's thirty-three in Polk Valley Park spread throughout. Mr. Johnson said where are the no mow areas? Mr. Kochanski said it's all the gray areas and spread out about 300 feet. Mr. Johnson said you could put the no mow signs at a location where it is likely that someone would enter it or the street so the guy coming with the equipment could see the sign. Mrs. Yerger said that's what she was thinking. We have a new contractor this year, so how they plan on accessing these areas, she doesn't know. Her hope is that someone from the township will be there the first couple of times to supervise this, whether it's Jack or the road crew. It would make sense to delineate these areas. She does know, they will have these areas roped off for awhile. They have to know the areas that are going to be herbicide. The first year or so, these areas will be roped off. As the meadow establishes itself, then the impediments will be removed. Mr. Kochanski said not all of these areas are naturalized at this point, so there are areas we are showing as do not mow that actually will be mowed this year as it might be next year until we get the meadow in. A lot of those signs are in a loop where we had naturalized trails, the grass trails in the upper portion of the park, where we continued to add signs, just as a reminder. That number can be reduced. Mr. McCormick said this is for education and goodwill. His motion would be that we limit the number of signs from 35 to 5 as that would be pollution. Mrs. Yerger said as a FYI, we are working within the last couple of weeks, she got a call from a Boy Scout who wants to do the wooden trail signage. There will be additional signage and we can incorporate that as well. Will it happen right away? No, but it will be educational signage, limited number, more like what's on the nature trail at Town Hall Park. Mr. McCormick said let's say no more than ten (10) at Polk Valley Park and two (2) at Cloverview.

MOTION BY: Mr. McCormick moved to recommend that in connection with the naturalized area signage that sign 4a be deployed revised to delete "meadow" and replace with "area", and to include reference to the township.

SECOND BY: Mr. Hijazi
Mrs. Yerger asked if anyone had any comments? Mr. Maxfield said are we talking about the naturalized, 4a sign? Mr. McCormick said he thought he heard the recommendation was already made. Mr. Kochanski said no, that's coming out of Park and Rec. It was just a recommendation. They liked the wording and vertical versus horizontal. Mr. Maxfield said he likes the wording on naturalized meadow, but the only question he has is should it be naturalized areas. If we are doing a standard sign, is everything going to qualify as a meadow. Maybe it should be 'naturalized area'. It even says in the first sentence, this area has been intentionally left unmown. The other important thing is that the other signs say "Lower Saucon Township". That is going to slow some people down who are going to want to go in and start trimming things versus their neighbors lot who just hasn't taken care of it. Mr. McCormick said he agrees, Lower Saucon Township should be at the bottom of the sign. Mr. Kochanski said we can probably incorporate something as the other three do have Lower Saucon Township and the Environmental Advisory Council, so we can add that in there to the first sentence. Mr. Maxfield said he likes initially the "No Mow Zone", but what is going to happen is people, once they see these areas, they are going to get used to the idea of "No Mow". He was going to suggest we have some newsletter coverage talking about our new signs. Mrs. Yerger said absolutely. All that will come, but the initial thing was to pick the sign and establish the number of signs necessary for the area. Mr. Maxfield said he's a proponent of getting rid of the weed ordinance. He thinks that eventually what the EAC should do is make a recommendation that minus the Lower Saucon EAC wording to make these available to a cost to residents who want to naturalize a portion of their property. That will stop the millions of calls from people in the township who call and say their neighbor is not mowing their lawn. We have our laws that say 25' from the roadway or people's property. Maybe that's something we could do for a future agenda item. Mr. Kochanski said maybe address both without having two different signs – one for the park versus one for residents. There may be a savings if we can incorporate your idea into the wording of No. 4, "this area has been left intentionally unmown to promote sustainability and environmental awareness in

cooperation with Lower Saucon Township”. That gets that in there, and also adds the validity for private homeowners. The Township may be able to order these in bulk instead of having to place five or six at a time. We may place an order of thirty and as residents want them, we can start to sell from our inventory. Mr. McCormick said he wouldn’t expect these to sell like hotcakes. He wouldn’t order thirty. Mr. Kochanski said there is Southeastern Park where we wanted two signs. Mr. McCormick said that’s good.

ROLL CALL: 6-0 (Mr. Beardsley – Absent)

MOTION BY: Mr. McCormick moved that the signs be deployed in Southeastern Park, not to exceed two (2); in the Cloverview area not to exceed two (2); and in Polk Valley Park, not to exceed ten (10).

SECOND BY: Mr. Hijazi

ROLL CALL: 6-0 (Mr. Beardsley – Absent)

B. REVIEW OF ORGANIC PEST MANAGEMENT (OPM) OPTION

Mrs. Yerger said she asked that the review of the Organic Pest Management option be put on the agenda, but she doesn’t know if Mr. Kochanski has had a chance to take a look at it. Mr. Kochanski said yes, we are in the final stages of preparing the draft for internal township review for IPM/OPM. What he had initially called it was the Pest Management policy and it incorporates both into what he calls a comprehensive plan, instead of just dealing with one. In the research, he found one or the other. It addresses both issues. He would expect you will have this before your next meeting. That can be a discussion item. Mrs. Yerger said she did want to ask Mr. Kochanski, the sample copy we have, that came out of New Jersey, has anyone thought to contact and see how effective this was. Mr. Kochanski said he has not contacted Dennis Township, but did make a lot of calls to Penn State Extension service. They are working in cooperation with an agency that he forgot the name. He got a lot of good recommendations coming from them. A lot of examples from California seemed to be on the cutting edge of different examples of different types of policy, whether it’s IPM or OPM. Even in Massachusetts, they were all dealing with the same thing. He even tried to contact the Pennsylvania Organic organization, with no luck. He was able to proceed with a good set of regulations.

Mrs. Yerger said we will review this next month. Mr. Kochanski said the draft he has prepared right now is about twelve to thirteen pages long and doesn’t necessarily incorporate something from this municipality or this policy. You will have that before your next meeting. Mrs. Yerger said keep this as a reference.

Mr. Johnson said why do we feel something like this is necessary? Mrs. Yerger said the Organic Pest Management - personally, it’s worthwhile as she’s not a big pesticide user. They know it doesn’t break down. We have water sources there. We have kids playing on these fields. She is not a big proponent of pesticide use at all. They know it’s in our soils, in our water, it’s not going anywhere because it doesn’t break down. Mr. Johnson said one thing he has heard lately is the thing that is happening to the honey bees where their hives are disappearing, they believe it’s probably due to a herbicide or pesticide that has a nicotine base. There’s a really dangerous thing that is happening because of these pesticides being used. Mrs. Yerger said there’s even some speculation that there is something that has been attacking the bat population and it may or may not be linked to pesticides as its not the direct cause, but the continued exposure to the pesticides because they eat the insects and its building up in their bodies. They are long lived, and bats live to be thirty years old, even though they are tiny, little guys. This is weakening their immune system and they are open to whatever is attacking and killing them. That’s one of the things they were discussing. She doesn’t think there is anything conclusive to it. One of the things was her husband worked with a guy who did lawn doctor and his neighbors dog came over and didn’t have fur up its legs. She has some real issues with this. Mr. Johnson said are we going to do this as an example

for the rest of the population? Mrs. Yerger said yes, we would like to. Mr. Johnson said are we going to put pressure on anyone, farmers or golf courses? Mr. Maxfield said we are working with the golf courses already. With the golf courses, the new areas, they are going to have to respect our riparian corridor ordinances which are going to have a positive effect on this stuff getting to the water.

Mr. McCormick said we should lead by example and if this stuff is so bad, then why shouldn't there be consideration of a proposed ordinance or drafting an ordinance that would apply to the township, the golf courses and people with 1/8 acre of a yard. Mr. Maxfield said businesses in the township would have to use an organic pest management plan, which would be really hard to enforce. Mr. Kochanski said through research, he was able to gain an education on this. One of the purpose statements in the beginning of this policy states that the township is doing this to be good stewards of the land and urging private industries and private residents also. Right now, it's worded that we are trying to lead by example. There is currently written in the policy a list of pesticides or chemicals, that if they are used, it's a let's use every means to combat the problem if we can without using chemicals. If we have to go to a last resort, then we go to the chemicals use and that's where you transition from the OPM to the IPM and the policy for the IPM is the least toxic available. There will be a list of approved pesticides, whether they are toxic or not, and a list of limited use, which you will have to get Council approval, and there are all sorts of paperwork that has to be done. These are limited to where and how long it can be used. There's a whole detailed list of prohibited pesticides that are banned for use on township owned property. There is a section that talks about contracts, easements and leases that's going forward, and the contracts that the township enters into – any department or any outside contractor that the township enters into. The same thing is with easements. Mr. Hijazi said has there been any evaluation of the effectiveness and the cost difference. He would assume if you go to a farmer, anyone who owns land, tell them you have this non-chemical, non-polluting alternative, if it is as effective and as cheap as some other alternative, he doesn't think they would say no. The question is what we are proposing is effective and cost comparative as an alternative. Otherwise, we are going to have some resistance if we go to a farmer and tell him to change it and use this, but it's not necessarily effective. They are not going to go with it. This becomes an issue of education as opposed to enforcement. Mr. Kochanski said yes and no. It really is a site specific issue and part of the OPM/IPM requirements, and there is a record keeping process, of what has happened and if you are going to get to the stage where you are using chemicals. Sometimes it depends on the threshold of the tolerance of a site. Grubs, for example, there's a certain threshold on a golf course that's going to be a lot higher than it's going to be in the natural area. It's really site specific, and there's a lot of studying that goes in to determine what the thresholds are for the individual sites. How much economic and aesthetic damage can occur from these pests before you need to choose? It all depends on the area. Getting back to individuals and neighbors, there was some information that was interesting, which was a notification to a neighbor, type policy, where you are going to be treating an area greater than 100 square feet or you are spraying over five feet, you have to notify neighbors on either side within 150 feet. Mr. McCormick said he'd hate to spend time writing an ordinance that basically said the following is prohibited, and it's a list of things that is already prohibited by federal or state law. That kind of stuff happens all the time in the world and it's such a waste. If we aren't going to incrementally increase protections, don't do it. Just saying don't spray cyanide and people get carted off to jail, as big a landowner as we are, if it's the right thing to do, we should consider making it a requirement. If there's constitutional or municipal planning issues with doing that, then never mind. Mrs. Yerger said some of it is going to be enforcement issues. Mr. McCormick said again, enforcement issues are no reason not to do something. You can selectively enforce it against people where you get the best bang for the buck. Mr. Maxfield said if we work out a process where we are stepping into these things slowly, and we start as the example, and extending it, eventually get to the point where we can get into a ten year plan. Mr. Kochanski said one thing he did see, from going to NJ to MA to CA, one of the things that was carried through all of those was a no civil liability clause that it was intended to promote the idea,

but if somebody didn't, there would be no civil liability or criminal actions against an individual for not adhering to the policy.

Mr. McCormick said that's in there and was lobbied in there by people, either the chemical providers from the golf courses or the landscapers, and that was put in there by somebody. We shouldn't start there. If there's stuff we won't put on our land as a township, as it's bad, what's the point? Let's explore that, it can be a phased approach. First we do it on our own and then we explore making it mandatory for landowners of over ten acres, or 50 acres. The fact that Dow Chemical lobbied in CA that this is a rule that doesn't apply to anybody - why would we start there? Mrs. Yerger said this is something if we are going to make an official motion on, she'd like to wait until we get Mr. Kochanski's plan, review it, and then if we approve that, then we can again talk about advancing it beyond the Park Management Plan. Mr. Maxfield said it's going to take time to work out a process. Mr. Kochanski said from the feedback he's getting, as there are some things he does have in the draft in the low liability clause as it seemed to be an overriding theme. Whether or not we can legally tell somebody that they have to do this, the approach to this is we recognize that pesticides are not the best thing in the world and there are definite impacts to the environment and people and we feel there's a better way of doing it. Let's use these non-pesticide approaches first. He doesn't know that we can do away with them. Mr. Maxfield said they went to some environmental conferences and there were programs set up for certification for pesticides. We may be going against state or federal laws. Mr. Kochanski said there is a component to this that requires continual education and certification - there would need to be a department or IPM Coordinator established, the Road Master, Township Manager, whoever Council decides to appoint to that position. Unless you are a certified applicator, you are not allowed to use on township properties, any pesticides, whether they are on the approved list or not. Speaking with the conservation district, there are opportunities to obtain that education on a continuing basis. We are not even that close. We are looking at just bringing the policy and then we're interesting in looking at that and offering an opinion. He wants to get that into your heads first for the next meeting so this can be discussed.

Mr. Johnson said normal pesticides require a certified applicator, so if somebody is applying an organic pesticide, is it necessary to be certified? Is there any certification required there? Mrs. Yerger said no. Mr. Kochanski said as part of the IPM policy, the application of any, at the township level with township property, the first couple of phases of this is we aren't even applying pesticides. We are looking at every other option to pesticides if you have to apply something. You are going to have to be an approved applicator through the IPM Coordinator. Yes, from that standpoint, any type of application to treat a pest issue, you'd have to be an authorized applicator. There was another clause in there that pesticides have to be purchased through a procurement procedure and not just using petty cash. There is kind of guidelines set up for checks and balances. Mr. Maxfield said it would be nice if we could get the cooperation of local vendors, as we could go right down to Neighbors and buy some of the nasty things right off the shelf for home usage. It's an educational process and is going to take some time. So to keep everybody informed, a couple of Council members and staff here are going to be meeting with PennDOT in the near future. One of the topics is the road maintenance policy. We have nine or twelve PennDOT roads in the township, and they spray herbicide all along those roads to the height of ten to twelve feet and their claim is it never gets to water sources, but he's seen it being sprayed right next to Saucon Creek. We're probably going to ask them if we can maintain our own state roads and are going to try to do it without herbicides. Hopefully, we'll get the water cleaner.

III. DEVELOPER ITEMS

A. GIANT FUELING FACILITY LAND DEVELOPMENT LD 02-09, 1880 LEITHSVILLE ROAD

Mr. Kochanski pointed out where the Giant Fueling facility would be located. Right now it's a grassed area. The retaining wall will be shifted and the gas station would be in the corner where the grass area is. Mr. Maxfield said it's right across the street from the buffalo's. Mr. Kochanski said one of the issues that needs to be worked out is this was an approved land development plan that was built. They are coming in with an amended plan. We are saying, no, this is a brand new plan. It's a new application, and as such, you are required to meet current ordinance requirements. That's our position. That's the township's position. From that standpoint, this will be one of the major hurdles for them to get through and meet current ordinance requirements. There are impervious coverage issues. There are setback issues, riparian issues. There are a variety of issues. Somebody mentioned the issue of the underground tanks. He's not up to speed on the latest decision on that, but from his understanding, and if they were encased in a vault, that is separate than just a tank being underground. Mr. Maxfield said they came in and said DEP considered the vaulted tank was an above ground tank. Mr. Kochanski said he did not personally do the review, but he's aware of the situations going on with that. There's a lot of requirements, from a plan submission standpoint, that they have just not addressed. Whether or not they can address them, we don't know if they will be able to revise the plans or if they need relief. It is on the next Planning Commission agenda. Whether or not they carry through after they see the review letters, as what he understands from Brien, they have a lot of comments as well. The lack of detail is an understatement on the plans at this time. Right now the plans don't even show a vault. They just show tanks underground. All those details need to be worked out and it's hard to comment on them. Mr. Johnson said since you are looking at all these details, as they are drawn, he would ask them how do they expect to get liquid out of the underground vault if somehow water gets in there. He hopes they aren't going to use a floor drain. Mr. Kochanski said the purpose of the vault is to contain any of that and then there's access to the vault to be able to remove the fuel. The details of spills have not been addressed. There are four or five major threshold issues that are just so lacking in detail that until those are really worked out, there's no point in moving forward with this project.

Mr. McCormick said you have to be very careful to have the right conversation about this. We have a conversation about what happens if there's a leak in the vault, how are you going to pump it? Then they are going to answer that with the correct answer. They are going to say they are going to pump it into a truck or whatever the wonderful answer is. There was a dialogue between our township and Council for Giant late last year that was whether or not this gas station is a principal use or a secondary use. Whether or not a gas station is part of a convenience store, location or not, an objection was made, and Counsel for Giant is rebutting that objection. They may or may not be right. If you make the wrong objection, they can rebut it and they've won the debate. He'd like to recommend to Council that they engage Counsel to report on what legal hurdles Giant needs to clear to put this gas station in. Your statement just now about whether it's above ground or underground, you think you've heard something that may or may not be true according to the state standard. My point is we need to be on the ball here and know exactly what our requirements are so we can make sure they meet them. If they don't meet them, they should not be allowed to move forward. If they win, meaning our requirements are a., b., c., d., and e., and they meet a., b., c., d., and e., then they are going to be able to put a gas station there. What's not forgivable is if we don't challenge them on the actual standards and make them meet them. This idea about, and this is a legal question, whether or not a state DEP definition of underground has any bearing on our township ordinance which prohibits underground tanks. The one thing may have nothing to do with the other. It's what our ordinance says. Our ordinance prohibits

underground tanks in a carbonate geology area; therefore, they should have gone away a long time ago. That's what he wants to make sure. Is Planning going to act on this on April 16? Is there any conveyable way this is going to move forward on April 16? Mr. Hijazi said he's on the Planning Commission and he saw an email today with the agenda, and it is on the agenda. He saw comments from you guys, but he didn't see comments from the township engineer. It was a draft agenda. Mr. McCormick said is Planning able to decide? Mrs. Yerger said they are a recommending body like the EAC. Mr. McCormick said Planning people aren't born with knowledge of our ordinances. They need to read them or be told about them. Mr. Maxfield said it's not a Planning decision, it's a Council decision. Mr. Hijazi said he works with gas stations and underground and above ground storage tanks. The angle we should look at, with legal or zoning, is important that the tank doesn't leak. These days you can get double wall tanks, alarms, monitoring. They could come up and give you a wonderful presentation about how safe the system is. They are a far cry from twenty to thirty years ago. Mr. McCormick said our ordinance says nothing underground. Is Council fully briefed on the legal standards that this project must clear to move forward? Mr. Maxfield said they will be. Mr. McCormick said it sounds like Planning is going to review this project for certain criteria within Planning's purview, and it may or may not pass, but the truth is even if it does pass that hurdle, that by no means it indicates this project is going forward.

Mr. Kochanski said he wants to get back to the issue of the tanks, and he may have misspoke. He knows of conversations taking place with that. Linc Treadwell knows of the situation and if it's an issue, he is aware of it. Linc is the township solicitor and on top of the issue of whether an underground tank in a vault is permitted or not. Mr. Kochanski is not fully aware of the details of that conversations, he just wanted to make you aware that the township solicitor is on top of the issue and is aware of it and is fighting the battle that needs to be fought if a battle is to be fought on that issue. There are people on the township staff that know if that is or is not an issue. He's not one of those people. If it's an issue, they will be making sure that issue is being resolved.

Mr. McCormick said the issue of principal versus secondary use. Chris Garges initially took the position that this is not permissible for a reason, and their Counsel is disagreeing. What's the state of play now. We have two different people saying two different things, so what's going to happen. Mrs. Yerger said we will be briefed. We don't know what his answer is to that. They were researching it. Mr. Kochanski said that's another issue that Linc is aware of and if that is an issue that it is a separate use, and it violates the ordinance, then the plan is not going anywhere. He's not aware of the resolution. Planning Commission being aware of the ordinances, that's one of our roles as a consultant to outline every single item that this plan doesn't comply with.

Mr. McCormick said it sounds as if you just completed your review. Mr. Kochanski said at 4:30 PM today. Mrs. Yerger said she can request it electronically. As an Environmental Advisory Council, it is their job to look at this from an environmental standpoint as per our rules and regulations. For your review, at this point, what do you see as environmental issues that we should be concerned with that they are not in line with? Mr. Kochanski said they are not complying with the ordinance with the environmental standpoint, only because there's a bigger threshold issue of they are vested in the old, approved plans and its been our position, no, they are not. McCormick said no, not to split hairs, but whether or not they have to comply with riparian this, setback that, slopes this, sewer drains that, is different. The fact that the shopping center was approved is not relevant whether or not they can put a bucket of gasoline underground. That was not passed upon. What you do is make sure the debate is about things you can win. That's how you win. If the debate becomes solely around whether a gas station is part of a convenience center. He wants to make sure we know the universe of requirements so we can make sure they clear all of them, not just the ones they want to talk about. Mr. Kochanski said right now our letter outlines all of those, so there are more threshold issues that are dealing with the uses. That's one battle. Now you have the tanks, that's another battle. Environmental protection, that's another battle. There are so many

Environmental Advisory Council
April 7, 2009

big picture issues. If we were dealing with one picture issue, he'd understand your concern, but we have so many big picture issues, if one goes away, there are still three or four other ones that are stopping this project in its track until it gets resolved. It's not a matter of picking the right argument for a particular case, as there are so many big picture issues that need to be resolved. It's our position and the township's position, that these are the ordinance and this is what is required, that's what we have outlined on our letter. Mr. McCormick said is the underground tank issue on your letter? Mr. Kochanski said he did not write the review, and he doesn't know specifically. It's something that Linc was working on. If it was determined it's not an issue, it wouldn't appear in our letter. It's not one of our threshold issues. Mr. Hijazi said as an environmental committee, we are looking at it at every angle we have. It becomes more of a legal situation. When this topic comes in front of Planning, they will look at it from the angle of Planning. Mr. McCormick said we have various environmental ordinances, and one of them is you can't have an underground tank, which is an environmental issue. It's a legal issue on whether or not this plan violates that ordinance. It either does or doesn't. What he just heard Mr. Kochanski say is people are aware of that issue, and then Linc may or may not have made a determination on that. That determination may or may not be driven whether or not it was included in their review letter. He doesn't believe that is possible. He doesn't believe Linc is talking to your firm. Mr. Kochanski said they do have staff meetings with Linc. Mr. McCormick said if a legal determination has been made and this tank is underground, this body is entitled to hear that rationale. Mr. Yerger said they have not seen this information yet. This was in the Council packet in January that was just an FYI. It was a rebuttal to the original determination by our Zoning Officer that they were not complying. It's more the usage and things like that. As Tom said, this is a multi level. You have Planning, Zoning, Legal, and Environmental issues. They are all stacked on top of each other. We don't even have the review letters. There's not a whole lot of information that we have received yet. Mr. McCormick said we are lacking information so people may be acting without the benefit of our recommendations because we are in the dark. Kevin speculated, and it may or may not be true, you wondered whether Linc knew if this plan would comply with the underground storage tank. He wants to know if he did that. It sounds like he may have, and if he did, we need to hear that. Mrs. Yerger said everyone is concerned about it, but we just don't have a whole lot of information. Mr. McCormick said that's our threat, so let's fix that.

Mr. Maxfield said my feeling is there may be a lot of stuff this body needs to do that may be fruitless or redundant because there may be something like significant legal hurdle, or whatever, but from multi layering, and or job as an eco group here, requires that we do those things. None of this stuff that Boucher & James has reviewed, may make a bit of a difference, but they have to do it. We have to do it. If we get other information in the time being, that we might as well stop, that's one thing, but right now there's so little information, the problem is we have to deal with it as it's a legal submission, so we have no choice than to deal with those issues. We can operate separately from the legal thing, as that's what we should do.

Mr. McCormick said he recommends that this project be denied by Council because it is violating our underground ordinances. Mr. Kochanski said that's a legal hurdle that is something that is being taken care of. If it is violating the ordinance, they are not going anywhere with it. It's that cut and dry. Mr. McCormick said if it's deemed it doesn't violate the ordinance, I want to hear the reasoning and Giant's lawyers should have to make that case, and not ours. Mr. Kochanski said he wishes he could give you that answer, but he doesn't know.

Mr. Hijazi said all of you have very good questions, but we know in fact that these guys are expanding in PA and everywhere. I'm sure they must have encountered similar hurdles, different hurdles. Do you think it may be helpful to look at how other locations are dealing with this or is the issue of the definition of underground tanks just applicable in our case. Mr. McCormick said it's in our ordinance. It might be built on the model that everybody uses. Mr. Kochanski said it's township specific because our ordinance is uniquely tailored to LST. Mr. McCormick said it may

be the only parking lot Giant has in a carbonate geology area in a township that prohibits that. The fact that other townships may have or have not enforced it doesn't matter. We have an opportunity here, we have a threat from an environmental perspective, someone is trying to put in a gas tank right on the banks of the river, that's the threat. He's really comforted that it's flat out illegal according to our ordinance. Mr. Maxfield said this supports one paragraph, what he was saying the way we have to deal with it, and this is the way Boucher & James is dealing with this particular issue. "Boucher & James states that underground storage tanks shall not be permitted in this district except for septic tanks for on lot sewage disposal systems, propane tanks, and water storage tanks with less than 2,000 gallons capacity. Should it be determined that the carbonate geology section of the ordinance does apply to the proposed development, a variance for the proposed liquid containment vaults will be required". That's neither affirming nor denying that point. Mr. Kochanski said it's basically deferring back to Linc. What is his determination? If this is determined that it applies, then this is void. He can retract what he said. It has or has not yet been determined. He did not write this, but he's aware of the overall general issues of the project. Some of the things that Tom was touching on, the different layers, and one of the layers you didn't touch on was traffic. We had a staff meeting today that they didn't offer any comments as they said there wasn't enough information for us to even start making comment on it. There's the layer of the whole timeframe that the municipality has to make their decision, and that's the 90 day MPC clock. There's a track that this has to take. It can get to Planning Commission (PC), and they can depending on how crafty the applicant is, they may just want to get through Planning Commission for a recommendation. If PC grants them that recommendation, then they are at the board level already whether or not, PC can recommend denial of these plans for one reason or multiple reasons that gets them out of PC. PC really should urge them to get an extension so they don't get to the Council. He's seen Counsel for the applicants really be pushing and say we really want this and sometimes the PC says okay, fine, we are going to deny it. Mr. McCormick said what is the Council's opinion on this? Mr. Maxfield said the majority are against the initial concept. We are said we are not in favor of it. They showed us details of the tank. Nothing was mentioned to us about an amended versus a new plan. Nothing was mentioned about the emergency spill plans or anything like that. We are basically in the dark.

Mr. Hijazi said they are going to take many parking spots, they are barely meeting requirements now. Mr. McCormick said this one was below, it was too small. Mr. Hijazi said now by putting the gas station there, they are going to lose spaces. Mr. Maxfield said initially there was a bank planned there, and the bank idea moved out so they filled it with this gas station, so they gained some parking spaces. Mrs. Yerger said in all fairness, the bank was on the other end of the shopping center. Mr. Maxfield said no, it was at the same spot. Mr. Kochanski said one of the issues we're dealing with is if that bank pad was built and there was an effort to improve it, then they might have an argument or vested interest under the old ordinance. That never was the case. It's been more than five years, and it's not a bank yet. To add another wrinkle to this whole underground geology information, they are even contesting whether this entire specific area where they are proposing the tanks is even in the carbonate geology district. They are arguing that there is a void in this area where they want to put the tanks so that section doesn't apply. We are basically deferring to the engineer. Mr. McCormick said that is actually a legal question as the ordinance doesn't say sinkhole, it says a carbonate geology area. Mr. Hijazi said in all fairness, and what if they did studies and found out, it's not carbonate geology. Mr. McCormick said that's a legal question actually. The ordinance could say an area that has been deemed a carbonate geology area by some survey dated, April of 71, that's a question. It's not a question of whether or not it's a sink hole. You have to read the ordinance and see what the requirement is. Who did the overlay? Mr. Maxfield said LVPC. Mr. McCormick said that determination, and it's a very good question, as they might be able to win this showing it's not a carbonate geology area, or maybe they can't win it because it's included in an overlay. Mr. Kochanski said the ordinance is clear in that the overlay is kind of a broad area, and there may be exclusions within that overlay and the overlay has that provision that upon proof and certification from the township, that these regulations may not apply

Environmental Advisory Council
April 7, 2009

if its approved by the township. There is a study submitted and that's something that the township engineer reviews that is nothing that we reviewed. The township engineer will then be offering specific comments on to that study as to whether or not. You have the issue of tanks in the area, well, they are trying to get around it two ones. One, it's not a tank, it's in a vault, or if that doesn't fly, it isn't even in that area. There are so many multiple fronts that this can take in different turns, it's hard to nail it down. Mr. McCormick said it also sounds like it's going to get moved on up pretty quickly. Mr. Kochanski said yes and no. Mr. Johnson said in addition to the argument it's in a carbonate geology area, how about the fact that we have a stream flowing under the proposed project area. It must have some environmental resource value. They are using it as part of the storm sewer system. They have grates on the parking lot and are collecting water from the parking lot and it's going into the box culvert where the stream is flowing. Now we have in that stream whatever is in that parking lot and it could be gasoline.

Mr. Maxfield said the old Council was incredibly short sighted when they let them do the things they did to the site like encase that stream in pipe underground, feed things to that detention pond, etc. Mrs. Yerger said she doesn't know if this is going to help or not, but she's looking at the timing of all of this. Planning Commission is going to review this with the letters we don't have, hopefully, on April 16th, which means Council will have met twice already in April, so even if they push it, they cannot bring this to Council before May 6, which means this body will meet on May 5, the day before, which hopefully by that time, we will have all the review letters from the engineer, planner, and hopefully, all the information we need to make a rationale and sound decision. Mr. Maxfield said we are going to have to make sure our recommendation letters get to Council the next day.

MOTION BY: Mr. Hijazi moved to recommend denial of the land development plans for the following reasons:
a. The plans, as proposed, create numerous environmental concerns that have not yet been addressed and the proposal is not following sound planning principals; b. the plans, as proposed, do not provide enough information to determine compliance with Lower Saucon Township ordinance requirements.

SECOND BY: Mr. McCormick

ROLL CALL: 6-0 (Mr. Beardsley – Absent)

MOTION BY: Mr. Maxfield moved to recommend that the Environmental Advisory Council be provided an opportunity to re-review this project, if and when, revised plans are submitted and project review letters are issued by the township's professional consultants.

SECOND BY: Mr. Aranyos

ROLL CALL: 6-0 (Mr. Beardsley – Absent)

Mr. Johnson asked if the information could be emailed to them. Mrs. Yerger said she will try her best. Mr. Hijazi said they have two tanks exactly the same size, 15,000 gallons, yet on the plan view, they show one long and one small. Mr. Kochanski said one of the terms he heard earlier was they are naked tanks which are just shoved in underground. Apparently, the project engineer has admitted, not to me, there are a lot of errors and different conflicts on the plans with the tanks. Mr. Maxfield said on the plan, there are words that say "underground tank".

A. REVIEW AND APPROVAL OF FEBRUARY 3, 2009 MINUTES

Mrs. Yerger said this will be tabled because we have the blanks we have to fill in from Terry Boos.

B. REVIEW AND APPROVAL OF MARCH 3, 2009 MINUTES

Mrs. Yerger said you have the March 3 minutes. Mr. McCormick said Ted Beardsley found this, and it's a good point, on page 8 of 15, line 32, it should say "lady" and not "old lady".

Page 10 of 15, line 7, should read “and that’s why she is asking what she wants for it”. Line 21, cell power should be “cell tower”.

Page 12 of 15, line 17, should read “copy of the letter to Skraban.

Page 15 of 15, line 7 should read “Mr. McCormick said he likes the Saucon Creek Watershed Association with regard to the Tuminello property recommendation.

Page 15 of 15, line 13 should read “installing gas stations next to many of their stores.

Page 15 of 15, line 18, “The time was 9:55 PM.”

MOTION BY: Mr. McCormick moved for approval of the March 3, 2009 minutes.
SECOND BY: Mr. Maxfield
ROLL CALL: 5-0 (Mr. Aranyos – Abstained – was not at the meeting; Mr. Beardsley – Absent)

V. UPDATES/REPORTS

A. OPEN SPACE SUB-COMMITTEE

Mr. Johnson said Mr. Beardsley is not here. They did not arrange a meeting between Mr. Skraban and the Open Space Sub-Committee as of yet. They are working on doing that.

B. PA HIGHLANDS TRAIL NETWORK – BUCKS COUNTY – OPEN HOUSES

Mrs. Yerger said you have two flyers. You are welcome to attend. It’s open to the public. This is about the project they are working on with the PA Highlands network and there are dates on the flyers.

C. ECO CAMP CONFERENCE – APRIL 23, 2009 – HOLIDAY INN CONFERENCE CENTER

Mrs. Yerger said this is a flyer on a Eco Camp if you are interested. The township will pick up a fee. Let us know.

D. INFORMATION ON THE APPALACHIAN MOUNTAIN CLUB

Mrs. Yerger said as an FYI, the PA Highlands also run through Lower Saucon Township. As a result, this is why Council was given this presentation that you have a copy of. At some point, they may possibly want to connect with our Rails to Trails.

VI. NON-AGENDA ITEMS

- ❖ Mr. Maxfield said where or what is this Buroff Plot Plan land development? Mr. Kochanski said yes and no, I don’t know details about it. Something came into our office, but he thinks it has something to deal with the storm water exception. That’s the extent that he knows.
- ❖ Mr. Maxfield said in other municipalities, Lehigh County Conservation is actually contemplating importing some non-native bugs to take care of non-native invasive plant species. There is some community outside the Lehigh Valley that imported these bugs that eat purple loose strife and when they are done eating that, they eat multi flora, then when those two foods are gone, they die. They are talking about trying it in Lehigh County, so there may be an opportunity here. Mrs. Yerger said they brought in some kind of bug to eat purple loose strife before but they didn’t realize is they ate

Environmental Advisory Council

April 7, 2009

some of the purple loose strife and then they died. Mr. Maxfield said that is their argument, they have a short life span. Mrs. Yerger said they didn't live long enough to have an impact on the purple loose strife.

- ❖ Mrs. Yerger has one announcement – she is going to send you an email as we are looking at doing a native plant sale on Saturday, June 6, 2009, where it will be a pre-sale and we pick them up here. She's looking at Edge of the Woods to get it down to about six or seven species. We are going to be working with the Saucon Creek Watershed Association to do an open sale at the Farmer's Market, Sunday, June 7. She will get you the information, and it will be on the township website. It will be up on both sites.
- ❖ Ms. Laura Ray said she would like Diane to send the minutes so she can put them up on the website.
- ❖ Saturday, April 25 is Recycling Day, from 9 AM to Noon. We need hands and better promotion. It's at the Township garage.

VII. ADJOURNMENT

MOTION BY: Mr. Maxfield moved for adjournment. The time was 8:59 PM.

SECOND BY: Mr. Kaye

ROLL CALL: 6-0 (Mr. Beardsley – Absent)

Sandra Yerger, Chairman