



DEP removes Dauphin County's Paxton Creek from 'impaired' list

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By LARA BRECKLE, The Patriot-News

A major hurdle to building on much of the remaining developable land in Lower Paxton Twp. is gone — at least for now.

The state Department of Environmental Protection took the Paxton Creek watershed off its most recent list of impaired streams.

After a two-year legal battle, a coalition of developers and municipal officials pointed to the action as a victory in the fight to prevent costly federal stormwater treatment requirements.

In addition to covering much of the remaining buildable land in Lower Paxton, the watershed also runs through Swatara and Susquehanna townships, as well as Penbrook and Harrisburg. The creek empties into the Susquehanna River.

At issue were federal regulations that would have called for extensive filtering of stormwater runoff — a requirement builders said would have made construction too costly. The regulations specifically looked at eliminating phosphorus, a chemical harmful to aquatic life that is found in fertilizers and other products.

Because sections of Paxton Creek run through built-up areas — especially the section that goes through a concrete channel paralleling Cameron Street in the city — opponents said it was unrealistic to think about returning the creek to natural conditions.

The fight might not be over, however.

The U.S. Environmental Protection Agency has the final say over whether the state gets to exclude the creek.

A spokesman for the EPA's Mid-Atlantic Region office said that decision was being made and he couldn't comment.

Likewise, the state Department of Environmental Protection cited pending litigation and could not comment on its reasons for removing the creek from the list.

In Lower Paxton Twp., half of the developable land left is in the Paxton Creek watershed.

“If we were to undertake improvements to reduce phosphorus in stormwater, where would we get the money for that?” Lower Paxton Manager George Wolfe said. “We don’t have a taxable entity. [Stormwater runoff] is not a service someone is paying for.”

Those costs ultimately would fall to builders and taxpayers.

“Right or wrong, builders already have to install fire suppression systems in new residential construction,” Wolfe said. “Plus comply with total maximum daily loads? People can only afford so much.”

Developers make investments years ahead of when spots are likely to be developed. Purchasing land and anticipating demand are all part of the calculation, said Mark McNaughton, president of the Home Builders Association of Metropolitan Harrisburg.

Those calculations, including the financing that underpins a new housing development or store, are based on certain assumptions, he said.

“We’re talking millions of dollars that could have been lost. It would have put a strain on a lot of people,” McNaughton said. “It would have had a massive economic impact.”

Given how much construction underpins the region’s economy, that impact would have rippled through to lost jobs and lost tax revenue for municipalities, he said.

That’s why the home builders and the municipalities say they plan to be vigilant as the creek’s status is reviewed.

They understand that it might be necessary to impose some kind of daily limits, but they want them rooted in good science and logical reasoning, McNaughton said.

In court filings, the coalition of builders and municipalities challenged the criteria and procedures the EPA used to come up with the phosphorus standards, saying they weren’t good science.

In April, the federal Science Advisory Board issued a 46-page report that noted the EPA’s methods “did not present a complete or balanced view,” and restructuring and revision were needed.

Swatara Twp., which has 25 acres in the watershed — none of it developable and none of it directly flowing into the creek — would have been subject to the same strict requirements, Manager Paul Cornell said.

Those 25 acres consist of Norfolk Southern Corp.'s rail yard, Interstate 83 and a car dealership.

“[Paxton Creek] is an urbanized stream,” Cornell said. “It’s not a mountain stream that flows along undeveloped banks. In some places, it has concrete walls. And it’s being treated as a mountain stream [by the EPA]. The goal was to get this stream back to ‘mountain’ conditions. It’s an issue that wasn’t based in reality.”

E. Drannon Buskirk Jr., a founder of the Paxton Creek Watershed & Education Association, said he had his own reservations about the phosphorus restrictions when they were proposed in 2008.

The group sent a letter to the EPA, saying it believed the limits suggested were too high and not based on accurate readings.

The changes also suffered from poor public relations, with the regulatory agencies springing the changes on municipalities with little notice.

“It’s a shame because sometimes people resent something because of the way it was done, not the results,” Buskirk said.

In a sense, the heavy restrictions were good, he said. It gave municipalities goals to reach. The restrictions weren’t to take effect until 2025.

Getting municipalities and developers on board with low-impact development concepts, such as porous concrete and rain gardens, would go a long way, he said.

“It’s like painting a problem with invisible paint,” he said. “The problem’s still there and you suffer because of it. [Without the restrictions, it] will take much longer to fix the problem.”

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