



September 27, 2019

East Whiteland Township Board of Supervisors
& Planning Commission
Municipal Building
209 Conestoga Road
Frazer, PA 19355

Patrick Patterson
Southeast Regional Office Director
Pennsylvania DEP
2 East Main Street
Norristown, PA 19401

Re: Bishop Tube, Roux Feasibility Study Report, June 17, 2019

Dear East Whiteland Township Supervisors, Planning Commission members, and Mr. Patterson,

I write to point out some critical deficiencies and absurdities in the Roux Associations June 17, 2019 Feasibility Study Report and to urge the Township to make the decision you must make given this juncture in the process, i.e. to reject the proposed development of the Bishop Tube Site by Constitution Drive Partners (CDP). While there are many pitfalls and problems with the Roux Report that we will highlight in due time, there are obvious issues that further demand the Township close the file on the proposed development of the site, make clear to CDP that Township approval of their residential development proposal cannot and will not be forthcoming, and make clear to the Pennsylvania Department of Environmental Protection (PADEP) that they must demand a defensible analysis from Roux (who is representing responsible parties). It is also incumbent on the PADEP to be clear with CDP that necessary state permitting for CDP's proposed development of the site can also not be granted given the highly contaminated conditions at the site.

Pursuant to PADEP guidance and agreement, the Roux Feasibility Study is premised on a future *non-residential use* of the Bishop Tube site. This premise underlies all of the analyses, discussions and proposals included in the Roux study. As a result, any and all proposals and assessments in the Roux Study are focused on a level of cleanup that will not support residential use of the site. And yet, CDP is presenting their residential development proposal to the township and the community in a way that suggests actions will be taken at the site by responsible parties that will support future residential use of the site. This is a clear and fundamental disconnect. The proposed actions by CDP, including their soil removal, seems premised on a higher level of clean up than is in fact being proposed by Roux or being considered by DEP. In short, it is impossible for the township to defensibly approve a residential development proposal based on an underlying remediation scheme that is focused on achieving goals for a non-residential use.

In addition, pursuant to PADEP guidance and agreement, the Roux Feasibility Study presumes there will be remedial action by third parties as part of the baseline from which Roux is assessing clean up

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needs and options. And yet, there has been no remedial action approved, committed to, funded or mandated by any entity and so there is no known or enforceable remedial action upon which Roux or DEP can make such an assumption.

Further, in the context of discussing a supposed third party remediation, the assumption by Roux is that “all soil on the property will be remediated” and that the future use will be “non-residential only”. And yet, no third party has proposed remediation of all soil; to the extent there has been any discussion of addressing soil contamination by a third party (CDP) it has been in only in 3 designated areas. And again, the only development proposal is for high density residential. As a result, Roux’s report is based on a series of fundamentally flawed and indefensible assumptions, thereby making its entire report and analysis unsupportable. But it also means that CDP’s development proposal is unsupportable because CDP is relying upon a level of remediation by responsible parties that is being developed in this fundamentally flawed landscape of false and unsupportable assumptions that are not grounded in reality. Clearly the Township cannot approve a development proposal, and DEP cannot support a remediation analysis, with these fundamentally flawed and patently false assumptions – i.e. Roux assuming CDP will take action they are not proposing and a level of development that is not in fact being proposed, and CDP assuming responsible parties will institute a level of clean up they are not proposing (and cannot propose because it is grounded on a false characterization of what CDP or some other third party may or may not take at the site).

Truly, the whole situation is absurd, Roux is relying upon a set of actions at the site that are not based in reality – and CDP is relying on a level of clean up at the site that is not being proposed by responsible parties and cannot be scientifically, factually or legally defended because it, in turn, is based on a set of assumptions about third party activity at the site that is either unknown (e.g. level of clean up activity) or not true (e.g. a residential use versus non-residential use).

Clearly, the Township cannot provide an approval for proposed development, and PADEP cannot provide an honest and supportable Feasibility Study Report review, based on this morass of inaccurate, inconsistent, undefined, undetermined, and wishful thinking assumptions and assertions. It is time for the Township to reject the CDP development proposal and for PADEP to demand a defensible Feasibility analysis that is based on reality.

With regards,



Maya K. van Rossum
the Delaware Riverkeeper

Cc: Cosmo Servidio Regional Administrator, EPA Region III
Brian O’Leary, Executive Director, Chester County Planning Commission
Senator Andy Dinniman
Senator Daylin Leach
Representative Kristine Howard
Congresswoman Chrissy Houlahan