

I. OPENING

CALL TO ORDER: The Planning Commission meeting of Lower Saucon Township Council was called to order on Thursday, January 20, 2011 at 7:00 P.M., at 3700 Old Philadelphia Pike, Bethlehem, PA, with Mr. John Landis, Chair, presiding.

ROLL CALL: Present: John Landis, Chair; Tom Maxfield, Vice Chair; Craig Kologie, John Lychak, and John Noble, members; Dan Miller, Engineer from Hanover Engineering; Chris Garges, Zoning Officer; Judy Stern Goldstein and Karen Mallo, Planner from Boucher & James; Linc Treadwell, Solicitor and Jameson Packer, Jr. Council member. Absent – Haz Hijazi & Scott Kennedy.

PLEDGE OF ALLEGIANCE

II. PUBLIC COMMENT/CITIZEN AGENDA ITEMS

None

III. REORGANIZATION

A. ELECTION OF CHAIR

MOTION BY: Mr. Maxfield moved to nominate John Landis as Chair for the Planning Commission.

SECOND BY: Mr. Kologie

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

B. ELECTION OF VICE CHAIR

MOTION BY: Mr. Kologie moved to nominate Tom Maxfield as Vice-Chair for the Planning Commission.

SECOND BY: Mr.

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

C. ELECTION OF SECRETARY

MOTION BY: Mr. Maxfield moved for nomination of John Lychak as Secretary for the Planning Commission.

SECOND BY: Mr. Kologie

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

D. DESIGNATION OF PLANNING COMMISSION MEETING, TIME, PLACE AND DATE FOR 2011

MOTION BY: Mr. Maxfield moved for the third Thursday of the month at Lower Saucon Township at 7:00 PM.

SECOND BY: Mr. Lychak

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

IV. BUSINESS ITEMS

A. T-MOBILE NORTHEAST, LLC – T-MOBILE NORTHEAST LLC SITE PLAN #SP 05-10 & CONDITIONAL USE #04-10 – 1995 LEITHSVILLE ROAD (TIME LIMIT – SITE PLAN 03/16/11 & CONDITIONAL USE 02/14/11)

Mr. Mike Grab, representing T-Mobile was present. He said Bill Gilmore, Engineer is also present. Mr. Grab said the plan before you is to extend the existing tower. The application says 22', but T-Mobile is proposing to extend it by 11'. Metro PCS had already extended it by 11', but at the time the application was submitted, that extension had not yet actually physically been placed there. It now has been placed there, so he wants to reassure the Commission that they aren't raising it 22' in addition to the Metro PCS 11'. The total extension, Metro PCS and T-Mobile is 22'. They met with the Zoning Hearing Board in December in order to get variance approval from the setback requirements and the ZHB did indeed grant them the request. The use is permitted by conditional use in the zoning district, so they are going through the zoning district process. They do have a hearing scheduled before the government body before the 2nd of February. We're before the Planning Commission (PC) to obtain recommendation. The PC is very familiar with this particular site and with telecommunication co-locations in general, so he will have Bill Gilmore briefly describe what is being proposed. He has copies of documents that we will present at the time of the conditional use hearing for the PC to take a look at as well.

Mr. Gilmore said they are also proposing to extend the compound to the west to accommodate a 10'x20' concrete pad with six proposed cabinets. It's a pretty simple application - the six cabinets with the extended compound, extending the pole 11' and attaching nine antennas and three sectors to the top.

Mr. Grab said the information he gave to the PC is the site license agreement to allow the co-location by T-Mobile on the extended tower. The second document is a copy of the FCC license that is required under the conditional use requirements under the ordinance. Next is a copy of the radio frequency propagation map which shows the current coverage or lack of coverage that T-Mobile has in this vicinity and the second page shows the improvement in coverage based upon this proposed location were it to be approved by the Township. The next document is called an RF Emission Compliance report and that indicates that in tandem all the emissions from the antennas from this tower including what's existing and what is proposed do not exceed the FCC guidelines for maximum human exposure to radio frequency itself. Again, it demonstrates compliance with the FCC guidelines. The next document is a copy of the structural analysis for the tower which indicates the extension and there are modifications proposed to the tower, but with the extension and modifications, then there is sufficient capacity for this proposed co-location. That's an important component to T-Mobile. They want to insure there is sufficient structural capacity. The last document is a copy of the FAA review confirming that the extended tower does not need to be lighted in accordance with FAA requirements. These are the documents and exhibits that we will present at the time of the conditional use hearing supported by testimony at the time of the hearing.

Mr. Landis said we have two letters from our consultants. There is one from Boucher & James from January 12th. Is there any major points you can't comply with? Mr. Grab said they were in the process of putting together some revisions to the plan and a response letter, but it will be a "will comply" response letter to each of those comments.

Ms. Stern Goldstein said they have no comments if they are willing to comply.

Mr. Landis said you also have a letter from January 13th from Dan Miller from Hanover Engineering. Mr. Grab said he does not have a copy of that letter. Mr. Landis said the 22' difference is there. Mr. Grab said correct, it's noted and can be corrected. They have obtained the variance which was granted in December at the ZHB meeting. It appears that all of these comments

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are in line with the Boucher & James letter of January 12th, so they would have no problem complying with the comments.

Mr. Landis asked if anyone in the audience had any comments? No one raised their hand.

Mr. Landis said this is for a conditional use and for a site plan. We will vote on each one of them separately.

MOTION BY: Mr. Maxfield moved to recommend conditional use approval.

SECOND BY: Mr. Noble

ROLL CALL: 5-0 (Mr. Hijazi & Scott Kennedy– Absent)

MOTION BY: Mr. Maxfield moved to recommend site plan approval be given, subject to the following conditions: The applicant shall comply with the comments set forth in the Boucher & James Inc. letter dated January 12, 2011 and the applicant shall comply with the comments set forth in the Hanover Engineering Associates, letter dated January 13, 2011.

SECOND BY: Mr. Noble

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy– Absent)

B. LOUIS PAVELCZE, JR. – PAVELCZE MINOR #MIN 01-09 – 1760 FRIEDENSVILLE ROAD (TIME LIMIT 02/10/11)

Mr. Louis Pavelcze, Jr. was present along with Greg Tom. Mr. Tom discussed all the details with their engineer and their surveyor, so they are here to answer any of the comments that are here before us. Mr. Landis said there are two letters.

Mr. Tom said he has the letter from Boucher & James of January 12th. Mr. Landis said we'll go over the Boucher & James letter first. Ms. Stern Goldstein asked if they went over the letter and they can comply with all the items? Mr. Pavelcze said most of them. Ms. Stern Goldstein said the one with a question is the one with the general comment Section 6 on the A2 and it has to do with the 55 gallon drums that were on the property. You were requiring a soil test which the 55 gallon drums were drums that were used from his business. They are removed from the property. Everything there is removed. He would like to ask for a variance for the soil test because it states here there could have been leakage, but he had two other tanks there that were there that were used for his loader. He sold those tanks when the fuel prices went up. He never had any problems with them and they are off the property and are removed. He did comply with that. Ms. Stern Goldstein said they were just recommending that something be done to just test the soil so there is no contamination. Mr. Tom said he's been visiting that property for a number of years, and he never saw any contamination of any kind. He's a general contractor and built a lot of homes and everything was always in tip top shape. Ms. Stern Goldstein said the main concern was there were tanks there.

Mr. Maxfield said from a legal standpoint, if there were a problem sometime in the future, who would be the responsible party? Attorney Treadwell said the property owner would be responsible. He asked who removed the tanks? Mr. Pavelcze said they were sold. They are gone. They were above-ground, off road diesel tanks. Mr. Tom said there were a couple of 55 gallon drums. Those drums shouldn't be an issue. Mr. Pavelcze said they were used for his business for release form oil so the contract doesn't stick to the forms. As we used them, they discarded the barrels. Ms. Stern–Goldstein said you as the property owner are responsible. Mr. Maxfield said it would be hard for the Township to sign off and say it would be okay. First of all, we can't do that and second, you probably are going to be responsible for anything. Mr. Noble said we can have the property owner sign something and say the Township is not responsible and if there are any problems, it is his issue. Mr. Landis said could that be put as a note on the plan. Mr. Pavelcze said he has no problem with doing that. Mr. Landis said when the property gets transferred, there should be a legal notice that there were above ground tanks on the property. They were not underground. Mr. Maxfield said are we saying that one is gone now? Mr. Landis said they will put a note on the

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plan. Mr. Noble said under the general note, put the information there. Mr. Landis said he should put on there that there were tanks, they were above-ground, and they didn't leak, and were removed. Mr. Kologie said it's always buyer-beware. How many other sites in the Township may have had tanks on them that we don't know about. Anytime you are doing anything on the property, you do a Phase I environmental assessment and that's the purpose of that. Mr. Pavelcze said these barrels were brand new and he purchased them at Eastern Industries.

Mr. Landis said what are the next items? Mr. Tom said No. 1 they will revise that. Mr. Landis said tell us what you have a problem with, and if you comply with the rest of them. We just have on 6B that there will be a note put on there. Mr. Tom said they will revise everything else. Mr. Pavelcze said they are fine with everything else. They applied for the driveway, so basically everything else is okay. If he could say one or two things on the trees, the drip line, the trees are all pine trees and in horrible shape. He loves trees. He'll plant five more new trees if need be. These pine trees are the type that are dead all the way up and they really should come down. He would like to cut them down. Ms. Stern Goldstein said existing trees, when you take them down and replace them with something else, it would be very appropriate. Tell us on the plan what you are suggesting to plant and you can call and we can talk about it. Mr. Pavelcze said he wants to make it beautiful. The one is falling over. He'd be happy to put some nice pear trees in there. Mr. Maxfield said they have a restricted list of trees. Mr. Landis said if you work with Ms. Stern Goldstein you can get a list of trees. If the trees are taken down, they must be replaced. Mr. Pavelcze said he will put the trees where they tell him to.

Mr. Landis said what about the Hanover letter? Mr. Tom said that should be pretty easy. From the I2 down to I8, they will take care of all of that. They've already submitted the DEP application. No. 9 they will revise or remove. No. 10, on the print, the information is shown. Mr. Landis said PennDOT approval is required. Mr. Tom said they've applied for that and are just waiting for it. They can't do anymore. Everything else they will do or revise. No. 16 is revise or provide. B2, which is not a problem. He thinks they are within 60' of utilities there, so that is not a problem. Mr. Miller said B15 compliance with Comment A.15 would require a change in the access and he is not sure whether the Township would want that. Mr. Maxfield said maybe because of the location? Mr. Miller said the property currently accesses Friedensville Road, and the plan proposes to modify the entrance, but continue to access Friedensville Road; compliance with this section would require access elsewhere, such as along the unnamed alley to the rear of the property. Mr. Noble said where would access begin? Mr. Tom said they can revise if you wish. Mr. Miller said is there a desire for compliance? Mr. Tom said they will revise it or provide it. It doesn't matter, whatever you would like them to do. Mr. Miller said the general position is to require compliance with Township Ordinances, unless directed otherwise by the Township. Mr. Kologie said that alley exists right now and there's some form of vehicular access in that alley right now. How do we know it hasn't reverted back to the original landowners right now? Mr. Miller said we do not know; the Applicant said that the neighboring lot deeds reference it, but we are not sure that the rights to use that alley have been confirmed satisfactorily to the Township. The Solicitor may be better suited to speak on that topic. Attorney Treadwell said that was one of his questions, we don't know who owns those alleys. The deed that was submitted with their application, semi-refers to one of them, but the alleys do not show up on the Northampton County tax map website, so he's wondering if it's one of your neighbors deeds. Who actually owns the property? Mr. Pavelcze said he did. Attorney Treadwell said the last deed that Northampton County has on record is to a Michael Muschlitz. Mr. Pavelcze said they sold the house portion of it because on the deed there were two parcels. That's why they wanted to separate those two parcels so he would be paying the tax on that lot. That part we never changed anything from the house. That parcel was sold to them. Attorney Treadwell said without a subdivision? Mr. Pavelcze said correct. We're not even moving any lot lines. It's just the same way it is on the deed. Mr. Garges said the deed only has one parcel. Attorney Treadwell said you sold half of a tax map parcel. We'll have to straighten this out. Mr. Pavelcze said his goal is to pay the tax on this lot. Mr. Maxfield said are we absolutely sure the ownership of the alley is you? Mr. Pavelcze said yes. Attorney Treadwell said there are two alleys. One is one alley on the side and one in the back. Mr. Landis said is anyone using the

one in the back? Mr. Pavelcze said they use it and so does Charles Kukoda. Mr. Landis said since everyone else has access on Friedensville Road, what's the problem? Mr. Kologie said this portion has access on Friedensville Road right now too. There's existing access from this parcel. The house on the property accesses Friedensville through one of alleys? Mr. Pavelcze said the house, the one that was sold to Muschlitz, has a joint driveway that is accessed from Friedensville Road. Track 2, where the old Saucon Valley Fruit Stand is, had a separate driveway and that driveway is a stone driveway in front of the fruit stand. It's always been there and they are not really asking for anything to change except PennDOT told them to put the driveway on the other side. There were a few things that PennDOT mentioned to their surveyor which they said they would comply with. Mr. Tom said the driveway is on the high side of the lot. Everything should be good. Mr. Landis said right now you have the parking lot there. Does the two story house have access or not? Mr. Pavelcze said yes, it does have access. Mr. Landis said that already exists. Attorney Treadwell said his guess is it's a paper alley that was created in the subdivision that happened 80 year ago and that's where it comes from. He doesn't know why it doesn't show up on the County tax map, but is the alley in the back, is there a pipe that goes through there? Mr. Pavelcze said yes, it's proposed sewer. Attorney Treadwell said that's a question who gives you permission to put the pipe in the alley? Mr. Pavelcze said he owns all the lots. Attorney Treadwell said you own behind the alley as well? Mr. Pavelcze said he would have enough room there to put sewer in. Mr. Kologie said does your deed reference the alley? Mr. Pavelcze said he can't answer that today. Attorney Treadwell said one of the deeds which is the 2006 deed, which is the one you submitted with your application, and we also need to see the deed prior to that as well as the deed from you to Muschlitz so we can check the chain of title and see how this alley may or may not have been transferred. The only deed we have, from 2006, there are two tracks. One is .628 acres and the other is .738 acres. That doesn't get you to the total number anyway. Mr. Kologie said the calculations probably exclude the right-of-way. Attorney Treadwell said in any event, we need some more information about the alleys before we can figure it out. Mr. Landis said in the back alley, there's a proposed sewer going in there and if you didn't own it, you'd need permission from someone. The unnamed alley, if that is where the access is for the existing two story thing, we'd have to make sure as that may be grandfathered anyway.

Mr. Maxfield said is this sewer line proposed by Lower Saucon Authority as it looks like it's crossing the road heading over to the Bethlehem side. Mr. Pavelcze said that's where we would be able to connect. Mr. Maxfield said you side would still be able to be controlled by Lower Saucon? Mr. Pavelcze said they would definitely give that to you. Attorney Treadwell said when you sold the property to Mr. Muschlitz, who prepared that deed? Did you have a lawyer? Mr. Pavelcze said he believes so. Attorney Treadwell said if you could get him that individual's name, it would be helpful to him so he can go in the right direction. They had realtors working with them, so he doesn't know exactly, but he will get the information for Attorney Treadwell.

Mr. Landis said any other items on the Hanover letter? Mr. Pavelcze said do you have any questions? Mr. Landis said we have to straighten out this deed and who owns the alleys? Mr. Kologie said he's not sure we addressed A15 yet. Mr. Miller he would recommend waiving the requirement, but maintaining the other requirements. Mr. Pavelcze said that's fine. Mr. Landis said is there anything else? Mr. Miller said nothing he could think of besides confirming rights, outside agency approvals, and confirming the sewer can be constructed as shown

Attorney Treadwell said they need an extension from the applicant on the timeframe as February 10th is your 90 day clock. Mr. Landis said we will table it until you get this information back. Mr. Pavelcze said Lower Saucon Authority was out and had a meeting with Mike Maddas who is an Associate of Herbacker, and he was out there saying we should hold off on the sewer because of the proposed Phoebe Ministries coming in. Whatever would work out, it may be closer for them. Right now with the way the economy is, he just wants to separate that to have a separate tax I.D. He wants to keep the lot. He'll do whatever he needs to do to comply with everything. If he could hold off a little bit on the sewer until things would get better. They really don't need sewer in there. Mr. Miller said sewage needs to be addressed for this lot, independent and not conditional

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upon any other development. Phoebe's proposal is not a certainty. Mr. Pavelcze said that's fine. They will comply with it. Mr. Kologie said that means on lot or approved line. Mr. Pavelcze said that's fine. Mr. Landis said you have a problem. How do you get sewer on the second lot, not the existing one? You are not permitted to, so you have to get a sewer connection. Mr. Miller said both lots are required to be served by sewer, it must be determined to be feasible, it must be addressed with this plan, and cannot be contingent on what might occur as a result of another development. Mr. Pavelcze said he's not relying on it. That's what the gentleman at LSA said. He's moving forward with his plan. Mr. Miller said it may make sense to tie into an extension along Friedensville Road, but in the meantime, this plan must propose something that will work, and if the plan is approved, you will need to post security to construct the improvements, even if you hope never to need to construct them. Mr. Kologie said that means you have to put money up for the construction. Even if you don't intend to do it, you have to pay for it now and provide some sort of guarantee that the money is there to put it in. Mr. Landis said you have to go back to LSA and tell them you need approval based on me getting sewer, not anything to do with Phoebe. We can't do anything that's contingent on what anyone else is looking for. Ms. Stern Goldstein said both lots have to be public sewerage. Mr. Landis said you could have it set up until you build on the other lot and have the existing sewer without connecting. You have the subdivision, have the approval by LS to provide the service and posting of bond or whatever, put the sewer in, but would you have to put the sewer in to the existing house before the other lot was built upon? Ms. Stern Goldstein said you would either have to install the sewer or post escrow for the construction, as the lot is not permitted at the size proposed with an on-lot system. Attorney Treadwell said the amount of the security keeps getting bigger. Mr. Landis said you are going to need public sewer on both lots. You'll need that from Lower Saucon. Because of everything that's needed, it would be appropriate to have a motion to table this. We'll need an extension from you. If we don't get that extension, then we'll have to make a recommendation.

MOTION BY: Mr. Landis moved to table the discussion until such time when the owner can provide additional information regarding the previous ownership of the property and alley. The motion to table would be considered a motion to deny if the required extension is not granted by the applicant.

SECOND BY: Mr. Maxfield

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy– Absent)

C. MAJESTIC REALTY CO. – MAJESTIC BETHLEHEM CENTER – EASTERN PHASE LAND DEVELOPMENT PRELIMINARY/FINAL PLANS #LD 03-10 – 3905 COMMERCE CENTER BOULEVARD (TIME LIMIT – 04/20/11)

Attorney James Preston, Mr. Skip Bailey with Majestic and Mr. Rocco Caracciolo, Project Engineer was present.

Mr. Landis said they need to go over the letters and see what they will comply with. Attorney Preston said there was a meeting at the site last Friday with Majestic and your consultants and they went over a lot of things. He can tell you they have the two letters from Hanover and Boucher & James and they can probably put all the comments in two piles - the first pile, being "will comply" and then the other pile being those things which they asked for a waiver. They've identified those. They put together a waiver letter. The letter that Mr. Caracciolo is handing out will identify the issues. If they are not on that letter, then it's a "will comply". They are the waiver items. Mr. Caracciolo is going to be handing you letter that are going to be responses to the engineering review letter. They are numbered in accordance with the other letters.

Mr. Landis said they will go through the waivers. Mr. Caracciolo said the first one is a waiver for the final plan after preliminary plan. They are requesting a waiver for preliminary final. Due to the nature of the project with no roadway access, utilities all handled through the City of Bethlehem, most of the impact in Bethlehem they feel they can go through all the items with Lower Saucon with one preliminary final meeting. The second waiver is just for a sheet size. They are

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going with the larger 30"x40" sheet. Everything fits on the one sheet. Mr. Landis said the consultants like it. Mr. Caracciolo said the third waiver is for swales. As we discussed, this development is on the old Bethlehem Steel land and is actually one big slag. We need to keep the impervious coverage because of exceedances. The nature of the user is for industry environment. The next one is inflation due to our DEP Act 2 permit. We are not allowed to infiltrate into this site. These are additional waivers when we submitted our plan and then we had a meeting on January 14th with staff, Dan, Chris and Judy to go over the plan. For the stormwater itself, all our stormwater now has been redesigned. It's being collected and being taken down to the City of Bethlehem side. No stormwater will go out directed anywhere into a discharge into Lower Saucon Township. It's all being controlled there. Therefore, easements for the stormwater, they are just the paved swales with collector pipes on both sides of the building taking it down into the City of Bethlehem where it goes to it's eventual discharge, so they are seeking not to grant easements for the stormwater as that will all be maintained by the owner. The next is for the overlap of contours over 500'. They provide 150' overlap on their sides in Lower Saucon. They will show the content is off their property. Mr. Noble said are you going to the creek? Mr. Caracciolo said yes. The other one is another section in the ordinance that discussed the drainage easement and the same reasoning as before. He said the next one is there is kind of wordy and lengthy. This one is in the ordinance itself. There's a regulation that 50% of the impervious coverage on the site when its developed may be considered as pre-existing developed condition as a cover that isn't imperious. This site is 100% slag. They are actually reducing it down to 70% impervious. They are going to introduce 30% green area now around the perimeter and along the stream. They will meet their water quality regulations both with LVPC and the PADEP for their NPDES permit. Through the other reductions they are doing, they feel that extra 20% in the calculations would be an improvement. The next is to dedicate an easement around stormwater management facilities, so they had to mention that again. The last one is about easements around stormwater management. They understand it comes up in the ordinance allowed, and it's a situation you want to protect, but for them they are clearly just pipes that come down into the City of Bethlehem's side where they do discharge and they will be maintained and serviced by them. Attorney Preston said the rest of the letters they will comply. Mr. Caracciolo said they have their comments on each one, but they can and will comply with each one. They resubmitted plans tonight. The staff hasn't had a chance to look at them, but they are trying to do their part to provide plans on a timely basis. Mr. Caracciolo said all their comments are the revisions they placed on the plans. There is nothing from our meeting that they can't comply with. Mr. Landis asked Ms. Stern Goldstein if there was anything she saw that needs to be mentioned? Ms. Stern Goldstein said that if they are going to comply with everything in her letter that would take care of her comments. There were two other issues she wanted to point out to the Planning Commission. One is that the applicant proposes to plant the riparian buffer and she has recommended that they include sufficient information regarding planting details and size of plant materials on the plans. Also, a significant amount of buffer planting is proposed, but using trees in the fastigate, or columnar form, which are not native shapes and forms. She suggests that all plantings proposed on the site be native plants. The second item is lighting. The plans show lighting in Lower Saucon Township at the required height, but then shows taller lights in the City of Bethlehem. We suggest that all lighting on that side of the building be at the lower height, and be uniform. Mr. Caracciolo said it's a unique situation and a great suggestion from staff. On the east side, which faces Lower Saucon, there's a 16' maximum height of pole with the 60 degree cutoff. In the City of Bethlehem, it's actually a 25' maximum height, so the poles could be higher. When they first laid it out, him being an engineer and always thinking about the cost to their client, they actually switched when they hit the Township City line on the east side and went to 25' tall poles. The suggestion was made to go to all 16' and they did discuss it. It is a minor decrease in cost, but it makes good sense. Along the whole eastern side of the property, even extending into the City of Bethlehem, their poles will be limited to 16' and will have the 60 degree cutoff on the lights. The wall is 12' high. Mr. Maxfield said that's good news. When he was reading through the comments, the one thing that popped into his head was the situation that is occurring down along Easton Road where the lights light up a good portion of Lower Saucon all the way up to Route 78. That is the beginning of our rural area, so that 60 degree cutoff is probably a really good thing. Mr. Caracciolo said that's one of the things with working

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together. Things like that are great. What we can do, we will do. Ms. Stern Goldstein said they agreed to put in native species plants. Mr. Caracciolo said for security purposes and the spacing of them, they went with a pure evergreen hedge there and on the outside they added the deciduous plants that are native and they will be placed around the outside. It's a much better look and they were still able to maintain that buffer. The other thing was the evil crown vetch. It was a great suggestion with native no mow grasses and it starts out with a rye grass to get it established. Ms. Stern Goldstein said there are many options, and that she's sure their landscape architect will be able to find an appropriate native, non-invasive mix to meet their needs. Mr. Maxfield said on the map there is the perimeter wall with a little stone area. There's one tiny little macadam square there. Mr. Caracciolo said that's been revised too. With the baseline environmental report, that's an area of exceedances that has a contaminant on the ground that they really had to be careful for infiltration. They actually just pushed the wall out a little bit so it's a uniform wall coming down a little bit. The total impervious was 68.2, now they are at 71.7, but it's a nice uniform wall and it's covered with hard surface with macadam. Mr. Maxfield said that wall will be enough to cap it? Mr. Caracciolo said yes. The oddity of that again is they made it uniform and cleaned it up.

Mr. Miller said there appeared to be more waivers needed for this proposal related to not using infiltration as the stormwater management for the site. Someone said there doesn't sound like there's much choice on the infiltration aspect as its covered by higher level regulations. Mr. Landis said D1? Mr. Miller said waivers would be required from the sections cited in Comments D.1, D.5, and D.6 of our letter. Mr. Caracciolo said that's a good point, it's more like the easement how they show up again. Mr. Landis said in each one of these, there's a waiver in 137.11(k), was it already requested? Attorney Treadwell said no, the theory is the same, these are just the specific sections that technically need a waiver. If you wanted to make a motion based on our discussion, it would be to recommend the waivers contained in the January 20, 2011 Penoni waiver request letter along with items D1, 5 and 6 in the Hanover January 14, 2011 letter. Attorney Preston can redo their waiver letter before they go to Council.

Mr. Landis asked if anyone in the audience had any comments?

MOTION BY: Mr. John Noble moved to recommend approval of the waivers as listed in the Pennoni letter to the Lower Saucon Planning Commission dated January 20, 2011 as well as four additional waivers from Section 137.11.K, Section 137.13.A, Section 137.16, and Section 137.15 (listed as items D1, D5 and D6 from the Hanover review letter dated January 14, 2011.

SECOND BY: Mr. Maxfield

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy– Absent)

MOTION BY: Mr. Noble moved to recommend approval of the Preliminary and Final Land Development plans subject to the applicant complying with the conditions outlined in the Boucher & James letter dated January 14, 2011 and the Hanover Engineering letter dated January 14, 2011.

SECOND BY: Mr. Kologie

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

D. IESI PA BETHLEHEM LANDFILL CORPORATION – IESI PA BETHLEHEM LANDFILL CELL 4-F MODIFICAITON LAND DEVELOPMENT #LD 02-10 – 2335 APPLEBUTTER ROAD (TIME LIMIT 02/16/11)

Attorney Dave Brooman, Sam Donato, Rick Bodner and Nelson Benedict were present. Attorney Brooman said although the comment letter seems long, he thinks Dan, Rick and Nelson have twiddled down the issues substantially. As you recall from the last meeting, this is a situation where we have a pretty minor modification to an otherwise complex landfill land development approval known as the Phase IV that they got back in 03. It's to accommodate the reduction of the basin and creating a cell 4 so they don't have to put a pipe under the landfill or around the landfill. Basically, the site in the back across the back of the landfill has been redesigned with a wall and all the stormwater will be taken to the basins in the front. Since they got their land development

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approval, you have adopted a new stormwater ordinance according to Act 160 and it's many of those provisions that they just can't comply with. He has prepared a list of all the waivers. They've taken Dan Miller up on a couple of suggestions that they might want to be overly inclusive, just in case. You'll see from that list a substantial number of those arise from the stormwater ordinance, but there are also some SALDO waivers needed for the same reasons. What he'd like to do is just go through the letter and indicate which ones are the waivers and which ones are okay and they have no problem complying with and then raise for you a couple they need to discuss.

Attorney Brooman said they will first discuss the ones they have a problem with. He said he will rely on Mr. Miller if he wants to bring any particular waiver to their attention, you can do that. Mr. Miller said he was not sure whether permanent maintenance provisions were addressed satisfactorily for the Township. Attorney Treadwell said don't we have a stormwater management agreement from the original land development? Attorney Brooman said we have a land development agreement and he brought that along as it addresses the insurance and indemnities. Yes, this is unusual in the sense we don't dedicate anything to the Township. It is their responsibility just for the life of the landfill, the closure and post-closure. You don't want us to dedicate anything to you, so we don't have those easements here. Let's discuss the zoning comment to which really there's just one remaining in both Mr. Miller's letter on page 2, Section C, and it also is in Boucher & James letter on page 3, comment C. That is zoning ordinance provision 180.95(d) and whether or not any replacement trees are in order for this application. They discussed with you last time the trees are being taken out by the virtue of the movement of the PPL right-of-way to enable the wall to be built. There's a portion of that is on our site known as the wood fill area which is the old unlined area from many, many years ago. We don't think any trees should be required in the wood fill area and candidly with the respect to the other that goes down the backside of the mountain to Bushkill property, there have done all this work in connection with their standard permits and operating procedures with DEP and the Department of Forestry. They have that sort of tree management plan. He's not personally familiar with it, but all of that has been done under the PPL work. It's kind of a unique situation and we just don't see a requirement. Ms. Stern Goldstein said that DCNR does not issue permits for tree removal. Attorney Brooman said not DCNR, PPL has a general permit for all the clearing and grubbing they have for all of their right-of-ways and they have a conservation plan that DEP put together in coordination with DCNR. That was submitted up with our application and they actually came in and Sammy gave all that information. Mr. Donato said back in October, early November he gave to them everything he received from the utility right-of-way. Ms. Stern Goldstein said she has not seen that permit. Attorney Brooman said they have it and will give it to her. It might have even been in the December 7th response. This comment has evolved because the original comment was they wanted to see the extent of clearing and that the areas that are outside of the right-of-way are protected so that the details beyond the plans, PPL didn't stray, as you will, into areas beyond the plans and that would be reflected. He has to really go back three comment letters to see why that original response was put together that way, but that's how it has evolved. Ms. Stern Goldstein said the issue is to clearly identify the areas and extent of tree removal and to provide the required protection for the trees proposed to remain. Attorney Brooman said we were just trying to explain what they did. That had to do with the steep slope component and erosion sedimentation control and not have any problems on that side. That's what was referenced to the topping as opposed to completely leaving the area disturbed without any kind of vegetation beneath it. There's still going to be vegetation beneath it. Mr. Maxfield said that would make sense with erosion, but not with tree health. Attorney Treadwell said they can't have trees grow under their right-of-ways. They see it all the time. Not just in Lower Saucon, but everywhere. When they have to come in and maintain, they come in and maintain as they can't have the trees grow into their lines. Someone asked if there was tree clearing beyond the limits of the PPL? Attorney Brooman said no. That's really our position. Maybe we should have stated it clearer in there. He doesn't disagree. Ms. Stern Goldstein said that the issue is the limits of disturbance and protection of the trees to remain. She then commented that the permit the applicant showed her was not a permit for tree removal. It was a permit for erosion and sedimentation control. Attorney Brooman said all that has been shown on the plans. We've showed the limited disturbance. We realize that's not our permit. We

asked PPL to produce. Mr. Bodner said PPL is doing the clearing, not you. Mr. Landis said we don't have any say in that. We can't get new trees from PPL. Mr. Bodner said it's just clarification as to what that limit of disturbance is to be sure they are not doing anything beyond that. Attorney Brooman said they've done that. Mr. Donato said it was highlighted on the final submission that went in. These trees are going to be removed along the wall. There are some that are not in the PPL right-of-way. Attorney Brooman said it's all scrap brush. What they would suggest is someone go up there and take a look at it. Ms. Stern Goldstein said they just need to show the trees to be removed, and the sizes of the trees to be removed, on the plans. Attorney Brooman said he's not sure you would call them trees once you get up there. This is in the wood fill area, so not a lot is growing there. Ms. Stern Goldstein said they are going to revise the plan to reflect the tree protection of measures and methods that need to be in place at the wall. Mr. Donato said it's difficult to put a number on the trees because it's scrub growth. Mr. Bodner said you don't get hardwood until you get into Bushkill. The plan now shows the area that is going to be disturbed and there is also a note provided on the plan that describes tree protection measures. Mr. Donato said then we talked about using the orange fence while we were doing the construction. Mr. Bodner said when they had their workshop meeting, they may have had a misunderstanding as they thought they heard they could use fencing or silt socks. We misinterpreted that to say the silt sock, so they can revise that easily. Attorney Brooman said the comment about the LVPC, they brought the letter along from them. The other one is the County Conservation District and they also included that letter in the December submission that they don't review it, they rely on DEP review. That hopefully addresses those two. That's D1 and D3 on page 2 and comment E23 on page 5. Mr. Miller said D1 relates to outside agency review of the erosion control plan; the Conservation District was purposely not mentioned. D3 and E23 relate to LVPC review. It is very interesting that the LVPC letters says that the LVPC would not review the plans unless required by the Township, however LVPC directed the Township to pass an Ordinance that specifically requires LVPC's review. Attorney Brooman said he thought their letter was pretty clear that they weren't going to review. Mr. Donato said they are not going to review. Mr. Bodner said he thought you passed an ordinance that you have to review it. Attorney Treadwell said he thinks it says we have to give it to them to review. If they don't want to review it, they just say we don't want to review it. Mr. Donato said the final review is going to come from DEP with the permit application. They are going to review the erosion and sedimentation control measures on the facility. We just provide the letter back and provide them with everything.

Attorney Brooman said he'd like to direct your attention to D35 on page 4. They had talked about that before in terms of street trees and that was part of their prior approval and they put in the street trees. It was also a part of the renewal energy project, the landscaping, and they put in the landscaping and the street trees. Mr. Donato said he doesn't think there is any room for any more street trees. Mr. Maxfield said you can contribute to our tree fund. Attorney Brooman said they will probably be discussing that in a couple of months. Those are really the only comments they wanted to discuss. The rest either fall in the bucket of no problem, plans will be revised, and the other bucket is the lengthily list of waivers, most of which all have to do with the stormwater management plan. There's a couple that don't have to do with the stormwater management ordinance, but they actually discussed them last meeting and that had to do with the new provisions on basins and the external slope, internal slope, and if you recall, we agreed we will turn them into retention basins instead of detention basins and landscape them accordingly. They will put in non-invasive plants.

Attorney Brooman said for the SALDO waivers, it's many of the ones you received last time. The preliminary plan rolling into a preliminary final. The scale of the drawings just because a large area we are dealing with, the sheet numbering, which we tried to make it clear as possible. The easement we've talked about in terms of the drainage easements. The insurance already covered it in the current land development plan, but we already put it on the list, and if we want to cross it off, we can. Specification for driveways, they are all internal roads which open and close as the landfill moves from space to space. Drainage easements and street trees we discussed. He thinks that it really the many, if not all of the waivers we talked about last time and there didn't seem to be any

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problem. Mr. Miller wanted that direction in terms of this board so that you would feel comfortable with that approach. The board gave that indication last time and that's where we are.

Attorney Brooman said if there are any questions, he'd be happy to address them. Mr. Noble said the bottom line is if our engineers are comfortable with the waivers and IESI will comply. Let's vote on the waivers. Attorney Treadwell said you can just use the revised January 20, 2011 sheet and do it all at once. Any recommendation would be subject the review letters.

MOTION BY: Mr. Kologie moved to approve the waivers as listed in the waiver memorandum to the Planning Commission dated January 20, 2011.

SECOND BY: Mr. Noble

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

Mr. Landis said now the plan itself. It's the preliminary final and would be subject to the Hanover and Boucher & James letters. Mr. Noble said historically we wanted to send these to Council cleaned, so we're making them subject to, but are they being cleaned up? Attorney Treadwell said they get cleaned up before they go on a Council agenda. We will not put it on an agenda unless these things have been addressed and there are much shorter letters. It's been working out well.

MOTION BY: Mr. Lychak moved to recommend approval of the Preliminary and Final Land Development plans subject to the applicant complying with Ms. Stern Goldstein's tree protection comments* and the conditions outlined in the Boucher & James letter daed January 14, 2011 and the Hanover Engineering leter dated January 19, 2011. *Judy's comments referred to the requirement that the applicant show the limits of all prosed tree disturbance as well as the placemtn and correct type of tree protection measures.

SECOND BY: Mr. Maxfield

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

V. MISCELLANEOUS BUSINESS ITEMS

A. APPROVAL OF MINUTES – NOVEMBER 18, 2010 & DECEMBER 16, 2010

MOTION BY: Mr. Kologie moved for approval of November 18, 2010 minutes.

SECOND BY: Mr. Maxfield

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

MOTION BY: Mr. Landis moved for approval of December 16, 2010 minutes.

SECOND BY: Mr. Maxfield

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

VI. PUBLIC COMMENT/CITIZEN NON-AGENDA ITEMS – None

OTHER:

Attorney Treadwell said we got a letter from Phoebe stating they would like to come to the February Planning Commission meeting. They submitted a revised Power Point presentation; however, they didn't submit any money for anyone to review it. At the moment, it hasn't been distributed to anybody to review but what he'd like everyone to think about is if they do come back in February and we will get you whatever materials we can get you as soon as they provide some money. That's the stumbling block at the moment. It would probably be a good idea at the February meeting if they are here to make a recommendation one way or another – either we like it or we don't like it. Mr. Landis said what is coming in front of us? Attorney Treadwell said he believes what they told him they would submit are some revisions that contain a different building height, a different entrance location. Mr. Garges said that Phoebe has submitted a copy of their Powerpoint presentation. It has not been distributed because they have not

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submitted an escrow check to cover review costs. Mr. Garges left the meeting to get a copy of the submission to try to tell what changes were made.

Attorney Treadwell said the one overriding question is, do we want to change the zoning ordinance or not, that's the real question. All this detail stuff is nice, but we're either going to leave the zoning ordinance as it is or allow this type of use, the CCRC in the zoning district which would be allowed in that zoning district wherever you go. That's really the overriding question – do we want to change the ordinance or not? Mr. Kologie said why don't we set the rules of the game here and set what our non-starters are. It can't be this, it can't be this many units, and see if this is something they want to continue with. Attorney Treadwell said from the Township's perspective, it's probably gone on long enough and we need to tell them no, we're not going to touch our zoning ordinance or if we are going to touch it, here's how we're going to touch it.

Mr. Landis said the primary issue is are we going to touch the ordinance in this zone. Mr. Noble said as a Planning Commission, if we say next week after the presentation, that we would be interested in this, are we all prepared to go through all the limitations at the same time? Attorney Treadwell said he doesn't think we have to get to that point. If you have an opinion one way or another on that initial issue, do we want to change it? You say maybe this use would be okay in this district and then tell Judy, Dan, Chris that we need to go back and look at the details. If we're not even going to consider the idea of changing the zoning ordinance, then we should just tell them no, we're not going to recommend that to Council and then let Council do whatever Council is going to do. Mr. Noble said what is the legal statute with that as far as having to provide that in the township? Attorney Treadwell said we have enough other uses that covered in our zoning ordinance that we don't have one specific use that combines all of the different things they want to do, but we don't have to have one that combines all the different things we want to do. We allow for hospitals. We allow for the St. Luke's hospice care. We allow for nursing homes. We allow for all the uses that make up what they want to combine into one use. He doesn't have any real issue if someone wanted to challenge our zoning ordinance because we don't allow for a CCRC. We don't have to allow for a CCRC. We have enough of the components that make it up. Mr. Maxfield said it doesn't sound like Phoebe would be the type of firm that would do that anyway. Attorney Treadwell said they've said all along they wouldn't, but that doesn't mean anything. Mr. Landis said otherwise you just run into a thing where people redefine a use. They could have that in another part of the district. Attorney Treadwell said the Township has areas that are zoned for a hospital, for a nursing home, for all the components that make up this CCRC. Mr. Noble said are they buildable? When he was looking at the building areas for those type of zones, they were all in sloped sections on the mountain? Ms. Stern Goldstein said that areas are available in the Township that would be feasible to construct those types of institutional uses. Mr. Noble said he was looking more at the big hospital type facilities. The only type of land we have left is the big sloped areas. Mr. Kologie said someone has to set what the parameters are from the Township side. If we chose to even hear or entertain it. From the fiscal standpoint, it's pretty easy to shift those numbers any way you want to. The group that is challenging this put their numbers together. That's not a good reason to make a decision. Does it make sense from a land use perspective? Ms. Stern Goldstein said that the land use could have some merit, but that the issue with the plan as currently proposed is the intensity of the use. The amount of impervious surface, the density/number of dwelling units, the height and massing of the buildings, the medical office building, and the proposal to have some of the ancillary uses open to the public such as the adult day care, the child day care, and the medical offices. Township staff repeatedly shared these concerns with the applicant, but they have indicated that they want to take them to Council to discuss.. Attorney Treadwell said as Ms. Stern Goldstein said they've been told on more than five occasions that some of the details of the proposal they set forth would not be recommended by any of the Township professionals and they chose to leave it that way.

Mr. Maxfield said the other thing we could do would be if we were to decide we didn't like this whole approach to it, would be to just enter into some sort of exploration as the Planning Commission on our own – to look at that zoning district or another zoning district and decide how we might want to modify those kind of things. Mr. Landis said that's what we did when we did our master plan. Mr. Kologie said his experience with these types of projects, these zoning changes are created as a result of a specific project and it's not something you create an ordinance and all of a sudden these things fit in. If it's something we

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want to entertain, it has to be a cooperative effort on both parties to get to a point that meets both. It's more someone has an idea and they want to pursue it. Then first of all, the first priority is it something you want to do and then second, it's setting that framework and working towards it. Attorney Treadwell said some of their comments are we need to have a 65' building, they told us, but evidentially they don't as they are down to 50' now. Ms. Stern Goldstein said they need to decide exactly what they need to have and then what they can amend to address the residents' and the Township's concerns.

Mr. Kologie asked staff what are their opinions in regards to the use of this property, as a CCRC use? Ms. Stern Goldstein said the proposal has some merit, but that some of the most successful CCRC's she has seen have been built adjacent to or close to existing services such as medical offices, shops, banks, and personal service providers. These types of uses are needed by the residents, visitors, and employees and if they are not provided on site, then most often the CCRC would provide shuttle bus service to take the residents to the service providers. Mr. Kologie said they are creating that community right there with all services right on site without relying on someone else. They create those uses for themselves so they are self-sufficient. This is a market decision based on where the need is. For us to try to impose to them what our marketing thoughts are is wrong. That's their decision. Ms. Stern Goldstein said that is true, but in this case, they are proposing some services on site, but are proposing to open them to the general public, which is not usually what is included in a CCRC. Mr. Maxfield said it kind of looked like they were trying that on a little scale as they had a little chapel, etc. Mr. Landis said the main issue is do we want this in our R-20. Mr. Kologie said from a yes or no standpoint, is it clear to you to say yes or no? Ms. Stern Goldstein said that is up to you. The use may have merit, but it seems that the intensity of the use as proposed in the plan and the applicant's draft ordinance seems to be a bit too intense. Mr. Garges said that at a minimum a use like this should only be considered as a conditional use. Mr. Kologie said it's going to be a conditional use. Attorney Treadwell said it's got to be.

Attorney Treadwell said let me ask a procedural question. The last time Phoebe was in front of the Planning Commission, we had it at the school. Did anybody see any benefit to having it at the school other than maybe we can fit a few more in? He thought it was harder to hear, you couldn't hear the visuals. He thinks this room just was much better to have that kind of meeting at. The people that came to the one at the school we could have probably fit into this room. The detriments of that room outweighed the benefits of fitting in a couple more people. Mr. Landis said he would recommend it being here.

Mr. Noble said there is land already zoned for hospitals. Mr. Kologie said you have to get to the point whether the use is appropriate and then we set what the ground rules would be. Attorney Treadwell said it would be perfectly okay for the Planning Commission to say we think that use might fit there and we'd like to come up with our own version of what it would look like, if that's what you feel. If you don't think it fits there, it doesn't fit there. Mr. Maxfield said some of the CCRC uses would fit there, but not all jammed together. Mr. Maxfield said are we just willing to let it go to dense residential. Mr. Kologie said with a residential subdivision, we won't get many traffic improvements; we'll get what we get. Attorney Treadwell said they have a goal in mind and are working towards that goal. At some point, they are going to have to make a business decision they are going to continue or they are going to just stop. Mr. Kologie said without any financial incentives, we must believe the CCRC is a much better use than a residential use. Attorney Tradaell said he would agree with Ms. Stern Goldstein that we haven't seen a lot of details, but they do have an overall tax plan that they believe the real estate taxes they would pay at this density would be around \$1 million. They are proposing that instead of the normal split, which is like 10% goes to the county, 17% goes to the Township, and the remainder goes to the school district, they were proposing to flip the Township and the school district numbers so that the Township would get more. Attorney Treadwell said their proposal was to flip the numbers, but that needs the school district to approve it and agree to it. The way they proposed is because the Township is providing all the services and there aren't going to be any school kids. You got to have the school district go along with that. Mr. Kologie said from a township resident, where do I want the majority of the money to go to? Do I want it to go to the school or the Township? The school as I'm taxed more heavily from the school district than the Township. It would be beneficial to him for the money to go to the school. There's no load in the school and it's free money and the taxes might not go up. Mr. Maxfield said that and the payment in lieu of taxes program is a set amount of money and in ten years that may be a low amount of money and the only mechanism they

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mention to alter that would be reassessment. Mr. Kologie said what percentage of their property is going to be tax free as it's a non-profit. Attorney Treadwell said they would agree to the payment whether they are characterized as non-profit or not. The pilot program goes for as long as we write in the agreement. The details of that would have in it that as the value of their real estate goes up, so would the pilot payment. If it's \$1 million now, but it increased as the value of their property goes up. Mr. Maxfield said in Lower Saucon, we have properties that haven't been reassessed since 1985. Attorney Treadwell said that's true. Mr. Kologie asked Mr. Miller what his opinion was on any infrastructure items? Any impacts? Mr. Miller said depending on the density, there may be less impact on traffic and educational expenses than from a residential development, however there would likely be a higher demand on emergency services. Mr. Kologie said ambulance services aren't even municipal services. They aren't Township owned. Have we looked at any other communities where these are located and how that's impacted emergency services? Mr. Garges said he had contacted the borough adjacent to where the Phoebe Berks facility is located and they did say that there has been an increase in EMS calls due to this project.

VII. ADJOURNMENT

MOTION BY: Mr. Lychak moved for adjournment. The time was 9:05 PM.

SECOND BY: Mr. Maxfield

ROLL CALL: 5-0 (Mr. Hijazi & Mr. Kennedy – Absent)

Submitted by:

Mr. John Landis
Chair