

At 6:30 PM, there was a brief ceremony for the Girl Scouts who worked on the Native Plant Garden. They were each given Certificates of Appreciation and there were light refreshments.

I. OPENING

CALL TO ORDER: The Environmental Advisory Council meeting of Lower Saucon Township Council was called to order on Tuesday, October 6, 2009 at 7:06 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; Haz Hijazi, Allan Johnson, and Ted Beardsley.

Associate Members: Colin Guerra and Chiharu Tokura. Absent: Glenn Kaye and Thomas McCormick.

Hellertown Liaison: Terry Boos

Jr. EAC Member: Sara Cote – Mrs. Yerger said Sara is our new Jr. EAC member for this year. We are pleased to have you.

Planner: Kevin Kochanski – Boucher & James

PLEDGE OF ALLEGIANCE

II. NEW BUSINESS

A. DISCUSSION ON OCTOBER 10 RECYCLING DAY

Mrs. Yerger said there is a copy of the ad in your packet. We are looking for volunteers. It will go from 9 AM to noon here at the Municipal Complex. There is a change, and unfortunately, it came at the last minute. This is the first time that they announced they are going to charge \$10 per monitor. That is what the Township staff was asking us to discuss. A few of you have weighed in on the issue. We're locked into this one as we had already put the ad out and it's on the website. She doesn't know how everyone feels about continuing or look for a different collector. Maybe we could try to combine our event with another community. Upper Saucon is starting to do one as well. What's the feedback on this? We've never been charged before. Mr. Beardsley said he has a suggestion.

Ms. Ray had said there is something we could make copies of that tells people what Best Buy is doing. They are charging \$10 for TV's and monitors, but are giving you a \$10 gift certificate for their store. Maybe we could have something that we could pass out and see how it goes before we make a decision. We don't know if people are going to complain or not. Ms. Ray said we tell people about Best Buy and the coupon. Mrs. Yerger said she can try to download the information. Mr. Hijazi said the discussion is for the future? Mrs. Yerger said yes. Mr. Maxfield said when Ted made the arrangements and put it in the paper, they never said anything about the \$10, so he's not so sure we're locked into the \$10 for this event. We should say something to them that we made an agreement with you and there was no \$10 charge. If we want to do this in the future, we should start looking around, but we need to press them about this. There's going to be a lot of people there that looked at the initial ad and are going to show up and they are not going to have \$10 with them, and get mad as we didn't advertise it. This is not our fault. We should do something for our residents. Mr. Hijazi said he agrees with Tom and Allan. Mr. Ray said they've advertised it both ways now. Mr. Beardsley said it's easier not to take the \$10 from somebody who has it and then from someone who doesn't have it. Mr. Maxfield said he just thinks we should go by the original agreement. It's ethical. Mr. Guerra said what it's the reason they are charging now? Mr. Beardsley said because they aren't making much profit on monitors or they are just trying to make

Environmental Advisory Council
October 6, 2009

more money. Mr. Maxfield said why should it fall on us. The number of monitors we take in on a day, we're talking about hundreds of dollars for them for us collecting them. Mr. Jonson said his email says how he feels about it and we should tell them if you want to continue to have your collections here, then you don't charge. Maybe they'll change their minds. Mr. Beardsley said they did tell him at one point, we are one of the few they don't charge as we came in at the beginning when they were just starting to do it. Most of the other communities, they do charge a fee. Mr. Johnson said it's going to slow down the whole process. There's going to be a big long line of cars while we argue with each person over the monitor. They go through there so fast, and if we don't take the stuff out of the car right away, they are all lined up.

Mrs. Yerger said she is going to ask staff to make some kind of notice, please note, due to a change in policy, A-Plus is now charging \$10 for each monitor. Not that it's going to solve the problem, it won't, but it might help so they are a little prepared by the time they get to the garage. Maybe we can get some kind of handout and combine it saying that there is a charge now for a change in policy, however you can go to Best Buy. That way they have time to turn around if they don't want to participate or pull through. Mr. Beardsley said he thinks Tom had a good point and talk to A-Plus and tell them if you want to charge us \$10 per monitor, do it next time in the Spring, then we pass out this piece of paper to everyone who comes and it tells you in Spring it's going to cost you \$10 or you can take it to Best Buy. Mrs. Yerger said the staff should contact A-Plus to change their mind about charging the \$10 for this event. Mr. Beardsley said he will contact A-Plus. Mrs. Yerger said if they do not change their mind, and we are compelled to have this, then she's going to ask staff to go forward with signage for the event and then a small handout that we can hand out to the participants. Mr. Johnson said we can ask if they are charging the \$10, how about providing a person to lug the monitors around? Why should we do it? Mr. Maxfield said the other thing is collecting the money. Mrs. Yerger said they will have someone there to collect the money. Mr. Maxfield said what about a laptop? Mr. Johnson said that's computer. Mr. Johnson said let's see what they say. Mr. Beardsley said why should someone give them a monitor if Best Buy is going to give you a \$10 gift certificate, so they might change their mind. Mrs. Yerger said it's \$10 good on your next purchase. When you turn your monitor in, they charge you \$10 and they will give you a voucher back. You can buy anything in the store that you want.

MOTION BY: Mrs. Yerger moved that we are going to have Ted Beardsley contact A-Plus and try to convince them not to charge the \$10 at the October recycling event, and if in the event they will not change their mind, that we will ask Staff to have signs at the event notifying participants of the charge for this particular event and also to generate handouts with information about Best Buy and their policy as far as giving a \$10 gift card in return for the \$10 charge on the monitor and/or TV.

Mr. Beardsley said we should have the handout anyway. We need to cancel it for the spring. Mrs. Yerger said let's see what happens. Mr. Maxfield said it's not the \$10, it's the last minute stuff. We are surprising the people. Mrs. Yerger said the ad was already in the paper. Mrs. Yerger said do you want to add that if they do not change their policy for this October event, we will look for a different vendor? EAC agreed.

SECOND BY:
ROLL CALL:

MOTION BY: Mrs. Yerger amended her motion and moved that we are going to have Ted Beardsley contact A-Plus and try to convince them not to charge the \$10 at the October recycling event, and if in the event they will not change their mind, that we will ask Staff to have signs at the event notifying participants of the charge for this particular event. We will also ask Staff to generate some handouts with information about Best Buy and their policy as far as giving a \$10 gift card in return for the \$10 charge on the monitor and/or TV.

SECOND BY: Mr. Beardsley
ROLL CALL: 6-0

Mr. Beardsley said if he calls them and they don't change it, the handout that we are going to ask Mr. Cahalan to make, is going to depend on what they tell us. He'll either be saying next time in April there will be a \$10 charge for monitors or it's today. Ms. Ray said there is a link on the EAC website with Best Buy.

III. DEVELOPER ITEMS

A. SCENIC VIEW APARTMENTS REVISED SITE PLAN #SP 01-08 – 2021 SCENIC VIEW

Mrs. Yerger said she has a map and you should have a lot of documents with regard to this development.

Mr. Kochanski said last meeting we ended up tabling action on this because they were not going to go in front of the Planning Commission (PC) and they were going to try to resubmit plans to readdress our concerns. Not all of our concerns had been met. It did go through the PC and the PC did make a recommendation to pass this on to Council subject to meeting the requirements in Boucher & James letter as well as HEA's letter. There are really two big issues that are outstanding in our letter and one is the disturbance of natural resources still, and site capacity calculations. They had provided us with site capacity calculations but as we had continually requested, they had not provided those resources on the plans for us to verify those calculations. Subsequently, it was last week they provided natural resource calculations but again, without any of the resources identified. We tried to use some published data and their map, but then we discovered that their map, this aerial you see in front of you, was not printed to scale. Even at that point, we could not try to work our way into where they were coming from. He has talked to the Engineer for Keystone, Doug Hunsicker, and Mr. Kochanski thinks he can provide the required information for the site capacity calculations and the resource protection calculations. They have identified the extent of the disturbance. There are ten trees that they have identified that will be disturbed on the site and that seems to be pretty accurate. They are just focusing in on the building, and depending on what happens with Council, as this is on the agenda tomorrow evening, they would proceed to the ZHB to a special exception to allow this use of expanding the non-conforming use as well as variances regarding site capacity calculations and impervious coverage. Essentially for this site, everything that is not developed with existing impervious coverage is being considered steep slopes, 8 to 15% so all the woodlands on the site would classify as environmentally sensitive woodlands. There's a riparian buffer along each of the intermittent streams and then there were the steep slopes. Those things they are going to use through published data and they are apparently talking to Doug, and that information has been obtained, they have just not provided it on the plans as of yet. The understanding he has is the Engineer will be making a presentation tomorrow night indicating that he understands what he has to provide and will do so prior to the next ZHB if it gets through Council tomorrow night.

When they go through the land development process, they are going to have to demonstrate that the primary systems and the replacement systems are suitable systems. There are multiple hurdles for them to clear, but what's in front of you is the special exception to expand the non-conforming use by 25%. There's a variance with respect to the impervious coverage as right now the site capacity calculations that we can't confirm yield that they are above their impervious coverage limit. They were looking at trying to tie that into the 25% expansion, and we said no, the 25% is a use. Impervious coverage is an area and dimensional requirement, so you would need a variance from that, so they are seeking a variance. It's a non-conforming use. Mrs. Yerger said if we would make them adhere to the correct amount of impervious coverage, they wouldn't be able to do anything as they are over by our current regulations? Mr. Kochanski said that is correct.

Mr. Johnson said it looks like they are requesting a variance as it says "the applicant is requesting a variances from the following sections: " c. to permit the proposed garden apartment to be served by an on-lot sewage disposal system" . What does that mean? Mr. Kochanski said the two newer

issues were the site capacity calculations and the impervious coverage. There were other variances. This use now is a use that requires public sewer and because they do not have public sewer on here, and the site has historically been served by on lot systems, they are seeking a variance as well. We do note that there were three variances that were being requested. One dealing with the density regarding existing and proposed contours because they are just did a small area of survey and they are trying not to require information for the entire site as the improvements were just focused in this one area. Then the septic issue, what is required for this use currently is a public system and they are doing on lots. Mr. Johnson said what about the variance from calculating permitted dwelling units? Mr. Kochanski said that is the density issue with the site capacity calculations. Mr. Johnson said one of the things that concern him is the issue of the water on this property. They have twelve homes or buildings, each of which has four apartments so that's forty-eight apartments. You figure three or four people per apartment; you are talking about 200 or 250 people who have to be served by water. They are pulling a lot of water out, and there are neighbors who also depend on ground water for their systems. Is it possible what they want to do here might affect the neighbors capabilities of drawing water out of their wells? We never look at that. We give permission for people to do developments and we never question whether or not there's enough water there for the new homes that are coming or how it's going to affect the people that already live there. Mr. Maxfield said he has asked that question also and they've been told that Lower Saucon is a place that has lots of water, as there are such steep slopes. Mr. Kochanski said the water system serving this is not a public water system, but classified as a community water system that's regulated as not an individual well would be. They are nowhere near their capacity as to what that water system will yield from a dwelling unit or a person capacity. Mr. Johnson said how do they know how much water is there? What if they need a couple of thousand gallons a day? You have a certain amount of water in the hole. Once you pump that out, then the water has to come in from the surrounding ground and a certain rate to provide how much you are pumping out. It's easy to pump out 10 gallons a minute. It's all there. We don't know these things. Ms. Ray said that Mr. Kochanski said they are already above their impervious coverage limit as it is. Mr. Kochanski said the impervious coverage, yes. Ms. Ray said why would we let them build another building? Why would you grant a variance for that? There's no reason. Mr. Kochanski said that's why they are asking for the variance. Ms. Ray said there's no reason to grant it, there's no special hardship condition.

Mr. Kochanski said to touch back on Allan's comment, the information they provided us on the system is that there are two six inch diameter wells, pump capacity is just under 150,000 gallons per day. They are averaging daily water use at 6,000 gallons per day. It's a permanent system, so there are checks and balances that happen with this. It's not like it's an individual onsite. It's a community system and is regulated and monitored as it's dealing with the community, so there's water tests that need to be done to make sure the water quality is there. Mr. Johnson said he's making this point as they are an advisory council. Mr. Maxfield said from the applicant's point of view, they have plenty of land. From our point of view, the reason they are over the impervious is because they are in the sensitive area because they have wooded slopes. From their point of view, they have a whole bunch of property and don't know why they can't expand it. The problem is for us and impervious is that we don't have an identified existing water run off problem in this area. All these problems show up down at Leithsville as it compounds and joins. We don't have any evidence that says their being over impervious already is causing problems. Mr. Kochanski said those issues have not been addressed. They are looking at it as when this development was first initiated, it was under a different zoning district. If zoning would not have been changed, all this would comply, even the impervious. They provided us with two sets of calculations – as it existed when this development was first created and then what you would yield now if the development was coming in. They are drastically different because of the difference in zoning and the difference in density. Mrs. Yerger said because situations change and you live in a certain district or area, they change speed limits all the time, so just because they are saying a speed limit is 55 MPH and they had to reduce it to 30 MPH for safety reasons, you can't say, oh well, because it used to be that way, we need to have it that way now. The situation is different and it is what it is.

In her opinion, they have to abide what is currently on the books. If they are over by the impervious coverage, because of where it is, in the headwaters of Cooks Creek and we know it's a high quality stream, and an important environmental area, she's having problems with this. Mr. Maxfield said he totally agrees.

Mr. Johnson said if they are going for site plan approval, what they are going for is the okay to build another unit in a place where our zoning regulations say they can't. If they get that okay this time, does that go on for future times? Mrs. Yerger said no, but it doesn't stop them from coming back. Mr. Kochanski said the ordinance permits the expansion of a non-conforming use which has been established with the change of zoning by 25%. They are looking at having x number of dwelling units and were looking at increasing it by 25%. Nothing is going to say that in three years they are going to come and say the 25% they are going to seek a variance from that. We don't know what the applicant is intending to do. Mr. Johnson said does that leave them open for nine additional units in the future? Mr. Kochanski said you are running into issues of impervious coverage, disturbance of natural resources and it's hard to speculate what they were thinking. There could be conditions if it made it to the ZHB and the ZHB felt favorable upon it, they could impose conditions that it be capped at that, and then it's another separate regulation.

Mrs. Yerger said we need to deal what is in front of us right now. Are there any environmental issues? Mr. Kochanski said from a resource disturbance standpoint, there are no issues as far as zoning. They are removing ten trees and disturbing steep slopes but are well within their disturbance allowance. The variance issues before you are the increase in site capacity calculations, special exception, the increase in impervious coverage, the septic public versus on lot system, showing the existing and proposed contours at two foot interval and maximum permitted number of dwellings for a total of five. Mrs. Yerger said the one that is environmentally involved is the impervious coverage. Mr. Kochanski said it would probably be the biggest impact from the environmental standpoint. That along with the potential environmental issue is on lot septic. This use is required to give the densities for a public system. Those sewage flows are going into the ground to be treated first. There's not as much impervious, but those two are the environmental. Mrs. Yerger said having heard that, is anyone ready for a motion? Ms. Ray said usually we are making recommendations. Mrs. Yerger said we can certainly say we are making a recommendation for Council not to support the variance for impervious coverage and how would we word the septic for granting of the on lot system? Mr. Kochanski said the septic is an environmental issue, but unfortunately for this site, there is no public system. They really don't have a choice. It kind of goes hand in hand with the density. You are going to permit the density because this whole site is served by an on lot system. They are kind of tied together. Mr. Johnson said they still have to find a suitable place to put the drain field and they probably haven't done that yet. Mr. Kochanski said they have provided testing for the primary and the secondary. Keystone tested it and HEA has reviewed that. What we have not reviewed, if this comes in for land development, would be the suitability of the existing and the replacement systems that are on the site as it opens up review for land development again. Mr. Johnson said when it comes to septic systems, we have to pretty much rely on our SEO's and knowledge of our engineers.

MOTION BY: Ms. Ray moved to make a recommendation to Council to be not supportive of the plan because of the impervious coverage issue and the septic system issue. The EAC would recommend that Council oppose this application.

SECOND BY: Mr. Johnson

ROLL CALL: 6-0

B. WARNER SITE PLAN #SP 05-04 (REVIEW FOR CONDITIONAL USE #CU 07-04) – 2472
BLACK RIVER ROAD

Mrs. Yerger said this is basically about a driveway accessing the property. Mr. Kochanski said he did not start review of this one yet. At this point, they don't have a draft. It is a conditional use

application for a driveway crossing the riparian corridor which you said is permitted by conditional use. If there are any issues, he doesn't have a whole lot of information. It's not a house; it's a driveway crossing which is permitted as a conditional use. This is running perpendicular which Black River Road is running parallel and there's a lot less impact. It's a condition allowed on conditional use which allows Council to impose reasonable conditions. It's before you get to Route 78. Mrs. Yerger said do you know what the clock is on this one, are we going to see it back again? We have an application that doesn't say a whole lot. Mr. Kochanski said it's on the PC agenda for October 15. Mrs. Yerger said is this a resubmittal as they didn't see it before? We don't have a whole lot of information. Mr. Kochanski said he doesn't know at this point if the ordinance would require them to tell us what they are proposing. Right now they are coming in for a driveway crossing and that requires a conditional use. It could be a driveway crossing to get to a lot. There may be notes on the plan, but they haven't gotten to the review yet. Mr. Maxfield said if it's only a driveway and so close to the creek, we can suggest that it be made out of pervious materials. Mr. Kochanski said it looks like the driveway is going to be made out of standard asphalt, mixed design, 2" to 4" crushed stone. Mr. Maxfield said ask them if they can do a pervious driveway right off the bat. Mr. Kochanski said there are two issues, and number one is make sure it perks. Also it's in the flood plain and if this area floods, silt laden water, it has a very good chance of clogging, so pervious paving and floodplain situations, depending on what you are trying to achieve, may not always yield the desired results as the spaces end up getting clogged up with dirt and silt and then it becomes impervious anyway, and a maintenance problem. Mr. Johnson said the pervious pavements can get clogged up with dirt and the rain doesn't clear it out. Mr. Kochanski said it's pervious pavement when it's proposed, and there's a strict maintenance policy that should be followed and that should include vacuuming the pavement. There may be ways of power flushing it. We always require the developer or engineer to provide us with the information and we review it.

Mr. Mark Wirth, resident, said his concerns tonight on this property aren't with Lot No. 4 where he wants to put the driveway in. His concerns are to bring to attention is the lot where they built the bank, behind the bank, now that all the landscaping is done; there is a manmade berm of stone that's in the back of that pond. That pond was a main thoroughfare and drainage swale that feeds that swamp made by the Army Corp of Engineers when they decimated the swamp where they put the I78 highway over from Black River Road to Dr. Feelgoodes. That main drainage swale is being blocked now. Those stones need to be removed so the water can go back down to the swamp. Down at the base, which all the property is owned by Mr. Warner, on the map, Q6-740719, known as 20A, right where the cement boat is the mine hole used to be, where they relocated the swamp, Mr. Warner has dumped or whoever is doing the clearing back there, has filled in a drainage part of the other end of that ditch which is the main entrance to the swamp, they dumped stone into it and pushed all kinds of dirt into it. That is at the opposite end of all the pieces of property he owns and now there is only one drainage swale that feeds that swamp. That swamp is over the required area that is considered a swamp. That is definitely a wetland and he'd like that to be addressed. He's going to do what he needs to be done up there, but he doesn't want to see that swamp dried up. There's stuff that should be protected. That's his concern. Mr. Maxfield said does the back end of this property get near that property? Mr. Wirth said on Lot No. 4 where they are putting the road in – no, that's totally at the opposite end. He just wanted to bring to your attention tonight because it all effects if he is going to do something. Mr. Hijazi said do you now anything about Lot No. 4? Mr. Wirth said they filled in that sinkhole which was over two years ago. There's a wellhead that went in. Somebody sunk a well there. Back near the corner before it goes to the tree line, there's a well that was put in.

Mrs. Yerger said we know it's crossing a floodplain, but also know it's on the other side of Black River Road. Do we want to take any action?

MOTION BY: Mr. Maxfield said we have no comment right now, but we reserve the right to comment if we get more information.
SECOND BY: Mr. Hijazi
ROLL CALL: 6-0

IV. OLD/MISCELLANEOUS BUSINESS

A. REVIEW AND APPROVAL OF SEPTEMBER 1, 2009 MINUTES

Ms. Ray said on page 12, line 52, take out the word “over”. Page 13, line 11, take out “sufficient” and put in “efficient”. Page 13, line 37, change “deficient” to “efficient”. Mr. Johnson said page 5, line 13, take out “closure” and replace it with “closer”. Page 7, line 19, it says “alkaling” stomachs, it should be “alkaline” stomachs. Page 5, line 23, it says “breaks down to the colon”, it should read “down in the colon”.

MOTION BY: Ms. Ray moved for approval of the September 1, 2009 minutes, with corrections.
SECOND BY: Mr. Beardsley
ROLL CALL: 6-0

B. DISCUSSION ON TIMBERING/LAND PRESERVATION

Mrs. Yerger said it is a question that has come up because it’s a question. We had preliminary discussions on timbering rights once preservation is completed or when conservation easements are purchased on a property and should the Township in their easement agreement allow timbering to take place after purchasing a conservation easement on a given parcel.

Mr. Beardsley said three applicants who wanted to get conservation easements and all three of them want the right to timber. We need to make a decision. There are at least two ways to look at it and one is to permit timbering under our existing ordinance. The other is to tell these people we are not going to buy a conservation easement from you if you want to timber, and then they decide whether or not they want to timber in order to get the conservation easement. The other alternate is have the appraiser, if we are willing to allow timbering, allow the appraiser to give us a value both ways – timber or no timbering. Mrs. Yerger said there are very specialized appraisers who do this. It can’t be done, but it’s harder and more costly. It’s not an easy option. Mr. Maxfield said plus you don’t know what kind of timbering is going to occur. How do you explain to an appraiser it’s sustainable timber. How do they know that it’s different from clear cutting, removing 50% of the trees or 13% of the trees. Mr. Beardsley said they would probably have to talk to a forester and they would definitely need to go by what our ordinance permits. What kind of timbering can be done? Our ordinance doesn’t allow clear cutting.

Mr. Skraban said all he wants to do is take out are some diseased trees on his property. Mrs. Yerger said that is not considered timbering. Mr. Beardsley said dead wood wouldn’t be a problem. Mrs. Yerger we’re talking about taking healthy trees out and selling it for profit. Mr. Johnson said maybe we should call it commercial timbering.

Mr. Maxfield said one of the things we really have to think about is the fact that when these conservation easements are purchased, they are purchased with public money. What we are saying is what we’re purchasing is called development rights, but when we go to the point of putting an easement on it, what we’re doing is protecting resources. If you talk to a lawyer, they will say you are buying resources. Usually, using public money to buy those resources with the agreement that at some time in the future, some of those resources could be mined by homeowner for his personal profit to him sets up an issue that we really need to think deeply about. Public money, when people voted for open space, he doesn’t think in their head they voted to award a part of their income that was going to be timbered. What the people voted for was to be able to see what they see now just

as it is now. That's a very important issue. If it was a private funded endeavor, that would be different, but public money is different.

Mrs. Yerger said she has two things that worry her about timbering with conservation easements. There is a timbering ordinance in place. Those are guidelines. Her concern is that timbering ordinance can change. She's not sure of the legality of the conservation easement should the timbering ordinance change. You write a conservation easement and say you are going to allow timbering, but it has to abide by our ordinance. Mr. Kochanski said you have to spell out the specific requirements. Mrs. Yerger said it is her concern, should the timbering ordinance change, does that open it up for later on, in five years, for someone to change it and say this is no longer required. The other thing is her concern is the policing for timbering. If it's allowed on a property we purchase, you have to have monitoring and who is going to be responsible to make sure that timbering is in compliance with what was written. It becomes an issue. If it can't be enforced, then there's no point in putting it in to an agreement or anything. Some of the enforcement issues always concern her a little bit and that's true in anything. Mr. Maxfield said other than Kevin or Judy, we don't have any one on staff that could go out and say that tree is diseased, cut it down, or this is a good tree, don't take it out, but take the two out around it. We don't have the expertise or knowledge. Mrs. Yerger said it's pretty evident if someone is ripping up a riparian corridor, but there are some things that are not going to be as easily monitored. Mr. Hijazi said you raise a good point, but how is it different from someone timbering a property not under a conservation easement? Mrs. Yerger said they haven't been paid with public money, tax payer dollars.

Mr. Beardsley said most of these properties have already been timbered and we decided if it's appraised and we recommended it for a conservation easement that even though it's been timbered, it does have some conservation value in its current state. This property has already been timbered once or twice, and if it gets timbered again, who's going to say it's not going to look like it looks now in a couple of years. If it's not clear cut, you don't even notice it. We've walked the properties and see a stump here and a stump there, but you don't even notice it. Tom said something about taking the resources and paying money for a conservation easement on resources that are going to be removed from a property, if you do that agriculturally, you are doing the same thing. There are resources there that are going to be removed from the property. You don't tell a farmer he can't grow corn just because there is a conservation easement on the farm. He's playing devil's advocate, but if the conservation easements says you have to do your timbering in accordance with the ordinance passed by the Township on such and such a date, or any more restrictive one that might be passed in the future, you've got that covered. As far as who is going to monitor it, our partner conservation organizations, that are going to hold the easements, and get an endowment for inspecting the property on a yearly basis are the ones that are going to monitor it or you're going to hire a forester to go out there. Mrs. Yerger said that might be a good idea if we decide at some point that timbering rights are to be capped by the property owner and development rights are purchased, then she thinks an endowment is even more important. The endowment for stewardship purposes and for monitoring purposes is going to be essential. This may have to go past Linc. Mr. Hijazi said are we finding a lot of property owners are insisting on timbering their property? Mr. Beardsley said no one has insisted, but we have two major property owners who said they want to retain their right to timber their property. They may back down, if we say we are not going to give them a conservation easement, they may say they don't really want to timber or they may say they are not going to do a conservation easement, and then we lost a property that we said we think should be preserved. Mr. Hijazi said is there a dollar value? Mrs. Yerger said there is, but it's hard. You want to be fair about this. You don't just want to throw a number at them. You can get the value of the timber estimated at the time. You can get an appraisal and that could be added or subtracted to a value of the conservation easement.

Mr. Maxfield said there have been people that tried putting a value to standing trees in the same way, not a commodity, but put a value to the jobs they do in our world as a standing tree. It was in comparison to a lumbered tree and the value of the standing tree was much greater for the things it

would do over time. That just gets to a point that we need to think about as an EAC group. He doesn't want to think short term. We really need to be thinking long term. The scary part is he has been reading lately things from DCNR about local changes that are happening with climate. We already are suffering things. Like for instance, the Susquehanna River Basin is up 4.6 degrees already from its standard place. These things are happening already and there are predictions that they are going to change, the forest is going to be impacted. They are already saying the forest are going to be totally different forests coming in and we have to think, in long term, we should keep this as healthy as we can. Terry Boos will tell you that any sort of timbering done sensitively or not is an impact on a forest. There is an impact of some kind or another. You can see on Granite Hill the tracks of old lumber trails that will never grow anything as that ground is so compacted. We need to think about the viability of these areas in the long term. We keep saying we don't have a natural forest and we aren't dealing with natural forest because they've been timbered, but we are never going to get to the point that we have a natural forest unless we let it live, and let the forest manage itself which it's more than capable of doing. We don't have to get in there and mess around. Like Mr. Skraban was saying if there is disease, that's a different sort of situation – that's nature out of control. In a normal healthy forest, it is more than capable of taking care of itself.

Mr. Hijazi said no one is forcing the property owners to put their land in a conservation easement or are they looking at it from a different perspective? Mr. Beardsley said some of them are motivated by protecting the environment and some of them are trying to get as much money as they can, which will help them out one way or another. There are some of them that are part of each. They may say they can sell the property, retire, and move to Florida.

Mr. Johnson said the reason they want to do commercial timbering is they want to make some money which he doesn't feel sympathetic to that goal. The citizens of the Township are paying an extra one-quarter percent tax to maintain the township the way it is and if we do commercial timbering, it's going to be obvious. One thing that wasn't mentioned is we have this deer problem where if we do any commercial timbering where we cut down enough trees that we can notice it by looking at it from the road, those trees will never come back because of the deer problem. The deer will eat everything, any new trees that come up, so it isn't going to come back. You may say it came back in the past, but we haven't had a deer problem like we have now. The trees had a chance to regrow. This deer problem is only about twenty or thirty years old. The deer problem isn't going to go away either because the deer have crops to eat. When they run out of normal feed, they go and eat soybeans. There are all these ifs, ands, or buts. One way to solve them is to just say no timbering on township conserved properties. In order for the township to spend money on a conserved property, we would require no timbering. However, there is one thing we haven't discussed and this is perfectly okay, if we allow an owner of the woodlands to take a certain number of trees out for his own personal use, whether it be firewood or maybe he wants to build a barn, something like that we could say one tree from an acre each year, so that he could only take one tree from any particular acre that year. If he has thirty-two acres, he can take down thirty-two trees. One tree on each of thirty acres isn't going to make a big difference. We have to go into details as that's how people get around our goals. We give a blanket no to timbering, but allow the landowner to cut down some number of trees for his own use. Mr. Boos said that would be in the conservation easement language.

Ms. Ray said you can cut down three trees a year in our ordinance. Mr. Maxfield said it's changed and now it's a percentage from the total of the property. Mr. Johnson said what it says is none of the following shall occur in the Township unless the zoning permit was issued by the Zoning Officer – cutting down or removing more than three major trees per year from a lot. He doesn't know if that's still in effect, but he got it from the website. Even that isn't very definitive. Does a lot mean two acres or two hundred acres.

Mr. Maxfield said another thing to think about as an environmental group, which is very important is he would guess, keeping the properties in mind in his head, that most of the wooded property we

are considering for conservation is on slopes, about 15% or greater. All the easy to get to lumber is already gone in the township. The only thing left is the slopes which are hard to get to. One thing we have to admit is our timbering ordinance is very strict. We have the opportunity to be clearer, and really be as clear as we can, and set a policy. A policy can be changed by Council. Council has the ability if there's a special situation or if they decide in this particular case it makes sense to do, this policy can be changed or altered for that particular circumstance. As an environmental policy, this body, we should be clear and say what it is that we really want, and what we want is the most environmentally friendly situation that we can ask for.

Mrs. Yerger said we haven't touched on the habitat. When you timber, it's going to disturb the wildlife. Right now she has behind her house some woodland that hasn't been disturbed in quite a while, and they are now seeing deep wooded birds which she did not see for years and years. They are birds that only come when you have a thick forest. Habitat is a goal. We should consider it as one of the goals we want to preserve when we purchase development rights on the property. That's another consideration. We have to figure out what our priorities are. That should help us decide on an environmental approach.

Mr. Beardsley said one of the things you could do is to say that, we are heading towards a new, more detailed way of evaluating property and the people who want to timber are not going to score as high as those that do not want to timber. If you are competing for scarce dollars, to get a conservation easement, they are going to go with people who do not timber, but there maybe something about the property that may be so important to us and they still want to timber it. Mr. Maxfield said in that case, there are other avenues like money from DEP, from the County. There are a lot of other places they could go look for money. As stewards of the Township, our neighbor's public money, it's something we have to think about. When DEP or the big land conservancies like Heritage, they will allow timbering. The state agencies that give money, they are required to allow it. As a contract maker, the Township does not have to require timbering. We can say no. When we asked Linc about it, he said when he talked to DEP, they said what do they care if you are more restrictive than they are, so go for it. We do have the ability to say no. It's a benefit for anyone who is applying for conservation to be clear and to have that set of criteria. Already we don't allow motorized vehicles on a piece of conserved property as we didn't want the landscape ripped to pieces. Maybe we have to roll all of it together into one ball and call it criteria for conservation.

Mr. Bruce Petrie, 2626 Redington Road, Hellertown, said he and his wife have lived on the property since 1987. Approximately 90 acres of the 144 acres are in timber. There is a stream there, Bull Run. They have had the place timbered three times in twenty-one years. It's interesting to note that walking in the woods he doesn't see too many stumps. His undergrad is in biology so he's a very environmentally person. He thinks the time they took the most trees off was about 200 trees, about two trees an acre. Come springtime, you have a full canopy out there. The other thing is you are saying public money, and when people envision giving their money, how do you assess that value in forty years as he also appreciated the comments about seeing woodpeckers in the deep wooded forest. When the initial appraisal was done, it wasn't done on a deep wooded forest, so do you appraise on the number of trees that are there currently. He can argue both sides just like you've done. They have had the place timbered three times and after they mark the trees he'll go through and puts a big S on a tree and tells them not to take it, as he likes the tree. The other thing is in terms of money. They have a horse farm. They put a new barn roof on and it was \$14,000. It's not like they are taking the money and taking a world tour. The first timbering they did, he used the money to get married and it paid for their wedding. From other timbering, they used to buy fence, they replaced the bailer this year. He understands the whole argument about using public funds to conserve land, and he is sensitive to the paths they used, the logging trails. Poplar grows very fast, and that's what they usually take off the property, some Red Oaks and some Black Oaks. Not too much walnut and a couple of other species, not much Beech. They got married in 88, timbered it in 87 for the first time; then in 1996, then again with a local guy who just did select

trees five years ago. When Sandra and Tom were out there, that was after all three times. Mr. Maxfield said do you think the money from a conservation easement could offset the money you get from lumbering? Mr. Petrie said he has no clue as to what a conservation easement would bring. The true value of his place is to conserve it. Obviously, if you came out and said no timbering, then they would have a decision to make. The timbering, the money they've gotten from all three timbers, they've pretty much poured back into the property. Mr. Maxfield said they didn't think people were doing it to get rich. Mr. Boos said the values usually hold consistent over the long term. Mr. Maxfield said if they were going to tell him no lumbering, they would probably make it worth his while not to lumber. They have letters from their solicitor and they are looking into it to see if they can say no lumbering or we are allowed to do that. It has something to do with how the referendum was worded. Last year the people who hunted on his property last year took at least twenty deer.

Mr. Johnson said you commented about the other timbering's that have been done, they probably have all been done before the current timbering ordinance in LST, so anyone who wanted to do timbering again, would have to follow the ordinance. The current timbering ordinance is pretty tight. After seeing what would be required under the current timbering ordinance, you probably wouldn't make as much money timbering, so you might want to think about that. Mr. Petrie said good point. He doesn't even know what we are talking about in terms of money. Mrs. Yerger said you won't until an actual appraisal is done on the property. She thanked Mr. Skraban and Mr. Petrie for coming to the meeting. Mr. Petrie said when Jack sent the letter, it said someone would be in contact with him, what is the timeline on that as it didn't specify? Mrs. Yerger said your property is at the bottom of the agenda, so you may want to stick around. She asked if there were any recommendations, what do we need at this point? It was a great opening discussion. Mr. Beardsley said Tom just said our attorney is looking into where we could spend money on property that would be timbered, and if there is a legal opinion regarding that, it could affect our opinion we make tonight. Mr. Maxfield said there's no guarantee he will come up with a definitive answer either. Mr. Beardsley said then we'll be back discussing it next month. Mr. Maxfield said if a landowner is willing to enter into the process with us, that we really ought to make it worth his while not to do timbering. It has a value standing, and probably more of a monetary value. It is more of a long term commitment and it's got to be worth something to that landowner. We should encourage whoever is making the decisions to make it worthwhile.

Mr. Boos said as far as purchase of conservation easement right, that landowners who are interested in doing commercial timbering, be put behind other properties that would be of equal consideration and they are not going to score as high as others. Mr. Maxfield said what if we had two properties and both owners were interested in conserving their property, one was a beautiful piece of property with wooded slopes, wonderful habitat, a stream running through it and that person wants to lumber. Then we have another piece of property that is okay, it's got some stuff on it, it's smaller, and it doesn't really connect to anything, and he's interested in conserving it also but doesn't want to lumber. The really great property gets stuck in the back. Mr. Boos said he's not saying that. If you have two of equal value or equal consideration, and if it's not connected with other integral parts, that one should get less consideration than the other one. What you're describing is a perfect one versus a marginal one. You can find you can live with the timbering just because of all the other amenities that come with the property. In that case, that would be the exception to the rule. Mr. Maxfield said then we'll get accused of a type of subjectivness. Mr. Hijazi said as an EAC we should set a goal and an objective and say that our goal is that commercial lumbering is discouraged. You mentioned two properties, one is good, one is perfect, there's more to it than just these issues. There are a lot of details. Mrs. Yerger said it's specific to each property in the process. Mr. Hijazi said the overall objective of the EAC, we should set the goal of valuing the property that commercial lumbering is discouraged. When it comes down to actual process, there are a lot of details that could be worked out. Mr. Maxfield said our recommendation should have the most environmental thinking that we can put into it, and then

when that gets to Council, and the final decision is made to spend the money, they might have recommendations from us.

Mr. Beardsley said what if we say it's our recommendation to Council that the Township promote no timbering on conserved properties and that the Township won't purchase conservation easements where timbering is to take place. Mr. Maxfield said ask Council to develop a policy where it expresses those things. Mr. Johnson said you are putting the decision making on Council. The decision can't be made until it gets to Council. When we get a letter back from a perspective conservation person and he says he wants to do timbering, then basically we just have to push it right up to Council. That's one big issue. Mr. Beardsley said we have to convince Council that there are extraordinary circumstances that make this property worth conserving even though they want to timber. Mr. Maxfield said it's like a baseline. Mr. Beardsley said if they do want to timber, there's only two ways they can go. There are so many environmental positives that override the fact that someone just has to timber their property, and won't sell it or give you a conservation easement without it; or they will give up the idea of timbering to get the conservation easement. That's what we are going to promote. The EAC and the Open Space Sub-Committee (OSS) has to consider all the different natural resource values, etc., etc., and come up with a recommendation to Council. Mr. Maxfield said it's Council's job to get voted in to do the economics. Mr. Johnson said would we have this same discussion every time? Would we have to give our same arguments every time and come up with something we agree on? Mr. Beardsley said another thing we'd be doing as the OSS when we are meeting with the property owners, we are going to say, that we don't want timbering. Mr. Johnson said the only way you can get timbering is if there is some special reason and we would allow it, or otherwise, no. Mr. Maxfield said if you really want to do it, and there are other avenues. All we can be is recommending stewards of township money. There's Natural Lands Trust, Heritage Conservancy, Wildlands, all these other places. We know Wildlands considered that and Heritage does too. Mr. Johnson said when we recommend conservation; we are recommending that the Township is willing to pay for it. We are not saying we recommend conservation, go look someplace else for the money. Mr. Maxfield said right.

- MOTION BY:** Mr. Johnson moved that EAC recommends to Council that Council create/adopt a policy that does not permit timbering on conserved lands where easements are being considered with township money.
- SECOND BY:** Mr. Maxfield
- ROLL CALL:** 6-0

C. REVIEW OF FLOW CHART

Mrs. Yerger said this is your last look until it goes to Council. Mr. Maxfield said there is a misspelling of "application". Mrs. Yerger said we already have a recommendation for this to go to Council.

D. REVIEW OF EMAIL TO DYER, NOBLE, BRACALENTE

Mrs. Yerger said this was an email that went around on the Dyer, Noble, Bracalente tract. They are considering farming on what is now a meadow. It was an old farm field. We purchased development rights on it with it being an open meadow along a riparian corridor. They want to know if we want to weigh in on this. Mr. Maxfield said there was another email that said he was hoping we could talk to the farmer about using practices that are spelled out in our IPM/OPM because considering that it's a flood plain and that it does get flooded, on a regular basis, it will just pick that stuff up and wash it back into the creek. Mr. Kochanski said it addressed herbicides. Mrs. Yerger said then that's what we need to do. Mr. Maxfield said what happened at Polk Valley Park, before the park got started, there was a farmer last year, he herbicided the whole area, went in and planted it and pesticided the whole area which this guy will probably do also. Mrs. Yerger said

it runs parallel to a large portion of the Saucon Creek. Mr. Johnson said that's what they do to the cornfield by his house. Every year they come in and spray it and put something else on there. It's standard practice. So you want to make sure you ask them what they are going to use and make sure it doesn't hurt the stream. Mr. Maxfield said if Noble, Dyer and Bracalante will agree to it, somebody's going to have to go out and mark the riparian corridor. Mr. Boos said those plantings were done inside his mown path and that mown path is inside the riparian corridor. Anything that is going on is going to be on the outside of where that mown path was. The plantings would not be a problem. Mr. Johnson said the farmer that they are trying to get to farm this property is the guy that farms the property behind his house. For the last six or so years, he always used no till planting which is good. He has never seen him do deep plowing. They always use the scraper type of thing, but he doesn't always plant the same thing. He plants corn, soybeans, and maybe hay. You can't know what he's going to plant. You wouldn't want to restrict what he can plant. As far as the pesticides and fertilizers, he has no idea what he uses. It kills the weeds. Mrs. Yerger said we put young trees in there, we want to make sure he doesn't herbicide those. Mr. Johnson said you have to go out there and put up a ribbon. Mrs. Yerger said yes, it has to be marked off. Mr. Johnson said there is a particular pesticide that kills the weeds but lets the corn grow.

Mrs. Yerger said we're talking about accuracy of spraying be considered, riparian buffer setback needs to be delineated and enforced, and that we recommend he uses a herbicide such as Rodeo.

- MOTION BY:** Mr. Maxfield moved to recommend that Township staff notify the owners that the riparian buffer setback should be enforced/delineated, that a herbicide that does not contain surfactant be used, i.e., Rodeo; and that the accuracy of this spray be considered.
- SECOND BY:** Mrs. Yerger
- ROLL CALL:** 6-0

E. REVIEW OF DRAFT LANDOWNER ACQUISITION LETTER – MR. MCCORMICK

This will be tabled as Mr. McCormick is absent.

V. UPDATES/REPORTS

A. OPEN SPACE SUB-COMMITTEE

1. PROPERTY UPDATE

a. REVIEW OF RESPONSE FROM PETRIE & SKRABAN LETTERS

Mr. Beardsley said the Open Space Sub-Committee (OSS) has reviewed these letters. Mrs. Yerger said so you know what the process is, the OSS will meet and hopefully come back at the November 10 meeting and we will, as a body, make a recommendation one way or the other. Mr. Johnson said is the policy on timbering going to be made before we have to decide these things. Mr. Maxfield said we will meet twice before the EAC meets. Mrs. Yerger said you will have an answer before you meet. Mr. Johnson said we need that to make up our minds. Mr. Maxfield said we can bring it up under reports, but there is no guarantee it will be voted on. We will try. Mr. Beardsley said assuming the EAC is going to recommend your property to Council, and then we would be recommending that they start the appraisal process. Mr. Petrie said how long does the appraisal process take? Mrs. Yerger said it really doesn't take that long, they are pretty good about that. We will discuss this next meeting, November 10.

VI. TERRY BOOS – HELLERTOWN REPRESENTATIVE – REPORT

Mr. Boos said the Hellertown borough Council approved the zoning change to declare the Tuminello property a park.

VII. NON-AGENDA ITEMS

- Mrs. Yerger said Mr. Cahalan asked us to look at this. What they want us to do is treat the shrubs and plants at Polk Valley Park with Plantskydd, which is supposed to be a deer deterrent. They are having some deer issues on the young trees and this was the recommended remediation by the landscaper that was awarded the bid. Mr. Kochanski said it was in the bid as a liquid form. They list the hazards and none of them came up for ingestion or contact, so he would think the blood in the product is processed to some degree or there would be some concerns. Mr. Boos said dried blood is commonly used for rabbits. Mr. Maxfield said there's blood that is used for fertilizer, and home gardens. Mr. Kochanski said the trees are 2-1/2 to 3 inch caliber and the shrubs are anywhere from 24 to 48 inches. There will be deer plastic guards on the trees. Mr. Kochanski said when they did their initial research on it, they did not come up with any concerns nor did staff. They wanted to bring it in front of the EAC to see if you had any concerns. Mr. Guerra said he sees no major issues, but he will do some research on it.
- Mrs. Yerger said Dennis Benner submitted an application for property in Lower Saucon Township. We will be discussing it next month.
- Mrs. Yerger said there is some feedback from Bilous from our Attorney. There is no value to the conservation easement. The only thing we could do is ask him if he's interested in selling it outright. We know it's considered high, high priority by the County. He can't do much with it anyway. Mr. Hijazi said why are we going after it? Mrs. Yerger said he can't do anything with our current ordinances. It doesn't mean our current ordinances are going to stay five years from now. Mr. Maxfield said he already has a use for the property. There's a house on the property. He can't say we are denying him use of the property – it's reasonable use. Mr. Hijazi said the appraiser is saying nothing could be done to it, why are we going after it? Mrs. Yerger said we didn't know that at the time. Tom had asked her what can we do? She had said we can purchase it if it's cheap enough, and may be something we might want to consider because it can't be developed. Mr. Beardsley said it scored well and the County will pay for a lot of it. It's in the dark green zone and it's also been pulled out as one of the highest priority areas in the County. Mr. Johnson said would we buy the land that the barn and the house is on or just buy the land? Mr. Maxfield said we'd have to buy an easement. Mr. Johnson said it's close to 90 acres. It's a great piece of property to conserve. All they are saying here is they can't do an appraisal because there's no value on the one side of the appraisal. Mrs. Yerger said what he's also saying is should a conditional use be granted, then the property value appears. It's only because they cannot anticipate a conditional use is going to be granted; however, if a conditional use is going to be granted by a governing body, then it acquires value. Mr. Maxfield said we tell them what to appraise for. Mr. Beardsley said they can appraise it as if the conditional use was omitted. Mr. Johnson said they can do an appraisal based on what it's worth per our current ordinance, which would not be much. Mrs. Yerger said that's what they are saying. Mr. Beardsley said there's no conservation value. Mrs. Yerger said there's not enough to warrant purchasing. They are saying they can't do it because there is no development value because they can't factor in that. You could do raw land. Mr. Maxfield said when the Sub-Committee looked at it, how did you get across the creek? Mr. Johnson said there was a little foot bridge. Bilous can go across it with his little tractor, farm implements. Mr. Boos said you would have had to get logs over that at one point. Mrs. Yerger said as far as timbering, if we don't go after it, then are we going to be forcing this guy to timber it. If we don't buy the easement, he needs money. Mr. Maxfield said he's got to timber it per our current ordinance. It's going to be tough, you have to put together a site plan. Mrs. Yerger said it still doesn't say it can't

Environmental Advisory Council
October 6, 2009

be done, there's enough acreage there that he can do it. It's brought here to see if you want to make a recommendation one way or the other. Mr. Beardsley said the question being given to us at this point, should we talk about buying the property outright? Mrs. Yerger said do we want to get an appraisal for the value of the raw land? Mr. Maxfield said as an EAC, we could request that Council explore alternate ways of conserving the property. Mrs. Yerger said an appraisal would have to be done, whether it be pieces, that's a whole different question. There would have to be a starting point. Mr. Beardsley said if he would have put in an application for conditional use, then he would have created value in the property and they could appraise it and we could buy it. Mr. Maxfield said which is the only way Dyer, Noble and Bracalente got value. They had an approved bridge approved by DEP. Mr. Johnson said suppose we make a motion that the EAC recommends that Council considers purchasing the land and then putting conservation easements on it. Mr. Guerra said does the Township buy land? Mr. Johnson said sure. The money can be used for conservation easements or to buy land. Mr. Beardsley said the motion should maybe say that Council look into alternate ways to conserving Len Bilous property. Mr. Johnson said is there alternative ways? Mr. Beardsley said there may be. Mrs. Yerger said Linc might get creative. Mr. Maxfield said there might be a portion of the property. Mr. Johnson said we could say the EAC recommends that Township Council look into alternative ways of conserving the property. Mr. Beardsley said that leaves it wide open, it could be purchasing, donation of an easement. Mr. Johnsons said just leave it at that then. Mr. Maxfield said Linc could do some work.

MOTION BY: Mr. Johnson moved that the EAC recommend to Council to look into alternative ways to conserving Len Bilous property.

SECOND BY: Mr. Beardsley

ROLL CALL: 6-0

- Mrs. Yerger asked how the group felt about moving the EAC meetings to the second Tuesday of the month. What's happening is staff is having a problem. We make all these recommendations and then they have to have them ready by tomorrow. We are trying to work it out that if we move it to the second, then it would be in preparation for the third week of Council and give them time to get ready. Council doesn't get our recommendations in the packet because there is no time. It would also give the Planning Commission time to see things.

VIII. ADJOURNMENT

MOTION BY: Mr. Johnson moved for adjournment. The time was 10:00 PM.

SECOND BY: Mr. Beardsley

ROLL CALL: 6-0