
EMMAUS LEGION BASEBALL FIELD
RECONSTRUCTION PROJECT

AN OVERVIEW AS OF AUGUST 16, 2010

Prepared by Craig B. Neely, Emmaus Borough Manager

EMMAUS LEGION BASEBALL FIELD RECONSTRUCTION PROJECT

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Prepared by Craig B. Neely, Emmaus Borough Manager

Attached hereto is a complete version of the Emmaus Legion Baseball Field Reconstruction Project Overview as of August 16, 2010. It is my detailed account of the development of the Project, from the first discussion that I had with Dennis Ramella of the East Penn School District, until the close of business on August 16, 2010. I have tried to be as succinct as possible; however, due to the complexity of the Project and the need to be as thorough about the facts as possible so that there are no misunderstandings, the resulting document is 16 pages long. For those who may not want to read the entire Overview, I have prepared this Executive Summary.

In 2003 I asked Dennis Ramella, Athletic Director for the East Penn School District, if the District would have any interest in partnering with the Borough of Emmaus to improve the Legion Baseball Field and have varsity baseball return to Emmaus. He advised me that the District did not have an interest. Nevertheless, after the issue arose again in February 2009, this time at an Emmaus Parks and Recreation Commission Meeting, School District Superintendent Thomas Seidenberger contacted me and discussed the possible partnership.

We obtained an opinion from the Borough Engineer that the reconstruction plan was feasible. As part of the 2010 Budget and of the 2010 Bond Issue the Borough approved investing \$100,000 of Bond money into the Project. The funding plan included this \$100,000, \$300,000 from the East Penn School District, \$300,000 from the Lehigh County Green Future Fund, and \$50,000 from private sources. As of August 16, 2010 it appears that funding from the County will not be forthcoming.

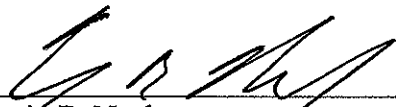
I prepared an Agreement between the Borough and the District and a Lease for the Legion Field that would govern the relationship between the two if the Project were completed. The Agreement sets forth the financial arrangement for completing the Project, while the Lease addresses issues concerning the use and maintenance of the Field. On June 28, 2010 the East Penn School District Board of Directors approved the Agreement and Lease.

The Lease attempts to balance the interests of the Borough with the District's ability to be assured that its investment is protected. The Lease affords the District priority, but not exclusive use of the Field, during the high school baseball season. The Borough's maintenance frequency and defined responsibilities are no different under the Lease than the Borough currently performs for the Legion Field. Thus, every effort has

been made to minimize any impact that the School District use would have on the Borough's work force.

Despite the District's approval of the Agreement and Leases on June 28, 2010, on July 19, 2010 the Emmaus Borough Council voted to "table" the Ball Field issue. No funds have been expended on the Project since then. Council President Gilbert referred the matter to the Parks and Recreation Committee of Council, which decided that it will review the plans and the latest cost estimate at its September 7, 2010 Meeting to determine if the Project can move forward as a scaled down version.

At this point the Project is in limbo due to the County not providing funds and because Council tabled the issue. However, there may be support among Council to move forward on a more limited project. Thus, the attached Overview is important to anyone who wants to understand how the Project began and developed, and to learn the facts surrounding the proposed Project. Though it is lengthy, its length is necessary to explain all of the issues.



Craig B. Neely
Emmaus Borough Manager

EMMAUS LEGION BASEBALL FIELD RECONSTRUCTION PROJECT

AN OVERVIEW AS OF AUGUST 16, 2010

Prepared by Craig B. Neely, Emmaus Borough Manager

As the Emmaus Legion Baseball Field Reconstruction Project has become a significant topic of conversation in the Borough, I will review the history of the Project, its current status and its future.

I. THE REASONS FOR FIELD RECONSTRUCTION

The Legion Baseball Field at Emmaus Community Park was constructed in 1967. Since then, it has not undergone any significant renovations, only having lights installed in 1987. At one time, it was the home of the Emmaus High School Hornets baseball team, but that relation ended in the 1990's when the field no longer offered conditions acceptable to the School District to continue play at the Field. It continues to be the home of the Emmaus Legion and Junior Legion baseball teams, as well as a field used by in-house baseball programs sponsored by the Emmaus Youth Association.

For at least 10 years the Emmaus Youth Association has been discussing the need to renovate the Legion Field. Its infrastructure has been deteriorating, while field standards in the baseball community have been elevated. The Borough has not had the funds available to make improvements to the Emmaus Legion Baseball Field.

A. Field Conditions

Cursory and intimate observations of the Field demonstrate the reasons why renovations are necessary.

1. The infield is completely comprised of dirt, which is below accepted standards, which is to install a grass infield with dirt cut-outs for the infielders, pitchers, and baserunners.
2. Third base is 10" higher than first base.
3. The base of the left field foul pole is 4' higher than the base of the right field foul pole.
4. The backstop is too close to home plate to make the field "official".
5. Makeshift bullpens are bare patches of hardpan on uneven surfaces.
6. The dugouts are deteriorating.

7. The backstop is rusted and its posts are leaning.
8. The outfield fence is comprised of an orange temporary snow fence secured by 4' metal posts attached by zip ties.

B. Safety and Liability Issues

Baseball, like most sports, has inherent risks, such that players are always in jeopardy of being injured simply by virtue of the natural perils of the game. Being hit by a pitched ball, twisting an ankle rounding third base, or colliding with a fellow player, happen in baseball, and every player and parent knows of these and other risks. Nevertheless, the Borough is obliged to provide a field that is as safe as possible, without known dangerous conditions imperiling players. In my opinion, the Legion Baseball Field needs to be renovated to eliminate dangerous conditions.

The most obvious dangerous condition is the temporary snow fence. In the spring the Borough installs the orange temporary snow fence by sliding metal posts, similar to signposts that are installed along roadways, through holes in the temporary fencing, and pounds the metal posts into the ground, such that, once installed, their tops are approximately 4' from the ground. The tops of the posts are simply sawed metal so that the Borough wraps the tops with foam and secures it with zip ties around the tops of the posts.

Over the last few years I have routinely inspected the fence as the Legion and Junior Legion baseball seasons progressed. The right field fence deteriorates quickly. It is close to the pool dropoff loop at the end of Miklencic Drive. As kids wait for their rides they play on the fence, resulting in the fence being torn apart and the foam being ripped or removed from the tops of the supporting posts.

During the 2009 Emmaus Legion Baseball season I sat in the bleachers and watched the Emmaus left fielder try to chase down a fly ball by inadvertently running right through the left field fence. What if he would have run into a post? What if an outfielder would dive for a fly ball and land on top of a post? What if he landed on the post on his abdomen? What if he landed on the post on his neck? What if his parents were in the stands and watched their son become seriously injured because of the condition of the outfield fence?

The alternative to the fence is to not install it. As I noted, it is substantially downhill from left to right field. Without a fence, a ball hit into right field, especially closer to the right field line, will roll unimpeded towards Miklencic Drive. What about the right or center fielder who chases a ball down into Miklencic Drive, and is hit by a car?

Whether there is a temporary fence or no fence, there is a significant risk of injury to outfielders playing baseball at Community Park, and the risk is not one inherent to the game of baseball, but one created by the condition of the Field. Considering the danger

of significant injury posed by the current conditions, if we have the opportunity to improve the Field and eliminate the risk of injury due to the condition of the Field, then it is worthwhile doing.

II. HISTORY OF THE EMMAUS LEGION FIELD RECONSTRUCTION PROJECT

Emmaus Community Park is a beautiful park nestled in a low-lying area of the Borough, which offers exceptional recreational opportunities to the community and its visitors. Baseball has been a mainstay at the Park and has provided memories indelibly etched in the hearts and minds of players, and their friends and families, with sometimes 3 generations in the same family having called Community Park their home field. Emmaus has historically been, and continues to be, a 'baseball town' where young and old attend the Park to experience the fun of America's Pastime.

Against this backdrop, for more than 10 years the Emmaus Youth Association has been advocating renovations to the Legion Field at Emmaus Community Park. Without funding, though, the Borough was in no position to effect the improvements.

Consequently, in 2003, while I was President of the Emmaus Borough Council, I contacted Dennis Ramella, Athletic Director for the East Penn School District, and asked whether he thought that there would be any support among the East Penn School District to partner together to renovate the Emmaus Legion Field and have the Emmaus High School Hornet baseball team return to play at Emmaus Community Park. He indicated that there was no interest at that time, such that, for years, this one telephone call was the only conversation between the Borough and the School District concerning a partnership at the Legion Field.

However, from 2007 through 2009 the Borough's Parks and Recreation Commission worked in conjunction with surrounding municipalities to develop the Southwestern Lehigh County Area Parks, Recreation, & Open Space Plan. After becoming Borough Manager, I began attending the Commission Meetings. At the February 2009 Commission Meeting, while discussing possible future park improvements, I commented that on one occasion I discussed the possible partnership for the Legion Field with Mr. Ramella. The School District's representative to the Commission was surprised that the District did not express interest.

In late April 2009 I received a telephone call from Dr. Thomas Seidengerger, Superintendent of the East Penn School District, in which he advised me that he heard of the idea that I had raised in 2003 about a cooperative effort between the Borough and the District to renovate the Emmaus Community Park Legion Baseball Field. He and I subsequently met to discuss the possibilities.

An important part to these discussions surrounded the efforts of the East Penn School District to accommodate its baseball and softball programs with new fields. In fact, representatives of the East Penn School District attended a Meeting of the Emmaus

Borough Council, at which it presented engineering plans for the development of a baseball and softball facility on District-owned property behind the Wescosville Elementary School.

In furtherance of this plan, on June 11, 2007 the East Penn School Board voted to authorize spending no more than \$1.7 million for the construction of baseball and softball fields behind Wescosville Elementary. However, when it bid the project out in 2008, the costs substantially exceeded the authorized \$1.7 million. Consequently, when Dr. Seidenberger heard of a potential partnership that could provide the needed athletic facilities at a substantially reduced cost, he contacted me. The District had already made the commitment to spend the funds.

When Dr. Seidenberger and I discussed the possibilities we were excited that the Borough and the School District could collaborate on a project that would substantially improve an important but deteriorating Borough asset, while bringing Emmaus High School Hornet Baseball back to Emmaus Community Park. I advised Dr. Seidenberger that the Borough would need substantial financial contributions to make the renovations a reality, because the Borough was not in the position to fund the necessary renovations. He advised me that he would discuss it amongst the District and see if the concept was a possibility.

As I reviewed the project with Borough officials during the summer of 2009 and as Dr. Seidenberger reviewed the matter with District personnel, the development of a partnership appeared to be an important fiscal reality that would drastically improve the recreational facilities of the Borough, and improve the quality of life of the Borough by having the perennially competitive Emmaus High School Hornet Baseball Team returning to the Borough of Emmaus in the idyllic setting of Emmaus Community Park.

As government resources have been consistently strained and tightened over the last decade, intergovernmental cooperation has been advocated as an important method by which local governments can reduce costs, and therefore the financial burden on taxpayers, by pooling their resources and sharing facilities. Consequently, Dr. Seidenberger and I believed that the proposed partnership would accomplish the goals of this important developing concept for local government, and would, in fact, be a prototype for efforts between other local governments.

I discussed the potential scope of the baseball field renovations with two firms who have substantial experience in baseball field construction/renovations. They advised me about the importance of certain items in field construction—a grass infield, a drainage system, patented infield mix, field grading issues, fencing, spectator areas, and safety issues. They verbally advised me that we should budget approximately \$750,000 for the project, which would allow us to renovate the Field into a fine facility of which the Borough and the School District would be proud, and which would make it a prime baseball facility that meets all existing dimensional and use requirements.

Consequently, I advised Dr. Seidenberger of this estimate so that he could attempt to determine what, if any, financial investment could be made by the East Penn School District. In the meantime, after discussing the matter with Committees of Borough Council, I asked the Borough Engineer to use an existing survey of Emmaus Community Park to lay out the basic dimensions of a renovated Field to determine if the renovations would be feasible. He prepared a basic sketch that demonstrated how the Field would sit on the Community Park site. I advised Dr. Seidenberger that the Field would fit on the site with home plate being repositioned forward, to have the dimensions satisfy official standards, and with the field being rotated slightly towards left field. We agreed that we would present the idea to our respective elected bodies.

III. PLANNED FUNDING OF THE PROJECT

During deliberations for the 2010 Emmaus Borough Budget, at its publicly advertised and conducted Meetings, it discussed how renovations to the Legion Field could be funded. The Committee evaluated the potentially available sources, and concluded that a unique combination of funding sources could be used to fund the renovations, concluding that the following sources would raise the \$750,000:

Emmaus Borough	\$100,000
East Penn School District	\$300,000
Lehigh County Green Future Fund	\$300,000
Private Sources	<u>\$ 50,000</u>
TOTAL	\$750,000

I will review the funding sources to explain how the plan appeared both feasible and fiscally responsible.

A. Emmaus Borough

During the Fall of 2009, when Emmaus Borough Council's Budget and Finance Committee deliberated over the 2010 Budget, it considered refinancing existing debt and borrowing approximately \$1.5 million for capital improvements, as interest rates were at historical lows. The Budget and Finance Committee ultimately recommended to the Emmaus Borough Council that it effect the refinancing and borrowing, with \$100,000 of the new borrowing being allocated to the Legion Field Reconstruction Project.

During discussions at Emmaus Borough Council Meetings in December 2009 some members of Council expressed disapproval of the borrowing, and the baseball field project specifically, which disputes were reported by the local media. Nevertheless, Borough Council ultimately voted to borrow the funds and to allocate \$100,000 of the funds to the Legion Field Reconstruction Project.

B. East Penn School District

Before discussions even began about this Project in 2009, the East Penn School Board had already authorized spending up to \$1.7 million for the construction of baseball and softball facilities at Wescosville Elementary School. After considering the proposed Legion Field Reconstruction Project, on June 28, 2010 it voted to invest \$300,000 in the Project and \$100,000 on improvements to the Kiwanis/Williams Street recreational facilities.

C. Lehigh County Green Future Fund

In 2002 the voters of Lehigh County voted by a nearly 2 to 1 margin to authorize Lehigh County to borrow \$30 million to create the Green Future Fund to preserve open space and fund improvements to recreational facilities in Lehigh County. Lehigh County advised every municipality in Lehigh County that it was allocating a pro rata portion of the Fund for each municipality, the division being based on the municipality's population as compared to the total population of Lehigh County. The County advised the Borough that its share of the Green Future Fund was \$553,000.

The County advised municipalities that the Green Future Fund is a matching program, whereby the municipality needed to have funding of at least 50% of a project from sources other than the Green Future Fund. The Borough took advantage of its Green Future Fund allocation when effecting improvements to the Kiwanis Playground on Ridge Street, the Emmaus Triangle, and the South Mountain Gateway Trail.

The County additionally advised municipalities that as a prerequisite to applying for Green Future Fund monies, municipalities needed to develop a Comprehensive Plan for its parks and recreation facilities. The Borough, through its Parks and Recreation Commission, worked with the Borough of Macungie, Lower Milford Township, and Upper Milford Township, to create and adopt what became known as the 2008 Southwestern Lehigh County Area Parks, Recreation, and Open Space Plan.

Relying on the availability of the Green Future Fund, I presented a proposal to Borough Council that included using the Green Future Fund to fund improvements to the Emmaus Legion Baseball Field, in which the Borough could use its contribution, the School District's contribution, and the private funds as a match to accommodate the requirements of the Green Future Fund. A majority of Borough Council agreed to the funding plan, and on May 17, 2010 Emmaus Borough Council voted to authorize me to submit an application to the Green Future Fund for \$300,000 to fund a portion of the Legion Baseball Field Reconstruction Project.

In early July 2010 I talked to a representative of the County, who advised me that the project may not be funded because of insufficient financial resources at Lehigh County. I learned that the County never in fact created a "Green Future Fund", in the sense that it never borrowed the \$30 million approved by Lehigh County voters, and never set up an actual "fund". As a result, with the downturn in the economy and

depleted reserves, the County would probably not fund the project via the "Green Future Fund."

Since 2002 the Borough of Emmaus and other municipalities have been relying on the County having established a "Green Future Fund" that would fund open space preservation and park and recreation improvements up to the allocated figure as calculated and publicized by Lehigh County. As was recently revealed, however, no true "fund" exists. Consequently, the County has now publicly stated that the "Green Future Fund" is "frozen" such that the Borough does not expect to be receiving County funding for the Project.

This revelation by the County has a significant impact on the future of the Legion Field Reconstruction Project, as the Borough expected that substantial funds would be received based on its available allocation from the "Fund". As of the drafting of this document, the County has not officially advised the Borough that the funds are not available, but the Borough expects that there will be no money forthcoming from the "Lehigh County Green Future Fund."

D. Private Sources

The Borough anticipates that it will be raising \$50,000 in private funding for the Project. The Emmaus Youth Association previously offered to provide \$20,000 to the Borough for improvements to baseball fields, which funds were never donated because the Borough did not have a defined plan for use of the funds. Now that the Reconstruction Project is defined, the Borough anticipates requesting and receiving a \$20,000 donation from the Emmaus Youth Association.

Emmaus Community Park was named as the recipient of a bequest from a Trust established by a woman named Rachel Strickler. She named 3 Emmaus-based beneficiaries—the Emmaus Public Library, the Emmaus Historical Society, and the Emmaus Community Park. Most of the funds in the trust have been distributed, and the portion attributable to the Emmaus Community Park has been deposited into a bank account segregated to the funds from the Trust. The balance in the account as of May 31, 2010 is \$21,146.63. These funds would be available for use as part of the Legion Baseball Field Reconstruction Project.

The Borough believes that, if it would need the balance of private funding to pay for the field renovations, it and the Emmaus Youth Association would be able to conduct a fundraising effort to obtain the balance of the money to reach the \$50,000 Private Funding goal.

E. Project Funding—Summary of Current Status

The Borough's \$100,000 is available as the proceeds of the 2010 Bond Issue were deposited into investment accounts following issuance of the Bonds. The East Penn School Directors have been asked to back out of the project, but have refused to take any

action that would have the District withdraw from the Project. By all indications, the East Penn School District appears to continue to be in support of the Project. The Borough believes that the Private Funding aspect will be fulfilled. The Borough does not expect to receive anything from the County, as there appears to be no "Green Future Fund" from which to receive money. Consequently, current reliable funding sources amount to \$450,000.

IV. TITLE IX—SCHOOL DISTRICT INVESTMENT IN KIWANIS/WILLIAMS STREET RECREATIONAL FACILITIES

As Dr. Seidenberger and I discussed the improvements to the Legion Field he advised me of the District's obligation under Title IX, a federal law passed in 1972, that has been interpreted to require educational institutions to invest in girls' sports when it invests in boys' sports. The law requires that girls and boys have equal opportunities in the educational setting.

For many years, the Emmaus High School Varsity Softball team has played in the City of Allentown at Patriots Park. The School District would like to bring Emmaus Hornet Softball back to the Borough by playing its games at the Kiwanis Field off of Ridge Street. To make its return, the District, as part of funding the Legion Field Reconstruction Project, agreed to pay up to \$100,000 for improvements to the Kiwanis/Williams Street recreational facilities to accommodate varsity girls softball. This funding does not require any investment of Borough or other funds.

The Borough and the District have been concentrating their efforts on the reconstruction of the Legion Field and have not discussed the specific improvements that could be made to the Kiwanis/Williams Street facility. Nevertheless, at its June 28, 2010 Meeting, the East Penn School Board authorized spending up to \$100,000 for the improvements, with the understanding that the District and the Borough would agree upon what improvements would be most economical and beneficial to the recreational complex.

V. BOROUGH COUNCIL APPROVALS

The first vote of Emmaus Borough Council related to the Project occurred during the Council's deliberation over the 2010 Borough Budget. The Borough's Budget and Finance Committee recommended to Borough Council that it include \$100,000 in the proposed 2010 Bond Issue for the Legion Baseball Field Reconstruction Project. On December 31, 2009 Borough Council voted to include the funding in the 2010 Budget. On February 1, 2010 Borough Council once again voted to fund the project in the 2010 Amended Budget.

Throughout the early part of 2010, the Borough's Parks and Recreation Committee discussed the project and met with the Borough Engineer in efforts to refine Council's expectations of the Project. The Engineer had the site surveyed, attended

Committee Meetings, and prepared multiple drawings in an effort to design a renovated field that met the expectations of the Borough.

On March 1, 2010 I asked Council if its would support the plan for the Project and authorize me to attend the March 8, 2010 Meeting of the East Penn Board of School Directors to advise the Board that Council is in support of the Project. Council voted to support the plan and authorized me to attend the School Board Meeting to advise it of that fact. I advised the School Board that the Borough supports the plan.

In the meantime, the Borough processed the administrative matters surrounding the 2010 Bond Issue, which included specifically identifying the Legion Baseball Field Reconstruction Project as part of the Capital Improvement Fund to be created as a result of the borrowing. On April 5, 2010 Borough Council approved issuing the Bonds, incorporating the funding for the Project as a component of the Bond Issue.

Obtaining funding from Lehigh County via the "Green Future Fund" was an integral part of the Project, so on May 17, 2010 I asked Council to authorize me to submit an application for funding to the Lehigh County Green Future Fund in the amount of \$300,000. The Motion passed and I submitted the Application.

In the midst of these discussions, at the June 1, 2010 Parks and Recreation Committee Meeting, Councilman Labenberg identified 2 goals for recreational facilities that the Borough had not met—completing the walking trail at the Emmaus Community Park, and the construction of T-Ball fields to accommodate the youngest of baseball players. He asked that we have the Borough Engineer prepare a comprehensive plan of the Community Park area surrounding the Legion Field that would show the engineering involved with completing the trail and constructing two T-Ball fields at Emmaus Community Park as part of the Legion Baseball Field Reconstruction Project.

At the June 7, 2010 Borough Council Meeting the Council approved plans for the Emmaus Legion Baseball Field Reconstruction Project.

The most recent plans prepared by the Borough Engineer include the completion of the walking trail and the construction of a new T-Ball field beyond what would be the left field fence of the renovated Legion Field. Nevertheless, considering the lack of adequate funding for the Project, I anticipate that it will be impossible to build the trail and the field that would have been expansions of the reconstruction project.

VI. AGREEMENTS AND LEASES BETWEEN THE BOROUGH AND THE SCHOOL DISTRICT

Borough Council authorized me to prepare an Agreement memorializing the partnership between the Borough and the District, and the Leases that would govern the District's uses of the Legion and Kiwanis fields. I did so, and forwarded them to the District for consideration by the District's administrative staff, Solicitor, and eventual approval by the East Penn Board of School Directors. After the District suggested a

handful of minor, non-substantive changes, on June 28, 2010 the School Directors voted to approve the Agreement and Leases.

A. The Agreement

The Agreement is simple, setting forth the respective parties' rights and obligations. It is premised on the financial plan as set forth and explained more fully above. It contains the following terms and conditions:

1. The District makes a \$300,000 contribution to the Legion Baseball Field Reconstruction Project.
2. The District contributes \$100,000 to improvements at the Kiwanis/Williams Street recreational facilities.
3. The Borough retains fee simple ownership of all facilities involved.
4. The Borough directs and supervises the design and construction of the Legion Field, agreeing to do so in consultation with the School District.
5. The Borough and District sign leases in the form of leases attached to the Agreement, the basic terms of the leases being described below.

For both parties' protection, performance under the Agreement is contingent on receiving money from the Green Future Fund, such that if the "Green Future Fund" monies are not received, then the Agreement can be terminated by either party.

The Agreement governs the financial relationship between the Borough and the District to enter into and complete the Project. If the Project would be completed, then the rights and responsibilities of the parties would be governed by the Leases attached to the Agreement.

B. The Lease

The leases for the Legion Field and the Kiwanis/Williams complex are designed to ensure that the School District obtains a value for its investment, while preserving the availability of the fields for use by Emmaus programs. As a result, I designed the Leases to grant to the District priority, but not exclusive, use of the fields during the varsity baseball and softball seasons. Moreover, I drafted the Leases to ensure that the Borough would not be overburdened by an increase in maintenance costs as a result of the renovated field and the District's use. Relevant Lease provisions are:

1. Designation of Leased Area. Describes the fields being leased—the Legion Field for the one, and the Williams Street/Kiwanis Fields for the other.

2. Term of Lease. The Leases are for 50 years, with a possible 50 year renewal. This paragraph is patterned after the 99-year Lease governing the District's use of Community Park for soccer and our use of South 4th Street, which lease arrangement has worked well.
3. Annual Lease Period. Every year the District will have the right to occupy the Field from the first day of baseball practice for the varsity team until midnight on the last day that the varsity team plays. The termination of the yearly lease period is designed to allow the team to use the field for practice during playoffs and until the playoffs are over. The District has no right to occupy the field during any other time of the year.
4. Field Use. During the Annual Lease Period the District has "Priority Use", which gives it the right to choose when it wants to occupy the Field, subject to its providing notice of its intended schedule to the Parks and Recreation Commission. It clearly states that Emmaus Junior and Senior Legion will be using the Field during the Annual Lease Period, and requires cooperation between the Borough and the District to accommodate all of the uses. Historically, the varsity teams have played during the day, while junior and senior legions have played at night. Consequently, we believe that use among all of the teams can be accommodated.
5. Maintenance Costs.
 - a. Lawn Maintenance. The Borough agrees to keep the grass areas in good condition, including reseeding, fertilizing, and applying vegetation controls, if necessary.
 - b. Lawn Mowing. We will mow the grass once per week.
 - c. Field Mix. We will replenish the infield mix.
 - d. Weed Trimming. We will do the weed trimming around the structures.
 - e. Raking. The Lease provides that all users of the Field rake the grass after using it. The Lease obligates the District to do it, but also requires that the Borough ensure that all other users of the Field do it.
 - f. Field Lining. We will provide the materials to line the Field, but the District will be required to line the Field.
 - g. Refuse, Garbage, and Debris. We will provide refuse and recycling containers, and we will clean the spectator areas. The District will clean the dugouts and the Field after each use.

- h. Special Requests. If the District has special requests, we will try to accommodate them, but we reserve the right to be paid for providing more than what we have agreed to in the Lease.
 - i. The District is allowed to perform maintenance on the Field as long as it advises us of what it is doing.
- 6. Field Lights. We will ensure that the lights are functioning, and the District will pay for use of the lights.
- 7. Inclement Weather. The District has the right to decide whether to play during or after inclement weather. However, if the use damages the Field then it will reimburse the Borough for the cost of repairing the damage.
- 8. Possession. The District does not have exclusive possession of the field during the Annual Lease Period and is required to cooperate with other organizations concerning use of the Field.
- 9. Assignment. Neither party can transfer its rights or obligations under the Lease to anyone else.
- 10. Modification of Agreement. Changes to the Lease need to be in a writing signed by the Borough and the District.
- 11. Insurance. The Borough and the District must both maintain at least \$3 million coverage in liability insurance.
- 12. Termination of Lease. The Borough and District can agree to end the Lease at any time. The District can unilaterally terminate it with 30 days notice to the Borough. Under neither circumstance would the District have any right to reimbursement or compensation from the Borough.
- 13. Replacement and Repair of Structures and Fixtures—Casualty Loss. We need to maintain casualty insurance on the Field and its structures, and it is our responsibility to effectuate repairs, or arrange for the repairs in the event of a casualty loss.
- 14. Replacement and Repair of Structures and Fixtures—Wear and Tear. We maintain the structures and fixtures. If they fall into disrepair due to age the Borough and the District will negotiate the terms of what will be repaired/replaced and who will pay for it.
- 15. Rest Room Facilities. We agree to provide functioning rest rooms within 150 feet of the Field, which are already installed and used.

16. Borough Use of the Field. At all times other than the Annual Lease Period the Borough can use the field for baseball whenever it wants. If the Borough wants to conduct another type of activity it will need the District's consent. This provision protects the District from having its investment in baseball damaged by the Borough's use of the field for a non-baseball use. For example, if the Borough wanted to sponsor a 3-day car show on the Field it would need to obtain the District's approval. Alternate uses could damage the Field, so the District is entitled to ensure that its investment is protected.
17. At the conclusion of the 50 year lease term it can be renewed by the District for another 50 years. Upon the renewal the Borough cannot be required to upgrade the Field. If the District wants improvements, then it and the Borough would negotiate on the terms.

C. Maintenance Responsibilities and Costs

Maintenance responsibilities and costs were a major consideration in my drafting the Leases, as I wanted to ensure that the impact on maintenance, if any, as a result of the reconstruction and the District's use, would be minimal. I believe that the Leases achieve that goal by requiring that:

1. The Borough agrees to keep the grass areas in good condition, including reseeding, fertilizing, and applying vegetation controls, if necessary. Currently, it is difficult, if not impossible, to make the outfield satisfactory because of football's use in the fall. With a baseball only facility we will be able to maintain the grass much easier and provide a substantially better quality field. If we only consider lawn maintenance there will definitely not be an increased cost, and it could actually be reduced.
2. We will mow the grass once per week, which is what we do now, usually every Thursday. If the District desires more frequent cuttings, that will be its responsibility.
3. We will do the weed trimming around structures, which we do now.
4. The raking responsibilities imposed by the Lease are important and will have ramifications beyond the District's use of the Field. It is imperative with a grass infield that after every border between the grass and the dirt be raked so as to ensure that any dirt that was pushed into the grass is raked back into the dirt part of the infield. If the dirt is not raked out it will accumulate at the edges of the grass, raising the turf level at the border and creating a dangerous playing condition that is difficult and expensive to remediate.

Consequently, the Lease provides that all users of the Field rake the grass after using it so as to prevent this condition from developing. The Lease obligates the District to do it, but also requires that the Borough ensure that all other

users of the Field do it. That means that we will need to require the Junior and Senior Legion teams and any others that play or practice on the Field to rake it.

5. We will provide the materials to line the Field, but the District will be required to line it, which is the same as we have done for EYA.
6. Refuse, Garbage, and Debris. We will continue to provide refuse and recycling containers, and ensure that the spectator areas are clean. The District will clean the dugouts and the Field after each use, which has always been the case.
7. Special Requests. We reserve the right to be paid for accommodating any special requests.

The District approved the Leases at its June 28, 2010 Meeting, thereby accepting all of the terms.

I tried my best to balance the interests of both parties in the Leases to ensure that both obtain the benefit of their investments, while not overburdening either party. By explicitly listing the maintenance responsibilities, and limiting the Borough's maintenance responsibilities to its current maintenance schedule, I believe that the maintenance costs of the Borough will not be substantially affected by the District's use of the fields.

VII. THE FIELD IMPROVEMENTS

The Project consists of the renovation of certain features and the installation of new ones. The intent of the design is to bring the Field conditions up to contemporary standards by having its dimensions and characteristics consistent with high school baseball standards and to provide spectators with a comfortable and safe atmosphere to watch baseball.

The initial design work began in the late summer and early fall of 2009 to determine the feasibility of the site for planned improvements. The Borough Engineer researched the requirements for regulation dimensions for high school baseball fields, reviewed the existing site conditions, and prepared a sketch drawing overlaid on an existing plan of Community Park to determine that the Field could be reconstructed as a regulation size high school baseball field by moving home plate approximately 15' forward, rotating the field slightly towards left field, and moving the lights away from home plate, thus concluding that the project is feasible on the Community Park site.

The basic elements of the improvements are:

1. Regrade the site to afford it a radial grading pattern, with equal grades radiating from the pitcher's mound.

2. Move home plate forward so that it would be 60' from the backstop, with the concomitant result that the entire infield would be relocated.
3. Installation of an underground drainage system beneath the infield.
4. Construction of a grass infield with dimensions consistent with prevailing dimensional requirements.
5. Installation of a patented infield mix that allows for quick drainage and increases stability of the infield.
6. Moving the outfield lights farther from home plate.
7. Installation of a 6' outfield fence, being chain link with a green vinyl coating.
8. Construction of 2 bull pens at the farther ends of each of the right and left field foul territories, enclosed in 6' fencing.
9. Placement of 6 bleacher units, in sets of 2, with one set behind home plate and one set on each infield side, with each bleacher unit having a manufacturer's specification of 110 seating capacity.
10. Installation of a roof over the center set of bleachers.
11. Construction of new dugouts that conform to federal laws requiring that they be handicap accessible.
12. Installation of a 4 foot fence along the first and third base sides.
13. Creation of a level grass spectator's section inside the 4' fence along the third base side.
14. Installation of backstop netting.

The Engineer prepared a cost estimate, dated June 2, 2010, that detailed the anticipated cost of these improvements at \$726,197.45 which included \$660,179.50 for the physical improvements and the balance as a contingency for other costs.

VIII. CURRENT STATUS OF THE PROJECT

On July 19, 2010 the Emmaus Borough Council voted to "table" the project, which I have interpreted as meaning that the Borough will not spend any money on the Project until and unless Council removes the matter from the table and votes to proceed further. Council President Gilbert referred the matter to the Parks and Recreation Committee for further consideration.

The Parks and Recreation Committee met on August 2, 2010, with Councilmen Barrett and Labenberg in attendance. They agreed on the next step. The Committee's next scheduled Meeting is on September 7, 2010, at which the third member, Mr. Holtzhafer, is expected to be present.

The Committee is assuming that there will be no funding offered by Lehigh County. It agreed, therefore, that the next step is to review the existing plan and cost estimate to determine what portions of the Project can be scaled back. The Committee was asked by a member of the public to recommend to Council that the Project be abandoned, but the Committee Members opted to proceed in the foregoing manner.

Even if Council removed the matter from the table and voted to proceed, the Project could not be completed this fall for next spring, such that there is no rush to reach a resolution. Thus, the Committee believed that further study on the design and costs is a worthy investment.

IX. CONCLUSION

The idea for the Emmaus Legion Baseball Field Reconstruction Project was a collaborative effort between the East Penn School District and the Borough of Emmaus, to improve the Emmaus facilities, specifically the Legion Field at Community Park and the Kiwanis/Williams Street Recreational Complex, and to bring Emmaus High School varsity baseball and softball back to Emmaus. The governmental agencies perceived the partnership as a responsible partnership that would be in the taxpayers' best interests.

The Borough relied on the Lehigh County "Green Future Fund" as a substantial resource for the Project, but it appears that the Fund does not exist to participate in the Project, such that if the Project moves forward it will need to be on a scaled back basis from the initial plan. The matter is currently "tabled" but is still being actively studied by the Parks and Recreation Committee of Emmaus Borough Council.



Craig B. Neely
Emmaus Borough Manager