

# BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs  
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## Centre County Infrastructure Security and Public Water: Campaign Updates

By Katherine Watt

### No to Nestle Campaign

#### *Item 1 – Audio Recording of March 14 Public Forum*

An audio recording of the March 14, 2018 “No-to-Nestle” community meeting is now available at <https://soundcloud.com/user-62099348/mar-14th-full-audio-edited>. Approximately 300 people attended and campaign organizing is ongoing.

#### *Item 2 – GoFundMe campaign for No Nestle litigation costs*

For readers interested in supporting likely litigation to stop the Nestle project, the campaign has set up a GoFundMe site. More information at <https://www.gofundme.com/NVEC-NoToNESTLE>

#### *Item 3 – Tabling at Banff Mountain Film Festival*

On April 13 and 14, Sierra Club-Moshannon Group and Nittany Valley Environmental Coalition will be tabling at the Banff Mountain Film Festival at the State Theatre, starting at 6 p.m. each day. Stop by for information about the No-to-Nestle campaign.

### Slab Cabin Run Water & Farmland Protection Campaign

In December, Penn State finalized sale, for \$13.5 million, of about 45 acres along Whitehall Road, to Toll Brothers, for development of luxury student apartments.

Through subdivision plan notes, the Toll Brothers project is related to plans for about 100 acres of adjacent land jointly owned by the Centre Region Council of Governments and Ferguson Township, slated for development by the Centre Region Parks & Recreation Authority as the Whitehall Road Regional Park (WRRP).

Construction of the student housing development is expected to begin this spring, and discussions of WRRP planning are underway.

#### *Item 1: March 19 Ferguson Township discussion of Whitehall Road Regional Park plans.*

On March 19, the Ferguson Township Board of Supervisors will be discussing “planned infrastructure” for the Whitehall Road Regional Park, as it relates to several regional topics.

Meeting starts at 7 p.m. at the Ferguson Township Municipal Building, 3147 Research Drive. “Whitehall Road

Regional Park Planned Infrastructure” is Item 8 on the supervisors’ agenda.

Please attend this meeting to advocate for conservation of a portion of the 100-acre parcel through amenities including reforestation; bird, butterfly and pollinator habitat; and nature trails.

For extensive background, please read the *Bailiwick News* Slab Cabin Run series.

For brief reorientation, the regional park has been a controversial local issue for several reasons including its location in a sensitive groundwater recharge area; its financial connection to the adjacent private student housing development; its public funding from the five COG municipalities that participate in the regional parks program; and its joint governance through the Centre Region Parks & Recreation Authority (“Parks Authority”), an independent municipal authority comprised of appointed members, and the Centre Region Council of Governments (COG) Parks Capital Committee, a committee comprised of elected officials from each participating municipality, who review projects on behalf of the full COG General Forum.

In January 2018, new legislators elected last November were sworn in to serve their municipalities, and individual legislators took up their committee assignments for the upcoming year.

Ferguson Township Supervisor Laura Dininni and State College Borough Councilwoman Janet Engeman were each assigned to represent their constituencies on the Parks Capital Committee. Dininni and Engeman have both been outspoken advocates for water protection and land conservation.

Since January, the Parks Capital Committee’s meetings have been cancelled, rendering it impossible for Dininni and Engeman to formally participate in the planning and review process for the Whitehall Road Regional Park.

As covered in greater detail in the Slab Cabin Run series, cancelling meetings is a technique historically used by COG committee chairs and other interested parties to limit public deliberation on controversial issues, and it appears it has been used for this purpose again.

In the meantime, the Parks Authority board has continued to move forward with planning, while cultivating and relying heavily on input from proponents of active park uses seeking a large sports complex and possibly a skate park, which would require extensive land disturbance and paving.

The March 15, 2018 Parks Authority board agenda packet included a background and “next steps” section about the Whitehall Road Regional Park, presented by Centre Region Parks and Recreation (CRPR) Department Director Pam Salokangas, excerpted here.

Salokangas reported to the authority board:

“In December, it was announced that Penn State and

Toll Brothers executed their contract for the land earmarked for the student housing development along Whitehall Road; at this time, Toll Brothers is the owner of the property to be developed. In addition, CRPR, via Stahl Sheaffer [engineering consultants], was contacted by PennTerra, Toll Brothers' engineering firm, to set a meeting date in early January to discuss their plans, timeline, and to discuss the infrastructure to be provided by Toll Brothers.

Chris Hurley (outgoing Authority Chair), Jim Steff (COG Executive Director), Pam Salokangas (Director), and Robyn Froehlich (Stahl Sheaffer) met with PennTerra officials to review their plan. It was important to know what infrastructure was to be built, how much interference there would be with the currently farmed 75-acre parcel and if CRPR would be able to lease that land in 2018.

PennTerra confirmed that the infrastructure includes the water, electricity, sewer (+pump house), and natural gas utilities, the main entrance road [Blue Course Drive Extension], flanked by a bike/walking path, the traffic light, and any other PennDOT-required off-site improvements.

Their tentative timeline after meeting conditions is to start construction in late spring or early summer.

One of the items that they require is a letter from the Authority indicating that, as a group, the Authority approves their plans. This letter was drafted and signed at the January 18 Authority meeting and forwarded to Stahl Sheaffer for signature and then on to PennTerra for their use.

It is important to note, generally, that with Toll Brothers agreeing to provide park infrastructure, funds earmarked for the driveway, traffic light at Whitehall/Blue Course, traffic light at Blue Course/Bristol, and off-site traffic improvements can be reinvested into park amenities. The valuation of what Toll Brothers is providing through this public-private partnership is approximately \$1.2 million."

The background section continued with an explanation of the two mechanisms through which elected public officials make decisions about the project:

"There are two primary plans associated with this project—the Master Plan and the Land Development Plan.

The Master Plan identifies the main features (playing fields, locations of restrooms, trails, etc.) of the park.

According to the Articles of Agreement for Regional Parks, the Master Plan must be unanimously approved by the COG General Forum.

The Land Development Plan is a highly-specific plan that is required to be submitted under the Pennsylvania Municipal Planning Code (MPC) to the governing board of the municipality in which the property is located," [in this case, Ferguson Township.]

"The Land Development Plan provides the detail (for example: stormwater management plans, specific locations of utilities, tree plantings, recreation equipment, etc.) that are necessary to implement the Master Plan. The preparation of the Land Development Plan is the

responsibility of the Parks Authority in conjunction the chosen engineering firm."

In 2014, a Land Development Plan for the Whitehall Road Regional Park was prepared and conditionally approved by the Ferguson Township Planning Commission. However, in 2017, because of several delays, it was withdrawn. The Land Development Plan must be reviewed and updated.

When the new Land Development Plan is complete, it will be submitted and reviewed first by the Ferguson Township Planning Commission, followed by a review by the Ferguson Township Board of Supervisors.

In the agenda packet, Salokangas asked the Parks Authority board members to "identify a process for selecting the amenities for Phase I so that CRPR Staff can prepare a summary for the May meetings of the Parks Authority, COG Parks Capital Committee, and the COG General Forum. Once the project has a green light from the Parks Capital Committee and General Forum, the next step will be to update the Land Development Plan based on the Phase I design and selection of amenities."

Salokangas' background report stated, "At this time, there are no plans to change or update the Master Plan" and asked the Parks Authority board members to decide how to proceed from among three options:

A - Endorse the recommendation that CRPR Staff and the engineers work to develop the final list of amenities based on final budget estimates and private funding levels, and estimate a tentative timeline, working from the General Forum May meeting.

B - Endorse the recommendation to form a small sub-committee to review the committee work done in 2016/2017 to finalize a list of amenities.

C - Identify another process to update the amenities in order to finalize a budget, amenity list, and timeline in preparation for the May General Forum meeting."

Salokangas concluded: "Looking ahead, regardless of the option chosen to update amenities, the goal should be to provide the General Forum at the May 29 meeting an update of the Phase I amenities as well as a tentative timeline and budget so that areas of concern can be identified and addressed before moving into the Land Development Plan work."

According to Ferguson Township Supervisor Laura Dininni, who attended the March 15 CRPRA meeting, the board selected Option A.

This decision appears to strip the elected representatives on the Ferguson Township Board of Supervisors, the COG Parks Capital Committee and the COG General Forum of timely opportunities to provide input on planned amenities and the relationship between selected amenities, public funding and evolving public land use priorities.

Despite this exclusionary maneuver by the Parks Authority board, the Ferguson Township supervisors will take up the issue of infrastructure planning on March 19, in their capacity as the host municipality, co-owner of the

site, one of the five municipal “units” that control the Master Plan through the COG General Forum, and the elected legislature empowered to grant or withhold approval of any new Land Development Plan.

As Dininni noted during her efforts to place the issue on the Ferguson supervisors’ agenda, with the withdrawal of the 2014 Land Development Plan, there is an opportunity for citizens of the five participating municipalities to advocate for a more conservation-oriented master plan for Whitehall Road Regional Park.

“[The Parks Authority] is trying to have a finished plan with no input from electeds. Then changes will be costly and way less likely to happen,” Dininni wrote. Water, farmland and forest advocates “need to weigh in now, before all the money is spent on the detailed engineering plan.”

More specifically, Dininni intends to advocate for a design that includes a handful of rectangular grass fields for soccer and lacrosse club use, a prohibition on artificial turf, requirement for low-impact parking lots, and shielding of any electric lights installed to permit night activities to protect neighbors.

Dininni estimates that the available balance remaining in the regional Parks Capital Fulton Bank loan account will enable grading and park construction on up to one-third of the available 100 acres, meaning that the remaining two-thirds could be reserved for future passive park use, pollinator and bird conservation land, reforestation, a watershed education station, or some combination of those and similar low-impact uses.

Public comments and the supervisors’ discussion March 19 will be memorialized in a document and provided to the Centre Region Parks and Recreation Authority.

### *Item 2: March 24 Art Workshop in Lemont & April 6 Exhibit Opening at State Theatre*

The Art Alliance of Central Pennsylvania in partnership with the Nittany Valley Environmental Coalition is offering a free hands-on Community Art Workshop to memorialize the farmland and watershed off Whitehall Road.

The event will be held on Saturday, March 24, from 1 to 3 p.m. at the Art Alliance, 818 Pike Street in Lemont.

Join artist and educator Nicole Packard to create art commemorating the beautiful landscape along Slab Cabin Run with Tussey Ridge in the background, before it’s destroyed by development. All supplies will be provided, no art experience is necessary and the event is free and open to adults and children.

Attendees will be encouraged to offer their art for inclusion alongside the works of local area artists at the State Theatre exhibit running from April 2-30. Register online at [signupgenius.com/go/10c054da4a62aa7fb6-artworkshop](http://signupgenius.com/go/10c054da4a62aa7fb6-artworkshop).

Then, on Friday, April 6, The Art Alliance and Nittany Valley Environmental Coalition will host an art exhibit opening reception from 5 to 7 p.m. at the State Theatre. Works of art capturing the Slab Cabin Run landscape will be on display, with opportunities to meet the artists and

participate in a discussion about regional land use issues. The exhibit will be on display from April 2 - 30.

Facebook event: [facebook.com/events/166114404044220/](https://facebook.com/events/166114404044220/)

### *Item 3 – April 2 - Public Hearing on Financial Liability for Public Water Well Pollution*

A few months ago, Ferguson Township citizen Pam Steckler drafted and circulated a petition to the Ferguson Township Board of Supervisors, under a Home Rule Charter provision that requires the supervisors to hold a formal public hearing within 90 days of submission, on any matter for which the proper number of signatures is obtained.

The petition reads:

“We, the undersigned, believe the Harter and Thomas Wellfields have been put unnecessarily at risk to pollution by the selling of Penn State University land, at Whitehall Road, to the Toll Brothers Developers, in order to build student housing, to be known as “The Cottages at State College.” Since the acreage being developed is directly upland of these wells, and the geology is known as karst topography, the likelihood of runoff, regardless of detention and infiltration basins, seems probable as we enter into an era of extreme weather events due to Climate Change.

Therefore, we respectfully request Ferguson Township require written confirmation, prior to construction, that PSU and Toll Brothers are to be held financially responsible, in perpetuity, for any pollution to these wells directly attributable to the Cottages Development. And that the residents/taxpayers/rate-payers of Ferguson Township would not bear the financial burden should our water be rendered polluted by this development, which was pushed forward unguided by the Precautionary Principle and despite citizens concerns and actions of dissent.”

Steckler obtained the required number of signatures on the petition, and the public hearing is now scheduled for Monday, April 2, 7 p.m. at the Ferguson Township Municipal Building, 3147 Research Drive.

### *Item 4 – Easement requested for sewer main across deed-restricted water conservation land*

At the Jan. 18, 2018 State College Borough Water Authority (“SCBWA”) board meeting, the board discussed an easement request for a 4,000-foot forced sewer main across a 60-acre deed-restricted well-field conservation parcel, to convey raw sewage from more than 1,000 Penn State students in the Toll Brothers development, along with sewage from users of the Whitehall Road Regional Park, from a pump station at the bottom of the hill upgradient to Whitehall Road.

According to the minutes, Assistant Executive Director Brian Heiser reported to the board that a request for a sewer line easement had been received from the University Area Joint (Sewer) Authority (“UAJA”). The easement was described as “a permanent and a construction easement for a forced sewer main installed by Toll Brothers and then

owned by the UAJA after completion.”

Bernard Hoffnar, a SCBWA board member appointed in December to represent State College citizens for a term starting in January, moved to not approve the requested easement. Board member Bill Burgos seconded Hoffnar’s motion.

According to the minutes, Burgos reported that he had attended a recent UAJA board meeting and learned that the easement request was made on behalf of Toll Brothers by UAJA so that Toll Brothers could avoid the higher connection cost and rates charged by the State College Borough Sewer Authority, by running the line instead into Ferguson Township. UAJA duly presented the request to Ferguson Township, State College Borough Sewer Authority and the SCBWA.

Brian Dempsey, Chair of the UAJA board and liaison from UAJA to SCBWA, confirmed Burgos’ account.

Hoffnar asked several questions, seeking information including 1) why Toll Brothers would not be required to take the shortest route for sewage conveyance; 2) why Toll Brothers sited the pump station so far from the property line and posed the following questions; and 3) whether SCBWA had historically received any easement requests of similar magnitude.

Dempsey replied that UAJA’s Rules and Regulations don’t require developers to design for the shortest distance.

SCBWA board and staff had no answer as to why the pump station was so far from the property line.

Heiser reported he was unaware of such a major request in the past.

SCBWA Board Chairman Jeff Kern noted the SCBWA property was originally purchased to remain passive and protect public water sources in Well Field 1 (the Harter and Thomas wells).

Deed restrictions were placed on the property when Penn State sold the parcel to SCBWA on June 20, 2008.

From the deed:

“It is the understanding of the parties that the Authority shall use this Property to protect a water recharge area and that the Property shall remain in an undeveloped state or used by the Authority, its successors or assigns, for agricultural, passive park, conservation area, preserve or wetland uses, to include unpaved roadways and walkways, and beneficial reuse uses. This property is restricted to such uses and this restriction has the effect of a covenant running with the land. The covenant shall be enforceable by the University and the costs of enforcement, including costs of litigation and counsel fees, shall be borne by the party who causes a violation of the restriction.”

According to the minutes, Burgos asked SCBWA Solicitor Robert Mix if there would be any repercussions if the water authority refused to approve the easement request. Mix informed the Board that UAJA could use condemnation to obtain the easement.

Laura Dininni, attending in her capacity as private citizen, stated that the deed restrictions alone might provide sufficient legal basis to allow SCBWA to deny the

easement request. Dininni further stated that the June 2017 Pennsylvania Supreme Court ruling in *PEDF v. Commonwealth*, which strengthened Pennsylvania Constitution Section 1, Article 27 (Environmental Rights Amendment), could also provide legal support for the SCBWA board to deny the easement request.

At Mix’s suggestion, Hoffnar withdrew his motion. Burgos then moved to table the issue and schedule a meeting with UAJA to clarify issues. Emory Ensore seconded, and the motion to table and seek more information carried unanimously.

The subject did not appear on the February or March 2018 SCBWA board agendas; as of March 18, 2018, author had no further information about the status of the easement request.

## CRITICAL ANALYSIS

Among other things, the proposed Nestle bottling facility and the planned Penn State/Toll Brothers student housing development and Whitehall Road Regional Park are excellent case studies in the illegitimate linking of public infrastructure investment with private corporate profit taking.

In the Toll Brothers situation, we learned how Penn State used its property tax exemptions to buy low and hold the farmland while lobbying for upzoning and soliciting developers and investors. And we learned how Penn State connected the student housing Land Development Plan to the Whitehall Road Regional Park through the notes on the 2008 subdivision plan, in order to hobble citizen opposition by linking the private student housing development to a public infrastructure project that would move forward if and only if local electeds supported the adjacent private project.

This is still playing out, with the WRRP project having to be redesigned due to the delays/funding shortfalls. And it continues to pit proponents of an ecologically-resilient vision of the community, manifest through firm growth boundaries, source-water protection, and farmland conservation, against proponents of an increasingly urbanized Centre Region, manifest through – among other displacements – conversion of fields and forests to a large, graded, paved sports complex potentially including artificial turf, electric lighting, a skate park and hosting of large regional tournaments with their attendant traffic.

In the Nestle/Spring Township situation, it’s a little bit different, but structurally very similar.

Spring Township Water Authority (“STWA”) has been working toward construction of a backup well for public water supplies, at the Cerro Well site, since roughly 2006. As a public backup well, it would not draw significantly more water from the aquifer than the current well. It would just be an alternative pumping system, and backup systems are very good from an ecological resilience standpoint.

Spring Township ran the Cerro Well project through the permitting process with PA Department of Environmental Protection and the Susquehanna River Basin Commission, describing it as a public backup water supply.

Nestle became involved, at least in public settings, after many of the permits had already been approved. Based on research completed to date, the first mention of Nestle's proposal to build a bottling facility and purchase large volumes of groundwater from the Cerro Well, occurred on November 22, 2017, when STWA board chairman Doug Weikel first mentioned Nestle at a regular meeting.

It remains to be learned whether Spring Township elected and appointed officials, and possibly Centre County commissioners, engaged in negotiations around the terms for the proposed water sale, earlier than November 2017, and what the contents of those negotiations were.

But the current version of the "Terms Sheet," approved by the water authority board on February 28 and released to the public a few days later, clearly lays out how Nestle is poised to benefit privately from more than a decade of public investment in public water supply infrastructure, should the water purchase contract be finalized in the coming months.

We've also been investigating potential locations for the bottling plant, based on public statements that the Nestle intends to build in Spring or Benner townships, and emails in which Centre County Planning Director Robert Jacobs assessed the zoning codes of the two communities in light of Nestle's proposal.

One likely site is the Benner Commerce Park.

If Nestle ends up purchasing land in the Benner Commerce Park, it could add another layer of illegitimate public subsidizing of private profiteering to the overall Nestle project picture.

As reported by Leon Valsechi in the *Centre Daily Times* in November 2017, the Centre County Industrial Development Corporation ("CDICC") – which is "the legal entity for the Chamber of Business and Industry of Centre County to engage in economic development and business financing" – bought 135 acres from the Commonwealth for \$1 in 2005.

Between 2006 and 2011, CCIDC received and spent \$13.5 million in state taxpayer grants to add infrastructure to the commerce park.

In 2012, Centre County commissioners gave the commerce park Keystone Opportunity Zone status under a 1998 tax incentive program.

Then in 2013, CCIDC sold 100 acres of the land – upgraded at public expense - to private investors Bob Poole, Heidi Nicholas and Paul Silvis of I-99 LLC in a no-bid sale for \$2.7 million.

According to Valsechi's *CDT* report, State representatives Scott Conklin and Mike Hanna submitted information about the questionable transaction to PA Auditor General Eugene DePasquale, seeking an audit.

No audit was ever conducted.

It's useful to draw these connections, to better inform public engagement in current threats to critical public infrastructure and to improve public ability to spot the patterns more quickly in future scenarios.

I've been setting aside money from my paid part-time job to build up some funds to pay freelance writers.

For the next few months, I'm offering \$50 for 1,500-2000 words of in-depth, long-form investigative reporting on the topics listed below.

I can provide preliminary documents and referrals to local sources. This is a good opportunity for journalism students and others interested in working with an experienced editor to craft compelling, fact-supported reports on issues of public interest and concern.

Submissions should adhere to a roughly 80:20 ratio – 80% document-sourced factual reporting to 20% critical analysis and opinion. Team research and writing encouraged. Queries to [kw.investigations.llc@gmail.com](mailto:kw.investigations.llc@gmail.com).

Topics of interest:

1) Water – History of work toward developing a regional integrated water resource management plan; current status; in-depth reporting on proposed Nestle water bottling plant.

2) Land Development - Relationship between Penn State enrollment growth, luxury private student housing development, sprawl, destruction of farmland, and lack of affordable workforce housing; in-depth reporting on Patton Crossing development plans for hotel complex to replace wooded former mobile home park.

3) Sewage Treatment – Relationship between population growth, land development, University Area Joint (Sewer) Authority planned upgrades for odor control and other measures, Penn State's planned expansion of the university sewage treatment plant off University Drive, and taxpayer/ratepayer costs for same.

4) Air Quality and Climate Change - Penn State energy system, planned addition of natural-gas fired Combustion Turbine/Heat Recovery Steam Generator to West Campus Steam Plant, emissions from fuel extraction, transport and combustion.

5) Zoning – Coverage of historical and current relationship between local zoning codes, local political power and community planning over time; in-depth reporting of State College Borough's current zoning code overhaul, relationship to high-rise construction, population growth, impacts on water, sewer and transportation systems

6) Penn State Administration - bloat, corruption capture by oligarchy; relationship to tuition increases, staffing (i.e. adjunct v. tenured); relationship to governance structure and PSU exemption from Right to Know and State Ethics Act; current state legislation to reduce size of Board of Trustees and impose RTK and State Ethics Act on state-related universities.

7) Penn State Real Estate – Data collection, organization and presentation of Penn State-owned property in Centre County, tax exemptions, PILOT agreements, and relationship to land development and municipal tax revenue.

8) Regional Government - structure, bloat, duplication of services, capture by oligarchy, dispersion of accountability; relationship of elected legislatures to appointed administrators, chartered municipal authorities and appointed municipal authority boards.

9) Economic development – prioritization of taxpayer subsidies for extractive and destructive multinational corporations, disadvantaging indigenous, human-scale economic development.

10) Justice System - Aftereffects of Stacy Parks Miller corruption of District Attorney's office and Centre County judiciary; updates on DA Bernie Cantorna's reform work; need for truth and reconciliation process to address harms to Centre County citizens.

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