

Environmental attorneys give advice to Solebury

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Forewarned is forearmed – that was the clear message delivered June 8 by local environmental attorneys to a Solebury audience concerned about the negative consequences of potential fracking operations to their community.

Environmental war veterans Jordan Yeager, Terry Clemons, and Jonathan Weiss offered guidelines, gleaned from years in the trenches fighting the natural gas and oil companies and environmental degradation. Yeager presented the visual reality of unconventional shale gas development.

The typical well site is a 5-acre complex of impervious surfaces, pipelines and pressure stations.

Initially the land is cleared and an impervious pad installed prior to setting up the oil rig. Trucks bring in sand and water mixed with chemicals, which are injected into the well a mile below the surface to facilitate extraction of the oil. Once the well is exhausted, the residual chemicals are buried in an on-site frack pond. The gas and oil companies are exempt under both federal and state law, from identifying the chemical compounds used in the process.

Drilling operations can continue for up to 30 or more years; wells can be refracked as many as five or

six times. Typically, six wells are drilled per site with horizontal pipelines extending up to two miles from the well.

Yeager emphasized that municipalities are required to allow for the reasonable development of minerals when determining land use issues in a comprehensive plan. In 2012 Pennsylvania legislators passed Act 13, creating a uniform zoning scheme for oil and gas operations that required municipalities to allow for drilling anywhere the companies chose regardless of zoning. Act 13 permitted impoundments in every zoning district, including residential and agricultural and allowed for compressor stations in agricultural and industrial districts.

In 2013 a landmark decision was rendered by the Pennsylvania Supreme Court, in *Robinson Township vs. the commonwealth*, striking elements of the law that permitted state regulations to override local zoning laws on the basis that Pennsylvanians have the “right to clean air, pure water, and the preservation of the natural historic, scenic and aesthetic values of the environment.” Further, the court declared Act 13’s “uniform zoning violated substantive due process.”

“The decision is not about municipal rights but the constitu-

tional rights of the populace,” Yeager said. “Because municipalities have an obligation to protect the rights of their citizens, municipal governments must have the ability to establish regulations in accordance with objectives while refraining from unduly infringing on the rights of citizens to a clean environment.”

Clemons cautioned that the *Robinson vs. Commonwealth* decision was a plurality opinion and the sitting judge, Justice Castille has since retired. Three new justices are to be elected in November. “The continued viability of the Environmental Rights Amendment rationale will depend on whether municipalities adopt a balanced approach to implementing the mandate of the plurality opinion,” Clemons warned.

He advised the township to hire a credible environmental consultant to identify public natural resources and perform an environmental audit of critical natural resources, specifically those with sensitive environmental features,

e.g. critical habitat for endangered or threatened species, carbonate geology, high quality streams, prime agricultural soils and forest land.

Clemons also suggested identifying land uses that must be accommodated under the Municipal Planning Code mandate, establish regulations to mitigate environmental impacts.

Township Solicitor Weiss concurred with Clemons’ recommendations, noting that the current ordinance does not address drilling or fracking. “Having sound science driven information will provide flexible and discretionary powers to support the rationale of ordinances to address these issues,” advised Weiss. “It is important to have a foundation to support your arguments.”

Yeager cautioned that an out and out ban would invite a challenge.

“Conventional wisdom says that you have to allow for every use. Understand that if challenged, you could get it where you least desire it.”

