

Penn State dominance in regional land use planning another example of boundary violations.

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Another planned luxury student housing development in Ferguson Township highlights escalating boundary violations in an increasingly abusive relationship between private interests aligned with corporate Penn State, and the residents and governments of surrounding communities.

“The Cottages” is a 1,093-bed luxury student housing development planned by Penn State Vice-President for Finance & Business Dan Sieminski, Richard Keyser of Toll Brothers, and Jon Williams of Williams & Associates, for a roughly 40-acre parcel at the intersection of Whitehall Road and Blue Course Drive, near the triple border of Ferguson, College and Harris townships.

If built, the project will sit atop the recharge area for the Harter-Thomas wellfields that supply two-thirds of the 5 million gallons of clean drinking water used daily by 75,000 State College area residents, on high-quality agricultural soil and karst limestone.

Scripted rollouts of these types of community-undermining projects are a depressingly common experience for municipal staff and elected officials, who have said that Penn State’s long-range plan is to fully develop more than 500 acres of university-owned land in the Slab Cabin Run watershed – traversed by an extension of Blue Course Drive between Whitehall Road and Route 45. “The Cottages” is just the tip of the spear.

Penn State spokesmen tout loudly and often the many benefits to the local economy provided by tuition, housing and food dollars spent by Penn State students. They frame demands on municipal governments in terms of “what’s good for Penn State is good for the surrounding communities.”

But concerned and increasingly angry citizens are amassing a large body of evidence for the opposite assertion - “What’s bad for the community is also bad for Penn State, so knock it off.”

Each new boundary violation – Circleville Farm development, the Sandusky scandal, the Columbia Gas pipeline controversy, the ongoing State College struggle around overlay zoning, and now the attack on our public drinking water supply – demonstrates a powerful, inhuman momentum to shape the entire community to feed Penn State’s corporate appetites. Corporate Penn State does not account for the diminishing returns posed by constant enrollment and construction growth on a finite land mass: threats to drinking water, stormwater and sewage disposal overload, increasing traffic, deteriorating air quality and higher demands on public services.

Growth pressure is enrollment-driven

Corporate Penn State does not provide public information about enrollment growth projections. It’s not in the 2009-2014 strategic plan, or in the current draft of the 2015-2019 plan.

They do publicize the “2+2 enrollment model,” which encourages students to attend branch campuses for two years and then transfer to University Park. As a result of this policy, the undergraduate population at University Park is disproportionately juniors and seniors of drinking age, steered to off-campus housing by the lack of available on-campus beds.

Even if upper-classmen wanted to live on campus, corporate Penn State has strategically undermined its residential building program for the past 30 years to externalize housing and food services. In 1980, University Park had 33,800 students and 13,200 beds, offering housing to 39% of enrollees. By 2013, there were 46,200 students competing for 13,600 on-campus beds. So over the past 30 years, enrollment has increased 37%, while available on-campus student housing increased 3%.

It’s not for lack of funding. Over the same period, corporate Penn State and mega-donors shelled out hundreds of millions of dollars for vanity projects including the Bryce Jordan Center (\$55 million); Medlar Field at Lubrano Park (\$31.4 million); Katz Law Building (\$60 million); Millennium Science Center (\$225 million) and Pegula Ice

Arena (\$90 million). The current capital plan includes a new Chemical and Biological Engineering building (\$140 million) and a new University Park Data Center (\$69 million).

Instead, it's a deliberate externalization of costs, taking the housing and student-supervision responsibility from corporate Penn State and giving it to local governments, for-profit private developers allied with University administrators, and neighborhoods. The developers make money. The university cuts costs.

But students driven off-campus are burdened with higher debt loads to pay for luxury housing off-campus. And municipalities – which rely on earned income taxes from wage-earners and property taxes (from which Penn State is exempt) to fund schools, police and fire protection, water and sewer service and system maintenance, trash-collection, snow-plowing and public employee pensions – find themselves struggling to make ends meet as the proportion of students to adult residents keeps rising.

Whitehall Road/Blue Course incursion

On August 25, 1999, the Richard King Mellon Foundation (the philanthropic arm of Bank of New York Mellon) sold a 26.3-acre Whitehall Road parcel to Penn State. There are at least two recorded deeds: one for \$1 and one for \$99,307.

In the 2000 Centre Region Comprehensive Plan, the six participating municipalities identified strategic regional goals, including balancing community growth; protecting environmental resources such as drinking water supplies; directing growth to areas efficiently served by public utilities, services and transit; preserving and enhancing the low-density community character in rural areas outside the Regional Growth Boundary; and preserving farmland for agricultural use.

In November 2003, Penn State submitted a three-part request to the Ferguson Township Board of Supervisors, asking supervisors to: rezone 26 acres of the Whitehall Road parcel from Rural Agricultural (RA) to Multifamily Residential (R-4); expand the Regional Growth Boundary past the north side of Whitehall Road; and amend the Centre Region Act 537 Plan to extend sewer service from the University Area Joint (Sewage) Authority into the new development tracts.

When asked by Ferguson Township officials to review the application, Centre Region Planning Agency staff submitted a report in March 2004 urging supervisors to deny the application, maintain the growth boundary and leave the agricultural zoning intact. Reasons included hydrogeological evidence that development at the site would threaten the safety of Centre Region residents' main drinking water recharge area, and the availability of other vacant R-4 land within the growth boundary to meet anticipated demand. The report cautioned: "Opening an arterial street into this area outside the Regional Growth Boundary would represent an important revision to the concept of containing higher density development north of Whitehall Road."

On September 7, 2004, Centre Region Planning Agency Senior Planner Sebastian DeGregorio attended the Ferguson supervisors meeting, strongly urging the board to uphold the Rural Agricultural zoning to protect regional water supplies and the integrity of regional growth boundaries. The supervisors spurned DeGregorio's warnings, and voted 3-2 to approve Penn State's rezoning request. Richard Mascolo, Cecil Irvin and George Pytel voted "Yes"; Steve Miller and Richard Killian voted "No."

In 2011 Penn State sold Ferguson Township a nearby parcel for parkland, opened the proposal process for the student housing development and selected Toll Brothers as developers. On May 4, 2012, the Penn State trustees approved the sale of two Whitehall Road parcels, a total of 40.39 acres, to Toll Brothers subsidiary Springton Pointe LP, for \$13.5 million. The trustees added an additional 5.5 acres – still zoned agricultural – to the planned sale on September 20, 2013. (Trustee Karen Peetz of BNY Mellon – the landowner that sold the property to Penn State in 1999 - didn't recuse herself.)

In December 2012, Toll Brothers presented their first a concept plan to Ferguson supervisors: 493 units for 1,600 students. Almost a year later, in November 2013, they updated the proposal to include a mix of apartments and townhouses with 1,544 student beds. Although the land was still zoned R-4, the developers said they planned to request rezoning to PRD (Planned Residential Development).

In the spring and summer of 2014, Toll Brothers delayed public hearings on the plan, because they were fielding investment interest from “national student housing corporations” and setting up a business partnership with Williams & Associates. On October 6, the developers submitted a Tentative PRD Plan for 268 units containing 1,093 beds (to rent between \$500 and \$900 per bed per month), and announced a single-phase build schedule to begin in May 2015 and be complete by August 2016.

Multiple reviewers examined the plan and weighed in on water and other issues, including Kenneth Beldin of Gwin, Dobson & Foreman; Ron Seybert (Ferguson Township Engineer); and Scott Brown of Newell, Tereska & McKay.

Brown expressed concern about “soils or geologic limitations ... including ... the risk of sinkhole formation, particularly as related to potential impacts to the State College Borough Water Authority well fields which are down-gradient from the site... and explicitly ... any limitations caused by the observed shallow depth to bedrock and high bedrock infiltration rates in the vicinity of proposed infiltration facilities and sedimentation control basins.”

David Yoxtheimer, Principal Hydrogeologist of Aqualith Technologies, submitted another analysis of groundwater impacts, warning:

“the proposed project area is upgradient and within the delineated Zone 2 wellhead protection areas for both SCBWA wellfields. Accordingly this project is contained within the ground water recharge area of these primary regional public water supplies and raises concern for potential ground water resource impacts. The surface drainage that would be routed via a large natural swale ... from the proposed project area would be ultimately directed toward Slab Cabin Run and Wellfields 1 and 3. A fracture trace was previously mapped to be coincident with a portion of this swale, therefore the swale’s subsurface is interpreted to be a zone of increased bedrock fracturing and therefore a zone of enhanced ground water recharge and flow. Previous dye trace testing demonstrated that Wellfields 1 and 3 receive at least some surface recharge from Slab Cabin Run, therefore any contaminants in surface runoff from the housing project could potentially have adverse impacts on regional drinking water quality. Potential contaminants of concern in the surface runoff would consist of oil, grease, fuels, glycol, and de-icing agents from the site parking lots, fertilizers used on site vegetation, as well as waterborne pathogens such as coliform bacteria.”

The paper trail for this multi-year process also includes boundary disputes between Ferguson, Harris and College Townships; jurisdictional shifts for erosion and sedimentation control and enforcement between Ferguson Township and Centre County Conservation District; stormwater management concerns raised by the COG Public Services & Environmental Committee; a developer application to the Federal Emergency Management Agency (FEMA) for “a conditional revision to the Flood Insurance Rate Map”; work by the PA Fish & Boat Commission to have Slab Cabin Run designated as a high quality coldwater fishery; problems with sewage treatment capacity, organic overload, Slab Cabin Run flooding, and prohibition of beneficial reuse water discharge due to the high-quality fishery designation (encountered by University Area Joint Authority officials); concerns about the comparative effectiveness of gravity-driven vs. pump-driven sewage systems at the site (raised by DEP); and legally-problematic phasing of the sales agreement between Penn State and Toll Brothers in terms of permitting procedures.

By mid-January of this year, Autumn Radle at Centre Region Planning Agency received “a final subdivision and lot consolidation plan.” Radle responded, noting concerns about including the additional 5.5 acres for stormwater management facilities as inconsistent with the “goals and objectives and intent of the 2013 Centre Region Comprehensive Plan,” because it’s outside the Regional Growth Boundary and Sewer Service Area, will retain Rural Agricultural zoning without meeting the minimum 50-acre threshold, and violates land use goals for “protection of agricultural areas to maintain their future agricultural use.”

Radle concluded: “...allowing developers to build facilities, calculate density, and satisfy open space requirements using parcels outside the RGB and SSA sets an undesirable precedent that erodes the integrity of the RGB and SSA.”

However, she then suggested that the Township respond to those clear boundary violations – not by firmly denying the developers’ improper application – but by *literally* moving the regional growth boundary to the developers’ advantage and the region’s self-protective disadvantage.

There’s no evidence in meeting minutes that Ferguson supervisors read these reports or considered the seriousness of the water safety issues; Board Chair Drew Clemson admitted March 16 he was not aware of the Yoxheimer report and hadn’t read it. So, ignoring 11 years of documented warnings, the Planning Commission split 3-3 on the Tentative PRD on February 23, and the supervisors approved the plan on March 2 by a 3-1 vote (Miller, Clemson, Killian voted “Yes;” Whitaker voted “No;” Mascolo absent.)

By township ordinance, the next stage of the PRD process is a 90-day design review period, a Final Plan Submission, a 45-day review period, and then another supervisor vote on the final plan. Two days after the tentative plan approval, the developers submitted a variance request to the Ferguson Zoning Hearing Board, asking to be exempt from the 90-day Pre-Final Design Review. (The supervisors endorsed the developers’ request, which was scheduled for the zoning board’s review on March 24, after *Voices* went to press).

Penn State’s cognitive dissonance

In recent years, some Penn State administrators have tried to project an image of transparency, engagement and sustainability, while cutting faculty and community members out of key strategic discussions, prioritizing financial profit over all other considerations, and refusing to strengthen weak open records and conflict of interest policies.

Corporate Penn State spokesmen appear regularly at public meetings, lobbying hard to undermine community priorities like clean water, clean air, firm growth boundaries and productive agricultural soils, and instilling fear of legal retribution and lack of confidence in community members and elected officials alike. At the same time, Penn State Extension staff present webinars on “land use planning to protect water supplies.”

The Ferguson Township website presents the results of resident survey, praising the “natural, pastoral beauty. When asked what they enjoy most about living in Ferguson Township, residents said they appreciate the Township’s farmland and open spaces, as well as its safe neighborhoods.” In 2012 – motivated by those same values – Ferguson residents adopted a Community Bill of Rights, the first of which is “the right to pure water.”

But time and again, we sit in meeting rooms and speak up at public hearings to support our values and priorities, only to see Penn State bully municipal officials into submission. The notion that resistance is futile becomes a self-fulfilling prophecy when resistance isn’t even attempted. Citizens are relegated to being witnesses watching bullies win. It’s a pattern of collective civic traumatization.

Township officials can shift from resignation to resistance. They can, in fact, deny all applications for further zoning changes, variances, waivers, extensions, subdivisions, sewer planning modules, permits and the final plan approval, and instead rezone the area back to Rural Agricultural (RA) or to Natural Resources (NR-1), citing the wealth of evidence that RA zoning is a crucial component of drinking water protection and their obligation as public officials to protect public health, safety and welfare.

COG, UAJA and individual municipalities can establish growth boundaries and sewer service areas as firm; regional planning can be aligned to zero-growth projections and replacement of aging building stock with basic, affordable, energy-conserving structures. DEP can deny permits and add wellhead protections to the recharge area. Community activists can continue to investigate, collect documents, and serve as an educational and advocacy resource for governments and neighborhoods as these types of conflicts continue to flare.

All of these public entities can respond to the litigation threat by drawing the legal challenge: we can force corporate plaintiffs – led by Penn State – to sue in open court for judicial endorsement of their plans to contaminate the regional drinking water supply.

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