

**TOWNSHIP OF FALLS
PLANNING COMMISSION MEETING
MARCH 26, 2019**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 8:50 p.m.

Members present: Brian Binney, Edward Crohe, John Haney, Thomas Hughes, Erik Person

Members absent: Mary Leszczuk

Also present: Kim Freimuth, Esquire (Fox Rothschild), and Erik Garton, P.E. (Gilmore & Associates) representing Elcon Recycling

For the Township: Joseph Jones, P.E. Township Engineer, Thomas A. Bennett, CCEO/ Zoning Officer, Michael Clarke, Esquire (Township Solicitor), Leanna Colubriale (Twp. Traffic Engineers Remington & Vernick), Diane Beri, Recording Secretary, and Karen Browndorf, Court Reporter

Item #1: Elcon Recycling, Dean Sievers Place, Fairless Hills, PA, TMP #13-051-001-005; Zoned: MPM. Equitable Owner: Elcon Recycling Services / Property Owner: United States Steel. Preliminary Land Development – construct an industrial recycling facility with related buildings, equipment and site improvements

Kim Freimuth, Esquire, presents the application. We submitted the Preliminary Plan in January 2019 and received some comments from the Township staff and made a supplemental submission. We have now officially filed the application, received our first set of review letters from the Township consultants and have submitted a letter to the Township indicating that the applicant is in the process of revising the plans that were originally submitted to respond to the comments contained in those review letters from the Township's consultants. We intend to re-submit the plans to comply with those review letters. This is the typical process that applicants are afforded in Pennsylvania and in municipalities all over this county. We do not intend to ask for a recommendation this evening.

By way of background, you are all familiar with the site; I know the public who is here is also familiar with this project and may have been part of some of the public participation process that has been ongoing throughout the DEP permit approval phase. There are various DEP permits required in connection with this facility. Those applications are pending and there has been some significant public participation throughout that process. The DEP is a separate process from this specific process which deals with the Township's Subdivision and Land Development Ordinance. The environmental matters are not germane to the discussion this evening. Some of them may be related to the use, and we are happy to answer those questions to the extent that we can. However, we would like to keep any discussion related to the land development aspect of this project and the plans that have been submitted.

This project is located at 100 Dean Sievers Place and is within the Keystone Industrial Port Complex, the KIPC. It is located on a US Steel site. Elcon is the equitable owner of approximately 32 acres owned by US Steel. The US Steel plant began production in approximately 1952 on approximately 1,600 acres, so this is just a small portion of that former plant. US Steel is currently under an EPA consent order and has remediated the site consistent with that consent order. The property is zoned MPM (Materials Processing and Manufacturing). It permits heavy industrial uses such as the use we are proposing at this site.

Erik Garton, P.E. continues. He references the aerial of the site, showing the location of the Delaware River and Rte. 13, the location of this project, shows some landfills, the lake, Tyburn Road and the security gate.

Atty. Freimuth continues and states that Elcon is proposing an industrial hazardous liquid waste stream treatment service, which is intended to provide companies with a safe environmentally responsible and sustainable solution for complying with environmental regulations related to hazardous liquid waste stream management. What they use is an eco-friendly technology. They utilize a 4-step process. They bring in the liquid waste stream – it's streamed, stored in permitted storage tanks and then pre-treated. The solids and salts are removed from the waste stream and dried and then treated to remove volatile organic compounds or VOCs. The VOCs are then removed from the waste stream as gases and sent to the pollution control system for treatment. The energy created by the process is captured and recycled on site. The end products are distilled water, which is then reused on the site. Salts and any remaining solids are sent to a licensed landfill for disposal. Elcon will be accepting hazardous liquid waste streams from a variety of industries such as electronics and semi-conductor, pharmaceutical, chemical and metals processing industries. They are not accepting any radioactive waste or medical waste. This is not an incinerator.

Mr. Garton goes into detail on the site plan, pointing out the main entrance to the site, the emergency access secondary entrance to the site, how the site is bounded by a wall to keep out the 500-year flood, parking lots and an office building. All employees will come into the office where they will get changed and then to the fenced and gated area of the site for work. The trucks coming into the site will come down the road and make a left hand turn in where they get weighed at the guardhouse and where their product is tested to ensure compliance that the product is not radioactive or medical waste. Once weighed, the trucks get offloaded into the containment area. Anything spilled here is contained within the process – it does not get into the storm sewer system, go off the property or get into the basin and/or wetlands. Once the trucks are offloaded, they get weighed again so they know how much tonnage they dropped off and then leave. There are tanks, an oxidizer, a warehouse and other maintenance buildings located on the site and some future expansion on the plans.

Chairman Binney asks if the trucks get cleaned before they leave the site.

Mr. Garton states he does not know the answer to the question. The environmental engineer would have handled that part with the DEP.

Atty. Freimuth states that there are a number of enhancements that Elcon has agreed to provide at this facility that are above and beyond any regulations. Elcon has done some protective measures to eliminate flood hazards and future floods and the impact on the proposed facility (concerns which were expressed during the public meetings with Elcon and the DEP permitting process). In order to address these concerns, the facility has been designed so that the elevation of all hazardous waste treatment and storage areas is 5 ft. above the 100-year flood plain and also above the 500-year flood plain. This will protect against future flood risks. In addition, we are constructing the barrier wall to further enhance fill protection and to protect against floods.

Elcon has voluntarily agreed to restrict the transportation routes to the facility – there will be no use of Pennsylvania Avenue in Morrisville as a truck route. Elcon has contracted with a private hauling company to collect and transport the liquid waste streams coming to its facility, so it will have full contractual authority over the route delivery trucks will use to access the site. Elcon has also agreed to prohibit barge deliveries and although there is a rail spur available to Elcon, they have voluntarily agreed to prohibit deliveries by rail to the facility.

Elcon has designed its treatment facility to have no wastewater discharging into any water body, including the Delaware River. The end product of their process will be salts and solids, which will be disposed of in accordance with all laws. In addition, Elcon has agreed (although it is not required) to install groundwater monitoring wells. This is above what the DEP requires.

With respect to the stormwater basin, Elcon has agreed to install a liner and a shutoff valve in the basin (in response to concerns about potential impacts to the drinking water).

Elcon has agreed to provide funding for a full-time inspector who would be working for the municipality to be stationed at the facility as an impartial observer to ensure that Elcon is complying with its permits and all other applicable regulations.

Mr. Garton says that Elcon will comply with all the comments in the four review letters from the Bucks County Planning Commission, Remington and Vernick, Jones Engineering Associates and the Township Fire Marshal. We are not seeking any waivers from the Subdivision/Land Development Ordinance or the Stormwater Ordinance.

Atty. Freimuth says they intend to submit revised plans and would hope to get revised review letters prior to coming back before this Board.

Member Hughes asks who would hire the full-time inspector.

Atty. Freimuth states that Elcon would be responsible for paying for it but it would be someone hired by the Township.

Chairman Binney asks about the ponds on the property and where they discharge to on the property.

Mr. Garton shows on the aerial of the site where the basin and wetlands are located. There is a culvert that goes under the railroad tracks and ultimately winds its way up into the Delaware River. There is going to be one shutoff valve so that if anything happens here it cannot get into the basin, it will have an impermeable liner so it won't get into the ground, and then there is a secondary shutoff valve after the outlet structure so that everything can be contained in the basin if it did get passed the first shutoff valve.

Chairman Binney questions about building on seven feet of fill and the logistics of building on seven feet of fill in terms of the suitability of the foundation and tanks.

Mr. Garton states that site has been filled over the years before Elcon ever arrived. Most of US Steel property is fill. In a different project, they had to drive hundreds of piles down to firm soil to support that facility. The Township would review this under the building permit application.

Chairman Binney states that this facility would sit seven ft. higher than the surrounding properties and it is going to be lit up. In response to a comment from Atty. Freimuth about construction questions being outside the scope of the SALDO, Chairman Binney states that SALDO indicates the Planning Commission is supposed to look out for the public health and welfare.

Member Crohe asks about how once the trucks offload, how does product get from one tank to another tank.

Mr. Garton says he is not completely qualified to answer that because that is a piping system.

Member Crohe says then it's through piping, not transferred.

Mr. Garton states correct. That is all part of the DEP review.

Member Haney asks about the trucks coming in – will they have placards – class 9, class 6, dangerous?

Mr. Garton states he doesn't know the answer to that question.

Member Haney asks regarding the biological storage tanks, when the product comes in, is it going to be inactivated, neutralized, gray water?

Mr. Garton says that is the environmental permit portion of this proposal that is being reviewed by DEP. No one with our team tonight is qualified to answer those questions.

Member Hughes asks if there are any plans for secondary containment on the stormwater basin – in other words, if the impermeable liner were to fail.

Mr. Garton says they would certainly be open to a second liner being installed.

Member Hughes says in the event of a fire at the facility, there is a fire water tank and diesel pumps -- is there any method for fire water containment to hold the runoff from the fire water in case it comes in contact with any hazardous materials.

Mr. Garton says again, this is part of the DEP environmental process and how to handle this. The environmental engineer for Elcon will be working with the Township's Fire Marshal to make sure that this all meets fire codes as well as DEP requirement.

Atty. Freimuth states that we are not asking for a recommendation this evening. We do plan to resubmit the plans. We are happy to return with someone from IES if you'd like these types of operational questions answered.

Member Hughes asks if there is an estimate of what the dimension is above the 500-year flood plain?

Mr. Garton responds that it will be five ft. above the 100-year flood plain and two ft. above the 500-year flood plain.

Member Crohe asks about salt as a byproduct and if the salt is neutralized.

Mr. Garton responds that the salt gets decommissioned – it's road salt, just like the Township buys to de-ice the roads.

Member Crohe asks if Elcon will have a reactionary team nearby to handle any type of spills.

Mr. Garton states he cannot answer that question but will be able to at the next meeting.

Atty. Freimuth states that Elcon has shown that they are willing to go above and beyond what is required and is certainly willing to discuss any concepts that you think have not been covered by the DEP process. Elcon is willing to work with the Township to address these concerns.

Public Comment

Toni Battiste, 218 Gloucester Road, expresses her concern about the liquid and how it is shipped, how it is stored, the violations and fines in Israel, how many tanks and what will be stored in them.

Sharon Furlong, a non-resident, lives in Feasterville, spokesperson for the Bucks County Sierra Club and Bucks Environmental Action. She expresses her concern with the Elcon project and lists her concerns and gives handouts to the Board members.

Brian Lachowitz, lives in Heddington section of Fairless Hills 800 yards outside of Falls Township and expresses his concern with the Elcon project, specifically with zoning, the water supply in New Jersey and Bucks County, catastrophic accidents involving trucks carrying product (and who will pay for them), and that Falls Township has sole control over this project.

Natalie O'Donnell, a non-resident and a volunteer with Protector of Water and Air, expresses her concern that the byproduct is not road salt (but listed hazardous waste) which can be stored at the site for up to one year before being removed, and her concern with the zoning for this type of operation (hazardous waste facility, not a recycling facility).

Fred Stine, works with the Delaware River Keeper at 925 Canal Street in Bristol, and expresses concern with Biles Creek less than a half mile from the facility, rail transportation eventually being used, truck accidents, contamination of the Delaware River, and whether the Township Engineer review letter will be available on the website.

Ethan Pottenger, 800 Elmhurst Avenue in Bristol, expresses his concerns with the liquid waste and has concerns about stormwater being affected when it rains.

Holly Harman, 452 Hillside Avenue in Morrisville, expresses her concern with the MS-4 mandate and compliance with that and the storage and disposal of the waste water.

Al Angeline, lives in Fairless Hills, has questions about the difference between variances and waiver requests, and expresses concerns on whether Elcon will be responsible for any cleanup of spills due to truck accidents on the road.

John Brodouski, Deputy Mayor for City of Bordentown, states that various municipalities in New Jersey have adopted resolutions at the state level opposing the construction of this project and expresses concern that what Elcon is proposing to do at the site is not an outright permitted use under the MPM zoning designation.

Steve Cickay, 263 Burgundy Lane, Newtown states that this project is the dumbest idea he's heard and expresses his concerns about real estate market value going down, how many times does Elcon get to submit, the dangerous chemicals / sludge that will be stored on the site, and why is Elcon being built here as opposed to more wealthy areas.

Gail Friedman, a land use planner who lives in Lower Makefield, states her concern about the project not coming in as a sketch plan first, the zoning does not conform to Elcon's use, which section under MPM specifically enables a waste treatment facility as a permitted by right use in the district, and if updated floodplain or wetlands delineation have been considered.

No further public comment.

Chairman Binney asks if Elcon can address any of the comments or concerns from the public with regard to Land Development – for instance where will the salt be stored?

Mr. Garton says that it is stored temporarily in the warehouse before it is taken off site. The distilled water is used in the pharmaceutical industry. The companies that send their waste here, it gets treated and turned into distilled water and they buy it back from Elcon at a much-reduced rate than if they had to buy new distilled water. The distilled water is being stored temporarily until it is sold back to end users.

Chairman Binney asks if all the storage will be inside, and then it will be hauled away.

Mr. Garton says correct. When it rains, the rainwater that hits that containment area goes back into the process.

Chairman Binney asks that in the event of a storm, is the stormwater tested to make sure it hasn't been cross-contaminated with anything that may have spilled onto the ground.

Mr. Garton states that Elcon has agreed to do monitoring wells for groundwater. I don't know if there have been any discussions with DEP as part of a permit; it's possible DEP might issue water quality sampling at the stormwater outfall.

Chairman Binney asks if an environmental assessment of this property has been conducted.

Mr. Garton states that thousands of application pages have been submitted to the DEP which contain all the environmental studies and reports.

Chairman Binney asks if there were any protected species identified on this property – plant or animal?

Mr. Garton states that when you do a PNDI search (Pennsylvania Natural Diversity Inventory), you get certain hits, you do your due diligence and you have the necessary state agencies come and confirm that those species do not exist on the property. That inspection has occurred.

Member Crohe asks with regard to the warehouse where product is stored – it looks like it's twice the size of the breakroom for the employees. Are there other areas of storage that would not be impacted by rain? The only containment area is where the trucks unload and where the tanks are located.

Mr. Garton states that all storage of the materials after the process stay within the warehouse building. There is ample space for Elcon to store it and ship it to the end user.

Member Crohe says if your end user is no longer in a contract with you because of concerns of where it can be placed, will Elcon have a stop order in the facility to stop manufacturing so there would not be a stockpile?

Mr. Garton states that he cannot answer that question.

Chairman Binney states that in response to a question during public comment, the Township will post on their website the review letters. In response to questions regarding the MPM zoning vs. the Resource Recovery zoning, it was determined by the professionals, zoning officer and engineers MPM is the appropriate zoning. The Resource Recovery zoning specifically excludes hazardous materials.

Chairman Binney asks if at this time you know where the salts will be taken to.

Atty. Freimuth states they would be happy to have someone from EIS or someone more knowledgeable to answer those questions at a future Planning Commission meeting.

Member Haney states that the Planning Commission is an advisory group on policies, land use and development. We are not just here for Land Development; there are a lot of things we are here to plan for and to make certain we protect the health and welfare of the residents. There were a lot of questions here tonight that we could not get answered; it's tough to make a decision.

Member Haney makes a motion to recommend that the application of Elcon, Dean Sievers Place, Fairless Hills, PA, TMP #13-051-001-005 is DENIED.

Chairman Binney says that one of the things that bothers me the most is that you are going to fill in and raise the site six or seven feet. If that is the case, then perhaps this is not the place for it.

Atty. Freimuth states that there have been discussions this evening that the public believes this process has been ongoing for a very long period. This application was just submitted at the end of January; it is the end of March – it has been two months. We just received the first set of comments for this large project in this municipality. We have the right, under the law, to respond to the comments received from the Township’s consultants. We did not ask for this meeting; we asked for this meeting to be continued. We came here as a courtesy because we understand that there had been public notice that Elcon would be on the agenda this evening. We have made numerous attempts to let you know that we will bring back the people who will answer the operational questions. We have indicated multiple times that we believe we can comply with all the requirements in the ordinances and review letters. I caution you that making a recommendation to deny this plan would not be in compliance with the law at this point in time.

Chairman Binney says that the Township does not allow someone to fill sites six or seven feet – so I’m not sure how you can comply with this requirement. If you did not do that [raise the land] then you would not be in compliance with your DEP permit.

There is a motion on the floor ...

Member Crohe seconds the motion.

All in favor 5-0. PRELIMINARY LAND DEVELOPMENT IS DENIED.

Item #2: Approval of minutes

Motion to approve minutes from February 26, 2019.

All in favor 5-0.

Meeting adjourned 8:50 p.m.