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[Original 2015 Petition to Ferguson Township Supervisors \(Closed in 2016\)](#)

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Petition update

Status of the Toll Brothers development battle



Nittany Valley Environmental Coalition
State College, PA

Apr 26, 2016 — Latest update from Kelli Hoover:

Where are we right now with the Toll Brothers development fight? You may recall that in December, 2015 a group of 15 plaintiff households and farmers formed the Nittany Valley Water Coalition and filed a lawsuit against Ferguson Township Supervisors to appeal approval of the Toll Brothers plan for a massive, luxury student apartment complex on Whitehall Rd. at Blue Course Dr. Toll Brothers is one of the largest developers in the country and has amassed over 340 violations of stormwater management ordinances since 2012, paying about \$1.5 million in fines in 23 states, including 55 violations in PA. Some of these violations threatened the Chesapeake Bay Watershed.

The Toll Brothers' development is proposed to sit on agricultural land in the Source Water Protection area for the Thomas-Harter wellfields, which supply two-thirds of the drinking water for our region. There are reasons to be concerned about the risks to our water; the wells are shallow (20 feet deep) and the ground is unstable karst limestone and bedrock, which does not filter runoff and is notorious for sinkholes and fractures. The mitigations in the approved plan are completely inadequate, and Toll Brothers wants to use blasting during construction, which we are concerned will create more sinkholes and widen already existing fractures.

Remember, Penn State has not yet sold this land to Toll Brothers. They have a contract, but the land still belongs to Penn State right now. This becomes important below.

In January, 2016 Toll Brothers lawyers filed 2 motions to quash our lawsuit. There was a Court hearing on March 4, 2016 and the Judge denied these motions on March 16, paving the way for the merits of the case to be heard. April 27, 2016 there will be a conference among the attorneys to set a court date, so watch this space.

Ferguson Township's revised Stormwater Management Ordinance.

Several new people have joined the Nittany Valley Water Coalition (NVWC) and a group of us has been following Ferguson Township's activities toward revising the Township's Stormwater Management Ordinance and development of a Wellhead Protection Overlay plan for the Township to protect our drinking water supply. If the Toll Brothers plan has to be revised significantly due to our lawsuit and has to go through the approval process again, the revised ordinance may be in place and apply to the Tolls revised plan.

This is why we are very concerned about a private meeting that took place on Feb. 29, 2016 among the Ferguson Township staff, SCBWA personnel, an outside engineering consultant who works for Penn State University, and the development community's representative John Sepp to discuss the revisions to the Stormwater Water Ordinance. Mr. Sepp is the consultant engineer on the Toll Brothers development and was allowed to be heavily involved in revising this ordinance. There were 3 supervisors present at this meeting and no public notice. There was no representation allowed by affected parties such as farmers or groups like us concerned with environmental protection. There will eventually be a public comment period, but we are concerned that public concerns may not be addressed.

As the revised Stormwater Management Ordinance is currently written, it appears to us that there is a built-in variance for blasting, including in Source Water Protection areas. The language reads: “blasting can only be used as a last resort.” We have spoken at Board of Supervisors meetings to recommend this wording be changed to “Blasting is not permitted (or at least restricted) in Source Water Protection areas,” which was previously recommended by the State College Borough Water Authority (SCBWA) at a February 2016 meeting. In this way, sensitive areas would be protected from blasting unless the developer can prove that it is safe to do so at a particular site. It seems to us that the burden of proof should be on the developer, not on the Township’s engineer, on a case-by-case basis.

It is also our position that a minimum distance of stormwater basins from geologic features such as sinkholes and fractures, for example, should be at least 100-200 feet. We have witnessed how sinkholes and fractures increase in size over just a few years; a minimum distance of only 25 feet as the ordinance revision is now written is arbitrary and does not provide adequate safety. This is especially important given that the Ferguson Supervisors responded to one of our questions by saying “Although we cannot require a greater distance (than 25 feet), our engineers and SCBWA will work with the developer’s engineers to design and evaluate the facilities based on engineering standards.” The underlining is mine. It was stated by Township staff that developers are concerned that there are places where more than 25 feet from stormwater basins to a fracture or sinkhole is not possible because there is not enough space. It seems to us that under those circumstances, development should not be permitted anyway if there is a fracture or sinkhole that close.

This ordinance revision has our full attention and we hope that from here forward input from farmers and concerned citizens will receive thorough consideration by the Board.

AND, we are also looking forward to discussion of development of a wellhead protection overlay for all wellheads in Ferguson Township as recommended by the SCBWA. It makes sense to us that Stormwater Management and Wellhead Protection Zones should be considered at the same time since there is direct linkage between the two.

Upcoming Penn State Board of Trustees Meeting, May 6 at University Park: Toll Brothers does not yet own the 45+ acres of land Penn State plans to sell to them to build a huge luxury student apartment complex (“The Cottages”). There are better options and we are hoping to present some alternative ideas to the Board of Trustees at their May 6 meeting. Toll Brothers cannot be trusted to follow their own stormwater management plans. Is this the kind of developer Penn State wants to do business with given its track record of environmental violations? Why is Penn State putting luxury student housing that most students can’t afford far away from campus in a sensitive Source Water Protection Area anyway? Over 2200 people signed the petition to stop this development and Ferguson Township voted in 3 new supervisors who ran on a platform against this development. Clearly the residents are against this plan. If this plan goes forward, the community will hold Penn State responsible. Penn State has an opportunity to do the right thing. We encourage the university to work with us, find a better solution for this land and for building affordable student housing that is close to campus; this would be a more sustainable solution and get Penn State out of an embarrassing situation. It’s time that Penn State change course on this project.

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