

1 SOLEBURY TOWNSHIP BOARD OF SUPERVISORS, PLANNING
2 COMMISSION & ENVIRONMENTAL ADVISORY COUNCIL

3 Fracking: Its Impact & Municipal Controls Over
4 It.

 ORIGINAL

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6 Meeting held on June 8, 2015 at the Solebury
7 Township Building, Sugan Road, Solebury, Pennsylvania,
8 commencing at 7:00 p.m., prevailing time.
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11 APPEARANCES

12 GRIM, BIEHN & THATCHER
13 BY: JONATHAN J. REISS, ESQ.,

14 CURTIN & HEEFNER
15 BY: JORDAN B. YEAGER, ESQ.

16 CLEMONS, RICHTER & REISS
17 BY: TERRY W. CLEMONS, ESQ.
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1 MR. COSDON: The issue has been the
2 forefront of the conversation in the state for
3 several years. The basin has not affected
4 Southeast Pennsylvania and Solebury Township as
5 a moratorium position.

6 Unless extended, this moratorium is due
7 to expire in 2018. The state has mandated that
8 hydraulic fracturing must be allowed within all
9 townships as a permitted use. Solebury Township
10 can not override this mandate.

11 In the original bill, fracturing
12 companies were able to override the local zoning
13 and operate wherever they choose to do so. Of
14 course they need permission of the property
15 owner.

16 Through the efforts of Jordan Yeager,
17 this practice was overturned, and each township
18 has the ability to identify where fracking would
19 be permitted. And for that, Jordan, thank you.

20 Recently a homeowner in our township
21 was approached by a company seeking a contract
22 for gas rights on their property. The Board of
23 Supervisors has identified fracking as an item
24 that we want to address this year. Is it near

1 the top of items of our priority list.

2 We're meeting this evening to take the
3 first steps to identify a permitted zone. If a
4 moratorium is not extended, we will be prepared
5 to put an ordinance in place.

6 The township Planning Commission will
7 have the responsibility of drafting the
8 ordinance with input and recommendations from
9 our EAC. It will then be sent to the Board to
10 review, the Board of Supervisors, and eventual
11 action.

12 Tonight we have the privilege of having
13 three attorneys present, Jordan Yeager, Terry
14 Clemons and Jonathan Reiss. And they will
15 present an overview of the situation. And as
16 this is a work session, questions can be asked
17 and answers, if available, can be given. I then
18 like to introduce you to Jordan and Terry and
19 Jonathan.

20 MR. REISS: Thank you. I think
21 everyone has a copy of the outline we're going
22 to try to follow tonight. Jordan is going to
23 give us a previous history of fracking,
24 pipelines and their impact on municipalities and

1 the history of Pennsylvania law regarding
2 regulation of those activities.

3 Terry is going to tell us briefly about
4 then preservation and what the township is doing
5 in their easements regarding fracking. Then
6 we'll try to sum things up and first probably
7 take questions from the Supervisors, Planning
8 Commission, and EAC since this is the purpose of
9 the meeting tonight. If we have time left over,
10 we'll try to address any questions from the
11 public. Jordan, would you like to start?

12 MR. YEAGER: Sure.

13 MR. REISS: We have a court reporter
14 tonight. The Board of Supervisors wanted a,
15 rather than their general minutes, verbatim
16 transcript of what occurred tonight. Because
17 there's a court reporter here, she can only take
18 down one person's comments or questions. So
19 when one person is speaking, only one person can
20 speak at a time. And just make sure she can
21 hear you. Thank you.

22 MR. YEAGER: If I may. So thank you
23 for having me here. You know, Solebury has been
24 at the forefront of utilizing its land use

1 ordinance, it's utilizing its zoning ordinances
2 to protect property values, protect the
3 environment, protect public health and safety
4 and welfare.

5 And what I'd like to do is go through
6 an overview of what happens when we talk about
7 unconventional shale gas development, give a
8 little background on what we've understood about
9 zoning, how that -- as it relates to gas
10 development, how that changed with Act 13 in
11 2012, and what happened in the courts in a case
12 we were involved in that was resolved at least
13 in part by the supreme court of Pennsylvania in
14 2013. And then kind of circle back and talk
15 about the general zoning considerations that
16 solebury and municipalities around the state
17 have to face.

18 This is not going to be a scientific
19 discussion. This is not -- we don't have time.
20 It's really not the focus to get into all the
21 details about the science and the risks
22 associated with unconventional shale gas
23 development.

24 We're really going to address this

1 simply from the perspective of a land use. And
2 it's important to remember that this is a land
3 use just like all other land uses. And it means
4 that as a municipality there are things you can
5 do and certain things you can't do in exercising
6 your authority. In doing that, you have to
7 understand what the nature of the use is. So
8 that's what we started with.

9 This is -- so I'm going to start with
10 some pictures. This is what a shale gas
11 development well site looks like. The typical
12 well site development results in around five
13 acres of additional impervious surface.

14 And most of that is made up of the well
15 itself, which is what you see here. Then some
16 of that is with the access roads. When you get
17 into the broader development that comes with a
18 well site, you have to look at primarily
19 pipelines.

20 There are lines that run from the well
21 site to a compressor station. And a compressor
22 station is utilized to adjust the pressure of
23 the gas, to get it to a broader set of
24 pipelines, which will then take it ultimately to

1 a natural gas processing facility, then into an
2 interstate pipeline. And they are building
3 additional facilities and coastal locations so
4 they can ship the gas overseas.

5 So this is another image of a site.
6 This is a site that has fracking going on. We
7 talk about fracking as an overall term, talk
8 about shale gas development. Fracking is really
9 one part of the shale gas development process,
10 but it's used as shorthand.

11 This is what it looks like when a well
12 site is being fracked, and you can see the
13 additional equipment that gets brought on.
14 These are all trucks that are bringing in
15 chemicals, bringing in sand, and bringing in
16 water to frack the well.

17 When the basic stages of development of
18 a site, they first come in and clear the land.
19 They turn it impervious, they create a pad site,
20 then they set up the rig, and then they frack
21 it. Then you'll see what it looks like later in
22 the process.

23 Some sites are utilizing sound walls.
24 So this is a sense of what those sound walls

1 will look like. This is a typical image of the
2 clearing that gets done for the transmission
3 lines for the -- I'm sorry, for the gathering
4 lines, the pipelines that gather the gas from
5 the site and take it off site.

6 This is an image of a well with the --
7 with the drill rig on it. And the upper portion
8 is an impoundment pit. Impoundment pits are
9 primarily used to store the waste that comes out
10 of the well.

11 So they -- they have a concoction of
12 toxic chemicals that they mix with sand and
13 water after they got the well drilled and cased.
14 The casing is a concrete layer that is supposed
15 to separate what's going down and up through the
16 well from -- from the aquifer and from the rocks
17 that are outside.

18 What they bring back up, if they bring
19 back up what's called produced water, they bring
20 back up some of the fracking chemicals. The
21 produced water is the heavily salted water.
22 They're going down about a mile deep.

23 And so the water that's down there is
24 not like the water we're used to when we drill a

1 drinking well. It contains naturally occurring
2 radio active material. And it's very, very
3 salty. They put that in -- they -- whether you
4 have a frack pond like that, that goes in there.

5 And then a lot of it will get shipped
6 out from there in trucks under current
7 regulations. They're ultimately allowed to bury
8 what's left over in the fracked ponds on the
9 site.

10 This is an image of a compressor
11 station when it's being flared. So you can see
12 the flare in the middle. A compressor station
13 is generally a small little factory. When you
14 look -- you know, we hear a lot about water
15 issues with shale gas development.

16 There are significant air issues and
17 ozone issues. And those are associated largely
18 with compressor stations. And so that's another
19 land use to be thinking about when you're
20 thinking about the regulatory regime you want
21 moving forward.

22 You're not just talking about the well
23 site, you're also talking about how we regulate
24 impoundments, because it's all put the

1 impoundments. They'll have group impoundments.
2 So a lot of different wells will use a
3 centralized impoundment and compressor stations
4 as well.

5 This is a natural gas processing
6 facility. So there's really nothing that
7 distinguishes this from any other industrial
8 site that you can imagine. As you can see, it's
9 quite large and has -- is a significant source
10 of air.

11 So we have some before and after
12 pictures in the Act 13 litigation. We were -- I
13 serve as solicitor to Nockamixon Township and
14 counsel to Delaware River Keeper Network in
15 Yardley Borough, we joined with some
16 municipalities of the western part of the state.

17 This is from Cecil Township, one of the
18 municipalities we work with. This is an aerial
19 image of pre-construction. And this is that
20 same area once the impoundment was installed.
21 That's a step farther out, kind of parallel to
22 the before picture. So you can see the level of
23 earth disturbance.

24 This is a drill site before the well

1 site that was put in. And that's what it looks
2 like after the well site has been developed.
3 And then here is a well site with an impoundment
4 site right next door.

5 After the well has been fracked, it
6 continued -- they ultimately take the rig away.
7 It stays in a production phase. And so there's
8 a lot -- there is a lot less equipment there.
9 There's a lot less truck traffic.

10 Truck traffic on site is another thing
11 that needs to be considered whether you're
12 looking at locations in your municipality, where
13 are the roads suitable for the amount of truck
14 traffic. You're talking about thousands of
15 trucks per site to bring the equipment on to
16 bring the sand, the water and chemicals on as
17 part of the process.

18 And so one of the biggest impacts that
19 communities have faced has simply been with the
20 roads. And it was really a lot of what
21 propelled the discussion about impact fees was
22 because communities didn't have the money to
23 repair the roads that were being destroyed by
24 the trucks.

1 So this is what's left. You'll see a
2 variety of equipment that keeps the well in
3 operation. It can last for 30 years. Sometimes
4 they come back and re-frack the well. So
5 they'll bring all the equipment back that you
6 saw earlier and turn it back into a frack site.
7 They can re-frack wells five times, six times.

8 There are also different formations
9 that can be targeted. Now we're here we don't
10 know for certain whether the formation that is
11 contemplated for targeting will be productive.

12 So if they identify a productive
13 formation, we really don't know what's going to
14 come down the road. In western Pennsylvania
15 we're redoing some work. They can target two or
16 three different formations for each well. So
17 they go back through the whole process from one
18 site.

19 One site can also have multiple wells.
20 Frequently you have up to six wells on a site.
21 Each well takes a lateral, a horizontal line
22 that goes out in different directions. The
23 horizontal lines can go out currently generally
24 about two miles.

1 And so they'll -- when you're --
2 ultimately if you were going to be very
3 sophisticated about placement and there were
4 geologic studies that could tell you what areas
5 were most likely to have minerals that could be
6 mined, you would also conduct geologic studies
7 to determine that, or you would have the
8 industry conduct those studies. And you would
9 place the zones in an area where those resources
10 can be developed. If that's accepted, that's to
11 be accommodated.

12 At the beginning of the process, they
13 -- companies will do seismic tests. These are
14 what are called thumper trucks. And they are
15 exactly what they sound like, and the image kind
16 of gives you a sense.

17 They -- picture of multiple -- of a
18 whole bunch of elements at once in a parade, all
19 jumping up and down. And they get seismic
20 waves. And they utilize that material, that
21 information to make determinations about site
22 location and details about how to construct the
23 well.

24 A number of sites had experienced fires

1 and blowouts. There was a fire within the last
2 year in Green County. And for most of the times
3 that they have a well blowout, they're looking
4 to evacuate from a two-mile radius. And so
5 that's part of what communities are considering
6 is what do you have in that radius and making
7 sure that you're siting in an area where you're
8 going to minimize evacuation concerns if there
9 is an explosion on site.

10 And that's the subject of some
11 litigation we're involved in in Butler County
12 where they want to put a well a half mile from a
13 major school campus, three thousand students,
14 elementary school, middle school, and a high
15 school.

16 And they have changed their zoning to
17 allow drilling in 90 percent of the township.
18 And the first well is going right next to the
19 schools. This is just a slide that I borrowed
20 from that case to give you a sense of the air
21 emissions. 'Cause mostly we've been thinking
22 about water. And air emissions are a
23 significant concern.

24 The blue are nitric oxide. The red are

1 particular matter, and hydraulic organic
2 compounds are in the green. So the well site,
3 and this is based on a study that the industry
4 representative had done. And we fixed her
5 charts because she had underestimated things
6 that hadn't stacked each of the components that
7 she was looking at.

8 So this is what you're looking at for a
9 well site utilizing industry numbers. And these
10 are all industrial sites, steel mills. And so
11 we see that the nitric oxides that you're
12 dealing with are significant from these sites.
13 That doesn't get into the compressor stations.

14 So what chemicals are involved is
15 something that folks are concerned about. Let
16 me say that these issues I think are primarily
17 being felt by communities that have open
18 impoundments. The private well issues that
19 people have experienced have primarily been from
20 gas migration.

21 And so when you drill a hole a mile
22 deep, you're creating a pathway. And geologists
23 will tell you that it's impossible to get a
24 perfect bond between the outer edge of the

1 casing and the rock in the earth. And there are
2 naturally occurring fractures. And you got that
3 pathway between with the outer edge of the
4 casing and the rock. And that seems to be where
5 most of the methane migration problems have
6 been.

7 And when there are issues with -- there
8 have been a lot of issues with impoundments
9 leaking. And that's where these issues have
10 come into play the most. So this is just from a
11 House of Representative study on some of
12 chemicals that are involved.

13 It is -- it is currently the case under
14 federal law and under state law that drilling
15 industry does not need to disclose all the
16 constituents of fracked goods. They will
17 identify things by proprietary names. And then
18 you have to -- but then within those proprietary
19 names, you can't get the information about
20 what's included.

21 And in some other litigation that we
22 haven't been involved in, the drilling companies
23 have admitted they don't have any information.
24 It's trademarked, it's proprietary information

1 from the companies that supply it to them. They
2 employ contractors. So they have said they
3 can't disclose it. The number of the chemicals
4 that are involved, particularly there are a
5 number of benzenes are known cancer causing.
6 All right. So that's the bad news overview.

7 The -- so what does the regulatory
8 framework for legal ordinances look like? Pre
9 Act 13, and I'll talk about that in a minute,
10 there was litigation that went up to state
11 supreme court that looked at the Well and Gas
12 Act as they have written previously prior to
13 unconventional shale development even being
14 considered.

15 And that statute, the oil and gas
16 preemption language that said that the issues
17 that are -- the operational issues that are
18 addressed under state law are for the state.
19 But that municipalities can utilize their zoning
20 ordinances, ordinances under the Floodplain
21 Management Act, Municipalities Planning Code.

22 There was litigation over two
23 municipalities, and we participated, friend of
24 the court brief from those cases as did Terry.

1 And the court said that under the old Oil and
2 Gas Acts, municipalities could regulate where in
3 the community drilling takes place, but not how
4 the drilling is done.

5 So as it's been thought of, that means
6 that you can't require different casing
7 standards than the state requires. That's kind
8 of the easiest example. So the more technical
9 operational your ordinance looks, the more it
10 looks like it's targeting gas drilling for
11 operational regulations, the less it looks like
12 a zoning ordinance, the more subject to
13 challenge it was and it would be.

14 So this is -- this was a slide my
15 daughter helped me with back when she was in
16 like 5th grade and she was much better at
17 slides. So this was one of these things that's
18 not like another kind of quiz, so -- and 'cause
19 remember for a zoning you're putting similar
20 uses together, you're separating them for
21 compatible uses.

22 So everybody recognizes this as a gas
23 well. Is a gas well more like a house, more
24 like a farm or more like a factory? And that's

1 the process that planners go through in
2 identifying where in the community to zoning
3 usage. You're going to put it with light uses.
4 That's what municipalities were trying to do.

5 Act 13 came along. Industry very
6 openly didn't like having to do to
7 municipalities and face different standards,
8 which is what every other industry has to do and
9 had to do, but they really wanted uniformity.
10 And they were successful in getting legislation
11 that defined the change to Oil and Gas Act,
12 defined oil and gas operations broadly, and
13 required every municipality in the state to the
14 allow oil and gas development activities in all
15 zoning districts.

16 So if you have a resource protection
17 district, an open space district, it didn't
18 matter. But you had to allow oil and gas
19 operations everywhere. For drilling, fracking,
20 well site construction, every municipalities in
21 the state was required to change their
22 ordinances within 120 days to allow drilling,
23 fracking to be permitted by right in every
24 zoning district.

1 The only limitation really was a 500
2 foot setback in a residential district from
3 existing buildings. Impoundments had to be
4 permitted by right in every zoning district
5 including agricultural. Compressor stations
6 permitted by right in agricultural and
7 industrial districts and permitted as a
8 conditional use in all others.

9 On behalf of Delaware River Keeper
10 Network, Nockamixon Township, Yardley Borough,
11 and five municipalities in the western part of
12 the state, we brought a challenge to Act 13.
13 And that was filed in the Commonwealth Court.

14 And in July of 2012, so within about
15 six months of -- the law was signed on
16 Valentine's Day of 2012. Within about six
17 months, the Commonwealth Court issued a decision
18 striking it down, and I'll get into the logic of
19 that. Then the supreme court affirmed that on
20 different grounds, largely in December of 2013.

21 The lawyers in the case brought
22 different arguments to the table. My principal
23 argument contributions to the case was Act 13
24 violated the environmental rights in the state

1 constitution, which is unique in our country.
2 There's only a handful of states that have less
3 than a handful that have strong environmental
4 rights amendments.

5 But it declares that people have a
6 right to a clean environment. And it declares
7 that the Commonwealth and of all applicable
8 subdivisions and agencies serve as trustee over
9 Pennsylvania public natural resources, that the
10 Pennsylvania natural resources have a common
11 property of all people, including generations
12 yet to come.

13 And that as trustee of these resources,
14 the Commonwealth and again that had already been
15 defined in laws meaning municipalities must,
16 shall and conserve and maintain them for the
17 benefits of all people.

18 So we said that by requiring
19 municipalities to change their ordinances and
20 allow drilling everywhere, it put municipal
21 officials in the position where they had to
22 violate their constitutional obligations. And
23 so the law went too far, because it put
24 municipal officials in that position.

1 Commonwealth Court didn't like that
2 view, but fortunately like the view of one of my
3 colleagues, which was that the law violated
4 article one section one due process a property
5 rights section of the state constitution.

6 We have often talked about property
7 rights in a way that is critical; I want to do
8 on my land what I want. The courts recognize
9 that there is a reciprocity of rights. And if
10 you can do on your land what you want as long as
11 it doesn't injure my property. As a neighbor, I
12 have property rights too.

13 And for zoning to be rational -- for
14 zoning to be constitutional, it has to be
15 rational. But for it to be rational, it has to
16 be directed toward the community has a whole.
17 And it has to be based on planning and balancing
18 community interests.

19 If you inject industrial uses in areas
20 that weren't intended as industrial uses, and
21 that people have invested money to buy their
22 homes and raise a family in those areas or to
23 build a business in those areas, you're
24 undermining those reasonable expectations.

1 You're making the zoning irrational, therefore,
2 it violates due process.

3 And that was the argument that the
4 Commonwealth Court accepted. And that decision
5 is good, it remains the law, rationality remains
6 the law. And it's something that municipalities
7 that are allowing the zoning -- that are
8 changing their zoning to allow it everywhere are
9 facing challenges that they're doing the same
10 thing that Act 13 did, because they're
11 undermining the rationality of their zoning, and
12 they're violating the reciprocal property rights
13 that residents have. Does that make sense?

14 'Cause when I heard it, it didn't make
15 any sense. But it does now. So the court found
16 that Act 13 violated substantive due process.
17 We went up to the supreme court. The supreme
18 court had four justices, six at the time because
19 one had been indited.

20 So it was already in front of six
21 justices. Four justices agreed that Act 13 was
22 unconstitutional. Three agreed with my argument
23 that it violated article and section 27
24 environmental rights amendment. And one justice

1 agreed with the Commonwealth Court and said that
2 it violated substantive due process.

3 So majority opinion in terms of it
4 being unconstitutional, but different approaches
5 to why. None of the justices disagreed with the
6 rationale of the others. So that fourth one
7 didn't say anything bad about the environmental
8 rights amendment. The three didn't say anything
9 bad about the due process.

10 So there's a lot of question marks
11 about how the courts will apply that going
12 forward. Two of the justices who were --
13 there's a lot of math here, I apologize. Two of
14 the three who agreed with the environmental
15 rights analysis are now off the bench, one
16 resigned because of inappropriate e-mails. And
17 when one was forced off due to mandatory
18 retirement.

19 So we're going to have three vacancies.
20 Three justices are up this year again, so the
21 court will be a new court come January. So I'm
22 going to go through some of the key elements in
23 the court decision.

24 The supreme court decision is the first

1 time that the court had utilized the
2 environmental rights amendment to declare a law
3 unconstitutional. So there's a lot of language
4 in there about the fact that our environmental
5 rights are stated in the declaration of rights
6 section of our state constitution.

7 That means that -- that they are on the
8 same level as your other political rights. So
9 just like a municipality can't take action that
10 would unduly limit your free speech rights or
11 your right to bear arms or your property rights.

12 Likewise a municipality or any branch
13 of government can't take action that would
14 unduly infringe on your right to a clean and
15 healthy environment.

16 And that means that if a municipality
17 goes too far, the citizens can bring an action
18 to remedy it. This notion of environmental
19 rights being inherent rights, being infeasible
20 like our other political rights, has really been
21 the focus of a lot of attention around the
22 country over the importance of the decision.

23 For our purposes, we look to the
24 discussion in the court about the statewide

1 standards. Because this is part of how these
2 issues are going to continue to play out.

3 To what extent is a municipality
4 limited by what remains of Act 13 in what
5 provisions you can act? And the court says that
6 statewide standards are in effect are suspect.
7 That because municipalities have an obligation
8 to protect the right of their residents,
9 municipalities have to be able to exercise the
10 authority to do so.

11 And included in that is an obligation
12 to protect the environmental rights of the local
13 residents that are tailored to local conditions.
14 So if you just say statewide all you need is a
15 500 feet setback or 300 foot setback from water
16 or a building, and that doesn't account for the
17 historic church we have over here or from the
18 fragile aquifer that we have in this part of the
19 township, that you're not considering all the --
20 you're not taking in account all the
21 considerations you need to to protect the
22 citizens rights. And protection of the
23 environment and aesthetic interest to keep our
24 local government role and crucial to the

1 well-being of Pennsylvania residents.

2 This amendment, like the other
3 amendments, the state constitution aren't of the
4 grant of authority. So it doesn't mean that a
5 municipality can go and do whatever it wants to
6 protect the environment.

7 It's a limitation. So what you can't
8 do is go and do anything you want in a way that
9 would cause an unreasonable degradation of the
10 environment. So looking at it as a limitation
11 on what you can do is part of what makes it
12 comparable to the limitations on free speech
13 rights and property rights and all that.

14 So there's an obligation to refrain
15 from unduly infringing on the citizens rights to
16 a clean and healthy environment. The court
17 looked to the nature, both this court, the
18 supreme court and the -- and the majority
19 decision from the Commonwealth Court look to the
20 nature of these.

21 We spent time at the beginning looking
22 at the land use here, said this is undeniably an
23 industrial value. And that if you insert a new
24 regime where you're going to permit industrial

1 uses as a matter of right in areas where it
2 wasn't previously allowed, you're not meeting
3 your obligations to protect residents.

4 The court looked to the language of the
5 environmental rights amendment which talked
6 about the Commonwealth serving as a trustee.
7 And so we looked to -- if anyone is familiar
8 with a trust that you might hold for a
9 grandchild or in business, the same trust
10 standards that govern you there govern the way
11 governments must act as it relates to public
12 natural resources.

13 So when you're a trustee, you can't go
14 and just give away the body of the trust, the --
15 whatever it is you're protecting. And when you
16 take action, it has to be prudent action. And
17 that means you need to investigate what the
18 impact of what you're doing is going to be. And
19 make sure that when you take action, it doesn't
20 cause a depletion of those resources.

21 So the same applies to the
22 municipalities when a municipality is acting
23 consistent with its obligations under the
24 constitution. You've got to the make decisions

1 based on science. What is the impact going to
2 be of what you're doing? And you need to make
3 sure that when you act, that what you're
4 doing -- you have studied it, and it's not going
5 cause an unreasonable degradation of public
6 natural resources, either now or in the future.
7 So you have to look at it cumulatively because
8 the constitution reminds us that those resources
9 are there for future generations.

10 This is the last section. So we're
11 back to zoning 101. The essence of zoning is
12 designation of certain areas for different
13 purposes. And that for zoning to be lawful it
14 has to be directed toward the municipality as a
15 whole. And you have to balance the interest.
16 You can't just put one set of interests over
17 another.

18 That means you can't simply put your
19 environmental interests over your private
20 property interests. They need to be balanced.
21 And the way we do that is through a
22 comprehensive plan, and the Municipalities
23 Planning Code spells that out. So it's just
24 consistent with basic zoning principals.

1 You start with the comprehensive plan.
2 what does the comprehensive plan contemplate
3 with a community as a whole? what does it
4 contemplate for different areas within the
5 community, and zoning should then be consistent
6 with the comprehensive plan.

7 And it's a -- zoning is an extension of
8 public nuisances. And that protects you from
9 what other people might do on their property.
10 If what they might do on their property is going
11 to injure your property or injure the public at
12 large, then the government has a role in
13 reigning that in.

14 So as part of that, we don't -- we're
15 not going to insert a land use of an area that's
16 inconsistent with the zoning classifications.
17 We're going to -- we're going to do it in a way
18 that's consistent with community needs as a
19 whole. And this is just from a Commonwealth
20 Court decision that stands for those basic
21 principals.

22 So that's my piece. I'm happy to take
23 questions after we hear from Terry and Jonathan.
24 I'll warn you that if you ask three lawyers a

1 question, you'll get five different answers.

2 MR. CLEMONS: Jordan has presented a
3 context to which we're all trying to wrestle
4 with, what the effects of oil and gas
5 exploration and development can have. One of
6 the tasks I was given was to discuss what
7 Solebury Township's conservation easements have
8 done to address the issue of oil and gas
9 drilling and drilling gas exploration.

10 The handout that I have given you that
11 says conservation easement provisions concerning
12 drilling for oil and gas. The -- one of the
13 headings I had as provisions to develop post
14 fracking court cases. And what the land
15 preservation committee said was we need some
16 strong provisions that address oil and gas, not
17 just development, but exploration.

18 So I have two examples under that
19 heading that describe the restrictions that are
20 and have been placed in conservation easements
21 over the last three or four years.

22 Basically it says that drilling for the
23 exploration or development of oil and gas
24 resources beneath the property. The removal of

1 oil and gas by any direct means utilizing the
2 surface of the property, establishing pads or
3 other areas from which stage oil and gas
4 exploration.

5 Using the property for the deposit of
6 storage of water and fluids used in or related
7 to the extraction of oil and gas or use of water
8 from the property in any process for exploration
9 of development of oil and gas resources are
10 prohibited.

11 So that all of those activities that
12 Jordan showed you in those early slides are
13 prohibited under the preserved properties that
14 the township has been involved in purchasing and
15 acquiring conservation easements that have been
16 on for the last three to five years.

17 Under that is another way that your
18 easement states that it specifically recaps what
19 was the language contained in older conservation
20 easements that you can't meet any portion of the
21 property for surface or subsurface mining,
22 quarrying, excavation, depositing of or removal
23 of rocks, minerals, sand, soil or other similar
24 materials, then it goes on to recite what I just

1 read to you.

2 And when I looked at this, I pulled
3 this from an actual easement. The person who
4 granted that easement wanted to make sure they
5 take out clay and will be able to make pots and
6 stuff and be in a position to do that.

7 The easements before all these issues
8 came up about fracking still held provisions
9 that related to the removal of by any method
10 within subsurface, by quarrying, excavation or
11 depositing or removal of rocks, minerals, soils
12 or other materials.

13 That provision I believe is broad
14 enough to those easements to cover fracking
15 operations because there is a court decision
16 that says that oil and gas is a mineral and,
17 therefore, in that case where the township
18 permitted the removal of stone, it also covered
19 oil and gas. I think there's at least one other
20 decision that says -- that goes the other way on
21 that. But I'm comfortable we will cover that.

22 Another kind of conservation easement
23 that we see in Solebury is the Land Trust
24 Association's provisions concerning regulating

1 oil and gas. It is a statewide organization
2 that has developed model conservation easements,
3 then gained statewide acceptance to the point of
4 the most recent. I worked one for a
5 conservation easement proposed by the Department
6 of Conservation and Natural Resources.

7 DCNR was funding 50 percent of the
8 acquisitions cost of that easement. They
9 provided the conservation easement, and it's not
10 in a document that can be modified. So you
11 can't go in and strike out those provisions and
12 say no part of the property can be used.

13 So attached to your materials are the
14 relevant provisions of the easement. On the
15 second page of that, you'll see the permitted is
16 within the highest protection area. It is the
17 most environmentally sensitive area.

18 Subject to review is extraction
19 improvements and improvements for generating and
20 transmitting renewable energy if beneath the
21 surface at a depth which can not impair water
22 and other resources described in the -- in the
23 easement.

24 Then the easement talks about

1 improvements and talks about activities. Under
2 improvement it permits -- again, I'm going to
3 get back subject to review extraction of natural
4 gas regardless of stores or oil, an injection of
5 the release water and other substances to
6 facilitate such extractions, but only at
7 subterranean depths at which there can be no
8 impairment of water with other resources
9 described in the objectives. It does not permit
10 surface activities.

11 Then finally, you will see two terms
12 that are relevant. One is the definition of
13 extraction improvements. And you will see that
14 that includes wells, casements, impoundments and
15 other improvements to the exploration,
16 extraction, collection, payment, transport and
17 removal of oil and gas.

18 So the point of sort of my review caved
19 to the request that conservation easements
20 accommodate some facets of oil and gas drilling.
21 Now, when reading of this is that it's only
22 permitting indirect removal, that is John Doe's,
23 whose property is not subject to a conservation
24 easement, has all those pad sites and

1 everything, then drills down a mile, and drills
2 over and then removes oil and gas from beneath
3 the conservation area.

4 I think this language goes further than
5 that in that it also talks about impoundments
6 and use of water. There's also another
7 provision here, because it says subject to
8 review. And that makes you think that the
9 granting of that easement remains in control of
10 whether this can happen if they determine
11 whether there will be an adverse impact of
12 conservation values.

13 But if you read the definition of
14 subject and review in the glossary, it means
15 they make a reasonable determination. And what
16 we lawyers say is that invites litigation
17 because somebody wants to do oil and gas
18 drilling or established extraction improvements.

19 We'll say it's unreasonable, this can't
20 possibly impact groundwater resources, and we're
21 off to the races. So those are three methods by
22 which fracking is addressed in the conservation
23 easement in Solebury and related townships.

24 Solebury has not adopted the model.

1 I've never been confident because of issues like
2 this and the difficulty in affecting changes,
3 the types of easements that the township has
4 been involved in one of the forms of language
5 above that. Now I'm going to turn this back
6 over.

7 MR. REISS: What I'd like to do is try
8 to sum things up. Then I'll ask you and Jordan
9 to join in.

10 MR. CLEMONS: Then let me say a few
11 things. One is I brought about 20 copies of
12 these materials. I'm not sure whether everybody
13 got a copy of what Jonathan distributed. I
14 talked to Dennis. Dennis will have on the
15 website within the next couple of days copies of
16 all the materials that were handed out.

17 MR. REISS: Thank you, Terry. I'm
18 going to in a couple of minutes try to sum up
19 where we are today based on the history you
20 heard from Jordan. And I think the first thing
21 that I take away from all that is that while
22 there was a decision by the Pennsylvania supreme
23 court, it was a plurality decision. So it can't
24 be seen as a well settled law, that the majority

1 of the justices said this is the way the law
2 should be.

3 Having said that, I think there's
4 really two issues for a municipality to look at.
5 One is the well site, the actual drilling and
6 fracking, and the other is the resulting
7 pipelines, which may come through the community.

8 So when you look at the fracking, I
9 think it is commonly accepted that that is an
10 industrial use. It's not something that is
11 compatible with a residential zoning district or
12 something like that.

13 So when a municipality is facing the
14 decision of what to do about fracking, and quite
15 frankly the township zoning ordinance really
16 doesn't even address well drilling like that.
17 So the question would be where do you put it?
18 Or do you band it altogether?

19 I think to make any such determination
20 like that, Terry has recommended and Jordan and
21 I both agree that really the first step is not
22 to go to a solicitor, but is to hire a qualified
23 environmental consultant, probably a geologist
24 or firm that has many different resources to do

1 an environmental analysis of the township to
2 determine what are the resources that need
3 protection, where are the likely places where
4 this activity may result in producing gas or
5 oil, and whether those activities then are
6 compatible anywhere in the township.

7 So that's really the first place I
8 think that you really need to, as a township,
9 look at before you start to say well let's start
10 drafting something.

11 Then based on that, it's really a
12 decision then for the community as to what you
13 want to do. I don't know that you would hear
14 unequivocally from any one of us that you can
15 ban it absolutely, or that you have you to allow
16 it.

17 I think it's going to be a balancing of
18 what's in your community, and understanding
19 there's other considerations of the zoning that
20 were briefly touched on by Jordan that there's
21 some requirements to allow for most uses in a
22 community. You can't just say well, my
23 township, I don't like it but, you know, put it
24 next door, in the township next door. So those

1 are issues that you'll have to deal with as you
2 come to terms with what you want to do in your
3 township.

4 In regards to the pipeline, that
5 basically was my handout from Chester County
6 Township of Officials Associations. And that is
7 a good synopsis of what you're looking at with
8 pipeline. Pipeline is going to be regulated
9 either by Pennsylvania Utility Commission or the
10 Federal Energy Regulatory Commission.

11 They're going to deal with locating the
12 pipeline, permitting the pipeline, and granting
13 the developer of that pipeline eminent domain
14 rights if they issue a permit for it.

15 MR. YEAGER: Can I just jump in on
16 that?

17 MR. REISS: Sure.

18 MR. YEAGER: There are some pipelines
19 that are not regulated by either. Gathering
20 lines that take the gas from the wellhead off
21 are not regulated by either FERC or the state
22 BUC. And so those would fall within the
23 municipality's purview subject to the same kinds
24 of limitations that we were talking about

1 earlier.

2 MR. REISS: Yes, that would tie in if
3 you had decided to allow fracking. Let's say
4 you're in an industrial zoning district,
5 obviously you have to allow for those lines to
6 exist in those zoning districts. And otherwise,
7 you basically gave them the ability for them to
8 have that use there.

9 But I think the municipality does have
10 control over the other types of lines as well,
11 because you can control the surface activities,
12 the activities that are occurring above the
13 ground, as far as the locating the compression
14 stations. Also you can regulate the -- your use
15 of your roadways, the roadway occupancy permits
16 or roadway permits.

17 So that type of regulation can be done
18 through your subdivision and land development
19 ordinance, your zoning ordinance, and your
20 roadway opening ordinance or right-of-way
21 ordinance. Do you all want to add to any of
22 that?

23 MR. CLEMONS: No. I had a discussion
24 with Jordan and Jonathan before we came here

1 today just about how all this is shaping out.
2 We go from some very great language in the
3 Robinson case down to those of us who have our
4 boots in the ground, and what we do about that
5 if this moratorium is elicited, and if fracking
6 actually becomes a viable use of land here.

7 And what I've suggested in another
8 outline that I handed out, I've echoed what
9 Jonathan just said, to have a cautionary note as
10 to just how much we can rely on Robinson article
11 one, section 127 provisions that there's a
12 mandate that we reserve the environment for
13 future generations, and what that means in terms
14 of zoning. Only because there's only one
15 justice that's still going to be in the court.

16 That having been said, there is still
17 the Huntly case and the Oakmont Furo (sic) case
18 that Jordan referred to that says -- and I think
19 Jordan and I and Jonathan would agree that the
20 rationale of those cases will survive whatever
21 the back and forth is over Robinson that we
22 still have regulated a where, we have the right
23 to regulate the traditional objects of zoning,
24 setbacks, separating uses.

1 What I've suggested is again after what
2 Jonathan said, that you have an environmental
3 consultant who's going to look at part of the
4 geology, streams that might be classified as E,
5 V, or H, G. We have at least one in the
6 township, critical habitat, important wetlands,
7 areas actively committed to agriculture, forest
8 land, and identify those areas, because they are
9 obviously areas the township has been providing
10 primal restrictions and prohibiting those uses
11 on.

12 And then going forward and developing a
13 zoning plan that will determine whether there
14 are places in the township that oil and gas
15 exploration will be appropriate. And we really
16 are one of those unique townships where it
17 should not be permitted anywhere. I think we
18 have to be very careful with that, because if a
19 court disagrees, the answer is to permit that
20 oil and gas exploration with a successful
21 challenger.

22 MR. YEAGER: Yeah, Terry and I could
23 spend all day talking about the state of the
24 different court decisions and what we're left

1 with. And there's another aspect of the supreme
2 court's decision that I didn't touch on, which
3 was striking down a very broad provision in Act
4 13 which said that state law preempted -- that
5 any state environmental law preempted locally.

6 The court struck that down, and there
7 were -- and there was a majority of the court
8 that struck that down, that I think does raise a
9 question about to what extent the prior law that
10 puts some limits on how far municipalities can
11 go, whether those are still good law or not.

12 And there's been some developments in
13 the Commonwealth court that rests on the logic
14 of the supreme court's decision as it relates to
15 the environmental rights amendment.

16 So we can quibble over some of that
17 stuff. But I think we end up at the same place,
18 which is that in order to figure out what the
19 township should do, it needs to start by
20 engaging and listening to the science.

21 And then once you have that, once you
22 have a lay of the land on what the -- what
23 resources might be impacted by which uses, then
24 you can get into the judgment calls about how

1 far you're comfortable going, what level of risk
2 you're comfortable in carrying and how
3 conservative or not approach you want to take.

4 MR. REISS: Thank you. What I'd like
5 to do now, since we have a court reporter, is
6 first take questions from the Supervisors, then
7 the Planning Commission, then the EAC. Just
8 remember for the court reporter, each of you
9 need to, when you ask your question, first
10 identify who you are. So Supervisors who are
11 sitting up here at this table, any questions?
12 This is Helen Tai.

13 MS. TAI: So you mentioned that they
14 said that fracking is an industrial use and is
15 incompatible. I can't remember the wording. I
16 guess my question is, does this mean that we can
17 not allow fracking in non-industrial zones?

18 MR. YEAGER: There is an argument to be
19 made that you can't. But we don't know how that
20 argument will play out. We're -- I'm involved
21 with litigation over that very issue now out in
22 Butler County. And we don't know how the courts
23 will ultimately answer that.

24 There is language not just in the

1 supreme court's decision, but in the
2 Commonwealth court's decision to that effect.
3 And the Commonwealth court's decision really is
4 the controlling rationale that we're left with.

5 That -- but that was in the context
6 they -- a law of regulations that didn't do any
7 study, that didn't look at local considerations,
8 and that changed -- that required a change of
9 ordinance without consideration for the purposes
10 of the zoning districts.

11 And so if you go back and look at your
12 zoning districts and say we need to -- we might
13 need to rezone some of the portions of the
14 township, and you do it pursuant to good science
15 and planning, and if you -- there's no
16 prohibition on being ever -- the law recognizes
17 that you can change zoning. So you might
18 determine that the industrial districts need to
19 be changed in light of, you know, current
20 industrial activities.

21 MR. CLEMONS: If I understood your
22 question, it was whether natural gas exploration
23 to be permitted in a residential district. And
24 I think that's one of the most fundamental

1 things they said is that zoning permits you not
2 to permit the pigs in the parlor, so that
3 industrial uses and residential uses are
4 incompatible.

5 We all agree that that language in the
6 Commonwealth court decision and in Act 13 that
7 says you have to permit fracking in every zoning
8 district in the municipality is incorrect and
9 has been declared to be unconstitutional.

10 So one of the funny logics of zoning is
11 to determine where uses and what uses are
12 compatible with other uses. I think you're safe
13 in saying no, we're contemplating putting gas,
14 oil drilling in residential areas.

15 MR. REISS: One more level of
16 inflection there, if your industrial district is
17 so small that the reality is that you say okay,
18 we're going to put fracking in the industrial
19 district or the quarry district and -- but the
20 reality is the science says you actually
21 couldn't put a site there because of the size of
22 the district or something, and in effect you
23 really haven't allowed for it, you would be
24 subject to a possible challenge on that basis.

1 MS. TAI: We could face that. Our
2 industrial zone is very small, right?

3 MR. REISS: And that's why you would
4 want to look at the science first, and then in
5 -- then use that for planning to say do we need
6 to enlarge that or we need to relocate it or are
7 we going to take the risk and just ban it and
8 say, you know, roll the dice, we'll take a
9 chance that we can either defend it based on our
10 science, or we don't think this community is
11 even reasonable to expect that type of activity.

12 MR. YEAGER: My understanding is the
13 industrial district is near the river and, you
14 know, there may be some industrial activities
15 that may be appropriate there but not others.
16 So that's something that I think you need to
17 look at.

18 MR. CLEMONS: We all agree that you've
19 got to start with the science. When you -- I
20 think the quarry district over there there's a
21 stream there, there is issues in this township
22 with karst geology.

23 So that's why it's so important, even
24 if you ultimately reach a decision that limits

1 or you come to a decision that maybe you're not
2 going to permit it, you really need the science
3 to back that decision up.

4 And so you need somebody to take a look
5 at the areas of the karst geology and areas that
6 happen to handle that kind of resources, then
7 see what's left where it is.

8 MS. TAI: Let's suppose that we do
9 that, then they identify that there's a couple
10 of areas within the township where you could do
11 it without -- I find this hard to believe, but
12 within the environment let's say, but that
13 happens to be in a residential area. I mean we
14 -- we wouldn't be obligated to --

15 MR. CLEMONS: You mean in an area where
16 there's residences?

17 MR. YEAGER: You mean where it's zoned
18 residential?

19 MS. TAI: Where it's zoned residential.
20 We couldn't be obligated to change the zoning to
21 allow this, would we?

22 MR. CLEMONS: That's a hard
23 hypothetical to answer. What you really have to
24 look at is where is that area and that

1 hypothetical. I think anywhere in the township
2 you're going to have residences. You may have
3 the area that's marginal, maybe a residential
4 area next to the quarry, maybe a residential
5 area where there was a bulk tank facility once
6 upon a time.

7 We're not -- because we're not
8 environmental scientists, we're not in a
9 position where to say where that may be, but if
10 you have an area that already had been subjected
11 to industrialization, that was a least density
12 populated area, you may rezone that district for
13 industrial uses if's that was the recommendation
14 that came out of the planning, that came out of
15 your environmental consultants. It's really not
16 an easy yes or no answer sorry to say.

17 MS. TAI: Okay. So Jordan, you
18 mentioned that we can't regulate how they do it.
19 You said through Act 13 you can't regulate how
20 they do it; is that true?

21 MR. YEAGER: What I was saying to my
22 last comments in response to John and Terry, I
23 think there's a question about -- the
24 conventional wisdom is that you still can't

1 regulate the how, that you're limited in
2 regulating the where.

3 I don't think that's completely
4 accurate. I think that if you have some
5 site-specific science driven considerations,
6 that you might be able to go further in
7 regulating how it's done than has been
8 conventionally thought, but that hasn't been
9 tested yet.

10 MS. TAI: Could we impose fees or other
11 things to make it less attractive?

12 MR. CLEMONS: As I believe -- this is
13 probably where Jordan and I differ. If you
14 look, and I attached page 47 of the supreme
15 court decision, that statute that Act 13
16 regulated in different areas say thou shalt not.
17 And they have been farther along reasonable
18 regulations.

19 I think that Act 13 there were statutes
20 that preempted local regulation of operational
21 aspects of land uses. The non-coal surface
22 mining conservation acts that you can't regulate
23 operational -- regulate where setback
24 traditional objects of zoning.

1 But you can not impose a billion dollar
2 bond, although there are townships that
3 considered that. You can't say that you have to
4 bond all roads; there are those kinds of
5 regulations that pre Act 13 the courts had
6 weighed down and said those operational aspects
7 are not an object of zoning. I think that's a
8 problem in itself.

9 MS. TAI: Okay.

10 MR. MCGAHAN: I have two questions that
11 I'd like shorter answers if I can get them. Do
12 all those houses we're talking about, all those
13 signs up, no fishing in the pond, my question
14 is, do we have any fish in this pond? What are
15 -- what is the probability of gas in this area?

16 MR. YEAGER: There are some studies
17 that suggest that there are natural gas
18 resources sufficient to make a fraction
19 worthwhile in the South Newark basin. I can't
20 put odds on that, and I don't think anyone can.

21 There was one set of companies that
22 targeted Nockamixon. Nockamixon had some
23 tests -- had a test well drilled in the mid
24 '80s. That is part of the reason why people

1 think there's gas a mile deep. So we don't
2 really know. The companies that have targeted
3 are outliers. They generally seem to be
4 interested in flipping their investments. So
5 they have an incentive to try to get something
6 to permitting --

7 MR. MCGAHAN: It would be safe to say
8 that this area is not as rich in gases or oils
9 than other areas north of us are.

10 MR. YEAGER: That's certainly true.
11 And currently based on the current price of gas,
12 which is at historic lows, it hasn't been
13 worthwhile. The compressor stations that the
14 pipelines can go through are unrelated to the
15 gas you have here.

16 MR. MCGAHAN: I would like
17 clarification. Do we have to allow drilling in
18 this township, or can we ban it? I wasn't
19 really clear on your answers.

20 MR. YEAGER: That's right.

21 MR. CLEMONS: I would not recommend
22 banning. I would recommend banning unless you
23 have an environmental study that says every
24 square inch of this township for one reason or

1 another is inappropriate. And then I think it's
2 not a ban, just a matter of the ordinance
3 doesn't provide for it.

4 MR. MCGAHAN: Some of the things you
5 said, and I'm going to rattle on a little bit
6 here. Going down a mile, going out three miles,
7 I'm across over a lot of conserved land. Is
8 that taking minerals out of the land, the
9 conserved land? Is that breaking -- who has
10 precedence, the conservation easement or the
11 driller?

12 MR. CLEMONS: My opinion, the
13 conservation easement takes precedence. The
14 statute preempted zoning, did not preempt land
15 decisions that the property owner made when they
16 sold.

17 MR. YEAGER: But if you have a company
18 with eminent domain authority granted by the PUC
19 or Federal Energy Regulatory Commission, then it
20 doesn't matter. 'Cause you've given the
21 companies the power of eminent domain. They can
22 take it even if it's covered by underground --

23 MR. Clemons: Pipe, pipelines,
24 distribution lines.

1 MR. YEAGER: Right.

2 MR. CLEMONS: Not drilling.

3 MR. MCGAHAN: I'm really confused. I
4 really am. Other than going out and getting a
5 geologist study for the area and then lean back
6 -- the things that you're saying, the government
7 or the state can override the federal --

8 MR. REISS: When you're talking about
9 interstate pipe, we have to distinguish what
10 kind of use we're talking about. When we're
11 talking about wells, they can't override us in
12 terms of our ability to decide where in the
13 township they belong, where they don't belong.

14 When we're talking about interstate
15 pipelines, the federal government can say you're
16 going to have a pipeline go through here. Where
17 is -- what your zoning allows and doesn't allow
18 will influence the federal government's
19 judgement about. But ultimately the federal
20 government trumps when it relates to interstate
21 pipelines.

22 MR. MCGAHAN: Industrially we have an
23 area that primarily runs around 202. I believe
24 I heard someone say someone should map a two

1 mile radius or diameter.

2 MR. REISS: Radius.

3 MR. MCGAHAN: Which is a four mile
4 diameter. We don't have anything like that. I
5 think industrial is presently zoned industrial.
6 I'm trying to figure out where we have something
7 that doesn't have residences around, that's
8 conserved land since 40 percent of our township
9 is under a conservation easement. I'm going in
10 circles. I'll just pass onto the next
11 supervisor.

12 MR. HEATH: The way I see it there's
13 four million balls in the air, none of which hit
14 the ground yet. To me, the way I look at it is
15 there anybody out that's ahead of this curve?
16 Any municipalities that have, you know -- and
17 what have they done, what has been their
18 problem? I think the environmental science of
19 it we can't answer all the questions we have.

20 To me, we have to start -- if you're
21 going to do anything you have to start A, see
22 what you have first. The only question I have
23 is, if you do an environmental study, does that
24 open the door for any of those -- I mean is

1 that -- at some point it becomes public
2 information. So, you know, you could be trying
3 to protect yourself in a way that, you know, you
4 say okay, let's see what we have. Now that we
5 know what we have, what we have is a well.

6 MR. YEAGER: I don't think you're going
7 to be able to afford the kind of advance
8 geologic studies that the industry will do
9 anywhere.

10 MR. HEATH: You understand my concern?

11 MR. YEAGER: In answer to your first
12 question, there are a host of municipalities
13 primarily right now in the southwestern part of
14 the state, 'cause a lot of places where drilling
15 has been going on there isn't zoning, none at
16 all.

17 And but there are a lot of communities
18 that are struggling. They have handled it in
19 vastly different ways. The lawyers that I've
20 worked with who have been on the side of trying
21 to protect communities, help communities do as
22 much as they can we believe have consistently
23 taken the view of that you should allow it, but
24 that you should limit it to an area where you

1 only are allowing industrial uses.

2 But that -- but part of what we are
3 saying in the critique of Act 13 is there is no
4 one size fits all answer. We don't want to
5 repeat the same mistakes that the state repeated
6 in suggesting that there is one answer that's
7 just as right for Doylestown as it is for
8 Solebury.

9 MR. HEATH: That's what I see, too many
10 variables. What I want for me I think would be
11 membership to try to develop an outline for the
12 township as to which way we proceed.

13 MR. CLEMONS: As an example in this
14 area, and Jonathan's office has prepared this,
15 is part of the joint municipal zoning district.
16 We have developed and are circulating now a
17 draft ordinance that would permit oil and gas
18 subject to a number of regulations. I'm sure,
19 Jon, can you get a copy of that ordinance.

20 We are talking about permitting in the
21 district where there are areas. That isn't a
22 one size fits all because that industrial
23 district isn't karst, doesn't have problems with
24 water issues. I know that that's one set of the

1 comprehensive regulations. Then you still get
2 to the question of where and how. So there are
3 examples out there as Jordan is saying --

4 MR. HEATH: There's so many questions
5 there that you can't answer. And, you know, you
6 can sit there, and I mean the townships can get
7 caught up in that spinning wheel and not get
8 anything done.

9 So what I'm concerned about is, like I
10 said, start with the simplest most direct route
11 in the beginning. What's the best outline
12 for -- at the municipality for maybe someone to
13 go with that have had success, they have done a
14 study this way, then tried to adjust at least an
15 ordinance that fits what they have?

16 At least see what else has been done.
17 You're not going to be able -- you don't know
18 where the judges are going to be. You don't
19 know who's going to sit where and how they're
20 going to answer.

21 MR. Yeager: We're working with
22 municipalities throughout the state doing just
23 that. I guess part of my point is what you just
24 said is true in some ways of any land issue. If

1 somebody came in and said we wanted to do a, you
2 know, a special treatment operation for X, we
3 have never had one of those before, and we're
4 not sure where it fits best, and we're not sure
5 what the risks are associated with it.

6 You would have to go through the same
7 process. You should look at this like you look
8 at other land uses. But that means you got to
9 investigate clearly what does this actually
10 entail, and what are our resources that would be
11 most impacted by it, and where in our community
12 might it do the least.

13 I just want to remind you that you're
14 not just talking about a hole in the ground with
15 the drill site. You're talking about
16 impoundment pits, you're talking about
17 pipelines, you're talking about compressor
18 stations, you're talking about national gas
19 processing facilities conceivably.

20 MR. CLEMONS: We have all seen what the
21 land surface impacts are. But you've had
22 experience with mobile home parks, as a township
23 maybe not as a board. You've had experience
24 with this in terms of high density development.

1 I mean one of these land use types the township
2 permitted, but you had to wrestle with whether
3 you were going to control where the use is
4 permitted, under what conditions or whether you
5 were going to be subjected to court challenges.
6 You have to make some judgments and hope that --

7 MR. HEATH: There's too many questions
8 out there that can't be answered. And you can't
9 get caught up in that what if, what if. What
10 can we do to start the ball rolling?

11 MR. Yeager: I think five years from
12 now there's going to be just another set of
13 questions. That's unfortunately the nature.

14 MR. REISS: I think what we take from
15 here tonight is the first thing if you look at
16 this, it's an educational process. It's to
17 learn as much about what's involved and also to
18 learn what -- you know what would happen in your
19 township, but to learn it better scientifically
20 so that you can either, so you can better
21 support whatever decision you make.

22 MR. COSDON: Paul Cosdon. If we chose
23 not to the designate any -- wouldn't we be
24 subject to a curative amendment?

1 MR. YEAGER: Could be.

2 MR. REISS: That's a possibility. If
3 there's somebody who wants to -- who has a lease
4 and wants to try to drill in the township.

5 MR. COSDON: Is historic preservation a
6 valid reason not to allow?

7 MR. YEAGER: Historic interests have
8 part of what's acknowledged under the
9 environmental rights amendment. It speaks to
10 historic resources as well. And the courts have
11 recognized a municipality's right to take
12 historic resources into account.

13 MR. COSDON: I was a little bit
14 disturbed when you put the slide up with the
15 sound walls. How much sound do these things
16 really -- can it be measured in decibels?

17 MR. YEAGER: Yes. And there -- I mean
18 there are noise experts who we've employed to
19 try to estimate that in different pieces of
20 equipment. Matters of the stage of development
21 that you're talking about matters.

22 The -- and I'm not remembering the
23 decibels, but the last -- in this case that
24 we're dealing with in Butler County, we had a

1 noise expert who estimated that it would exceed
2 the 65 decibel limit that that municipality had.

3 And the problem is that it's -- when
4 you're in the fracking and production stage,
5 it's 24 hours, seven days a week. So a lot of
6 municipal ordinances that address noise have
7 hour limits and day of the week limits. And
8 those don't work for drilling because it's 24/7
9 during that period.

10 MR. COSDON: Would it be limited by
11 those --

12 MR. YEAGER: That's where I think in
13 answer back to Helen's question about
14 operational, you're not going to get away with
15 saying you have to stop the drilling.

16 MR. COSDON: If you drill on your
17 property and you're going out two miles under
18 mine, are you stealing my gas?

19 MR. YEAGER: No. Right now we don't
20 have forced -- it's called forced pulling when
21 you require somebody in the path to allow you to
22 take their gas. Right now we don't have forced
23 pulling in Pennsylvania. There's been some
24 legislative efforts to allow that.

1 So when -- once a property holder gets
2 leased, all that property holder's neighbors are
3 going to get visited. They can snake it around
4 if they need to, but they might be able to shoot
5 out in as many different directions as they can.

6 MR. COSDON: I read Act 13 several
7 years ago. Who wrote it?

8 MR. CLEMONS: The industry wrote it. I
9 did a seminar up at Penn State. About two years
10 ago I had a case representing a property owner
11 up there. I went to the industry seminar. They
12 were -- you know, the Robinson cases hadn't come
13 down yet. But even this act didn't go far
14 enough. If they could be like West Virginia
15 where you can just go in and do it.

16 MR. COSDON: The last question that I
17 have really you had mentioned that in the last
18 three to five years our conservation easements
19 are covered. Has there been any thought to
20 going back prior to 2010?

21 MR. CLEMONS: As I said, I believe
22 we're covered in two ways. I think that the
23 quote old conservation easements prohibited
24 extraction while it was in a general statement

1 it included minerals, and there are decisions
2 that say that oil and gas are minerals. There's
3 a decision on the other side.

4 Certainly that's an effort that can be
5 undertaken. It requires agreement by the other
6 property owner who may or may not be willing to
7 put an additional restriction.

8 MR. COSDON: No other questions.

9 MS. TAI: I do have one other question.
10 I know we're focussing on land use and all that,
11 but is there anything as a municipality that we
12 can do to try and extend the moratorium on
13 building in this area?

14 MR. YEAGER: There are two more
15 moratoriums currently. One is under the state
16 law that limits DEP's ability to issue permits
17 in the South Newark basin. That has an
18 expiration date as we noted.

19 There's also a moratorium under the
20 Delaware River Basin Commission. And that is
21 dependent on the votes of the representatives of
22 Pennsylvania, New Jersey, New York, Delaware,
23 and the Federal Army Corps of Engineers. With
24 New York and Maryland's actions, New York and

1 Maryland both instituted a moratorium within
2 their own states.

3 I think the DRBC's moratorium is safe
4 for the foreseeable future. And that covers the
5 whole Delaware River basin. But it's a matter
6 of political whims. So the more the people and
7 their elected representatives voice themselves
8 both to the DRBC representatives and to the
9 state senators and state reps the better.

10 MR. MCGAHAN: One question. Did I hear
11 that the chemicals they use to fract, people who
12 are physically fracking are buying those -- that
13 formula from a manufacturer, and they don't know
14 what's in it?

15 MR. YEAGER: Correct.

16 MR. MCGAHAN: So we're putting
17 something in the ground that the manufacturer is
18 not required to tell the government what it is?

19 MR. YEAGER: Correct.

20 MR. MCGAHAN: Because it's a patent?

21 MR. Yeager: Correct.

22 MR. COSDON: Take questions from the
23 Planning Commission first. Please state your
24 name.

1 MR. MORRISSEY: Kevin Morrissey,
2 Planning Commission. Going back to the comments
3 about open land, as I understand it, I think one
4 of the comments earlier about local ordinances
5 are most likely to protect our land the last
6 five to ten years perhaps?

7 MR. YEAGER: The easements.

8 MR. MORRISSEY: Yes, we need to take a
9 closer look on those properties that were
10 sponsored by the state, is that --

11 MR. CLEMONS: First of all, we're
12 talking about places where those conservation
13 easements in the township, all of the easements
14 have been written since I've been here.

15 All of the easements that are
16 agricultural conservation easements that the
17 township contributed to also had township
18 conservation easements that had provisions.
19 There's a relatively small class of easements
20 that say nothing.

21 Okay. The question is whether that
22 language before we start focusing on oil and gas
23 is broad enough to include extraction of oil and
24 gas. And certainly landowners would have to be

1 willing to add that provision.

2 MR. MORRISSEY: So that's potential
3 exposure, it's a question mark?

4 MR. CLEMONS: Yes.

5 MR. YEAGER: The word mineral is the
6 key word. It's defined different ways in
7 context. And the context of zoning it's been
8 defined to include natural gas because the
9 Municipality's Planning Code includes it outside
10 of that context. It's been read not to be
11 included in gas.

12 MR. MORRISSEY: Thank you.

13 MR. COSDON: Anyone else from the
14 Planning Commission? Yes.

15 MR. CAPUTO: Chris Caputo. So if the
16 township is mandated to develop a zone for this
17 in an industrial area, is there a minimum size
18 that has to be? And going back -- there's
19 actually another part of the question, going
20 back to some of the other questions, what if
21 there's no gas in that zone, can that be
22 challenged? I'll wait for my third question.

23 MR. REISS: I think what you heard is
24 it's an industrial use. The first question is,

1 would ideally like to place it where you have
2 pre-existing industrial uses. If you don't have
3 sufficient space in those areas, the next
4 question would be do you expand that industrial
5 zoning district or create a new industrial
6 zoning district where you have other industrial
7 uses now permitted as well. That would be the
8 first place to answer the first part of the
9 question.

10 MR. CLEMONS: The other thing that I
11 would say is that if someone were to challenge
12 that ordinance, we're not required to do an
13 investigation as to whether it's feasible to
14 build town homes in an area that's zoned for
15 town homes, or whether it's feasible to put a
16 mobile home park in an area that's zoned for a
17 mobile home park.

18 We are required to provide a home for
19 those various types of uses. So I would
20 maintain that anybody that challenged the
21 regulation that we adopted would have to prove
22 that there was some other places that actually
23 had oil and gas resources. And would have to
24 prove that they had done the exploration that

1 this one didn't.

2 MR. YEAGER: Generally talking about
3 ten acre minimum lot size for oil and well site,
4 but that doesn't mean you need an existing
5 parcel that's ten acres. It can be on the
6 developer to probably gather the parcels to meet
7 that size. You're not required to put it in a
8 place where you only have ten acre parcels.

9 I think the bigger question that you
10 asked, and this goes to a question that I think
11 has been asked repeatedly in one form or another
12 is do we have to allow this? And the
13 conventional wisdom has been in zoning law that
14 you have to allow for every use. That's not
15 actually what the Municipalities Planning Code
16 says.

17 And so how far a municipality can go
18 in -- how far the courts are going to go in
19 saying all these different uses you need to
20 allow all of them. If I think of a new way of
21 extracting shale from 50 feet deep, but involves
22 a nuclear detonation, is the court going to say
23 I got to allow that kind of use, too?

24 So you can get ridiculous. But at what

1 point can you say at what level risk are you
2 willing to take a municipality in saying it just
3 doesn't work here? Understand the risk when you
4 do that. You could end up in a place where you
5 want it least.

6 MR. CAPUTO: So if we agree that there
7 is an industrial zone where this is going to be
8 allowed, whether it proves to be economic or not
9 for drillers is not our problem. Could the
10 landowners in that zone sell those rights to the
11 township, those drilling rights, therefore,
12 preventing any drilling?

13 MR. CLEMONS: That's an interesting
14 question.

15 MR. YEAGER: Yes, you could have the
16 whole township under conservation easement in
17 effect, an easement that limits anything. And
18 then you're defectively built out for the
19 purposes of that use.

20 MR. FEST: Dan Fest. Is it possible to
21 throw a rough use of what the environmental
22 study would cost based on other townships?

23 MR. YEAGER: No.

24 MR. CLEMONS: You have to get

1 proposals. Board of Supervisors would have to
2 get proposals.

3 MR. YEAGER: I think you're probably
4 talking about an environmental planner, somebody
5 with or a firm that includes a planner. Because
6 a significant aspect of this is the roads. And
7 that gets beyond any of the details of the
8 environmental issues.

9 MR. DURKIN: Jack Durkin, Planning
10 Commission. Can we put forth a referendum to
11 the voters regarding allowing fracking in the
12 township, and if that comes back and not in
13 favor, then not allowed the use?

14 MR. YEAGER: You're dealing with
15 property rights as well as the property rights
16 of landowners who want to develop their land.
17 And those are fundamental rights just like the
18 environmental rights are. And you can't subject
19 fundamental rights to democratic will.

20 MR. DURKIN: And the second question
21 is, we have our productive agricultural soil
22 requirements in the township. We are primarily
23 an agricultural community. So these frack sites
24 really don't play into the productive

1 agricultural protecting agricultural soils. So
2 perhaps we can tighten the limits on productive
3 agricultural soils which would possibly make it
4 more difficult for them.

5 MR. CLEMONS: That should certainly be
6 one of the elements considered, preservation of
7 agricultural soils. But I think all of us know
8 you can't say we're primarily an agricultural
9 community, we have so much agricultural.

10 Again, it's discretion of going too
11 far. Bedminster reviewed that in terms of its
12 ordinances that protected prime agricultural
13 soils and required set aside. Their first deal
14 with that the court held they went too far, then
15 they scaled it back.

16 MR. DURKIN: If I can comment on that,
17 it does play into the same thing as historic
18 areas, your wetland areas, you know, your high
19 quality streams. I mean it's just another
20 extension of all those different aspects.

21 MR. YEAGER: This is why you can't just
22 take an ordinance that someone else has done,
23 because the more -- if you do those issue
24 limitations in a way that just targets vast

1 development, the more vulnerable the ordinance
2 is. So what you want to do is look at those
3 interests that you're trying to protect, when
4 gas development is done, and look at the
5 ordinance as a whole on how you're addressing
6 those things.

7 So that if you're going to require
8 preservation of prime AG soils, class whatever,
9 to a certain percentage, you're not just going
10 to do it for oil and gas development, you're
11 going to do it for all industrial development.
12 So you want to look at it as wholistically as
13 you can. That's part of how you protect the gas
14 piece from challenge.

15 MR. REISS: So to add complexity to
16 that, Tinicum Township, and Jordan is familiar
17 with this case, basically had 90 percent of
18 their township protected by an overlay district
19 to protect their agricultural soil. And there
20 the court said they had gone too far.

21 In essence even though they had
22 commercial zoning districts, high density zoning
23 districts, when you put that overlay on it, none
24 of those areas could be used for the purpose

1 that they zoned them for.

2 MR. YEAGER: John wanted to point out
3 the case I lost.

4 MS. SACHS: Laura Sachs, Planning
5 Commission. I have one question, if you know.
6 Say they found the site from the time they
7 started to when it was completed, how many years
8 are you looking at?

9 MR. CLEMONS: In Solebury?

10 MS. SACHS: Anywhere.

11 MR. YEAGER: It stays in production for
12 decades. The traffic that you're dealing with,
13 the noise, the lights that you're dealing with
14 is much less active the first two years. So you
15 have a construction site to begin with, and in a
16 sense you got a concerted period of activity.
17 There's a lot going on in that concerted period
18 of activity. Then you have heavy equipment and
19 all that.

20 Then you got getting the well set up,
21 then you got the fracking stage. That's where
22 you've got the most light. That's the other
23 thing we didn't talk about was the light.
24 That's where you got the place gets lit up real

1 bright, and you got the noise.

2 That fracking stage is, you know, it is
3 a couple months at the most. But they can come
4 back and re-frack, and they can come back and
5 target it. They can have six different wells on
6 site. It gets multiplied out.

7 So you could be talking about a year of
8 production like that when you think of the
9 fracking. Then it's that more of that site that
10 doesn't look as imposing. If you remember that
11 picture, that's the less imposing site, and
12 you're left with that for decades.

13 MS. SACHS: Thank you.

14 MR. MORRISSEY: Kevin Morrissey,
15 Planning Commission. This is getting down to
16 the question that have any of the townships
17 worked together to make sure ordinances are
18 compatible? For instance, you don't have a
19 situation like Buckingham agreeing to have a
20 fracking site right on the border of Solebury or
21 something like that.

22 MR. REISS: Example that Terry gave you
23 of the draft ordinance would involve the
24 jointure of Wrightstown, Upper Makefield and

1 Newtown.

2 MR. MORRISSEY: That kind of activity
3 already?

4 MR. YEAGER: They have existing joint
5 zoning rights.

6 MR. CLEMONS: Wrightstown, where I'm
7 the solicitor, had formed a pact in 1983 to have
8 joint zoning. So the MPC recognizes that. To
9 your point, though, it is also my understanding
10 that there's a requirement if we are adopting a
11 zoning ordinance amendment, we share that with
12 the neighboring townships.

13 If Buckingham decided they were going
14 to put the fracking district right next to the
15 township border, we would have an opportunity to
16 accommodate that.

17 MR. COSDON: Let's move to EAC.

18 MS. BLAYTHORNE: Hope Blaythorne. I
19 have a question around the geologies of the
20 site, if the township would invest in that. We
21 really don't know a map of the land up top, not
22 to do a mile down either. But by investigating
23 in this geological study and surfacing
24 environmental impacts that we could call

1 industrial impacts for the lack of it sounds as
2 though if we focus it on gas and oil that can
3 be --

4 MR. CLEMONS: What we're not talking
5 about, sorry I interrupted you. We're not
6 talking about investigating to determine whether
7 the resources that are there, oil and gas; we're
8 talking about, and I agree with Jordan, having
9 an environmental firm that has an environmental
10 consultant and has a planner to study other
11 aspects, wetlands for all of these other
12 environmentally sensitive resources in farrowing
13 out where whether they're for --

14 MS. BLAYTHORNE: Exactly. So for us as
15 a township it would reveal the gaps or areas at
16 risk for us environmentally, but it might also
17 identify those risks could exist even within the
18 industrial, correct?

19 MR. CLEMONS: Yes.

20 MS. BLAYTHORNE: To that point, have
21 you seen benchmarks where that sort of study
22 where they have done that due diligence, again,
23 environmental impacts, not just the gas and oil
24 aspect, has that stood up in court if indeed

1 that study revealed that the best solution here
2 is to ban it?

3 MR. YEAGER: There hasn't been case a
4 case to attest to that.

5 MR. CLEMONS: Under the Oil and Gas
6 Act, but --

7 MR. YEAGER: Correct, and under the
8 current law.

9 MR. CLEMONS: But there are, as a
10 planning tool, you do those kinds of studies all
11 the time. You have just completed a
12 comprehensive plan that identified resources.
13 Whether it's to oil or gas, but that's, you
14 know, the traditional thing to do. We have all
15 been involved in ordinances where that has been
16 one of the --

17 MR. YEAGER: Courts take common sense
18 approaches ultimately to things. The more they
19 can see that there is a rationale, a logic, that
20 it's backed up, the better off you are. At a
21 minimum you're minimizing risk.

22 MS. BLAYTHORNE: It seems as though
23 we're going to have the benchmark that
24 environmental conservatism will be in favor.

1 MR. CLEMONS: Pennsylvania loves being
2 able to exploit environmental resources. They
3 declared in 1972 that every township ordinance
4 can permit a quarry. You have a coal mining
5 industry. We look at ourselves here in
6 southeast Pennsylvania, but Jordan certainly
7 knows there is a broad view of legislation which
8 I think is getting turned around as a result of
9 what's happened with this case. But the
10 important thing is to go back and focus right
11 here in terms of what we --

12 MR. REISS: It's important to have the
13 foundation for the decision so it's not deemed
14 arbitrary, capricious or --

15 MS. BLAYTHORNE: No, and science
16 backing it up as you're suggesting, then we're
17 saying because of these environmental impacts,
18 based on the study that's done just for an
19 industrial exploration perhaps in Solebury
20 Township, this is the finding. Thank you.

21 MR. FETTEROLF: Barry Fetterolf, EAC.
22 You mentioned there's Newark, shale. I have
23 read reports that could be shale, but we don't
24 know. But the industry will move very quickly

1 if they see that much quicker than we're even
2 prepared, number one. Number two, you have to
3 remember that all of our representatives, our
4 state senator and our assemblymen voted for
5 proposition 13. So they were quite willing to
6 have our zoning laws wiped off the books.

7 Then one of them came back and said why
8 don't you read it closely. So we got an
9 extension till 1960. They were quite willing to
10 ignore the township, people we voted for. So
11 would it be considered a conspiracy if we worked
12 with say Buckingham?

13 The townships have worked close to us
14 and say why don't we pull our resources and try
15 to keep ahead of -- you know, come up with that
16 ordinance; you said there is a common ordinance.
17 But at least conversation could be opened if
18 they're in agreement with us and we want to
19 limit this as best we can to work together to
20 get something going now, because there is so
21 much money if it comes down to the fact that
22 there's gas under here.

23 MR. CLEMONS: Short answer there is one
24 organization, Bucks County Association of

1 Township Officials, and they're in touch with
2 the legislators. I figure after these elections
3 are over that the industry is going to come back
4 and say we failed at Act 15, how about Act -- I
5 mean I should say how about Act 15.

6 First, I think this whole Robinson case
7 was a big jolt. A lot of legislators who got
8 religion after they saw what a monstrosity they
9 voted for. But I think we need to work with
10 both legislative and the ordinance level.

11 MR. FETTEROLF: It's not a conspiracy.

12 MR. CLEMONS: No.

13 MR. YEAGER: I don't know if it's going
14 to save all that much money. Any ordinance that
15 you write, you need to look at your ordinance as
16 a whole. And you need to make sure you need to
17 go back and look at how does it fit in with AG
18 soils, how does it fit in with light
19 limitations. And that's going to be very
20 municipality specific.

21 MR. COSDON: You have to recognize that
22 we have a different state representative in
23 those books. Yes?

24 MR ALLEN: Eric Allen, EAC. My

1 question is, has been an example of
2 municipalities that have successfully challenged
3 the fracking companies, because it seems that --

4 MR. YEAGER: Yes.

5 MR. ALLEN: I hear that when the
6 township can't legislate against it because that
7 would be an affront to simply say that we're not
8 allowing it. Doing the scientific study is not
9 going to be free. It's -- and as we know from
10 evolution that science can be challenged.
11 There's nothing sacred.

12 When we're questioning the efficacy of
13 an environmental study, work positively towards
14 Solebury's aim to limit fracking. I guess
15 that's jumping back to my initial question,
16 what's the path to really do something, because
17 if they discover resources in the area, is there
18 really anything -- can you stop it?

19 MR. YEAGER: So in 2008, 2007 the
20 Nockamixon Township was targeted for
21 development. And a gas company got a permit
22 from DEP to drill a well. And Terry had written
23 an ordinance that, when I became solicitor, was
24 challenged in court. And we defended it and

1 were successful in defending it.

2 It was an ordinance that limited
3 drilling to the quarry in the industrial
4 district in Nockamixon. So that's one example
5 that Terry and I can both attest to where both
6 of our work protected the township.

7 And the drilling companies ultimately
8 packed up and left. And they were on their way
9 to the township with a rig. And they were
10 turned back because none of the bridges in the
11 township could withstand the load of the rig.
12 And we got word to them through the county,
13 through the state, that they weren't going to be
14 able to bring the rig on.

15 MR. ALLEN: We have a problem with that
16 in Solebury. Our roads won't support any.

17 MR. YEAGER: And that brought the space
18 for the legal strategy. And then they turned
19 around and got the law changed. And Nockamixon
20 Township and six other municipalities challenged
21 what the legislature had done, what the
22 government had done, what industry had done and
23 were successful.

24 So yes, you can fight them and you can

1 win. What we're talking about in terms of
2 advising a study is putting you in the best
3 position to be able to do that.

4 MR. FLESCHEAR: Dr. Manfred Fleschar. I
5 wanted to clarify something. I think there was
6 a statement that the solution that they pumped
7 in is proprietary with 29, 30 different
8 compounds including benzene which is a
9 carcinogen. Real question is, first of all, how
10 many gallons of that solution which is
11 carcinogenic do they pump into a well site?

12 MR. YEAGER: If you give me your e-mail
13 address, I'll get you the gallons and what you
14 end up with, how many gallons end up being
15 unidentified. I have that, I don't just don't
16 have it here.

17 DR. FLESCHEAR: How is it that they can
18 claim this is proprietary?

19 MR. YEAGER: The oil and gas industry
20 enjoys exemptions from every major federal
21 environmental law including the laws that
22 protect our drinking water.

23 DR. FLESCHEAR: A lot of money involved,
24 I understand that. But I have part B. And part

1 B is this, those trucks you showed before, 20,
2 30 of them were lined up there. And they're
3 probably heavy. When I drive down 202, my car
4 sort of disappears in potholes every once in a
5 while.

6 I have to fix that car. Are these guys
7 going to pay \$10 million every three months to
8 completely fix the roads that they drive on, or
9 is the taxpayer right here in this room going to
10 be hit up to fix those roads for that company?

11 MR. YEAGER: The taxpayer will be hit
12 up to do it. That was the point of the -- that
13 was the logic behind the impact fees. And part
14 of what happened with our legislators who voted
15 for Act 13 was that some of them didn't
16 appreciate that it applied here.

17 And when they realized that, they
18 realized that they hadn't done a good enough job
19 getting our share of the money. And that's what
20 drove them back to the table. So this study
21 that's going on is really about economics, so
22 that they can argue to get a greater share of
23 the impact fee for communities in this South
24 Newark basin.

1 MR. BENNER: Dave Benner, EAC. A lot
2 of things have come to my little brain with this
3 meeting. One is I don't think it will ever work
4 in Solebury Township. We have so many dinky
5 little bridges. We have dirt roads. It's not
6 possible to get those tricks through this
7 township to do anything.

8 Second thing is, I heard some kind of
9 mention about making our whole township a
10 conservation easement thing. That sounds great
11 to me. Then there would be no place they can
12 even think of doing it.

13 The third thing that makes me hopeful
14 is that we need to do a survey, and hopefully
15 maybe the survey will show there's no damn place
16 in Solebury Township that's feasible or
17 profitable to do it.

18 MR. COSDON: Anyone else from the EAC?
19 Okay. General questions. Yes?

20 MR. TINSMAN: Bill Tinsman, citizen.
21 Jordan, thank you. This is a stark reminder for
22 those of you that have never seen this take
23 place. Take a weekend drive up to Susquehanna
24 County or anywhere north of here, Montrose area,

1 and I would encourage you, sir, if I may be so
2 bold that the photographs you're missing is one
3 taken at night, because there are mountains up
4 there in the endless mountain chain that glow
5 24 hours a day. It's amazing.

6 Let's not forget when we do this
7 environmental study, the direction that those
8 that are challenged to do that study are given
9 is going to be absolutely key in that when you
10 hire a consultant, the consultant works for you,
11 and if they're given direction that says we want
12 fracking, that's what they're going to look at.

13 If you give them the direction that the
14 majority of this community is adamantly opposed
15 to fracking and tell them why, because of our
16 historic districts, our agricultural security
17 areas, our conservation easements, our
18 watersheds, the whole township is defined
19 basically as water sheds of the Delaware River.

20 There's very little of Solebury
21 Township that isn't either in the Paunacussing
22 or Laurel or Primrose or Pidcock or Aquetong or
23 Honey Hollow. It's almost all of it is
24 environmentally sensitive. Then have the

1 environmental consultant take a look at the
2 damage that we've sustained in Solebury Township
3 because of all the mineral extraction, be it the
4 quarry, be it Tuscarora. The very thing they're
5 looking to come back and extract from the
6 township is practically destroyed, half of the
7 ground water in Solebury Township.

8 I think when the EPA gets finished with
9 their most recent study that they're having
10 Shell oil do, that's going to come to bear, it
11 will prove to be the case.

12 I guess my question for you gentlemen
13 is how much damage does the municipality have to
14 endure? How much damage does the public in a
15 municipality have to endure before you can just
16 simply say no?

17 MR. REISS: I would tell you -- this
18 isn't going to make you happy, there isn't a
19 settled answer to that question. There's going
20 to be some balancing. And I think the courts
21 always will look to balance interests.

22 But if you go to the plurality decision
23 in the Robinson case, I think if your science
24 backs you up, you could say well, you know, it's

1 not -- we have local circumstances here that
2 would require special protections.

3 But at the end, that's the plurality
4 decision, and two of those judges aren't sitting
5 anymore. So that's why I believe right now it's
6 not really a settled answer that says it's 20
7 percent or ten percent or 50 percent.

8 MR. CLEMONS: We certainly can develop
9 ordinances that make this an impossible place to
10 establish this use. And I expect we would. The
11 risk is how far do you go before the court says
12 no, you're not balancing. And that's the
13 tightrope that we all walk with zoning again,
14 whether it's town homes, mobile homes or these
15 other land uses trying to strike a balance that
16 acknowledges the burdens that are put on us by
17 DPC, and these state statutes that address
18 extractions and trying to keep the wonderful
19 place we all love.

20 MR. COSDON: Any other questions?

21 MR. GALLA: Peter Galla, Lumberville.
22 For those of you who are surprised by the fact
23 that the proprietary chemicals and why these
24 companies don't know what's in it, one person

1 who is probably responsible for it more than
2 anybody else in this country would be our former
3 vice president. This is Dick Cheney.

4 And secondly, I haven't read Act 13 yet
5 but I will. But I saw something on one of your
6 screens that said something about reasonable
7 activity or reasonable business that couldn't be
8 banned.

9 And getting back to these chemicals
10 again, how reasonable can a business say they
11 are when they are injecting what I will
12 characterize as poison into the ground and not
13 be able to identify what that poison is? And I
14 think that's because they don't want to be held
15 responsible for any of the cleanup or any of the
16 environmental damage and cancer that may be
17 caused by people drinking that polluted water.

18 So how reasonable can they say their
19 activity is if they can't identify what these
20 poisons are? So if it's going to be re-argued,
21 that may be a point that should be emphasized
22 unless it has already been emphasized.

23 MR. YEAGER: It has. The
24 unconstitutionality of Act 13 is settled law.

1 The dispute is over what is the legal reasoning
2 behind why it's unconstitutional. But there's
3 no question that a law does what Act 13 does is
4 unconstitutional.

5 You're absolutely right. And -- but it
6 is a bias that we confront environmental law
7 across the board. There is a presumption that
8 if someone wants to do something, we're going to
9 give them a permit to do it. It is a built-in
10 presumption into the law.

11 And part of what is exciting to me as a
12 lawyer about the Robinson Township decision is
13 the recognition of the environmental right as
14 inherent and infeasible is something new for a
15 court to recognize.

16 And it actually puts Pennsylvania as a
17 leader in the country and a leader in the world
18 in having its highest court recognize that. And
19 part of what we're struggling with now is to
20 make sure that the lower courts take all
21 provisions of the constitution seriously, not
22 just the ones that they like, and that the
23 environmental hearing board and DEP and
24 municipalities around the state take it

1 seriously.

2 And where that leads us we don't fully
3 know. But it's a certainty that provides us an
4 opportunity that we didn't have before to make
5 exactly the argument that you're making, that
6 just because you want to do something doesn't
7 give you the right to do if you're going to
8 poison the water and the air that we all depend
9 on for our future generations.

10 MR. MCEWAN: Robert McEwan. As we're
11 moving to the supervisors probably resting with
12 the idea of doing an environmental study, I'd
13 like to suggest that I don't know what is
14 allowed, but the Aquetong Watershed Association,
15 water fields in Buckingham; Plumstead has a
16 quarry that probably makes ours look like
17 nothing in terms of a footprint if I was looking
18 for an industrial site.

19 So our environmental studies should
20 probably, if we can, incorporate some of these
21 things that would impact our key resources. You
22 can think about it, figure out how to do it, if
23 it's allowed and how much it cost. But all
24 those things will flow into our water basins, et

1 cetera, et cetera. I'd like to hear you try to
2 do that if you can.

3 MR. COSDON: Thank you.

4 MR. GETTY: Bill Getty from North Suga
5 Road. I want to thank you all for this forum.
6 And the one thing I'm curious if we were to move
7 or create an industrial area for this, it
8 wouldn't be specific just for gas, can it be
9 used for other industrial purposes?

10 MR. YEAGER: Absolutely.

11 MR. CLEMONS: There are cases that
12 clearly say you don't have to permit every
13 single use. If it gets occupied by some other
14 use, that's okay too.

15 MR. GETTY: Would the compressor
16 stations also be considered part of this
17 industrial situation?

18 MR. YEAGER: Yes.

19 MR. GETTY: I was hoping with the
20 economy of scale often these things need fields
21 to -- having worked as a petroleum geologist,
22 you don't want to put one well and have to then
23 pipe it. But I'm a little concerned that we
24 have transcontinental gas pipelines running

1 right that they might tap into and find that
2 appealing. I have to say that those compressor
3 stations that are a big factor, too, with the
4 noise.

5 The other thing that as having worked
6 and tried to sleep on offshore drilling rigs and
7 having worked for and against many quarries and
8 worked against many of the strip mines out in
9 western Pennsylvania, I was thinking that while
10 it sounds like we can not tell them how to
11 tinker inside their workshop, one thing that I
12 saw was successful in Plumstead Township is to
13 say fine, but don't be making a lot of noise to
14 upset the neighbors or keep your lights on, that
15 we might think about all the emissions aspect
16 and say these sound barriers, the light
17 pollution, that type of thing. There are things
18 we could probably try to do to curb these lights
19 shining out.

20 Also coming from years of experience
21 and as a scientist, it's great to do the
22 studies, but if these things come in or even
23 before they do, just like what we could have
24 done with New Hope crush years ago is the more

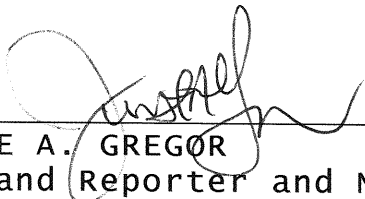
1 baseline data we have in the area ahead of time
2 on the quality of our roads, the bridges, the
3 aquifer's quality, makes it so much easier that
4 when they come in, they don't say oh, it was
5 always that way. That's always been their
6 argument, the wells were already contaminated
7 before. Getting good baseline data is
8 essential. Thank you.

9 MR. COSDON: Any another questions?
10 Gentlemen, thank you very much for coming. We
11 appreciate it. I think it was well worth the
12 time we all vested. Thank you. And thank you
13 all for coming.

14 (Whereupon, the matter was adjourned.)
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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings and testimony taken by and before me are contained fully and accurately in the notes of testimony, and that the foregoing is a true and correct transcript of the same.



JUSTINE A. GREGOR
Shorthand Reporter and Notary Public

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