

# BAILIWICK NEWS

Reporting and critical analysis of State College public affairs

September 16, 2016

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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 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 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, and Doug Levisky, 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."

Downsborough 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, Downsborough 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 Downsborough'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.

UPCOMING COVERAGE – Sept. 23 – State College Borough 2017 Budget Review & Adoption Process, and policy change proposals from staff.

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