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Non-overlapping Venn diagram circles: design and funding discussions for Whitehall Road Regional Park (Part 9 in a 10-part series)

By Katherine Watt

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.

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.”

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.

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 Capital Committee Chair

Public Safety and Liability Issues

The 100-acre WRRP project site is up-gradient 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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