

FINDINGS OF FACT

- 1. On April 30, 2019, the Board of Supervisors of Falls Township ("Board of Supervisors") held a special meeting to consider an application for Preliminary Land Development Approval for a property located at Dean Sievers Place, Tax Parcel No. 13-51-1-5, Township of Falls, Bucks County, Pennsylvania ("Property") pursuant to the Falls Township Subdivision and Land Development Code ("Code"). The special meeting was advertised in the Bucks County Courier Times on April 22, 2019.**
- 2. Applicant is Elcon Recycling Services, LLC ("Applicant").**
- 3. Applicant proposes to construct a hazardous waste processing facility at the Property.**
- 4. The Property is zoned MPM – Materials Processing and Manufacturing, and the proposed use is consistent with the permitted uses in the MPM Zoning District. On August 1, 2017, the Township's Chief Zoning and Code Enforcement Officer issued a Zoning Consistency letter regarding the proposed use of the property.**
- 5. Applicant initially submitted a plan for Preliminary Land Development approval on January 29, 2019.**
- 6. The Township issued a series of review letters regarding the Plan, as follows:**
 - a. Christopher J. Fazio, Remington & Vernick Engineers – March 6, 2019**
 - b. Joseph G. Jones, P.E., Jones Engineering Associates – March 14, 2019**
 - c. Richard Dippolito, Township Fire Marshal – March 15, 2019**
 - d. Shade Tree Commission – March 21, 2019**
 - e. Mark Giunta, Geotechnical Engineering Services – April 22, 2019**
- 7. The Bucks County Planning Commission issued a review letter dated February 26, 2019.**
- 8. On March 26, 2019, the Applicant appeared before the Township Planning Commission, who unanimously recommended denial of the Preliminary Land Development Application.**
- 9. The Applicant submitted revised plans on April 22, 2019.**
- 10. The Township issued revised review letters as follows:**
 - a. Christopher J. Fazio, Remington & Vernick Engineers – April 26, 2019**
 - b. Joseph G. Jones, P.E., Jones Engineering Associates – April 29, 2019**
 - c. Richard Dippolito, Township Fire Marshal – April 29, 2019**
- 11. The Township hereby incorporates by reference all review letters referenced in Paragraphs 6 and 10 into the Findings of Fact.**

12. At the meeting, Applicant's attorney presented the proposed land development. The presentation can be summarized as follows:

- a. Erik Garton, P.E. of Gilmore & Associates is the civil engineer for the project, and Marjorie Fitzpatrick from IES Engineers is the environmental consultant for the project. Transcript, at 4.
- b. The subject property is located at 100 Dean Sievers Place within the Keystone Industrial Port Complex. The property is approximately 32 acres and is currently owned by U.S. Steel. Applicant is the equitable owner of the property, meaning that it is under agreement of sale. Transcript, at 5. U.S. Steel has remediated the subject property consistent with a consent order from the Environmental Protection Agency. Transcript, at 5-6.
- c. Applicant is proposing a waste water treatment facility for hazardous liquids, including pharmaceutical, petroleum, semiconductor or petrochemical operations. According to Applicant, most of the waste stream is made up of water. Small portions will be suspended solids, organic materials and salts. Transcript, at 6.
- d. Applicant has agreed that certain wastes will not be accepted, including radioactive waste, medical waste, oil and gas fracking waste, PCBs or cyanide containing waste, reactive wastes, dioxin and furan-containing waste, and no solid waste. Transcript, at 7.
- e. If the facility were approved, the process would be as follows:
 - i. Before the waste arrived to the site, a customer would provide Applicant with comprehensive information about the waste stream that they are proposing to be processed at the site. Applicant would then verify that it is permitted to accept the waste stream under its permit from the Department of Environmental Protection ("DEP"). Applicant would then compile detailed information to be submitted to DEP, which would then approve the storage and treatment of the waste stream by Applicant at this site. Upon DEP's approval, Applicant would then notify the customer that the waste can be accepted for treatment. This process would occur for each type of waste stream and each customer. Transcript, at 7-8.
 - ii. If approved, the waste would arrive at the site in tanker trucks or trucks with containers, and the waste would check in at the guard house. Applicant would then check the shipping documents to confirm that the waste that is arriving is the waste stream that was expected from the particular customer. The truck is then weighed and a sample of the material is collected to verify that the waste matches the profile for the customer and the waste is approved for treatment at the site. Transcript, at 8.
 - iii. The truck would then move to the stacking area while sample materials are analyzed in the on-site laboratory. Once the quantity and quality of the waste stream was verified, the truck would move to the unloading area and unload to a tank designed to hold the waste being unloaded. All of the unloading operations will occur within an area designed to hold the full contents of the truck plus a heavy

rainfall in order to protect from any spills. All tanks would be stored within containment areas designed to hold the contents of the largest tank and a heavy rainfall again for spill protection. Transcript, at 8-9.

- iv. Applicant would then use a four step process to treat the waste that arrives on site. Waste streams would be screened, stored in permitted tanks and then pretreated. Solids and salts would then be removed from the waste stream and dried and treated to remove the volatile organic compounds ("VOCs"). The VOCs would be removed from the waste stream as gases and sent to the pollution control system for treatment. Energy created by the process would be captured and recycled on site. The end products of this process would be distilled water, salts and sludge. Any remaining solids would be sent to a licensed landfill for disposal. Salts and sludge would be stored in totes or superstacks in the warehouse building on site until they were transported to a licensed hazardous waste landfill. Transcript, at 9-10.
- f. Applicant anticipates no more than one truckload of salt and sludge to be removed from the site per day. Approximately 20 truckloads would be arriving on site with the waste streams per day. Transcript, at 10.
- g. Applicant has performed spill modeling at the site to determine whether an accidental spill could impact any drinking water supplies and any impact on the Delaware River. The modeling concluded that there would be no impact on public water supplies from any of the hypothetical spill scenarios. Transcript, at 10-11. The proposed facility also contains a barrier wall to further enhance any spill protection and protect against future floods. Transcript, at 11.
- h. Applicant has taken significant protective measures to eliminate flood hazards. Pennsylvania regulations prohibit hazardous waste treatment facilities from being sited within the 100 year floodplain. This proposed facility would be at least 5 feet above the 100 year floodplain and also be above the 500 year floodplain. Transcript, at 11.
- i. Applicant has agreed to restrictions regarding the transportation routes that will be used to access the site. Applicant will not use Pennsylvania Avenue in Morrisville as a truck route. Applicant would contract with a private hauling company to collect and transport the liquid waste streams coming to the facility so that Applicant would have full control over the trucks that would be delivering to the site and the routes used. Transcript, at 12.
- j. Applicant has agreed to a prohibition to barge and rail deliveries. Transcript, at 12.
- k. Applicant is agreeable to any of these enhancements being a condition of approval for any permit. Transcript, at 12.
- l. Applicant will not have any industrial waste water discharge to any water body, including the Delaware River. Rain water falling within the containment areas will not enter the stormwater basin, but will be captured into the industrial waste water treatment process. Rainwater that falls elsewhere on the site will be collected and conveyed to the stormwater basin which discharges to the on-site wetlands that flow to Biles Creek and then the

Delaware River. The stormwater basin also will contain an emergency shutoff valve leading into and exiting the basin and is lined with an impermeable liner to prevent infiltration into the ground water table. The liner and shutoff valves will contain any release of contaminants into the basin so that the water can be treated within the treatment facility. Transcript, at 12-13.

- m. Applicant has agreed to the installation of ground water monitoring wells in order to address concerns expressed by the public regarding the potential impact from the operations on drinking water. The monitoring well network at the facility would act as an early warning sign of any accidental releases not contained by the numerous controls, secondary containment and barrier wall already proposed in the facility. Transcript, at 13.
- n. Applicant will fund a full-time inspector working directly for the Township to be stationed at the facility as an impartial observer to ensure that Applicant is complying with the permits and all applicable regulations, as well as any other commitments Applicant has made that exceed regulatory compliance. Transcript, at 14.
- o. Applicant received review letters from the Township Fire Marshal, the Township Engineer, and the Township Traffic Engineer. Transcript, at 15. Applicant is not asking for any zoning relief and believes that it can comply with each of the comments contained in the outstanding review letters. Transcript, at 15.

13. Applicant offered additional information in response to questioning from the Board of Supervisors, which can be summarized as follows:

- a. If there were an emergency on site, it is unclear how employees or volunteer firefighters would get off the site, particularly if they were in the back corner of the property where there is a 7 foot high retaining wall with a fence on top of it. Transcript, at 21-22.
- b. The storm sewers have backflow preventers as an additional safety measure in the event that a spill of one of the trucks occurred outside the containment areas. This would give Applicant the ability to shut off the storm surge getting into the basin and contain it in the pipe. In the event that it got into the basin, there is another shutoff valve at the outer structure to contain it in the basin. The pipes are located below the hundred year flood elevation. Transcript, at 25. The shutoff valve is a manual process. Transcript, at 29.
- c. The basin discharges to the on-site wetlands which is connected to Biles Creek and the Delaware River. Transcript, at 26.
- d. The truck stacking area is not within a containment area. In the event of a spill, the spill would go to the basin. Transcript, at 27-28.
- e. In the event of a catastrophic failure, the first line of defense would be the secondary containment area, and if that failed, the basin would serve as a backup to the initial containment area. Transcript, at 28-29.

14. Mr. Jones offered the following comments regarding the application:

- a. Mr. Jones is a licensed professional engineer, and has been the Township Engineer since January of 2019, but served as the assistant engineer since 2007. Transcript, at 30.**
- b. In general, the changes made from the original plans to the resubmitted plans were to address the various review comments. There were no significant substantive changes. Transcript, at 31-32.**
- c. A retaining wall is a structure that holds or retains soil behind it. The retaining wall in this project is designed as a cantilever type reinforced concrete wall. It appears to be constructed and proposed in its location to support a significant amount of fill to bring the site elevations to a predetermined elevation above the floodplain. Transcript, at 32-33.**
- d. Fill is generally a material brought to a site and compacted in place to change the elevation of the improvement and existing elevations on site. The Township's Subdivision and Land Development Ordinance states that land developments shall be properly designed in order to prevent the necessity for excessive amounts of fill. Falls Township Code of Ordinances, at 191-29(E). Applicant proposes to utilize at least 70,000 cubic yards of fill on the site, which is the equivalent of about 5,000 dump trucks of material. It would take many months to bring this amount of fill to the site. In his years of experience, Mr. Jones has not seen a project proposing the use of this amount of fill, as the Applicant proposes the use of an exorbitant amount of fill. Transcript, at 33-35.**
- e. The project will be located about 2,000 feet to Biles Creek and 7,000 feet from the Delaware River's mouth. If the retaining wall were to fail, there would be consolidation of the existing soil, which would cause cracks to the pavement system and concrete slabs, et cetera. If the slabs in the containment area were to crack, potential leaks would reach into the ground area. Transcript, at 35-36.**
- f. For trucks coming into the site carrying hazardous material after offloading, the right-hand turn to go between the storage tanks and warehouse is very tight and there are no protections between the driveway and the building of the tank wall. There are numerous areas where the turning radius is extremely tight. Transcript, at 52.**
- g. Mr. Jones asked the Applicant to take a look at the hydraulic connections between the site through the various culverts and channels directly to Biles Creek because the site backs up to the FEMA floodplain. Just because the site is not identified as being within the floodplain does not mean that the site is not inundated or subject to flooding. Applicant's response in the Revised Plans was simply that it would not provide the requested information. Transcript, at 55-57.**

15. Mr. Garton stated that he has not previously worked on a project that brought in 70,000 cubic yards of fill. Transcript, at 38.

16. Mr. Richard Dippolito, the Township Fire Marshal, offered the following statements regarding the Application:
- a. The Fire Marshal reviews land development plans for life safety issues, specifically things involving water supply, ingress, egress, fire lanes, and similar issues. Transcript, at 40. Applicant has not submitted an emergency action plan. Transcript, at 40.
 - b. In his first review letter, Mr. Dippolito identified several areas of concern, including issues with the retaining wall. Specifically, Mr. Dippolito was concerned with the seven foot high retaining wall in the back of the plan with a fence on top of it. If there was a catastrophic event, it was unclear how workers, police and/or firefighters would escape the property. This item has not been satisfactorily addressed in the Revised Plans. Transcript, at 41-42. In speaking with Applicant's engineer, he indicated that Applicant was not sure how they were going to put emergency stairways on the wall. Transcript, at 48.
 - c. If there was an emergency at the site, Mr. Dippolito would be notified, and either he or the Bucks County Radio Room would notify other agencies, including the fire department, EMS and potentially the County hazmat team. Due to the Township's proximity to the City of Trenton, the City of Trenton's hazmat team would also be notified. Normal response time for the fire departments is within four minutes with an additional eight or nine minutes for travel time. The County hazmat team typically takes up to an hour to respond. The City of Trenton hazmat team takes up to 15 minutes or so to respond. Transcript, at 43-46.
 - d. Mr. Dippolito has not been made aware of any special equipment that may be needed to respond to an emergency at the site. Transcript, at 44.
 - e. If there were an emergency, Mr. Dippolito would have concerns about the Township's ability to respond to other emergencies in the Township. Transcript, at 45.
 - f. The International Fire Code requires that the Developer provide clear and unobstructed pathways from a building to a public way. Mr. Dippolito believes that this means that a safe pathway must be provided, which Applicant has failed to provide. Transcript, at 48-49.
 - g. Mr. Dippolito continues to have concerns regarding turning circulation throughout the complex, as well as fire lanes. The area near the storage tanks appears to have a tight right-hand turn for vehicles coming from the truck stacking area around to the fire lane. There are a couple of spots that are too tight and may not work for emergency vehicle access. Transcript, at 51-52.
17. Mr. Fazio stated that while the plans depict a truck route, there is no indication as to how truck drivers will be aware of the route, including the restriction on Pennsylvania Avenue. Transcript, at 53.
18. Mr. Garton believes that he can revise the plans to comply with all of the comments from all of the review letters. Transcript, at 54.

19. Ms. Fitzpatrick stated that the delivery trucks will be equipped with a GPS monitoring system that allows them to confirm that the trucks are utilizing the agreed upon truck route. Transcript, at 54-55.
20. The Board of Supervisors took public comment regarding the Application from approximately 35 residents and non-residents. Petitions from approximately 4,000 Falls Township residents and almost 1,400 non-residents in opposition to the project were submitted to the Board of Supervisors.

CONCLUSIONS OF LAW

1. Applications for Preliminary Land Development approval are governed by Article V of the Municipalities Planning Code, 53 P.S. §10501-10515.3, and the Code of Ordinances of the Township of Falls.
2. Falls Township has adopted the Uniform Construction Code. Code, at 109-2. The Uniform Construction Code incorporates the International Fire Code of 2015. 34 Pa. Code § 403.21.
3. The Code requires that "Subdivisions and land developments shall be properly designed in order to prevent the necessity for excessive cut or fill." 191-29(E). Mr. Jones identified this section of the Code in both his March 14, 2019 and April 29, 2019 review letters. The Application proposes to bring in at least 70,000 cubic yards, or 5,000 dump trucks, of fill to the site. In his responsive letter dated April 22, 2019, Mr. Garton acknowledged the elimination of fill from within the drainage area located along the Dean Sievers Place property frontage, but failed to address the amount of fill that was referenced in the comment. At the April 30, 2019 meeting, Mr. Jones confirmed that in his years of experience as a professional engineer, he has never seen a project with the amount of fill proposed in this project, citing the proposed amount as "exorbitant." Mr. Garton also stated that in his years of professional experience, he has never been involved in a project that proposed this amount of fill. The term "excessive" is not defined in the Code. It is, however, defined as "exceeding what is usual, proper, necessary, or normal" by Merriam-Webster. The amount of fill proposed for the project clearly meets this definition. Applicant proposes to utilize this amount of fill because the type of facility that is proposed cannot be located within the floodplain, so Applicant must elevate the facility from the current topography of the site. The property can be used for another use without having to bring in an excessive amount of fill. Simply, the Applicant cannot construct the proposed facility without bringing an excessive amount of fill into the site, and therefore cannot comply with this section of the Code. Applicant has offered no basis for a waiver of this section of the Code, other than its desire to utilize the selected Property. The Board of Supervisors determined that the amount of fill was excessive, and that there was no basis to grant a waiver of this section of the Code. Applicant's failure to comply with this section of the Code or demonstrate a reasonable basis for the granting of a waiver of this section of the Code is sufficient independent grounds for the denial of the Preliminary Land Development Application.
4. The proposed retaining wall will be approximately 1,800 feet long and about 8 feet in height, proposed around the entire site, except on the southeastern boundary. Retaining walls are a proper design in many projects. However, the use of a retaining wall in this particular project, combined with the excessive amount of fill to be brought into the site, renders the use of the retaining wall of the size and scope as proposed here much more dangerous than on other projects. As noted in Mr. Giunta's report, "retaining wall failures can be slow preceded by warning indicators that the wall is

falling over time or sudden and sometimes catastrophic triggered by a single event.” Giunta, at 2. There are several possibilities regarding potential failure of the retaining wall.

- a. Shear Strength Reduction is when soil reduces its ability to support itself. This can be caused by external loading, including the addition of weight from traffic or a water tank on the top side of the wall, seismic forces, or, most commonly, saturation of the soil, which pushes on the wall with more load than it was designed to resist. See Giunta, at 3.
 - b. Settlement of the subgrade soils can allow foundation movement. Cast in place concrete walls, as proposed here, are rigid and may crack if not designed properly. Some settlement can take place over years. The wall foundation can also settle because of a loss of support caused by flood water, either from surface water or from flood waters from the Delaware River. See Giunta, at 3-4.
 - c. Because of the extreme danger presented by the inclusion of the retaining wall in question should there be a catastrophic failure, the Board of Supervisors rejected the Preliminary Land Development Application.
5. The proposed retaining wall does not allow for emergency ingress and egress for workers or emergency personnel. Section 1028.5 of the International Fire Code requires the Applicant to provide a direct and unobstructed access to a public way, which Applicant has failed to provide. As Mr. Dippolito stated at the April 30, 2019 meeting, because the retaining wall is 7 feet in height, then topped with an 8 foot high fence, it is extremely dangerous for workers and emergency personnel in the event of an emergency. Mr. Dippolito requested that the Applicant add stairs at several points on the retaining wall, but was told by Applicant’s engineer that Applicant was unsure how to add the stairs. Applicant has made no attempt to comply with this section of the Code, opting instead to state its belief that it has complied with the Code, ignoring the real and obvious dangers of its proposed design. Applicant has offered no basis for a waiver of this section of the Code, but rather has offered the weak assertion that it believes it has complied with the Code, despite its failure to adequately address the real and obvious danger to workers and emergency personnel. The Board of Supervisors determined that Applicant’s failure to comply with this section of the Code or demonstrate a reasonable basis for the granting of a waiver of this section of the Code is sufficient independent grounds for the denial of the Preliminary Land Development Application.
6. The Application fails to provide adequate turning radii for trucks and emergency responders.
- a. Section 503.2.4 of the International Fire Code requires the Applicant to provide a turning radius for fire apparatus as determined by the fire code official. Mr. Dippolito requested that the diagram be submitted using a 43’ straight body fire truck, but Applicant’s Revised Plans provided turning templates based upon a 47’9” firetruck. These diagrams show an apparent conflicting movement at the outgoing scale.
 - b. Section 191-37(D) of the Code requires that “Parking lot areas shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle and to permit any vehicle to enter and leave the area in a forward facing position.” The proposed driveway accessing the vehicular parking area and the overall site entrance layout indicate potential conflicting vehicular/truck

movements considering where the gated facility access is proposed. As Mr. Jones stated, there are numerous areas on the plans where the turning radii are extremely tight, and where there is no protection against truck traffic impacts to buildings and/or containment walls, as required by Section 191-37(B) of the Code.

- c. Applicant has offered no basis for a waiver of these sections of the Code. The Board of Supervisors determined that Applicant's failure to comply with these sections of the Code or demonstrate a reasonable basis for the granting of a waiver of these sections of the Code is sufficient grounds for the denial of the Preliminary Land Development Application.
7. On page 9 of his April 22, 2019 response to Mr. Jones' initial review letter, Mr. Garton states that "The proposed stormwater management system has been revised to meet or exceed the requirements of the Falls Township Stormwater Management Ordinance." To the contrary, the system as designed does not meet or exceed the requirements of the Stormwater Management Ordinance as set forth in Mr. Jones' April 29, 2019 review letter. In particular, Applicant has failed to provide the downstream analysis requested pursuant to Section 187-8(C) of the Code. Applicant has offered no basis for a waiver of this section of the Code. The Board of Supervisors determined that Applicant's failure to comply with this section of the Code or demonstrate a reasonable basis for the granting of a waiver of this section of the Code is sufficient grounds for the denial of the Preliminary Land Development Application.
8. In addition to the sections cited specifically herein, there are numerous provisions of the Code that Applicant has failed to demonstrate compliance with, as outlined in the review letters of Mr. Dippolito, Mr. Jones and Mr. Fazio. Many of these comments are substantive in nature.
9. Section 508 of the MPC provides the procedure whereby the governing body or planning agency of a township shall review and act upon a subdivision and land development application. 53 P.S. § 10508.
10. "Where a preliminary plan contains clear substantive issues of noncompliance with a township's SALDO or other applicable ordinances, the governing body is within its discretion to deny the plan." *Delchester Developers LP v. London Grove Township Board of Supervisors*, 161 A.2d 1106, 1113 (Pa.Cmwth. 2017) (citing *Herr v. Lancaster County Planning Commission*, 625 A.2d, 164 (Pa.Cmwth. 1993)).
11. Courts will defer to a governing body's determination as to whether deficiencies in the plan are minor technical deficiencies or substantive deficiencies. *Herr v. Lancaster County Planning Commission*, 625 A.2d, 164 (Pa.Cmwth. 1993).
12. Where a municipality has reviewed plans for the development of property in good faith, has highlighted the plan's deficiencies, and has given the developer an opportunity to cure those deficiencies, the municipality will not be found to have abused its discretion in denying an application based on failures of the plan to comply with township ordinances. *Abarbanel v. Solebury Township*, 132 Pa.Cmwth. 326, 572 A.2d 862 (1990).
13. As noted above, the Township and its consultants issued numerous review letters after the initial plan submission. The Applicant then submitted revised plans ostensibly addressing the comments contained in each of the review letters. While many of the identified issues were addressed in the Revised Plans, many of the issues were not addressed. In particular, the issues cited above involving

the excessive fill, the proposed retaining wall, the fire safety concerns, the turning radii, and the failure to provide a downstream analysis were either not addressed at all or were inadequately addressed. Each of these concerns constituted sufficient independent grounds for denial of the Preliminary Land Development Application.

14. The Applicants plans fail to comply with the provisions of the Township's Subdivision and Land Development Ordinance as noted herein and as noted in the various review letters issued by Township staff and consultants.

CONCLUSION

Based on the plans, various review letters, the presentation by Applicant and the discussion at the public meeting held on April 30, 2019, the Board of Supervisors unanimously voted to deny the Application for Preliminary Land Development Approval.



Peter Gray, Township Manager

5/14/19

Dated



Robert Harvie, Chairman, Board of Supervisors

5/14/19

Dated