

# BAILIWICK NEWS

Reporting and critical analysis of State College public affairs

*September 9, 2016*

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## **Court ruling against Ferguson Township student housing development impacts regional planning**

By Katherine Watt

Part 1 introduces the governing frameworks and some of the history that has led to the current situation. Part 2 (to be published Sept. 16) will cover July and August public discussions about the issues, and provide critical analysis of options for moving forward.

### REPORT

The Centre Region Parks & Recreation Authority (Parks Authority) is currently wrestling with the implications of a recent Centre County court ruling in a land use appeal filed by Nittany Valley Water Coalition to stop construction of student housing near Whitehall Road and Blue Course Drive in Ferguson Township. The July 18 ruling by Common Pleas Judge Jonathan Grine reversed and vacated a Nov. 16, 2015 decision by the Ferguson supervisors to approve a Toll Brothers/Penn State development plan.

In his ruling, Grine wrote: “the basis upon which [Ferguson Township] and [Toll Brothers] rest their argument is essentially an attempted end-run around complying with the zoning ordinance applicable to the Rural Agricultural District,” whose intent is defined in Township ordinances as “preserving the quality of soils for crop and pasture use by limiting the conversion of prime cropland to nonagricultural uses.” The Grine ruling has been appealed to Commonwealth Court.

The ruling has also reopened a dormant debate about how to balance water and farmland resource protection interests against housing and park development interests, because the Whitehall Road Regional Park Master Plan, originally adopted in 2010, was predicated in part on the housing developer installing an access road from Whitehall Road to the landlocked park site.

Specifically, the suspension of the housing development has raised the question: “When do changes to a park master plan driven by external forces, along with changes in municipal appetite for debt-funded projects, become significant enough to send a previously approved project back to the COG General Forum for review requiring new unanimous consent of the municipalities?” From a broader perspective, it’s raised questions about the regional allocation of political power, and how to weigh the costs and benefits of centralization and decentralization of power.

### GOVERNING FRAMEWORKS

Since 1969, six participating municipalities have allocated tax revenue to support the Centre Region Council of Governments (COG), a voluntary coordination organization with no taxing authority and limited enforcement mechanisms for decisions, apart from contract law. The COG General Forum is comprised of all the elected municipal legislators from State College, Ferguson Township, College Township, Patton Township, Harris Township and Halfmoon Township. The General Forum votes on proposals “to initiate, continue, modify or discontinue” COG programs.

The Parks Authority was created in 1970 under the Municipal Authorities Act of 1945, and includes all but Halfmoon Township. The Parks Authority is independent from the COG Parks Capital Committee, whose role is primarily to develop and recommend funding strategies for regional park facilities to the General Forum, so that the General Forum can use the taxing authority of its’ members to pay for park construction and maintenance. Under state law, individual municipalities may leave the Parks Authority under certain circumstances, but the authority itself can only be dissolved by an act of the state legislature, or, possibly, expiration of its articles of incorporation.

### SLAB CABIN WATERSHED PRESERVATION & DEVELOPMENT HISTORY

In 1999, Penn State University purchased a 26-acre parcel of Rural Agricultural land near Blue Course Drive and Whitehall Road, from the RK Mellon Foundation — a subsidiary of BNY Mellon — for \$99,307. The parcel comprises part of roughly 550 acres of University-owned cropland in the area by 2004, traversed by a tributary swale feeding Slab Cabin Run, and sloping steeply down to the Harter-Thomas water wellfields, ultimately feeding into Spring Creek and the Chesapeake Bay. (I think the unnamed tributary is etched in stone in the watershed map at the Penn State Arboretum.)

The land, on the southeast side of Whitehall Road, naturally filters two-thirds of the 5 million gallons of drinking water supplied daily to 75,000 customers by the State College Borough Water Authority (SCBWA). The wells are shallow (20-30 feet deep) and the watershed geology is unstable karst limestone and bedrock, putting the wells at high risk of contamination from introduced pollutants.

### Land Conservation & Groundwater Protection

In 2000, COG General Forum adopted the 2000 Centre Region Comprehensive Plan, establishing the Regional Growth Boundary. In the Harter-Thomas recharge area, the growth boundary was set along the north side of Whitehall Road to keep development out of the Slab Cabin watershed. Specific provisions of the 2000 Comprehensive Plan also identified the parcel as an agricultural area, and allocated existing parcels within Ferguson Township and across the region to meet expected student housing demand without compromising the recharge area.

In August 2006, the State College Borough Water Authority and Clearwater Conservancy purchased 423 acres of forested land in Musser Gap, another key part of the groundwater recharge area, to protect it from a proposed residential development. At that time, the water authority conducted dye-trace testing in the area, and found that in high flow conditions, it took only two days for dye to reach the wells.

The following year, the water authority commissioned a Source Water Protection Report, which presented further evidence that the Slab Cabin watershed is a crucial drinking water recharge area in need of strong protections.

On June 9, 2008, Penn State sold 59 acres upstream of the parcels proposed for housing and park development to the water authority for \$383,500 (\$6,500 per acre). The SCBWA parcel is protected with deed restrictions based on the groundwater recharge role of the land, requiring that "...the Property shall remain in an undeveloped state or used...for agricultural, passive park, conservation area, preserve or wetland uses, to include unpaved roadways and walkways."

In 2013, the COG published the 2013 Centre Region Comprehensive Plan, updating the 2000 Comprehensive Plan, maintaining land use goals to protect agricultural areas, and redrawing the 2000 Regional Growth Boundary to encompass the Penn State housing development parcel rezoned R-4 in 2004 against regional recommendations. (Details below.)

In Fall 2014, RK Mellon Foundation gave a \$250,000 grant to ClearWater Conservancy for two years of streambank restoration projects. At the time, ClearWater board president Steve Miller was also a member of the Ferguson Township Board of Supervisors, which was then beginning its review of the Penn State/Toll Brothers student housing application. By March 2015 – when the supervisors voted on the tentative housing plan, Miller was serving as the interim executive director of ClearWater and still a Ferguson supervisor. Throughout the housing development review process, ClearWater made no public effort to stop the project as a threat to public drinking water supplies.

In May 2015, Steve Watson, a Penn State planner, was also serving as chairman of the Centre Regional Planning Commission (CRPC). At the May 7 meeting, Bob Hoffman, College Township CRPC representative and the commission's liaison to the water authority, reported on general SCBWA concerns about drinking water endangerment. Like ClearWater Conservancy, the CRPC made no public moves to stop the proposed land development projects as incompatible with regional planning frameworks and sourcewater protection.

Throughout the process – dating back to at least the 2004 rezoning – the water authority was not consulted about the impacts of development on water quality. As water board member Jeff Kern put it at a July 2015 joint meeting of the water authority and the Ferguson supervisors: "I don't think any of us would have recommended that it be zoned as it is now, back in [2004] when it was rezoned. I think that we would follow the recommendations that were just presented as a Zone 2 [DEP-designated sourcewater] area, and said that was just the wrong thing, to rezone that property [for high-density housing.]"

The water authority presented a draft wellhead protection overlay ordinance to Ferguson Township at the July 2015 meeting – now being developed by staff for consideration by the supervisors. But to date, Kern's comments are the closest the water authority board and staff have come to taking a clear public stand against land development activity in the remaining undeveloped land in the Slab Cabin watershed.

Partly driven by the community concerns about land development impacts on drinking water raised during the housing development fight, the Ferguson Township staff and supervisors also worked between January and June of this year to draft a new township stormwater management ordinance, unanimously approved June 6. The new ordinance replaces an outdated version and brings the township into better compliance with updated state regulations. The new ordinance applies to all land within Ferguson Township that is also within Zone 2 drinking water recharge areas (roughly 60% of township land), and establishes 50-foot setback distances for stormwater infiltration basins from critical geological features such as sinkholes and bedrock outcropping.

### "The Cottages" Luxury Student Housing Development

Despite the 2000 comprehensive plan, in November 2003, Penn State applied to Ferguson Township to rezone part of their land, outside the growth boundary, from Rural Agricultural (RA) to high-density Multifamily Residential (R-4), to

expand the Regional Growth Boundary past the north side of Whitehall Road; and to amend the Centre Region Act 537 Plan to extend sewer service from the University Area Joint (Sewage) Authority into the new development tracts. Ferguson Township supervisors agreed to consider the request and forwarded the proposal to regional planners for review.

Between March and September 2004, Centre Region Planning Agency (CRPA) staff and the Centre Region Planning Commission (CRPC), comprised of representatives from the six municipalities, recommended denial of Penn State's application, in order to uphold the regional planning framework, keep the growth boundary intact and protect the drinking water and farmland.

However, on Sept. 7, 2004, the supervisors voted 3-2 to approve Penn State's request and change the zoning of the 26-acre parcel from RA to R-4. One of the "Yes" votes came from Ferguson supervisor Dick Mascolo, spouse of Parks Authority chairwoman Sue Mascolo.

As a result, in 2011, Penn State opened the proposal process for the high-density development of the land for student housing. Later in 2011, Toll Brothers were selected as developers, and Penn State officials had at least one meeting with Toll Brothers representatives to discuss an "investment offering memorandum" for the Whitehall Road residential development.

In May 2012, the Penn State Board of Trustees approved the sale of two Whitehall Road parcels, a total of 40.39 acres, to Toll Brothers subsidiary Springton Pointe LP, for \$13.5 million. At the time, Karen Peetz was serving as chairwoman of the board of trustees and vice chairwoman of BNY Mellon, and BNY Mellon was the seventh-largest shareholder in Toll Brothers corporation.

As planning continued, the developers requested 5.5 additional acres be subdivided from an adjacent RA parcel owned by Penn State, but sitting outside the Regional Growth Boundary, for stormwater management. The trustees approved that addition to the deal in September 2013, for a total sale of roughly 46 acres, at about \$293,478 per acre.

The developers worked on preliminary planning during 2013 and 2014. Ironically, on Nov. 18, 2013, the University Area Joint (Sewage) Authority shared a Ferguson Township meeting with Toll Brothers. UAJA presented information about limits to regional sewage treatment capacity due to increased population, and Toll Brothers presented a plan for an apartment and townhouse mix with 1,544 student beds.

On Oct. 1, 2014, Penn Terra Engineers submitted Tentative PRD Plan and attachments to Ferguson Township for review to build 268 units and extend Blue Course drive into the watershed by August 2016. The 1,093 beds in the complex would rent between \$500 and \$900 per bed per month. Annual anticipated rental income to Toll Brothers and investors, at an average \$750 per bed, was \$9,837,000.

The project was designed to include large stormwater detention basins on the 5.5 acres of land inside the Township's agricultural district, and outside the Regional Growth Boundary, in violation of Ferguson Township zoning laws and regional planning protocols, via subdivision. Multiple reviewers examined the plan and flagged these violations along with threats to drinking water safety; stormwater runoff, sedimentation and erosion control problems; karst limestone and bedrock subsurface geology sinkhole risks; and erosion of the regional land use planning framework.

Two reviews were particularly important, and later formed the foundation for the successful land use appeal. On Jan. 29, 2015, CRPA planner Autumn Radle sent a letter to Maria Tranguch, then-Ferguson Township Planning & Zoning Director, regarding the proposed lot consolidation plan, noting concerns that the proposal to include 5.5 acres for stormwater management facilities was inconsistent with the "goals and objectives and intent of the 2013 Centre Region Comprehensive Plan," because it lies outside the Regional Growth Boundary and Sewer Service Area, will retain Rural Agricultural zoning without meeting the minimum 50-acre threshold, and violates Land Use goals 7 & 8 for "protection of agricultural areas to maintain their future agricultural use." Radle concluded: "...allowing developers to build facilities, calculate density, and satisfy open space requirements using parcels outside the RGB and SSA sets an undesirable precedent that erodes the integrity of the RGB and SSA."

Reinforcing Radle's conclusions, on Feb. 19, 2015 Tranguch sent her own memo to supervisors, emphasizing that the stormwater management parcel, zoned RA, couldn't be rezoned directly to "Planned Residential Development" under local ordinances, and that it couldn't legally house stormwater management facilities to support high density housing in the adjacent R-4, because high-density development is not allowed on agricultural land. Tranguch highlighted risks to SCBWA water wells, and recommended disapproval "due to the inconsistencies with best efforts to effectively plan and zone within the Township."

On Feb 23, 2015, the Ferguson Township Planning Commission and community members discussed concerns about water contamination, and the Planning Commission split 3-3 on a motion to recommend supervisor approval of the tentative plan and move the process forward into the final review phase.

On March 2, 2015, the supervisors ignored the legal and public health issues raised by the team of reviewers, and approved the plan by a 3-1 vote, with one member absent. A week later, the *Centre Daily Times* published a story on odor problems at the UAJA wastewater treatment plant in College Township, which Executive Director Cory Miller attributed to increased sewage from increased housing development and increased population.

Following the tentative approval on March 2, residents across the region mounted a vigorous public campaign against the development, appearing at public hearings before municipal and water boards, and at Penn State Board of Trustees

meetings, and putting up a slate of candidates for the fall elections. On Nov. 3, Ferguson voters elected the water slate to replace three of the pro-development supervisors, effective with the January 2016 swearing in.

By Nov. 9, the Ferguson Township Planning Commission was persuaded by the evidence presented about risks to the water supply and farmland, and voted unanimously to recommend that the supervisors disapprove the final plan. However, on Nov. 16, the supervisors ignored public concerns, the election results, the Planning Commission recommendation and a letter from attorney Jordan Yeager urging them to vote “No” on multiple legal grounds, including those highlighted by Radle and Tranguch. Instead, the supervisors voted 4-0 to approve the plan, with one member absent.

Nittany Valley Water Coalition plaintiffs, represented by Yeager, filed a land use appeal on Dec. 16, 2015, under the PA Municipalities Planning Code, asking the Court to overturn the Township approval of the plan. Plaintiffs argued that the final plan violated one of the conditions of the tentative plan (compliance with local ordinances) and two zoning ordinances related to stormwater management and allowable uses in agricultural districts; that the supervisors did not have the authority to nullify those zoning ordinances; and that the improper attempt to circumvent Township ordinances governing land use was an abuse of discretion.

On July 18, 2016, Judge Jonathan Grine of Centre County Court of Common Pleas ruled in favor of the plaintiffs, reversing and vacating the supervisors’ approval. Toll Brothers appealed the Grine ruling to Commonwealth Court, where review is now pending.

On Sept. 8, during discussion at a joint meeting of the COG Parks Capital Committee and the Parks Authority, Margaret Gray, Penn State Director of Local Government and Community Relations, and spouse of David Gray, Vice President for Finance & Business, confirmed that Penn State still owns the land proposed for development of the housing and the access road.

### Whitehall Road Regional Park Development

On Nov. 27, 2006, Ferguson Township, College Township, Harris Township, Patton Township and State College Borough entered into “Joint Articles of Agreement for the Planning, Development and Operation of Regional Parks” through COG. The municipal representatives also approved “Joint Articles of Agreement for the Ownership of the Whitehall Road Regional Parklands.” (Halfmoon Township, although a member of COG, does not participate in the regional parks program.)

The agreements required that both the master plan for the Whitehall Road Regional Park, and any amendments to the plan, be approved unanimously by the General Forum.

On May 30, 2008, Penn State sold COG the first of two parcels of land for the park. Funding for the purchase of these 75 acres was supplied by a PA Department of Conservation and Natural Resources grant, and from Ferguson Township municipal funds. According to the parks authority project timeline online, in 2005, the land was appraised at \$15,000 per acre; Penn State sold the land to COG at \$3,077 per acre. In May 2011, COG and Ferguson Township jointly bought the second, 25-acre parcel from Penn State, bringing the total to 100 acres.

On Aug. 23, 2010, the COG General Forum members unanimously approved the original Whitehall Road Regional Park Master Site Plan & Report. Phase 1 was to include grading, erosion and sediment control, and stormwater management for the 75-acre parcel; installation of crushed stone parking areas, 8 rectangular sport fields and one rectangular practice field, 1 baseball field, a playground area, a basketball court, a large community pavilion, one set of restrooms with flush toilets and concession stand, a perimeter trail and interior walkways and a new Centralized Parks Maintenance Facility.

From the start, a key component of the Whitehall Road Regional Park Plan was that the adjacent housing developer, selected by Penn State, would pay for the installation of an access road to the landlocked park parcel, including water service; sewer service with a pump station to pump sewage uphill roughly a mile along Whitehall Road to the nearest gravity line at Stonebridge Drive; electric and telecommunications service; and stormwater management.

In June 2011, confident that the housing development would move forward, the Parks Authority borrowed \$7,578,800 from Fulton Bank, with municipal guarantees, to plan and build Oak Hall Regional Park Phase 1, and Whitehall Road Regional Park Phase 1. Of the total borrowed, roughly \$5.2 million was designated for the Whitehall Road park.

On Oct. 3, 2011, Ferguson Township, COG and the Parks Authority entered into a 50-year lease agreement for the 100 acres at Whitehall Road (approved by the General Forum on Sept. 26, 2011). The park land is now jointly owned by the Centre Region COG and Ferguson Township, leased to the Parks Authority.

In February 2013, the General Forum was asked to approve four changes to the master plan, including adjusting the footprint of a proposed “field sports building,” showing a possible CRPR Agency Headquarters Building, and showing more landscape buffers, stormwater provisions and building coverage calculations. The changes were unanimously approved.

Municipalities have been paying off the principal since March 2013, and the loan has been refinanced several times, with a current drawdown date of June 1, 2017, meaning that the funds must be spent or returned by that date.

Since March 2013, the Whitehall Road park project has been in limbo, awaiting the start of the adjacent housing development for the access road. The housing development is also in limbo, pending the outcome of the Toll Brothers' appeal to Commonwealth Court.

As the Parks Authority watched the litigation unfold, its governing board decided in March 2016 to refer the related park planning issues to a consultant to report on feasibility of options in case the court ruled against the housing developers and thereby eliminated the planned funding source for the access road.

The feasibility report, and the regional public discussion about its implications, will be covered in the Sept. 16 edition.

DISCLOSURE: I was active in the public information campaign during the effort to get the supervisors to deny the final PRD, and I am a plaintiff on the Nittany Valley Water Coalition land use appeal.

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## **Some municipal legislators reluctant to continue investing taxpayer funds in Whitehall Road Regional Park development**

By Katherine Watt

Part 1 (published Sept. 9) introduced the governing frameworks and some project history. Part 2, below, covers summer public discussions about the Slab Cabin Run water and farmland protection issues.

### REPORT

#### *Parks Authority Feasibility Study*

On March 10, 2016, the Centre Region Parks & Recreation Authority (Parks Authority), with the support of the COG Parks Capital Committee, commissioned a feasibility study from Stahl Sheaffer Engineering, LLC, at a cost of \$11,600. The study was “to analyze the options and actions required for the Whitehall Road Regional Park (WRRP) project to move forward without infrastructure support that was previously planned to be provided by an adjacent Planned Residential Development (student housing),” stalled by litigation.

The study was to review access and utilities options, because the proposed park site is on undeveloped land, about 1,000 feet from Whitehall Road.

The feasibility study was completed by July 7, and reviewed by the Parks Authority (chaired by Sue Mascolo) and the COG Parks Capital Committee (chaired by Tom Daubert) on July 14, at which time the two committees discussed how to reach consensus among the five municipalities to proceed with Phase 1. Members of both boards apparently agreed that General Forum participation would be key. On July 19, the two boards recommended that the COG Executive Committee refer issues for discussion to the General Forum’s July 25 meeting, and that the General Forum then refer the issues for municipal-level discussions during August.

The key findings of the study were that, without the subsidy for access and utilities provided by the adjacent housing development, the Parks Authority will need to revise the Phase 1 construction plan, by adding road construction and delaying utility installation and other components of Phase 1 to future phases, to keep Phase 1 design and construction within the allocated budget of roughly \$5.2 million.

The study highlighted many other complications, especially for financing. The Fulton Bank loan must be drawn down to pay for approved construction contracts by June 1, 2017. A \$300,000 PA-DCNR grant is contingent on the park being complete and open to the public by Dec. 31, 2017. According to the feasibility study, DCNR Grant Project Manager Beth Helterbran has “encouraged the Authority to consider withdrawing the grant project.”

The feasibility study reviewed two access road options. Option 1 is located on State College Borough Water Authority property, which is part of the parcel sold by Penn State to SCBWA in 2008 and is subject to deed restrictions for sourcewater protection of the downstream Harter-Thomas wells. Under this option, an existing gravel farm lane would need to be widened, realigned and partially paved to accommodate vehicle, bicycle and pedestrian traffic; if utilities were added, there would be further land disturbance.

Option 2 is extending Blue Course Drive 1,000 feet into the undeveloped area to reach the park site, through land owned by Penn State, but part of a Township “right of way.”

The study notes that there is a drainage tributary (“#23045”) that crosses the proposed roadway and drains to Slab Cabin Run. The roadway site is in a floodplain, and is “surrounded by steep topography, thus would require a large culvert installation and associated earthwork to construct the road over the tributary.” Further, PennDOT (Pennsylvania Department of Transportation) would have to approve the design of the intersection.

The feasibility study notes that Toll Brothers obtained Ferguson Township approval (through the now-vacated Nov. 16, 2015 supervisor vote) for their original stormwater management plan for the roadway. It also notes that, “All stormwater facilities outside of the park boundary will need to be designed to meet Township Ordinance 1018, which was recently passed in June 2016.” That new ordinance is stricter than the prior ordinance under which the Toll Brothers plan and the 2013 proposed park land development plan were both reviewed.

If the Commonwealth Court overturns the Centre County court ruling that reversed the Township’s Nov. 16, 2015 approval, and the Toll Brothers housing project proceeds, their road design could be grandfathered under the previous

stormwater management rules.

If, however, the Commonwealth Court upholds the county court ruling, and the housing project is abandoned or redesigned, then the Parks Authority would need to design stormwater management systems to comply with the updated, stricter Township regulations. The appellate decision is not likely to occur until Summer 2017.

The feasibility study addressed this issue obliquely, writing “tributary crossing/floodplain permitting obtained for [housing project] road design, will need to coordinate with [Ferguson] Township and [Centre Region Parks & Recreation] engineering consultants to either transfer or reapply for required permits.” Nittany Valley Water Coalition activists are aware of this potential attempt to avoid the more stringent requirements of the new stormwater management ordinance.

The study recommended that the Parks Authority not install water or sewer service during Phase 1, as “cost prohibitive within the Phase 1 park budget;” the report didn’t even provide a cost estimate, but simply recommended use of portable toilets. Similarly, while electricity hookup is available along Whitehall Road, it would be so expensive to run lines more than 1,000 feet to the park site that no cost figures were provided.

The study summed up that either access option would result in a 24’-wide gravel driveway, connected by a paved section at the intersection with Whitehall Road; a 10’-wide paved pedestrian and bicycle path; but no water, sewer or electrical service. The access road would cost about \$287,000 at the existing gravel farm lane, and about \$536,600 at the Blue Course Drive intersection.

Finally, the study presented a series of next steps for decision-makers, including choosing an access road option and utility scope/plan, updating the Phase 1 cost estimates and feasibility, reviewing the loan and grant funding situation, and refining the Phase 1 amenities plan. Once those decisions are made, planners would need to complete a traffic study, arrange for permitting and design for the access road, and then update the land development plan and get Ferguson Township approval. At a presentation of the study before the General Forum on July 25, engineer Robyn Froehlich estimated 9 to 11 months for those steps; once those were complete, the project could go to bidding and construction.

### *Regional Public Discussions of WRRP Feasibility*

The implications of the feasibility study findings were discussed at many local meetings throughout July and August, including July 14 joint meeting of COG Parks Capital Committee and Parks Authority; July 19 COG Executive Committee; July 20 Patton Township supervisors; July 21 State College Borough Water Authority; July 25 COG General Forum; Aug. 1 and Aug. 15 Ferguson Township supervisors; Aug. 15 State College Borough Council; Aug. 17 Patton Township supervisors; Aug. 18 Parks Authority; and Sept. 8 joint meeting of Parks Capital Committee and Parks Authority.

Discussion topics were presented to the municipalities by the Parks Authority, via the General Forum, and included whether each governing board/council is interested in moving forward with the planned park, especially Ferguson Township, whose board will be asked to review the updated land development plan; whether construction should be postponed until a Regional Parks Comprehensive Plan can be completed (probably in late 2018); whether there are any “show stoppers” that would make a local governing board member hesitate to endorse further work on the project; whether the original 2010 site plan, or the amended plan (contents to be determined), offer the amenities the municipalities want; and whether the municipal leaders are willing to amend the master plan or the phasing schedule.

The five prompts led to many thoughtful discussions, with the issues summarized below. Not all of these issues were raised by each of these individuals, but the following supervisors are among those who have publicly expressed skepticism about pursuit of the Whitehall Road Regional Park under current practical and financial circumstances: Laura Dininni, Ferguson Township; Peter Buckland, Ferguson Township; Rita Graef, Ferguson Township; Evan Myers, State College Borough; Josh Troxell, Patton Township (who has since left the board because he moved out of his district); George Downsborough, Patton Township; Jeff Luck, Patton Township; Walter Wise, Patton Township; and Bruce Lord, Harris Township.

### *Issues Raised*

Issue 1. Soccer and lacrosse programs want more rectangular fields, primarily to meet local demand, and secondarily to be able to host large tournaments drawing teams from beyond the Centre region. Matt Vidic, President of Centre Soccer Association, and Doug Lovinsky, President of Centre Lacrosse, both appeared at several meetings, citing growing youth program enrollment and a shortage of appropriate rectangular fields for practice and games. Some the coaches and parents would prefer artificial turf to extend the season earlier in spring, later in fall, and during wet weather, and electric lights to extend use later in evenings. They’d also like flush toilets and a concession stand with running water to attract tournament organizers. But several parents said they’d be fine with grass fields and Port-o-Potties: they just need more places for their kids to play organized sports.

Issue 2. Nittany Valley Water Coalition and other advocates for sourcewater protection want stronger protections on the Harter-Thomas wellfield recharge area. According to spokeswoman Kelli Hoover, the group unanimously supports

efforts to provide access to more soccer and lacrosse fields for local kids, but they do not support the significant grading and land disturbance, nor the installation of artificial turf with toxic chemical runoff, or grass fields requiring herbicides and pesticides, at the proposed site within the Zone 2 recharge area for the Harter-Thomas water wells. They would like to see the Parks Authority identify and develop sites for rectangular sports fields in areas that don't compromise the safety of public water supplies. Overall, they would like to see the three issues – getting enough playing fields for local kids, building luxury student housing, and building a multimillion dollar tournament-ready sports complex – disentangled from each other.

There's also a possibility that the park development poses a higher environmental threat to the safety of the SCBWA water wells than the housing development, such that moving forward could mobilize the same public opposition as the housing development, triggering more delays and costs.

Issue 3. General Forum Votes. There will likely need to be at least two more unanimous votes at the General Forum: one to approve a revised WRRP Master Plan, and one to approve an application to extend the Fulton Bank loan beyond its current June 1, 2017 deadline. Members of several municipal boards have reservations about continuing to pursue the Whitehall Road Regional Park under current practical and financial conditions.

Troxell emphasized this issue at the July 25 General Forum meeting, noting that “if one municipality says ‘No,’ every minute of discussion is a waste.”

COG Executive Director Jim Steff has publicly confirmed Troxell's interpretation of the legal approval procedures at least twice: at the July 14 joint Parks Capital and Parks Authority meeting and at the July 25 General Forum meeting.

On August 15, however, attorney Terry Williams circulated a legal memo to the governing boards. Williams simultaneously serves as the solicitor for the Borough of State College, which supplies taxpayer funds to COG for regional programs; the COG itself, which collects taxpayer funds from municipalities to support programs; and the Parks Authority, a quasi-independent entity which receives COG funds to run programs. Williams' memo did not specify which entity's legal interests he was representing in giving his opinion. He concluded that neither the General Forum nor the individual municipalities have any authority to control whether or how the Parks Authority moves forward with the park project, apart from their ability to appoint municipal representatives to the Parks Authority.

Citing Williams' memo, State College Borough Council President Tom Daubert shut down council discussion of the issues on Aug. 15, saying it was moot under the legal circumstances. Recall, Daubert is also the Parks Capital Committee chairman, and had, until that point, recommended strong efforts to obtain General Forum support for moving forward with the Whitehall Road park project.

COG Executive Director Jim Steff also appeared at the Aug. 15 State College Borough Council meeting. Confronted with the Williams memo, Steff hedged a bit this time, saying that while it may be legally true that the Parks Authority can go ahead without unanimous General Forum votes in support of their plans, in the long run, COG relies on municipal support for its existence, so COG administrators have a very strong interest in maintaining municipal support for programs and budgets, and not ignoring or frustrating municipal concerns. Steff also pointed out that the municipalities have leverage over the project through their guarantees of the loan, which expires June 1, 2017.

Two days later, on Aug. 17 at the Patton Township meeting, several supervisors said they'd received alternative legal interpretations of the decision-making authority allocation between the General Forum and the Parks Authority from the Patton Township solicitor. George Downsborough reported to the joint Parks Capital/Parks Authority meeting on Sept. 8 that the Patton solicitor had a different analysis, but could not discuss the specifics because the legal advice was received during executive session.

There will be a need to resolve differing legal opinions regarding the Parks Authority's right to move forward *without* unanimous General Forum approval. There is a high risk that, even if the Parks Authority technically has legal authority to move forward, such a maneuver compromises the legitimacy of the General Forum and the trust relationships between the funding municipalities and the funded Council of Governments.

Issue 4. Financing. It's likely that, even if the project moves forward, it won't happen in time to meet the terms of the Fulton Bank loan, which expires June 1, 2017. COG Finance Director Joe Viglione has said that COG could apply to extend the loan, but then Fulton Bank would have to make a business decision regarding that application. The bank could refuse the request, or raise the interest rate on the debt. Further, planners agree that there's no way the project can be complete and open to public by Dec. 31, 2017, in order to comply with DCNR grant terms. Again, COG could apply for an extension, but DCNR has already given at least one extension, and there's no guarantee they'd do it again.

Issue 5. It's likely that, even if the project moves forward, it will have to be without water, sewer or electrical service, due to budget constraints from the costs of the access road, and that if it lacks those amenities, such as flush toilets, the project may not meet the standards to be considered a “regional” park, and also may not meet the standards to promote it as an economic driver for the community to bring in large regional sports tournaments.

Issue 6. New Stormwater Management Ordinance in Ferguson Township. If either access road is chosen, there will need to be a new stormwater management plan for the access road to comply with the new, more restrictive stormwater management ordinance adopted by the Ferguson Township Board of Supervisors on June 6, 2016. This was noted in the July 7 feasibility study.



Issue 7. Deed Restrictions on SCBWA Land. If the existing farm lane is chosen as the access point, there will be a need for State College Borough Water Authority and Penn State University to agree to lift deed restrictions barring disturbance in SCBWA land intended for conservation and sourcewater protection. The deed restrictions provide SCBWA with significant legal power to stop the construction of the access road across their land.

Although the August 2010 WRRP Master Plan has a section on “key person interviews” including UAJA and PennDot representatives, there’s no evidence that park planners consulted the water authority on anything other than whether water service could be provided. The plan referenced UAJA beneficial reuse plans, but did not reference the 2004 SCBWA Long Range Plan or the 2007 Sourcewater Protection Plan, and made no reference to the risks to the nearby Harter-Thomas water wells.

During the public discussion on the adjacent housing development, SCBWA board member Jeff Kern stated at a July 7, 2015 joint Ferguson Township/SCBWA meeting that the 2004 rezoning in the area, allowing high-density development, should never have happened. At a Ferguson Township meeting on Jan. 18, 2016 regarding proposed stormwater management ordinance updates, SCBWA board member Jason Grottini and hydrogeologist David Yoxtheimer articulated support for wellhead overlay zoning protection for the whole area. Yoxtheimer noted that the cumulative effect of developments brings communities to tipping points in water safety, highlighting Penn State’s current construction of a \$60 million water treatment plant to deal with contamination of their groundwater supplies, primarily caused by development along North Atherton.

Most recently, at the July 21, 2016 SCBWA meeting, Kern noted the land now being considered for an access road was intended for preservation rather than recreational use, and board member Rachel Brennan announced that the Source Water Protection Committee would be addressing the issue.

Issue 8. Ferguson Township Approval Required for Land Development Plan. If the Parks Authority proceeds, they will eventually need a majority vote on Ferguson Township Board of Supervisors to approve the revised land development plan. The new board was seated in January 2016. There are three new supervisors, two of whom campaigned as part of the “water slate” that unseated three pro-development supervisors. Laura Dininni and Peter Buckland now regularly vote to protect water and farmland from development. Steve Miller and Janet Whitaker generally vote to support development. Rita Graef often casts the deciding vote in split decisions, and she has expressed public concerns about the many complications inherent in the current park development plan. Graef was absent for the Aug. 15 Ferguson Township discussion and vote on whether Ferguson wants to move forward at all, which is considered the highest priority question by many General Forum members. Thus, the supervisors deadlocked 2-2.

Issue 9. There is no comprehensive regional parks master plan. In response to the ongoing discussions, funding for such a study has been moved up the priority list for the 2017 COG budget. If funded, it won’t be complete until 2018.

Issue 10. There is no identified funding source for future phases, operations and maintenance costs. Phases 2, 3 and 4 of the WRRP are projected to push the total cost over \$12 million. The 2010 park master plan projected \$234,000 in annual operations and maintenance expenses for staff and materials after Phase 1 is done. The plan projected direct revenue from park use at \$32,680 per year assuming water, sewer and electric installed in Phase 1.

## CRITICAL ANALYSIS

Earlier in the summer, the public record showed a strong interest among park advocates for building consensus on the General Forum to move forward. However, that push changed sometime between Aug. 1, when the Ferguson Township board held a contentious discussion on the issues, and Aug. 15, when Terry Williams provided his legal memo to municipal legislators.

Since Aug. 15, Daubert, Mascolo and others have framed the issue narrowly, as whether the General Forum, through the Parks Capital Committee, would defer all decision-making to the Parks Authority.

On Aug. 18, during a Parks Authority meeting held at the Nittany Mall, the authority board decided to simply ask the Parks Capital Committee to “reaffirm its commitment to the COG Regional Parks Program and to the previously-authorized funding.”

Thus, that was the question presented to the Parks Capital Committee at the Sept. 8 joint meeting and approved by a 4-1 vote.

After the vote, Steff summarized that the Parks Authority would first investigate cost and land and road ownership issues, then retain a landscape architect to determine how much of Phase 1 can be built with the remainder of available funds.

This process does not adequately respond to municipal concerns about the changed practical and financial circumstances since the original 2010 plan gained COG approval; ambiguous decision-making authority; lack of cost control; and haphazard regional park planning.

On July 20, Patton supervisor Josh Troxell summarized the core problem, noting that while the consultant investigated two access options as asked, the political framing of the issue has become a “forced choice fallacy.” It pushed the discussion past the main question – “Should we build this park at this time in this place?” – to look immediately at

access road options.

“With all of these unknowns, and the need to have unanimous votes and so many things that need to be decided, in my opinion, it really feels like we’re trying to push forward with this plan at this time. And I’m not sure that’s the wisest course.”

Downsbrough concurred, saying “The existing plan is broken,” and advocating that the Parks Authority square the books, retire the loan, and reopen a regional assessment about needs and resources to inform development of a new plan.

As Graef put it Sept. 8, “We need a big picture before anyone can and perhaps should make a decision.”

The Troxell, Downsbrough and Graef positions are supported by the available evidence. Therefore, the COG General Forum should consider a motion at its Sept. 26 meeting to implement Downsbrough’s recommendations.

The COG Executive Committee (comprised of the chairs of the six municipal boards) meets Tues., Sept. 20 at 12:15 p.m. at the COG Building. The General Forum meets on Mon., Sept. 26 at 7:30 p.m. at the College Township Municipal Building, 1481 E. College Ave.

# BAILIWICK NEWS

Reporting and critical analysis of State College public affairs

*September 30, 2016*

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## **Municipal leaders quietly wrestling with Whitehall Road Regional Park planning**

By Katherine Watt

As reported in the Sept. 9 and Sept. 16 issues of *Bailiwick News*, there is currently a kerfuffle about whether or how the Centre Region Council of Governments (COG) should move forward with Whitehall Road Regional Park, a multi-million dollar artificial turf soccer complex currently proposed to be built at the end of a gravel road, and served by portable toilets, if permitting, easements and land development approvals fall smoothly into place before the loan drawdown date of June 1, 2017. This is Part 3 in the Slab Cabin Run water and farmland protection series.

### *Background*

In 2010, the COG General Forum unanimously approved a master plan for the Whitehall Road park assuming that the access road and utilities would be paid for by the housing developer for the adjacent parcel. The resolution included the stipulation that revisions to the plan would require additional unanimous votes, and some minor revisions were approved unanimously by the General Forum in 2013.

In 2011, a large Fulton Bank loan was taken out, the bulk of which (about \$5.2 million) was earmarked for the Whitehall Road park project.

However, the adjacent housing development has been delayed over the last five years, most recently due to litigation that successfully challenged the Ferguson Township Board of Supervisors' Nov. 16, 2015 approval of the housing project. On July 18, 2016, the Centre County Court of Common Pleas ruled against the township – finding the 2015 supervisors' actions to be unlawful. The developer has appealed to Commonwealth Court.

### *Summary of Summer and Early Fall Activity*

In July 2016, as the quasi-independent Parks Authority and the COG Parks Capital Committee reviewed a feasibility study about possible workarounds for the lack of private funding for the access road and utilities, their initial plan was to try to get a unanimous General Forum vote to shift funds from park amenities to road access, and abandon utilities as prohibitively expensive.

Accordingly, the Parks Capital Committee recommended that the Executive Committee ask the General Forum to refer a half-dozen questions to the individual municipalities for discussion during August. On July 25, the General Forum approved that recommendation, and the question list was sent to the municipal boards. However, none of the questions on the list covered the basic issue of who has decision-making authority about whether to move forward at all.

Unfortunately for diehard park advocates unwilling to accept that time has passed and the situation has changed since 2010, on Aug. 1 at the Ferguson Township supervisors meeting, it became clear that unanimous support for moving forward was not forthcoming. The Ferguson board now includes two supervisors specifically elected by voters to protect public water supplies and farmland against development threats, and those supervisors (Dininni and Buckland) are well-versed in the studies demonstrating the high risks posed by development on the fragile karst geography of the Slab Cabin watershed.

In response to the Ferguson discussion, behind the scenes, someone cancelled the Aug. 11 Parks Capital Committee meeting. Someone also asked Terry Williams, highly conflicted as the solicitor for three different legal entities with different legal and financial interests (COG, State College and the Parks Authority), to draft a memo providing legal cover for the position that the Parks Authority would not need to seek COG approval to move forward with spending the remainder of the \$5.2 million loan. Williams provided his memo on Aug. 15. Then someone cancelled the Aug. 22 General Forum meeting.

Relying on the Aug. 15 Williams memo, the Parks Authority voted on Aug. 18 to “reaffirm” their own commitment to completing Phase 1 of the Whitehall project, “recommend” that the COG Parks Capital committee reaffirm its commitment, and instruct staff to solicit contractor proposals for the next planning steps.

Parks Capital Committee Chair, and State College Borough Council President, Tom Daubert duly set the agenda for the Sept. 8 joint Parks Authority and COG Parks Capital Committee, phrasing the item as a “discussion,” not as an action

item requiring a vote. Nonetheless, at the meeting, Daubert entertained a motion that the Parks Capital Committee vote to reaffirm its commitment to the regional parks program and endorse the Parks Authority's right to forge ahead without General Forum discussion or vote. With non-negligible hesitation expressed by some members, the Parks Capital Committee approved the motion 4-1.

This was reported to the Parks Authority in its Sept. 15 meeting agenda, prompting the Parks Authority to consider and approve a draft contract between the authority and Stahl Sheaffer Engineers to conduct the WRRP Traffic Impact Study (TIS) for \$90,000, plus up to \$1,000 for standard reimbursable items.

At this point, there had not been a General Forum meeting since July 25, when the issues were referred to the municipalities, and yet the Parks Authority had already approved a contract to spend an additional \$90,000 of the loan balance the municipalities are on the hook to repay.

On Sept. 20 at the COG Executive Committee meeting, the six members agreed to move the topic of the Whitehall Road park's future off of the Sept. 26 General Forum agenda as its own item. Instead of moving it to the consent agenda, where it could be easily pulled out for fuller discussion, they moved it into the Executive Director's report. To the extent a reason was given, it was by Daubert. Relying on Williams' opinion that the Parks Authority had all the power it needed without formal General Forum endorsement, Daubert said there was no need to discuss the issue further.

One major problem with this backroom approach is that, under the COG Articles of Agreement, most of the subcommittees are advisory. They review projects and proposals, and then they refer those projects to the full General Forum with recommendations as to how they suggest the General Forum members vote. The General Forum is where binding decisions that obligate the constituent municipalities occur.

Thus, there are only two logical possibilities. If the Parks Authority needed COG approval to move forward, then the Sept. 8 COG Parks Capital vote wasn't enough, because COG Parks Capital's role is to review, refer and recommend items for General Forum consideration and votes, not to independently make binding decisions. If the Parks Authority didn't need COG approval to move forward, then the Sept. 8 COG Parks Capital vote was a sham, probably designed as a legal fig leaf to reassure prospective contractors that the Parks Authority is good for the money.

On Sept. 26, at the first General Forum meeting since July, a few municipal representatives aware of the strange developments of the preceding eight weeks expressed some objections. State College Councilwoman Janet Engeman moved to add the Whitehall Road park issue to the Oct. 24 General Forum agenda for discussion, and Ferguson Township Supervisor Peter Buckland seconded her motion. During limited discussion, General Forum Chair Eric Bernier stated that, if the motion failed that night, municipal leaders could still direct their representatives to the Executive Committee to add the item to the next General Forum agenda. Daubert continued to express confusion as to what there could possibly be to discuss, since the Parks Capital Committee had squared everything away so tidily.

The motion failed, with eight votes in favor, 16 votes against, and two abstentions.

COG Executive Director Jim Steff later reported to the General Forum that he had received comments from elected and appointed officials about the scope and cost of the proposed Stahl-Sheaffer traffic study, and that, since the contract had not yet been executed, Steff would try to reduce the scope and cost while still meeting some of the Parks Authority's planning goals.

Steff also reported that Williams had been deployed to approach Penn State officials to identify the process that could be used to negotiate easements across Penn State land to the proposed park site.

## CRITICAL ANALYSIS

*Bailiwick News* believes the project is demonstrably non-viable, and that on Oct. 18, the COG Executive Committee should place the issue on the General Forum agenda for Oct. 24 discussion and vote. One possible version of a proposed agenda item would be "Given the significant increases in financial, planning and permitting challenges that have developed since the original plan was approved in 2010 and amended in 2013, does the General Forum wish to direct the Parks Capital Committee to square the books on the work done to date, retire the Fulton Bank loan, and discontinue the Whitehall Road Regional Park project?"

# BAILIWICK NEWS

Reporting and critical analysis of State College public affairs

October 21, 2016

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## Public debate on land development and water protection in Slab Cabin Run watershed – Part 4 of series.

By Katherine Watt

Centre Region Council of Government General Forum members will receive a detailed written update on the Whitehall Road Regional Park (WRRP) development process ahead of their Monday, October 24 meeting (7:30 p.m. at the COG building), following an announcement about the update from COG Executive Committee Chair Eric Bernier at the committee meeting Oct. 18.

### *Background*

In 2010, the COG General Forum unanimously approved a master plan for the Whitehall Road park assuming that the housing developer for an adjacent parcel would pay to install the access road and utilities. The resolution included the stipulation that revisions to the plan would require additional unanimous votes; the General Forum approved some revisions in 2013. In 2011, a large Fulton Bank loan was taken out, the bulk of which (about \$5.2 million) was earmarked for the Whitehall Road park project.

However, the adjacent housing development has been delayed over the last five years, most recently due to litigation that successfully challenged the Ferguson Township Board of Supervisors' Nov. 16, 2015 approval of the housing project. On July 18, 2016, the Centre County Court of Common Pleas ruled against the township – finding the 2015 supervisors' actions to be unlawful. The developer (Toll Brothers) has appealed to Commonwealth Court.

To date, *Bailiwick News* has published three reports on conservation and land development conflicts in the Zone 2 recharge area for the public Harter-Thomas water wells owned by the State College Borough Water Authority: on Sept. 9, Sept. 16 and Sept. 30. Those reports can be found online at [steadystatecollege.wordpress.com/bailiwick-news](http://steadystatecollege.wordpress.com/bailiwick-news). New and/or newly obtained information about financial and political considerations is below.

### *Financial Considerations*

About \$3.7 million of the original \$7,578,000 regional park borrowing in 2011 has been spent on Oak Hall Regional Park and Hess Field construction, and the five participating municipalities have been paying down that portion of the debt for several years.

Prior to Oct. 13, there were three publicly-expressed possibilities for the remaining roughly \$4.7 million held in Fulton Bank accounts for Whitehall Road Regional Park design and construction.

First, the Centre Region Parks & Recreation Authority (Parks Authority) could move quickly through studies, easement negotiations, permitting and design to sign construction contracts by the June 1, 2017 drawdown date for the loan.

Second, the Parks Authority could go to the General Forum for a unanimous vote to apply to Fulton Bank to extend the loan past the June 1, 2017 drawdown date, and renew the municipal guarantees that expire on the same date.

Or third, the General Forum could intervene, by voting to close out the loan and municipal guarantees, pay down the rest of the debt from the Oak Hall and Hess Field projects, and leave the door open for the Parks Authority to come back later with a new master plan, new budget, and new request for municipal guarantees for new borrowing.

On Oct. 13, at the joint COG Parks Capital/Parks Authority meeting, Parks Capital Committee Chair Tom Daubert quietly mentioned a fourth possibility: that the Parks Authority could somehow transfer the balance of the money from the loan fund, to a Parks Authority holding account before June 1, 2017, without having signed construction bids, and without General Forum approval, based on the Parks Authority's legal theories regarding spending authorization.

At that same meeting, Patton Township Supervisor Jeff Luck announced that Patton Township had sent an official letter to COG, saying that they will not put any more money into the regional parks program beyond the money they must pay legally as part of the borrowing agreement for the current Fulton Bank loan.

Mr. Luck also stated that Patton Township supervisors had reviewed the 2006 Regional Parks Articles of Agreement, which included language (Section 5.3) requiring unanimous General Forum votes to approve contracts for construction; however, General Forum did not approve contracts for prior construction at the two other regional parks.

Luck said that Patton supervisors believed in 2006 that the provision was enforceable, but they have recently been told

it is not enforceable. The contradictory interpretations of the agreement partly stem from an Aug. 15 legal memo drafted by solicitor Terry Williams, laying out some arguments about the interplay of the quasi-independent Parks Authority, which has borrowing authority, and COG, which does not have borrowing authority, but whose constituent municipalities have taxing authority, upon which municipal loan guarantees are based.

Dick Mascolo, a former Ferguson Township supervisor and spouse of Parks Authority chair Sue Mascolo, was also at the joint Oct. 13 meeting. Mr. Mascolo expressed the opinion that, by approving the original master plan in August 2010, the participating COG municipalities are responsible for all of the phases of design and construction of all three planned regional parks, not just the first phases. Mr. Mascolo later clarified his position: “The municipalities are morally liable for costs to build the Regional Parks but are only legally responsible for costs for loans already issued.”

After the Oct. 13 meeting, I asked COG Finance Director Joe Viglione for data about the budget impacts if the General Forum votes to halt spending of the Fulton Bank loan immediately and not apply for an extension, instead returning the unspent balance of about \$4.7 million to Fulton Bank and paying off only the principal and interest for the funds spent up to this point.

On Oct. 19, I reviewed a binder of Fulton Bank loan documents (copies forthcoming). Two documents provided information about taxpayer savings that could be realized if the WRRP project is discontinued.

One is a March 16, 2015 “Schedule of Annual Debt Service on Centre Regional Recreation Authority Guaranteed Project Revenue Bond (Regional Parks Projects) Series of 2011,” prepared by Concord Public Finance. The other is a June 3, 2016 summary report on “Centre Region Parks & Recreation Authority Loan Draws and History, Regional Parks Loan” prepared by Viglione.

Those reports indicate that the principal and interest on the completed phase 1 Oak Hall and Hess Field construction will be paid off by roughly December 2019.

If the Whitehall Road project moves forward, for the 12 budget years between January 2020 and December 2031, the five participating municipalities will pay about \$6.2 million in additional principal and interest (about \$520,000 per year for the region) roughly as follows: \$1.75 million for Ferguson Township, \$1.46 million for State College, \$1.32 million for Patton Township; 1.13 million for College Township, and \$590,000 for Harris Township.

Not building the park would save taxpayers that \$6.2 million. Further, not building the park would eliminate the need for the five participating municipalities to collectively budget to pay about \$234,000 in annual operating expenses for Phase 1 amenities from opening day onward: the estimated operating cost presented on page 101 of the August 2010 WRRP master plan.

For perspective, during their recent 2017 budget review sessions, several COG Finance Committee members hesitated to endorse an additional \$8,800 contribution to the Schlow Library budget (spread over six municipalities), most of which is to bring 14 part-time staff members from \$12 per hour to \$13 per hour.

[The draft 2017 COG budget will be reviewed at the municipal level from now until November 17.]

On Oct. 19, I picked up about 300 pages of emails and attachments, exchanged with COG public employees and officials between March 1 and Oct. 15, 2016 regarding the WRRP project, obtained through the PA Right to Know process.

Among the documents was an exchange between Jeff Luck (Patton Township supervisor) and Jim Steff (COG Executive Director) on August 15 and 16. Luck asked Steff whether the Parks Authority has “signature authority to expend those funds today without the approval of the COG?”

Steff carefully responded: “All the funds for Whitehall Road Regional Park are in the name of the Authority...In 2012 the COG through its annual budget process transferred about \$1.3 million from the COG Regional Parks fund (C22) to CRPR Regional Parks fund (R15). Per the directive of the elected officials, these monies were spent prior to drawing any funds on the loan. Primarily, the transferred funds were invested in the development of Oak Hall Regional Park.”

This suggests that there should be a similar transfer in the current 2017 COG budget draft, including both the C22 source account and the R15 destination account, through which the General Forum members decide whether or not to transfer money between accounts. A keyword search for “R15,” got several hits, mostly on the pages related to the Regional Parks Capital budget. However, a keyword search for “C22” got no hits.

Another interesting aspect of many of the legal contracts surrounding the Whitehall Road Regional Park project – such as articles of agreement, land leases, and loans – is the seeming lack of exit clauses explaining which circumstances (passage of time, project delays, change in financial status), allow parties to withdraw from the arrangements without penalty, and how those rights to withdraw are to be implemented.

### *Political Considerations*

After the housing development controversy erupted in March 2015, the State College Borough Water Authority board participated in a July 2015 joint meeting with the Ferguson Township board of supervisors. SCBWA staff have assisted in drafting a stormwater management ordinance update for the township, adopted in June 2016, and are currently working on a source water protection overlay zoning ordinance.

Throughout, the water authority board has maintained public silence on the core issue – whether land development activity in the Zone 2 recharge area of the Harter-Thomas wells poses a “significant risk” to those wells. The public silence has been accompanied by private expressions of concern by water authority staff including director John Lichman, water authority board members Jeff Kern and Jason Grottini, and water authority consultant David Yoxthimer, conveyed to elected officials and citizen activists.

Public statements have been circumspect. Kern, for example, stated on the record in July 2015 that if the water authority board members had been consulted before the September 2004 Ferguson Township upzoning decision – which changed the parcel from Rural Agricultural to R-4/Multifamily Residential, they would have advised against it, to protect public water, but acknowledged that the water authority was not consulted, and the rezoning occurred.

Similarly, Grottini and Yoxthimer spoke on the public record at Ferguson Township on Jan. 18, 2016, expressing concern about development activity on the recharge area, but framing it as a cumulative risk. They said no one can precisely predict the date and location that a contamination incident will occur, but the more land disturbance is allowed, the higher the likelihood, and the baseline risk is high because porous limestone karst geography is fragile.

Several possible reasons for this public hedging have been proposed, including legal regulations barring the water authority from taking a clear public position; land sale contract language stipulating SCBWA silence; political pressure from developers and their supporters at Penn State and within local government agencies; and adverse employment pressure exerted on individuals employed by Penn State or public agencies with whom Penn State administrators have strong influence.

Whatever the reasons, in recent months, mixed messages from water authority representatives have added another layer of confusion to municipal public discussions.

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According to the July 21, 2016 SCBWA minutes, board member Rachel Brennan “informed the Board that the Source Water Protection Committee would be addressing this,” referring to development in the Harter-Thomas recharge area.

During park development discussions at Ferguson Township supervisors meetings on Aug. 1, a majority of the five supervisors agreed that, if the SCBWA issued a statement that development at the Whitehall Road site is a “significant risk,” the supervisors would consider that a “showstopper” causing them to withhold support for development. (C-NET video, Aug. 1, 2016, 151.00)

On Sept. 18, Toll Brothers published a full-page advertisement in the *Centre Daily Times*, claiming “our partnership with the SCBWA has even been suggested as the model for how responsible developers and local experts should work together.” (The ad did not cite a source.)

On Sept. 19, Nittany Valley Water Coalition spokeswoman Kelli Hoover gave a statement to Ferguson Township supervisors, including a report that, during conversations with Lichman and other SCBWA officials, she has been told that prior SCBWA officials endorsed the concept of the Whitehall Road park because they believed it was to be a small, passive, conservation-based park; they were not consulted on the active sports-field park plan prior to its approval by the COG General Forum in August 2010; and current SCBWA board members are concerned about threats posed by the 2010 park plan to public water.

In response, on Sept. 20, Ferguson Township Manager Mark Kunkle emailed Hoover, claiming the water authority had reviewed preliminary plans for the intensive park in 2014, and forwarding a copy of a two-page letter from Gwin, Dobson and Foreman dated April 10, 2014. The first comment by the engineer, Ken Beldin, reiterates that the proposed project is within the Zone 2 wellhead protection area.

I reached out to Grottini (SCBWA Source Water Protection Committee Chair) by email on Oct. 3, to ask whether there had been any action on Brennan’s July 21 statement. Grottini responded: “There has not been any action on that project in quite some time. We would expect COG to make contact with us again if and when the park discussions become more serious again. The subject has not made its way back to committee.” Apprised of Grottini’s response, another water protection stakeholder wrote: “I’m confused by that because I brought it up to John Lichman and he said the committee was working on it and I’d be happy about the resulting memo.”

The Ferguson Township supervisors also had a meeting on Oct. 3. Steve Jackson (Ferguson Township liaison to the water authority) gave his report, noting that SCBWA supported Judge Grine's decision; appreciated NVWC activist work; and had “concern about the Whitehall Park design and its use of non-permeable surfaces.” Ferguson Township Planning & Zoning Director Ray Stolinas reported on source water protection overlay zoning ordinance drafting process, predicting that a draft could appear on planning commission and supervisor agendas by late October or early November.

Ferguson Township supervisor Rita Graef introduced into the public record a 2002 letter from then-SCBWA Executive Director Max Gill about the Whitehall Road Regional Park plan as he understood it, and the April 10, 2014 GDF review of the 2010 park plan. Supervisor Laura Dininni repeated her account of her conversations with Lichman about 2002 perceptions of the planned park as conservation-oriented, and said she would continue seeking documentation from Lichman and the water authority board to enter into the record.

On Oct. 7, Nittany Valley Water Coalition members sent a letter of objection to COG Executive Director Jim Steff, regarding September actions taken by the Parks Authority, the COG Parks Capital Committee and the COG Executive Committee (covered in the Sept. 30 *Bailiwick News* report). The group objected to the vote taken on Sept 8, 2016 at the joint Parks Authority/COG Parks Capital meeting about the Blue Course Extension access road and changes to Phase 1 of the park construction plan, as having been “taken without public notice” regarding “matters that the General Forum as a whole should decide.” They urged “the COG General Forum ... to take these matters up as soon as possible.”

On Oct. 13, 2016, during another joint Parks Authority/Parks Capital meeting, members of both committees continued to publicly express confusion about whether the SCBWA board has any objections to the Whitehall Road Regional Park sports complex project.

On Oct. 14, The *Centre Daily Times* “reported” on a new Toll Brothers public relations push. The story reported Toll Brothers “Campus Living Managing Director” Charles Elliott had announced a new corporate website about “The Cottages at State College” and urged concerned residents to send comments and questions to a new email address, to help Elliott understand their concerns.

On Oct. 18, at the COG Executive Committee meeting, Steff announced that COG had renewed the lease for a farmer who raised corn on the 100-acre WRRP property this year, to allow him to farm during the 2017 growing season, since groundbreaking on the park can’t occur until late fall next year, at the earliest.

Also on Oct. 18, the *CDT* published a letter-to-the-editor by Kelli Hoover of Nittany Valley Water Coalition. Hoover stated she doesn’t “believe for a second that Toll Brothers cares about this community or that they don’t already know what the citizens want. Citizens sued to stop this development on our watershed (Harter-Thomas wellfields) and won the suit because the Toll Brothers and Ferguson Township supervisors tried to override township zoning laws, according to the judge.” Hoover further pointed out that “Toll Brothers settled with the EPA for \$741,000 for alleged discharge of pollutants at 370 sites in 23 states, including 40 sites located in the Chesapeake Bay watershed in violation of the Clean Water Act.”

Hoover concluded: “State College has some of the cleanest drinking water left in the nation and we want to keep it that way. But there is more at stake here besides the risk of contaminating our drinking water supply by a huge development on our watershed. If Toll Brothers wins on appeal this would set a dangerous precedent, allowing developers to ignore municipal zoning ordinances anywhere in Pennsylvania.”

On Oct. 20, I presented a statement to the SCBWA board, with proposed resolution language, requesting that by their November meeting, the board prepare to vote on the core issue – whether development activity in the Zone 2 area poses a “significant risk” to the water wells – or offer specific information about the legal, contractual, political or adverse employment reasons barring them from taking a public stand. Grottini announced that the Source Water Protection Committee would be discussing the issue at their next meeting, scheduled for Nov. 5.

## CRITICAL ANALYSIS

The public discussion of the WRRP project has raised many legal interpretation issues. What types of amenities must a park offer, to meet the “regional” standard? Are those amenities affordable under the current financial circumstances? What types of changes to a master plan meet the definition of “amendment” such that they must go to General Forum for approval? If Section 5.3 of the Regional Parks Articles of Agreement is unenforceable, which provisions are enforceable, against whom?

What actions are appropriate to meet the definition of “drawdown” for the Fulton Bank loan, and who can authorize those actions? Who has legal authority to make decisions to extend, refinance, guarantee and/or retire the loan that currently must be drawn down by June 1, 2017? What process does Fulton Bank regard as legitimate for securing municipal guarantees of the loans, given that neither the Parks Authority nor the COG have taxing power? Are there boilerplate contract exit rights when a specific contract is silent on the issue?

The bottom line is that the Parks Authority and COG Parks Capital Committee – by pushing for the WRRP despite the public safety risks and the financial burdens – are trying to get Centre Region taxpayers to foot the bill to contaminate our own public water supplies, at a cost of \$6.2 million in principal and interest for construction, plus \$234,000 in annual operating costs.

In contrast, stopping the Whitehall Road Regional Park development process now offers regional elected officials an opportunity to simultaneously protect public water supplies and productive farmland, while realizing significant long-term cost savings for taxpayers already confronting very difficult budget decisions over the next few decades for essentials like police protection and sewer system maintenance.

Why does *Bailiwick News* cover these topics so extensively?

Because the Whitehall Road housing and park projects sit at the intersection of many crucial issues confronting Centre Region citizens: corporate Penn State’s undue and publicly unaccountable influence over our local political economy, especially enrollment decisions, land flipping and zoning interference that set regional housing market conditions (luxury student housing displacing affordable workforce housing); Nittany Valley hydrogeology, public water systems, and farmland preservation; approaching limits on sewage treatment and effluent discharge capacity into Spring Creek;



compromised regional planning frameworks; and stressed municipal budgets.

Currently, corporate Penn State increases enrollment to keep it higher than a growing local housing supply, so private investors and landlords can reap large profits and put competitive pressure on students (and their loan lenders) to pay higher rents. Corporate Penn State also buys agricultural land at low cost, maintains property tax exemptions while they knock over municipal zoning laws and regional planning limitations, and sells high to reap institutional profits, further facilitating private profits for investors who buy into the development corporations to whom the Penn State land is sold.

Each new occupied bed adds 8 to 12 pounds of nitrogen per year to the local wastewater treatment stream through food processing, urine, and feces. Maintaining and upgrading the sewage treatment infrastructure is a public expense: University Area Joint Authority ratepayers fund maintenance and upgrades to infrastructure that protects clean water downstream in Bellefonte and beyond, all the way to the Chesapeake Bay.

Thus, stopping the Whitehall Road Regional Park project could also open a window of opportunity to reassert democratic control over regional planning, and align it with long-term protection of essential public water resources for stable, non-growing populations.

# BAILIWICK NEWS

Reporting and critical analysis of State College public affairs

*December 2, 2016*

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## **Continuing public discussion of water protection and land development tensions**

By Katherine Watt

Part 5 of a series on Slab Cabin Run water and farmland protection. This is a compilation of reports published at *Steady State College* between Oct. 21 and Nov. 28, updating previous *Bailiwick News* reports published Sept. 9, Sept. 16, Sept. 30 and Oct. 21.

### INTRODUCTION

If built, the Whitehall Road Regional Park will impose unjustified financial and environmental burdens on the Centre Region community. Further, because of the political techniques used to bring the project to this point – preventing municipal officials from recognizing their power to stop the project as no longer viable under current conditions – it imposes an unjustified legitimacy burden on the Centre Region Council of Governments.

### TIMELINE

As reported previously, in early July, the Parks Authority received a feasibility study taking into account new circumstances regarding environmental, permitting, and financial challenges resulting from the suspension of the adjacent Toll Brothers housing project. The study was passed along to Centre Region Council of Governments (COG) committees, and on July 25, the COG General Forum voted to refer the issues to municipal boards for discussion.

A wrench was thrown into the gears of transparent public governance on Aug. 15, when Conflicted Solicitor Terry Williams circulated a memo suggesting that the Centre Region Parks and Recreation Authority (Parks Authority) is an independent municipal authority, strongly implying that its independence exempts its board from having to justify projects on the merits and renders public deliberation moot.

State College Borough Council Chair Tom Daubert accepted Williams' analysis without question, shutting down discussion at the Aug. 15 Borough Council meeting, cancelling the August COG Parks Capital meeting, and then heavily curtailing discussion at the Sept. 9 Parks Capital meeting.

By October, the COG Finance Committee was reviewing agency requests for 2017 – including Parks & Recreation requests. Again, accepting the Williams memo without critical thought, nobody mentioned the proposed \$2.9 million appropriation from the Fulton Bank loan balance to the Regional Parks Capital account during the budget hearings, let alone insisted on a clear justification from Parks & Rec staff and Parks Authority board members to support their view that the anticipated benefits of the park outweigh the financial and ecological costs.

[The \$2.9 million appropriation for 2017, when added to \$1.8 million held in a Fulton Bank CD since a refinance draw in May 2014, together comprise roughly \$4.7 million: most of the amount originally earmarked for the Whitehall Road project in 2011 but unspent as of June 2016.]

Water protection activists, in contrast, have made a clear case that the costs outweigh the benefits, by demonstrating that land development in the Zone 2 recharge area of public drinking water wells poses a high risk of contamination. See, for example, the 2007 SCBWA Source Water Protection Report, at p. 42: “The vulnerability of Wellfields 1 and 3 [Harter-Thomas wells] to surface contaminants exists as demonstrated by the presence of dye in these wellfields five days after injected into the watershed, traveling at a rate of up to nearly one mile per day.”

Despite multiple citizen presentations of the SCBWA's findings at venues all over the region, including back to the SCBWA board – several members of the COG Parks Capital Committee on Oct. 13 continued to express confusion about the SCBWA position, and interest in clarification on the risk profile of the Whitehall Road project. The confusion stemmed from evasive public statements by SCBWA Director John Lichman, who waffles for political self-preservation, and the public silence of the SCBWA board, which maintains silence for political self-preservation.

At the Oct. 13 Parks Capital meeting, Parks & Recreation Director Pam Salokangas also gave a brief update summarizing recent and upcoming meetings staff had held or would soon hold with other WRRP stakeholder agencies (PennDOT, Ferguson Township Planning Department, Penn State legal teams). At that meeting, Patton Township supervisor Jeff Luck indicated that no more money would be forthcoming from Patton Township beyond the original loan guaranty adopted for the first phase of construction. Luck mentioned the Patton Township board's recent unpleasant

discovery that a 2006 Articles of Agreement provision requiring unanimous General Forum consent for construction contracts might be legally unenforceable, and conveyed his board's sense of "resignation" that a first phase of construction would probably move ahead despite municipal objections.

Additional discussion highlighted the fact that Parks Capital representatives trying to be fiscally and environmentally responsible were hamstrung by a lack of information about what park amenities could be affordable with the remaining money, given the many unanticipated cost pressures.

On Oct. 18, the COG Executive Committee bumped the Whitehall Road Regional Park issue from an Oct. 24 General Forum discussion agenda item down to an Executive Director informational item. Then Daubert cancelled the November Parks Capital meeting.

On Oct. 20, I carried the risk question from the Parks Capital committee to the SCBWA board, formally asking that the Source Water Protection Committee review the issue and come back with a resolution for the full SCBWA board to vote on Nov. 17, to publicly clarify the board's position on the risk, or explain why the board won't take a public position. I provided draft language: "The State College Borough Water Authority Board, on the recommendation of the SCBWA Source Water Protection Committee and SCBWA consulting hydrogeologists, formally endorses a resolution stating that land development activity in the Zone 2 recharge area of the Harter-Thomas wells poses a "significant risk" to those wells. We therefore recommend that public policy-makers in Ferguson Township and in the other Centre Region Council of Governments constituent municipalities, protect those public wells by enacting and enforcing legislation to prevent development and protect public water supplies."

On October 21, Andy McKinnon and Bernard Hoffnar of Nittany Valley Water Coalition had a private meeting with Lichman. McKinnon drafted a report on the meeting, including these observations:

"My guess is that [Lichman] sees his primary responsibility as providing abundant clean water to the public at an affordable price. He may feel it's a balancing act to maintain water quality but also keeping rates down; in other words, he needs development but wants 'sustainable development.' He may be afraid of pissing off some of these developers, such as the Toll Brothers and the Parks Authority, by expressing his concerns, risking losing the development, and having to raise rates...I can understand his position but it doesn't make him much of an ally of the NVWC or the public at large. And I certainly don't appreciate the fact that he misled me with his contradictory meanings and statements over the phone v. in the meeting. I do advocate for ongoing efforts to get a more community friendly commitment, or at least a more explicit statement as to its position, from the SCBWA."

In response, I wrote that Lichman's position makes perfect sense under the existing business model for public utilities. Conservation of any resource (land, water, sewage discharge capacity, electricity, oil, natural gas) inflicts chaos on the business models that these industries have used for the last 50-60 years. As existing users consume less, the organization that provides the resource makes less money in user revenue, so they try to add new users.

I advocated that our regional community deal with that problem, not by doubling down on development, but by deliberately restructuring local utility business models to create water financing models in which existing consumers pay-as-we-go for a water system with contributing/filtering ecosystems intact, serving a stable, non-growing population. I contrasted this with the outdated business model through which development and population growth impair intact ecosystems providing water supply and filtration, and drive debt-funded purchases of mechanical water treatment systems (\$40 million and up) to remove contaminants.

I further advocated that – to inform citizen views on their political and financial choices – I'd like to see side-by-side financial assumptions and projections for those two scenarios for the next fifty years, at least, and more scenarios as suggested by others.

At about the same time, Ferguson Township supervisor Peter Buckland responded to a statement in the October 21 edition of *Bailiwick News*, regarding possible reasons for public hedging by the SCBWA board, noting that "these are only political considerations. There's nothing about individual people's informed risk assessments.

In response, I concurred with Buckland's characterization of the SCBWA board's silence as politically motivated, but reiterated my belief that the SCBWA board's official position on development in Zone 2 recharge areas is a crucial, missing piece of the public discussion. I also raised the question: "What assumptions – such as the economic value of real estate tax revenue as compared to the economic value of not needing to build new multi-million dollar water treatment plants – are being used to support various positions?"

Despite plans for COG staff to provide COG General Forum with a written update about the Whitehall Road Regional Park project for the October 24 General Forum meeting, no report was provided that evening. (A status report was provided for the Nov. 28 meeting; cost-benefit analysis was beyond the scope.)

On Oct. 28, ClearWater Conservancy announced the launch of the Slab Cabin Run Initiative, aiming to raise \$2.75 million by Sept. 2017 to fund purchase of conservation easements covering 300 acres of the Meyer and Everhart farms (along University Drive Extension) to protect the Harter and Thomas water wellfields. Since the end of October,

ClearWater director Deb Nardone has been reaching out to municipal governments and the SCBWA, aiming to raise about half the total amount from public entity contributions.

On Nov. 17, COG Finance Director Joe Viglione gave the third quarter financial report to the Finance Committee. His presentation included several graphs showing that Fulton Bank loan draws associated with parks capital are a current “revenue” source for COG, albeit one with strings; the principal and interest must be paid back to the bank by future taxpayers.

In response, I published an analysis of Williams’ Aug. 15 memo endorsing the legal theory that the Parks Authority could sue the Centre Region COG, if the COG failed to transfer the remainder of the Fulton Bank loan funds for the construction of the Whitehall Road Regional Park. I identified key differences between the *Orbisonia-Rockhill Joint Municipal Authority vs. Cromell Township* case cited by Williams, and the Parks Authority v. COG scenario.

In *Orbisonia*, a municipality tried to get out of paying for contracted, completed planning work done by a sewer authority to bring Cromell Township and the sewer authority back into compliance with DEP regulations they were violating. In that case, the sewer authority could clearly claim a specific harm: they had already contracted and spent money for authorized work.

In contrast, the Centre Region is not violating any state laws mandating the provision of public parks, and although there may be one signed planning contract (for a traffic impact study by Stahl-Sheaffer) there are no signed construction contracts. To repeat: the balance of unspent money in the Fulton Bank loan fund as of June 2016 was about \$4.7 million: \$1.8 million held in a Fulton Bank CD, plus \$2.9 million being transferred via the 2017 COG budget. That money represents virtually all of the loan proceeds originally earmarked for Whitehall Road park “Phase 1” when the loan was taken out in 2011.

If the constituent COG municipal boards decide to return \$4.7 million to Fulton Bank, fully paying off the loan early, protecting the Harter and Thomas wells, and saving regional taxpayers about \$6.2 million in principal and interest payments between 2020 and 2031, the Parks Authority, would have a hard time making an evidence-supported claim that COG had inflicted specific harm or damages on them, a “material breach of the agreement” in the language of the *Orbisonia* case.

Also on Nov. 17, Jason Grottini briefly reported to the SCBWA board that the source water committee (Grottini, Gary Petersen, William Burgos, Rachel Brennan and Emory Enscom) met Nov. 7, discussed a number of issues including the proposed Zone 2 risk resolution, and declined to recommend that the full board discuss or vote on the issue. Grottini did not offer any information about why the source water committee dropped the matter.

On Nov. 18, I suggested that two General Forum members (a motion and a second) could test the hypothesis that the Parks Authority is not a truly independent municipal authority, but is, rather, financially dependent on municipal taxing power to pay its bills, including loan repayments.

Specifically, I suggested that General Forum members move to strike three lines from the proposed 2017 budget (R15-452-00-4393; R15-452-13-8610 and R15-000-00-3279) and see what emerged from the ensuing discussion.

On Nov. 20, COG Executive Director Jim Steff confirmed by email that the Parks Authority differs from the independent SCBWA and University Area Joint (Sewage) Authority, because – unlike the SCBWA and UAJA, whose boards adopt their own budgets based on their own revenue streams from fees and fee-backed borrowing – Parks & Recreation funding is folded into the COG budget and subject to the appropriations power of the participating municipalities.

On Nov. 22, COG Executive Committee Chair Eric Bernier asked some related questions of Viglione, probing for information about the budget appropriation and receipt technicalities. Viglione gave several vague responses to suggest that Regional Parks Capital line items are in the 2017 draft budget to give General Forum members a “holistic” understanding of the situation. He elided the issue of why an information-only (i.e., non-discretionary) item would be in the budget, and not simply presented to officials as a memo or “matter of record.”

At that same Executive Committee meeting, I asked what would happen if a municipality adopted a version of the 2017 budget that differed from the presented budget (i.e., made amendments during their ratification votes, due by Dec. 31). I was told by Bernier and others that COG procedures are set up to air and resolve conflicts at the committee level, which are formed by representatives from each municipality, before the final General Forum and municipal ratification votes; that there are no formal budget reconciliation procedures; and that distressed municipalities can note objections to the budget, and can pull out of programs or out of COG altogether, with one year’s notice, although they remain obligated to pay debts incurred while participating in those programs.

Also on Nov. 22, I reported that Nittany Valley Water Coalition members have spent some time in recent months thinking about different uses that would be more appropriate for the 100 acres owned by COG and Ferguson Township, and, for that matter, for the roughly 350 acres still owned by Penn State and subdivided for future housing developments and roads. The water coalition had discussed scenarios in which legal and financial delays for the housing and park projects create an opening to pressure Penn State for conservation easements.

I expressed support for COG, Ferguson Township, Penn State and SCBWA putting the land they own in the Zone 2 Harter-Thomas recharge area into conservation easements, and further endorsed the eventual sale of the protected land to young farming families at cost (the per-acre prices paid by Penn State during acquisition in decades past).

Most of the land is still zoned Rural Agricultural, with minimum lot sizes of 50 acres allowing one dwelling per lot. About 10 small farms could operate on the 550 acres laid out as “Lands of PSU” in April 2004, producing seasonal and storage crops for sale, and sending their produce into urban State College using the CATA buses traversing Whitehall Road.

I also reported my sense that the Parks Authority became a hybrid of a non-independent COG agency, akin to the code enforcement agency, and an independent municipal authority, akin to the water authority, during a February 25, 2013 General Forum meeting – *after* the 2011 signing of the loan and loan guaranty documents, and speculated that a hybrid agency/authority may be a legally non-viable entity.

I further noted that there’s a good reason for the parks and recreation budget being a subsection of the general COG budget, which Patton Township supervisor George Downs brough summed up in a Nov. 24 email: “UAJA and the SCBWA have income based on water rates, sewer rates and tapping fees. Therefore UAJA and SCBWA can borrow funds and secure those borrowings based on future revenue. Since the parks and rec fees go to COG, the CRPRA has no income to borrow against. The COG has borrowed the funds for the parks and those loans are secured by the taxing authority of the COG municipalities.”

On Nov. 28, I published an open letter to General Forum members and engaged public on these issues, recommending that the General Forum strike the Regional Parks Capital budget items from the budget before endorsing an amended version to send to the municipal boards for ratification or pull the Regional Parks Capital budget items out for separate review and, if warranted, separate ratification next year, after more information becomes available.

At the Nov. 28 General Forum meeting, Ferguson Township Supervisor Laura Dininni, made a motion to remove the Whitehall Road Regional Park appropriations from the draft 2017 COG budget, and State College Councilwoman Janet Engeman, seconded the motion.

The discussion on their amendment didn’t cover a lot of ground, but several people stated that they’d never seen the Parks Authority do anything that wasn’t fully supported by General Forum, and that if General Forum members wanted to see the Parks Authority change course and conveyed those wishes to Parks Authority board members, the changed course would probably happen.

Some supervisors commented on their sense that they must “honor” the obligation to pay back the \$7.6 million loan that was first obtained back in 2011, and extended several times in the intervening six years, of which roughly \$4.7 million remained unspent as of June 3, 2016. The implication was that it would somehow be dishonorable for COG municipalities to pay back the loan early, leaving the municipalities to make only the remaining installment payments for completed work at Oak Hall Regional Park and Hess Field, which will be done by roughly December 2019. I disagree: paying off the loan is fulfilling the obligation, even if it’s done early.

In any case, the amendment failed to pass, and the main motion to endorse the 2017 proposed COG budget and forward it to the municipalities for ratification at their December meetings, passed.

Next spring, the saga will continue. In a few months, some entity will need to formally request that Fulton Bank extend the loan past the current drawdown date of June 1, 2017. If Fulton Bank is interested in doing that at all, the bank will want a renewal of municipal guarantees, encumbering future municipal boards, on behalf of future taxpayers, to pay back the principal and interest.

## CRITICAL ANALYSIS

One operating principle of public legislative bodies is that agencies present planned activities and arguments about why those are in the public interest, such that taxpayers should pay for them. It’s then up to the legislative body to make value judgments about whether the case presented by the agency is sound. Or not.

The public interest in fully-informed, transparent decision-making often conflicts with the human desire to not sit through long meetings.

The COG committee system seems to be designed to strike a reasonable balance between those opposing forces. Complex issues are to be hashed out at the committee level, leading to informed recommendations to the General Forum for votes.

Unfortunately, that system was deliberately short-circuited this year, on the Whitehall Road Regional Park issue, through at least two deflection maneuvers.

Deflection in time is when a governing board is told that they have the authority to make a decision, but in the past or in the future, not in the present.

An example is the interplay of “capital improvement plan” adoption, usually in the summer, followed by budget adoption, usually in December. Those interested in manipulating the system find it helpful to tell the boards in summer that they needn’t worry about proposed costs, because it’s “just a plan; there’s no funding appropriated.” Those same

boards are then told in winter that they needn't worry about assessing the pros and cons of allocating funds for projects, because the projects were reviewed and approved back in the summer.

Deflection in power locus arises when one governing board is informed – and believes – that the power to make a decision rests with a subcommittee, a different agency, or a different governing board. When used successfully by off-stage manipulators, most elected representatives will believe that they must simply endorse a decision made elsewhere, earlier. As a result, no one is plausibly, publicly responsible for final decisions, good or bad.

These techniques were both used to manipulate local legislators during this year's budget adoption cycle.

The Parks Authority board has not had to publicly justify why today's and tomorrow's taxpayers should spend borrowed bank money to purchase a 2010 park plan, located at a site chosen in 2006, based on a general needs assessment endorsed by General Forum and member municipalities in 2001, using loan guarantees originally adopted by General Forum and member municipalities in 2011, under 2017 economic and environmental conditions.

And none of COG's legislators have publicly reviewed or debated the merits of the WRRP project under those conditions.

On Nov. 28, elected officials were not asked to vote for the regional parks capital appropriation because the project is a good idea. They were instructed to vote for the appropriation on the theory that their votes were a meaningless charade. There's a stark difference between the legitimacy of those two types of votes.

On the merits, Whitehall Road park is a bad project: wrong location, design, time, and cost. But thought-stopping is an effective way to prevent critical analysis.

In a few months, municipal legislators will take up the issue of renewing municipal guarantees for the Fulton Bank loan. I predict that loan extension advocates will point to the Nov. 28 General Forum vote on the budget as a reason why the members must extend the guarantees. Whether our local legislators resist that manipulation, and instead honestly, publicly grapple with the actual project costs and benefits, remains to be seen.

# BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

December 23, 2016

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## Slab Cabin Run Water & Farmland Protection Update

By Katherine Watt

Part 6 of series. Previous reports published Sept. 9, Sept. 16, Sept. 30, Oct. 21, and Dec. 2.

### INTRODUCTION

Like a moving pitchfork, a four-pronged community approach to water and land conservation is coming into focus.

### PRONG 1: Negotiated Public-Private Conservation Easements – Slab Cabin Run Initiative

In late October, ClearWater Conservancy announced the Slab Cabin Run Initiative, aiming to raise \$2.75 million by September 2017 to protect 300 acres of farmland in the Slab Cabin Run watershed in an area that is very vulnerable to development pressure, and within a crucial groundwater recharge zone for the main State College Borough Water Authority wells: the Harter and Thomas wellfields.

The Everhart and Meyer properties are located across University Drive Extension from the State College Friends School, just outside the regional growth boundary.

These 300 acres are in the same Zone 2 wellhead protection area as roughly 350 acres owned by Penn State downslope from the Whitehall Road and Blue Course Drive intersection, including about 45 acres under litigation regarding a Toll Brother's plan to build luxury student housing. The Zone 2 wellhead protection area also includes 100 acres jointly owned by Ferguson Township and the Centre Region Council of Governments (COG), intended for Whitehall Road Regional Park, and roughly 60 acres of State College Borough Water Authority (SCBWA) land.

By email on Dec. 8, ClearWater executive director Deb Nardone forwarded a list of funding requests, along with information about the 2006-2007 Musser Gap conservation campaign (which raised about \$821,000 from public entities), and the portion of each municipality's residents who are SCBWA customers. Among SCBWA service communities, customer proportions ranged from a low of 21% of College Township residents, to 77% of State College residents and 97% of Patton Township residents.

Nardone said ClearWater is aiming for a roughly 50-50 split between public and private contribution to raise the full amount.

Since late October, Nardone – along with ClearWater Land Conservation Manager Kevin Abbey and ClearWater Board President Andy Warner – has been visiting municipal boards to solicit public funds. Citizens have also been speaking at meetings and writing letters to the editor of the *Centre Daily Times* in support of the project.

<b>Municipal Partner</b>	<b>Meyer-Everhart Conservation: Amount Requested (2016-2017)</b>
State College Borough Water Authority	\$750,000
College Township	\$150,000
Ferguson Township	\$150,000
Patton Township	\$125,000
State College Borough	\$100,000
Harris Township	\$50,000
Benner Township	\$10,000
Halfmoon Township	\$10,000
Penn State University	Unknown
Public Funding Requested	\$1,345,000
Private Donation Goal	\$1,405,000
<b>TOTAL EASEMENT COST</b>	<b>\$2,750,000</b>

In an email to water and farmland protectors dated Dec. 5, NVWC spokeswoman Kelli Hoover noted: “the alternative [to conservation easements] is a \$60 million water treatment plant. Making investments now saves lots of money down the road.”

Among other things, Hoover was referring to hydrogeologist David Yoxtheimer’s Jan. 18, 2016 comments to the Ferguson Township Board of Supervisors, regarding proposed stormwater management ordinance amendments:

“...[W]e don’t have to look very far, when we see that Penn State’s currently building a \$60 million water treatment plant, whereas for many decades, they were able to drink their groundwater out of their wellfields without need for, really, any treatment at all. And so as we saw more and more development, along, in essence, North Atherton, we have more stormwater, more runoff, more turbidity in the groundwater as a result. And, largely, hence, the need for a very expensive water treatment plant.

And so, on this side of the watershed I don’t think we want to see significant investment like that, necessary. The [State College Borough] water authority does have a treatment plant, a filtration plant. And sure, at some point, that will need to be likely upgraded. But we don’t want to have to increase the level of treatment, and therefore the cost of treatment, when we could have prevented that in the long run.”

On Dec. 5, the Ferguson Township Board of Supervisors approved a \$150,000 contribution to the Slab Cabin Run Initiative. On Dec. 15, the State College Borough Water Authority board approved a \$750,000 contribution, plus an additional \$50,000 pledge as a matching fund, to match any municipal contributions above the minimum requested amounts. The SCBWA’s maximum contribution would be \$800,000, counting the base contribution and the matching fund, and the approved resolution stipulates that the SCBWA must be a named beneficiary in the conservation easement and must have third party rights of enforcement.

There was a good crowd of about two dozen concerned citizens at the meeting, and many made compelling public comments supporting the conservation campaign. Of particular note, David Hughes of Nittany Valley Water Coalition informed the SCBWA board that Hughes recently met with Penn State President Eric Barron and Vice President for Finance & Business David Gray to discuss Penn State’s landholdings in the Slab Cabin Run watershed. Hughes urged the SCBWA board to contribute the full requested amount to help build community political momentum for additional conservation easements in the Slab Cabin Run watershed on land owned by Penn State. The audience gave the board a standing ovation after the vote.

On Dec. 15, the College Township Council approved a \$125,000 township pledge, with another \$25,000 still under consideration and contingent on the conservation easements including legal language not precluding future installation of beneficial reuse water distribution pipes on the properties.

On Dec. 19, the State College Borough Council approved a \$110,000 pledge, to be paid in four annual installments of \$27,500 between 2018 and 2021. The total represents the \$100,000 base contribution, plus \$10,000 to be matched by the water authority.

Harris Township’s Board of Supervisors has approved a \$20,000 contribution.

### *Stipulations – Pollution Control and Stream Recharge*

In addition to the beneficial reuse access tied to an additional \$25,000 contribution from College Township, several of the municipal resolutions have included stipulations giving municipalities access to Slab Cabin Run stream banks within the 300 conserved acres, to use for stream bank restoration projects that would filter runoff as part of regional MS4 stormwater management programs.

The beneficial reuse program is a University Area Joint (Sewer) Authority project that currently distributes purified wastewater to commercial customers and environmental projects along Spring Creek and Slab Cabin Run, upstream from the sewage treatment plant near the I-99 Shiloh Road exit just beyond the Nittany Mall. The current terminus of the beneficial reuse water distribution system is Kissinger Meadow, along East Branch Road near the Hills Plaza. The purpose of the beneficial reuse program is to reduce discharge of treated wastewater into Spring Creek at the sewage treatment plant outflow, while recharging Slab Cabin Run to support trout and other wildlife populations.

The UAJA and Centre Region Planning Agency are currently updating the beneficial reuse plan, circulating a draft proposal for additional discharge lines to be built within the UAJA sewer service area. This will be covered in more detail in forthcoming reports about regional water and sewer systems, part of a *Bailiwick News* series launched on Nov. 4.

MS4 municipalities hold Municipal Separate Storm Sewer Systems permits from the PA Department of Environmental Protection (DEP), regulating discharge of stormwater containing sediments, nitrogen, phosphorous and other pollutants, to prevent flooding and to protect inland waterways and the Chesapeake Bay from pollution. Additional information is online regarding the MS4 programs operated by the Borough of State College, Penn State University, and other members of a collaborative group of permit-holders called the Spring Creek Watershed MS4 Partners.



The standards for discharges are tightening, putting more pressure on permit holders to reduce stormwater runoff, including cost pressures to build infrastructure projects to manage runoff.

The stipulations in the ClearWater Conservancy easements for the Meyer and Everhart farms will give municipalities the right to construct nutrient management facilities (such as stream bank plantings) along Slab Cabin Run within the conserved 300 acres, to reduce regional nitrogen, phosphorous and sediment discharges. Conservation easements thereby offer a tangible, economic benefit to public budgets, by serving as sites for nutrient credit trading projects. (This topic will also be covered in upcoming regional water resource management reports.)

## PRONG 2: Public Legislation – Ferguson Township Wellhead Protection Overlay Zoning

Two major public policies have been strengthened by the 2015 conflict between engaged citizens opposing the planned Toll Brothers/Penn State luxury student housing development, and proponents of the development.

The first public policy area is stormwater management regulation. On June 6, 2016, the Ferguson Township Board of Supervisors adopted an updated stormwater management ordinance, strengthening water and farmland protection and bringing the township into better compliance with updated state regulations (Act 167).

Stormwater management ordinances regulate how developers must construct facilities to detain and infiltrate stormwater runoff from newly constructed buildings, roads and parking lots. The updated Ferguson Township ordinance applies to all township land within Zone 2 drinking water recharge areas: about 60% of Ferguson Township's total land area.

Discussion during the ordinance review process focused on how to strengthen water and farmland protection, especially by increasing the minimum buffer distance between stormwater detention basins and karst features such as fractures and sinkholes, and by banning blasting in sensitive areas. During the Ferguson Township supervisors' May 2 discussion, they increased the setback distance from 25 feet to 50 feet; State College Borough Water Authority officials have advocated for 200-foot setbacks. However, the supervisors failed to approve a blasting ban.

The Toll Brothers fight had a second public policy impact by increasing momentum for sourcewater/wellhead protection overlay zoning, which regulates land use under the authority of the PA Municipalities Planning Code and federal clean water laws.

The Ferguson Township sourcewater protection work group has been meeting for several months to draft a sourcewater protection overlay zoning ordinance. Work group members include Ferguson Township planning and zoning staff, hydrogeologist Todd Giddings, Centre Region Planning Agency Director Jim May, and State College Borough Water Authority board member Gary Petersen.

In September 2016, the group discussed their progress with Mark Stephens, Sourcewater Coordinator for the North Central Regional Office of the PA-DEP.

The Ferguson Township Board of Supervisors received a draft of the proposed ordinance on Dec. 5. The supervisors and township planning commission members will continue to review and revise the ordinance in January.

Kelli Hoover of Nittany Valley Water Coalition has pointed out that the wellhead protection overlay is important because if the Toll Brothers developers lose their Commonwealth Court appeal – if the intermediate appellate court upholds Judge Grine's July 18 decision – and decide to redesign the luxury student housing development to fit within the land zoned for multifamily residential uses (R-4), the new land development plan will be subject to the new sourcewater protection ordinance.

NVWC members reviewed the draft ordinance at their Dec. 16 meeting. Water and farmland protectors identified several areas of concern, including a provision giving the public water supplier (such as SCBWA) 30 days to review land development plans and respond with risk assessments. The provision allows for an extension if negotiated by the developer and the water authority, but states that if the water authority doesn't respond within 30 days, the project gets automatic approval. There is no provision for public notice or public comment on water risk assessments, and no provision for members of the public to obtain independent hydrogeological studies and enter the findings into the review process. Water and farmland advocates are concerned that this provision interferes with the water authority's ability to thoroughly conduct risk assessment studies.

Water and farmland protectors are concerned that "intermittent streams" have been omitted from the definitions list and land development design standards section; an intermittent stream runs through the proposed site of the Blue Course Drive extension road and the proposed site of the luxury student housing.

They're concerned that the ordinance allows stormwater facilities within 25 feet of geologic features, which is less restrictive than the 50-foot setback in the stormwater management ordinance. They're also concerned that the ordinance doesn't mention or restrict blasting within any distance from geologic features.

NVWC member Terry Melton summarized the group's conclusions in a report stating that Ferguson Township ordinance drafters "need to improve, add, and tighten up definitions, correct omissions such as 'blasting,' and create more detailed and specific language relevant to reporting, timelines, and decision trees. In particular the sections on enforcement and penalties were judged to be inadequate." Melton said a sub-group of NVWC members provided their

comments to supervisor Peter Buckland on Dec. 17.

The group also discussed the Slab Cabin Run Initiative, and the need to provide the general public and public officials with more education about the benefits of conservation easements, to build more public support.

### PRONG 3: Legal Pressure – Land Use Appeal

About a year ago, on Dec. 15, 2015, a 15-member group of neighboring landowners, including downslope farmers, filed a land use appeal under the PA Municipalities Planning Code, one month after the Ferguson Township supervisors gave final approval to the Toll Brothers luxury student housing land development plan. [*Disclosure:* The author is a plaintiff on the land use appeal.]

Plaintiffs asked the court to overturn the township plan approval as an abuse of discretion, alleging that the final plan didn't comply with township zoning ordinances regulating appropriate uses of land zoned for rural agricultural (RA) uses. Defendants (the developers and the Ferguson Township government) argued that plaintiffs lacked standing to have the case decided on the merits, on grounds that the deadline for appeal passed in early April 2015, a month after the tentative plan approval vote occurred.

After briefing and oral arguments in early 2016, Centre County Common Pleas Judge Jonathan Grine ruled that plaintiffs had standing to appeal, and – by opinion and order July 18, 2016 – vacated the township's approval on grounds that the final plan didn't comply with a condition of the tentative plan requiring compliance with all other township ordinances, including zoning ordinances regulating uses of rural agricultural land.

Toll Brothers appealed Judge Grine's decision to Commonwealth Court. On Dec. 19, 2016, attorneys for the neighboring landowners filed a brief, arguing that the Commonwealth Court should affirm Grine's decision.

The court date is tentatively scheduled for the week of March 6, and plaintiffs are planning to carpool to the courthouse in Harrisburg.

### PRONG 4: Economic Pressure - Whitehall Road Regional Park Dilemma

On Dec. 19, the Whitehall Road Regional Park (re)working group met at the COG building. This stakeholder committee includes COG Parks Capital committee members, Centre Region Parks & Recreation Authority board members, engineers from Stahl Sheaffer Engineering, along with representatives from Parks & Rec staff, the Central PA Convention & Visitors' Bureau and local soccer associations.

The group has been asked to examine a July 7, 2016 feasibility study and updated budget figures for the design, planning and construction of the park and required off-site improvements, in light of the suspension of the adjacent Toll Brothers housing and road-construction project. The goal is to figure out what elements of the 2010 master plan Phase 1 (covering 75 acres of the total 100-acre plan) the region can afford to build under the current funding circumstances; whether the project needs to be suspended until the conclusion of the Toll Brothers appeal process; or whether to abandon the Whitehall Road project and instead amend the Oak Hall Regional Park Master Plan to add a few rectangular sports fields. (Oak Hall already has water, sewer and electricity service.)

The working group will meet again at 9 a.m. on Jan. 5; their recommendations will be forwarded to the Parks Authority and COG General Forum for further discussion in January or February.

The original 2011 budget for Phase 1 was \$5.2 million. Parks & Recreation staff recently returned a \$300,000 grant to the state Department of Conservation and Natural Resources (DCNR), because the park will not be complete and open to the public by the Dec. 31, 2017 deadline. About \$4.7 million remain in the Fulton Bank loan balance, as of a June 2016 update from COG Finance Director Joe Viglione. As reported previously, the current drawdown date for the loan is June 1, 2017; after that, the municipalities will have to vote on whether or not to renew their guarantees to extend the loan or obtain a new loan.

During the Dec. 19 working group meeting, roughly 16 people spent 2.5 hours reviewing a budget table comparing cost estimates from 2014 to today's costs.

The discussion focused on one key dilemma. Off-site traffic improvements will be required at Blue Course Drive and Whitehall Road in any scenario, and at up to five neighboring intersections if the project will generate more than 75 additional vehicle trips per day. The General Forum did not authorize public spending for off-site intersection improvements when the members endorsed the park master plan in 2010, although they did implicitly endorse expenditures for construction of an access road from the Whitehall/Blue Course intersection to the park entrance.

However if the project is scaled back far enough to keep the trips per day under the threshold, it will be very difficult to make the case that it's a regional park worthy of regional financial investment, rather than a municipal park or a special interest park.

Specifically, the budget projections prepared by Robyn Froehlich of Stahl Sheaffer Engineering indicate that upgrading the signalized intersection at Blue Course and Whitehall will cost about \$375,000. If the amenities are likely to

draw 75 or more vehicles per day, then the developer (in this case the Parks Authority) will also be required to upgrade the Bristol Avenue/Blue Course intersection, which already handles more daily traffic than it was designed to handle. That intersection alone will cost \$500,000. According to the budget table, the Parks Authority would have to spend almost \$1.3 million on planning, traffic impact studies, design, soil infiltration testing, permits and fees, legal fees construction management, and driveway and intersection improvements, leaving only \$3.4 million for Phase 1 grading, stormwater management facilities, materials, playground installation, equipment, fencing, plantings and signage.

In 2014, the total base cost for Phase 1 was estimated at \$7.6 million, which included \$566,000 to pay for on-site utility hookups for the park, assuming the adjacent housing developer would put in off-site water, sewer and electricity lines when they constructed a paved, shared access road. That \$7.6 million total also included bonds, insurance and contingency funds.

The updated 2016/2017 construction budget discussed early this week stripped out all utilities except stormwater management (i.e., no plumbing or electricity); assumed a gravel access road; reduced the number and size of amenities; left the rectangular fields as grass (not artificial turf) without lights, and still yielded a total base cost for Phase 1 of just over \$6 million, again, to be paid from \$3.4 million in available loan funding.

Several of the working group participants reviewed this information and commented on the difficulty in making the case to the municipal representatives that taxpayers should pay more than \$875,000 for off-site traffic intersection improvements, even though those aren't on the 2010 master plan. Some played out the scenario further, observing that it would also be hard to round up municipal endorsements for a regional park that has no utilities, and has facilities minimal enough to keep visits per day under 75.

"That's not the picture we presented to the municipalities" for approval in 2010, COG Executive Director Jim Steff observed.

## CRITICAL ANALYSIS

There was some discussion about how to move forward without taking the project back to General Forum for votes, because of the low odds of getting unanimous support for buying a small piece of the 2010 park design, on Zone 2 drinking water recharge land, under the current economic circumstances.

But I also got the sense that Steff and Parks & Recreation Director Pam Salokangas, among others, were uneasy with that approach. Perhaps I was projecting my own views onto their comments, but they seemed to indicate that if there are enough problems with a project that proponents want to avoid General Forum, that's a red flag that General Forum review is essential for the sake of maintaining municipal faith in the regional coordination framework.

# BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

*March 1, 2017*

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## **Whitehall Road Regional Park as a case-study revealing fault lines in regional governing structures.**

By Katherine Watt

Part 7 of the Slab Cabin Run water and farmland protection series.

In January and February, there were several developments in the ongoing debates around the fate of the proposed Whitehall Road Regional Park.

Readers who haven't yet read the first installments in the series and are interested in detailed background are encouraged to read the following *Bailiwick News* reports: Sept. 9, 2016; Sept. 16, 2016; Sept. 30, 2016; Oct. 21, 2016; Dec. 2, 2016; and Dec. 23, 2016.

### BRIEF BACKGROUND

The basic issue raised by the Whitehall Road Regional Park planning and financing process is whether the Centre Region Parks & Recreation Authority – a quasi-public/quasi-private legal entity – should act as a land developer and use public funds to construct a park in the Zone 2 recharge area of the State College Borough Water Authority Harter and Thomas well-fields, putting public drinking water at risk of contamination, and taking 100 acres of high-quality farmland out of production.

In June 2011, the Centre Regional Recreation Authority (as it was then called) borrowed \$7,578,800 from Fulton Bank to plan and build Oak Hall Regional Park Phase 1, and Whitehall Road Regional Park Phase 1.

The loan was guaranteed by the taxing authority of five participating municipalities: State College, Ferguson, Patton, Harris and College, whose elected representatives had approved the park plans and the loan guarantees by COG resolution 2011-4 and 2011-5, and individual municipal resolutions adopted in May 2011.

The “drawdown” date listed in the original loan contract was June 1, 2013. Of the total borrowed, roughly \$4.8 million was designated for the Whitehall Road park, to be combined with a \$300,000 DCNR grant for a total Phase 1 budget of roughly \$5.1 million. The remainder of the loan proceeds were earmarked for Oak Hall Regional Park development, and have been spent on that projects.

At the time the parties signed the Fulton Bank loan contracts, they were confident that an adjacent student housing development would move forward, providing funds to construct a shared access road and utility hookups for electricity, water and sewer for the planned Whitehall Road park, and off-site traffic intersection upgrades.

However, multiple delays beset the adjacent Penn State/Toll Brothers housing development, such that the loan drawdown date and interest rate has been renegotiated between the Centre Region Council of Governments (COG) and Fulton Bank. The most recent revised contract, purportedly approved by COG General Forum on Nov. 23, 2015, included a drawdown date of June 1, 2017.

The adjacent housing development is now in litigation related to environmental impacts on public water supplies, and the off-site traffic intersection improvements, paved access road, and utilities that the housing developer would have installed are not in the approved master plan and budget for the park project.

As a result, the Parks Authority, the COG Parks Capital Committee and other municipal elected and appointed officials have been struggling with a feasibility reassessment, based in part on a July 7, 2016 report drafted by Stahl-Sheaffer engineer Robyn Froehlich.

Much of that struggle has centered on the Parks Authority's desire to avoid another General Forum vote on the project, because they have reason to believe unanimous support for the project is no longer forthcoming due to changes in elected representatives serving on municipal boards, changes in municipal financial conditions, and changes in the project costs given the unanticipated burden of off-site traffic improvements, access road construction and utilities.

### CONTEXT

The Whitehall Road Regional Park project lends itself to use as a case study, because it involves most of the crucial issues facing the Centre Region's long-term residents in our dual roles as political citizens and taxpayers. These issues are primarily driven by development pressure and the overall question of how the costs and benefits of residential and

commercial development are allocated between private entities such as land developers, and public organizations operated by government employees paid primarily by real estate and income tax collections.

The park project provides a lens through which to address many questions.

Does it still make sense to exclude the population cohort of individuals aged 18-24 and Penn State University as an institution from Centre Region Council of Governments funding formulas, when the added expenses related to the growth of the undergraduate population as a proportion of overall population – and the growth of high-volume tourism activities – are paid primarily by the over-25 working population, which represents a shrinking piece of the population base?

Does it still make sense to restrict local revenue collection from hotels, bars, restaurants and other tourist-facing businesses to annual property tax payments, which are independent of sales volume? If not, how can public entities capture a portion of the alleged economic benefits of population and tourism expansion, that now accrue primarily to private entities (hotel, bar and restaurant owners) to offset increasing economic costs related to providing public services to undergraduate students and short-term transient visitors?

As the undergraduate student population increases, and Penn State adds large events to the annual calendar of tourist-draws, burdens on police, fire and emergency medical employees and volunteers increase. Increased stress impacts recruitment, retention and attrition. The costs for operating existing public safety departments, and recruiting, training and retaining new staff and volunteers to replace those who leave, is borne primarily by over-25, working, taxpaying residents.

As the undergraduate student population increases, the Centre Area Transportation Authority adds buses, bus routes and drivers. A good chunk of the maintenance and operation costs of the expanding bus fleet are borne by over-25 working, taxpaying residents.

As the undergraduate student population increases, adding cars to the local traffic load, roads wear out more quickly. Some must be widened, and some traffic intersections must be upgraded with signalization. A good chunk of the costs for road repairs, expansion and intersection improvements are borne by over-25 working, taxpaying residents.

As the undergraduate student population increases, water and sewer treatment demand rises, requiring upgrades to existing plants and construction of new plants. A good chunk of the costs for water and sewer system maintenance, operation and expansion are borne by over-25 working, rate-paying residents.

As the undergraduate student population increases, burdens on the regional code inspection office increase, first for inspection of new student housing under construction, and then for routine inspection of existing rental units. The increased burden requires the code agency to hire and train more inspectors, purchase and operate more vehicles and computer infrastructure, and occupy more office space. A good chunk of the costs to operate and expand code inspection capacity is borne by over-25, working, taxpaying residents, although some is offset by permit fees paid by developers and landlords, particularly during “boom” times like the last few years.

As farmland close to the State College population center is taken out of production to build housing and amenities such as parks, the conversion simultaneously moves potential food crop production areas farther away from the population and (through impervious surfaces like roads, parking lots and roofs) increases the sediment, nutrient and thermal pressure on area cold-water fisheries and Chesapeake Bay tributaries including Slab Cabin Run and Spring Creek. A good chunk of the costs to install new sediment and nutrient filtration systems along these waterways to manage stormwater runoff is borne by over-25, working, taxpaying residents.

As the undergraduate population increases in proportion to the over-25, working, taxpaying residents, the impact of the nuisance sub-set of the undergraduate population (binge-drinkers, public uriners, vandals, etc.), combined with the increasing tax burden that primarily subsidizes the undergraduate population drives many of the remaining over-25, working, taxpaying residents out of town, to more or less distant suburbs. This in turn increases suburban sprawl, takes more farmland out of production, and increases traffic on regional roads as workers who formerly walked or bicycled to work shift to driving.

Where is the point at which adding more undergraduate population and adding more tourist traffic costs the region more in increased public expenses than it brings in in increased public revenue? Have we reached it yet? If not, when will we reach it, and how will we handle the transition to a steady-state economy?

Local legislators – virtually all of whom are in the over-25, working, taxpaying cohort – constantly struggle to manage the high pressure of new residential and commercial development aimed primarily at serving transient students and tourists. And since time is a finite resource, it's virtually impossible for those same local leaders to take a breath, and establish an identity for the region's over-25 population as something other than involuntary resident assistants living in a giant Penn State dormitory complex.

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**SIDEBAR: Commonwealth Court appeal to be heard March 6 in Harrisburg**

Nittany Valley Water Coalition recently announced that the Toll Brothers' appeal of Centre County Common Pleas Judge Jonathan Grine's July 2016 decision stopping the proposed "Cottages" luxury student housing development for procedural violations of state and municipal zoning law will be heard by the Pennsylvania Commonwealth Court on Monday, March 6 at 1 p.m. in Harrisburg, 601 Commonwealth Avenue, Courtroom 3001.

The group is also fundraising to cover the costs of litigation. NVWC spokeswoman Kelli Hoover reported that citizen homeowners and farmers have been able to sustain the legal battle since December 2015 by raising more than \$20,000 from community donations. They've set a goal of raising another \$10,000 to finish the fight.

Hoover wrote:

"We all drink the water that is recharged by the wells that are at risk from this development. The implications of this court case go beyond Centre County and will be felt statewide. If Toll Brothers wins this appeal, a precedent will be set that municipal officials can ignore local zoning ordinances in favor of developers. It would also set a precedent that citizens who object to a development must file a legal objection within 30 days of 'tentative' municipal approval of a development plan...Both precedents would threaten local democracy and our environment."

To donate to the CommunityWise legal fund using PayPal, send donations to [communitywisesc@gmail.com](mailto:communitywisesc@gmail.com) at [www.paypal.com](http://www.paypal.com). To send a donation by check, please mail checks made out to CommunityWise to P.O. Box 1256, State College, PA 16804.

Contact Kelli Hoover if you are interested in attending the Harrisburg hearing; carpool arrangements are underway. Hoover's address: [kxhoover2015@gmail.com](mailto:kxhoover2015@gmail.com)

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# BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

*March 9, 2017*

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## **Whitehall Road Regional Park planning and financing as a case study in regional governance**

By Katherine Watt

Part 8 of the Slab Cabin Run water and farmland protection series.

### **INTRODUCTION – COG STRUCTURE**

Just as the Internet was once infamously described as a “series of tubes,” the Centre Region Council of Governments (COG) can be thought of as a series of intergovernmental agreements – legally binding contracts written between two or more municipal legislatures laying out the terms under which joint projects are to be conducted. The contractual exchange is generally money for services: the municipal governments pledge their tax revenue to obtain regional services including fire protection, library services, code inspections and park programming.

COG was established with general articles of agreement in 1969, when the regional population was about 53,000, according to the *crcog.net* data center. Those articles of agreement have been updated from time to time in the intervening 48 years, most recently in December 2008. Under the agreement, COG uses a set of seven committees to review proposed programs and policies and make recommendations to the General Forum for adoption and/or referral to municipal legislatures for legally binding ratification. Sometimes ratification votes occur at regularly scheduled municipal meetings between monthly General Forum meetings, but sometimes ratification votes occur during unit vote “recesses” of the monthly General Forum meeting, after which General Forum reconvenes to conduct further business.

COG programs are provided for a regional population of roughly 93,000 people living in six municipalities covering about 150 square miles, as of the 2010 federal census. Penn State University, which is not a municipality, and in many cases functions as a private land development corporation, contributes minimally to COG budgets, but has seats on some COG committees.

Apart from the specific terms of written contracts, the COG has no taxing or policy-making power. The power exercised by the COG General Forum is entirely derivative. It comes from the power held by elected municipal legislators as the governing bodies of their six respective boroughs and townships.

The COG funding formulas used to apportion contributions by population exclude individuals between the ages of 18 and 24. The data in the table on the next page is drawn from the 2017 COG budget, using 2015 census figures, for a total tax-base population of 56,130: roughly 60% of the actual regional population. The other 40% – or about 36,870 people – are predominantly Penn State students between the ages of 18 and 24 living off-campus.

The COG Parks Capital and Finance committees are the two most relevant committees to the current Whitehall Road Regional Park (WRRP) public debates, although the Transportation & Land Use, Public Safety, and Public Services & Environmental committees are implicated as well.

The Centre Regional Parks & Recreation Authority (Parks Authority), however, is not a COG committee. It’s a quasi-independent municipal authority comprised of representatives from municipal park advisory boards who are appointed by municipal legislatures.

### **REGIONAL PARK FUNDING & COG GENERAL FORUM**

Prior to Oct. 13, 2016 there were three publicly-expressed possibilities for the remaining roughly \$4.7 million held in Fulton Bank accounts for Whitehall Road park design and construction.

First, the Parks Authority board could move quickly through studies, easement negotiations, permitting and design to sign construction contracts based on the original approved master plan, before the June 1, 2017 drawdown date for the loan.

Second, the Parks Authority could go to the General Forum requesting a unanimous vote to apply to Fulton Bank to extend the loan past the June 1, 2017 drawdown date, and renew the municipal guarantees that expire on the same date. During public discussions, COG Finance Director Joe Viglione said that Fulton Bank would have to make a business decision regarding that application. The bank could refuse the request, or raise the interest rate on the loan.

Third, the General Forum could vote to close out the loan and municipal guarantees, leaving taxpayers responsible only for paying down the rest of the debt incurred by completed work at Oak Hall Regional Park and Hess Field.

On Oct. 13, however, at the joint COG Parks Capital/Parks Authority meeting, committee chair Tom Daubert quietly mentioned a fourth possibility: that the Parks Authority could somehow transfer the balance of the money from the loan fund, to a Parks Authority holding account before June 1, 2017, without having signed construction bids, and without General Forum approval, based on the Parks Authority’s legal theories regarding spending authorization.

2017 MUNICIPAL LEGISLATORS <i>Listed in order of non-student population</i>	COG GENERAL FORUM	2017 COG ADVISORY COMMITTEES <i>Listed in order of monthly meeting cycle</i>
<b>Ferguson</b> Township Supervisors – 5 Miller, Buckland, Whitaker, Dininni, Graef Meets 1 <sup>st</sup> and 3 <sup>rd</sup> Mondays 2015 Pop. w/o students: 16,188	32 voting members  Abrams (P); Barlow (SC); Bernier (C); Brown (SC); Buckland (F); Daubert (SC); Dauler (SC); DelCorso (HM); Dininni (F); Downsborough (P); Engeman (SC); Fragola (C); Francke (C); Graef (F) Graham (H); Haimeister (H); Harden (H); Kirsten (HM); Lafer (SC); Lord (H); Luck (P); Lyncha (C) Merritt (HM); Miller (F); Myers (SC); Spencer (HM); Stevenson (HM); Stilson (C); Trevino (P); Whitaker (F); Wilson (H); Wise (P)	<b>Transportation &amp; Land Use</b> Luck (P); Lafer (SC); Lyncha (C); Whitaker (F); Kirsten (HM); Harden (H); Cooper (PSU) Meets 1 <sup>st</sup> Mondays
<b>State College</b> Borough Council – 7 Daubert, Dauler, Myers, Lafer, Brown, Barlow, Engeman Meets 1 <sup>st</sup> and 3 <sup>rd</sup> Mondays 2015 Pop. w/o students: 13,362	Meets 4 <sup>th</sup> Monday	<b>Human Resources</b> Wilson (H); Whitaker (F); Brown (SC); Fragola (C); Merritt (HM); Trevino (P) Meets 1 <sup>st</sup> Wednesdays
<b>Patton</b> Township Supervisors – 5 Abrams, Wise, Luck, Downsborough, Trevino Meets 2 <sup>nd</sup> and 4 <sup>th</sup> Wednesdays 2015 Pop. w/o students: 11,346		<b>Public Services &amp; Environmental</b> Hameister (H); Stilson (C); Barlow (SC); Spencer (HM); Luck (P); Buckland (F) Meets 1 <sup>st</sup> Thursdays
<b>College</b> Township Council – 5 Francke, Bernier, Stilson, Lyncha, Fragola Meets 1 <sup>st</sup> and 3 <sup>rd</sup> Thursday 2015 Pop. w/o students: 7,500		<b>Public Safety</b> Wise (P); Wilson (H); Dauler (SC); Dininni (F); Lyncha (C); Stevenson (HM); Brachbill (Bellefonte); Bittner (PSU) Meets 2 <sup>nd</sup> Tuesdays
<b>Harris</b> Township Supervisors – 5 Haimeister, Graham, Wilson, Harden, Lord Meets 2 <sup>nd</sup> Monday 2015 Pop. w/o students: 5,173		<b>Finance</b> Graham (H); Francke (C); Myers (SC); Miller (F); Kirsten (HM); Downsborough (P) Meets 2 <sup>nd</sup> Thursday
<b>Halfmoon</b> Township Supervisors – 5 DelCorso, Kirsten, Stevenson, Spencer, Merritt Meets 2 <sup>nd</sup> and 4 <sup>th</sup> Thursday 2015 Pop. w/o students: 2,561		<b>Parks Capital</b> Daubert (SC); Stilson (C); Graef (F); Trevino (P); Lord (H) Meets 2 <sup>nd</sup> Thursday
		<b>Executive</b> Daubert (SC); Francke (C); Miller (F); DelCorso (HM); Abrams (P); Lord (H) Meets 3 <sup>rd</sup> Thursday

*General Forum Loan-Related Votes*

During the first few weeks of February, I did a close read through the available COG General Forum minutes for 2011 through 2016, looking for the record of how Fulton Bank loan renegotiations have been handled in the past by the General Forum.

The key documents include the 2006 Articles of Agreement governing the development of the regional parks, the 2010 WRRP Master Plan (projecting a total cost of about \$13 million for full build-out), the 2011 Fulton Bank loan contract, and General Forum minutes.

On Nov. 27, 2006, five Centre Region COG municipalities – State College, Ferguson, Patton, College and Harris – entered into Articles of Agreement for the “Planning, Development and Operation of Regional Parks.”

Halfmoon Township supervisors decided not to participate in the regional parks program, and so have abstained from all further votes on the program.

Section 7.3 of the contract stated: “Proposed expenditures for Regional Parks Capital Projects shall be determined each year as part of the COG Budget process. The Participating Municipalities may authorize a committee...to recommend an annual appropriation.”

The COG Parks Capital Committee was later established to fulfill that responsibility.



Section 7.5 stated: “During 2008, the [COG Parks Capital] Committee will review funding...Said committee shall propose a funding method to finance these improvements. **This funding method shall require the unanimous approval of the Participating Municipalities at a regular scheduled General Forum meeting.**” (Emphasis added.)

Other sections of the 2006 regional parks contract/agreement required unanimous approval of all construction contracts and unanimous approval of all Master Plan changes. The section on construction contracts has not been enforced for any construction contracts executed to date for the Oak Hall and Whitehall Road regional parks and, under one legal interpretation, may be unenforceable, to the surprise of at least the Patton Township supervisors, as covered in previous *Bailiwick News* reports.

There have also been several General Forum votes to amend the Whitehall Road Regional Park Master Plan; those votes are not covered in this report but may be covered in future reports.

In August 2010, the CRCOG General Forum unanimously approved the WRRP master plan.

The master plan stipulated that flush toilets had to be available in the first phase of construction (p. 94) and that the proposed centralized maintenance facility should be constructed in Phase 1. The master plan did not include budget line items for a paved access road, a sewage pump station, or installation of water and sewer lines and off-site traffic intersection improvements, because park advocates presumed those would be built by the adjacent housing developer.

The master plan did, however, include a provision that regional funding might be used to build a temporary gravel access road from Whitehall Road to the park entrance, if the adjacent student housing development were delayed for any reason. (2010 plan p. 26 and budget pp. 87-88).

Since the General Forum master plan vote in August 2010, there have been six key General Forum votes on regional park funding between April 2011 and Nov. 2015, including one vote possibly changing the legal relationship between the Centre Regional Recreation Authority (the former name of the Parks Authority) and the Centre Region Council of Governments.

#### *Loan Vote 1 – April 2011*

The first loan-related General Forum vote occurred on April 25, 2011. Prior to that meeting, the COG Finance Committee reviewed a bid from Fulton Bank for a 20-year \$7,578,800 loan to finance Phase 1 construction of Oak Hall Regional Park and Whitehall Road Regional Park.

On the Finance Committee’s recommendation, the COG General Forum then approved Resolution 2011-5, authorizing entry into the “Participation Agreement.”

According to the minutes, Fulton Bank was the sole bidder for the loan. Jens Damgaard, a tax-exempt finance attorney with Rhoads and Sinon, LLP, presented a set of loan documents to the General Forum. There were no citizen comments on the issue, and the meeting chairman – State College Borough Councilman Ron Filippelli – “recessed the General Forum meeting at 8:00 p.m. so that the participating municipalities and the [Centre Region Recreational Authority] could convene meetings of their own.”

The minutes continued: “At 8:07 p.m. the General Forum meeting was reconvened and the recording secretaries for the municipalities of College Township, Ferguson Township, Harris Township, Patton Township, and State College Borough each reported approval of a guaranty agreement, participation agreement, and municipal ordinances to incur ‘Lease

#### SIDEBAR - November 2008 Survey Results

In November 2008, the Centre Regional Recreation Authority published the results of a survey measuring citizen interest in regional parks.

A key finding of that report was in Question 5: “Are you satisfied with the park facilities in the Centre Region currently available to members of your household?”

Of 1,037 responses received via Web and paper surveys, 74% said “Yes,” and 26% said “No.”

Respondents elaborated on their views in responses to Question 8: “As we plan for two new regional parks, what other suggestions or comments would you like to share with us?” Among dozens of suggestions for park features, nine comments succinctly captured the “no more parks” position:

- “Don’t do it.”
- “We are already well equipped, why more?”
- “No new taxes please...cost of living is significant, especially to retirees.”
- “Do not do the parks, instead give the money to the police to stop the drug selling that goes on in the park area.”
- “Instead of the parks, give the money to make my taxes lower, save money do not cost the tax payer more money in making a park that is not necessary.”
- “Stop planning. Save the money and apply it to useful services or return it to the taxpayers.”
- “There are already plenty of parks and there is no need for additional facilities.”
- “Do not do it.”
- “We don’t need more tax-free property!”

Despite this key finding – that regional taxpayers did not want to purchase new regional parks by a 3-1 margin – planning and public spending for the regional parks went ahead. This raises the question: “How can the No-More-Parks majority be represented in the decision-making venues?”

Rental Debt' in specified amounts.”

The minutes further stated: “Sue Mascolo, [CRRRA] Chair, reported that the Authority adopted Resolution 02-2011 that approves all loan documents necessary for the transaction.”

Upon reconvening, the full General Forum then adopted Resolution 2011-5, to formalize the contract by “adopting” the participation agreement and “authorizing” the execution of the legal documents. The vote was unanimous (24-0-3), as required by the articles of agreement governing the regional parks program.

### *Loan Execution*

On June 1, 2011, the Fulton Bank loan documents were executed. Through the contracts, the Centre Regional Recreation Authority borrowed \$7,578,800 from Fulton Bank, collateralized by the taxing authority of State College, Ferguson, Patton, Harris and College governments, to plan and build Phase 1 of Oak Hall Regional Park and Whitehall Road Regional Park.

The “drawdown” date listed in the original contract was June 1, 2013. Of the total borrowed, roughly \$4.8 million was designated for Phase 1 of WRRP, to be combined with a \$300,000 DCNR grant for a total Phase 1 budget of roughly \$5.1 million.

At the time the parties signed the contracts, they were confident that an adjacent student housing development to be built on Penn State-owned land would move forward, providing funds to construct a shared access road and utility hookups for electricity, water and sewer for the planned Whitehall Road park.

Section 3.04 of the loan contract stated: “The Authority shall have the right at any time, **at the direction of the COG**, to prepay without premium or penalty of any kind, all or any portion of the outstanding principal balance of the Authority Bond.” (Emphasis added.) Section 7.01 of the loan contract transferred the collateral security – the taxing authority of the municipalities – from the Parks Authority to Fulton Bank.

### *Loan Vote 2 – November 2011*

The second regional parks loan-related General Forum vote occurred on Nov. 28, 2011. Resolution 2011-11 “recommended” the Centre Regional Recreation Authority “enter into a modification agreement for the loan to fund the development of regional parks subject to final approval by Fulton Bank,” and subject to confirmation by the COG Parks Capital Committee, to extend the drawdown date for the loan from 2013 to June 1, 2014.

The municipal representatives in attendance that night approved Resolution 2011-11 unanimously as required by the articles of agreement, by a vote of 21-0-2 (again, Halfmoon abstaining). The municipalities did not recess into unit meetings during the General Forum meeting to obtain a majority vote of each constituent board.

### *Loan Vote 3 – December 2012*

The third regional parks loan-related General Forum vote occurred on Dec. 18, 2012. Resolution 2012-7 “authorized” the Centre Regional Recreation Authority to work with COG staff and Fulton Bank staff to renegotiate the loan terms to obtain a lower interest rate on the debt.

The municipal representatives in attendance that night approved Resolution 2012-7 unanimously as required by the articles of agreement, by a vote of 22-0-3 (Halfmoon abstaining). The municipalities did not recess into unit meetings during the General Forum meeting to obtain a majority vote of each constituent board.

### *Loan Vote 4 – February 2013*

A fourth regional parks-related General Forum vote occurred on Feb. 25, 2013. This one was a bit different, and was not specifically related to the loan collateralization, but may have had legal ramifications related to the loan.

At that February 2013 General Forum meeting, then-Centre Region Parks and Recreation Director Ron Woodhead reported that the Centre Regional Recreation Authority was asking the General Forum to refer a draft resolution to the individual municipalities for adoption, “authorizing” a merger with the Centre Region Parks & Recreation Board, and renaming the new hybrid entity the Centre Region Parks & Recreation Authority, arguing that membership on both committees was the same.

Woodhead said Solicitor Terry Williams had prepared a model resolution for the municipalities to use. Although no resolution number is included in the minutes, the General Forum voted to “receive a model Resolution” from Williams, “transfer” the responsibilities of the Centre Region Parks and Recreation Board to the renamed Authority; and “recommend” that the participating municipalities approve the Resolution at their municipal meetings and then send executed copies to COG Executive Director Jim Steff by May 7, 2013 for distribution to the Centre Region Parks and

Recreation Authority.

At that time, according to the minutes, Patton Township Supervisor Elliot Abrams "expressed concern that transferring the responsibilities of the Board to the Authority could affect the elected officials' control over the Parks and Recreation program, noting that the Board and Authority were purposely kept separate when originally formed."

Woodhead replied that: "the two entities have been comprised of the same members throughout its history, each with a different function."

Dick Mascolo, then-Ferguson Township supervisor chair, and husband of recreation authority chairwoman Sue Mascolo, "**observed that COG controls the funds.** He noted that the reason an Authority was formed was to facilitate a non-profit status that could solicit grant monies. He expressed support for one entity." (Emphasis added).

The General Forum vote in favor of the motion was reported as "26-0-3 with members from Halfmoon Township abstaining as they do not participate in the Parks and Recreation program."

I haven't yet tracked down all the minutes of the five municipal meetings at which this resolution was discussed, but the May 28, 2013 COG General Forum minutes report that all five municipalities approved the merger.

Specifically, I don't know if any municipal legislators ever considered or addressed the impact the merger and renaming might have on the legal relationships between the parties as outlined in the original Nov. 27, 2006 Articles of Agreement governing the regional parks program. That legal relationship is the flashpoint for the current controversy around control of the regional parks construction program, given the changes in municipal legislators and project costs that have occurred over the last few years.

#### *Loan Vote 5 – May 2014*

The fifth regional parks-related General Forum vote occurred on May 27, 2014. The proposal was to modify the loan again, to extend the drawdown date from June 1, 2014 to Dec. 1, 2015, in response to ongoing delays for the adjacent student housing development on Penn State-owned land.

In response to questions from Patton Township Supervisor George Downsborough, COG Finance Director Joe Viglione explained that the loan could be prepaid.

However, Resolution 2014-1, unlike two of the previous three loan-related resolutions, did not contain the word "authorize." Instead, the General Forum voted on a proposal from the Finance Committee that they adopt Resolution 2014-1, which "recommended" that the Parks Authority enter into a modification agreement for the loan. The vote in favor was unanimous: 19-0-4.

#### *Loan Vote 6 – November 2015*

The sixth General Forum vote occurred on Nov. 23, 2015. Like the May 2014 resolution, Resolution 2015-4 did not contain the word "authorize." Instead, the resolution asked the General Forum to "recommend" that the Centre Region Parks and Recreation Authority enter into a modification agreement for the regional parks loan to extend the drawdown date from Dec. 1, 2015 to June 1, 2017.

"The motion was approved 18-1-4, **with Patton Township Supervisor Mr. Downsborough voting nay**" and Halfmoon Township supervisors abstaining. (Emphasis added).

In other words, the vote was not unanimous, and therefore didn't comply with the Nov. 27, 2006 articles of agreement; the current loan agreement between COG, the Centre Region Parks & Recreation Authority and Fulton Bank may be already void, as of Nov. 23, 2015 when Downsborough cast his "Nay" vote.

#### CRITICAL ANALYSIS

The specific funding question is: "Do the COG General Forum members have the legal power to delegate away their municipal taxing authority, by voting to 'recommend' transferring that authority to the appointed members of the Centre Region Parks and Recreation Authority?"

I believe the answer is "No."

Taxing authority is not transferrable.

The municipal legislators must vote at a General Forum meeting – and vote unanimously as individuals, not as units – to continue municipal tax-based guarantees for the regional parks construction program – or the funding mechanism is illegitimate.

It may already be illegitimate.

The Feb. 25, 2013 General Forum vote to merge the Parks Authority and the Parks Board in February 2013 may have been an unlawful attempt to transfer direct taxing authority from the elected General Forum members to the appointed Parks Authority board.

And the Nov. 23, 2015 General Forum vote may have been unlawful as a reauthorization of the borrowing, because it

wasn't unanimous. George Downsborough voted "No."

In any case, the loan contracts make clear that the COG General Forum has the legal authority to *direct* the Parks Authority to pay off the loan early, if its constituent members regard that course of action as in the best interests of taxpayers (Section 3.04), and that *any* negotiations regarding payment of the loan must be conducted between Fulton Bank and the COG General Forum, not between Fulton Bank and the Parks Authority (Section 7.01).

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# BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

March 24, 2017

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## Non-overlapping Venn diagram circles: design and funding discussions for Whitehall Road Regional Park

By Katherine Watt

Part 9 in the Slab Cabin Run water and farmland protection series.

The main dilemma for Whitehall Road Regional Park planners is the requirement that they scale the project in three divergent dimensions:

- *small enough* to cost \$4.8 million or less: the budget approved by the Centre Region Council of Governments (COG) General Forum on April 25, 2011 and most recently reauthorized with municipal guarantees through a Nov. 23, 2015 vote set to expire June 1, 2017;
- *within* the previously-approved master plan design approved in August 2010 and amended several times since; and
- *with a broad enough* range of features to be accepted unanimously by municipal legislators as a “regional” park when the funding question comes up for another General Forum vote, likely on May 22.

The financing history was covered in Part 8 of this series, published March 9, 2017. This report covers design and funding discussions held at multiple committee meetings between Dec. 19, 2016 and March 21, 2017.

### Chronological Orientation

At the time the parties originally signed the Fulton Bank loan contracts, they were confident that an adjacent student housing development would move forward, providing funds to construct a shared, paved access road and utility hookups for electricity, water and sewer for the planned Whitehall Road park, and off-site traffic intersection upgrades. The off-site traffic intersection improvements, paved access road, and utilities that the housing developer would have installed are not in the General Forum-approved master plan and budget for the park project.

However, multiple delays beset the adjacent Penn State/Toll Brothers housing development, which is now in litigation related to environmental impacts on public water supplies and technical violations of Ferguson Township zoning laws by the Ferguson Township Board of Supervisors.

Ruling on a land use appeal filed by neighboring homeowner and farmers, Centre County Common Pleas Judge Jonathan Grine on July 18, 2016 vacated the Ferguson Township Board of Supervisors Nov. 16, 2015 approval of the Toll Brothers/Penn State land development plan. Judge Grine found that Ferguson Township had attempted an “end run” around municipal zoning ordinances, by approving the plan without subjecting it to normal zoning variance or rezoning procedures for the 5.5-acre parcel planned for stormwater detention. [Disclosure: The author is a plaintiff on the underlying land use appeal].

As a result of the delays, the Centre Region Parks & Recreation Authority (Parks Authority), the COG Parks Capital Committee and other municipal elected and appointed officials and staff have been struggling with a feasibility reassessment, based in part on a July 7, 2016 report drafted by Stahl-Sheaffer engineer Robyn Froehlich.

The key fork in the road appeared on July 25, 2016 at the General Forum meeting at which municipal legislators reviewed the feasibility study. At that meeting, then- Patton Township Supervisor Josh Troxell, who also served at the time on the COG Parks Capital Committee, stated that there would likely need to be at least two more General Forum votes: one to approve a revised WRRP Master Plan, and one to approve an application to extend the Fulton Bank loan beyond its current June 1, 2017 drawdown date.

And since the articles of agreement for the regional park construction program require unanimous support for funding resolutions and master plan amendments, an individual or municipal unit dissent would effectively end the park construction program for the time being.

Troxell concluded: “If one municipality says ‘No,’ every minute of discussion is a waste.”

In response, the General Forum voted to refer six questions to the participating municipalities for legislator discussion. However, less than three weeks later, the municipal deliberative process was derailed, when COG Parks Capital Chairman and State College Borough Council Chairman Tom Daubert accepted a legal opinion provided in a

memo by conflicted Solicitor Terry Williams. Williams asserted that the General Forum and municipal legislatures had no further role in the project, and that the appointed Parks Authority board was fully empowered to move forward without additional review or authorization by elected officials.

Thus, the road not taken was the Troxell-recommended road: placing the matter on a subsequent General Forum agenda for general discussion and polling to find out whether any legislator was likely to vote “No” on further loan renewals and master plan amendments, to avoid wasting time, money and effort on a non-viable project.

Instead, the COG Executive Committee and Parks Capital Committee members chose to give the Parks Authority and the Centre Region Parks & Recreation staff an opportunity to spend hundreds more hours and thousands more dollars trying to find that sweet spot where the project is small enough to be affordable but big enough to be regional.

Between Dec. 19 and March 21, there were nine such public small-group meetings:

- Dec. 19 ad hoc WRRP working group meeting
- Jan. 5 ad hoc WRRP working group meeting
- Jan. 12 COG Parks Capital/Parks Authority joint meeting
- Jan. 17 COG Executive Committee meeting
- Jan. 19 Parks Authority board meeting
- Feb. 9 COG Parks Capital/Parks Authority joint meeting
- Feb. 16 Parks Authority board meeting
- March 9 COG Parks Capital/Parks Authority joint meeting
- March 16 Parks Authority board meeting

Jan. 5 design discussions focused on an “Option 1A,” including off-site traffic improvements at Blue Course and Whitehall (\$375,000) and Blue Course and Bristol (\$460,000), neither of which were in the unanimously approved 2010 master plan or any of the approved amendments. After off-site traffic improvements, Option 1A would allow construction of a gravel access road with water to serve drinking fountains and hose bibs, electric hookups to serve possible future facilities, portable toilets, three rectangular grass playing fields, one practice field, a playground, a walking trail, and two parking lots, on 38 acres of the 100-acre site.

But even scaled back that far, the projected cost was \$5.6 million, about \$900,000 more than the available funding of \$4.7 million left in the Fulton Bank loan. And about 25% of the cost (\$1.2 million) was for off-site traffic and access road construction.

There were further non-public (private) meetings, including one between COG staff and Fulton Bank officials sometime in the second or third week of January to discuss financing options, and one between COG staff, PennDOT staff, Ferguson Township staff, State College Borough staff, and Stahl Sheaffer engineers to discuss scoping for a “traffic impact study,” held on Feb. 27.

There were two information-only updates given to General Forum: one on Jan. 30 and another on Feb. 27; General Forum discussion has been sharply curtailed.

And there was a hearing before a three-judge Pennsylvania Commonwealth Court panel in Harrisburg on March 6. The appellate judges are reviewing Judge Grine’s decision. If the Commonwealth Court panel reverses Judge Grine’s decision, they will set a precedent that it’s legal for a local governing board to nullify pieces of its own zoning code, and therefore the Pennsylvania Municipalities Planning Code, unilaterally through improper subdivision and lot consolidation, without following prescribed public variance or rezoning procedures, on behalf of private property owners seeking higher-intensity uses, so long as they don’t get “caught” by objectors filing an appeal within the first 30 days after the board “tentatively” breaks its own laws.

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## SIDEBAR – COG LIABILITY FOR DAMAGES

Oak Hall Regional Park is another project organized by the Parks Authority and funded by the COG municipalities through the Fulton Bank loan.

Unanticipated costs at the Oak Hall park project resulted in the need for the Parks Authority to borrow \$139,800 from the Centre Region Code Administration. The COG municipalities agreed to pay back the loan through the approval of the COG budget Nov. 28, 2016.

According to a Nov. 4, 2016 COG Parks Capital Committee meeting cancellation notice, “the costs were associated with three expenses: 1) bringing to closure the contract with Mr. Pashek, the project architect, 2) reimbursing Fiore Construction for repairing stormwater damage and installing new facilities, and 3) constructing barriers to stormwater runoff in front of a private residence.”

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During Parks Authority board meetings in recent months, several board members have sensibly observed that they are not, in fact, land developers. They're citizen volunteers with a strong and admirable interest in public parks who have historically supervised COG staff provision of park programs and park improvement projects.

The relevance is that the Parks Authority already has a track record, when functioning as a land developer, of requiring COG taxpayer backstops to mitigate damages from public park construction activities.

In the case of the Oak Hall project, the overrun was about \$140,000, and the injured parties included one nearby private property owner.

In the event that land development and stormwater management in the Slab Cabin Run watershed damage the nearby public drinking water wells, the stakes are much higher. Mitigation may run to millions of dollars, or mitigation may be impossible if the damage is catastrophic.

The COG General Forum members have never publicly weighed the risks of damaging the public supply against the benefits of adding another park to the regional portfolio, which already includes more than 50 parks.

Yet if COG taxpayers, through their elected representatives, move forward with Whitehall Road Regional Park construction, those same COG taxpayers will also become legally responsible for mitigating damages resulting from construction and use of the park.

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### Looking ahead

CRPR Director Pam Salokangas reported at recent meetings that the rough timeline from here to June will begin with another information-only report at General Forum on March 27. The ad hoc WRRP working group will reconvene for one more meeting in early to mid- April to choose a final design.

Chris Gibbons, of Concord Public Financial Advisors, will attend the April 13 COG Finance Committee meeting, to go over options for financing. Then at the April 13 joint Parks Capital/Parks Authority meeting, that group will select a final design to recommend to General Forum.

The COG Executive Committee will meet April 18 to nail down the agenda item(s) related to WRRP. Then the Parks Authority board will meet April 20.

On April 24, the Parks Authority and Parks Capital Committee will present the chosen design to General Forum.

Then the COG Finance Committee and joint Parks Capital/Parks Authority committees will meet May 11 to select a funding plan to recommend to General Forum, followed by a May 16 Executive Committee meeting to set the May General Forum agenda.

The Parks Authority will meet May 18, and then the financing recommendations from the Finance Committee and Parks Capital Committee will go before General Forum on May 22.

### Summary of Issues Discussed, with Key Quotes:

Most of the problems with the current plan are intractable and complex. More importantly, most of the questions raised are political questions about weighing competing public values and interests to allocate limited public resources, rather than factual or technical questions.

The most vocal discussion participants included (alphabetical listing):

- Bill Keough – Former Ferguson Township supervisor and current member of ad hoc WRRP working group
- Betsey Howell – Central Pennsylvania Convention & Visitor's Bureau Executive Director
- Bruce Lord – Harris Township supervisor and COG Parks Capital Committee member
- Carla Stilson – College Township councilwoman and current COG Parks Capital Committee chair
- Chris Hurley – Current Parks Authority Board chair, appointed by Patton Township Board of Supervisors
- Dan Trevino – Patton Township supervisor and current COG Parks Capital Committee member.
- Diane Ishler – Current Parks Authority Board member, appointed by Harris Township Board of Supervisors
- Jim Steff – COG Executive Director
- Laura Dininni – Ferguson Township supervisor, but commenting on parks as Ferguson Township citizen only.
- Matt Vidic – Centre Soccer Association President
- Pam Salokangas – CRPR Director
- Robyn Froehlich – Consulting Engineer, Stahl-Sheaffer Engineers
- Steve Miller – Ferguson Township Board of Supervisors chair
- Sue Mascolo – Immediate-past Parks Authority Board chair, current Parks Authority Board vice-chair, appointed by Ferguson Township Board of Supervisors.
- Tom Daubert – State College Borough Council Chair, COG General Forum Chair, immediate-past COG Parks

*Public Safety and Liability Issues*

The 100-acre WRRP project site is upgradient and within the Zone 2 recharge area of the Harter and Thomas well-fields providing drinking water to 75,000 State College area residents, atop fragile karst limestone geology prone to sinkholes and fractures.

- Do grading, park construction and park operation present risks to the safety of nearby State College Borough Water Authority wells and Slab Cabin Run?
- If the WRRP causes damage to the water wells and/or stream, who will be responsible for paying to mitigate the damages?
- Will the State College Borough Water Authority board go on public record certifying the project as a non-risk, and absolving the Parks Authority and COG of liability in the event of damage to the water wells?
- How does the new Ferguson Township stormwater management ordinance (adopted in June 2016) impact the stormwater management plan for the park, given that the land development plan was submitted in 2014 and endorsed by the Planning Commission but never approved by the Board of Supervisors?

*Planning Issues*

COG is currently preparing to appoint a steering committee to establish the study scope and hire a consultant to conduct a \$75,000 regional parks comprehensive plan. The study should be completed by late 2018.

- Should the WRRP project be postponed until after the study is completed?

*Political, Financial and Legal Issues*

The 2010 Phase 1 budget was already very tight. In addition to the added costs of access road, utilities and off-site traffic improvements, inflation has also raised the base budget. Roughly \$4.7 million remain in the Fulton Bank loan balance. Of that, off-site traffic improvements, access road and utilities will cost about \$1.2 million.

There hasn't been a formal request from General Forum to municipalities for discussion and written feedback on the funding prospects or design since the abortive July 25 request. [Some municipalities have discussed the issues on their own initiative, but I don't have time to go to or watch all the municipal meetings to collect and compile that information.]

Three financing possibilities have been presented at the committee level. COG could draw the \$4.7 million and hold it in an escrow account, paying arbitrage fees to the Internal Revenue Service; return the balance to Fulton Bank and close out the loan; or attempt to renegotiate with Fulton Bank for another extension. The last time the loan was refinanced, Fulton Bank required COG to draw funds, hold them in a CD, and pay interest on it.

- Which comes first? The decision to renew funding commitment for the project? Or the design of the project to be funded?
- Is it possible that it's too costly to proceed?
- How much has already been spent on planning since summer 2016, when the feasibility problems became clear?
- Are all three proposals for further funding legally sound? Does Fulton Bank endorse all three options?
- Is draw-and-escrow an "end run" around General Forum?
- If the June 1 drawdown date passes without General Forum action, what's the legal effect on the loan balance?
- If the money is drawn and placed in escrow, and WRRP doesn't move forward, can the money be spent at Oak Hall Regional Park and Hess Field?
- Should the COG General Forum and/or the constituent municipal boards discuss the WRRP project in depth, in public, to get a sense of their constituents' views and share those views with each other formally, before casting votes? Should Ferguson Township supervisors' and citizens' positions have more weight than other municipalities, since the site is within Ferguson Township and co-owned by Ferguson Township and COG?
- If the issues should be discussed informally only, how can information get back to other municipal representatives so they know what their peers in other towns are thinking?
- Do citizens oppose the park, and if so, why?
- If citizens want to convey to their representatives that they don't want the park, whether because of water risks, high costs or other reasons, when and how can they do that?
- What, precisely, did General Forum members "buy into" when they approved the 2010 master plan and the 2011 loan?



- What can COG taxpayers afford now, in 2017? Is that package of amenities “sellable” to General Forum members as a regional park?
- Is “regional” defined by who pays for a park project? Or is it defined by the size, user base and amenities of a park?
- Under the circumstances, should the master plan be revised?
- Can the Parks Authority continue to plan and build the park, and continue to encumber taxpayer funding, without General Forum approval?
- How should the needs and interests of other COG citizens – for safe drinking water supplies, tax relief, additional construction at Oak Hall Regional Park and Hess Field or additional programming at other area parks – be weighed by elected or appointed representatives against the interests of soccer, lacrosse and other rectangular field sports clubs?
- Legally, does General Forum have to approve the revised park design under the terms of the 2006 articles of agreement? If so, does the vote have to be unanimous? Or can it be simple majority? Is it an individual member vote, or a unit vote?
- Legally, does General Forum have to approve the financing plan for June 1, 2017 forward, under the terms of the 2006 articles of agreement? If so, does the vote have to be unanimous? Or can it be simple majority? Is it an individual member vote, or a unit vote?
- Under the terms of the 2006 articles of agreement requiring unanimous votes, did that mean all future elected representatives were required to cast “Yes” votes at every relevant future decision from 2006 forward? Did the 2006 General Forum have the power to direct the votes of future councils or boards in perpetuity?
- Or did that mean that if the future resolutions could not obtain unanimous support from elected officials freely voting to express their views, then the projects would be suspended?
- If the design and funding issues go to General Forum for a vote and don’t get unanimous support, is the project abandoned? Is there a Plan B?
- What’s the legal significance of the lack of contract provisions addressing delays, loan guarantee expiration dates, and loss of political support, in the 2006 Articles of Agreement and the 2011 borrowing authorization?
- What’s the legal significance of the lack of clear, contractual relationships among Centre Region Parks & Recreation Authority (formed in 2013 through the merger of the CRPR Board and the Centre Regional Recreation Authority), COG Parks Capital Committee, COG General Forum and Centre Region Parks & Recreation staff? Should the articles of agreement be updated? Should the WRRP project be postponed until after those legal relationships are clarified?
- Is it relevant that the YMCA is considering a massive fundraising campaign to build a regional sports park near Nittany Mall, and if so, how should that factor be incorporated into COG planning?

During discussion Dec. 19, Jim Steff said that in 2010, the COG municipalities “bought into six to eight grass fields” for Phase 1 of WRRP. Carla Stilson asked if the scaled back Phase 1, is “sellable to the municipalities as a regional park?”

During discussion Jan. 5, Tom Daubert said the Parks Authority should “take the money,” make all further design and construction decisions, and bring information to General Forum for updating purposes only. Sue Mascolo added that General Forum discussion of WRRP “will just stir them up.”

Bill Keough observed: "The reality is, we don't have the money from our taxpayers through our townships."

During discussion Jan. 12, Carla Stilson urged the municipal representatives to initiate in-depth discussions at their municipal meetings, but no formal resolution was adopted.

Bruce Lord said he would support a General Forum resolution to negotiate a loan extension or to pay back the loan and then rebid for a new loan, but that the draw-and-escrow plan sounded like “an end-run around General Forum,” calling it a “nice trick” that could “create bad blood,” and that that made him “very nervous.”

Sue Mascolo retorted that there were “no tricks” involved, and Lord replied that he wasn’t making accusations, he was simply observing that the maneuver gave the appearance of trying to avoid General Forum financial oversight. [Lord’s concerns were not reflected in the minutes of the Jan. 12 meeting approved by the Parks Capital Committee and Parks Authority board on Feb. 9.]

During discussion Jan. 19, Chris Hurley asked “Who decides about the funding?” Jim Steff replied that before General Forum could decide about funding, the Parks Authority needed to choose a design. Steff elaborated that in his “ideal world,” General Forum would vote unanimously to authorize Parks Authority board to draw-and-escrow the remaining loan funds, with a very specific picture of how much park their taxpayers money will purchase.

Hurley said it would be a “healthy thing to clear the air” by having a General Forum resolution, because “the funding at the end of the day is going to be up to the municipalities...We either make this plane fly with the fuel that we have, or it shouldn’t take off...It might be that the cost comes back too prohibitive to proceed.”

Parks Authority board member Diane Ishler asked Steff for information about how much had already been spent on design work since summer 2016, saying that she had not seen any billing statements and was “really nervous” about the fact that the Parks Authority board had no idea how much had already been spent.

During discussion Feb. 9, Dan Trevino asked about Plan B. Pam Salokangas replied that Plan A was to have been the full Phase 1 construction with the adjacent student housing developer paying for traffic improvements, paved access road and utilities. She said Plan B was the “exhaustive” effort to find a portion of the original Phase 1 plan small enough to be purchased with the available \$4.7-4.8 million but regional enough to be purchased by the participating COG municipalities. “What Plan C is, we don’t know,” Salokangas admitted.

During discussion March 9, Laura Dininni pointed out that under the proposed timeline for next steps in March and April, there is no provision for collecting and distributing municipal feedback on the design recommendation before the April General Forum meeting. Tom Daubert replied: “That should not be required. We’re doing too much of that.”

When the topic of a General Forum vote on a renegotiated loan came up, Steve Miller said that if the interest rate is changed through a renegotiation, “the parties paying for it have to approve it.”

Jim Steff observed: “This project has more uncontrollable unknowns than any project I’ve worked on.”

### *Traffic Issues*

The traffic impact study (TIS) to assess the traffic impacts for the Phase 1A plan and identify the intersections that will require upgrades, will cost \$19,000, Salokangas reported March 9. On March 16, the Parks Authority approved that cost but delayed starting the study for two months to wait for the results from the Toll Brothers appeal to Pennsylvania Commonwealth Court.

- Should COG taxpayers fund the TIS study through the approved loan, given that off-site traffic improvements were not in the approved 2010 master plan?
- Should the TIS be done now, or should it be postponed until the Toll Brothers appeal process plays out, in case Toll Brothers wins, builds the student housing complex, and pays for the off-site traffic improvements?
- If the TIS shows that several intersections must be upgraded, should COG taxpayers fund those upgrades in addition to funding the park itself, given that off-site traffic improvements were not in the approved 2010 master plan?
- Should proceeding be contingent on Ferguson Township taxpayers funding the off-site traffic intersection improvements at Bristol and Blue Course?
- Will Ferguson Township taxpayers pay for the off-site traffic intersection improvements at Bristol and Blue Course?

During discussion on Dec. 19, Carla Stilson asked if regional funding for off-site traffic improvements is “sellable.” Bill Keough asked: “Is this massive traffic expenditure literally a show-stopper?”

### *Water and Sewer Utility Issues*

The 2010 master plan stated that flush toilets in Phase 1 were required.

- Should COG taxpayers fund installation of water lines now, and install portable toilets at the park, or wait until the Toll Brothers appeal process plays out, in case Toll Brothers wins, builds the student housing complex and pays for water line installation and a sewage pump station?
- If COG can’t afford to install water, sewer and electricity, and flush toilets and a sewage pump station, is it still a regional park that complies with the terms of the 2010 master plan?
- Does the lack of a sewage pump station, and use of portable toilets, meet Ferguson Township sewage management standards? COG/DEP Act 537 Plan standards?

### *Access Road Issues*

- Should COG taxpayers fund a gravel access road now, or wait until the Toll Brothers appeal process plays out, in case Toll Brothers wins, builds the student housing complex, and pays for the fully paved access road?
- If COG can only afford to install a gravel access road, does that comply with Ferguson Township ordinances governing the standards for public roadways?

### *Purpose & Use Issues*

The original momentum for the regional parks came in 2001, with requests from sports clubs looking for public funding to create more sports facilities to serve local sports clubs and potentially regional tournaments. Also, soccer teams donated \$8,000 to the Parks Authority several years ago to fund a master plan amendment to add artificial turf fields. However, there is no COG policy connecting donations to priority use.

The costs to operate the regional parks and revenues from park use are not tracked yet, but CRPR staff are preparing to begin tracking those costs and revenues.

- Is the main purpose of the park to draw tourists for tournaments?
- If so, is that a purpose COG taxpayers should fund?
- Is there a valuable “trickledown” economic effect of tournament hosting, such that taxpayer costs will be recouped in public revenue?
- Should the regional parks support themselves through user-fees and controlled access, like the pools? If so, how?
- Is the main purpose of the park to provide playing fields for soccer, lacrosse and other rectangular field sports clubs?
- If so, is that a regional purpose all COG taxpayers should fund? Or is that a special interest?
- Could rectangular fields be built elsewhere in the region, for lower cost, to meet the needs of soccer and lacrosse clubs?
- Do private donations entitle private users to priority use of public facilities, and if so, how should that priority use be structured?
- Should addition of WRRP to the regional park portfolio be postponed until the income and expense data is available?

During discussion on Jan. 5, Betsey Howell of the Central Pennsylvania Convention and Visitors Bureau suggested the Whitehall Road park would be an economic boon to the townships. Tom Daubert replied that hotels and restaurants see a benefit from tourism dollars spent in the area, but municipalities get nothing other than the regular annual property taxes paid by hotel and restaurant owners which are not occupancy-based, because there's no locally-assessed hotel or alcohol pour tax.

#### *Programming Issues*

- Are CRPR staff already stretched too thin providing maintenance and programs for 55 parks, plus two pools, Millbrook Marsh Nature Center and the Active Adult Center?

#### CRITICAL ANALYSIS:

As stated above, most of the issues are political issues, not technical issues. As such, I believe they must be decided by elected representatives, not by staff, appointed boards, and consultants.

The bottom line questions are these: Can COG plan a project that's too complex and expensive for COG to carry out? Is it okay for elected representatives to realize a project is non-viable and abandon it to free up resources for other, more feasible projects?

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# BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

June 6, 2017

The battle for the Slab Cabin Run watershed and the ecological and political future of the Centre Region community.

By Katherine Watt

Part 10A of Slab Cabin Run water and farmland protection series.

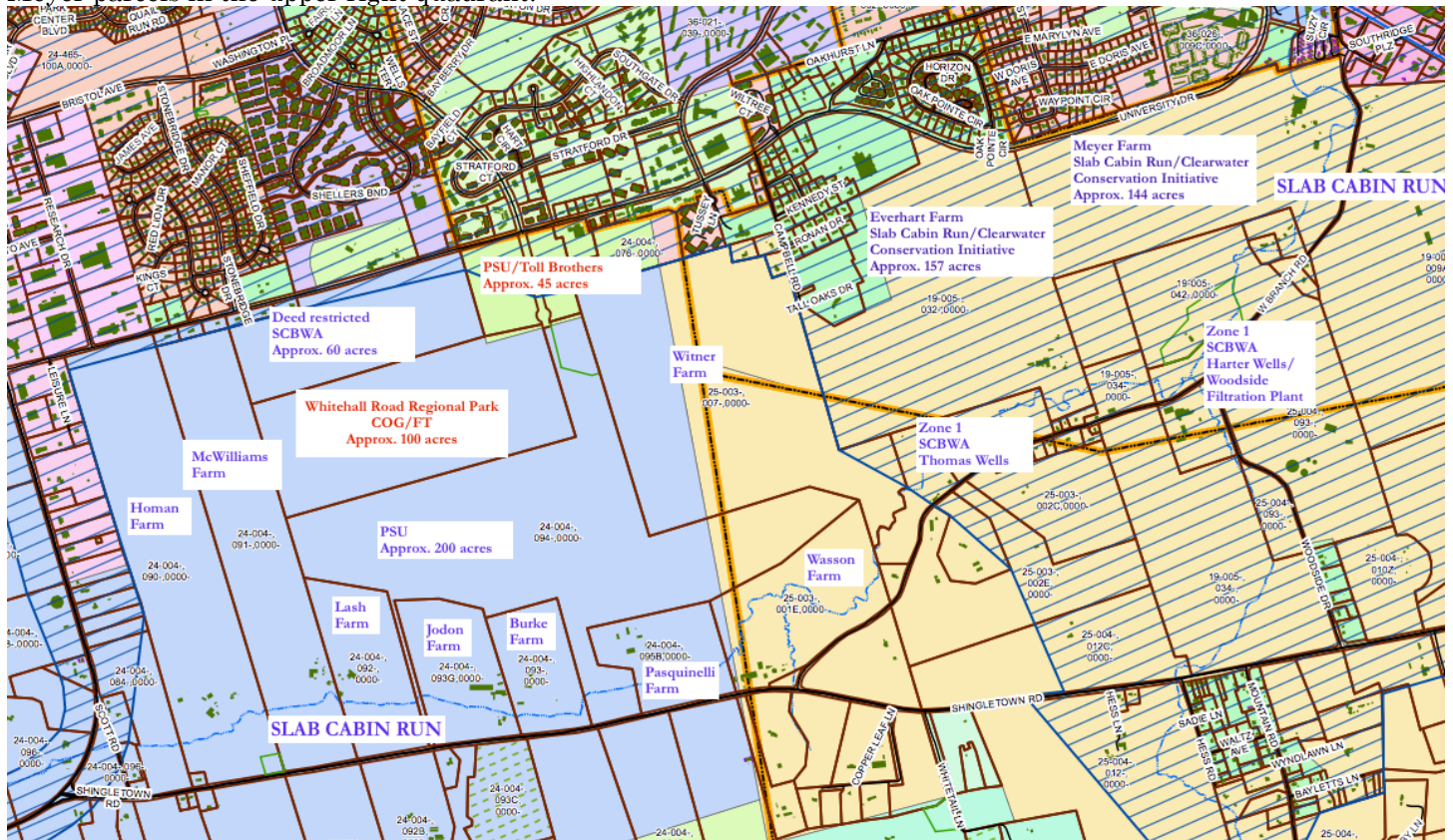
## INTRODUCTION

Laura Dininni and I co-authored a piece about the proposed Toll Brothers/Penn State student housing development, published in *Voices of Central Pennsylvania*, on April 1, 2015. We wrote:

“Scripted rollouts of these types of community-undermining projects are a depressingly common experience for municipal staff and elected officials, who have said that Penn State’s long-range plan is to fully develop more than 500 acres of university-owned land in the Slab Cabin Run watershed – traversed by an extension of Blue Course Drive between Whitehall Road and Route 45. “The Cottages” is just the tip of the spear.”

From the beginning, the fight for water and farmland protectors has been to keep the first dominos standing by stopping the Toll Brothers student housing and the COG Whitehall Road Regional Park developments.

The map below shows how the two development threats– the Penn State/Toll Brothers student housing and COG park – would, if built, breach a key water and farmland protection boundary, and put the surrounding sourcewater ecosystem and farmland at high risk for intensive-use development. On this map, readers can also see the two pieces of the ClearWater Conservancy Slab Cabin Run Initiative conservation campaign launched in October 2016: the Everhart and Meyer parcels in the upper right quadrant.



Map compiled with reference to a Centre County zoning map provided to Terry Melton in January 2017; 2004 State College Borough Water Authority Long Range Plan; 2007 SCBWA Sourcewater Protection Report; 2007-2008 Penn State/Sweetland Engineering subdivision plans on file with Centre County Recorder of Deeds; Nittany Valley Water Coalition's January 2016 large-format area map, and ClearWater Conservancy's October 2016 Slab Cabin Run Initiative map.

This tenth and final installment in the Slab Cabin Run watershed series begins with reporting on the 2007 land subdivision plan that created the link between the private student housing project and the public regional active sports park. The next section provides a recap of the regional review and funding process for the park over the last year, focusing on April and May 2017 events, up through the June 3, 2017 launch of a citizen occupation of the Penn State/Toll Brothers site.

Part 10B, to be published next week, will offer critical analysis of the issues.

### *2007 Sweetland Subdivision Plan – Forging the Link*

In June 2007, Sweetland Engineering produced a subdivision plan regarding five parcels of land comprising about 400 acres. The land to be subdivided included the R-4/multifamily residential land that had been rezoned by Ferguson Township in 2004 (by a 3-2 vote) at the request of landowner corporate Penn State, over the strong objections of regional planners and without review by independent hydrogeologists or the State College Borough Water Authority.

The area is traversed by an intermittent stream, riddled with sinkholes and sits upslope from the nearby Harter and Thomas public wellfields.

The Sweetland subdivision plan – combined with strategic subsequent land sales by Penn State – politically and financially linked the public park project to the private student housing development, to ensure that public officials would fight against community efforts to protect water and farmland, and in favor of private efforts to threaten water and destroy farmland, while corporate Penn State continued to occupy its weird semi-public, semi-private position, enjoying all the advantages of both classifications, while externalizing all of the costs.

The 2007 subdivision plan re-divided the five parcels into six new parcels.

The new Lot 2RRRR comprised about 200 acres lower down toward Slab Cabin Run, zoned Rural Agricultural. It is still being farmed, on lease arrangements with farmers working land owned by Penn State. As can be seen on the map, this parcel includes clear passage for an extension of Blue Course Drive from Whitehall Road to Shingletown Road.

The new Lots 3 and 4 comprised about 40 acres. This is the land now slated for the luxury student housing development, which has been under a sales contract from Penn State to “equity” owner Toll Brothers since 2012.

In 2013, a 5.5-acre portion of the 2RRRR parcel just below the student housing parcels and outside the Regional Growth Boundary was added to the Penn State sales contract, to be subdivided from the 2RRRR lot and used for stormwater detention basins supporting the adjacent high-density student housing.

The new Lot 5 contained about 60 acres, zoned Rural Agricultural, with frontage along Whitehall Road. This lot was sold by Penn State to the State College Borough Water Authority with deed restrictions for water protection in 2008.

The new Lots 6 and 7 included about 100 acres, zoned Rural Agricultural. These two lots were sold by Penn State to joint current owners Centre Region Council of Governments and Ferguson Township, in 2008 and 2011, for the Whitehall Road Regional Park development.

The crucial link between luxury student housing and the regional park is a series of notes in the 2007 subdivision plan requiring the developer of Lots 3 and 4 (the Penn State/Toll Brothers site) to install traffic improvements, an access road with utilities, and a sewage pump station to serve both the future multi-family development and the future park.

Notes 9, 10 and 11 required the developer of lots 3 and/or 4 “to submit a traffic study and traffic signalization plan for the Blue Course Drive-Whitehall Road intersection...which includes the design of Whitehall Road turning lanes to accommodate lots 3 and 4 if deemed necessary...and installation of traffic signalization if not previously installed...to design and install a sewage pump station to provide public sewer services for lots 3 and 4, and provide access to the pump station to lots 6 and 7 for park use only...and to install a cartway, sidewalks and street trees to township street standards, and public water main extension to the southern terminus of the 90’ Blue Course Drive right of way extension between lots 3 and 4.”

These three notes link the Toll Brothers/Penn State student housing project and the Centre Region Parks & Recreation Authority active sports park project.

And they are the source of a severe conflict of interest for public officials working through the Centre Region Council of Governments (COG), because they ensure that COG entities have a direct financial stake in the successful completion of the private luxury student housing – regardless of the well-documented public health and safety risks – to ensure private funding for traffic improvements, road access and water and sewer service connections for the proposed park.

This is why those who oppose the Toll Brothers project also oppose the sports park.

Right now, the rest of the land around the Penn State- and COG-owned parcels is zoned Rural Agricultural, and for intensive development to occur, the zoning would have to be changed by the Ferguson Township Board of Supervisors.

Tragically, there’s precedent for that: the 2004 rezoning from RA to R4 that made the Toll Brothers project possible to begin with. And there’s precedent for developers to use an existing development as a reason to allow adjacent rezoning. Bottom line: to protect the drinking water recharge area, productive farmland, Slab Cabin Run and the Regional Growth Boundary, our community must stop the student housing development, the Whitehall Road Regional Park project, and any other developments proposed for that farmland and the Harter-Thomas watershed.

## *Toll Brothers Housing Project Background & Spring Re-cap*

In 2015 – after enduring the 2011 Sandusky scandal and the 2013 Columbia Gas/Penn State pipeline fight, Centre Region residents were forced to mobilize for our own public safety against another Penn State threat, when we learned that Penn State had engaged in a sweetheart land deal with Toll Brothers developers to build 1,093-beds of luxury student housing units right on top of the groundwater recharge area for our public drinking water supplies.

We have no large lakes, reservoirs or rivers in the Centre Region. If our groundwater is contaminated, we're screwed.

And Toll Brothers has a horrible record of non-compliance with Clean Water Act regulations.

The planned residential development was tentatively approved by the Ferguson Township supervisors on March 2, 2015 and received final supervisor approval on Nov. 16, 2015, in a sequence of illegal maneuvers intended to help Penn State and Toll Brothers avoid proper municipal rezoning, subdivision, lot consolidation and zoning variance procedures.

Those maneuvers formed the basis for the Nittany Valley Water Coalition land use appeal filed in December 2015. Disclosure: I am a plaintiff on the land use appeal.

In July 2016, Centre County Court of Common Pleas Judge Jonathan Grine ruled in favor of the plaintiffs, finding that Toll Brothers, in collusion with the Ferguson supervisors, attempted to “end run” or unlawfully circumvent local zoning ordinances. Toll Brothers appealed to Commonwealth Court in August 2016.

The county court decision was reversed on May 17, 2017 on a procedural technicality. But the Commonwealth Court panel did not address the substantive underlying issue of whether municipal supervisors can rezone land through subdivision and lot consolidation without following the prescribed Pennsylvania Municipalities Planning Code zoning rules, the Centre Region Council of Governments Regional Growth Boundary/Sewer Service Area Implementation Agreement rules and Ferguson Township zoning ordinances.

## *Whitehall Road Regional Park Background and Spring Re-cap*

In the meantime, the Toll Brothers litigation forced COG elected and appointed officials to wrestle with two main problems derived from the tight link between the private student housing and the public park.

What should they do about the mismatch between available funding and construction costs, exacerbated by the loss of private developer funding for traffic improvements, water and sewer service, and paved access road construction?

What should they do about the June 1, 2017 final drawdown date for the Fulton Bank loan money originally borrowed on June 1, 2011 and renegotiated several times in the intervening six years?

COG efforts to answer these questions began with a July 7, 2016 feasibility study conducted by Stahl Sheaffer engineers and then circulated to elected officials for review.

On July 20, 2016, Patton Township supervisor George Downsborough stated: “The existing plan is broken” and advocated that the General Forum direct the Parks Authority to square the books, retire the loan and conduct a regional assessment of needs and resources to inform development of a new plan.

However, the July 25, 2016 General Forum meeting was the last time the General Forum members were permitted to discuss the many complex issues involved in the decision as a regional coordinating body, because the topic was restricted to “information-only” items on the September, October, November, January, February, March and April General Forum agendas. (The August and December General Forum meetings were cancelled.)

Also in July 2016, Maher-Duessel government auditors submitted a FY2015 audit package regarding the Centre Region Parks & Recreation Authority accounting.

The audit included a “Basis for Adverse Opinion on U.S. Generally Accepted Accounting Principles” section, which noted:

“To meet the financial reporting requirements of the Commonwealth of Pennsylvania, the Schedules are prepared by the Authority on the basis of the instructions provided by [the Pennsylvania Department of Community and Economic Development], which is a basis of accounting other than accounting principles generally accepted in the United States of America. These requirements permit the Schedules to be prepared without financial statement disclosures, without cash flows, and without Management’s Discussion and Analysis. The effects on the Schedules of the variances between the regulatory basis of accounting described above and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material.”

From investopedia: “...Adverse opinions are not a good thing for companies because it implies wrongdoing. An adverse opinion is a red flag for investors,” in this case, Centre Region taxpayers.

The auditors’ findings have been completely ignored by COG General Forum and Finance Committee members, at least in public settings, and did nothing to deter a majority of General Forum members from tacitly endorsing (on May 22, details below) continued Parks Authority board access to a \$4.8 million Fulton Bank line of credit to build a regional action sports park on the watershed, to be paid back with \$1.4 million in interest by regional taxpayers.



To break the public debt burden down further, in October 2016, I asked COG Finance Director Joe Viglione for data about the budget impacts of Downsborough's July 20 proposal, which would have left taxpayers on the hook only for paying off the principal and interest for the funds spent up to this point on Oak Hall Regional Park Phase 1 and Hess Field.

Viglione provided documents showing that the principal and interest on the completed Oak Hall and Hess projects would be paid off by roughly December 2019. The financial reports further showed that, if the Whitehall Road project were abandoned, for the 12 budget years between January 2020 and December 2031, the five participating municipalities would save about \$6.2 million in principal (\$4.8 million) plus interest (\$1.4 million). That equals about \$520,000 per year for the region. The \$6.2 million total would be saved by the municipalities roughly as follows: \$1.75 million by Ferguson Township, \$1.46 million by State College, \$1.32 million by Patton Township; \$1.13 million by College Township, and \$590,000 by Harris Township.

For further financial context, there has been no public discussion to identify sources for annual WRRP operating costs of about \$234,000 per year after construction, nor for Phase 2, 3 and 4 construction, nor – if plans for artificial turf fields move forward – for \$2.2 million in turf replacement costs required every 7 to 10 years.

Moving along.

In December 2016, the General Forum took action to appoint an ad hoc WRRP reworking committee, to address the Phase 1 funding shortfall driven by the delay in the adjacent student housing development, and to address the looming deadline for the drawdown of the Fulton Bank line of credit.

At a January 2017 ad hoc committee meeting, then Parks Authority chair Sue Mascolo publicly whined about the fact that voters in COG municipalities had elected new representatives on their legislative councils and boards in the last couple of years, representing different community priorities for taxing and spending decisions, and replacing many of the representatives who had approved elements of the WRRP plans over the last decade. Some of the new representatives don't support the long-term, multi-million dollar, multi-phasic plans that the old representatives supported.

In Mascolo's staggeringly entitled view – expressed at the meeting – this is a flaw in the new supervisors and the voters who elected them, rather than a healthy sign of changing voter priorities under changing social, political and economic conditions, and responsible use of the electoral system to address those changing conditions.

Her concerns were simply for show, however, because she and then-Parks Capital Committee chairman Tom Daubert, along with COG Executive Director Jim Steff, CRPR Director Pam Salokangas and Ferguson Township Board of Supervisors Chair Steve Miller, continued to carefully, quietly restrict the range of motion available to local legislators, through continued use of information-only agenda items at General Forum meetings, coupled with dissent-suppression at committee-level and municipal-level meetings.

These tactics were used in direct contradiction to Steff's oft-stated views about the consensus-building, conflict-resolution purpose of the COG in general, and General Forum in particular.

#### *April 2017*

While officials, plaintiffs and the general public waited for the Commonwealth Court decision, the ad hoc WRRP planning committee held its third and final meeting in April. Observers heard side-comments and saw changed body language by Salokangas and others suggesting that someone had pulled strings to get a park-favorable decision from the three-judge Commonwealth Court panel.

In any case, to observers, park proponents seemed otherwise inexplicably more relaxed about the budget issues, more confident that the cost pressures and the loan renegotiation process were well under control.

As it turned out, their confidence was well placed.

Without General Forum review or authorization vote, the "advisory" COG Finance Committee on April 13 retained Chris Gibbons of Concord Public Finances for \$5,000 to begin private negotiations with Fulton Bank representatives about extending the loan drawdown date again.

CRPR Director Pam Salokangas appeared at the April 24 General Forum meeting to give yet another information-only presentation to legislators on Whitehall Road Regional Park.

Salokangas described the revised design plan selected earlier in April by the ad hoc WRRP working group. Under the amended "Option 1A" design, the Parks Authority, acting as a land developer using public funds, would build on 38 acres of the original 75-acre Phase 1 site.

Contractors would grade the area and install three playing fields, one practice field, 250-275 parking spaces and a playground, plus a walking trail. Off-site work would include gravel access road construction, installation of water and electrical lines, and upgrades to three nearby traffic intersections. With no public funding for installation of a sewage pump station to serve flush toilets, portable toilets would be brought onto the site for public use after the park opened.

If the fields were to be grass, the total budget for the scaled back "1A" project was presented as about \$800,000 over the available \$4.8 million in loan-based public funding from COG taxpayers. If two of the fields were to be artificial turf with electric lights, that would add about another \$2.7 million, making the total projected overrun about \$3.5 million and the total Phase 1A project cost about \$8.3 million.

Salokangas also presented a pay-to-play kicker. To make up the funding shortfall without asking COG taxpayers for more (because some electeds have made clear that they're tapped out), Salokangas said she'd been making the rounds to private entities – mostly soccer, lacrosse and other rectangular sports clubs, and the Central PA Convention and Visitor's Bureau – asking for "donations."

But her contacts with those private "donors," including what she'd offered them in terms of access and what they'd offered her in cash, were described as "proprietary" information that she was not at liberty to share with local elected officials or the general public.

In response to a question from Ferguson Township Supervisor Peter Buckland, Salokangas admitted that the tentative verbal agreements gave the private "donors" about 30-40% use of the playing fields, leaving 60-70% for Centre Region Parks & Recreation programs and general public use. Further, general public groups interested in using the fields would likely have to pay a rental fee.

*May 2017*

On May 11, there was a joint meeting of the COG Finance Committee, the COG Parks Capital Committee, and the Centre Region Parks & Recreation Authority board, along with CRPR Director Salokangas, COG Executive Director Steff, COG Finance Director Viglione and Concord Public Finance consultant Gibbons.

It was 16 years into the park project triggered by a 2001 request from some soccer clubs, and still, no one at the meeting could express a clear understanding of which governmental entity had the authority to fund or not fund the project when the current loan and guarantee agreements expired as of June 1, 2017.

Instead, just about every official who spoke at the meeting used the phrases "we can decide," and "our decision," without specifying which "we" they were referring to. They were relying on analysis by conflicted solicitor Terry Williams, who simultaneously represented a good chunk of the loan collateral (taxes encumbered through the elected State College Borough Council), the borrowers/developers (appointed Parks Authority) and the pass-through agency (COG).

George Downsborough, Patton Township Supervisor, made some comments reiterating Patton Township's general support for the project, but urging the party empowered to close the loan – whoever that might be – to close the loan, work through the myriad remaining hurdles, and then take out a new loan if and when the project's scope and path forward become clear.

Downborough was told that General Forum wouldn't have any more opportunities to legally re-pledge taxpayer funds for an extended loan. General Forum would only have an opportunity to ritualistically "ask" the Parks Authority to re-pledge taxpayer funds for an extended loan.

There was no discussion of what would happen if the ritual "ask" failed to get a majority of either individual or unit votes at the May 22 General Forum meeting; or if there were no motion made or seconded to entertain the "ask"; or if there were no quorum of legislators present at the May General Forum, leaving the Parks Authority without the fig leaf of legitimacy to sign loan documents purporting to have the legal authority to encumber taxpayer funds after that June 1 deadline.

After the non-discussion May 11, State College Borough Council Chair Tom Daubert of the COG Parks Capital Committee made a motion that Parks Capital endorse the General Forum ask to the Parks Authority to extend the Fulton Bank loan for another three years: June 1, 2017 to June 1, 2020. College Township Councilwoman Carla Stilson seconded the motion. Daubert added some language proposing the various boards and committees who may or may not have the authority to close or extend the loan further, discuss it again by June 1, 2018, if no construction contracts have been signed by then.

For COG Finance Committee, College Township Councilman Rich Francke made a similar motion, and Harris Township Supervisor Bud Graham seconded it.

Ferguson Township Supervisor Laura Dininni – speaking as a citizen only – made extensive comments about the enormous procedural open governance due process violations that have occurred: most crucially the repeated refusal of agenda-setters at General Forum (Eric Bernier in 2016 and Tom Daubert in 2017) and Ferguson Township (Steve Miller) to allow frank and open discussion among legislators of the myriad complex governance and financial issues in play, from last July until the present.

The two committees then voted.

The Finance Committee vote was 3-2, with Graham, Miller and Francke voting "Yes," and Evan Myers (State College) and George Downsborough (Patton Township) voting "No." The Parks Capital Committee vote was 3-2, with Daubert, Stilson and Janet Whitaker (Ferguson Township) voting "Yes," and Bruce Lord (Harris Township) and Downsborough - standing in for Dan Trevino (Patton Township) voting "No."

COG staff then announced that they had already retained bond counsel Jens Damgaard to prepare the loan extension documents ahead of the May 22 General Forum meeting, *before* the Finance and Parks Capital committees had even voted on whether to recommend General Forum "ask" the Parks Authority to proceed.



The May 16 COG Executive Committee meeting was cancelled and rescheduled for May 17, at the College Township municipal building rather than the usual COG building.

At the Executive Committee meeting, Salokangas announced the Commonwealth Court ruling and handed out copies of the decision, which rewarded the confidence of those who had appeared visibly relaxed by mid-April. The Commonwealth Court panel found in favor of the developers, and against the homeowners and farmers, focusing on the 30-day window of time for appeal after the March 2, 2015 "tentative planned residential development" approval by the Ferguson Township Board of Supervisors.

If allowed to stand, the Commonwealth Court decision sets a very interesting precedent: that a municipal legislature may repeal or amend any portion of municipal zoning laws not only by the two traditional methods: legislative amendment or by waiver procedures before the Zoning Hearing Board, as set forth in the PA Municipalities Planning Code, but also through the approval of a "tentative" land development plan that includes the zoning amendment, so long as the local legislature isn't caught doing so and formally challenged by alert citizens within 30 days of the "tentative" act. If they make it 30 days without being caught, the zoning law change stands.

The remainder of the Executive Committee discussion on WRRP on May 17 was an awkward shuffle toward endorsing a version of the "ask" recommended by the Finance and Parks Capital committees by 3-2 split votes at their joint May 11 meeting, for inclusion on the May 22 General Forum agenda. At one point, Patton Township Supervisor Elliot Abrams referred to the Daubert stipulation regarding review as a non-binding "red herring" intended to gain legislator support for an otherwise unpopular General Forum move, particularly if split off from the main resolution as recommended by bond counsel Damgaard, conveyed via Steff. The Executive Committee endorsed the two-part agenda item.

Meanwhile, the May 18 Parks Authority meeting was cancelled and rescheduled as a special meeting for May 24, to ensure that it would take place *after* the General Forum meeting but *before* the June 1 refinance deadline.

On May 22, the General Forum voted as expected, on a resolution "asking" the Centre Region Parks & Recreation Authority to revise the loan from Fulton Bank, originally obtained in June 2011, and then spend it for the proposed-but-unbuilt Whitehall Road Regional Park that 74% of 1,037 respondents to a November 2008 Centre Region Parks and Recreation survey said they didn't want.

Under conflicted-solicitor Terry Williams' legal analysis, gently endorsed for General Forum members by bond counsel Damgaard and finance consultant Gibbons, the last time General Forum had a legally binding role to play in the project was in April 2011, when the representatives serving at that time adopted the original municipal guarantees.

According to that theory, the original guarantees had no expiration date, and all of the intervening General Forum "votes" held Nov. 28, 2011, Dec. 18, 2012, May 27, 2014, and Nov. 23, 2015, were equally legally meaningless.

And, according to that theory, the only binding decisions since April 2011 had been made at Parks Authority meetings by appointed representatives, and the next binding decision would be made at the special May 24 meeting of the Parks Authority board.

General Forum attendance was spotty: Evan Myers and Jesse Barlow were absent from the State College delegation, and Abrams was absent from the Patton Township delegation.

Once again, by Daubert diktat, General Forum members were explicitly forbidden to discuss any park-related issues outside the narrowly-written motion "asking" the Parks Authority to move ahead, thus putting the lie to the litany of public promises made since August 2016 that there would be eventual broad, deep legislator deliberation before the project could move forward.

The vote on the measure was roughly 18 - 4, with Halfmoon Township abstaining. The four "No" votes were cast by Laura Dininni and Peter Buckland of Ferguson Township and David Brown and Janet Engeman of State College.

The 18 "yes" votes were cast by representatives who apparently believe \$6.2 million is a good price for Centre Region taxpayers to spend on a gravel road and about 65% access to three soccer fields and some Port-o-Potties.

That, or it just didn't matter to them one way or the other, since they knew their votes were meaningless.

Oddly, there was a palpable frisson of relief in the air around Daubert and Steff when they finished counting the votes and confirmed that despite four "No" votes, all five voting units had managed to provide quorums and obtain majority "Yes" votes: 3-2 for both Ferguson Township and State College.

In due course on May 24, the Parks Authority board met. State College representative Jim Dunn was absent. Steff handed out a series of purportedly legal documents, and announced that earlier in the day, Daubert had signed a copy of a version of a document memorializing the May 22 General Forum "vote."

Laura Dininni and I both expressed skepticism at the legality of the proceedings, but the Parks Authority board members appeared to be comforted by Steff's reassurances that bond counsel Jens Damgaard had prepared the documents and therefore implicitly believed the deal to be legitimate.

A few moments later, the Parks Authority board members in attendance voted 5-0 to approve/ratify/adopt the documents, and authorize Chair Chris Hurley and Secretary Kathy Matason to sign them.

The revised loan documents left intact Section 3.04 from the original 2011 loan contract, which states:

"The Authority shall have the right at any time, at the direction of the COG, to prepay without premium or penalty of any kind, all or any portion of the outstanding principal balance of the Authority bond."

“At any time” could theoretically be as soon as the June 2017 General Forum meeting.

On May 26, Nittany Valley Water Coalition plaintiffs decided to appeal the Commonwealth Court decision to the Pennsylvania Supreme Court, petition corporate Penn State to break the sales contract with Toll Brothers, and launch an occupation of the development site.

The occupation began Saturday, June 3.

# BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

*June 13, 2017*

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## **The battle for the Slab Cabin Run watershed and the political and ecological future of the Centre Region**

By Katherine Watt

Part 10B – final installment – of a 10-part series on water and farmland protection in the Slab Cabin Run watershed.

### INTRODUCTION

For the last five decades, corporate-directed Penn State enrollment growth, state legislature blind-eye turning, and local government-enabled private housing development have been simply the way things are done around here.

And they've been done without explicit reference to the tightly linked ecological and political carrying capacities of the Centre Region.

Both systems are groaning under the strain of rapid growth, and we're at an ecological and political turning point.

These are not conservative or liberal issues. People across the political spectrum value clean water, rural heritage and thriving farm economies, and responsive, accountable, transparent public governance.

Fights like the Battle of Slab Cabin Run flare up between the people who live in a specific place and time, and care about ensuring it can support the generations following in their footsteps, and people who care only about maximizing the wealth they can extract from it.

The Slab Cabin Run water and farmland protection fight serves as a useful case study in government corruption and perverted land use planning in the Centre Region.

But it's by no means the only part of community life so corrupted. It's just the one I spent time researching first, sitting as it does at the intersection of many crucial regional issues, including corporate Penn State's undue and publicly unaccountable influence over our local political economy, especially through institutional enrollment decisions, land flipping and zoning interference; Nittany Valley hydrogeology, public water systems, and farmland preservation; approaching limits on sewage treatment and effluent discharge capacity into Spring Creek; compromised regional planning frameworks; and stressed municipal budgets.

In just the last few years, year-round local households and business owners and transient Penn State students have lived through an erosion of trust in public relationships, especially the breakdown in trust between corporate Penn State and those subject to its private decisions.

We've faced at least four such corporate-community assaults, from the Sandusky child rapes and the Columbia Gas pipeline threat to the Toll Brothers/Centre Region Parks & Recreation Authority water and farmland threat and the hazing death of Tim Piazza.

This breakdown in trust between the governed and the government is not unique to Centre County in the late 20<sup>th</sup>-early 21<sup>st</sup> century.

If we want to protect this place for the future – as many, many people who live or visit here do – then we need to start by clearly seeing what we actually have right now.

We currently live with two illusions. Corporate Penn State postures as a public university – hiding behind the well-deserved professional reputations of its faculty – when in fact, for at least the last 20 years, it's functioned more as a profiteering business corporation.

The Centre Region Council of Governments postures as voluntary coordination organization when in fact, for at least the last 20 years it's functioned more as a racketeering system operated by land developers including Penn State.

Here as elsewhere, a big part of the solution is being put in place as citizens learn to trust ourselves and our sense of belonging to the places where we live, and then learn to trust each other, to build networks of social support and counterweights to non-benevolent corporate dictatorships.

That's what's happening through the Battle of Slab Cabin Run. With time out of our lives, letters and signs, tents and bodies and voices, we're writing a meaningful new story about who makes up this community and what we stand for, that fits the facts on the ground better than the corporate platitudes spouted by Penn State spokeswoman Lisa Powers and Penn State President Eric Barron.

What's left when the illusions are pushed aside? A cold-water trout stream, a handful of local legislators, a few brave attorneys and local judges with a little integrity left, and a groundswell of local year-round residents (largely Penn State faculty and staff and their children) and business owners, students and alumni, whose historic, silent fear of corporate

Penn State retaliation is slowly turning into clear public demands for our values, needs and interests to take precedence over corporate profit in our shared public life.

### *Outline*

After a couple remaining housekeeping items, covering two current behind-the-scenes conversations about the Penn State/Toll Brothers/Whitehall Road Regional land development plans, this report will offer a broad brushstroke overview of the geological and human history of the Centre Region, followed by a decade-by-decade account of water/sewer system development, land development, Penn State enrollment, population growth, and political systems.

The series concludes with critical analysis, laying the foundation for future coverage of land use planning, water and sewer systems, and government/Penn State corruption.

### *Safety assertions without supporting evidence*

High-level Penn State administrators and at least one SCBWA board member have been angrily insisting – mostly in private conversations with Nittany Valley Water Coalition (NVWC) representatives – that the development plans for the student housing complex and the active sports park present no risk to public water supplies.

No credible research or consulting scientist has attached his or her name to that assertion in public, however, because the assertion is absurd and scientists value their professional reputations.

When pressed, these high-level local and Penn State officials have admitted that there are no hydrogeological studies specifically assessing the risks posed to the Slab Cabin watershed by development activities at the sites of the proposed Toll Brothers housing complex and Whitehall Road regional action sports park.

A lack of studies is not affirmative evidence of safety.

For the counter-argument, the available studies include decades of hydrogeological research into the complex, interconnected karst limestone subsurface structure and water flows in the Nittany Valley.

The available studies include a 2003 PA Department of Environmental Protection (DEP) report that found that the two main risks to the State College Borough Water Authority (SCBWA) Thomas and Harter wells are “transportation corridors” and “residential and light commercial land development.”

The available studies include 2005-2006 SCBWA dye trace testing along Slab Cabin Run near the two development sites, that showed rapid dye uptake into the Thomas and Harter wells.

The available studies include 2013-2014 CMT Laboratories infiltration analyses at the Toll Brothers site. For those, consultants were forced to use non-standard testing protocols because of the shallow depth to bedrock, and concluded, among other things,

“altering a site’s grading and drainage characteristics can result in sinkholes developing even when surface/subsurface observations reflect little or no potential...the risk of sinkholes developing in carbonate bedrock/karst areas as a result of stormwater infiltration [Best Management Practices] is inherent.”

The science is not unclear. The fractures in the bedrock under the Toll Brothers and Whitehall Road Regional Park sites send stormwater straight into Slab Cabin Run and the related subsurface flows, and from there into the public wells.

What’s been muddied is the weight to be given to the obvious risks of development in the Slab Cabin watershed, a muddying process that began in 2004 when the Ferguson Township Board of Supervisors ignored a cacophony of warnings from regional land use planners and rezoned 26 acres of Rural Agricultural land to R4 multifamily housing at corporate Penn State’s behest.

From at least the late 1960s to September 7, 2004, our community had a fairly strong de facto precautionary principle in place: the Ferguson Township RA zoning, alongside a series of COG comprehensive plans designating the watershed farmland as an “agricultural security area” outside the Regional Growth Boundary.

The nonpartisan public interest in safe drinking water supplies hasn't changed across those years, and the science about the risk profile hasn't changed either.

The only thing that's changed is the risk tolerance of a handful of well-placed Penn State administrators and Ferguson supervisors, in response to the large private profits to be reaped from accepting higher risks on behalf of an unwilling public.

### *Comparative risk – agricultural runoff v. development*

To the extent that local officials make any attempt to address the risk profiles, they’ve sometimes alluded to the contamination already entering the public water supply through herbicides, pesticides and fertilizers (including manure) applied to farm fields in the watershed.

The point is well made.

But the follow-up proposition – that therefore housing and active sports park development would be better for public health than continued farming, is false choice garbage, akin to hitting one’s head with a hammer to lessen the pain of a stubbed toe.

So long as the agricultural soil structure remains intact, farmers can choose to convert to low-chemical or organic and sustainable farming practices.

But once the soil is clear-cut, bulldozed, paved and built up, it’s gone forever.

Preventing that soil loss, more than any other factor in this whole controversy, is what motivates me personally. I want all of that Slab Cabin watershed land available for decades into the future for sustainable agriculture to feed the local population. That’s not what it’s used for now, but if it remains in agricultural production of any kind, it can someday be cultivated into a proximal community Victory Garden: a food and water hedge against hard times that are already upon many of us, and will soon overwhelm many more. (See sidebar).

Housekeeping aside, what follows is a deep dive into where we are, where our water is, and how human-habitation and water source relationships have evolved over time.

### *Where are we?*

The Nittany Valley formed between 325 million and 260 million years ago, during the Alleghanian-Appalachian orogeny of the Carboniferous to Permian periods. The orogeny, or smashing together of pieces of the Earth’s crust, formed the Appalachian and Alleghany mountain ranges, when Africa collided with North America to form Pangaea. Nittany Valley is an “eroded anticlinal valley,” meaning it has a folded subsurface that has the oldest beds at the core. (Wikipedia)

According to accounts at the Centre County Historical Society website, the earliest human inhabitants of the Centre Region were Native Americans of the Delaware, Shawnee, Mingo and Iroquois tribes, “planting the valleys in corn and squash, and hunting in the ridges.”

Their food was not delivered in petroleum-powered semi trucks from California, and their water didn’t come in plastic bottles.

William Penn took ownership of the land and sold parcels to settlers in the 1760s. In the late 1700s and early 1800s, those settlers established farms and mined iron ore, which was processed in furnaces, including Centre Furnace, built in 1791. They cleared thousands of acres of trees to burn wood to make charcoal, and used the local surface streams to power the bellows, grist and flour mills, sawmills, woolen mills and tanneries, and to supply distilleries and breweries.

Their food also was not delivered in gas-powered semi trucks from California, and their water didn’t come in plastic bottles.

The region became the primary iron-producing region in the country between 1800 and 1850. By the time coke-fired production of iron in Pittsburgh and Cleveland shut down the last charcoal-fueled furnace in Centre County in 1858, the “gentlemen farmers” had set things in motion to establish the Farmers High School, which has grown into the corporate behemoth now known as Penn State University.

### *Where is our water?*

Nestled in the Nittany Valley, the State College area population depends on groundwater for public water supplies. We are a dense human habitation of about 100,000 people with no large lakes, rivers or reservoirs nearby, which is extremely unusual.

Instead, the entire community from Pine Grove Mills to Milesburg sits at the top of the watershed, on a fragile and complex limestone network of tunnels containing underground springs and streams that run from Shingletown Gap, through a valley bounded by Tussey Ridge on the southeast and Bald Eagle Ridge on the northwest, out through Milesburg Gap.

These underground springs and streams rise to the surface and sink back underground through crevices in the carbonate bedrock geology to create Slab Cabin Run and Spring Creek. The time the water spends underground is the reason why those two waterways can support cold water fisheries.

Slab Cabin Run traverses the Centre Region, as an 11-mile tributary feeding Spring Creek at Houserville. Spring Creek then joins Bald Eagle Creek, which joins the West Branch Susquehanna River, which joins the Susquehanna River, which flows to the Chesapeake Bay.

The upper Slab Cabin watershed between Pine Grove Mills and State College Borough is the area around the Thomas and Harter wells, where Penn State intends to sell land to Toll Brothers for student housing development, and where the COG has given the Parks Authority funding to build an active sports park.

According to Walter Ebaugh, a retired hydrogeologist who founded Nittany Geoscience Inc. and now serves on the University Area Joint (Sewer) Authority (UAJA) board, roughly 100 million gallons of water flow under our feet every day. Of those, about 10 million gallons per day are intercepted through public, university and private water wells, used in homes, businesses, schools, hospitals and churches, and then discharged through sewage treatment plants, Penn State’s

spray irrigation system, and the UAJA “beneficial reuse” system including the Gordon D. Kissinger Meadow wetlands, which replenishes Slab Cabin Run near the Hills Plaza Shopping Center on South Atherton.

There are currently seven SCBWA wellfields: Thomas, Gray’s Woods, Harter, Nixon, Chestnut Ridge, Alexander and Kocher. Of those, Thomas and Harter are the oldest, drilled in the 1940s and 1950s as local officials began to realize that surface water wasn’t able to provide enough to meet demand.

The Thomas and Harter wells are also among the shallowest – requiring the least electrical energy to pump the water up from underground – and the most voluminous, with capacities of 18.3 million gallons per day for the Thomas wells and 8.5 million gallons per day for Harter wells.

### *Water & Human Cohabitation: Political History*

#### 1960s and 1970s

In the 1960s and 1970s, the regional population jumped from 35,100 in 1960 to 53,600 in 1970, to 62,000 in 1980. Driving the overall population, Penn State enrollment grew from 16,200 in 1960 to 26,000 in 1970 to 33,800 in 1980.

Penn State researchers began looking harder at the local water situation, to locate other places to drill with a high probability of striking productive water flows. Two of the leading researchers were Richard Parizek and Todd Giddings, who both published several papers on the unique underground aquifer of the Nittany Valley.

An apartment construction boom accompanied the enrollment growth, pushing the edges of human habitation out into farmland and forests, replacing them with homes, roads and parking lots. Off-campus housing with more than 100 beds built in that period included Briarwood Apartments in 1958, Parkway Plaza in 1960 and Executive House in the late 1960s. Nittany Gardens, Lions Gate Apartments, Toftrees, Vairo Village, Allenway, Armenara, Penn Tower, Alexander Court, Cedarbrook and Beaver Hill Apartments came along in the 1970s.

Each new occupied bed adds 8 to 12 pounds of nitrogen per year to the local wastewater treatment stream through food processing, urine, and feces, a hard fact unaffected by water-saving toilets, showerheads and appliances.

To deal with the increasing ecological challenges of a growing sewage flow, local officials used public funds to create the University Area Joint (Sewer) Authority in 1964 and constructed the UAJA Spring Creek Pollution Control Facility (wastewater treatment plant) off Shiloh Road, put into operation in 1969 to protect clean water downstream of State College in Bellefonte and beyond, all the way to the Chesapeake Bay.

To deal with the increasing political challenges of governing a growing population, in 1969, local officials formed the Centre Region Council of Governments (COG).

Corporate Penn State owns and operates a separate wastewater treatment plant, off University Drive, which is permitted to treat up to 4 million gallons per day of wastewater primarily from the University Park population.

Penn State also has at least three unelected but voting representatives on COG committees. Rob Cooper of the Office of Physical Plant votes on Transportation and Land Use. Steve Watson of OPP votes on the Planning Commission. Charima Young, Director of Local Government and Community Relations, votes on Parks Capital.

Apart from limited contributions to support regional fire and emergency services, corporate Penn State does not fund COG budgets; taxpayers in the six participating municipalities do. And corporate Penn State does not pay property taxes on university-owned land or buildings within the six participating municipalities; the institution is tax-exempt and pays a limited “fee-in-lieu” of about \$600,000 per year to the Borough of State College. This arrangement saves corporate Penn State \$3.2 million per year, shifting the cost burden for public services to local taxpayers.

#### 1980s

In the 1980s, Penn State began an “experimental” program to handle the sewage flow from the increasing student population living on campus in the dormitories. The program involved spraying treated sewage wastewater in the Fox Hill Road/State Game Lands 176 area. Although the system does not comply with the PA Department of Environmental Protection Manual for Land Treatment of Wastewater – standards to which other public sewage treatment plants using land application for disposal are held – DEP has regularly renewed Penn State’s permits ever since.

In the late 1980s, the DEP imposed a moratorium on Centre Region building permit issuance, subdivision approval and installation of new on-lot septic systems, in response to a 1987 report submitted by UAJA showing a hydraulic overload. The overload was not a permit violation, but it did require responsive action by the participating municipalities to figure out how to provide the needed capacity.

1990s

The COG municipalities decided to do a regional Act 537 Plan (more below) to address public sewage treatment planning and on-lot sewage system management, instead of individual plans. Act 537 plans are derived from 1966 state legislation adopted to correct existing sewage treatment problems and prevent future problems.

The COG Act 537 planning process coincided with ongoing UAJA planning for a plant expansion to be able to handle up to 6 million gallons per day (annual average).

The construction moratorium was lifted in 1990, when the COG General Forum adopted a DEP-approved regional Act 537 plan.

The 1990 COG Act 537 Plan identified “sewer service areas” as land parcels to be served in the future by public sewer service. It was adopted alongside a 1990 regional “comprehensive plan” laying out “future growth areas,” which overlapped the identified sewer service areas.

However, corporate Penn State was not then, and is not now, required to participate in the Act 537 planning process, leaving the 4 million gallons per day of Penn State wastewater unaccounted for in regional capacity planning. Instead, Penn State’s system was simply described in the 1990 plan, as handling university and some State College sewage. Penn State’s plant was not overloaded, so even during the DEP moratorium, on-campus construction and some off-campus construction went forward.

In the 1990s, private developers added the Meridian, Nittany Crossing Park Crest Terrace, Nicholas Tower, Lions Crossing and State College Park to the local supply of student apartments.

And the regional population grew from 70,600 in 1990 to 79,400 in 2000.

However, as the decade unfolded, there were several changes in how sewage treatment plants in general – and UAJA in particular – were permitted to operate. By 1992, UAJA had completed upgrades to enable treatment and discharge of up to 6 million gallons per day into Spring Creek, as permitted under a National Pollutant Discharge Elimination System (NPDES) permit.

But in 1994, the Spring Creek Chapter of Trout Unlimited appealed UAJA’s NPDES permit, on the grounds that the large volume of warm water entering Spring Creek was reducing available oxygen and stressing cold-water fish populations: problems likely to intensify with increased discharge.

At the same time, increased pumping of groundwater upstream from SCBWA wells, to supply the growing population, was reducing the baseflow in Slab Cabin Run and Spring Creek, because of the complex connections between surface and subsurface flows.

The baseflow reductions further endangered fish and other wildlife populations.

In 1996, local officials began reviewing wastewater treatment alternatives to handle the increasing demand brought on by rapid population growth without increasing the average daily discharge volume into Spring Creek. One of the options they reviewed was “beneficial reuse,” which would require building a plant to purify wastewater to very high standards, build pipelines, and pump the water back upstream for non-potable uses and discharge into constructed wetlands supporting Slab Cabin Run.

In 1997 UAJA and two other local sewer authorities, the College-Harris Joint Authority and the Patton-Ferguson Joint Authority, unified.

In 1998, the thermal impact study of the effects of UAJA discharge into Spring Creek on fish and other wildlife concluded, and the DEP permanently capped UAJA discharge at 6 million gallons per day.

In July 1999, DEP published new anti-degradation regulations, eliminating all but two of the 14 original wastewater management alternatives from consideration. One of the two remaining options was the beneficial reuse program.

In August 1999, Bank of New York Mellon sold land to corporate Penn State, situated near the intersection of Whitehall Road and Blue Course Drive. At the time of sale, the land was in the identified recharge area for the Thomas and Harter wells, zoned by Ferguson Township as low-density Rural Agricultural land, outside both the COG Regional Growth Boundary and the Act 537 Sewer Service Area.

This is the land Nittany Valley Water Coalition activists are currently occupying, to block the fall of the first dominoes in a high-density residential cascade.

2000s

In 2000, the COG General Forum adopted an updated Act 537 Plan, selecting beneficial reuse as the preferred option for regional sewage management and setting out new boundaries for the sewer service area, to contain new construction and protect surrounding fields and forests.

The planned beneficial reuse system would eventually pipe treated water back upstream into the upper Slab Cabin watershed, to recharge the depleting aquifer and the surface flow in Slab Cabin Run.

The legal effect of a regional Act 537 Plan is binding: it constrains the actions of the sewer authority until the next update is adopted, limiting construction to infrastructure identified in the active plan.

That same year, General Forum adopted an updated Comprehensive Plan, reinforcing the SSA boundaries with Regional Growth Boundaries, again, to contain new construction near existing infrastructure and protect water quality and crop production capacity. The 2000 Comprehensive Plan specifically identified the recharge area for the Thomas and Harter water wells.

Unfortunately, regional comprehensive plans are not binding on the participating municipalities or landowners. Enforcement of regional priorities can *only* be achieved through adoption and enforcement of municipal zoning law.

In 2001, citizens approached the Centre Region Recreational Authority, which approached the COG, about growing demand for fields for organized sports such as soccer and lacrosse. Meanwhile, the Ferguson Township Board of Supervisors was revising the township's official map, and slipped into the new map a sketch of an extension of Blue Course Drive across the watershed and Slab Cabin Run, to Shingletown Road/Route 45.

Centre Region Planning Agency Senior Planner Sebastian DeGregorio caught the attempt and drafted a letter to Ferguson Township, emphasizing the land use and environmental concerns, including the threat to the downstream SCBWA water wells and the destruction of productive farmland.

In March 2003, several local entities signed a Sourcewater Protection agreement, including SCBWA, UAJA and the College Township Water Authority, but not Penn State. The agreement, which was driven by the progress of the beneficial reuse program toward delivering treated, tested UAJA wastewater to upstream customers and environmental restoration projects, called for coordinated monitoring of groundwater and treated wastewater for non-regulated contaminants, to enable quality comparisons, above and beyond the standard Safe Drinking Water Act testing protocols. The agreement also stated that the signatories would work together to protect all source waters from *any* source of potential contamination, such as agriculture, urban development, roadways and chemical spills, not just beneficial reuse projects.

In October 2003, the DEP published a Sourcewater Assessment Study. The study identified the top two risks to the Thomas and Harter wells as "transportation corridors," and "residential/light commercial development."

In November 2003, corporate Penn State approached the Ferguson Township Board of Supervisors requesting upzoning of the land near Whitehall Road and Blue Course Drive from low-density Rural Agricultural (RA) to high-density multifamily residential (R4).

From January to September 2004, regional planners and adjacent municipalities, including State College Borough Council, reviewed Penn State's rezoning request and universally recommended Ferguson Township deny the request to avoid extension of Blue Course Drive into the fragile Slab Cabin Run watershed and agricultural security area.

A representative example was a March 29, 2004 Centre Region Planning Agency staff report:

"Topography – The 26.3 acre site is undeveloped, rolling and gently sloping farm fields that have an average slope of between 0-3% in the front portion of the site, directly adjacent to Whitehall Road. The site drops much more sharply to approximately 7% as one moves away from the road, about 500-600 feet and closer to the fairly large drainage swale, which moves across the site from northwest to southeast. This swale acts as an active natural stormwater drainage facility in even the most modest storm events. This natural drainage moves across all adjacent farm fields and at a distance of less than 1 mile, eventually reaches the area of the [SCBWA] Harter-Thomas Well fields where a series of active water production wells are located. These wells pump approximately 4 million gallons of drinking water a day to 35,000 – 40,000 people..."

On September 7, 2004, by a 3-2 vote, Ferguson Township supervisors approved the rezoning, and brought the Penn State parcels inside the Regional Growth Boundary/Sewer Service Area without amending the regional comprehensive plan or the Act 537 plan. The upzoning increased the value of Penn State's land by about \$13 million, as reflected in the 2012 purchase price offered by Toll Brothers.

Probably somewhat in response to the 2004 rezoning – coupled with a similar maneuver in Patton Township for the property off Grays Woods, which is now Geisinger Medical Center – in 2006, the COG General Forum adopted "Developments of Regional Impact" approval process. The DRI implementation agreement laid out procedures for COG General Forum to review developer requests for parcels to be brought into the Regional Growth Boundary/Sewer Service Area.

Under the 2006 agreement, approval of rezoning and RGB/SSA incorporation for projects outside the RGB/SSA required unanimous consent of all municipal boards. In contrast, zoning to increase the intensity of use for development projects inside the RGB/SSA could be done unilaterally by municipal boards.

Also in 2006, COG General Forum adopted an updated Act 537 plan and the regional parks articles of agreement that paved the way for the 100-acre Whitehall Road Regional Park project in the Slab Cabin watershed.

Meanwhile, ClearWater Conservancy and the State College Borough Water Authority negotiated purchase of 423 acres in nearby Musser Gap, explicitly to conserve the land for sourcewater protection.

2007 brought two SCBWA reports. In January, the water authority published a Sourcewater Protection Report, and in July 2007, the authority published a Dye Trace Study presenting the data collected in 2005 and 2006 to support the Musser Gap conservation project.

Also in 2007, Sweetland Engineering prepared a subdivision plan for several parcels of Penn State land. The subdivision plan, as reported previously, linked private funding for an access road, water and sewer service, and traffic



improvements for the adjacent public park, to successful completion of the student housing complex. The subdivision plan set the stage for corporate Penn State to engage in a series of strategic land sales.

In 2008, the Centre Region Parks and Recreation agency conducted a survey. 75% of more than 1,000 respondents said they were satisfied with available park resources and did not want public money spent to add to the park portfolio. The parks authority board ignored the findings and proceeded with planning for two new regional parks at Oak Hall and Whitehall Road.

Also in 2008, Penn State sold 75 acres of land to Ferguson Township and COG for the proposed Whitehall Road park, and 60 acres of land to SCBWA for water conservation, upslope of the proposed high-density housing site.

In 2008 and 2009, signatories to the 2003 Sourcewater Protection Agreement conducted comparative testing of groundwater and treated beneficial reuse water for non-regulated pharmaceutical and endocrine-disrupting chemicals. The results showed similar contaminant profiles for both groundwater and treated reuse water.

By the end of the 2000s, private developers had built The Pointe, Palmerton, Bryce Jordan Tower, Campus Tower and Centre Court. The regional population stood at about 92,000.

## 2010s

In February 2011, the COG General Forum used the 2006 DRI implementation agreement to approve a request made by Centre Region Planning Agency on behalf of the parks authority board to add the 75-acres proposed for the Whitehall Road Regional Park to the RGB/SSA. In April 2011, the COG General Forum voted to approve municipal taxpayer guarantees for a \$7.58 million regional park construction loan from Fulton Bank. In May 2011, Penn State sweetened the pot, selling Ferguson Township and COG another 25 acres for the Whitehall Road park, bringing the total to 100 acres.

Also in 2011, the PA Fish and Boat Commission published a report aptly entitled “The Spring Creek Fishery: A Watershed Under Siege.”

In May 2012, the Penn State trustees approved the sale of two Whitehall Road parcels, totaling just over 40 acres, to Toll Brothers subsidiary Springton Pointe LP, for \$13.5 million.

In August 2012, the COG General Forum denied a Calvary Baptist request for RGB/SSA expansion in Harris Township for construction of Harvest Fields. Ferguson Township supervisors cast the determinative “No” vote, submitting an utterly hypocritical written objection to expansion of RGB/SSA for the Harvest Fields project, based on the need to strictly enforce the growth boundary to protect rural open-space and farmland. Calvary Baptist subsequently sued COG, and the matter was settled by the court, allowing Harvest Fields to proceed.

In November 2012 – motivated by a desire to protect their local ecosystems, including water recharge areas and productive farmland – Ferguson voters adopted a charter-amendment Community Bill of Rights, the first of which is “the right to pure water.”

In September 2013, the Penn State board of trustees threw in another 5.5 acres for the Toll Brothers land sale. These 5.5 acres – slated for proposed stormwater detention basins – became subject to *de facto* rezoning from RA to R-4 through the subsequent 2015 Ferguson Township land development plan approval process, in violation of municipal zoning ordinances and the regional comprehensive plan.

Also in 2013, precipitated by the Calvary Baptist controversy, in December 2013 – the COG General Forum adopted an updated RGB/SSA Implementation Agreement, replacing the 2006 version, and giving municipalities flexibility to expand RGB and SSA boundaries without formal regional procedures for up to 50 housing units on up to 12 acres for a period of five years through December 2018.

In 2013 and 2014, the PA DEP published a Climate Impact Assessment report, warning of temperature and precipitation changes, urbanization and impacts on agriculture and land use, and the PA Fish and Boat Commission classified all of Slab Cabin Run as a Class A Trout Stream.

Meanwhile, PennTerra engineers were preparing to submit the Toll Brothers land development plans to Ferguson Township for the student housing complex.

PennTerra hired CMT Laboratories to conduct infiltration analyses at the PSU/Toll Brother site. The tests were done in May 2013 and December 2014, using non-standard pit testing protocols because of the shallow depth to bedrock. The report authors concluded, “in terms of risk management, we do not believe there is an effective method for eliminating sinkholes in karst infiltration areas.”

In 2014, Scott Brown of Newell, Tereska & McKay (NTM) submitted a preliminary review of groundwater impacts of the PSU/Toll Brothers project to Ferguson Township, addressing

“soils or geologic limitations...including...the risk of sinkhole formation, particularly as related to potential impacts to the State College Borough Water Authority well fields which are down-gradient from the site...and explicitly...any limitations caused by the observed shallow depth to bedrock and high bedrock infiltration rates in the vicinity of proposed infiltration facilities and sedimentation control basins.”

And Aqualith Technologies LLC conducted project reviews of the proposed rezoning of Everhart Farm (near the PSU/Toll Brothers site, but across the border in College Township) and the PSU/Toll Brothers site. Author David Yoxtheimer, consulting for SCBWA, wrote of the Toll Brothers site:

“...the proposed project area is upgradient and within the delineated Zone 2 wellhead protection areas for both SCBWA wellfields. Accordingly this project is contained within the groundwater recharge area of these primary regional public water supplies and raises concern for potential ground water resource impacts. The surface drainage that would be routed via a large natural swale...from the proposed project area would be ultimately directed toward Slab Cabin Run and Wellfields 1 [Thomas] and 3 [Harter].

A fracture trace was previously mapped to be coincident with a portion of this swale, therefore the swale’s subsurface is interpreted to be a zone of increased bedrock fracturing and therefore a zone of enhanced groundwater recharge and flow. Previous dye trace testing demonstrated that Wellfields 1 and 3 receive at least some surface recharge from Slab Cabin Run, therefore any contaminants in surface runoff from the housing project could potentially have adverse impacts on regional drinking water quality.

Potential contaminants of concern in the surface runoff would consist of oil, grease, fuels, glycol, and de-icing agents from the site parking lots, fertilizers used on site vegetation, as well as waterborne pathogens such as coliform bacteria.”

In 2015, citizens mobilized against the proposed student housing project, which received “tentative” township approval in March of that year, and “final” approval in November. The controversy propelled three new supervisors into office that year: Laura Dininni, Peter Buckland and Colleen Unroe, who ran on a platform of water and farmland protection.

Also in 2015, partly based on the Yoxtheimer recommendations, College Township Council decided not to rezone the nearby Everhart Farm for residential development, a public decision that helped lay the foundation for the current Slab Cabin Run Initiative by ClearWater Conservancy (more below).

In 2016, Mountainview Country Club asked UAJA to consider providing beneficial reuse water for golf course irrigation, and COG General Forum approved initiation of an Act 537 Plan Special Study to review the proposed project. Ferguson Township’s new supervisors approved new stormwater management rules and began working on a sourcewater protection overlay zoning ordinance.

A Centre County judge ruled against the township and Toll Brothers, and for the plaintiffs, in the citizens’ land use appeal, and Toll Brothers appealed to the Commonwealth Court.

In October 2016, ClearWater Conservancy launched the Slab Cabin Run Initiative conservation campaign to preserve 300 acres of Meyer and Everhart farmland near the Penn State-owned parcels, and the SCBWA continued working on plans to construct two new, \$20 million water treatment facilities: one at the Nixon and Kocher wellfields, and another at the Thomas and Harter wellfields.

Several phases of the beneficial reuse system were completed between 2000 and 2016, including reverse osmosis treatment plant to produce ultrapure water piped upstream as far as Kissinger Meadow for discharge into wetlands recharging Slab Cabin Run, but the final phase to the upper Slab Cabin watershed has been delayed because growth in sewage flow to UAJA had grown more slowly than projected. Recall, however, that even as the water volume declined, the volume of nutrient solids (nitrogen and phosphorous) piped to the treatment plant had been and continues to steadily grow, because every human-occupied bed of housing adds an irreducible amount of solid waste.

Since 2000, UAJA has spent about \$29.3 million in capital expenditures to construct the beneficial reuse system, and about \$5.2 million to operate it.

Expansion of the treatment facility capacity from 1 million to 2 million gallons per day, and extension of the pipelines to serve Tussey Mountain and Mountainview Country Club project are underway, with the former projected to cost \$4.7 million and the latter to cost \$2 million.

New housing constructed so far in 2010s includes: Villas at Happy Valley, Grove, View, Heights, Legacy and Retreat complexes, with Metropolitan and Rise under construction and Toftrees expansion and Residences at College and Atherton in the planning stages.

And here we are in 2017.

A couple of months ago, UAJA director Cory Miller convened a meeting of the regional source water protection committee to begin discussions for an update to the 2003 agreement and restart joint water testing protocols, against a backdrop of regional beneficial reuse expansion discussions as they converge sprawl, overpopulation, stress on the nutrient management capacity of UAJA under Chesapeake Bay regulations and stress on stormwater runoff systems under MS4 regulations.

Last month, on May 17, the Commonwealth Court overturned the Centre County Court of Common Pleas decision, based solely on the timeliness of the land use appeal, thus clearing the way for PSU to complete the sale to Toll Brothers, knocking over the first domino in the row.

The ruling compelled Nittany Valley Water Coalition to launch a citizen campaign and site occupation to persuade corporate Penn State to halt the sale to Toll Brothers and gracefully negotiate a face-saving land swap so that Toll

Brothers can build luxury student housing on other Penn State-owned land not on top of the drinking water recharge area, and so that Penn State can forestall further bad publicity as abusers of their host community.

## CRITICAL ANALYSIS

Taken together, the scientific data support the Nittany Valley Water Coalition stance: that the Thomas-Harter recharge area is fragile, valuable and worth fighting to protect from the dangers of initial and cumulative land development.

Taken together, the political history supports the *Bailiwick News* stance: that corporate Penn State increases enrollment to keep it higher than a growing local housing supply, so private investors and landlords can reap large profits and put competitive pressure on students (and their loan lenders) to pay higher rents. Corporate Penn State also buys agricultural land at low cost, maintains property tax exemptions while they knock over municipal zoning laws and regional planning limitations, and sells high to reap institutional profits, further facilitating private profits for investors who buy into the development corporations to whom the Penn State land is sold.

Win or lose the Battle of Slab Cabin Run, corporate Penn State will continue trying to internalize profits and externalize costs, because that's what it's structurally designed to do.

The state legislature will continue to stand idly by, and occasionally adopt new rules empowering developers at citizen expense, because that's what it's structurally designed to do.

Well-placed COG insiders will ensure that controversial issues are buried in committees for many months, use the committees to narrow the issues permissible for debate, and then present the original decisions made through private side deals to the General Forum for rubber-stamp ratification. Local governments will continue to buckle to extreme pressure to roll over and play dead.

Nonetheless.

In the years ahead, our community will be choosing from among three visions for the relationships between ecosystems, political systems, citizens and developers.

The first is "business-as-usual," in which developers can build anywhere anytime they can get municipal board endorsement, ecological and political carrying capacity be damned.

The second is the "smart growth" vision espoused by many, perhaps most of the concerned citizens involved to date, to put new high-rise student housing in the State College Borough core and thereby prevent further sprawl into rural and ecologically-essential areas.

The third is the "steady-state" vision, stabilizing Penn State enrollment and regional population within a small fluctuating range to stabilize density in the core and at the periphery, and actively cultivating rural farms and forests as ecological protection zones to increase the odds of long-term access to clean water and locally produced food.

In the meantime, we're building a strong network of informed, engaged citizens capable and willing to fight for the right to be part of something more meaningful and soul-sustaining than a multi-municipal corporate Penn State dormitory.

### *Selected Citations:*

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- 2004 SCBWA Long Range Plan
- 2007 SCBWA Sourcewater Protection Report, by David Yoxtheimer, citing dozens of studies, back to 'Geology and mineral resources of the Bellefonte Quadrangle,' Butts and Moore, *US Geological Survey Bulletin*, 1936, and 'Relationship between fracture traces and the occurrence of ground water in carbonate rocks,' Parizek and Lattman, *Journal of Hydrology*, 1964.
- 2007 SCBWA Dye Trace Study, citing data collected in upper Slab Cabin Run watershed in 2006 and 2006.
- 2011 Whitehall Road Investment Prospectus
- 2013 Infiltration Analysis at PSU/Toll Brothers site, CMT Laboratories LLC
- 2014 Infiltration Analysis at PSU/Toll Brothers site, CMT Laboratories LLC
- 2014 Aqualith Technologies PSU/Toll Brothers project review, by David Yoxtheimer
- Author's Interview Notes (Nov. 14, 2016), Walter Ebaugh, Founder of Nittany Geosciences Inc., UAJA Board Member
- Author's Interview Notes and Email Correspondence, Cory Miller, UAJA Executive Director
- Centre County Historical Society
- Centre Region Planning Agency Data Center

SIDEBAR – Long-time readers know that I have been in community-disaster-preparedness mode since 2005, when I read Richard Heinberg’s book *The Party’s Over: Oil, War and the Fate of Industrial Society* and first began to consider the implications of peak cheap, easy-to-extract oil.

Some of the socioeconomic analysts whose data interpretation on finance, energy, critical resource management, geopolitics and civil society I find credible and relevant include: Adam Taggart; Art Berman; Brandon Smith; Charles Hugh-Smith; Chris Martenson; David Stockton; Dmitri Orlov; Doug Casey; Edward Snowden; Eric Zuesse; Gail Tverberg; Glenn Greenwald; Howard Kunstler; John Williams (Shadowstats); Julian Assange; John Michael Greer; John Pilger; M. King Hubbert; Matt Taibbi; Michael Snyder; Mike Krieger; Nassim Taleb; Nicole Foss; Raul Ilargi Meijer; Richard Heinberg; Ugo Bardi; and Wolf Richter.

Describing our current predicament, Doug Casey calls it the “Greater Depression.” Howard Kunstler calls it the “long emergency.” Charles Hugh Smith calls it “neofeudalism,” with the vast majority of us relegated to the status of debt slaves.

My favorite description is John Michael Greer phrase: the American empire’s already-begun slide into “history’s compost bin.” See, for example, his January 25, 2017 essay “How Great the Fall Can Be.”

“This is what the decline and fall of a civilization looks like. It’s not about sitting in a cozy earth-sheltered home under a roof loaded with solar panels, living some close approximation of a modern industrial lifestyle, while the rest of the world slides meekly down the chute toward history’s compost bin, leaving you and yours untouched.

It’s about political chaos—meaning that you won’t get the leaders you want, and you may not be able to count on the rule of law or even the most basic civil liberties.

It’s about economic implosion—meaning that your salary will probably go away, your savings almost certainly won’t keep its value...

It’s about environmental chaos—meaning that you and the people you care about may have many hungry days ahead as crazy weather messes with the harvests, and it’s by no means certain you won’t die early from some tropical microbe that’s been jarred loose from its native habitat to find a new and tasty home in you.

It’s about rapid demographic contraction—meaning that you get to have the experience a lot of people in the Rust Belt have already, of walking past one abandoned house after another and remembering the people who used to live there, until they didn’t any more.

More than anything else, it’s about loss. Things that you value – things you think of as important, meaningful, even necessary – are going to go away forever in the years immediately ahead of us, and there will be nothing you can do about it. It really is as simple as that. People who live in an age of decline and fall can’t afford to cultivate a sense of entitlement.”