

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – FEBRUARY 7, 2022

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on February 7, 2022. Mr. Bruch called the meeting to order.

Those present:

Planning Commission:        Ross Bruch, Chair  
  Adrian Costello, Vice Chair  
  Tony Bush, Member  
  Tejinder Gill, Member

Others:                             James Majewski Community Development Director  
  Barbara Kirk, Township Solicitor  
  Andrew Pockl, Township Engineer  
  Daniel Grenier, Supervisor Liaison

Absent:                             Dawn Stern, Planning Commission Secretary

APPROVAL OF MINUTES

Mr. Gill moved, Mr. Costello seconded and it was unanimously carried to approve the Minutes of January 10, 2022 as written. Mr. Bush was not present for the vote.

APPROVAL OF ACT 537 PLAN SPECIAL STUDY – SALE OF SEWER SYSTEM

Mr. Bruch stated this was discussed at the last meeting. Mr. Fred Ebert, Lower Makefield Township wastewater consultant, was present. He stated he was unable to attend the last meeting, and he is here to explain the Special Study, the input needed from the Planning Commission, and what the long-term Act 537 planning responsibilities are that will remain with the Township.

Mr. Ebert stated the Act 537 Plan is the means by which Lower Makefield Township identifies the methods for providing sanitary sewer, wastewater treatment, and disposal. He stated this is for both the public sewer and on-lot sewer areas.

He stated anytime that there is a change to the means of the public sewer or on-lot sewer service, DEP requires that it be reviewed by the County Planning agency, the Township Planning agency, and the County Health Department so that the Township can take all of those comments under consideration when making their decision to approve a Revision to the Act 537 Plan.

Mr. Ebert stated in this situation, the revision is an institutional one as to who will own, operate, and maintain the public sanitary sewer system. He stated Lower Makefield Township is in the process of finalizing the sale of the public Sewer system to Aqua Pennsylvania. He stated the DEP wants to make sure that the Township Planning Commission evaluated and made a clear recommendation to the Board of Supervisors as to how it will impact their ability to implement the SALDO (Subdivision Land Development Ordinance,) Zoning Ordinance, and any Master Planning documents.

Mr. Ebert stated the most important thing is that the 537 Plan controls the public sewer service area and the means by which it is done, and that is not impacted at all by this sale; and that still remains the responsibility of the Township. In order for the Township to make their decision, DEP requires input from the Township Planning Commission, Bucks County Planning Commission, and the Bucks County Health Department. He stated they will make a decision to modify the public sewer service areas – increase them, decrease them, any Planning Modules that go through, etc.

Mr. Ebert stated all this Special Study does is change the ownership and operation of the Sewer system from the Sewer Authority working with Lower Makefield Township owning the system to Aqua Pennsylvania. He stated Aqua Pennsylvania will now be required to implement all the requirements of the 537 Plan, so that whatever the Board of Supervisors says has to be done, Aqua Pennsylvania cannot do anything without Planning approval the same way DEP is asking acknowledgement for that. Mr. Ebert stated what the Planning Commission is looking at is an acknowledgement that because the 537 Planning stays with the Township that the change of who actually operates the system will not change their ability to implement SALDO or Zoning. Mr. Ebert stated he understands that last month the Planning Commission may not have fully understood that was their purview. He stated their purview is to give guidance to the Board of Supervisors to say that as long as we still control the 537 Plan and are not changing the public sewer service area, they are not changing anything besides who actually operates the system which includes billing; however, he does not feel that impacts the SALDO or Zoning. He added that what impacts the SALDO and Zoning is the area of the

public sewer service area, and that is not changing. He stated all of the requirements of the existing 537 Plan which includes the Corrective Action Plan and the Connection Management Plan will all remain the same. He stated it is the implementation that now goes from the Board of Supervisors to Aqua Pennsylvania.

Mr. Ebert stated he is looking for a recommendation from the Planning Commission to the Board of Supervisors to adopt the Act 537 Plan for the reasons that the public sewer service is not changing, and the Planning Commission's ability to make recommendations on the Zoning and Subdivision and Land Development are not impaired in any way; and that they can do the same job as they do today with Aqua owning it because the Township controls the 537 Plan. He stated it would send a non-positive statement to DEP if the Planning Commission were to "take a non-action" which would mean that they did either not understand it or do not agree with it and believe that it would somehow impact their ability to make proper recommendations to the Board of Supervisors on all Planning aspects within Lower Makefield Township. He stated after any questions, he would ask for a re-consideration to make a recommendation to approve the 537 Plan as the Planning Commission would do with all future 537 Plan Amendments or anything that would modify the Township's Act 537 Plan which includes Planning Modules.

Mr. Ebert stated this is a requirement of DEP, and they must adopt the Special Study so that the 537 Plan is formally modified to allow Aqua Pennsylvania to take over ownership and operation of the public sewer system within Lower Makefield Township.

Mr. Bruch stated Mr. Ebert identified three areas of review – one with regard to SALDO, one with regard to the Comprehensive Plan, and one with regard to Zoning. He asked why does the question with regard to Zoning not fall under the Zoning Hearing Board instead of the Planning Commission.

Mr. Ebert stated the Planning Commission looks at Zoning to determine if a use is acceptable within a Zoning District, and that implies public sewers. He stated the Planning Commission would review proposed developments, trails, etc. and indicate that they are in accordance with Zoning and would not therefore have to go to the Zoning Hearing Board.

Mr. Majewski stated this would not go to the Zoning Hearing Board, as the Zoning Hearing Board is charged with hearing Appeals from Zoning Ordinance regulations from homeowners and property owners within the Township. He added that the Planning Commission has oversight on Zoning regulations such as when they did the Zoning Overlay for Prickett Preserve and also when other Zoning Amendments were put before the Planning Commission.

Mr. Bruch stated an e-mail was sent earlier today that it was the responsibility of the Planning Commission to verify that the sale of the Sewer system will not impact the Township's ability to enforce the SALDO and the Zoning of the Township. He stated while he understands that, based on what was just stated, it seems that the Planning Commission is specifically charged with approving or not approving the Special Study; and he asked if they are able to approve what they can with regard to the sale of the system under their purview or are they specifically looking for approval of the Special Study.

Mr. Ebert stated it is only what is under their purview. He stated it has nothing to do with the rest of it, and it is really how it impacts the Planning Commission and their ability to make recommendations under SALDO.

Mr. Bush stated it was mentioned that it is a requirement that there be input from the Planning Commission, and they have already given their input. He stated he understands this is here for re-consideration. He stated the Planning Commission did not look at how it could impact the Master Plan. He stated Mr. Ebert indicated that the Township would still be responsible for development of Maintenance Plans and Aqua would be responsible for implementation; and he asked if that is correct or if Aqua as the new owner would not have more say than that in terms of maintenance. Mr. Ebert stated the 537 Plan as to where and how we provide public sewers remains with the Township, but the implementation and methodology of how it is operated and maintained will be transferred to Aqua Pennsylvania. He stated they will have to implement the Township's Act 537 Plan, and how they do that is under compliance with the regulations of the PADEP and any Contracts that are transferred with it.

Mr. Bush stated it was not discussed whether this was necessarily in compliance with the Township's Zoning Ordinance, and he believes they would have to defer to Ms. Kirk, as the solicitor for the Planning Commission, to help with this.

Mr. Ebert stated the change of ownership has no impact on the public sewer service areas or as to where sewers are provided. Mr. Ebert's stated the means and methods of how it is maintained does not have a direct impact whether it is done by Lower Makefield Township or Aqua Pennsylvania and would not impact the Planning Commission's review and analysis of approving any proposed project whether it is a development or Township project.

Ms. Kirk stated Mr. Ebert is correct in that as far as the Comprehensive Plan is concerned, the Township has maintained and operated the sanitary sewer system in order to provide public sewer service to its residents. She stated while there are still some properties that have private septic tanks, overall any new development must connect into a public sewer system if it is available. She stated that the Comprehensive Plan is geared in order to provide public sewer system services to all of the residents in the Township. She stated that will stay in place although there is a sale of ownership of the system. She stated if you look at the Comprehensive Plan and the anticipation of all residents having public sewer service, that is the long-term wastewater disposal system that the Comprehensive Plan addresses; and that will continue to be what the Township seeks. She stated that is how the Planning Commission review of the Act 537 Study would be in consideration of the overall Comprehensive Master Plan.

Mr. Bush stated he is trying to determine what has changed between the last meeting and this meeting for the Planning Commission. Ms. Kirk stated at the last meeting, it was anticipated that this would be in front of the Board of Supervisors at their meeting after the January Planning Commission meeting; however, after reviewing the Minutes and seeing some confusion as to why the Study was even presented to the Planning Commission and because Mr. Ebert was not available to participate at that meeting to provide a more clear explanation as to why the Planning Commission needed to review it, the Township Administration asked if Mr. Ebert would be available for tonight's meeting in order to give the Planning Commission more specific information as to why the Study was coming to the Planning Commission for review. She stated that is why it is back in front of the Planning Commission in anticipation that if they heard a better explanation as to why they were reviewing the Study, they may re-consider the Motion taken at the last meeting of taking no action and might make a recommendation to approve the Study.

Mr. Bush stated when they met last he felt they were under some pressure to make a decision at that meeting because there was an upcoming Board of Supervisors meeting when this was going to be addressed. He stated just before tonight's meeting he saw on the Township Website that this was put out for public comment on January 21 for thirty days. He stated when the Planning Commission met at the last meeting, they may have been under a misconception that they had to take action at that last meeting. Ms. Kirk stated part of that was her misunderstanding of the necessity for the Planning Commission's immediate review, and she understood that this had to be before the Board of Supervisors immediately; and it was not until after the meeting that there was a decision to put this on the Website for public comment and review and to defer the Supervisors' final review of the Special Study. Ms. Kirk stated while she had some information from Mr. Ebert, some of it did not probably come across as clearly than if he had been in front of the Planning Commission. Ms. Kirk stated the Administration felt it best that rather than the Planning Commission be under a misconception as to why they were even looking at this, they wanted Mr. Ebert to come before the Planning Commission and clarify why the review had to be conducted.

Mr. Grenier stated the DEP is requiring a Public Hearing which will be held on February 21. He stated on January 14 he had advised the Supervisors that he would not be able to attend a meeting on February 21, but they scheduled it then anyway so he will not be able to provide his own public comment at the Public Hearing. Mr. Grenier stated as Mr. Ebert noted it helps with "pushing the sale through at the DEP level to check the box that the Planning Commission has approved of it so it does not look like there is any negative connotation from the Planning Commission's purview with respect to the Act 537 Plan and the sale of the Sewer system." Mr. Grenier stated that is why the Township Administration is so "adamant" about having the Planning Commission take a vote other than no action because "it helps the sale of the system in terms of DEP review and making it look positive in the eyes of DEP."

Ms. Kirk stated it is also relevant that the Planning Commission understand that they were not looking at the Study as to whether or not the sale should go through, and they were actually looking at the Study as to how it effects the Comprehensive Plan, our SALDO, and Zoning regulations, and for them to learn that the Township still maintains control over the long-term plan for wastewater disposal, which she feels is a significant difference in their original understanding of why the Study was before them.

Mr. Grenier stated the 537 Plan is a technical document that lays out future plans for sewer treatment within the Township, and it is not an “opinion document.” He stated there are some items included which he does not feel are appropriate for a 537 Plan as it is a technical document and there is significant debate about the reasoning “behind certain things.” He stated he would have stated this at the February 21 Public Hearing meeting if it had been scheduled at a date when he could attend. He stated under Section 7, third paragraph, it mentions several reasons for selling the system. He stated he believes some people may agree with these reasons but some may “vehemently” disagree with this based on public presentations made by Township Administration and future plans for rate increases and the state of the system. He stated he has no issue with a 537 Plan moving forward as a technical document, but he feels that there are reasons given for the sale of the system that he believes to be very much debatable, many of which he would disagree with as someone who was “in the room on many of these discussions.”

Mr. Gill asked if they are approving the sale or just recommending it. Ms. Kirk stated the Planning Commission is not approving or disapproving the sale. She stated what the Planning Commission would recommend is approval of the Special Study Report being submitted to DEP as an Amendment to the original Act 537 Plan that the Township had to submit. She stated the reason a Special Study is coming up is because of the fact that the system is being sold. She stated the Planning Commission is just recommending whether the Board of Supervisors should approve and submit this Study to DEP as a supplement to the original Plan.

Mr. Bruch stated he does not feel that they are just approving submitting the Study since Mr. Ebert stated earlier that the recommendation would relate to the Planning Commission’s view that the sale of the system would not impact the SALDO, Comprehensive Plan, and Zoning which has nothing to do with the actual Study. Ms. Kirk stated she stands corrected, and it should probably be worded to the effect that the Planning Commission recommends that the Act 537 Special Study does not adversely affect the Township’s Comprehensive Master Plan, SALDO, or other Zoning regulations as it relates to the public sanitary sewer system.

Mr. Ebert stated it is the purview under which the Planning Commission operates, and that is what the Board of Supervisors wants to know. He stated they want to know that if they sell the system, can the Planning Commission still do its job; and does it impact their ability to implement and make

recommendations under SALDO. He stated the only thing that impacts the Planning Commission directly is whether public sewers are available to service a development and if it is in the public sewer service area or out of the public sewer service area, and can they amend the public sewer service area in the future to address on-lot failing systems. Mr. Ebert stated in this case because all of the 537 Planning remains an action of the Township, he does not feel it has an adverse impact. He stated they would like the Planning Commission to understand that it does not impact that, and therefore consider a recommendation of the Special Study since it would not impact the Planning Commission's ability to make recommendations to the Board of Supervisors on the planning of any project that comes before the Planning Commission.

Mr. Majewski noted Page 58 of the Comprehensive Plan which has the Section: "Future Needs and Recommendations for Action," and Item 2 on that Page is "Public Sewerage" which states: "This Comprehensive Plan reaffirms the current Township Policy now in effect requiring that all major new developments be served by public sewers." Mr. Majewski stated he believes that the Act 537 Plan as proposed aligns with that goal of our Comprehensive Plan.

Mr. Costello stated it seems that from the Planning Commission's perspective, this has been set up in this way because of the way the ownership is set up; and the way the Planning Commission is to apply the things that we review and treat them the same way with the expectation that it will be executed the same way whether it was LMT doing it in the past or the way Aqua will do it in the future. He stated currently the Sewer system is owned by the Township, and when the Planning Commission makes a recommendation to the Board of Supervisors, they have direct control over the people who would do the maintenance, make the changes, and implement what was decided to be done for a particular development. He asked what would be the enforcement control mechanisms if Aqua "becomes a bad actor." He asked what controls the Township has to make sure that the Contract is still executed the way the Township expects it to get executed. Mr. Costello stated currently when the Township makes approvals, there is a level of expectation that there will be successful implementation. Mr. Costello stated he wants to make sure that when we give up the control as to who is doing the day-to-day operation, he feels the Township would want to define what the control mechanisms are or we could have a situation where residents are unhappy because the third-party supplier under the regulation of the Public Utilities Commission, does not respond to anything.



Mr. Ebert stated the regulatory has always been and always will be the PADEP and ultimately the EPA. He stated that includes the operation and maintenance, and they are still required to do a Chapter 94 Report every year and still have to comply with the Corrective Action Plan. He stated if there is any concern about how Aqua is doing something, it can be addressed through the 537 Plan, but the regulatory authority is still the DEP as it is today. He added Aqua does have to report by March 31 where they are at, if there are hydraulic overloads, and if they have done the maintenance. He stated DEP reviews that report. He stated we are under additional scrutiny in approximately one half of the Township which is the part that is served by Bucks County Water and Sewer Authority to make sure that we are in compliance with the Corrective Action Plan as they control the number of connections. Mr. Ebert stated we also have certain requirements under Contracts for the flows through Yardley, with the Morrisville Municipal Authority, and with Bucks County Water and Sewer Authority. He stated instead of having a Township staff person doing this, we will now have Aqua Pennsylvania which also has reporting requirements to the PUC. Mr. Ebert stated 90% of that is financial; however, if there is a lack of service, someone could complain to the PUC as well as to the DEP. He stated a complaint to the PUC is never taken lightly by a third party because that implements their ability to buy the next system and get the next rate increase. Mr. Ebert stated we will be getting a larger operation that specializes in this operation as opposed to a Department, and we have the PUC and the DEP involved to guarantee that the level of service meets all of the regulatory requirements.

Mr. Costello asked if there is a development that has been approved once Aqua takes over is there any ability for the developer and Aqua to do something different from what was approved by the Planning Commission and the Board of Supervisors. Mr. Ebert stated they could not because the Township still approves the Land Development Plans. He noted with regard to an upcoming project, the Permit for the pump station has already been approved by the Board of Supervisors and submitted so those standards cannot change. He stated for any future project, the Township will review the Planning Modules, and they can require them to be as specific as deemed appropriate to make sure that there is no question that they will install what the Township wants. He stated Aqua will make sure that there is compliance with Township standards. He stated he is also working on other projects, such as Dogwood Drive, where he will be doing planning for a low-pressure system in that development, and to pick up nine houses along the road for a total of fourteen houses. He stated the Township's desire is that as developments go through that the entire Township will be publicly sewered. He stated that still remains in the Planning Modules which he reviews on behalf of the Township now. He stated he is also requiring that

there be improvements to the Chanticleer force main and the developer be responsible to upgrade that to provide capacity not only for their development but also to sewer anyone else within a reasonable distance that can be sewered. He stated the Township still maintains that control, and the Planning Modules will still come before the Planning Commission to determine if they are adequate and that they meet the needs for the development and any existing areas that can be sewered. Mr. Ebert stated the Township can do more detailed planning so that the implementation and means and methods of implementation, which will be Aqua's responsibility, are very clear.

Mr. Costello asked where that planning happens, and Mr. Ebert stated that is in the Sewage Facilities Planning. He stated in the case of Dogwood Drive, it is in their Planning Modules. He stated that is also consistent with the 537 Plan which included that there would be a public/private partnership to increase the size of the force main for Chanticleer to provide twenty-three additional EDUs. He stated it is the base 537 Plan, but because it requires Water Quality Management, DEP requires going back and doing a Planning Module to double reinforce that and add significantly more detail than is in the overall 537 Plan.

Mr. Ebert stated the Planning Commission will still be reviewing Planning Modules, and it will be important for the Planning Commission to review them and determine how it will impact the area and then make recommendations to the Board of Supervisors so they are still maintaining that control. He stated that does not change with the sale of the system.

Mr. Costello asked Mr. Pockl and Mr. Majewski if they agree that this does not fundamentally change the way the Planning Commission looks at Development Plans, and both Mr. Majewski and Mr. Pockl agreed.

Mr. Grenier stated Mr. Majewski indicated that the Comprehensive Plan indicated that they are looking forward to having everyone in the Township on public sewer, but this will now be a private sewer and not a public sewer; and it will be subject to private ownership and private rate increases subject to PUC approval much like PECO and others. Mr. Grenier stated he feels this fundamentally changes everything and makes this a private sewer system where we are " beholden to a private entity moving forward in perpetuity and can never get that back." He stated he feels it should be made clear in the comprehensive planning process that we are no longer having a public sewer system and that it is a private sewer system moving forward in perpetuity and Lower Makefield Township no longer has ownership rights, and no say other

rates “or anything else” and it is owned by a “very private entity” and is subject only to the PUC much like other private entities that service Lower Makefield and other parts of the State.

Mr. Majewski stated the word “private” in this case versus “public” is different and public in this case in reference to the Comprehensive Plan is that it is a system that is used by the general public similar to how the water lines are considered the public water supply system even though it may be privately owned.

Mr. Grenier stated like the public water system, we do not have much in the way of recourse as could be seen when there was the turbidity issue, and there was really nothing that the Township could do; and we had to wait for the private entity to do something. He stated this will be a similar issue with sewers moving forward.

Mr. Grenier stated normally when we go through a process like this and we want Advisory Boards and Commissions to make comment, we would have asked them early in the process as opposed to after it was already approved by the PUC. Mr. Ebert stated that is not how it happens in Act 537 Planning because until the Township makes the full commitment and the PUC accepts it, he cannot do a selective alternative. He stated what Mr. Grenier is talking about may be input and a recommendation on the sale from the Planning Commission which is not what he is here for. Mr. Grenier stated that is not what he is talking about. He stated it is how a sale and the new ownership of the system effects the Planning Commission’s ability to do its job under our Code and the State Municipal Planning Code. He stated he feels it is unfortunate that it is happening after “everything is all said and done, and puts them in an awkward position to have to do something at the very end of the game.” Mr. Ebert stated unfortunately this is how the procedure works with DEP, and they want to get all the way through so that all the facts are known so that the Planning Commission can make the most-informed decision based on what the Board of Supervisors is doing and how it impacts the Planning Commission. He stated if they were to do it early, it could be argued that the Planning Commission did not know all of the facts, did not know what the PUC was approving, or what conditions the PUC would put on; and there would have been a lot of unknowns if it had been done earlier.

Mr. Bruch stated based on the timing, the hope is that there is an approval by the Planning Commission tonight, and Mr. Ebert agreed. Mr. Ebert stated after the “no action alternative” he wants to be on the Record to explain to DEP that he came back to the Planning Commission and explained the process very thoroughly, and that they fully understood it. He stated he is requesting that the Planning Commission make a recommendation to the Board of Supervisors as to their position on the Planning Commission’s ability to implement the SALDO, Zoning, and Planning document that they are charged with making recommendations on.

Mr. Grenier stated there is the open public comment period and the Public Meeting on February 21. He stated all of that is based on counting days backwards to make sure that there is time for Mr. Ebert to make any updates to the Report prior to the March 4 Closing.

Mr. Ebert stated it is important for the public to see the document and understand how it impacts the Planning Commission. He stated he will also be able to state at the Public Hearing that this has been reviewed by the Planning Commission twice and what were their statements. He stated he will also relay the information from the Bucks County Health Department and the Bucks County Planning Commission. He stated he wants to give this all to the Board of Supervisors in enough time that they can digest this. He stated he has to submit the Report prior to the Closing on March 4, and he would like to be able to have time to reply to all of the public comments. He stated he also wants to be able to accurately explain to the Board of Supervisors what were the comments and the recommendation of the Planning Commission.

Mr. Bush stated if the Planning Commission were to make a recommendation of approval, he feels there should be a discussion about having that approval be modified to reflect Mr. Grenier’s comment that it may impact the Comprehensive Plan to the extent that it would not be public sewer going forward, and that it would be private sewer. He stated he agrees with Mr. Grenier that that is a distinction with real consequences and it is impactful forever.

Ms. Kirk stated rather than make a distinction of private versus public because technically the buyer is a public utility that is subject to State regulation as opposed to something like an Authority like Bucks County Water and Sewer Authority which is more of a private entity in this situation, she would suggest that the distinction be made that the Planning Commission is concerned that there may some effect on the Comprehensive Plan as the Township will no longer maintain control over the sanitary sewer system. She stated she does

not feel it is appropriate to refer to Aqua's acquisition as being done by a private entity because they are specifically designated as a public utility which is the reason they had to go through the PUC for review and approval for the sale to occur.

Mr. Grenier stated Aqua is a private company much like Exelon which owns PECO which is also a for-profit, private entity so they are a private entity.

Mr. Ebert stated the term they had to use is third party PUC-regulated company rather than private or Municipally owned. He stated he believes that public means that there is connection within the public sewer service area, and it does not matter who owns and operates it; and it is the difference of whether it is in the public sewer service area or an on-lot system. He stated public and private are not necessarily the best terms since in the eyes of the DEP and the regulatory world, private would mean that it is owned by an individual that is not governed by the PUC.

Dr. Fredric Weiss, stated he is a Lower Makefield resident. He stated he appreciates the Planning Commission re-considering this issue tonight. He stated he had been the Supervisor Liaison to the Sewer Authority for over a year and was also on the Sewer Sub-Committee for a few years. He stated even though Aqua is a publicly-traded corporation, it is a PUC-regulated organization, and it must obey Lower Makefield Township Ordinances regarding the sewers, the sewer laterals, and everything else that Lower Makefield is responsible for. He stated even though Aqua is a private corporation, they must follow the DEP rules and the local Ordinances. He stated the Township is still responsible for inspections and Code enforcement, and that will not change. He stated Aqua will be responsible for everything that is currently being done by the Township. He stated the Ordinance states that all further development must be connected to public sewers, and that will not change. He stated there is nothing in the 537 Plan which will change any kind of future development, and it is the Township's responsibility that Aqua follows the 537 Plan, and there are tools the Township has that can help enforce that. Dr. Weiss stated this has no effect on the SALDO or the Comprehensive Master Plan. He stated the Township Ordinances, Planning Codes, and Construction Codes will not be affected by this sale. He stated the Planning Commission is not being asked to make a recommendation on the sale, and it is just whether the 537 transfer changes anything in SALDO or the Comprehensive Master Plan or affect the Township's ability to enforce its Ordinances.

Mr. Costello moved to recommend the Act 57 Special Study move forward based on the fact that we see no impact on SALDO and the Master Plan and ultimately from the Planning Commission's ability to perform its mission.

Mr. Costello stated he is not interested in providing commentary on things that are not the purview of the Planning Commission. He stated he feels he now has some clarity on what the Planning Commission's role is in this process and what the impact may or may not be on what the Planning Commission is supposed to do.

Mr. Bruch stated he agrees with this as it relates to SALDO and Zoning; however he is not sure about the Comprehensive Plan. He stated he assumes that just approving SALDO and Zoning does not get them where this needs to be to move this along from a Township standpoint as he assumes it needs to be all three.

Mr. Gill stated he agrees with Mr. Costello after hearing the comments tonight from several parties that it does not seem that it will affect any of the three so he is comfortable with Mr. Costello's Motion.

Mr. Bush stated he agrees with SALDO and Zoning, but would disagree with the Comprehensive Plan. He stated he is not sure why "we would care that two out of three would be overly negative" for the Township's presentation to the PUC.

Mr. Costello asked what the concerns are with regard to the Master Plan. Mr. Bush stated the Comprehensive Plan talks about public sewers, and this will not be public sewers as it is a privately-owned company. He stated while it is publicly-regulated by the PUC, it is a private company that gets to charge whatever the PUC lets them charge. He stated it is not the Township, and it is not owned by the Municipality or another Government entity so it does affect the Comprehensive Plan.

Mr. Costello asked if the Comprehensive Master Plan has references to public water, and Mr. Bush agreed it does. Mr. Costello asked why there is not a concern about that. Mr. Costello stated he does understand that this is a significant change for the Township. He stated the Comprehensive Plan calls out for public sewer, and we are changing that to a privately-controlled entity; however, at the same time the same Master Plan calls for public water.

Mr. Bush stated what Mr. Grenier was talking about and what we are voting on is the 537 Plan/Sewer Plan, and the Sewer Plan talks about being public sewer and this is not going to be public sewer.

Mr. Majewski stated in the Comprehensive Plan it does mention private Sewage disposal systems and that relates to a private, on-lot disposal system as opposed to a system that the general public can use. He stated there are no restrictions on people hooking up to the public sewer system, and they just need to pay the Tap-In Fee and they are permitted to connect versus private on-lot septic systems. He stated he feels the Comprehensive Plan is clear that a private system that they are referring to is something within a development after you get past the public main or something that is a private on-lot disposal system whereas public sewer as Mr. Costello pointed out is no different than public water; and while it may be privately-owned, it is a public water system. Mr. Majewski stated as noted by Mr. Ebert, DEP has slightly different wording, but this is the wording in our Comprehensive Plan.

Mr. Costello asked if the concern is that the Comprehensive Plan refers to public sewer but the 537 Plan is fundamentally changing it to private sewer and there might be a disconnect in the future. Mr. Bush stated when they say that the Plan will still have a public sewer, that means certain things to the public; and the public will have a certain understanding of what public means versus what private means. He stated if the distinction is it is still a publicly-regulated entity, it may be semantics, but it is semantics that he is not comfortable with.

Mr. Grenier stated he was the Supervisor Liaison to the Planning Commission during the time period when the Comprehensive Master Plan was updated, and if he had thought that public sewer would also have included selling to a private owner, he would not have voted in favor of passing the Plan in its current form, and he would have made that distinction very clearly. He stated he would have not have voted to approve a Comprehensive Master Plan that considered a private sewer system, and he does not feel that provides the greatest public benefit. He stated they did not have that debate at the Planning Commission level or the Board of Supervisors level since it was not something they contemplated at that time.

Mr. Bruch stated based on the description of what has been provided, it does not appear that the sale of the Sewer system will impact the Planning Commission's ability to enforce the SALDO or the Zoning of the Township; however, he cannot say with certainty that the sale is also aligned with the Comprehensive Master Plan.

Ms. Kirk stated while she understands what Mr. Grenier's distinction is which is the fact that that it will not be owned by a Municipal entity and is therefore private, when she looks at the Comprehensive Master Plan, she believes that the Plan designates that the Township is looking for a sewer system that is not private, on-lot septic-type systems or a system that is not owned by any one individual to control and charge whatever they want. She stated when you think in terms of a public system, it is a series of sewer pipes and lines that will flow to a wastewater treatment plant to dispose of wastewater. She stated the fact that there will be a sale of the system to a different entity is not going to eliminate the Township's plan to have the entire Township under a public sewer system as opposed to going back to everyone having individual on-lot septic systems.

Mr. Ebert stated that is an important point since what the 537 Plan looks at is what is the ultimate long-term means of providing public water and sewer. He stated an individual on-lot system will eventually fail; and if there is not sufficient area for a replacement system, then in the eyes of DEP, the best long-term option is connection to a public sewer system compared to continued use of private, individual, on-lot system or a small flow treatment plant. He stated the purpose of the Comprehensive Plan is to look at what is the long-term best alternative which is not a private, individual, on-lot system, but rather connection to a public system – whether it be a third-party PUC or other owned system that goes to a Municipally-owned and operated treatment plant or third-party PUC. He stated the purpose of the Comprehensive Plan is to acknowledge that the best long-term interest of its residents is that when available, they connect to a public system rather than to rely upon an individual, on-lot system which by definition will ultimately fail. He stated he believes that is why the Comprehensive Plan was written the way it was.

Mr. Costello asked if they could include in the Motion a caveat that with this there is a recommendation to update/amend the Master Plan to insure that what is referred to as public sewer in the past, the spirit of that does not change with the change in ownership. He stated this would be done to avoid confusion and make sure that the Master Plan goals do not change.

Ms. Kirk recommended that the Motion be modified to include a caveat to recommend to the Board of Supervisors an Amendment to the Comprehensive Plan to address the sale of the system to a private entity but not necessarily negating the long-term goal of everyone having access to a sanitary sewer system other than individual, on-lot septic systems.



Mr. Bush stated while this is starting to get there, he does not feel what has been stated gets him there. He stated it is to incorporate or address the sale of the system to a private entity and what that means and how is that worded as he feels it should be more specific than what has been stated and he is not sure what was stated properly conveys what they are talking about.

Mr. Costello agreed to the Amendment and Mr. Gill seconded. The Motion did not carry as Mr. Costello and Mr. Gill were in favor and Mr. Bruch and Mr. Bush were opposed.

Mr. Pockl stated in the Comprehensive Plan there are portions of the Township sewer system that are operated/maintained by the Morrisville Municipal Sewer Authority and the Bucks County Water and Sewer Authority; and they are both referred to as the public sewer system. He stated the whole comprehensive system is referred to as the public sewer system within the Comprehensive Plan.

Mr. Grenier stated he believes that is because at the time the entire system was owned by public entities including Morrisville and Falls; and this is a “new thing across the State as Act 112 has totally upended this whole approach to what used to be considered a public good and the utilities are privatizing them for various reasons.” He stated he does not think a lot of Townships have ever considered this before as an option, and it is something new. Mr. Grenier stated he has been writing Comprehensive Plans since the 1990’s and private ownership of a sewer system was not contemplated until recently. He stated instead of a private, on-lot system, he would consider it an integrated sewer system whether it is owned by a public or private entity, and it would go to some treatment plant that has historically also been publicly-owned, although that is also changing now in a lot of places in southeastern Pennsylvania where companies are trying to purchase wastewater treatment plants for large sums of money. He stated this is also something new that our Plan did not contemplate. He stated he feels the distinctions are very important because it fundamentally changes how residents, elected officials, and others have to think about their systems. He stated once this goes private, we are out-sourcing the entire Township’s utility systems so there is very little that we will have authority over any more. He stated he feels that distinction in the Comprehensive Master Plan is important.

Mr. Ebert stated that the “regulatory things the Planning Commission has” are SALDO and Zoning, and that is what they implement. He stated the Comprehensive Plan is a guide to which the Planning Commission works and provides

recommendations to go through. Mr. Ebert stated they could have a Motion that it will not impact the Planning Commission's ability to implement their regulatory requirements of the Zoning and SALDO, and it could be stopped there or they could also say that in the future the Planning Commission would like to look at the impact this decision the Board of Supervisors may make will have on the Comprehensive Plan. He stated in this way the Planning Commission is giving clear guidance that the things that are regulations – SALDO and Zoning – this does not impact their ability to implement that and that they would have another look at the Comprehensive Plan. He stated in this way they could pass a Motion tonight so that it can proceed and be given to the Board of Supervisors.

Mr. Bush stated he would be comfortable with that.

Ms. Kirk stated a Motion could be made along the lines as presented by Mr. Ebert. Mr. Bruch stated he would like it to be clarified whether it is just SALDO and Zoning or if the commentary about the Comprehensive Plan and the Planning Commission's lack of action on the Comprehensive Plan will be incorporated into that.

Mr. Ebert stated the Planning Commission could keep it just to SALDO and Zoning.

Mr. Bush moved and Mr. Costello seconded that it be limited to the SALDO and Zoning regulation, and that it does not impact the Planning Commission's ability to implement SALDO and Zoning regulations.

Mr. Grenier stated at the last meeting Mr. Majewski had indicated that the Planning Commission was to review this with consistency with the Comprehensive Plan. Mr. Grenier stated when he looks at the Municipalities Planning Code, part of the Planning Commission's role is to review all items for consistency with the Comprehensive Plan. He stated their specific guidance is based off of the SALDO and Zoning Code as they are very quantitative, but there is also a requirement to review their decision looking toward the Comprehensive Plan as a guidance document.

Mr. Bush moved, Mr. Costello seconded and it was unanimously carried that the Act 537 Special Study will not impact the Planning Commission's ability to regulate SALDO and Zoning but the Planning Commission cannot reach a consensus as to the impact on the Comprehensive Plan which would require future, further study.

Mr. Ebert stated in the future he would be glad to come before the Planning Commission when there are Planning Modules to be considered.

#### APPROVAL OF PROPOSED ORDINANCE TO AMEND PROVISIONS OF SALDO CHAPTER 178, ARTICLE XI, LANDSCAPE AND OPEN LAND REQUIREMENTS

Mr. Majewski stated the Board of Supervisors voted to advertise an Ordinance for a Public Hearing on February 16 to consider for enactment an Ordinance that would amend the provisions of the Township's Subdivision and Land Development Ordinance to provide and clarify certain provisions related to the required planting of native trees. Mr. Majewski stated he provided a copy of the Ordinance that the Supervisors voted to advertise for adoption.

Mr. Majewski stated the Bucks County Planning Commission provided a summary of all the changes involved. He stated on Page 1 they noted that several of the trees that were either non-native or had issues with diseases were eliminated from our tree planting list. He stated working with the EAC and looking at some other standards for area native trees, we came up with the list of trees that are shown on Pages 2 and 3 of the Bucks County Planning Commission review, as well as additional shrubs, ground covers, and perennials. Mr. Majewski stated on Page 3 the Bucks County Planning Commission noted that we are changing the caliper sizes. For street trees 3" minimum caliper size was required, and we are reducing that to be 2" to 2 ½" caliper trees. He stated it was found over the years that most Towns use 2" to 2 ½" trees as the standard for what is planted by developers. He stated that in Lower Makefield we have had some issues getting certain varieties of trees, and by waiting for a tree to grow to a 3" caliper, the trees we were able to get were the "leftovers on the lot," or the developers had to order them a year in advance in order to get them planted. It has therefore been suggested to reduce the caliper size in order to increase the availability of different species, and it also helps with the survivability of trees.

Mr. Majewski stated we also changed some of the requirements for evergreen, shade, and ornamental trees in buffers; and those changes would slightly reduce the height of the minimum size of trees. For evergreens it would be 6' to 5', shade trees from a minimum of 3" caliper down to 2" to 2 ½" caliper, and for ornamental trees from a 2 ½" caliper down to a 1 ½" to 2" caliper as noted on Page 4 of the Bucks County Planning Commission memo.

Mr. Majewski noted Page 5, and we are proposing to modify the language so that other native species not listed and non-native cultivars may be used with prior approval of the Township plant expert.

Ms. Kirk noted Page 2 of the Ordinance where it starts: “Shrubs may be non-native species” the words “to not” should be taken out, and the words “but shall not include invasive species...” as she found it difficult to understand, and this would make it more clear.

Mr. Majewski stated with regard to native plants an addition has been included that not more than 10% of required ornamental flowering trees and shrubs may be non-native species which shall not include invasive, exotic, or alien species or any species that are on the Pennsylvania Department of Conservation and Natural Resources or Pennsylvania National Heritage Program list subject to the approval of an arborist for the Township. Mr. Majewski stated this also goes for buffer flowering trees and shrubs. Mr. Majewski stated the Bucks County Planning Commission commented that we should include that the arborist should be Certified by the International Society of Arboriculture (ISA). He stated they also noted that there are a few species of trees that are currently subject to blight, and Mr. Pockl’s office noted this as well. There are a number of oak trees impacted, and they wanted to make sure that those species not be over-planted in any planting plan. He stated this also relates to the flowering dogwood which is susceptible to disease, and they recommended that be removed from the list. Mr. Majewski stated since that is a nice tree, there may be a treatment for that disease so that tree would not have to be removed from the list.

Mr. Majewski stated the EAC reviewed the Ordinance and had a number of comments which were incorporated into the Ordinance as presented. He stated one comment that was not incorporated into the Ordinance was that they objected to the use of non-native species. He stated they also made their case at the Board of Supervisors meeting, but the Board chose to proceed with the 10% non-native species for flowering trees and shrubs only.

Mr. Bush stated he saw that Pennsylvania took a number of non-native trees and banned them as invasive and destructive, one of which there is a lot of in the Lower Makefield which is referenced in the EAC report which is the Bradford pear. He asked what were the comments raised about using non-native plants when this was discussed at the Board of Supervisors meeting.

Mr. Grenier stated it was a three-two vote in favor of including non-natives. He stated there was another group of plants from the U. S. Department of Agriculture today that were recently banned, and it was noted that: “Pennsylvania is working to repair the damage done by plants that were introduced into our landscape decades ago without foresight into how they might harm our environment and food supply. Banning the sale of invasive plants and educating homeowners and consumers to plant native species today are both vital for protecting our environment, our food supply, and our economy tomorrow.”

Mr. Grenier stated the comments in favor of allowing non-natives included that there were non-natives growing in the Township now and they questioned what effect there would be by allowing 10% in a new development on plants that are here already. There was also the desire to have more attracting flowering plants.

Mr. Grenier stated “a big part of the request for allowing for non-natives is coming from developers that have put in recommendations to the Township to add additional species to our planting list.” He stated one developer who is coming before us who the Planning Commission has seen in the past had his landscape architect submit a very detailed Plan sent to the Township with the recommendations and many of those were non-native and some of them were poisonous. He stated the push was to allow for more aesthetically-pleasing plants for certain people and to give developers more options for what they could plant.

Mr. Grenier stated he is an environmental scientist and he designs and Purchases thousands of native plants a year for habitat mitigation and other projects. He stated he is in favor of the recommendations to allow for reductions in the size of the material since oftentimes if you plant a smaller tree, it more easily can adapt to a new environment and becomes a healthier tree in the long term.

Mr. Grenier stated in terms of the non-native species, the arguments against approving that are that this is the first time the Native Plan Ordinance has ever been challenged. He stated with regard to invasive/non-native plants being planted besides the Bradford pear there are many other examples of what some people felt were aesthetically-pleasing plants that were planted and they take over and ruin habitat. He stated there are many studies that show native suburban yards have up to ten to twenty times more native bugs and pollinator species in their yards versus a non-native yard with a similar density

of plants and species. He stated it is very important to promote native species. He stated it is well known that there is declining pollinator habitat on the East Coast and in the Country, and that is largely due to non-native/invasive species. Mr. Grenier stated there is also an impact on the economy in that when you reduce the types and numbers of pollinators that are available, you reduce the productivity of agriculture.

Mr. Grenier stated at the Board of Supervisors meeting they presented the EAC's annual award to a composting company promoting sustainability; and because it was a private company, the owner passed the monetary award to Bowman's Hill Wildflower Preserve, and their main charter is to promote native species. He stated the Board therefore gave an award to a native plant society at the same time they were allowing for non-native plants. Mr. Grenier stated many members of the EAC attended the Board of Supervisors meeting and spoke against allowing for non-native plants.

Mr. Majewski stated another change to the Ordinance was to the Type III Buffer which is the Farmland buffer. He stated previously it was a 25' buffer all on the Farmland side of the buffer which included trees. He stated this has become problematic for the Farmland Preservation group over the years in that they have the maintenance for the trees which becomes costly. He stated to relieve them of that burden going forward if there are more Farmland Preservation Subdivisions, the 25' buffer will be maintained on the Farmland side to be planted in grasses and wildflowers or with ground cover plants where the slope is steeper, and on the Residential side of the line there would be a 10' area planted with appropriate native species to provide a naturalized Farmland buffer. Mr. Grenier stated he believes that everyone was in favor of that change.

Mr. Costello stated he understands that they are requiring the approval of an arborist, and he asked if it indicates who the arborist works for as he feels it should be an arborist hired by the Township and not the developer.

Mr. Majewski stated it states: "an arborist for the Township." Mr. Costello stated he feels that should be clarified so it cannot be misinterpreted.

Mr. Bruch asked Mr. Costello if he would be in favor of non-natives if that part was clarified. Mr. Costello stated he is not necessarily in favor of it.

Mr. Costello asked if we can put a requirement in that if someone is proposing a non-native flowering plant, they would have to prove that it be an effective pollinator. Mr. Costello stated if the Board is going to do this he is trying to suggest what could be done so that there are not problems.

Mr. Pockl stated the draft Ordinance previously permitted up to 20% non-native species, and the Board of Supervisors changed that down to 10%.

Mr. Bush stated when he was previously on the Planning Commission these types of Ordinances came first to the Planning Commission and then to the Board of Supervisors who would then vote to advertise it; however, here the Planning Commission is being asked to make a recommendation/comment on it after the Board has already voted to advertise it. He stated this has happened approximately three to four times recently, and it is “working backwards.” He stated any input that the Planning Commission has is after the fact and unlikely to change anything given that the Board of Supervisors has already voted to advertise it. He stated he does not understand why it is on the Planning Commission’s Agenda tonight.

Ms. Kirk stated procedurally when there is an Ordinance to amend SALDO or Zoning it has to be submitted to the Bucks County Planning Commission and the local Planning Commission at least thirty days before the Public Hearing unless it is an Ordinance generated by the Planning Commission; and this what the Board did. Mr. Bush stated while he understands that, in the past these came to the Planning Commission prior to going to the Supervisors.

Mr. Costello stated while he agrees with Mr. Bush, he still feels the Planning Commission should be as honest as we can with our feedback to the Board of Supervisors. Mr. Bush stated while he agrees, for future Ordinances that come up, he does not feel it should work this way.

Mr. Grenier stated when he was a member of the EAC they would propose Ordinance and Ordinance updates related to these items, and they would start with the EAC and procedurally it would also go to the Planning Commission and ultimately to the Board of Supervisors. Mr. Grenier stated this came from an “outside developer to Township Administration that immediately started changing the Ordinance per the outside request, and then it went to the Supervisors.” He stated that the Supervisors stated “at a meeting that we were going to wait for the EAC to provide comment, but we did not do that, and the EAC meeting was the day after the Board

meeting where the Board voted to advertise.” Mr. Grenier stated Mr. Bush is correct that procedurally this is “backwards.” He stated he does not want to think that is a “done deal,” and he feels the Planning Commission’s voices are very important. He stated even though the EAC was told of a process that did not occur, they still came to the Board of Supervisors’ meeting and made their comments. He stated he feels the Planning Commission is set up to be an Advisory Board for a reason, and Planning Commissions are among the most-respected Boards in the State per the Municipal Planning Code, and it is very important to have the Planning Commission’s thoughts and guidance on the Record.

Mr. Grenier stated the Native Plant Ordinance from 2007 is listed in our Comprehensive Plan as a major accomplishment and native plants are mentioned multiple times in the Woodlands Section and other Sections of the Comprehensive Plan as providing a great benefit to the Township.

Mr. Costello stated he would like to tell the Supervisors that he would be more comfortable with this if they required developers to indicate plant-by-plant their rationale as to why they could not use a native substitute.

Mr. Costello stated with regard to the issues other than use of non-native plants it seems that the Planning Commission would be in favor of those changes.

Mr. Bruch stated with regard to the use of non-native plants, he would be in favor of sending the message that non-native species are not intended to be in the Township in accordance with everything we have heard from the EAC, the Bucks County Planning Commission, and the State itself.

Mr. Costello stated his point was that if there were going to be non-natives permitted, he does not feel there are enough controls around this and it is ripe for it being taken advantage of.

Mr. Bruch stated he feels the 10% permitted is also unclear as one non-native tree could be planted that could grow 35’ tall with nine native shrubs around it that will grow 1’ tall each which would be 10%; however the 35’ tree will do far more damage to our environment. Mr. Costello stated he agrees that it is unclear as to whether it is 10% area or 10% “number of stems.” Mr. Gill stated he agrees that it is unclear; and while he would be in favor of the size changes, he would not be in favor of non-natives.



Mr. Bush. moved, Mr. Gill seconded and it was unanimously carried to recommend approval of the proposed Amendment to SALDO regarding required planting of trees subject to the elimination of the provision for planting non-native species.

#### OTHER BUSINESS

Mr. Bush asked that Mr. Grenier relay to the Board of Supervisors that if there are future proposed Ordinances that the Planning Commission would appreciate having its input taken before the Board of Supervisors votes to advertise an Ordinance as has typically been done in the past.

Mr. Grenier stated he has heard this from others as well and it is not always as effective if it comes from him and he asked Ms. Kirk if it would be more effective via a Motion of some type from the Advisory Board asking for earlier review of potential Ordinances. Mr. Grenier stated this would then be a clear recommendation to the Board of Supervisors which would have more weight compared to him making a request as the liaison. Ms. Kirk stated she does not believe a Motion would make any difference. She stated she would need to know if the Planning Commission is asking that the Planning Commission be afforded the opportunity to preview proposed Ordinances before they go to the Board of Supervisors for advertisement.

Mr. Bush noted the previous discussion about the non-native plants which was before the Planning Commission asking if they would recommend approval of the Ordinance; however, the Board of Supervisors had already voted to advertise it. He stated when he was on the Planning Commission previous to his current tenure, they had many Ordinances come before them, including this one when it passed in 2007; and it was brought to the Planning Commission as a rough outline to which the Planning Commission provided input and eventually was recommended for approval and went to the Board of Supervisors. He stated he feels that if the Board of Supervisors is looking for a recommendation from the Planning Commission, which is required by Pennsylvania Statute, it should be provided to the Board of Supervisors before they vote to advertise the Ordinance.

Mr. Costello stated he feels it is appropriate for Mr. Grenier to bring this up when he gives his Supervisor Report and advise the Board that there was “a level of frustration with the Planning Commission on this one as they felt they were being used as a rubber-stamp on something they should have

had more input into.” Mr. Costello stated when he first started on the Planning Commission they were going through the Ordinance change for the Mixed-Use Overlay, and the Planning Commission was very much involved in the beginning before the Board of Supervisors decided on the language, and the Planning Commission put in a lot of time and effort putting that together including large public meetings. He stated it then went to the Board of Supervisors, and this seems to have been flipped around.

Mr. Grenier stated a lot of that falls on the Chair of the Board of Supervisors because they set the Board Agenda and they can look at process and procedure. He stated in 2019 when the Mixed-Use Overlay came up, he was Chair at the time, he wanted to be careful to set up the process such that that would occur.

Mr. Costello stated he feels he may have been able to get behind what is considered for this Ordinance if he had the chance to address and articulate some of his concerns. Mr. Grenier stated this particular item has “spanned a couple of Chairs, and he feels there were certain motivations to get it done quickly, and it does not always work well when you try to do that.” He stated he will try to articulate what Mr. Bush has stated and what everyone else seems to be behind, but he asked that if the Planning Commission members know any of the Supervisors, it may be good to contact them. Ms. Kirk stated she will also submit a memo to the Township Manager as well indicating that the Planning Commission raised this issue. Mr. Grenier stated he will bring it up during his Supervisor Report and note the Planning Commission’s concern and indicate that the Planning Commission wants to work with the Board in a positive light to maximize the benefit of future Ordinances.

There being no further business, Mr. Bush moved, Mr. Costello seconded and it was unanimously carried to adjourn the meeting.

Respectfully Submitted,

Ross Bruch, Chair

