

"Federation Corner" column  
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### **Are WSSC and MNCPPC about to be engulfed by a "perfect storm?"**

by Wayne Goldstein

At a full County Council briefing by WSSC on January 27th about the River Road pipe break, Councilmember Nancy Floreen was the most outspoken in participating in the political theater by proclaiming that WSSC perhaps needed to be broken apart in order to resolve intractable differences between the three Montgomery County WSSC commissioners and the three Prince George's County WSSC commissioners.

A PHED Committee meeting was held February 9th to discuss the recommendations of a report about merging recreation programs to eliminate duplicative activities and costs between MNCPPC's Department of Parks and the County's Department of Recreation. Councilmember Marc Elrich, with some support by Councilmember Floreen, pushed beyond the initial Council staff recommendations to consolidate all recreation programs in one of these departments, including possibly expanding the merger to include parks. This left unanswered the question, except through speculation, of what to do with what would then become a standalone Planning Department.

In the 80-90 years since WSSC and MNCPPC were organized, there have been periodic calls to dismantle these two bi-county agencies. There were specific plans to abolish MNCPPC in the '50s and '60s and sustained attacks on WSSC in the '30s and the '60s with plans to sell it off in the '90s. If the wishful thinking of several elected officials were to grow in numbers and intensity, it might create a perfect storm against the bi-county concept that could radically alter or sweep away these two agencies.

I believe that knowing some of the historic background of these agencies is necessary in any discussion of their futures. Furthermore, WSSC is very much the parent to MNCPPC as their combined histories also tell how our counties have developed. If each of these agencies were the equivalent of marriages, WSSC would resemble a couple with irreconcilable differences, one spouse coldly contemptuous of the other who looks for distraction in petty squabbles. MNCPPC would resemble a marriage in name only where the partners long ago divided their assets and lived apart but who come together as needed for the sake of the children and mutual financial requirements.

In November 1911, Washington, D.C.'s health officer urged a Kensington audience to support the installation of a suburban sewerage system because of the need to preserve "Rock Creek in its present sanitary condition." In March 1916, there was a proposal in the General Assembly to give Montgomery County and Prince George's County residents "a joint sanitary sewerage system and a water supply under one administration" known as "The Washington Suburban Sanitary District" to "be submitted to the people on a referendum." In Montgomery County, the area would extend from the D.C. line to Garrett Park in the west and Burnt Mills in the east. There were to be three commissioners, one each from the respective counties and the third appointed by the governor. Each county would be a separate sanitary district.

It wasn't until March 1918 that this agency began operations, spurred by the State board of health promising to compel various suburban communities to either link up to D.C.'s sewer system to end unsanitary conditions in Rock Creek or to build their own sewage treatment plants. By 1919, WSSC was buying up the Chevy Chase Land Company's water system, building a filtration plant in Kensington, and installing sewers in Bladensburg. Originally, the Washington Suburban Sanitary District covered just 90 of the 981 square miles of the two counties. In 1922, D.C. formally agreed to allow WSSC to connect to its sewers. By 1924, WSSC decided that it had to build a filtration plant at Burnt Mills because the Takoma Park plant was no longer adequate. Gaithersburg also wanted to become part of WSSC while Rockville decided to go it alone.

An April 1924 news account of the new Seven Oaks subdivision stated: "By following closely the advice and wishes of the [WSSC], the natural beauties of the country have been fully conserved; over one-third of the tract is dedicated to roads, woodland trails and drives along the famous Sligo creek, which runs through the center of the property." A May 1928 news account described "Chevy Chase Section No. 1" as "a subdivision planned and laid out when the [WSSC] had jurisdiction over street, sidewalk and building layouts."

In April 1925, seventeen Hyattsville residents protested being assessed for the cost of laying a larger water main in front of their houses to serve other houses when the existing, smaller water main they had already paid for was working well. In July 1926, a Kensington resident filed suit, claiming that WSSC could not levy a second front-foot benefit charge (FFBC) after having already charged him. In November 1926, a circuit court judge ruled that this plaintiff's second FFBC was cancelled and that WSSC could not double charge anyone else.

In December 1926, Colonel E. Brooke Lee, just elected to the House of Delegates and about to be elected Speaker of the House, proposed the creation of a suburban zone in both counties "which would include the general territory of the [WSSC] with 'such additions, or exceptions as a comprehensive study may indicate.'" This new suburban zone would be taxed to pay for street construction, lighting, garbage and ash collection. He recommended employment of a zoning expert and the enactment of a zoning law. A month later, Colonel Lee proposed "The Maryland National Capital Park and Planning Commission", with three commissioners from each county - all appointed by the governor - which would cooperate with the National Capital Park and Planning Commission [NCPPC] and "receive advice from its experts." Montgomery County was to be subject to a mandatory park tax while Prince George's County would decide how much tax, if any, its residents would pay for such improvements.

"A majority of the commissioners from each county would have the power of approval over all parking, planning and zoning questions in their respective districts." The law also approved an increase of WSSC's FFBC for everyone. Two delegates "charged that this provision is an effort to anticipate a contemplated adverse court opinion. Other delegates admitted that it was sought to validate the commission's action. This must be done or some way provided for raising this amount for a refund, it was explained." The Maryland Court of Appeals overturned the new FFBC in April 1927, but the General Assembly's vote made the ruling moot. Montgomery County ended up with greatly increasing county taxes, including park taxes more than triple the rate of Prince George's County. The governor proposed providing \$100,000 to purchase parkland immediately adjacent to D.C. Col. Lee was appointed an MNCPPC commissioner, as was T. Howard Duckett, by virtue of being WSSC chair.

Another lawsuit that had also begun in 1925 became a challenge to the constitutionality of the Maryland legislature changing the law in 1927 to allow WSSC to assess the higher FFBC. While the Court of Appeals supported the legislature, the case was docketed in the U.S. Supreme Court for the fall of 1928, but was never heard by the high court. In April 1928, by a vote of 300-6, Silver Spring residents rejected WSSC's proposal for the unified disposal of trash, ashes and garbage as being too expensive.

In February 1928, the Prince George's MNCPPC announced the creation of five zones: A, B, and C, residential; D, commercial, and E, industrial. In the A zone - in addition to single-family homes with 5000 square foot minimum lots - churches, schools, libraries, farms, clubs, hospitals, gravel pits and quarries could be built with approval of MNCPPC and the written consent of 75% of the property owners within 200 feet of the proposed structure or use. All of the same uses were allowed in the B zone, in addition to duplexes on 2500 square foot minimum lots. The C zone allowed apartment and boarding houses up to 72 feet high or six stories.

In June 1928, Riverdale residents were challenging the legality of the rezoning process of the Prince George's County commissioners. By September 1928, these county commissioners were struggling with

implementing the new zoning ordinance - including whether or not to grandfather approvals based on previous standards - and how to allow MNCPPC to make such decisions.

That same month, the Prince George's MNCPPC was working with the federal NCPPC to add parkland along the Anacostia River adjacent to D.C. By January 1929, such plans then included study of a "new scenic boulevard forming an additional approach to the National Capital." Both the Fine Arts Commission and WSSC considered this proposed Anacostia Parkway to be important, joining the Rock Creek Parkway as a second scenic route into D.C. from Maryland.

Meanwhile, the Montgomery County commissioners held hearings in February 1928 on the new zoning ordinance. In May 1928, as the Board of Zoning Appeals of MNCPPC, the county commissioners had no problem reversing MNCPPC decisions that ignored "property contracts, provisions, and understanding" arrived at before the creation of MNCPPC. A month later, MNCPPC's chief engineer was surveying the boundaries for the new section of Rock Creek Park near Jones Mill Road and the brand new cross-country highway originally named Montgomery Avenue (East-West Highway).

In September 1928, the Montgomery County members of MNCPPC commented on the controversy involving the Prince George's County commissioners over whether their brand new zoning ordinance might have to be repealed because of structural problems. They stated that the problem would not affect them. "Montgomery County members say that they are willing to let Prince George's County officials take any action they wish, even to the extent of excluding their county from the jurisdiction and functioning of the park and planning commission."

In January 1929, the MNCPPC's chief engineer announced that the Montgomery County zoning ordinance had been worked out. "Having completed plans for parks in four main valleys of Montgomery County" they were working on a "city plan which will include the arterial highway system and the park system for suburban Montgomery County." This same engineer was also working on a zoning ordinance for Rockville in November 1929. That same month, he informed Montgomery County's MNCPPC members what additional acreage needed to be purchased for Rock Creek Park.

In its first decade, a 3-member WSSC worked well together, quickly expanding the agency. They also undid much of the initial gratitude and good will of the residents for providing a safer and more reliable water supply and sewer service through the equivalent of double-billing that WSSC then needed the state legislature to hide behind to prevent the courts from holding them financially accountable. This behavior of unfairly shifting costs to residential ratepayers was to repeat itself, leading to the calls in the '90s for privatization. WSSC started out as the equivalent of a strong marriage that stayed that way for some time, despite external strife.

In its first few years, two largely unconnected county MNCPPCs quickly went their separate ways, with one even indicating that it didn't care what the other did. They shared some human and financial resources, but made their own decisions about how to plan, how to regulate, and how to create their parks. MNCPPC did start out as the equivalent of an arranged marriage of convenience with little disdain - but also little respect - between the partners.

No one can today claim that the two counties work well together in WSSC. No one can today claim that it would make much difference if the two separate MNCPPCs severed the few links they have - legal, human resources, pension and health insurance plans. The emerging issue in our county is whether or not to divide parks from planning. If a perfect storm does develop, I will provide further background.

*The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to waynengoldstein@hotmail.com*