

BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

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Water & Farmland Protection Update

By Katherine Watt

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

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.

Municipal Partner	Meyer-Everhart Conservation: Amount Requested (2016-2017)
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
TOTAL EASEMENT COST	\$2,750,000

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.

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