

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Chester Township  
and the Chester Township Trustees  
Michael J. Petruziello, Bud Kinney, and  
Ken Radtke, Jr.  
12701 Chillicothe Road  
Chesterland, OH 44026

Relators,

vs.

Honorable Timothy J. Grendell, Judge  
Geauga County Court of Common Pleas,  
Probate Division  
231 Main Street, Suite 200  
Chardon, OH 44024

Respondent.

) CASE NO.:

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**COMPLAINT**

1. This is an action for a writ of prohibition to preclude Respondent Probate Court Judge Timothy Grendell from exercising authority without jurisdiction over Relators Chester Township and the Chester Township Trustees (Michael J. Petruziello, Bud Kinney, and Ken Radtke, Jr.) in Geauga County Probate Court Case No.: 84PC000139. Respondent cannot exercise any such authority over Relators because he without jurisdiction in that case. Relators' complaint further states as follows:

**JURISDICTION**

2. This Court possesses original jurisdiction over this Complaint in Prohibition under Section 2(B)(1), Article IV, of the Ohio Constitution, and the Supreme Court of Ohio Practice Rules.

### PARTIES

3. At all times relevant, Relators Michael J. Petruziello, Bud Kinney, and Ken Radtke Jr. are the acting trustees of Chester Township, Geauga County, Ohio. Relator Chester Township is an Ohio political subdivision located in Geauga County. Chester Township is a separate and distinct political subdivision from the Chester Township Park District. At all times relevant, Respondent Judge Timothy Grendell is the Geauga County Probate/Juvenile Court Judge.

### BACKGROUND

4. More than 30 years ago, then Geauga County Probate Court Judge Frank Lavrich created the Chester Township Park District under Chapter 1545. On April 2, 1984, the predecessors to the current Chester Township Trustees under R.C. Chapter 1545 applied to Judge Lavrich to create a park district. (Application Under Chapter 1545; Apx. 2.)

5. On May 10, 1984, Probate Court Judge Lavrich granted that application and created the Chester Township Park District under R.C. 1545.02. (Judgment Entry of May 10, 1984; Apx. 6.) In doing so, the Probate Court created a new "body politic and corporate with full authority and subject to such limitations as provided by law." (*Id.*) The Park District is a separate legal entity distinct from the Chester Township/Chester Township Trustees. The Probate Court also appointed three Park District commissioners under R.C. 1545.05. (*Id.*)

6. During the three decades after the Park District's creation, the Probate Court appointed, reappointed, or removed Park District trustees. Chapter 1545 does not give authority to a probate court to exercise authority over any entity other than the Park District itself. *See generally* Revised Code Chapter 1545.

7. A board of park commissioners of a park district formed under R.C. Chapter 1545 has various powers and duties related to the government of the park district. R.C. 1545.09-18. For example, a board of park commissioners has the power to acquire and dispose of land (R.C. 1545.11-12), to create parks, parkways, forest reservations, and other reservations (R.C. 1545.11), to exercise police powers within, and adjacent to, the lands under the board's jurisdiction (R.C. 1545.13-.132), and to adopt bylaws and rules to preserve order and protect property within the district (R.C. 1545.09). A board of park commissioners also has authority to levy taxes, subject to certification or modification of the levy by the county budget commission (R.C. 1545.20), to submit a levy directly to the electors of the park district (R.C. 1545.21), and to issue notes or bonds (R.C. 1545.211; R.C. 1545.24).

8. "Parkside" is a five-acre community park located in Chester Township. In a Judgment Entry filed in the apparently still open case through which the Park District was created [1984 case (84PC000139)], Judge Grendell appointed a Master Commissioner (Mary Jane Trapp) to review issues related to the operation of the Park District and Parkside. Judge Grendell, citing R.C. 1545.05 and 1545.06, appointed a Master Commissioner to investigate issues regarding vendor payments; increased spending; park projects, plans and budget estimates; alleged failures to follow Ohio law, Park District Bylaws and the agreement between the Park District and Chester Township relating to the operation of a park district; open meeting concerns; irregularities in accounting; non-park related expenditures for goods and services; and the employment of the park secretary. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Apx. 8.)

9. The Master Commissioner conducted an investigation and rendered a Report regarding the Park District.<sup>1</sup> (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at 1, Apx. 8; Master Commissioner's Report Apx. 16.) Ultimately, the Probate Court accepted the Master Commissioner's recommendations contained in the Report that addressed the Park District. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Apx. 8.)

10. In addition to accepting the Master Commissioner's report and issuing various directives as to the Park District, the Probate Court also improperly imposed duties and fees on the Relators (not merely the Park District), thus exceeding its jurisdiction and authority as to the Relators. (See Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Apx. 8.)

11. Although Chapter 1545 does not give the Probate Court ongoing authority over Chester Township, the Probate Court's Nov. 26, 2014 Entry ordered that the Township "has a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties" (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6; Apx. 12) and ordered that the ongoing costs of the "Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court pursuant to its responsibilities under ORC 1545." (*Id.* at ¶ 13; Apx. 14.) The order also required the Township to meet with the Master Commissioner and the Park District "to formulate a new" service agreement, despite an existing 20-year agreement (*Id.* at ¶ 7); and to establish a new budget for the Park District, even though the Township has already approved the Park District's requested budget for 2015 for \$75,000. (*Id.* at ¶ 6; Apx. 12; see also Dec. 12, 2014 Letter from Chester Township to Park Board; Apx. 268.)

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<sup>1</sup> The Report (Apx. 16) also is available at the Probate Court's website (<http://co.geauga.oh.us/Portals/3/resources/forms/FORMS-PROBATE/Master%20Commissioners.pdf>.)

12. The Probate Court notified the Relators -- as well as the Park District -- that the November 26, 2014 Judgment Entry "may be an 'appealable' order." (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at 8.) Because the Probate Court exceeded its authority and to protect the record, the Relators timely filed a notice of appeal of that Judgment Entry in the Eleventh District Court of Appeals. (Notice of Appeal of 12/12/2014; Apx. 270.)

13. After the Township filed the appeal (the next business day later), the Probate Court issued a Judgment Entry stating the November 26 Judgment Entry was not a final appealable order. (J. Entry of 12/15/2014; Apx. 273.) Although relying exclusively on its authority under Chapter 1545 of the Revised Code to issue this overly broad order as to the Relators in its November 26, 2014 order, the Probate Court belatedly relied on its purported "inherent authority" after the Township filed its notice of appeal in a supplemental order<sup>2</sup>. (Supplemental J. Entry of 12/15/2014; Apx. 276.)

14. Chapter 1545 was -- and is -- the exclusive authority the Probate Court possessed with regard to the Park District. The Respondent did not and does not have "inherent authority" in this regard over the Relators.

15. On March 31, 2015 and before briefing, the Eleventh District dismissed the appeal for lack of jurisdiction, essentially finding that because the Probate Court had not yet determined the amount of fees and costs that the Relators would ultimately be responsible for, therefore there was not yet a final and appealable order. (*In re Chester Twp. Park*, 2015-Ohio-1210; Apx. 278.) On the same day, Respondent issued an order compelling the Relators to

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<sup>2</sup> The Probate Court did not have jurisdiction to issue the subsequent order, after Chester Township filed its notice of appeal. See *State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 2011-Ohio-626, ¶ 16, 129 Ohio St. 3d 30, 33 (the trial court is divested of jurisdiction to proceed with the adjudication during the pendency of the appeal).

attend a "Status Conference ... [on] all pending matters" before the Respondent on April 28, 2015 at 2 p.m. (Notice of Hearing, March 31, 2015; Apx. 282.)

**COUNT ONE: WRIT OF PROHIBITION**

16. Relators hereby repeat and reallege the foregoing allegations of this pleading as if fully restated herein.

17. Respondent Judge Grendell has exercised judicial and/or quasijudicial power by imposing various duties, fees, and obligations on Chester Township and/or Respondents in its Nov. 26, 2014 Entry in Geauga County Probate Court Case No.: 84PC000139. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Apx. 8.)

18. A probate court is a court of limited and special jurisdiction with only the powers that are granted by statute. The probate court's jurisdiction is created through Section 2101.24 of the Ohio Revised Code. Subsection (A) lists specific areas that the probate court has exclusive jurisdiction over. This subsection lists the areas that one typically associates with the probate court, including to take the proof of wills, to appoint and remove guardians, to grant marriage licenses, and to make inquests respecting persons who are so mentally impaired as a result of physical or mental illness that they are unable to manage their property and affairs effectively. This section makes no reference to any powers conferred to the probate court regarding park districts. Those powers are discussed exclusively in Chapter 1545 of the Ohio Revised Code.

19. None of the provisions of Revised Code Chapter 1545 provide that the Probate Court or Respondent has power over the Relators. See generally Revised Code Chapter 1545. The "responsibilities" provided to the probate court in those sections do not authorize the Probate Court's actions as to the Relators.

20. The Probate Court does not have authority over the Relators and its orders are void as to the Relators. *Burns v. Daily*, 114 Ohio App. 3d 693, 710, 683 N.E.2d 1164, 1175 (11th Dist. 1996) citing *Hoerner v. Downs* (1989), 63 Ohio App.3d 286, 288, 578 N.E.2d 830, 831 (“If courts transcend the limits which the law prescribes, and assume to act where they have no jurisdiction, their acts are utterly void.”). The Probate Court's orders as to Relators are void.

21. The Probate Court improperly ordered without valid authority or jurisdiction that the Township "has a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties." (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6; Apx. 12.)

22. The Probate Court improperly ordered without valid authority or jurisdiction that the ongoing costs of the "Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court pursuant to its responsibilities under ORC 1545." (*Id.* at ¶ 13; Apx. 14.)

23. The Probate Court does not have valid authority or jurisdiction to require the Township to meet with the Master Commissioner and the Park District "to formulate a new" service agreement, especially when an existing 20-year agreement (*Id.* at ¶ 7) exists; or to establish a new budget for the Park District, especially when the Township has already approved the Park District's requested budget for 2015 for \$75,000. (*Id.* at ¶ 6; Apx. 12.)

24. The Respondent does not have jurisdiction or authority to order the appearance of Relators to attend hearings or compel Relators to act or refrain from acting under Geauga County Probate Court Case No.: 84PC000139. (See Notice of Hearing of March 31, 2015; Apx. 282.) For instance, the Respondent does not have jurisdiction or authority to compel the Relators to attend the hearing he set for April 28, 2015. (*Id.*)

25. Respondent has already acted, and is reasonably expected to continue to exercise judicial and quasi-judicial power to facilitate and enable the execution of the void judgment rendered in the Nov. 26, 2014 Judgment Entry as to the Relators and will therefore exceed his lawful jurisdiction and authority. Respondent is reasonably expected to continue exercising judicial and quasi-judicial power to compel Relators attend hearings or compel Relators to act or refrain from acting under Geauga County Probate Court Case No.: 84PC000139. (See Notice of Hearing of March 31, 2015; Apx. 282.)

26. Unless the Respondent is prohibited from exceeding his lawful authority, Relators will suffer irreparable harm.

27. Because jurisdiction of the Probate Court to render the void Nov. 26, 2014 Judgment as to the Relators and other orders as to the Relators is patently and unambiguously lacking, the availability of an alternative remedy at law is immaterial. *State ex rel. Sullivan v. Ramsey*, 124 Ohio St.3d 35, 358, 2010-Ohio-252 at ¶24; *State ex. rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St. 3d 447, 449 (2000).

28. Regardless, no suitable, adequate, and expedient remedy is available at law to spare Relators of the irreparable harm which will result from the violation of lawful jurisdictional authority and to prevent Respondent from improperly enforcing the aforementioned orders as to these Relators.

29. Relators are entitled to a writ of prohibition preventing Respondent from acting in a judicial and/or quasi-judicial manner with a patent and unambiguous lack of jurisdiction and authority.

30. Relators are entitled to a writ of prohibition preventing Respondent from exceeding his lawful jurisdictional authority by continuing to maintain and enforce the void judgments and orders in Geauga County Probate Court Case No.: 84PC000139 as to the Relators.

**COUNT TWO: ALTERNATIVE WRIT**

31. Relators hereby repeat and reallege the foregoing allegations of this pleading as if fully restated herein.

32. Because jurisdiction to render the void Nov. 26, 2014 Judgment as to the Relators and other orders as to the Relators is patently and unambiguously lacking, the availability of an alternative remedy at law is immaterial. The Relators do not have an adequate remedy at law that can immediately halt the Respondent's unauthorized exercise of power.

33. Immediate relief is necessary to prevent Relators from being subjected to the void Nov. 26, 2014 order and other orders, including the Respondent's March 31, 2015 order compelling the Relators to attend a "Status Conference ... [on] all pending matters" before the Respondent on April 28, 2015 at 2 p.m. (Notice of Hearing, March 31, 2015; Apx. 282.)

**PRAYER**

Relators request and are entitled to Writ of Prohibition. Based on the foregoing, Respondent patently lacks jurisdiction or authority over Relators in the Geauga County Probate Court Case No.: 84PC000139. Relators are entitled to a peremptory writ of prohibition barring Respondent from exceeding his lawful jurisdictional authority by continuing to issue, maintain and enforce the void judgments in Case Number 84PC000139. Those void judgments should be vacated as to Relators.

Furthermore, Chester Township is otherwise entitled to an immediate issuance of an alternative writ pursuant to S.Ct.Pract.R. 12.05 barring Respondent from exceeding his lawful jurisdictional authority by continuing to issue, maintain and enforce the void judgments in Case Number 84PC000139.

Relators also ask this Court to grant such other relief as this Court may deem just and proper. Costs should be taxed to Respondent.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

/s/Frank H. Scialdone

FRANK H. SCIALDONE (0075179)

[COUNSEL OF RECORD]

TODD M. RASKIN (0003625)

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(440) 248-8861 – Fax

Email: [fscialdone@mrrlaw.com](mailto:fscialdone@mrrlaw.com)

[traskin@mrrlaw.com](mailto:traskin@mrrlaw.com)

Counsel for Relators State of Ohio ex rel. Chester Township and the Chester Township Board of Trustees Michael J. Petruziello, Bud Kinney and Ken Radtke, Jr.

**APPENDIX INDEX**

Affidavit of Frank H. Scialdone, Esq.	Apx. 1
Application Under Chapter 1545	Apx. 2
Judgment Entry of May 10, 1984	Apx. 6
Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014	Apx. 8
Master Commissioners' Report	Apx. 16
Dec. 12, 2014 Letter from Chester Township to Park Board	Apx. 268
Notice of Appeal of 12/12/2014	Apx. 270
J. Entry of 12/15/2014	Apx. 273
Supplemental J. Entry of 12/15/2014	Apx. 276
<i>In re Chester Twp. Park, 2015-Ohio-1210</i>	Apx. 278
Notice of Hearing, March 31, 2015	Apx. 282

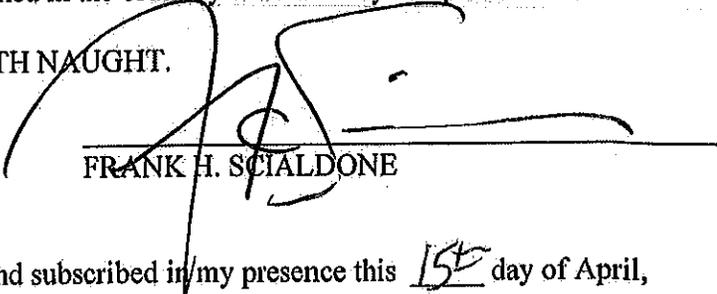
STATE OF OHIO )  
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COUNTY OF CUYAHOGA )

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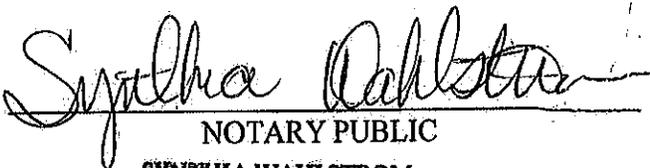
I, Frank H. Scialdone, having been duly cautioned and competent to testify hereby state as follows from my own personal knowledge:

1. I am one of the attorneys who has been representing Relators in the litigation which was commenced in Geauga County Probate Court, Case No. 84 PC 139 and the appellate litigation in the Eleventh District Court of Appeals, Case No. 2014-G-3242.
2. The facts set forth in the foregoing Complaint in Prohibition are true and correct to the best of my knowledge, information, and belief.
3. The materials which are included in this Appendix were all generated and issued in connection with the aforementioned litigation and subsequent appeals. The copies which were issued are maintained in the ordinary course of my law practice.

FURTHER AFFIANT SAYETH NAUGHT.

  
FRANK H. SCIALDONE

SWORN TO BEFORE ME, and subscribed in my presence this 15<sup>th</sup> day of April, 2015.

  
NOTARY PUBLIC  
SYNTHIA WAHLSTROM  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Lake County  
My commission expires Jan. 16, 2018

FILED

APR 2 1984

IN THE COURT OF COMMON PLEAS      FRANK G. JACOBUS  
PROBATE DIVISION                      PROBATE JUDGE  
GEAUGA COUNTY, OHIO                  GEAUGA COUNTY

CASE NO. *84 PC# 139 Doc. 17 of 371*

IN THE MATTER OF THE )  
CREATION OF A PARK )      APPLICATION BY RESOLUTION OF THE  
DISTRICT WITHIN )      CHESTER TOWNSHIP TRUSTEES, PURSUANT  
CHESTER TOWNSHIP )      TO OHIO REVISED CODE CHAPTER 1545.

1. This Application has been filed with the Geauga County Probate Court in accordance with the provisions of Ohio Revised Code Chapter 1545.

2. Applicants are Rosemary Balass, Lance Yandell, and William Sasa, the duly elected and acting Trustees of Chester Township, Geauga County, Ohio.

3. Applicants by virtue of action taken at a regular meeting of the Chester Township Trustees held on the 29th day of March, 1984, have adopted a resolution (a copy of which is attached hereto as Exhibit A.) authorizing the creation of a park district to be known as Chester Township Park District in Chester Township, Geauga County, Ohio, and authorizing legal counsel for the Township to file this Application with the Geauga County Probate Court.

4. Attached hereto as Exhibit B. is an accurate description of the territory to be included within the park district.

5. Attached hereto as Exhibit C. is an accurate map of the territory to be included within the park district.

6. Applicants say that the creation of a park district as set forth herein is conducive to the general welfare of the community.

WHEREFORE, Applicants request a hearing upon this Application and publication of notice by this Court as provided by law; a judgment and order from this Court creating a park district under the name specified in this Application; an order by this Court appointing three (3) park commissioners as provided by law, subject to their providing bond as required by law; and such other action as the Court deems lawful under the circumstances.

APPLICANTS:

*Rosemary Balazs*  
ROSEMARY BALAZS

*Forrest Burt*

FORREST BURT  
Attorney for Chester Township  
Geauga County Prosecutor's Office  
Chardon, Ohio 44024

*Lance Vandell*  
LANCE VANDELL

*William Bass*  
WILLIAM BASS

FILED

APR 2 1984

FRANK C. ...  
REC'D  
GEAUGA COUNTY

FILED 3

RESOLUTION  
CHESTER TOWNSHIP TRUSTEES

APR 2 1984

Regular Meeting  
March 29, 1984

ROBERT C. LAMPICH  
CLERK  
GEAUGA COUNTY

WHEREAS, many citizens of Chester Township, Geauga County, Ohio, have expressed a desire for and an interest in the creation of a park district for Chester Township; and

WHEREAS, it has been determined that the existing Joint Recreation District could be more effectively operated in conjunction with a park district in Chester Township; and

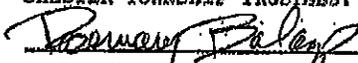
WHEREAS, the Chester Township Trustees have determined that the creation of a park district for Chester Township would be conducive to the general welfare of the citizens of Chester Township as well as surrounding communities.

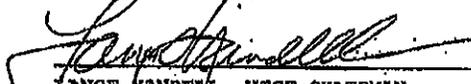
NOW, THEREFORE, IT IS UNANIMOUSLY RESOLVED:

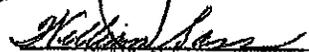
1. That the Chester Township Trustees immediately act, under the provisions of Ohio Revised Code Chapter 1545, to file an Application with the Geauga County Probate Court requesting the creation of a park district to be known as Chester Township Park District, and to include in such District, the territory of Chester Township composed of Geauga County Taxing District 11, as it appears in the 1983 permanent records of the Geauga County Treasurer's Office and Geauga County Auditor's Office.

2. That Forrest Burt, legal counsel for the Township, is hereby authorized to prepare and file such Application with the Geauga County Probate Court, and take all necessary legal steps provided for in Ohio Revised Code Chapter 1545 to create a Chester Township Park District.

CHESTER TOWNSHIP TRUSTEES:

  
ROSEMARY BALASH, CHAIRMAN

  
LANCE VANDELL, VICE-CHAIRMAN

  
WILLIAM SASS, TRUSTEE

Dated: March 29, 1984

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EXHIBIT B - DESCRIPTION OF PROPOSED CHESTER TOWNSHIP PARK DISTRICT

The proposed Chester Township Park District shall be coterminous with the existing lines of the Township which is 25 miles square - that being the original Western Reserve Township boundaries. (See attached map).

The proposed Chester Township Park District is most accurately described by the Geauga County taxing district composing all of the territory included within such Park District; such taxing district information having been extracted from the Treasurer's Duplicate of Real Property for Geauga County, Ohio, for the Tax Year 1983, and the Auditor's List of Exempted Real Property and Public Utilities, Geauga County, Ohio, for the Tax Year 1983. Accordingly, the proposed Chester Township Park District is described as follows:

Chester Township - West Geauga School District (Taxing District No. 11)

First Entry:

Account Number 11-000020  
Charles & Donna Abate  
7080 Mulberry Road  
Chesterland, Ohio 44026  
Lot 11 - TR 1

**FILED**  
APR 2 1984  
FRANK C. LAUTICH  
PROBATE JUDGE  
GAUGUA COUNTY

Last Entry:

Account Number 11-900060  
Public Utility  
Ohio Bell Telephone Company

and Auditor's List of Exempted Real Property entries for 1983 beginning with Account Number 11-702500 (first entry) and ending with Account Number 11-71400 (last entry).  
Public Utilities first entry 11-600100, last entry 11-602400.

*Primary Balay*  
*James [unclear]*  
*Michael [unclear]*

9  
MAY 10 1984  
FRANK G. LAVRICH  
CLERK OF COURT  
GEAUGA COUNTY

IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
GEAUGA COUNTY, OHIO

IN RE: CHESTER TOWNSHIP )  
PARK DISTRICT )

CASE NO. 84-PC-139, DOCKET 17,  
PAGE 371

JUDGMENT ENTRY

This matter came on for Hearing on May 10, 1984, upon the application of the Board of Township Trustees of Chester Township for approval of the creation of the Chester Township Park District.

THE COURT FINDS that the application for creation of said park district has been signed or authorized in accordance with Ohio Revised Code Section 1545.02.

THE COURT FURTHER FINDS that creation of said park district is conducive to the general welfare;

NOW, THEREFORE, IT IS ORDERED that there is hereby created the Chester Township Park District; that the territorial limits of said park district shall be those described in Exhibits "B" and "C" of the application for creation of said park district and that Exhibits "B" and "C" are hereby incorporated and made part of this Order.

IT IS FURTHER ORDERED that this Court shall appoint three commissioners in accordance with Ohio Revised Code Section 1545.05 and that said commissioners shall constitute the Board of Park Commissioners of the Chester Township Park District, a body politic and corporate with full authority and subject to such limitations as provided by law.

*Frank G. Lavrich*  
FRANK G. LAVRICH, JUDGE

*Copy Comm. Chester Park District*

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EXHIBIT B - DESCRIPTION OF PROPOSED CHESTER TOWNSHIP PARK DISTRICT

The proposed Chester Township Park District shall be coterminous with the existing lines of the Township which is 25 miles square - that being the original Western Reserve Township boundaries. (See attached map).

The proposed Chester Township Park District is most accurately described by the Geauga County taxing district composing all of the territory included within such Park District; such taxing district information having been extracted from the Treasurer's Duplicate of Real Property for Geauga County, Ohio, for the Tax Year 1983, and the Auditor's List of Exempted Real Property and Public Utilities, Geauga County, Ohio, for the Tax Year 1983. Accordingly, the proposed Chester Township Park District is described as follows:

Chester Township - West Geauga School District (Taxing District No. 17)

First Entry:

Account Number 11-000020  
Charles & Donna Abata  
7080 Mulberry Road  
Chesterland, Ohio 44026  
Lot 11 - TR 1

**FILED**

APR 2 1984  
FRANK D. LAWRENCE  
PROBATE JUDGE  
GAUGA COUNTY

Last Entry:

Account Number 11-900080  
Public Utility  
Ohio Bell Telephone Company

and Auditor's List of Exempted Real Property entries for 1983 beginning with Account Number 11-702500 (first entry) and ending with Account Number 11-71400 (last entry).  
Public Utilities first entry 11-600100, last entry 11-602400.

*Rosemary Balaz*  
*James [unclear]*  
*William [unclear]*

FILED  
IN COMMON PLEAS COURT

**IN THE COURT OF COMMON PLEAS**

**PROBATE DIVISION** 2014 NOV 26 AM 8:14

**GEAUGA COUNTY, OHIO**

PROBATE-JUVENILE  
DIVISION  
GEAUGA COUNTY, OHIO

IN THE MATTER OF:	)	CASE NO. 84PC000139
	)	
CHESTER TOWNSHIP PARK DISTRICT	)	JUDGE TIMOTHY J. GRENDALL
	)	
	)	<b>JUDGMENT ENTRY</b>
	)	<b>FINDINGS OF FACT</b>
	)	<b>CONCLUSIONS OF LAW</b>

In March, 2014, the Probate Court received a copy of the Chester Township Park District 2013 Review (revised 3/5/2014) (the "Review"). Because of the Review, the Township Trustees at their March 7, 2014 meeting withheld funding for the Park District.

The Review raised a number of issues regarding the operation of the Park District relating to vendor payments; increased spending; park projects, plans and budget estimates; alleged failures to follow Ohio law, Park District Bylaws and the agreement between the Park District and Chester Township relating to the operation of a Park District; open meeting concerns; irregularities in accounting; non-park related expenditures for goods and services; and the employment of the park secretary.

Pursuant to the Probate Court's statutory responsibilities under R.C. 1545.05 and 1545.06 with respect to the Chester Township Park Board, the Court appointed Mary Jane Trapp as Master Commissioner to investigate the matters raised by the Review.

The Master Commissioner conducted a thorough and comprehensive review and prepared a 252 page report, with recommendations (the "Report").

The Probate Court held a public hearing at the Chester Township Fire Station at which the Master Commissioner presented a summary of her Report and delivered the Report to the Court.

The Probate Court invited comments from Chester Township residents and the  
Chester Township Trustees, with a comment deadline in October, 2014.

FILED  
IN COMMON PLEAS COURT

2014 NOV 26 AM 8:14

The Chester Township Trustees timely submitted their comments by letter dated  
October 8, 2014.

PROBATE DIVISION  
JUVENILE DIVISION  
GEAUGA COUNTY, OHIO

No other public comments were submitted in writing to the Court.

Based on the Court's consideration and review of the Master Commissioner's Report and supporting documents and the Township Trustees' letter, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Chester Township Park is vastly improved in recent years under the authority of a dedicated group of volunteer Commissioners, who have not had the benefit of a dedicated, independent financing mechanism.
2. The Chester Township Park District was formed by the Geauga County Probate Court (Judge Lavrich) in 1984 as a separate governmental entity.
3. The primary purpose for forming the Park District as a separate governmental entity was to keep politics out of the Township Park and to protect the Township Park District from the vicissitudes of township politics and government.
4. The Chester Township Park District operated until 2002 with separate identified inside millage funding, as part of its funding source.

- FILED  
IN COMMON PLEAS COURT  
2011 NOV 26 AM 8:14  
PROBATE, JUVENILE  
DIVISION  
GEAUGA COUNTY, OHIO
5. In 2002, the Township Trustees terminated the dedicated millage funding of the Township Park District. As a result, the Park District lost access to those dedicated funds and monies for the Park District had to be appropriated by and obtained from the Township Trustees.
  6. This loss of dedicated funds and the change in funding was and remains contrary to the original purpose for forming the Park District as a separate, distinct, and independent governmental entity, removed from the politics and control of the Township Trustees.
  7. Historically, the Township Park District has operated with less formality than specified in the Park District's Bylaws and required by applicable state statutes. These formality issues include, but are not limited to, meeting minutes, financial accounting methods, and public meeting requirements.
  8. For reasons apparently outside of the Park Commissioners' control, the State Auditor failed to conduct an audit of the Chester Township Park District for approximately 30 years.

Conclusions of Law

1. The Chester Township Park District is an independent body politic, duly formed by the Geauga County Probate Court to provide Chester Township residents with a public park and recreational amenities.
2. As a matter of Ohio law, the Township Park District is a separate government entity operated by a Board of Park Commissioners

appointed by the Probate Court pursuant to Ohio law, independent  
from the control of the Township Trustees. As so formed, dedicated  
annual funding of the Park District is necessary for the Park District to  
perform its independent statutory duties.

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3. The Township's elimination of dedicated millage funds for the Township Park District in 2002 directly contravened the fundamental purpose for creating the independent Park District, free from the vicissitudes of Township government and politics. The agreement between the Township Trustees and Township Park District, addressing construction or alteration of any permanent improvement on park lands, zoning compliance and police use, has a somewhat similar disparate impact.
4. (a) Contrary to the written comment of the Township Trustees, the funds necessary for the operation of the Township Park are separate and independent from the Township's funding needs. It is specifically for reasons such as possible Township financial management problems or financial pitfalls that the Chester Township Park District was formed separate and distinct from the control of the Township Trustees.  
(b) Pursuant to O.R.C. Section 1545.20, the Park District Commissioners have the statutory authority to levy up to one-half mill for park funding purposes. Contrary to the comment/suggestion of the Township Trustees, such statutory levy authority does not necessarily

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require "a ballot measure presented to the voters." Moreover, the proposition advanced by the Township Trustees that such a ballot measure "is the best method for stabilized funding" of the township park is contrary to O.R.C. Section 1545.20 and is not supported by the findings of the Master Commissioner.

(c) The statutory responsibility for establishing dedicated funding for the Township park rests with the Park District Commissioners (see O.R.C. Section 1545.20), not the Township Trustees. For that statutory reason, there is no need for the Chester Township Trustees to meet with the Park Board to work on a ballot measure (as generously suggested by the Trustees), nor do the Chester Township Trustees have any legal authority to do so.

5. To perform its statutory duties, the Park District needs to address its financial needs and take appropriate action, as permitted by statute, to assure that dedicated independent funds are available annually, starting January, 2016.
6. Until the Park District is able to establish a dedicated independent funding source, the Township Trustees, who previously (2002) unilaterally terminated the Park District's prior millage funding, have a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties. The Master Commissioner shall conduct a meeting with the Chester Township Trustees and Park District Commissioners to facilitate the

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finalization and approval of a 2015 Budget and funding for the Chester  
Township Park District.

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DIVISION  
BERNARD COUNTY, OHIO

7. The current agreement between the Township and the Park District is possibly in conflict with the original Township application and judicial formation documents creating the Park District, which set the territorial limits of the Township Park District. Such agreement cannot circumvent or improperly limit the statutory authority of the Park District Commissioners or the independent nature of the Park District as a separate governmental entity. Such agreement cannot be employed to give the Township Trustees authority over the Park Commissioners' levy authority under O.R.C. Section 1545.20 or to dictate the policies and procedures employed by the Park District Commissioners in their management of the Township Park. The Master Commissioner is directed to meet with the Township Trustees and Park District Commissioners to formulate an agreement that is consistent with and not in conflict with the authority of the Park District under O.R.C. Chapter 1545 and the initial Township application and judicial documentation forming the Park District.
8. Except as otherwise provided in this Judgment Entry, the Court adopts the findings and recommendations of the Master Commissioner submitted to the Court on August 25, 2014, as if those findings and recommendations were fully rewritten herein.

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9. The Chester Park District Commissioners must comply with the statutory bonding requirement. O.R.C. Section 1545.05.
  10. The Chester Park District Commissioners must submit all donations to the Probate Court for approval pursuant to O.R.C. Section 1545.11.
  11. The Court orders and directs that the Chester Township Park District Commissioners (i) comply with all applicable Ohio laws and (ii) take the actions necessary to comply with the recommendations of the Master Commissioner to the extent required to maintain compliance with applicable Ohio law.
  12. The Court urges the Chester Township Park District to consider the retention of legal counsel to advise and assist the Park District, as necessary from time to time, to maintain compliance with applicable Ohio law.
  13. The cost of the Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court pursuant to its responsibilities under O.R.C. Chapter 1545.

Under Ohio law, the Chester Township Park District, as formed by the Township, is a separate government body, independent from the control of the Chester Township Trustees. The Chester Township Park District must maintain such independence and governmental autonomy. Funding for the Township Park and all contractual interaction with the Township Trustees also must respect and maintain the independence and governmental autonomy of the Chester Township Park District. The Park District and its Board must comply with all applicable Ohio laws.

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You are hereby notified that on this date a Judgment Entry was filed that may be  
an "appealable" order.

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GEAUGA COUNTY, OHIO

IT IS SO ORDERED.

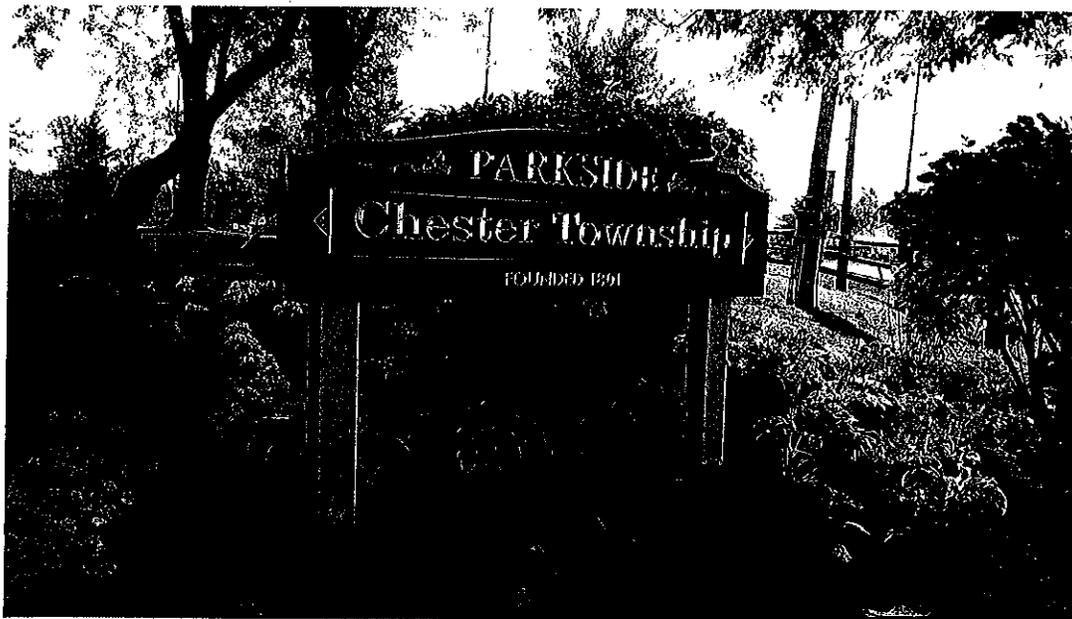
  
TIMOTHY J. GRENNELL, Judge

cc: Chester Township Trustees  
Chester Park Board Commissioners  
Master Commissioner Mary Jane Trapp  
*Prosecutor*

IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
GEAUGA COUNTY, OHIO

IN RE: ) CASE NO. 84 PC 000139  
)  
CHESTER TOWNSHIP PARK ) JUDGE TIMOTHY J. GRENDALL  
DISTRICT )  
)

REPORT AND RECOMMENDATIONS  
OF THE MASTER COMMISSIONER-  
ANALYSIS OF THE  
“CHESTER TOWNSHIP PARK DISTRICT  
REVIEW 2013”



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## **Analysis of the "Chester Township Park District 2013 Review"**

### **Executive Summary of Findings and Recommendations**

The renaissance of the primary park land in Chester Township known as Parkside over the past four years has been a source of pride for the community of residents and business owners. Under the stewardship of the Geauga County Probate Court and the Chester Township Park District Board of Commissioners and the funding support from the Chester Township Board of Trustees, the community has a public park that is in keeping with the intent of the donor of this property, David Hudson, who envisioned this five acre parcel as the public square where citizens would gather.

Its users come day and night from Chester and surrounding townships, young and old, music lovers, and softball, volleyball, and horseshoe players. Parents and grandparents bring children to play on the state-of-the-art playground equipment. Teens organize games at the park, and it has become a positive meeting place for young adults. Seniors have also found the park to be a great place to meet. Local gardeners display their talents in the perennial garden. The Chesterland Chamber of Commerce moved its Chester Fest to Parkside, showcasing the park and the local business to 2,000 to 3,000 visitors. Service organizations, including Rotary and Kiwanis, have spearheaded donation drives and events for and in the park. The summer band concerts have been enhanced by the upgrades to the park, and the park provides the perfect location for weddings, family reunions, and holiday celebrations. The park is the community gathering place from morning into the night with its lighted recreational areas and pavilions.

But controversy and a lack of understanding about the legal status of the park district as a separate body politic not governed by all the same rules as a township board of trustees nor

controlled by that board have occasionally overshadowed the accomplishments and interfered with the mission of the park district.

This latest controversy is not new. Within the first five years of the park district's existence, the seeds of discontent were already being sowed when the township trustees asked the park district commissioners to attend a trustees meeting for the purpose of voicing objection to Judge Lavrich reappointing one commissioner without any recommendation from the trustees. The park board chairman objected "to the Park District being used in a political battle."<sup>1</sup> Thus, as the politics of Chester Township ebbed and flowed the discontent spilled over to the park district.

From my research and discussions with those involved with the park district's formation, and apart from securing local government funds for park operations and improvements after the elimination of the intangible tax, one thing was constant- a driving force behind the creation of an independent park district with commissioners appointed by the probate court, as opposed to a park board with members appointed by the township trustees, was to "keep politics out of the park" and protect the park district from the vicissitudes of township government and priorities.

In 1984, Judge Lavrich created the Chester Township Park District at the request of the Chester Township Trustees, and under R.C. 1545 it became a separate body politic<sup>2</sup>. It entered into an agreement with the township to maintain the township's park lands. The park district was originally funded by its share of the local government and library funds passed through from the state of Ohio by the Geauga County Budget Commission and by inside millage of 0.08 mil initially and raised in 1992 to 0.1 mil from Chester Township, as well as donations. The park commissioners voted to bring the finances in-house, so to speak, as they were authorized to do, rather than have the Geauga County Auditor certify expenditures and issue warrants for payments from the Geauga County Treasurer.

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<sup>1</sup> Chester Township Park District Record of Proceedings, 3/2/89

<sup>2</sup> Geauga County Probate Court, Case No. 84 PC 000139

What is curious is the first park board opted to bring the finances in-house and at the second meeting two days later adopted by-laws that conflicted with this procedure.<sup>3</sup> Those by-laws have never been amended. Many past commissioners I interviewed were unaware of the existence of by-laws during their service, and the current board<sup>4</sup> was not aware of the existence of the by-laws or the written agreements relating to control and maintenance of the park lands until the "Review" was presented to them.

In the ensuing years the park district went about its business with little controversy and only occasional acrimony between the park district commissioners and the township trustees for a number of years. There were many changes in the composition of the volunteer park district board of commissioners. There were also a number of paid secretaries or administrative assistants, who kept the minutes, handled correspondence, wrote the checks, maintained the financial records, issued public notices, and in some instances actually performed work at the park or helped prepare for park events.

This turn over in leadership without a structured transition designed to assure each new commissioner or administrative assistant was aware of the controlling documents and appropriate processes for record keeping, budgeting, and expenditures has contributed to confusion and incomplete or misinformation about the activities and responsibilities of the park district board. It has also provided fodder for complaints from the various political factions in the township.

When I began my interviews and research I inquired whether the park district had a current policy and procedure manual for either the commissioners or the administrative assistant. Neither the current board nor the current administrative assistant received one upon taking the position. One current board member attempted to schedule a transition meeting with an outgoing

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<sup>3</sup> Minutes 6/12/84 and 6/14/84 meetings

<sup>4</sup> This reference to the "current" board does not include the two new members, whom I have not personally interviewed for this analysis.

commissioner without success. There has never been new commissioner or new administrative assistant orientation or training.

I was recently provided with a very outdated and incomplete procedure manual<sup>5</sup>, which one commissioner found. This manual will at least provide a skeleton upon which to build a new manual.

The minutes for the year 2008 cannot be located, and until now, the park district has never been audited either at its own request or by the Auditor of State. In short, because the park district never developed a complete, standardized, and continually updated set of policies and procedures for its operation nor did it ever put into place a fund-based accounting system, the park district has generally operated more like a small, private charitable organization. Unlike its larger sister park districts, it never had the benefit of full-time, paid, professional staff, advisors, or counsel.

In 2002, the township eliminated the third source of funding, the inside millage, citing a sufficient reserve for the park district's 2003 budget and the township trustees' intent to shift money toward developing other park lands. From that point on, funding from the township has been basically on a project basis with maintenance services provided by the township's road department, and those maintenance services were eliminated in 2013.

With the shortfalls linked to the embezzlement scheme perpetrated by then township clerk, Michael Spellman, it is understandable that the trustees pulled back the set amount of funds allocated to the park district. But in a few years the park district reserve was depleted. Then a number of factors came together to create a perfect storm resulting in the open disharmony we now find between the park district, the trustees, and a few vocal citizen activists. Those factors are or were:

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<sup>5</sup> *Chester Township Park District Procedure Manual*, with various updating notations from 1994 and 1994

- the lack of an allocated fund for the park district;
- a lack of understanding or appreciation of the fact that the park district is a separate body politic;
- the cycling of new faces on the township board of trustees and the park board of commissioners;
- the increased demands on the township road department time and resources;
- severe cuts in the local government fund;
- loss of the estate tax revenue;
- litigation concerning the so-called “eighty-acres” of parklands;
- energized, “full speed ahead” park commissioners bringing to fruition big ticket projects that have enhanced Parkside but with a lack of adherence to the more deliberative pace and detailed processes and checks demanded of projects funded by public dollars;
- and just some old-fashioned and long-standing political rivalries and scores to settle.

This disharmony has been fueled by unfounded rumors that the township trustees are preparing to close Parkside by “defunding” the park district juxtaposed with unfounded rumors that the park commissioners are engaged in improper activity. This disharmony and lack of understanding of the boundaries of authority or more simply put, who runs the park, has been building over time. The presentation of the “Review” document to the township trustees ratcheted this conflict to a new level.

Compound all of this with the fact that the park district has never been audited, which allowed inadequate and/or incomplete compliance with strict fund-based financial record-keeping and reporting requirements to continue for many years.

What we have today is a vastly improved public park overseen by a dedicated group of volunteers, who have not been given the necessary tools to adequately and simply report and account to the public. These volunteers do not want to have the park district’s funding become a political battle each year.

My research has found that funds coming into the park district may be traced to projects, but not always easily. A consistent process of budgeting, appropriations, and documenting income and expenses for each project has never been implemented. In those years when projects

were few and small in amounts, the inability to consistently follow a path from budgeting, to resolution, to certification, to payment was not so problematic, as it is now when the projects are numerous and the dollars amounts are more substantial. The money *is* being spent on the park and the results are plainly evident; however, the lack of a standardized practices and procedures provides an opening for critics.

In regard to the “Review”<sup>6</sup> and the issues, questions, and concerns raised in that document, I have found no evidence of intentional disregard of controlling law on the part of the current park commissioners or its administrative assistant. There are instances of omission as opposed to commission, which are detailed throughout my analysis of the issues raised in the “Review,” but I have also found that the township leadership and some citizen activists have a very incomplete understanding of the *independent* nature of the park district and what laws are and are not applicable.

I have also found that negative personal agendas and long memories of past disputes have interfered, at times, with governance and have distracted all involved- the park commissioners, the township trustees, citizen activists, and the general public from encouraging the development of a positive culture of clear communication and information sharing, cooperative problem solving, and a clearly defined process compliant with both the law and best practices for accepting, spending, and accounting for both the receipt and expenditure of public funds and private donations to the park district.

As noted earlier, I have found a substantial and long-standing failure to strictly comply with the requirements proscribed for any public body receiving and expending public funds and for a park district accepting donations. The township trustees raised the issue of donations or

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<sup>6</sup> Exhibit A, *Chester Township Park District 2013 Review*, (revised 3/5/14)

discounts on contracts given as donations, which may give the appearance of impropriety or a quid pro quo from vendors. But I have found no evidence of actual improprieties in that regard.

I have found that the park district by-laws and the 1993 Agreement with the Chester Township Trustees are sorely in need of revision.

I have found that the park district needs to develop a handbook for its commissioners and administrative assistant/secretary/fiscal officer outlining the structure of the park district, detailing the governing documents and their responsibilities, as well as the requirements of state law and best practices for accounting and operations so that each purchase order or contract may be easily traced from budget to resolution through payment.

Toward that end I have already offered to the park district examples of meeting minutes and accounting forms and practices utilized by their sister district in Russell Township, which are simple, straight forward, and have passed muster with the Auditor of State.<sup>7</sup> I also recommend that district's examples of best practices including having one commissioner tasked with financial oversight. That commissioner would review and sign off on the monthly bank statement and listing of cash balances each month. While there is no set recommendation from the Auditor of State for park districts as to the number of signatories on checks or who those signatories must be, I recommend that checks be signed by two commissioners and the fiscal officer. With the addition of two new commissioners, that process should not present a problem.

I also offer examples of a resolution adopted by Lake Metroparks adopting a "Board of Park Commissioners Performance Metrics," which may be utilized to introduce new commissioners to the requirements and expectations of their new position.<sup>8</sup> While the Lake

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<sup>7</sup> Exhibit B-Russell Township Park District ("RTPD") sample year end & year beginning minutes;  
Exhibit C-RTPD sample cash balances spreadsheets;  
Exhibit D-RTPD sample receipt documentation;  
Exhibit E-RTPD sample warrant approval with certification

<sup>8</sup> Exhibit F-Lake Metroparks Resolution No. 2013-010

system is substantially larger and has full-time, paid, professional staff, many of the metrics are equally applicable to a small park district.

I also recommend the park district review its insurance and bond coverages. I have found that other districts have been able to purchase more coverage for the same amount. For example, Russell Township Park District commissioners' bonds are in the amount of \$25,000 rather than the \$5,000 minimum bond required by statute. The premium for three years is \$250. Their fiscal officer also has a higher bond. Given the increased amount of funds passing through the park district, a larger bond is prudent, especially if it may be obtained at the same price. The bonds should be filed with the Geauga County Auditor as mandated by statute. It just makes sense that another entity provides a check to assure compliance with the bonding requirement.

The park district needs to have regular legal counsel, be it the Geauga County Prosecutor on a contract basis (which may at times present a conflict if the trustees continue to fund on a project by project basis because the county prosecutor represents the township trustees) or private counsel.

The park district and the township need to work cooperatively to develop three, five, and ten year strategic plans, focusing first on maintaining the improvements at Parkside so that the investment is preserved and then on a vision for other park lands within Chester Township.

Most importantly, the two boards must discuss and resolve to either restore a set amount of inside millage or support an inside levy for the park district to stabilize funding and allow for more precise budgeting. Over the years the park district has been in existence, there have been few attempts to craft a strategic plan for the parklands, and attempts that were made failed, in part, because of the project-by-project nature of the park district's funding by the township. At one point in time after the township withdrew the inside millage, the park commissioners, in the words of a former commissioner, literally "begged" the trustees for money to run the park. Sadly,

these volunteer commissioners simply lost interest or moved to another volunteer position where they could accomplish something and to avoid personal attacks.

This cooperative effort begins simply with a schedule change- the two boards should not meet on the same night. The park commissioners and the township trustees have already implemented one improvement designed for better communication. Each board now has a designated liaison so that information may be exchanged efficiently and effectively with the goal of ending miscommunication or incomplete communication.

I am of the opinion that once the park district has in place its new fund-based accounting system with enhanced minutes, which will more simply allow the public and the township to track project expenditures and any subsequent change orders, especially during each board's budgeting process, the township trustees will no longer insist that it act as an über authority demanding a second vetting process for each and every park district project as well as dictating the continued maintenance of park grounds and facilities, an example of which may be found in the April 1, 2014 "funding" letter from the township trustees and noted in Judge Grendell's April 3, 2014 letter to the trustees.<sup>9</sup>

The minutes should reflect all donations and quantify donations of time and materials made to and by the park district, and all donations to the park district must have prior probate court approval as required by statute. In regard to donations or discounts on contracts given as donations and bartering, in particular, the state auditor confirmed my research. I recommend that bartering not be done on a regular basis, but the one example of bartering I found did not present a problem in and of itself. The park district should be continue its practice of securing discounts for purchases whenever possible, as long as there are no conflicts of interest with the vendor offering the discount over another potential vendor. I would ask Judge Grendell to consider

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<sup>9</sup> Exhibits G & H

exempting so-called “donation” discounts on contracts with vendors from the prior approval requirement.

Standardized forms for public notices of each type of meeting should be developed, and the park district has already recently enhanced its website to include a calendar. A meeting schedule for the year should be determined at the January meeting and posted. The agenda for the meeting should be posted along with the notice itself.

## **Introduction to the Analysis of the “Chester Township Park District 2013 Review”**

### **Formation of the Chester Township Park District**

Sometime in either 1983 or early 1984, research began into the creation of a Chester Township Park District. The impetus for the project appears to have been two-fold. The first was the perceived need to create a separate park district under R.C. 1545 in order to lock in a “viable method of funding continued recreation and parks activities.”<sup>10</sup> The second was to remove the day-to-day policy, planning and operational decisions to an entity separate and apart from the township board of trustees in order provide stability and continuity regardless of any change in township government and to attempt to ameliorate any negative effects of politics.

A R.C. 1545 park district is a separate and distinct entity, and the office of park commissioner is not a township office within the meaning of R.C. 703.22. Park commissioners serve without compensation, but they may be reimbursed actual and necessary expenses associated with the performance of their duties.<sup>11</sup>

As will be discussed infra, the seeds of discontent and tension between the park district board of commissioners and the township board of trustees began to blossom as early as 1989.

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<sup>10</sup> *Creation of a Park District*, a three page white paper, undated and without an author noted found in the records of the Chester Township Park District, p.1.

<sup>11</sup> R.C. 1545.07 and R.C. 1545.05

In regard to the continued funding aspect, the white paper observed that the “singular attractiveness of a township park district is its authority to request intangible tax dollars from the [Geauga County] Budget Commission...”<sup>12</sup> The author was under the impression that with the impending elimination of intangible taxes after 1985, “...the budgetary request filed in July of 1984 for the tax year 1985 [was] the last time a newly created park district [would] have the opportunity to lock in a continuous source of revenue.”<sup>13</sup> The author was operating under the assumption that the intangible tax was going to be replaced by a pool of state funds (what we now refer to as the Local Government Fund); that the money from that pooled fund would be distributed to the counties in the “same proportion that the intangibles taxes were distributed in 1985;” and that the taxing units within each county that had received a percentage of the intangible funds in 1985 county would “receive a proportionate percentage” from the new fund.<sup>14</sup>

These three assumptions may have been correct; however, the assumption that funding would be “locked in” or grandfathered at a specific dollar amount was incorrect. It should be noted that the Chester Township trustees were also of the opinion that after the approval of the park district’s 1985 budget request in September 1984, and its allocation of the sum of approximately \$20,000, the park district was “now assured at least this amount of money yearly in perpetuity.”<sup>15</sup>

That letter to the editor and an earlier one sent to The Herald-Sun were prompted by a controversy that arose by the creation of the Chester and Russell Township Park Districts, specifically over the fact that these entities would now share funds with the libraries.

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<sup>12</sup> *Creation of a Park District*, p.1.

<sup>13</sup> *Id.*, p.3.

<sup>14</sup> *Id.*, p.2.

<sup>15</sup> September 27, 1984 letter from the Chester Township Trustees and Clerk to the Weekly Mail Journal Editor

### **Chester Township Board of Trustees Applies to the Geauga County Probate Court**

On March 29, 1984, the Chester Township Board of Trustees passed a resolution authorizing the filing of an application with the Geauga County Probate Court under R.C. Chapter 1545 to create the Chester Township Park District, and on May 10, 1984, Judge Lavrich approved the application. On May 17, 1984, Judge Lavrich appointed the first Board of Commissioners for the district-Nicholas Gattozzi, Jr., Bruce L. Mielziner, and Charles F. Sells.<sup>16</sup>

The Board of Commissioner held its first organizational meeting at the Township Hall on June 12, 1984, for the purpose of adoption of a set of by-laws, which were taken directly from those used by Howland Township in Trumbull County, Ohio.<sup>17</sup> The board also appointed Carol Ferguson as a secretary/bookkeeper to be paid at an hourly rate.

### **By-Laws of the Chester Township Park District Board of Commissioners**

The by-laws<sup>18</sup> confer upon the board all powers and responsibilities found in R. C. Chapter 1545, and the provisions mirror the applicable sections of that code chapter. These by-laws are the same by-laws in effect today. The by-laws pertinent to this review are discussed below.

### **Composition, Oaths & Bond Requirements**

The board shall be comprised of three commissioners appointed by the Geauga County Probate Judge pursuant to R.C. 1545.05, who will serve without compensation and the successors to each expiring term of park commissioner will be appointed for three year term. There is no limit on re-appointment to the board. An oath and a \$5,000 bond are required of each commissioner. The bond is to be filed with the Geauga County Auditor. A commissioner may be removed at the discretion of the Geauga County Probate Judge. The Geauga County Treasurer and Auditor are ex-officio members of the board pursuant to R.C. 1545.22.

<sup>16</sup> *In Re: Chester Township Park District*, Case No. 84-PC-139, Docket 17, Page 371

<sup>17</sup> Chester Township Park District Record of Proceedings, Organizational Meeting, June 12, 1984.

<sup>18</sup> Exhibit I-By Laws of Chester Township Park District Board of Commissioners

The current commissioners, Clay Lawrence, Joseph Weiss, Jr., Lance Yandell, Al Parker, and Ruth Philbrick have oaths on file with the Geauga County Probate Court, and all five are bonded, but the bonds have not been filed with the Geauga County Auditor as required by R.C. 1545.05(A). In fact, no bonds of any park district commissioners have been filed with the auditor's office for some time.<sup>19</sup> Some former commissioners' bonds could not be found in the records of the Chester Township Park District. According to the Geauga County Auditor his office serves only as a "pass through" of public funds, and the only park district records filed with his office are the budget requests and year end reports.

### **Board Officers**

The board officers are to be elected by the board members at an annual meeting, which is to be held at the Chester Town Hall on the third Thursday of January or a special meeting called for the purpose of electing officers. There is to be a Chairman, authorized to sign all documents and make all reports required by law. There is also to be a Clerk/Secretary who keeps the minutes and gives public notice of the board meetings.

### **Employees, Consultants and Contracting for Goods and Services**

The board is also empowered to hire secretarial or other employees and may hire and contract for professional, technical, consulting, or other special services and may purchase goods. It contracts pursuant to R.C. 1545.09, and as a "contracting authority under R.C. 307.86 through 307.90," to the same extent and with the same limitations as a county Board of Commissioners. Thus when procuring any goods with a cost in excess of fifty thousand dollars, the board must follow the provisions of sections 307.86 to 307.91 of the Revised Code. Any contract for the purchase of goods or services or the employment of personnel requires a majority vote.

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<sup>19</sup> Auditor Gilha advised me that his informal polling of other county auditors found that few, if any, park district are filing bonds with that office.

The board may also designate persons as police officers to exercise police powers within and adjacent to the lands within the district.

### **Meetings and Public Notices**

Regular meetings of the board are to be held at the Chester Town Hall at least once a month. A special or emergency meeting may be called by the Chair or by a majority of the commissioners. Written notice of the regular or special meetings are to be given by the Secretary of the Board to the commissioners by regular mail at least twenty-four hours in advance, and no written notice is required for an emergency meeting.

The public notice of meetings is to comply with the so-called "Sunshine" law found at R.C. 121.22. There is to be a schedule of the regular meetings, noting date, time and place, posted on a bulletin board in a public area within the Chester Town Hall. This posting requirement also applies to notices of any special meeting.

No special meeting may be held without at least twenty-four hour notice being given to the news media who have requested, except in the event of an emergency meeting. In the event of an emergency meeting the board member (s) calling the meeting shall immediately notify the news media outlets, which have request notification of the time, place and purpose of the meeting. If a meeting is to be cancelled or changed, the board is to make "every reasonable effort," including newspaper notice to all interested parties. Members of the news media or persons who have requested direct notification shall be notified individually of the change "as soon as possible."

To request this direct notification of a meeting and/or the agenda, one must send a written request and provide the board with a self-addressed, stamped envelope. If there is a special or emergency meeting, then the board is to make a "reasonable effort" to notify the person or persons by phone.

Minutes of each meeting are to be promptly recorded and open for public inspection, and the board operates on a quorum of two members.

### **Expenditures**

Regarding expenditures of funds, the by-laws tract the revised code section and require that no expenditure is effective until the Geauga County Auditor certifies that there are sufficient funds otherwise unappropriated for the board in the custody of the Geauga County Treasurer. The Auditor is then to issue a warrant to the Treasurer to disburse the funds upon an order of the board evidenced by a certificate of the Secretary.

However, at the board's second meeting the commissioners formally adopted an alternative procedure authorized by the Revised Code, but the park district's by-laws apparently have never been amended to reflect this alternative procedure. The Geauga County Treasurer was requested to appoint Chairman Mielziner as Deputy Treasurer for the limited purpose of maintaining custody of the park board funds, paying the funds out upon warrant of the deputy auditor and investing funds upon board authority. The Geauga County Auditor was requested to appoint Carol Ferguson as Deputy Auditor for the limited purpose of maintaining the required financial records, certifying availability of funds and disbursing funds upon approval of the vouchers by the park board of commissioners. They also adopted a resolution to issue a Letter of Intent to select a depository, which letter was to be sent to the Geauga County Board of Commissioners and qualifying banks within the county.<sup>20</sup>

R.C. 1545.07 now authorizes the board to appoint a treasurer to act as custodian of the board's funds and as fiscal officer for the park district-similar to the provision followed at the formation of the Chester Township Park District.

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<sup>20</sup> Chester Township Park District Record of Proceedings, 6/12/84 & 6/14/84

R.C. 1545.22(A) provides that “[i]f a treasurer is appointed by a board of park commissioners pursuant to section 1545.07 of the Revised Code, the accounts of the board shall be kept by that treasurer. The treasurer shall be an ex officio officer of the board. No contract of the board shall become effective until the treasurer certifies that there are funds of the board sufficient to provide for that contract.”

The minutes provide scant information as to how succeeding treasurers were determined as it appears that the formalities followed by the initial board of commissioners in designating a treasurer, auditor, and depository have not been followed in the ensuing years (until 2014) even though there has been a turnover of commissioners and secretaries or administrative assistants.<sup>21</sup>

In April 2014, the commissioners voted to designate Margaret “Peg” Vitale as “secretary” and appoint her as “treasurer” and as “fiscal officer” to act as custodian of the district’s funds and to act “as necessary in the performance of the powers conferred in such sections of the Ohio Revised Code 1545.07.”<sup>22</sup> Ms. Vitale, a C.P.A., has been working for the district as an independent contractor since September 2010, in the position of secretary or administrative assistant at an hourly rate of \$15.00 set by the commissioners. As previously noted, Ms. Vitale is bonded in the sum of \$ 5,000.

#### **Check Signing Authority & Authority for Expenditures by One Commissioner**

In 2009, the commissioners voted to require two signatures on checks without specifying which of four signatories are required, and a review of some of the cancelled checks over the last few years indicates that checks drawn on the park district account at Charter One are being signed by either two commissioners or by a commissioner and the administrative assistant, Margaret Vitale.<sup>23</sup>

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<sup>21</sup> It must also be noted that the minutes from 2008 are missing.

<sup>22</sup> Minutes of the Chester Township Park District, April 23, 2014

<sup>23</sup> Minutes of the Chester Township Park District, December 21, 2009

I confirmed the propriety of this policy with the state auditor, who advised that unlike townships, the Auditor of State has no real set recommendation on the number of check signers when it comes to park districts. If the park district has a set policy about signatories and the number of signatories, it should follow that policy. If it does not, only one signature from an authorized signatory would be required.

Now that there are two additional commissioners available, I recommend that all checks be signed by two commissioners and the fiscal officer.

The park district board also passed a resolution authorizing a single commissioner to “orally and individually expend up to \$1,000 for work to be done at the Park.”<sup>24</sup> An earlier board passed a resolution authorizing any commissioner to “address routine electrical maintenance issues up to \$500” without a meeting; however, the issue must involve a “material safety hazard” or an “immediate operating issue,” which will prevent a reserved facility use. If this expenditure is authorized, the commissioner must “email” the other commissioners within one week.<sup>25</sup> If emails were sent pursuant to this earlier resolution, they were not noted in the minutes or maintained in a separate file, paper or electronic.

Finally, the by-laws provide that the board may also acquire land within or without the district by a majority vote. The purposes and procedures for land acquisition are as prescribed in R.C. 1545.11 and include appropriation. The board may also accept donations of money, property, or may act as trustee of land, money or other property, and use the donation or property to be held in trust as either stipulated by the donor or as provided in the trust agreement. The probate court judge must approve each donation or trust before it is accepted by the board, but that practice has been followed only once.

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<sup>24</sup> Minutes of the Chester Township Park District, January 24, 2013

<sup>25</sup> Minutes of the Chester Township Park District, August 3, 2009

It is my understanding that Judge Henry had dispensed with the donation approval process, in whole or in part, but Judge Grendell has rescinded that order.

The board may also sell land it has acquired with probate court approval as set forth in R.C. 1545.12. It may also lease lands.

### **The By-Laws are Supplemented with Additional Provisions of R.C. 1545**

#### **Expansion of the Board of Commissioners**

The park district board may by majority vote expand the board to five members. The board then certifies a resolution to the probate judge requesting the appointment of two additional commissioners who will take office immediately. One member is appointed to a term that expires on the first day of January of the year following the year of that member's appointment, the second member is appointed to a term that expires on the first day of January of the second year following the year of that member's appointment. Thereafter, their successors are appointed by the probate judge for terms of three years.<sup>26</sup>

On April 23, 2014, the park district commissioners voted to approve the drafting of a resolution requesting Judge Grendell expand the board to five commissioners, and two new commissioners, Ruth Philbrick and Al Parker were appointed.<sup>27</sup>

#### **Adoption of Park Rules, Regulations & Penalties**

The commissioners may also adopt "rules for the preservation of good order within and adjacent to parks and reservations of land, and for the protection and preservation of the parks, parkways, and other reservations of land under its jurisdiction and control and of property and natural life therein."<sup>28</sup> The board may also set penalties for violations of a by-law or rule, with certain limitations on the severity of the penalty.<sup>29</sup> The penalties are to be paid into the treasury

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<sup>26</sup> R.C. 1545.05(B)

<sup>27</sup> Minutes of the Chester Township Park District, April 23, 2014.

<sup>28</sup> R.C. 1549.09

<sup>29</sup> R.C. 1545.09 (B)(2)

of the park board.<sup>30</sup> Summaries of the by-laws and rules are to be published as provided in the case of ordinances of municipal corporations under section 731.21 of the Revised Code before taking effect.<sup>31</sup>

The commissions may also enter into contracts not to exceed a three year period with any private corporation or non-profit association to maintain a museum of natural history in any county where the park district is located.<sup>32</sup>

#### **Power to Enter Into Certain Contracts**

Subject to the terms of the Agreement between the Chester Township Park District and Chester Township described below and subject to the provisions of the statute, the commissioners may enter into a contract with township, the county sheriff, or other park district (among other entities listed in the statute) to “allow the use of the park district police or law enforcement officers designated under section 1545.13 of the Revised Code to perform any police function, exercise any police power, or render any police service” on the park district’s behalf.<sup>33</sup>

#### **Annexation and Public Highway Improvements**

R.C. 1545.15 and RC. 1445.16 set out an annexation procedure.

When a public highway extends into or through a park area, the park commissioners may under R.C. 1545.17 through R.C. 1545.19 enter into improvement agreements with the public authorities controlling the subject area and to assess the cost of the improvement.

#### **The Power to Levy Taxes**

Most importantly, under R.C 1545.20 the park commissioner may levy taxes on all taxable property within the district “in an amount not in excess of one-half of one mill upon each

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<sup>30</sup> R.C. 1545.09(C)

<sup>31</sup> Id.

<sup>32</sup> R.C. 1545.10

<sup>33</sup> R.C. 1545.131

dollar of the district tax valuation in any one year, subject to the combined maximum levy for all purposes otherwise provided by law.”

The park commissioners may also pass a resolution submitting a tax levy to the voters. “The rate submitted to the electors at any one time shall not exceed two mills annually upon each dollar of valuation.”<sup>34</sup> There is also a provision for tax anticipation notes to meet current expenses and debt charges.<sup>35</sup>

### **Legal Counsel**

In 1984, the Chester Township Trustees requested an opinion from the Geauga County Prosecutor whether that office acts as legal counsel for the park district, and if not, whether the park district is required to retain its own legal counsel.

By letter of June 19, 1984, then Assistant County Prosecutor Forrest W. Burt advised the township trustees that while the prosecutor’s office serves as legal counsel for the township trustees, the county board of commissioners, the board of elections and all other county offices and boards, there is no provision in R.C. 309.09 permitting that office to act as counsel for a park district created pursuant to R.C. 1545, because the district is a body politic in its own right and its commissioners and employees are not considered township officers or county officers.

Mr. Burt’s opinion cited two Ohio Attorney General Opinions. The first determined that the board of park commissioners is not represented by the county prosecutor and may employ its own counsel to be paid from district funds.<sup>36</sup> The second determined that the county prosecutor is not the legal advisor for a joint recreational district, which is a separate body politic from the townships and boards of education which combined to form the district.<sup>37</sup> Mr. Burt concluded

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<sup>34</sup> R.C. 1545.21

<sup>35</sup> R.C. 1545.211

<sup>36</sup> 1927 OAG 279

<sup>37</sup> 1981 OAG 279

and advised that the park district could not be represented by the county prosecutor and that it may employ counsel from district funds.

As late as 1994, the Ohio Attorney General opined that a R.C. 1545 park district could not be represented by the county prosecutor<sup>38</sup>; thus, in 1996, the General Assembly amended R.C. Section 309.09 to permit the county prosecutor to contract with a R.C. 1545 park district to provide legal services.<sup>39</sup>

R.C. 309.09(D) now provides that the “prosecuting attorney and the board of county commissioners jointly may contract with a board of park commissioners under section 1545.07 of the Revised Code for the prosecuting attorney to provide legal services to the park district the board of park commissioners operates.” And division (I) of that section also provides

“all money received pursuant to a contract entered into under division (D)... of this section shall be deposited into the prosecuting attorney's legal services fund, which shall be established in the county treasury of each county in which such a contract exists. Moneys in that fund may be appropriated only to the prosecuting attorney for the purpose of providing legal services to a park district... as applicable, under a contract entered into under the applicable division.”

### **Park Lands**

#### **Written Agreements Between the Park District and the Township Trustees**

Within the first year of the district's existence, the Chester Township Trustees passed a resolution<sup>40</sup> and signed a written agreement pursuant to R.C. 1545.14 by which the park district assumed control of all parks and park lands owned by Chester Township beginning April 5, 1985, and continuing for another period of one year and then renewable for an additional five year period.<sup>41</sup> The park district commissioners agreed to “use, operate, maintain, develop,

<sup>38</sup> 1994 OAG 035

<sup>39</sup> 1996 H 268, eff. 5-8-96

<sup>40</sup> Record of Proceedings before the Chester Township Board of Trustees, April 4, 1985

<sup>41</sup> Exhibit J- Agreement of April 4, 1985, p. 1,2.

improve and protect” the park lands for the “purpose of providing passive and active recreational facilities to the residents of Chester Township and the public.”<sup>42</sup>

The park district agreed that no construction or alteration of any permanent improvement on park lands would be undertaken without prior written approval of the township trustees, and that plans for any such project would be submitted to the township trustees at least sixty days before start of work. The township trustees also reserved the right to refer any plans to the zoning commission for “advice and comment,” and the park district agreed that any projects would be performed “in the spirit of the Chester Township Zoning Resolution.”<sup>43</sup>

The park district also obligated itself to adopt rules and regulations for the use of the park lands within thirty days, and the township trustees acknowledged that the duty and authority to regulate the use of the park lands has been transferred to the park district commissioners.<sup>44</sup>

The park district agreed not to appoint any park rangers or officers other than Chester Township police officers, who would remain under the direction and control of the police department.<sup>45</sup>

The Agreement specifically provided that control of the park lands would revert to the township trustees upon any early termination or at the end of the period, as extended; that is April 4, 1992.

It was not until February 25, 1993, that the two boards executed a new Agreement, with the same or similar provisions. This Agreement’s term is five years and renews annually thereafter unless terminated.<sup>46</sup>

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<sup>42</sup> Id., p. 1.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id., p. 2.

<sup>46</sup> Exhibit K, Agreement dated February 25, 1993, p.2.

**What are the Chester Park Lands?**

Two questions then arise: the first, what are the park lands and the second, which entity, Chester Township or the Park District, is in de facto control of each park land? The answer to the first question is complicated because until 2014 Chester Township had no inventory of its real property holdings. Township Fiscal Officer, Craig Richter, compiled a list of township property, but it is not readily apparent which properties are park lands.<sup>47</sup> The township has no zoning designation for parks. From my interviews with the trustees, the township fiscal officer, and the park commissioners, and from land records, the following chart sets forth the park lands in Chester:

Park	Acquired	Acres	Parcel Number
Parkside (Rt. 322 & 306)	David Hudson, 1811-deed restriction for public park	5	11-710900
Lot Adjacent to Parkside	5/13/10	1.27	11-714499
Hancock Park/Mulberry^	8/14/08 deed restriction for public park	3.375	11-389276
"The Eighty Acres" Chillicothe Rd. between Sharp & Kirkwood*	2/26/01	85.17	11-714490,
	12/29/11 Conservation easement given to the Western Reserve Land Conservancy		11-714483, 11-714485
Henry House#	3/16/12	0.22	11-714503

<sup>^</sup>The Park District has not been asked to maintain

<sup>\*</sup>The Park District has not been asked to maintain and the conservation easement is the subject of litigation, *Kenneth Radtke, Jr. v. Chester Township, et al.* Case No. 13M1076, Geauga County Common Pleas Court. A motion to dismiss for failure to state a claim was granted by the court on June 19, 2014. Mr. Radtke filed an appeal on July 17, 2014.

<sup>#</sup>Henry House property-There has been discussion by the township trustees of making this part of the Parkside campus

<sup>47</sup> See Exhibit L, Chester Township Real Property Inventory

In 1993 the Chester Township Zoning Commission drafted an amendment regarding park district zoning, specifically the creation of both an active park district zone and passive park district zone. The zoning commission sought input from the Nature Conservancy<sup>48</sup>; however, no further action was taken. Consequently, Chester Township still has no park district zoning.

#### **Other Park Districts in Geauga County**

Geauga County has four R.C. 1545 park districts: Geauga County Park District, Thompson Township Park District, Chester Township Park District, and Russell Township Park District. There are seven park boards or departments in the county: Hambden, Chardon Township and City of Chardon Parks & Recreation Department, Bainbridge, Munson Parks & Recreation Board, Newbury and South Russell Village Parks Committee.

#### **Funding Sources**

As noted above, R.C. 1545 provides for levying a tax upon all of the taxable property within the park district in an amount not in excess of one-half of one mill, subject to the combined maximum levy for all purposes otherwise provided by law.<sup>49</sup> Additional levies approved by the electorate and not in excess of two additional mills per levy may be sought.<sup>50</sup>

Currently, there is no tax levy for the Chester Township Park District, and the funding sources for the park district are Chester Township, the Local Government Fund, the Library Fund, and donations. The park district has in turn contributed a portion of these funds to the West Geauga Joint Recreational District, which serves both Chester and Russell Townships.

Initially (and it would appear that until August 2002) the park district received inside millage of .08, raised to 0.1mil in 1992 from property taxes. In August 2002, the township board of trustees voted to rescind the inside millage, citing the park district's "ample budget for 2003"

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<sup>48</sup> Letter from zoning commission to Mr. Tom Stanley dated September 1, 1993.

<sup>49</sup> R.C. 1545.20

<sup>50</sup> R.C. 1545.21

and the intent of the trustees to have that money “go back into development and funding for the other park we have in the community now.”<sup>51</sup>

The following chart shows how the “reserve” was spent down:

Unencumbered Year End Cash Balances & Township Contributions for that year	2002	2003	2004	2005
Cash Balances	\$29,838.27	\$14,690.08	\$6,590.08	(\$8,814.68)
Chester Twp.	\$25,363.02	—	—	\$13,320 <sup>52</sup>

R.C. 511.37 provides that a board of township trustees may make contributions of “moneys, lands, supplies, equipment, office facilities, and other personal property or services to any board of park commissioners of a park district” established under R.C. 1545 for the “purposes of park planning, acquisition, management, and improvement.” The park district may accept these contributions without the approval of the terms by the probate judge.

It further provides that “[a]ny moneys contributed by the board of township trustees for those purposes shall be drawn from the general fund in the township treasury not otherwise appropriated. The board of township trustees may anticipate the contributions of moneys for those purposes and enter the amount of the contributions in its annual statement to the county budget commission for inclusion in the budget upon which rates of taxation are based.”

<sup>51</sup> Record of Proceedings, Chester Township Board of Trustees, August 1, 2002, Resolution 2002-298.

<sup>52</sup> Chester Township Board of Trustees’ Resolutions 2005-97, 2005-346, 2005-361 & 2005-535-all for either electric bills or electrical repairs.

**Recent Funding for the Chester Township Park District taken from Geauga County Auditor's Amended Certificate of Estimated Resources for the Fiscal Year**

Year	Undivided Local Government Fund	Library Fund	Chester Township	Other (Permits, Fees & Interest)
2014	\$10,050.00	\$4,379.00	\$75,000	\$500
2013	\$10,050.00	\$4,379.00	\$100,000.00	\$501.20
2012	\$10,049.90	\$4,268.00	\$90,000.00	\$275
2011	\$10,749.00	\$4,645.00	\$83,925.00	
2010	\$10,749.00	\$4,172.00	\$28,602.13	\$1,289.76
2009	\$10,749.00	\$4,588.00	\$41,162.00	\$2,200.00

**Actual Funding Balances for the Chester Township Park District Submitted to the Geauga County Auditor**

Year	Cash Balance Brought Forward	Receipts Chester Township	Receipts Local Govt. & Library Funds	Other (Permits, Fees & Interest)	Total Receipts & Balance
2014					
2013	\$12,375.52	\$150,000.00	\$14,678.00	\$10,002.79	\$187,056.39
2012	\$4,018.68	\$130,410.00*	\$15,515.53	\$326.03	\$150,270.24
2011	\$4,246.84	\$44,000.00*	\$14,466.47	\$927.53	\$63,685.84
2010	\$12,684.44	\$33,005.00*	\$16,025.98	\$277.28	\$61,992.70
2009	\$18,570.28 (\$4,262.00)^	\$28,602.13*	\$16,090.08	\$1,289.76	\$60,290.25

\*Chester Township paid \$10,000 for maintenance

^ Prior Year Encumbrances

**Actual Expenditure Balances for the Chester Township Park District  
Submitted to the Geauga County Auditor**

Year	General	Personal Services	Capital Improvements	Reserve Fund	Maintenance	Donations or Other#	Total Expenditures
2014							
2013	\$16,300.43	\$4,422.49	\$119,875.79	3,223.50	\$30,876.38	\$4,000.00	\$178,699.59
2012	\$9,600.36	\$3,357.03	\$117,833.74	-0-	\$8,174.30*	\$1,000.00	\$139,965.43
2011	\$13,166.06	\$2,712.05	\$39,489.80	-0-	\$1,421.55*	\$1,005.50	\$57,794.96
2010	\$14,479.34	\$3,297.50	\$35,725.33	-0-	\$2,942.02*	\$1,301.67	\$57,745.86
2009	\$16,244.39	\$3,119.02	\$26,078.62	-0-	\$858.58*	\$1,305.00	\$47,605.81

\*Chester Township paid \$10,000 for maintenance  
#Other is vandalism

The park district's assets valued on a cost basis as of December 31, 2013 total \$12,077.53.<sup>53</sup>

**The "Chester Township Park District 2013 Review"**

In March 2014, a twenty-nine page document entitled, "Chester Township Park District 2013 Review (Revised 3/5/14),"<sup>54</sup> without an identified author was presented to individual members of the Chester Township Board of Trustees and the Chester Township Fiscal Officer by a former Chester Township Trustee, Ron Cottman.

The "Review" raised a number of issues regarding the operation of the park district relating to vendor payments; increased spending; park projects, plans and budget estimates; alleged failures to follow Ohio law, park district by-laws and the Agreement between the park district and the Chester Township relating to the operation of a park district and open meetings; irregularities in accounting; non-park related expenditures for goods and services; disposition of park district property; bonding of the commissioners; and the employment of the park secretary.

<sup>53</sup> See Exhibit M, Chester Township Park District Inventory List

<sup>54</sup> Exhibit A

Because of the “Review” the township trustees at their March 7, 2014, meeting withheld funding for the park district. An immediate needs funding request submitted by letter from Park Commissioner Weiss dated April 10, 2014, was approved on April 17, 2014.<sup>55</sup>

On March 20, 2014, Geauga County Probate Judge Timothy Grendell appointed me as Master Commissioner “to address issues raised” in the “Review,” and to “determine, examine, and either resolve or provide to Court a proposed resolution” of the issues raised in the “Review.”<sup>56</sup>

I began my research by interviewing the new Chester Township Fiscal Officer who had already asked for a state audit of the township shortly after he assumed his new post. The auditor inquired of him about the park board, and after that inquiry, it was determined that the park district had never been audited. Upon further investigation, the state auditor determined that the park district would be audited but separately from the township because of the district status as a separate body politic.

That audit is underway, and because of it I did not undertake an exhaustive review of the park district’s finances, but rather focused on the specific issues raised in the “Review” in general terms, leaving the audit function up to the state of Ohio. I also focused on issues raised in my interviews of the township fiscal officer, the township trustees, the park commissioners and the park’s administrative assistant, former township trustees and park district commissioners, the

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<sup>55</sup> Minutes of the Chester Township Board of Trustees, April 17, 2014. 2014-223. Mr. Radtke moved to approve up to \$21,348.90 payable to the Chester Township Park Board for the following items:

- \$3,275.00 to M.A.L. Enterprises – repainting the gazebo
- \$2,000.00 to Ladislav Zala – electrical engineering configuration layout for lampposts
- \$2,395.00 to Ken’s Parkhill Roofing – replace horseshoe pavilion roof and gutters
- \$3,548.90 to Play & Park Structures – mulch for both playgrounds
- \$2,100.00 to M.A.L. Enterprises – recoat all split rail fencing
- \$2,500.00 Eugene DiFranco – baseball field initial preparation
- \$1,000.00 to Chesterland Kiwanis Club – summer concert series
- \$3,780.00 for Professional House Cleaning Services - Park cleanup expenses
- \$ 750.00 for restroom vandalism repair – Freshly & Sons

Mr. Petruziello seconded. Vote unanimous; motion passed.

<sup>56</sup> In Re: Chester Township Park District, Case No. 84PC000139, Judgment Entry dated 3/20/14.

Geauga County Auditor and his deputy, and members of the public through their emails, letters<sup>57</sup> or at a public meeting.<sup>58</sup> My methodology was to examine each section of the “Review” versus the minutes, any controlling documents and law, contracts or orders for the purchase of goods or services, receipts and disbursements.

In other words, I have examined the questions raised in a broader context and measured generally how the park district operates using the metrics set out in applicable revised code provisions, the district’s by-laws, and best practices for a park district board. Where necessary to provide context to my conclusion and findings and to point to specific deficiencies in process, I have given specific references to park board or township trustee meeting minutes, to specific resolutions and checks approved, or to answers to my specific questions posed during interviews. But it must be emphasized that my analysis of the “Review” is not an exhaustive audit.

I defer any final conclusions as to the specific items delineated in the “Review” relating to financial discrepancies until the audit is complete. Once that audit is complete, I will be notified and the results reported to the court.

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<sup>57</sup> See Exhibit N1 through N10-emails and letters received from the public and attendance list from public meeting with Master Commissioner held on June 26, 2014

<sup>58</sup> See Exhibit O-notice of June 26, 2014 meeting

**Analysis of the "Review"**

**"Recent Significant Vendor Payments" in 2012 and 2013<sup>59</sup>**

**Issue 1-Play and Park Structures-\$64,734      Issue Raised-No other quotes obtained**



**Conclusion-**With major enhancement projects there is necessarily going to be major expense. Even if the formal bidding process calling for multiple bids is not mandated because of the dollar amount of the contract, best practices generally require obtaining multiple bids for large dollar expenditures.

When asked why no other bids were obtained for the playground, the commissioners and Ms. Vitale, who was a member of the playground committee, cited the failed attempts to re-engage another vendor, TDA Design, which company the park district had worked with in the initial design and planning stages, as well as the expense of the TDA proposals in the \$200,000 range. They also cited their consultation with the Geauga Park District, their desire to "go with a local company," and the safety credentials of Mr. Varga of Play and Park Structures. I conclude the park district did its due diligence, the details of which are set forth in the chart below.

Park District Meeting Date	What the Records Reveal
2/8/11 meeting	Resolution passed to "allocate \$3,500 to initiate the playground continuation project involving TDA Design [Then Design Architecture]" with a fall target date for installation and to re-

<sup>59</sup> I have also considered the charts of expenditures prepared by Ms. Vitale in response to the "Review" and my inquiries, which is found in the appendix as Exhibit AA.

	establish the playground committee to seek community input.
February and March, 2011	Letters were sent to "interested citizens" and to school PTOs seeking input and volunteers for the playground committee. Committee members were Margaret Vitale, Ronald Downs and Jim Beazel.
4/4/11 meeting	TDA notified of its selection-"awaiting reply." Resolution approved appointing Jim Beazel as Leader of the Playground Committee. No community members appeared at the meeting despite invitations sent to school PTOs. A press release will be issued to seek more members.
6/6/11 meeting	Playground Committee will obtain a quote from TDA to include in 2012 budget
6/27/11 meeting	TDA presented the Playground Committee's equipment selection and cost estimates for 4 project categories. The commissioners decided to present a playground proposal to the Township Trustees seeking 2012 budgeted funds for 3 of the 4 categories. No other specifics were reflected in the minutes. No minutes for the July 14, 2011 budget meeting are in the district records.
8/15/11 meeting	2012 Budget approved and there was no item for playground improvements. Ron and Cathy Cottman attend the meeting and questioned why phase II of the playground expansion project "budgeted for \$215,000" at the June 27, 2011 meeting was removed from the 2012 budget posted at Town Hall. "Ron Cottman requested an explanation of what happened between the Commissioners and the Trustees regarding the change from the budget of June 27 <sup>th</sup> which was approved and posted at the town hall." "The Playground Committee fulfilled the commissioners requirement for an initial plan and it was determined that a meeting needs to be scheduled with the Trustees, the Playground Committee and the Commissioners to explain the phase II playground project expansion and discuss fruition plans." Commissioner Downs reported that he contacted TDA to verify the request for a survey.
1/17/12	TDA will be invited to next meeting to "discuss their planning needs and inform the Park Board of what is involved in the installation project."
2/2/12 Meeting	Another potential vendor, Then Design Architecture (TDA) was not responding to request for information and to attend a meeting. TDA had requested a "full park survey," which the board could not justify inasmuch as topographic survey could be obtained from the county. Commissioner Downs was tasked to meet with Mr. Curtain from the Geauga Park District to obtain information on its playground designs and Commissioner Weiss was tasked with contacting Playground World of Chester and to follow up again with TDA.
4/2/12 meeting	Commissioner Weiss reports Playground World will provide their earlier proposal and site plan presented a few years ago

5/3/12 meeting	Presentation by Jerry Varga of Play and Park Structures-works with installer, Playground World of Chesterland. Park District is "no longer working with the TDA Group"
6/14/12 meeting	Mr. Varga presented 2 purchasing options: purchase selected equipment in 2 or 3 phases and keep cost below \$25,000; the other would be to install the selected equipment via The Cooperative Purchasing Network (TCPN). Commissioner Weiss was tasked to consult with the Geauga County Prosecutor to determine eligibility to use this program. The cost of park benches was also determined to be approximately \$517 and Commissioner Weiss has contacted interested donors.
8/23/12 Township Trustees Meeting	Plans and contract presented to the township trustees with the funding request by Commissioner Weiss and Ms. Vitale. Resolution funding the project in the amount of \$24,650 was passed. <sup>60</sup>
7/12/12 meeting	Commissioner Weiss reports that there has been no final answer from the prosecutor's office regarding TCPN. If it could be used then the installation could be done in two phases. The commissioners passed resolution to approve the phase one as presented 6/4/12 [sic] with Play & Park in the sum of \$24,126.18 and submit to county prosecutor for contract preparation.
10/18/12 meeting	Check 1683 approved to pay Play & Park \$24,126.18 (for quote 717-65393A)
2/27/13 meeting	Met with Mr. Varga to discuss playground completion. "Updated pricing" noted, but no amounts are reflected in the minutes.
3/21/13 meeting	Resolution was approve to approve a contract with Play & Park to "complete the final playground expansion discussed at the prior meeting." But there is no contract price or other details reflected in the minutes.
5/16/13 meeting	Check 1758 approved to pay Play & Park \$35,296.65 (for Invoice 30515 for the final phase of equipment)
6/19/13 meeting	Six park benches have been donated and installed and patron's displays have been ordered; however, the Probate Court file reflects only one park bench donation was submitted to Judge Grendell for approval. <sup>61</sup>
7/2/13 meeting	Check 1803 approved to pay Play & Park \$2,655.74 (for 6 park benches)
7/31/13 meeting	Twelve park benches have been installed "primarily paid for through the donations" and the district "will assume an estimated \$500" for the twelve benches
8/22/13 meeting	Check 1821 approved to pay Play & Park \$2,655.74 (for additional park benches) and commissioners acknowledged Chester Auto Body for donating the labor to mount the twelve plaques on the benches. There was no quantification of the donated labor reflected in the minutes.

<sup>60</sup> Chester Township Board of Trustees Resolution 2012-489.

<sup>61</sup> 3/20/14 approval of donation by Consolidated Investment Corporation

**Issue 2-H & M Landscape-\$40,622**

**Issue Raised-No specific issue identified other than payments were "significant"**



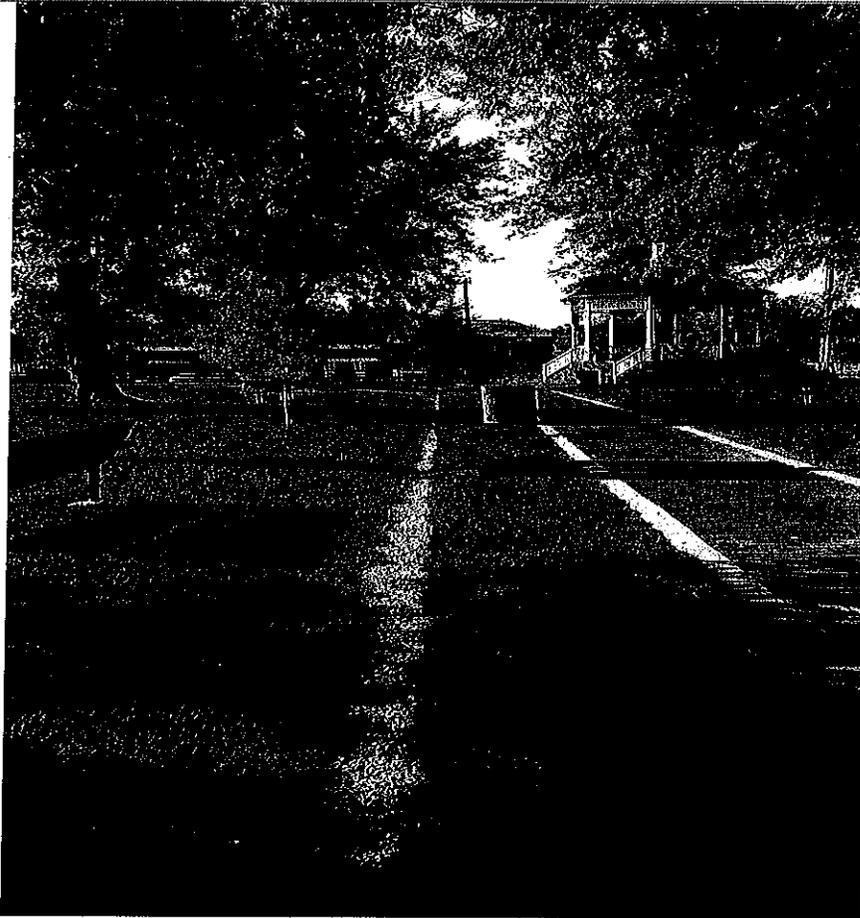
**Conclusion-**The NatureWorks funded pavilion project was actually started by the township trustees, who turned the project over to the park district for completion. This is a good example of cooperation between the township and the park district. The project was vetted by the township, the park district and the Ohio Department of Natural Resources. Outside sources of funds were identified and plans obtained from Munson Township at no cost. Given the scope of the project and the end product, I conclude the significant payments were well-spent.

<b>Park District Meeting Date</b>	<b>What the Records Reveal</b>
4/2/12 meeting	ODNR NatureWorks <sup>62</sup> has been approved to fund the pavilion which is a part of the master plan for the volley ball court installation. The grant is in the amount of up to \$15,000 with the inclusion of a budgeted 25% funds match from the public entity. Commissioner Weiss obtained drawings from Munson Township prepared to fit the existing concrete pad <sup>63</sup> . H&M to prepare proposal for pavilion.
5/3/12 meeting	Mr. Mazzurco of H&M Landscape presented proposals for pavilion construction to meet ODRN Nature Works grant specifications. No amounts for each option are reflected in the minutes. He also presented proposals for landscape enhancements to complete the volleyball park court installations and repairs to the existing pavilion. Commissioners agreed to further discuss 5 items from this

<sup>62</sup> Exhibit P-ODNR Letter dated 12/22/11 to Trustee Joyce regarding grant applied for by the Chester Township Board of Trustees

<sup>63</sup> Exhibit Q-email dated 4/3/12 from Trustee Joyce to Commissioner Weiss regarding drawings

	proposal totaling \$14,721.01 with H&M.
6/14/12 meeting	ODNR approval both options, and a resolution was passed to go forward with option 1 in the amount of \$20,419 contingent on preparation and review of contract by county prosecutor. (Contract signed 6/28/12.)
7/12/12 meeting	Resolution approved the landscape enhancements of \$14,721.01 contingent on preparation and review of contract by county prosecutor. (Contract signed 8/9/12.)
8/9/12 meeting	Check 1661 approved to H&M \$10,209.50 (for 50% draw on pavilion project)
9/5/12 meeting	Check 1669 approved to H&M \$10,209.50 (for balance on pavilion project)
9/27/12 meeting	Pavilion complete and documents being assembled to submit to state of Ohio for reimbursement per the grant. Minutes reflect H&M "performed several additional required tasks at no cost," without quantification of the value of those donated services. It is also noted that "special Township funds" were approved to purchase gravel for the parking lot adjacent to the baseball field without further detail in the minutes.
10/18/12 meeting	Check 1684 approved to H&M \$10,800.93 (toward landscape enhancements contract)
11/29/12 meeting	Check 1689 approved to H&M \$3,920.08 (toward landscape enhancements contract balance)
5/16/13 meeting	Check 1754 approved to H&M \$1,560.00 (toward repairs to volleyball court area)
7/31/13 meeting	Minutes reflect that Joe Mazurro of H&M donated his time and materials to replace the lighting at the corner of the perennial garden without quantification of the value of this donation. Resolution approving H&M's bids for three separate projects: Perennial Garden Renovation \$1,585.00, Stone Reset Around Driveways and Garden Areas \$1,500.00, and Flower Bed Horseshoe Area Clean Up \$585.00 [sic]. Minutes reflect proposals were obtained from "three local area landscape companies" for this work; however, the records only contain one additional proposal for the stone reset project.
9/12/13 meeting	Check 1832 approved to H&M \$3,665.00 (for the three projects)



**Conclusion-**When asked about efforts to obtain other quotes, the commissioners indicated that “all vendors” were asked to quote the work for the ball field. The park district arborist recommended the board hire DiFranco. I conclude the park district did its due diligence, the details of which are set forth in the chart below.

Park District Meeting Date	What the Records Reveal
12/9/11 meeting	Commissioner Bidwell was tasked to contact Bart Alcorn (also preps ball fields) and Eugene DiFranco to obtain assistance on baseball field renovation and get time estimate for the work
3/5/12 meeting	Wayne Williams from the West Geauga Baseball Federation attended meeting to discuss its use application and “commitment to the ongoing field maintenance.” Mr. Williams offered his assistance in evaluating the renovation project. Alcorn “will perform the required pre-maintenance of the field and invoice the Park Board for that initial job.” No dollar amount noted.
4/2/12 meeting	Mr. DiFranco discusses drainage issues. Minutes note that the

	township road superintendent is willing to assist in investigation of the drainage issue and proving trenching services. Mr. DiFranco will submit a proposal.
5/3/12 meeting	Commissioner Weiss reports of possible drainage temporary fix by road department while full renovations plans are being prepared
6/28/12 meeting	Within the 2013 Proposed Budget is an estimated project costs for field renovation of \$25,000
7/12/12 meeting	"Proposals are being requested to determine the scope, timing and cost of the work"
8/9/12 meeting	Minutes reflect that Commissioners Bidwell and Weiss met with DiFranco at the ball field to discuss the "necessary renovations." <sup>64</sup> Resolution was adopted to accept the 7/27/12 proposal from DiFranco in the sum of \$23,600 contingent upon documentation and contract. (Contract was signed 9/5/12.)
9/5/12 "emergency" meeting	Contract with DiFranco signed and commissioners also approved \$1,700 contract with ABV Contractors, Inc. to scope the ball field drainage pipes "if deemed necessary" by Mr. DiFranco
11/29/12 meeting	Check 1688 approved to DiFranco Landscaping \$21,240.00 (10% retained because 90% of the project complete and the balance to be done in the spring)

<b>Issue 4-Electrical Contractor Payments \$52,411</b>	<b>Issue Raised: No specific issue identified other than to note that the payments were "significant"</b>
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**The "Review" identifies these specific vendors and payment totals:**

<b>Peerless Electric</b>	<b>2012-2013</b>	<b>\$36,996</b>
<b>Chesterland Electric</b>	<b>2013</b>	<b>\$9,509</b>
<b>Hi Lite Maintenance</b>	<b>2013</b>	<b>\$3,065</b>
<b>ElectroLite</b>	<b>2013</b>	<b>\$2,841</b>

**Conclusion-**The electrical system at Parkside has historically been problematic. With input from a consultant and the recent investments in upgraded lighting system, the lighting expense "black hole" should become manageable. I conclude the "significant" payments were necessary to continue to offer the park for evening games and events, and the park district did its due diligence, the details of which are set forth in the chart below.

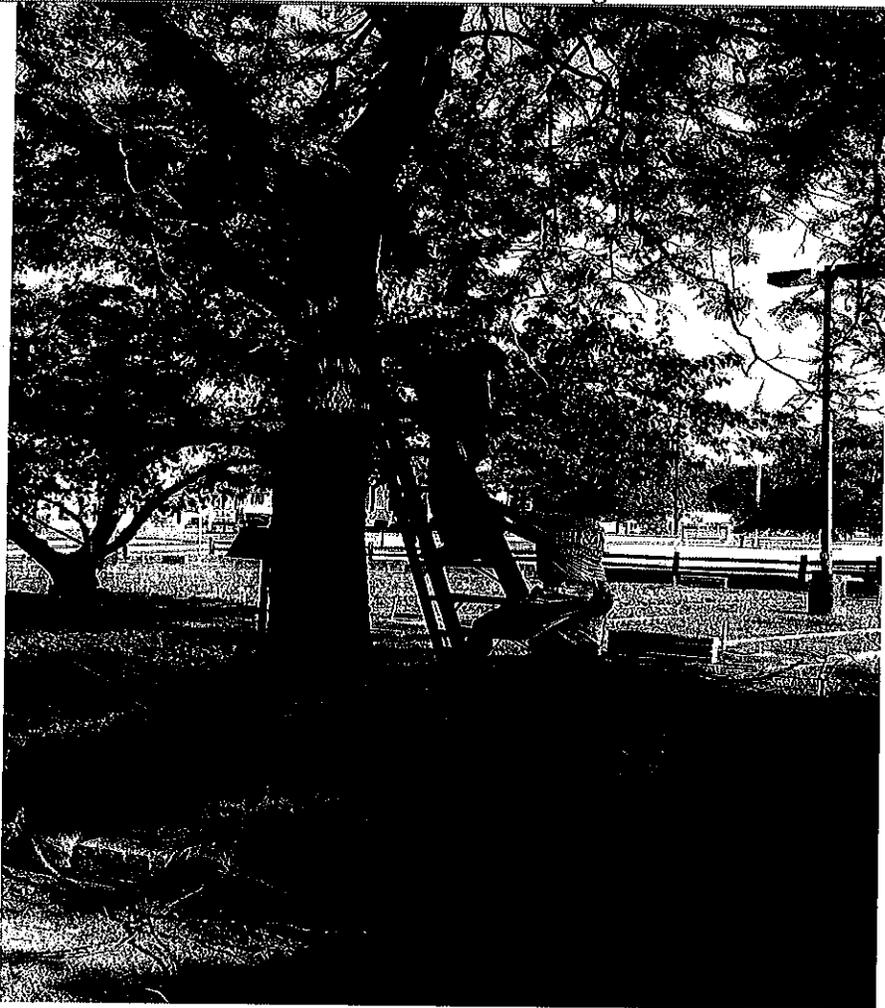
<sup>64</sup> See "Sunshine Law" discussion infra., regarding the issues raised in the "Review" about this meeting.

Park District Meeting Date	What the Records Reveal
1/17/12 meeting	Presentation by Laszlo Zala, electrical engineer, for two proposed lighting plans for the volleyball court. Approved resolution to request Zala to given written details of what he would provide to the district to assist in the preparation of scope and specifications packages for contractor bids for his \$1,500 engineering fee
2/2/12 meeting	Approved resolution to accept Zala's engineering proposal and \$1,500 fee
3/5/12 meeting	Zala presents specification package. He will review the bids and make a recommendation once bids are received
4/2/12 meeting	Commissioner Weiss reported he requested volleyball lighting bids from "three local area electrical contractors found in the phonebook." Responses: Chesterland Electric "job is outside of their scope and too large"; Kennington Electric and Peerless Electric "will provide a quote"
5/3/12 meeting	Two quotes received and commissioners found that both are under the competitive bidding threshold. Zala is evaluating the bids.
6/14/12 meeting	Peerless bid is accepted contingent on contract review by county prosecutor. No amount is stated in the minutes.
6/28/12 meeting	Peerless contract approved and signed. Minutes do not reflect the amount of the contract. (From other documents I found the Contract price was \$24,650.)
	Peerless was also contacted to perform an emergency lighting repair performed on June 22, 2012 to the ball field light fixtures to meet needs of scheduled games in the amount of \$1,589. Check 1643 to Peerless \$1589.00 was approved.
	Proposal from Peerless dated 6/27/12 to provide a monthly park electric inspection and report at a cost of \$110 per month for the months of April through December approved.
	The Proposed Capital Budget for 2013 included \$10,000 for "Safety Lighting" near the new pavilion area parking lot and \$5,500 for "Holiday Lighting/Decorations"
7/12/12 meeting	Check 1651 approved to Peerless \$6,162.50 for the 25% down payment for the volleyball lighting project. No requisition form signed, only an email initialed apparently by Commissioner Downs
8/9/12 meeting	It was noted that the Chester Road Department performed the trenching for the volleyball court lighting project without any quantification of the value of these services.
9/5/12 meeting	Check 1663 to Peerless \$10,353.00 approved (42% of the contract price) Job estimated to be complete by the "end of the week"
9/20/12	Check 1674 \$8,134.50 to Peerless for volleyball court lighting issued but not approved in minutes
9/27/12 meeting	Minutes reflect "Peerless Electric will install the light fixtures along the ceiling" of the new pavilion. No mention of cost or approval of a proposal.
10/18/12 meeting	Check 1686 to Peerless \$225.00 approved (for gazebo repairs) Peerless presented a quote to relocate wires in the playground area. Resolution approved a 10/17/12 Playground Lighting Base Bid for

	\$900.
11/29/12 meeting	Check 1697 to Peerless \$925 approved (to pay new pavilion power and lighting contract dated 10/5/12) It appears this is the pavilion lighting project discussed at the 9/27/12 meeting, and there is no resolution approving the contract.
2/27/13 meeting	Check 1713 to Peerless \$1,450 approved (for ½ of the purchase option for the holiday lights) It is presumed that this stems from the resolution passed at the 1/3/13 meeting to “fund the holiday lighting/decoration project up to \$5,500 the 2013 budgeted amount”.
	Check 1716 to Peerless \$720 (for flag pole light repair per 12/27/12 invoice) and there is no resolution approving the contract
	Check 1723 to Peerless \$1,450 (for the second payment toward the holiday lights/purchase)
3/21/13 meeting	Resolution approved to contract with Chesterland Electric for the expanded parking area \$5,315.00. No mention in the minutes of any other quotes received. (Commissioner advised that Peerless submitted a quote.)
4/17/13 meeting	Check 1737 to ElectoLite \$2,841.65 (for installation of hanging baskets and banners) It appears this is the “park banners” mention in the minutes from the 3/21/13 meeting, and there is no resolution approving the contract.
	Check 1740 to Peerless \$605.00 (for rope lighting)
5/16/13 meeting	Check 1749 to Peerless \$900.00 (for third and final payment for holiday lights/decorations purchase)
	Check 1755 to Hi Lite Maintenance \$3,065 (to install flagpole and lighting) The minutes of the 2/27/13 meeting reflect a resolution passed approving the “purchase and installation” of new flag pole and flag from The Flag Store for \$2,500
	Check 1774 to Chesterland Electric \$4,500.00 (for parking lot project) approved 3/21/13
6/19/13 meeting	Resolution approved a quote from Peerless in the sum of \$1,395.00 to replace the 1500 W ball field light
	Check 1787 to Chesterland Electric \$3,750.00 (to pay the balance for the parking lot project plus “extras.”) Total cost \$8,250.00 Approval of extras not reflected in the minutes.
7/31/13 meeting	Check 1807 to Peerless \$767.50 approved (for monthly inspection performed 6/5/13 and repairs) Check 1812 to Chesterland Electric for \$291.18 actually written but minutes show check was to Sal Charillio for \$291.
8/22/13 meeting	Resolution passed and Check 1826 to Peerless \$320.00 approved for temporary electric service panels for Chesterfest
	Check 1829 to Chesterland Electric approved (for \$290.00 for soda machine light) No resolution to approve work.
11/13/13 meeting	Resolution approved to contract with Peerless for temporary installation and the removal of outlets and cabling for holiday lights for \$1,500

	Check 1842 to Peerless approved \$1,395 (for 1500 W ball field light)
12/19/13 meeting	Check 1860 to Peerless approved (for \$2,000 for holiday lights) This was the contract for \$1,500 approved at the 11/13/13 meeting plus \$500 extras. Approval of extras not reflected in the minutes.

**Issue 5-Tree work and arborist charges    Issue Raised: No specific issue identified other than to note that the payments were "significant"**



The "Review" identifies these specific vendors and payment totals:

<b>Inspeyered Tree Service</b>	<b>\$5,760</b>
<b>The Pruning Company</b>	<b>\$4,815</b>
<b>Apex Land Management</b>	<b>"paid \$1,690 for a two year period expenditure of \$12,265"</b>

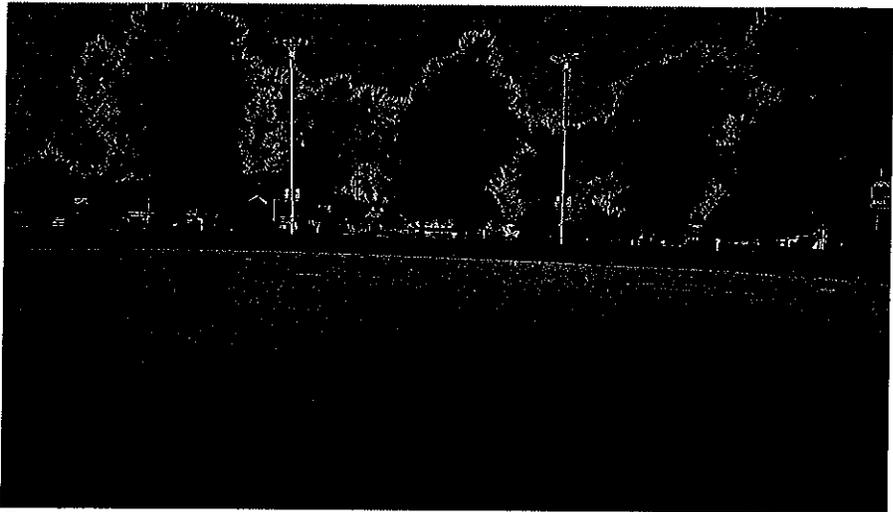
**Conclusion-**Engaging an arborist and tree service contractors to maintain a park with many large, mature trees seems to be an obvious and necessary expense. The total expenditure number is “significant” because it appears significantly higher than the budgeted amount. However, tree maintenance is separate and apart from other tree work associated with a project, e.g, removing trees from the volleyball area. I conclude the park district did its due diligence in selecting a Forester, and it was reasonable for the park district to rely on his advice and his recommendation of contractors as detailed in the chart below.

<i>2012 Budget request</i>	<i>Included \$2,500 for arborist tree trimming expenses</i>
<b>Park District Meeting Date</b>	<b>What the Records Reveal</b>
2/8/11 meeting	Three applications for position of Forester were received and resolution passed to select Dave Allen and the arborist consultant. No mention in minutes of contract terms.
3/7/11 meeting	Minutes mention commissioners review a document submitted by Mr. Allen stating his available services and rate, but no specifics given. The document is apparently the 3/2/11 rate letter from The Pruning Company, LLC setting Mr. Allen’s rates of \$45 per hour for consulting services and \$60 per hour for tree care services
1/17/12 meeting	Park arborist Allen recommended pruning for health and safety. “He referred Inspeyered Tree Service of Chesterland to perform the work over the winter months as their rate is more competitive during this time.” Mr. Allen was tasked to obtain 3 quotes for the necessary pruning.
2/2/12 meeting	Mr. Allen presented quote from Morningstar Tree Service and Inspeyered Tree Service. Resolution passed to approve the lower bid of \$2,400 from Inspeyered.
	Check 1621 to The Pruning Company (Dave Allen) approved \$390 for consulting and pruning work
6/28/12 meeting	2103 Proposed Budget included \$5,310 for Arborist-Safety Pruning
8/9/12 meeting	Resolution approved for contract with Inspeyered Tree Service for \$3,360.00 for tree removal by volleyball courts
	Check 1657 approved to Inspeyered Tree Service \$2,400 approved at the 2/2/14 meeting
9/27/12 meeting	Check 1675 approved to the Pruning Company \$675.00 for arborist services & labor
1/3/13 meeting	Resolution passed approving contract to Apex Land Management for planting trees \$1,000
	Check 1702 approved to the Pruning Company \$330.00 for arborist services & labor
1/24/13 meeting	Resolution passed approving contract with Apex for stump removal \$425.00

	Check 1709 approved to Apex Land Management for \$1,265.00 for planting approved on 1/2/13 and extra clean up services
3/21/13 meeting	Check 1728 approved to the Pruning Company \$1,237.50 for arborist services
4/17/13 meeting	Check 1734 approved to Apex Land Management \$425.00 for 1/24/13 stump removal contract (Check was voided but that fact was not reflected in the minutes)
	Check 1743 approved to Apex Land Management \$120.00 for stump grinding
5/16/13 meeting	Check 1769 approved to the Pruning Co. \$1,252.50 for arborist services and labor
	Check 1781 approved to Apex Land Management \$425.00 (reissued to replace Check 1734)
7/31/13 meeting	Check 1819 approved to The Pruning Company \$930.00 for arborist services and labor

**“Recent Commissioner Actions Resulting in Increased Spending”**

<b>Issue 1-Dragging Ball infield</b>	<b>Issue Raised: Prior to 2013, Bart Alcorn was hired to drag infield and was paid \$650 in 2012; then DiFranco Landscaping was hired to do the work for \$2,480</b>
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**Conclusion-**I went back to examine what Mr. Alcorn did for the \$625. In 2010, he was paid \$650 to do one pre-season field preparation. In 2011, he charged \$650 for this same pre-season prep work. This is different work than preparing the field before a game. I conclude the “Review” is not making an “apples to apples” comparison as detailed in the chart below.

<b>Park District Meeting Date</b>	<b>What the Records Reveal</b>
11/29/12 meeting	Commissioners noted that a discussion of having DiFranco Landscaping (who was doing the field renovations) do the field maintenance the first year "to ensure proper upkeep" would be had at a future meeting. They also noted that the West Geauga Baseball Federation "will need to be informed... since they have maintained the field in the past."
1/3/13 meeting	Commissioners again noted that a discussion of having DiFranco Landscaping (who was doing the field renovations) do the field maintenance the first year "to ensure proper upkeep" would be had at a future meeting. Minutes also note that a "memo will be sent to West Geauga Baseball Federation informing them that DiFranco Landscaping will maintain the field for the 2013 season and that use fees will be imposed to defray the maintenance cost.
1/24/13 meeting	Proposal to charge West Geauga Baseball Federation use fee of \$250 per day for five days per published rates. No vote.
5/16/13 meeting	Resolutions passed to contract with DiFranco to prepare and maintain the ball field at a contract price of \$85.00 per prep. Minutes reflect that the West Geauga Baseball Federation offer to donate \$50 toward the expense, but in light of the Federation's shortage of funds a resolution passed to waive the field prep fee for the 2013 season.
11/13/13 meeting	Check 1846 approved to DiFranco Landscaping \$2,480 for 24 drags of the infield (\$2,040) approved at the 5/16/13 meeting plus extras for materials for the field, e.g. base plugs, bags (\$315.00) and one field aeration due to compaction (\$125.00). Extras were not included in any resolution.

<b>Issue 2-Hiring Dave Allen of The Pruning Company</b>	<b>Issue Raised: None specifically stated as the park's resident arborist apart from a total three year fees of \$7,315.00</b>
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**Conclusion-**As previously noted, engaging an arborist is essential. The park district advertised its RPF, reviewed three quotes, and accepted the lowest quote.

<b>Park District Meeting Date</b>	<b>What the Records Reveal</b>
11/1/10 meeting	Commissioner Downs was tasked with preparation of an ad for a certified forester "for work consisting of safety pruning, assisting in the selection and placement ... of memorial trees & plaques and two year tree planting phase schedule corresponding with park plans with a specified mandatory meeting attendance."
1/3/11 meeting	No applications had been received in December in response to RFP in the Chesterland News. The RFP was very detailed and called for a two year contract
2/8/11 meeting	Three applicants: Knowles Municipal Forestry \$50/hr; The Pruning Co. LLP (Dave Allen) \$45/hr; and Douglas Yates \$70/hr.

<b>Issue 3-Land &amp; Site Contractor Services Hired 2013 to mow grass and do janitorial work 1 day/week from 4/1-11/30 (2013 paid \$16,493)</b> <b>Professional House Cleaning Service hired to clean restrooms</b> <b>A minimum of two days per week at \$45/day (2013 paid \$2,742.30)</b>	<b>Issued Raised: Road Dept. previous did this</b>
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**Conclusion-**I conclude the park district had no choice but to hire outside contractors because of increased demands on the road department as detailed in the chart below.

Park District Meeting Date	What the Records Reveal
1/3/13 meeting	Chester Township Road Department Groundskeeper Mark Rosieum spoke to the commissioners about issues and concerns about the proper maintenance of the parklands and the reasons why the park district may have to hire an outside crew to perform this work. He cited increase in parklands and new equipment needs in order to meet the increased tasks.
1/24/13 meeting	Arborist was tasked with compiling a list of duties to maintain the park. Minutes reflect “several local landscape contractors have been solicited to provide a quote to the park for these maintenance services. Considering the funds required to maintain the Park in the past, the Commissioners are moving forward to assigning the upkeep of the Park to a single contracted source of services instead of a combination of two Road Department employees performing the maintenance and the law cutting. Due to a lack of resources and time some of the maintenance was overlooked in the past by the Road Department because of other more pressing jobs and therefore the condition of the Park is at a lower standard.”
4/17/13 meeting	Arborist conducted a review and bidding process and recommended Land & Site, a local company. Resolution approved to hire the firm at a contract price of \$15,495 for period from April 1 through November 30, 2013. Contract signed 4/17/13. An additional resolution passed to hire Professional Home Cleaning a local company to do addition janitorial work a minimum of two days a week at \$45/day. Contract signed 4/17/13. Neither the minutes nor the letter from Mr. Allen specifically detail any other bidders or RFPs.

<b>Issue 4-Peerless Electric Monthly Inspections</b>	<b>Issue Raised: No specific issue identified other than to note that the payments were “significant”</b>
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**Conclusion-**I found only one monthly inspection and one payment for that inspection. I cannot find where any additional monthly inspections were performed or paid, and I confirmed in my interviews with the park district’s fiscal officer that no other inspections were done.

Park District Meeting Date	What the Records Reveal
6/28/12 meeting	Proposal from Peerless dated 6/27/12 to provide a monthly park electric inspection and report at a cost of \$110 per month for the months of April through December approved. No proposal in the records.
7/31/13 meeting	Check 1807 to Peerless \$767.50 approved for monthly inspection performed 6/5/13 and repairs. Written report form is in the park records.

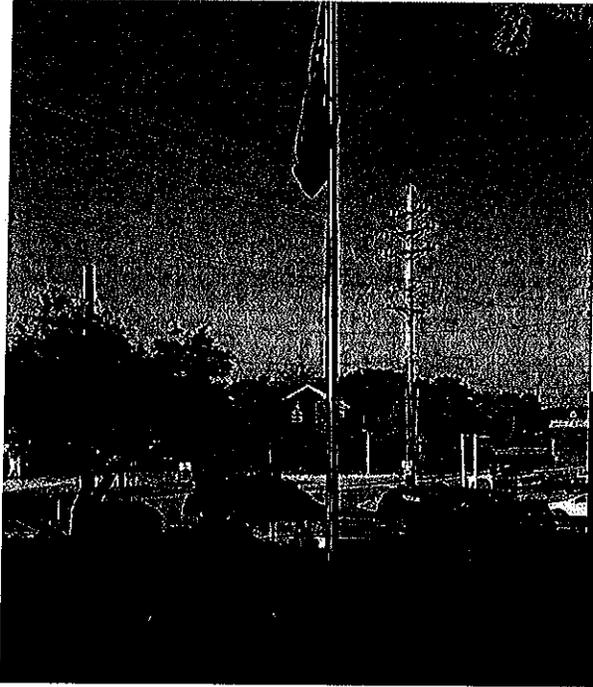
<b>Secretarial Costs</b> 2011 \$2,710 2013 \$4,422	<b>Issue raise: Increase from 2011 by 61%</b> <b>2014 Funding Request to Chester Township Trustees indicated secretary costs at \$3,600 "same as last year" but last year's amount was \$4,422</b>
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**Conclusion-**When I inquired about the increased amount, Ms. Vitale explained that she has been required to put in more time with the increased level of activity and number of park projects. She has also spent many hours doing work at the park for which she has not sought compensation. Commissioner Weiss explained that the "same as last year" notation was simply an error.

Park District Meeting Date	What the Records Reveal
8/6/2007 meeting	Resolution approved to hire Ms. Vitale's predecessor, Michele Reksten and to change the title for the position from "Secretary" to "Administrative Assistant." No mention made in minutes of amount to be paid.
12/21/09 meeting	Commissioners inquire whether time logs for secretary were being maintained. Secretary maintains time on "slips of paper" and then transfers them to a log. (Logs are being maintained by Ms. Vitale)
8/30/10 meeting	Resolution approved to appoint Margaret "Peg" Vitale as new Administrative Assistant. No mention of pay rate.
1/3/13 meeting	Resolution approved to increase Park Secretary's rate to \$15.00

**Deviations from 2013 Stated Park Projects**

**Issue raised: Actual spending was 20% over estimate presented to Chester Township Trustees on 2/7/13<sup>65</sup>**



<sup>65</sup>Exhibit R-Chester Township Park District Project Estimates dated 2/7/14

From the "Review": Project/cost estimate/ 2013 payments (as calculated by the "Review") and Comments in "Review"	What the Records Reveal
Playground completion Estimated cost \$25,000 2013 payments \$35,296 (\$10,296 over estimate)	2/27/13 meeting (after the date of the estimate)- Met with Mr. Varga to discuss playground completion. "Updated pricing" noted, but no amounts are reflected in the minutes. 3/21/13 meeting-Resolution approving a contract with Play & Park to "complete the final playground expansion discussed at the prior meeting." But there is no contract price or other details reflected in the minutes. 5/16/13 meeting-Check 1758 approved to pay Play & Park \$35,296.65 for Invoice 30515 for the final phase of equipment
Ball field outfield renovations- Not done Estimated cost \$25,000 2013 payments -0-	6/19/13 meeting-the minutes reflect that the "timing of the ball field outfield work to complete the ball field project will be discussed at future meeting."
Pavilion repair-horseshoe pit area Estimated cost \$6,000 2013 payments -0- Not done, except gutter work for \$300-\$500	I found nothing in the records regarding this proposed project. In my interviews with the Commissioners and fiscal officer, I learned that they decided to put this off for a year, and the gutter work was for the gazebo.
Maintenance Estimated cost \$18,000 2013 payments \$40,614 (\$22,614 over estimate)  \$2,480 for DiFranco dragging \$2,841 for ElectoLite \$5,207 for Peerless \$2,135 for Freshley  \$3,065 for Hi Lite \$1,100 for bench painting \$16,493 for Land & Site \$2,742 for restroom cleaning	DiFranco dragging the ball field-this used to be done by the West Geauga Baseball Federation. Electolite -payment to hang baskets & banners Peerless-multiple electrical repairs Freshly-plumbing work to upgrade the bathroom fixtures and repair men's bathroom. \$250 was donated by the West Geauga Kiwanis after the commissioner solicited donations to do the upgrade and install a drinking fountain (see 7/2/13 meeting). 8/22/13 resolution to approve \$1,850 to complete the replacement of flush valves and sink faucets Hi Lite-new flag pole and lighting installation Bench painting is self-explanatory Land & Site and Professional Home Cleaning- The actual maintenance cost for FY 2012 was \$18,174.30, so the estimated cost for 2013 of \$18,000 was in line if the road department was going to continue to do the work as in the past. However, the road department and the commissioners began to question whether

<p>\$3,750 for the Pruning Company \$801 for Turney's</p>	<p>this arrangement could continue. See the entire discussion above regarding the contract to Land and Site and Professional Home Cleaning regarding the increase for these services triggered by outsourcing and not being able to use the road department See entire discussion above regarding the need for a park arborist</p>
<p>Park signs-not listed in the 2013 plan Estimated cost -0- 2013 payments \$3,963</p> <p>Park signs by All-ways Flasher for \$963</p> <p>\$3,000 to Guthrie Designworks</p>	<p>All-Ways Flasher-park safety signs determined to be needed at 4/17/13 meeting</p> <p>3/21/13 meeting-resolution passed to purchase a new Parkside sign from Guthrie and Check 1732 to Guthrie Designworks \$1,200 approved (for down payment on the initial sign at a cost of \$3,000) 4/17/13 meeting-resolution approved to purchase two more Parkside signs from Guthrie for \$1,200 (But these were never purchased) Check 1745 to Guthrie Designworks \$600 approved (for second payment on the initial sign) 5/16/13 meeting-Check 1766 to Guthrie Designworks \$1,200 approved (for the final payment on the initial sign)</p>
<p>Park benches-not listed in the 2013 plan Estimated cost -0- 2013 payments \$5,311</p>	<p>6/28/12 meeting a park bench donation project is first discussed 7/31/13 meeting \$500 assumed by the park district for this park bench donation project \$8,750 in park bench donations have been received<sup>66</sup></p>
<p>Drainage trench along walkway-not listed in 2013 plan Estimated cost -0- 2013 payments \$3,548</p>	<p>6/19/13 meeting brick walkway flooding problem raised and resolution passed to contract with Abate Landscaping to perform the drainage work</p>
<p>Perennial garden renovation by H&amp;M-not listed in 2013 plan Estimated cost -0- 2013 payments \$1,585</p>	<p>1/24/13 meeting Ms. Slane from the Perennial Gardeners informed that approximately \$700 is spent per year for planting and maintaining the garden. Resolution approved to provide \$500 in support of their work 3/21/13 meeting Ms. Plank from the perennial gardeners informed district that they will require help to continue to maintain the corner garden 7/31/13 resolution approve to contract perennial garden improvements to H&amp;M \$1,585</p>
<p>Holiday Lighting Estimated cost \$5,500</p>	<p>1/3/13 meeting- resolution adopted to fund the project up to \$5,500 11/13/13 meeting-resolution to approve the same amount paid in</p>

<sup>66</sup> Exhibit S-Chester Township Park District Donations 2013 list

<p>2013 payments \$7,400 (\$1,900 over budget)</p>	<p>2012 to Peerless to set up and take down the outlets and cabling. 12/19/13 meeting Check 1860 to Peerless approved for \$2,000 for holiday lights. This was the contract for \$1,500 approved at the 11/13/13 meeting plus \$500 in extras 11/13/13 meeting Check 1845 approved to Rotary for \$3,000. <b><u>A review of 2013 checks for holiday lighting reveals:</u></b></p> <table border="0"> <tr> <td>02/07/2013</td> <td>1713</td> <td>Peerless Electric</td> <td>Holiday Lighting</td> <td>1,450.00</td> </tr> <tr> <td>03/13/2013</td> <td>1723</td> <td>Peerless Electric</td> <td>1/18/2013 memo</td> <td>1,450.00</td> </tr> <tr> <td>05/06/2013</td> <td>1749</td> <td>Peerless Electric</td> <td>Holiday electric equipment</td> <td>900.00</td> </tr> <tr> <td>10/01/2013</td> <td>1845</td> <td>Rotary Club of Chesterland</td> <td>Holiday display</td> <td>3,000.00</td> </tr> <tr> <td>12/18/2013</td> <td>1860</td> <td>Peerless Electric</td> <td>Christmas lighting</td> <td>1,500.00</td> </tr> <tr> <td>12/18/2013</td> <td>1860</td> <td>Peerless Electric</td> <td>Extension cords</td> <td>500.00</td> </tr> <tr> <td colspan="5">TOTAL \$8,000</td> </tr> </table>	02/07/2013	1713	Peerless Electric	Holiday Lighting	1,450.00	03/13/2013	1723	Peerless Electric	1/18/2013 memo	1,450.00	05/06/2013	1749	Peerless Electric	Holiday electric equipment	900.00	10/01/2013	1845	Rotary Club of Chesterland	Holiday display	3,000.00	12/18/2013	1860	Peerless Electric	Christmas lighting	1,500.00	12/18/2013	1860	Peerless Electric	Extension cords	500.00	TOTAL \$8,000				
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<p>Parking lot expansion and horseshoe driveway gravel-new pavilion and lighting walkway area and park and electric relocation expense Estimated cost \$21,000 2013 payments \$24,093 (\$3,092 over budget)</p> <p>\$6,299 for gravel \$3,500 for Podogil Excavating \$1,500 to H&amp;M for stone boundary wall replacement \$585 to H&amp;M for added top soil &amp; mulch \$9,509 to Chesterland Electric \$646 to Costco for lamps \$2,054 to Yandell and Costco for lamps and Costco membership 6 out of 10 lamps purchased have been installed)</p>	<p>1/24/13 meeting -discussed expanding the parking lot area. Mr. Parker to perform survey</p> <p>2/27/13 meeting -police chief and road department support the revised parking plan and resolutions approved to spend up to \$2,500 for Podogil Excavating to revamp the driveway and up to \$750.00 for additional gravel for the horseshoe driveway. Mr. Parker's survey and drawings delayed due to the weather.</p> <p>\$2,054 to Yandell and Costco for lamps and Costco membership-requisition signed by Weiss and Yandell on date of purchase 1/29/13 and Check 1711 dated 2/1/13 was cashed on 2/7/13 and was approved at the 2/27/13 meeting</p> <p>3/21/13 meeting -Mr. Parker presented the updated parking area survey. Resolution to approve contract with Chesterland Electric for \$5,315 to perform the electric work.</p> <p>4/17/13 meeting-resolution approved to spend \$1,000 for more gravel and Mr. Parker presented additional plans for split rail fencing and block edging</p> <p>5/16/13 meeting: Check 1759 to Podogil Excavating \$3,500 Check 1763 to All-Ways Flasher Services \$140.84 Check 1765 to Deepwoods Trucking \$5,779.52 (gravel) Check 1773 to All-Ways Flasher Services \$239.62 Check 1774 to Chesterland Electric \$4,500 (parking lot-partial payment) Check 1772 to Al Parker \$300</p> <p>6/19/13 meeting: Check 1783 to Costco \$646.47 Check 1878 to Chesterland Electric \$3,750 (parking lot-balance due)</p>																																			

	<p>7/31/13 meeting resolution passed to accept 1 (H&amp;M) of 3 bids to replace stone boundaries around new driveway and repair stone walls around driveway gardens \$1,500</p> <p>9/12/13 meeting Check 1832 to H&amp;M \$3,665 for stone boundaries and other projects outside of the driveway area Check 1839 to Deepwoods Trucking \$519.79 for more gravel</p>
<p>Patio stones for Fire Department Patio-not listed in 2013 plan Estimated cost -0- 2013 payments \$620</p>	<p>5/16/13 meeting -Check 1751 to American Rail Road Tie \$620.60 6/19/13 minutes reflect "goodwill efforts by commissioners" including fire station patio, painting the road department building "efforts assumed by Park Board to improve the overall appearance of the Township campus adjacent to the Park."</p>
<p>Garden design by Mary Singluff-not listed in 2013 plan Estimated cost -0- 2013 payments \$400</p>	<p>5/16/13 meeting-Check 1778 to Mary Singluff \$400 No resolution</p>
<p>Apex planting trees and stump grinding-not listed on 2013 plan Estimated cost -0- 2013 payments \$1,690</p>	<p>1/3/13 meeting-resolution to contract with Apex to plant the live tress from the holiday lighting up to \$1,000 1/24/13 meeting-Check 1709 to Apex Land Management \$1,265 Resolution passed to contract with Apex for stump removal \$425 4/17/13 meeting-Check 1734 to Apex Land Management \$425</p>
<p>Staining and painting labor and materials- Estimated cost \$17,000 2013 payments \$16,809 (\$191 under budget)</p>	<p>\$12,080 to-MAL \$4,729 to Sherwin Williams<sup>67</sup> 2/27/13 meeting-resolution approved contract with 1 (MAL) of 2 contractors for wash, treat and stain park structures in the sum of \$8,530 4/17/13 meeting under "Staining Park Structures"-minutes refer to a resolution passed at the 1/24/13 meeting approving MAL Enterprises to stain and paint all park structures in the amount of \$7,530. Minutes also reflect discussion of additional work to be added including power washing gazebo bricks and power washing all park fencing and oil staining. Resolution passed to approve an additional \$1,970.</p> <p><b><u>Review of the MAL Contract dated March 21, 2103</u></b> 2/5/13 proposal price \$7,560 with a 50% draw upon acceptance \$3,780 2/10/13 amended proposal adding \$970.00-TOTAL NOW \$8,530 3/20/13 additional amendment adding \$1,000-TOTAL NOW \$9,530 <b><u>Add on after contract-see Invoice dated 4/27/13</u></b> An addition \$2,550 was added for painting bathrooms, service garage, and power wash brick walkways TOTAL NOW \$12,080</p>

<sup>67</sup> It should be noted that there has been a problem with assuring that vendor accounts are charged properly so that, for instance, charges at Sherwin Williams are put on the park district account rather than the township account.

	<p>N.B. invoice shows and \$325.00 donation discount to the walkway power washing</p> <p>4/17/13 meeting-resolution approved a draw to MAL \$3,500 to complete painting, staining and power washing services</p> <p>4/17/13 meeting:  Check 1733 dated 4/9/13 to MAL Enterprises \$3,780  Check 1741 to Sherwin Williams \$1,354.61  Check 1747 to MAL Enterprises \$3,500</p> <p>5/16/13 meeting:  Check 1757 to MAL Enterprises \$1,300.00  Check 1782 to MAL Enterprises \$3,500.00</p>
<p>Gutters and downspouts-new pavilion  Estimated cost \$300  2013 payments \$835  (\$535 over budget)</p>	<p>2/27/13 meeting-resolution passed to contract with H&amp;K to install gutters on the pavilion up to \$535</p> <p>3/21/13 meeting-received estimate from H&amp;K of \$350 for new gutters on the horseshoe pit pavilion. Additional quote would be sought.</p> <p>5/16/13 meeting:  Check 1750 to H&amp;K \$835. No resolution</p>
<p>Horseshoe pit repairs  Estimated cost \$1,000  2103 payments \$1,000  No "deviation"</p>	<p>5/16/13 meeting:  Check 1761 to Bob Lautenschleger \$335 for construction materials for new backstops. Labor donated by the West Geauga Horseshoe Club.</p> <p>Check 1775 to Claridon Barns \$665 for new shed installed by the road department \$100 discount on the purchase given by Claridon Barns)</p>
<p>Perennial Gardeners  Estimated cost \$1,000  2013 payments \$500  donation</p>	<p>1/24/13 meeting-resolution approved for a \$500 donation given to the club by the district to help off-set club's annual expense of approximately \$700</p> <p>7/31/13 resolution approve to contract perennial garden improvements to H&amp;M \$1,585</p>
<p>Hanging flower baskets  Estimated cost \$1000  2013 payments \$3,298  Bremec \$2,048  Sal Charillo [sic] \$1,250</p>	<p>2/27/13 meeting resolution approved to purchase and install seven park banners from Design Viewpoints and install flower basket brackets on park poles for \$2,334. (3/21/13 meeting minutes reflect ten)</p> <p>4/17/13 meeting:  Check 1735 to Bremec Greenhouse and Nursery \$692 for brackets</p> <p>6/19/13 meeting:  Check 1784 to Sal Charillo \$1,000 to remove Chester Township banners and flowers baskets and rehang flower baskets</p> <p>7/2/13 meeting:  Check 1800 to Bremec Greenhouse and Nursery \$761.92 for baskets  Check 1805 to Sal Charillo balance due on 5/31/13 invoice 497275</p> <p>9/12/13 meeting-resolution passed to approve \$594.13 to Bremec for the flower baskets for Chester Township</p> <p>9/12/13 meeting:</p>

	<p>Check 1831 to Bremec Greenhouse and Nursery \$594.13 7/31/13 meeting: Check 1809 to Sal Charlillo \$150 to remove and rehang 4 Chester Township banners N.B. Check 1812 to Sal Charlillo \$291 (was actually a check to Chesterland Electric)</p> <p><b><i>Actual total to Bremec for Park District Flowers &amp; banners was \$1,453.92 for the baskets &amp; brackets. The \$594.13 for Chester Township flower baskets was a donation to the township by the park district.</i></b></p> <p><b><i>Total to Charlillo \$1,250.00 to remove and rehang banners and baskets for Chester Township was a donation to the township by the park district.</i></b></p> <p><b><i>ElectroLite installed the park district hanging flower basket brackets at no charge. (See 3/18/13 invoice for hanging banners below**)</i></b></p>
<p>Park banners Estimated cost \$2,400 2013 payments \$1,344</p>	<p>2/27/13 meeting resolution approved to purchase and install seven park banners from Design Viewpoints and install flower basket brackets on park poles for \$2,334.(3/21/13 meeting minutes reflect ten) 2/27/13 meeting: Check 1718 to Design Viewpoints \$784 for 7 banners 3/21/13 meeting: Check 1726 to Design Viewpoints \$336 for 3 banners 5/16/13 meeting: Check 1752 to Design Viewpoints \$224 for 2 banners</p> <p><b><i>Total banner cost was \$1,344, but "Review" does not include the cost to install the banners.</i></b></p> <p>4/17/13 meeting-Check 1737 to ElectroLite for \$2,841.65 approved for installation of park district banners (**Invoice 48662 dated 3/8/13 to install 6 banners \$2,324.99 and Invoice 48669 dated 4/1/13 to install 2 additional banners \$516.66)</p>
<p>BBQ grills Estimated cost \$1,300 2013 payments -0- Not done</p>	<p>I found no specific mention in minutes. My interviews with the Commissioners and Fiscal Officer revealed this was a concept added to the proposal at the last minute, but it was never discussed at a meeting or pursued further.</p>
<p>Flag pole Estimated cost \$4,000 2013 payments \$2,291 (\$1,709 under budget)</p>	<p>2/27/13 meeting -The minutes reflect a resolution passed approving the "purchase and installation" of new flag pole and flag from The Flag Store for \$2,500 and two residents have donated \$500 each toward the new flag pole.<sup>68</sup></p>

<sup>68</sup> Exhibit S-Chester Township Park District Donations 2103, which reflect 3 donors for a total of \$1,500.

	<p>2/27/13 meeting: Check 1722 to The Flag Store \$1,000</p> <p>5/13/16 meeting: Check 1753 to The Flag Store \$1,291.48 Check 1755 to Hi Lite Maintenance \$3,065 to install flagpole and lighting.</p> <p><b>Actual cost for flag and pole \$2,291.48</b> <b>Actual cost for installation and lighting \$3,065</b> <b>Less donations \$1,500</b> <b>Total actual cost \$3,856.48</b></p>
<p>Pavement markings not listed in 2013 plan Estimated cost -0- 2013 payments \$250</p>	<p>6/19/13 meeting: Check 1786 to Brite Stripe Pavement Markings for \$250 approved No resolution specifically addressing this item.</p>
<p>Chesterland News ads not listed in 2013 plan Estimated cost -0- 2013 payments \$874</p>	<p>4/17/13 meeting: Check 1736 to Chesterland News \$250 for park bench ad</p> <p>6/19/13 meeting: Check 1788 to Chesterland News for \$400 for Memorial Day ad 8/22/13 meeting minutes reflect a full page thank you ad in the Chesterland News was placed to thank vendors in the 8/21/13 edition</p> <p>8/22/13 meeting: Check 1820 to Chesterland News \$16.00 for legal ad</p> <p>11/13/13 meeting: Check 1841 to Chesterland News \$412.50 for Chesterfest ad</p> <p>12/19/13 meeting: N.B. Check 1857 to Chesterland News \$45.62 Check 1857 to Chesterland News for \$45.62 actually a check to All-Ways Flasher for \$45.62</p> <p><b>Total was actually \$1,075.50</b></p>
<p>Custom Logos work? not listed in 2013 plan Estimated cost -0- 2013 payments \$754</p>	<p>6/19/13 meeting: Check 1797 (Actually check 1796) to KT Custom Logos \$538.99 for plaques for benches. (Check 1797 was actually a check to Ms. Vitale for \$682.17)</p> <p>8/22/13 meeting: Check 1823 to KT Custom Logos \$216 for plaques for benches No specifics in a resolution or minutes.</p>
<p>Mulberry Creek Greenhouse? Not listed in 2013 plan Estimated cost -0- 2013 payments \$939</p>	<p>6/19/13 meeting: Check 1798 to Mulberry Creek Greenhouses \$335 for rototill &amp; topsoil</p> <p>7/31/13 meeting: Check 1817 to Mulberry Creek Greenhouses \$3,548.45 for drainage repairs</p> <p>8/22/13 meeting: Check 1825 to Mulberry Creek Greenhouses \$64 for anchor corn hole games &amp; spray</p> <p>9/12/13 meeting:</p>

	Check 1835 to Mulberry Creek Greenhouses \$80 for rake wood chips 11/13/13 meeting: Check 1850 to Mulberry Creek Greenhouses \$348 for install of gravel & flower bed around flag pole 12/19/13 meeting: Check 1859 to Mulberry Creek Greenhouses \$111.98 for rakes for volley ball court No specifics in a resolution or minutes.
Western Reserve Graphics? Not listed in 2013 plan Estimated cost -0- 2013 payments \$550	1/24/13 meeting: Check 1707 to Western Reserve Graphics \$515 for stationary and business cards 2/27/13 meeting: Check 1720 to Western Reserve Graphics \$35 for business cards No specifics in a resolution or minutes.

**Potential Ohio Revised Code Issues**

**Issue 1-Compliance with R.C. 1545.22(B)(1) and (2)-“It would appear that the approximately \$180,000 worth of check signed and issued by the park commissioners in 2013 violate this provision of Ohio law.**

**Conclusion-** There is no issue here. As previously explained, R.C. 1545 permits the park district to appoint its own fiscal officer and deposit its funds with a depository. The original board of commissioners elected to do this and complied with the formalities. R.C. 1545.22(B)(1) and (2) apply only, as the statute provides, “[i]f no treasurer is appointed by the board pursuant to section 1545.07 of the Revised Code.”

That being said, the park district by-laws have not been amended to reflect this resolution to appoint its own fiscal officer nor have successive boards complied with the formalities.

**Issue 2-R.C. 5705.45 liability for wrongful payments from public funds**  
**Issue 4-R.C. 5705.41(D)(1) certification of available funds**  
**Issue 5-R.C. 5705.38(A) passing an annual appropriation resolution on or after the first of day of each fiscal year**

**Conclusion-** Ohio law does provide for personal liability for wrongful payments *unless* those payments were “subsequently approved” as provided in R.C. 5705.41.<sup>69</sup> Over the years, the park district did fail to include certification language on its requisition form and did fail to formally adopt an annual appropriation resolution at the beginning of each fiscal year. While ignorance of these requirements is no excuse, my research has found that there are other small township park districts that have similarly failed to comply.<sup>70</sup> The park district needs to update its practices and procedures, and I have already provided the district with examples of forms used by Russell Township Park District to correct any process deficiencies.

The “Review” though contains incomplete statements of the applicable law and many misapprehensions. What may apply to a township board of trustees or a park district that has its own tax levy is not necessarily the same law applicable to this park district.

#### **Discussion-**

##### **R.C. 5705 - The Tax Levy Law**

The definitional section of that chapter, found at R.C. 5705.01, provides in pertinent part:

5705.01 Definitions As used in this chapter:

(A) “**Subdivision**” means any county; municipal corporation; township; township police district; joint police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention facility district; a district organized under section 2151.65 of the Revised Code; a combined district organized under sections 2152.41 and 2151.65 of the Revised Code; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district created under section 6131.52 of the Revised Code; a lake facilities authority created under Chapter 353. of the Revised Code; a union cemetery district; a county school financing district; a city, local, exempted village, cooperative education, or joint vocational school district; or a regional student education district created under section 3313.83 of the Revised Code....

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<sup>69</sup> R.C. 5705.45

<sup>70</sup> See e.g., [https://ohioauditor.gov/auditsearch/Reports/2013/Auglaize\\_Township\\_Park\\_District\\_12\\_11-Allen\\_Basic\\_Report.pdf](https://ohioauditor.gov/auditsearch/Reports/2013/Auglaize_Township_Park_District_12_11-Allen_Basic_Report.pdf) and

[https://ohioauditor.gov/auditsearch/Reports/2013/Spencer\\_Township\\_Park\\_District\\_12\\_11-Allen\\_Basic\\_Report.pdf](https://ohioauditor.gov/auditsearch/Reports/2013/Spencer_Township_Park_District_12_11-Allen_Basic_Report.pdf)

(C) **“Taxing authority” or “bond issuing authority”** means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; in the case of a city, local, exempted village, cooperative education, or joint vocational school district, the board of education; in the case of a community college district, the board of trustees of the district; in the case of a technical college district, the board of trustees of the district; in the case of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, the joint board of county commissioners of the district; in the case of a township, the board of township trustees; in the case of a joint police district, the joint police district board; in the case of a joint fire district, the board of fire district trustees; in the case of a joint recreation district, the joint recreation district board of trustees; in the case of a joint-county alcohol, drug addiction, and mental health service district, the district's board of alcohol, drug addiction, and mental health services; in the case of a joint ambulance district or a fire and ambulance district, the board of trustees of the district; in the case of a union cemetery district, the legislative authority of the municipal corporation and the board of township trustees, acting jointly as described in section 759.341 of the Revised Code; in the case of a drainage improvement district, the board of county commissioners of the county in which the drainage district is located; in the case of a lake facilities authority, the board of directors; in the case of a joint emergency medical services district, the joint board of county commissioners of all counties in which all or any part of the district lies; and in the case of a township police district, a township fire district, a township road district, or a township waste disposal district, the board of township trustees of the township in which the district is located. “Taxing authority” also means the educational service center governing board that serves as the taxing authority of a county school financing district as provided in section 3311.50 of the Revised Code, and the board of directors of a regional student education district created under section 3313.83 of the Revised Code...

(H) **“Taxing unit”** means any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

(I) **“District authority”** means any board of directors, trustees, commissioners, or other officers controlling a district institution or activity that derives its income or funds from two or more subdivisions, such as the educational service center, the trustees of district children's homes, the district board of health, a joint-county alcohol, drug addiction, and mental health service district's board of alcohol, drug addiction, and mental health services, detention facility districts, a joint recreation district board of trustees, districts organized under section 2151.65 of the Revised Code, combined districts organized under sections 2152.41 and 2151.65 of the Revised Code, and other such boards.

Following a basic principle of statutory construction, this chapter does not apply to the Chester Township Park District because the term “park district” or any reference to an entity created under Chapter 1545 is not found in the list of entities in the definitional section.<sup>71</sup>

The Chester Park District is not a “subdivision.” It is not a “taxing authority.” It is not a “bond issuing authority.” It is not a “district authority,” because it receives funds from only one “subdivision” as the term is defined in this chapter, Chester Township. The funds received via the county’s budget commission are pass-through funds from the state local government and library fund.

The only definitional section that references “park districts” is R.C. 5705.01 (H), which includes a “metropolitan park district” in the definition of a “taxing unit.” The Chester Park District is not a metropolitan park district.

While the district has the authority to levy property taxes, it had not chosen to do so. Thus, may be argued that this section does not apply to Chester because it has no levy, unlike its sister district in Russell Township.

I could find no case law or Ohio Attorney General opinions addressing this issue vis á vis park districts. There is an opinion posing the question of whether a regional council of governments formed under Chapter 167 had to comply with the budgetary requirements of Chapter 5705.<sup>72</sup>

The Attorney General answered in the negative, and the opinion provides analytical guidance cogent to this analysis. It also emphasizes that while this chapter is inapplicable to a

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<sup>71</sup> See R.C. 1.42 (“[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly”); *Woman’s International Bowling Congress v. Porterfield*, 25 Ohio St. 2d 271, - 267 N.E.2d 781 (1971) (syllabus, paragraph 2) (“[w]here a statute defines terms used therein which are applicable to the subject matter affected by the legislation, such definition controls in the application of the statute”).

<sup>72</sup> O.A.G. 98-004

regional council of governments because such councils are not delineated in the definitional section, other sections of the Revised Code do offer safeguards.

It should be noted that, even though R.C. Chapter 5705 does not apply to a regional council of governments, the moneys held and expended by a regional council of governments may be expended only for proper purposes and through proper procedures. The fact that a regional council of governments is not itself required to comply with R.C. Chapter 5705 does not mean that no safeguards apply to its funds. Moneys held by a regional council of governments are public moneys that are held in trust for the public and may be recovered by legal action if illegally expended or not properly accounted for. *See* R.C. 117.01(C), (D), (E); R.C. 117.28-.30; R.C. 117.42; 1973 Op. Att'y Gen. No. 73-119, at 2-457 (moneys of a regional council of governments are public moneys that are to be deposited or invested in accordance with the Uniform Depository Act). As a public office, a regional council of governments must file with the Auditor of State an annual financial report setting forth its income and expenditures. R.C. 117.38. *See generally, e.g.*, 1971 Op. Att'y Gen. No. 71-010 (a regional council of governments is a political subdivision for purposes of exemption from the payment of sales tax). As your letter indicates, a regional council of governments is subject to audit by the Auditor of State in accordance with auditing standards established by the Auditor of State. *See* R.C. 117.10; R.C. 117.11; R.C. 117.19; R.C. 117.43. O.A.G. 98-004.

#### **The Audits of Chester Township and the Chester Township Park District**

As previously noted, the first people to be interviewed for this review was the new Fiscal Officer for Chester Township, Craig Richter. Mr. Richter advised that upon taking office he requested an audit of the Chester Township's 2013 finances. In the course of his discussion with the state auditor the auditor asked about the park district. The initial question for the auditor was whether the park district was a "component unit." This question is not simply answered,<sup>73</sup> and may be one reason why the park district has never been separately audited. Another reason may be that the park district does not have its own tax levy.

The Chester Township audit for the 2013 fiscal year has been completed, and the state auditor expects to complete his audit of the park district within thirty days of receipt of requested

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<sup>73</sup> See generally, Statement No. 39 of the Governmental Accounting Standards Board Determining Whether Certain Organizations Are Component Units an amendment of GASB Statement No. 14, May 2002

records. The audit will cover only the years 2012 and 2013, and thus will also address the compliance issues raised in the "Review."

When looking for guidance as to what practices and procedures are to be followed by a park district that does not levy taxes, the Auditor of State follows the *Implementation Guide for Legal Compliance Auditing in Ohio*.<sup>74</sup> And it should be noted that the Auditor of State does look to certain sections of Chapter 5705 in reference to park districts' budget process and record-keeping. The Guide provides

[w]hen they [park districts] do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) requires a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36, .38, .40, .41, .43, .44,<sup>75</sup> and .45. However, documents prepared in accordance with these sections need not be filed with the county auditor or county budget commission. Also, while Ohio Rev. Code §5705.39 does not apply, §5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash).<sup>76</sup>

#### **Applying These Metrics to the Chester Township Park District**

The park district does submit an annual budget to the Geauga County Budget Commission and to the township trustees.<sup>77</sup> It also complies with R.C. 5705.36(A)(1) which states, in pertinent part, that on or about the first day of each fiscal year the fiscal officer shall prepare a certificate of the total amount from each fund set up in the tax budget which is available for expenditure in the tax budget along with any encumbered balances that existed at the end of the preceding year with a few certain exceptions.<sup>78</sup> These are prepared and they have

<sup>74</sup> The 2014 Ohio Compliance Supplement was employed in this review.

<sup>75</sup> R.C. 5705.36 (Certification of Available Revenue; Amended Official Certificate); R.C. 5705.38 (Annual Appropriation Measures); R.C. 5705.40 (Amending or Supplementing Appropriation Ordinance); R.C. 5705.41 (Restrictions on the Appropriation and Expenditure of Money; Certification by Fiscal Officer); R.C. 5705.43 (Improvements paid by Special Assessments); R.C. 5705.44 (Contracts Running Beyond Fiscal Year); and R.C. 5705.45 (Liability for Wrongful Payments from Public Funds)

<sup>76</sup> Id. at 120.

<sup>77</sup> Exhibit T-2014 Annual Park District Budget

<sup>78</sup> Exhibit U-FY2014 Beginning Balance/FY2013 Chester Township Park District Annual

been filed each year with the Geauga County Auditor, but that fact is not always documented in the minutes of the first January meeting each year.

For instance, minutes of 1/3/11 meeting note "Reviewed year to date Financial Statements and Bank Account Reconciliations, but no such reference in the minutes for the 1/12/12 meeting or the 1/3/13 meeting.

Confirmations of beginning balances are not in the minutes regularly. For example, in the 1/17/12 meeting minutes there is no mention of formally confirming beginning balances, but a sheet with balances is appended to the signed minutes.

The purpose of the certification is to assure there has been prior approval by the commissioners for any expenditure. The prior approval of each expenditure, with two exceptions<sup>79</sup>, is to be done at a public meeting by resolution, which is noted in the minutes of the meeting.

Generally, this has been followed by the park district, but Mr. Richter expressed concern that the park district did not go back and recertify funds after the park received another \$50,000 after its budget was submitted.

As for expenditures, the district does utilize a requisition form for each expenditure.<sup>80</sup> This form is signed by two commissioners authorizing each payment. The payment is also listed by check number and payee in the minutes of the meeting at which the disbursement has been approved.<sup>81</sup>

The district's requisition form does not fully meet the requirements of R.C. 5705.41(D), which states that no subdivision shall make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the

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<sup>79</sup> Resolution for up to \$500 for emergency electric repairs and resolution for one commissioner to expend up to \$1,000

<sup>80</sup> Exhibit V-Chester Park District Requisition

<sup>81</sup> Exhibit W-Minutes of Chester Township Park District, 9/27/12

subdivision. The fiscal officer must certify that the amount required to meet such a commitment has been lawfully appropriated and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance. The requisition form does not have the certificate.

Pertaining to uncertified expenditures and lack of appropriate resolutions, R.C. 5705.41(D)(1) and (3) provide safe harbors for expenditures made without the certificate or resolution. This is how each safe harbor is described by the Auditor of State:

**“Then and Now” Certificate** – If the fiscal officer can certify that both at the time that the contract or order was made (“then”), and at the time that the fiscal officer is completing the certification (“now”), that sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance, the subdivision can authorize the drawing of a warrant for the payment of the amount due. The subdivision has thirty days from the receipt of the “then and now” certificate to approve payment by ordinance or resolution. Amounts of less than \$3,000 may be paid by the fiscal officer without a resolution or ordinance upon completion of the “then and now” certificate, provided that the expenditure is otherwise lawful. This does not eliminate any otherwise applicable requirement for approval of expenditures by the subdivision.

**Blanket Certificate** – Fiscal officers may prepare “blanket” certificates not exceeding an amount established by resolution or ordinance adopted by the legislative authority against any specific line item account over a period not running beyond the end of the year. The blanket certificates may, but need not, be limited to a specific vendor. Only one blanket certificate may be outstanding at one particular time for any one particular line item appropriation.

**Super Blanket Certificate** – The subdivision may also make expenditures and contracts for any amount from a specific line-item appropriation account in a specified fund upon certification of the fiscal officer for most professional services, fuel, oil, food items, and any other specific recurring and reasonably predictable operating expense. This certification is not to extend beyond the current year. More than one super blanket certificate may be outstanding at a particular time for any one line item appropriation.

In other township park district audits I have reviewed I note that the use of these safe harbors is the prescribed solution to a finding of non-compliance. In fact, in my meeting with the secretary of the Russell Township Park District, I learned that the park district employs the blanket certificate. I have already shared the examples of the Russell Township Park District’s

accounting forms with the Chester Township Park District and recommended it convert its process to that used by Russell. I also understand that the state auditor has recommended a software program the park district may purchase from the Auditor of State's office.

The reader should not infer from these observations and recommendations or from those that follow that the current administrative assistant, now treasurer and fiscal officer, has not been maintaining books, records, and accounts for the park district. The "Quick Books" format used by the park district for some time makes it more difficult to follow than a fund-based accounting system.

Neither she nor any commissioner received any transitional assistance, training, or guidance from those who preceded them in the position. Only recently did one current commissioner find a very outdated and incomplete procedure manual<sup>82</sup>. It appears the new commissioners and assistants simply continued the same practices as their predecessors, relying on an assumption that their predecessors were following all requirements.

**Issue 3-Actual expenditures exceeded appropriation authority for 2013 in violation of R.C. 5705.41(B)**

**Conclusion-** I agree that 2013 actual expenditures were \$178,699.59 and the amended certificate of estimated resources for fiscal year 2013 dated 2/19/13 reflected the sum of \$127,305.72. It is important to note that the actual total receipts and balance for 2013 was \$187,056.39, resulting in a balance brought forward into 2014 of \$10,800.30. In regard to the appropriateness of the term "legal spending authority" of the park district, please refer to the previous discussion. A change to a fund-based accounting system with appropriate forms and process will resolve this issue.

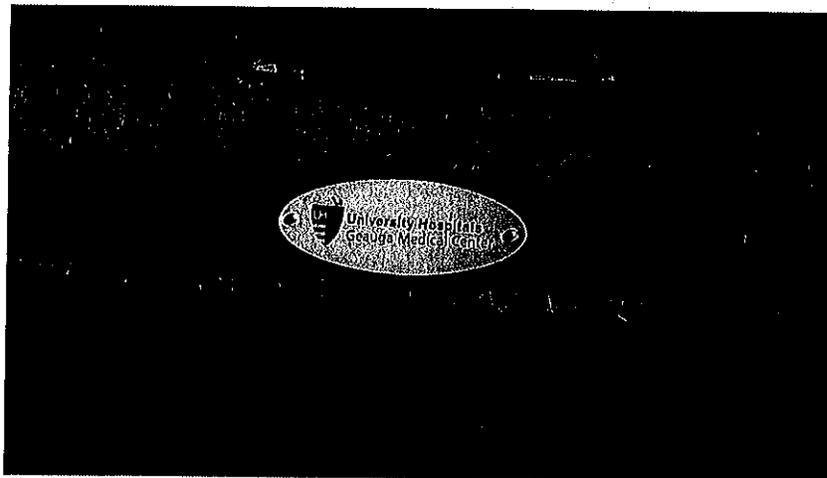
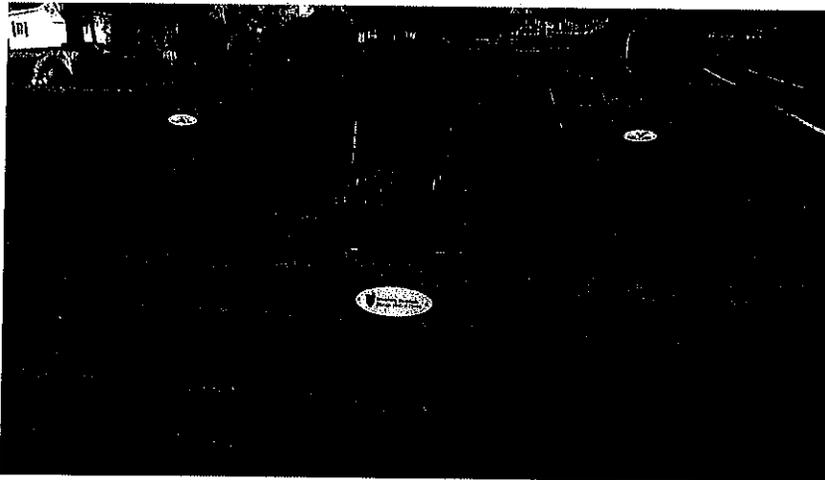
**Discussion-** As noted above, the auditor applies R.C. 5705.38(A) to park districts. That section requires the district to pass an appropriation measure at the beginning of the year. During the year it may pass any supplemental appropriation measures as it finds necessary, based on the

<sup>82</sup> *Chester Township Park District Procedure Manual*, with various updating notations from 1994 and 1994

revised tax budget or the official certificate of estimated resources or amendments of the certificate. It may postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, and instead pass a temporary appropriation measure until April 1. Most importantly, the R.C. 5705.40 stipulates that any appropriation measure may be amended or supplemented by complying with the same process used in making the original appropriation.

The purpose of this process of approving estimated receipts and appropriations is to protect against the possibility of deficit spending.

**Issue 6-The Record of Proceedings or minutes do not reflect acceptance of approximately \$10,000 in donations nor did the minutes document the authorization of many of the expenditures that exceeded the \$1,000 limit for expenditures by individual commissioners.**



**Conclusion-** I agree that some donations and some expenditures were not noted in meeting minutes, as observed in the preceding discussion. Since the park district is now submitting donations for approval by Judge Grendell, going forward the minutes should reflect both the donation and the approval. Please also see the discussion that follows regarding receipts of donations.

In regard to the \$1,000 expenditure by a single commissioner, any such expenditures should be noted in the minutes, and I recommend the park district review this practice during the state audit in order to establish a procedure for certifying these expenditures during the year via a blanket certificate.

**Discussion-** Once again the issue with proper documentation of donations is not unique to this park district. On at least one occasion I did find that the park district sought probate court approval of a donation, but that was the only one I found in the probate court file for the district<sup>83</sup>. Inquires were made to other districts and none follow the practice of probate court approval for donations. It is my understanding that Judge Henry had dispensed with the donation approval process, in whole or in part, but Judge Grendell has rescinded that order.

A listing of donations during 2013 may be found in the appendix.<sup>84</sup>

**Issue 7- Does R.C. 9.38, Deposit of Public Moneys apply to the park district?  
Was the \$250 donation from the West Geauga Kiwanis noted in the 7/31/13 meeting minutes actually received and deposited? Were the other donations deposited according to Ohio law?**

**Conclusion-** R.C. 9.38 applies to a “public office” and to a “public official.” The park district is a “public office” as provided in R.C. 117.01(D) and “public official” is any officer, employee, or duly authorized representative or agent of a public office. R.C. 117.01(E).

<sup>83</sup> See Exhibit X-3/19/14 request from Ms. Vitale for approval of a park bench donation

<sup>84</sup> See Exhibit S-Chester Township Park District Donations 2013

The section requires the deposit of all public moneys received by a public official with the treasurer of the public office or properly designated depository, which in the park district's case would be Charter One Bank, its depository, on the next business day after receipt, if the total amount of such moneys received exceeds one thousand dollars.

If the total amount does not exceed one thousand dollars, the deposit is to be made on the business day next following the day of receipt, unless the park district had adopted a policy permitting a different time period, not to exceed three business days next following the day of receipt, for making such deposits, and the person is able to safeguard the moneys until such time as the moneys are deposited. The policy shall include provisions and procedures to safeguard the public moneys until they are deposited.

As for financial documentation and documentation in the minutes, as the state auditor has noted in other district's audits, the "failure to maintain supporting documentation increased the risk that errors and/or irregularities could occur and not be detected in a timely manner. Public knowledge of such errors and/or irregularities may impact the amount of donations received by the Park District."

When this deficiency is found in an audit, the auditor has recommended corrective action, most of which is already being done in the Chester Township Park District, such as maintaining a copy of the check from each donation and issuing a duplicate and pre-numbered receipt to the donor. If the donation is paid in cash, the donor should sign a duplicate receipt issued to the donor. Finally, as noted earlier all donations should be reported to the park board of commissioners and documented in the minutes.

The difficulty with strict compliance with R.C. 9.38 (one apparently not contemplated by the General Assembly) is that a park district must obtain probate court approval *before* the donation is accepted (i.e., deposited). This situation rarely arises with other public bodies

because most do not receive donations; however, I would note that the township trustees have recently discussed how donations are to be handled when offered.

I recommend that the policy should be that the time requirements set forth in R.C. 9.38 must be followed upon receipt of Judge Grendell's approval of acceptance of a donation.

In regard to the questions as to the Kiwanis donation of \$250, that donation was received.<sup>85</sup>

**Issue 8-R.C. 117.38 report to the Auditor of State with newspaper notice when filed**

**Conclusion-** There has not been compliance with this provision. After questioning the commissioners and administrative assistant, I find that this lack of compliance was an act of omission, not commission. As with other requirements discussed throughout the report, the current and past commissioners I interviewed were totally unaware of the requirement.

**Discussion-** Simply, R.C. 117.38 requires in part, that cash-basis entities must file an annual report with the Auditor of State within 60 days of the fiscal year end. Also, the public office must publish notice in a local newspaper stating the financial report is available for public inspection at the office of the chief fiscal officer.

**Issue 9-Does RC. 5705.30 requiring public notice and public hearings prior to adopting the annual budget apply to the park district.**

**Conclusion-** Per the state auditor compliance manual this section of Chapter 5705.30 does not apply to a park district that does not have its own levy.

**Discussion-** It should be noted that over the years, the park district has given prior public notice of its budget meetings if the meeting is a special meeting for that purpose.<sup>86</sup>

<sup>85</sup> See Exhibit Y- Letter from Messrs. Dave Puruczky and Rich A. Levin to the Park Commissioners and Charter One deposit slip and statement

<sup>86</sup> See, e.g., Exhibit Z- Notice of special meeting-budget hearing set for July 12, 2012.

## Financial Discrepancies

**Issue 1- 2014 “carry over balance”-Commissioner Weiss told the Chester Trustees during the 2/20/14 meeting that the figure was around \$4,800, but the figure on the FY2014 Beginning Balances statement was \$11,580 & The listing of 2014 park revenues and expenditures is missing the carry over balance in its arithmetic.**

**Conclusion-** When I inquired about the carry over figure given at the meeting, Commissioner Weiss responded that he simply misspoke. It should be noted that the FY2014 Beginning Balances statement signed by Commissioner Weiss on 2/19/14 was submitted to *both* the township trustees and Geauga County Auditor.<sup>87</sup>

I agree with the finding in the “Review” that the carry over balance is missing in the listing.

**Issue 2-2013 list of donations shows donations of \$10,150 vs. the amount of \$9,652.79 submitted to county for interest/misc. revenues**

**Conclusion-**Mr. Yert’s \$500 park bench donation was not included because the donation was received at year-end 2013 and deposited in 2014<sup>88</sup>

**Issue 3-2014 Beginning Balances show receipt of \$174,680.87 vs. bank statements show deposits of \$174,803.07-\$122.20 discrepancy**

**Conclusion-**I leave this up to the state auditor. When I inquired of the Fiscal Officer she could not either agree or disagree with this finding. She explains that she takes her beginning balances from the year-end bank statements.

**Issue 4-12/19/13 meeting resolution passed to hire MAL Enterprises to paint the gazebo at a cost of \$3,275 and this amount was not listed as encumbered in the 2014 Beginning Balances**

**Conclusion-** When I inquired about this, it was explained that this was an oversight.

<sup>87</sup> Exhibit U

<sup>88</sup> Exhibit S

**Issue 5-Five checks issues in 2012 were not listed as approved for payment in the minutes**

Check 1670 9/20/12	\$27.14 The Illuminating Company
Check 1671 9/20/12	\$3,360 to Inspeyered Tree Service 8/9/12 meeting-Resolution approved for contract with Inspeyered Tree Service for \$3,360.00 for tree removal by volleyball courts
Check 1672 9/20/12	\$257.81 to H&M Landscaping Co.
Check 1673 9/20/12	\$68.42 to Turney's Hardware
Check 1674 9/20/12	\$8,134.50 to Peerless Electric for 1/3 payment on the volley ball court lights 7/12/12 meeting -Check 1651 approved to Peerless \$6,162.50 for the 25% down payment for the volleyball lighting project. No requisition form signed, only an email initialed apparently by Commissioner Downs 9/5/12 meeting- Check 1663 to Peerless \$10,353.00 approved 42% of the contract price-job estimated to be complete by the "end of the week"

**Conclusion-**There is no record in the minutes of these checks being approved. Check 1669 was the last check approved at the 9/5/12 meeting. The 9/20/12 meeting was cancelled and rescheduled to 9/27/12. At the 9/27/12 meeting the first check to be approved was Check 1675. The checks were cashed.

**Specifics-Apparent Overage of Spending Authority**

**Conclusion-**In some instances, such as the first and last example below, an individual commissioner would exceed the \$1,000 threshold for expenditure without prior resolution and no subsequent resolution was passed to approve purchase(s). The checks would be subsequently approved as noted in the minutes. I would reiterate the earlier recommendation regarding discussion with the state auditor about the use of a blanket certificate and subsequent documentation in the minutes.

In other instances, such as the Sherwin Williams expenditures for materials for the painting and staining project, appear to be part of a larger project, the total cost of which appear to be within or under budget. I would reiterate the earlier recommendation to follow the fund-based accounting procedures so that one may easily follow a project from point to point utilizing

purchase orders for each project and warrants and check numbers relating back to the specific purchase order.

Check 1711 2/1/13 \$2,054.88 to Lance Yandell for Costco membership and lamp posts	2/27/13 meeting-Check 1711 approved \$2,054.88 to Lance Yandell for Costco membership and lamp posts
Check 1737 4/17/13 \$2,841.65 to ElectoLite	4/17/13 meeting-Check 1737 to ElectoLite \$2,841.65 for installation of hanging baskets and banners. approved for installation of park district banners (**Invoice 48662 dated 3/8/13 to install 6 banners \$2,324.99 and Invoice 48669 dated 4/1/13 to install 2 additional banners \$516.66) This is the "park banners" mentioned in the minutes from the 3/21/13 meeting. There is a resolution passed at the 2/27/13 meeting to purchase and install park banners and hanging baskets for \$2,334, but no resolution approving a specific ElectoLite contract.
Checks totaling 5/6/13-1/23/14 \$18,429.96 to Land & Site Contractor	4/17/13 meeting-Arborist conducted a review and bidding process and recommended Land & Site, a local company. Resolution approved to hire the firm at a contract price of \$15,495 for period from April 1 through November 30, 2013. Contract signed 4/17/13. (2013 paid \$16,493)
Check 1765 5/16/13 \$5,779.52 to Deepwoods Trucking	2/27/13 meeting-police chief and road department support the revised parking plan and resolutions approved to spend up to \$2,500 for Podogil Excavating to revamp the driveway and up to \$750.00 for additional gravel for the horseshoe driveway. Mr. Parker's survey and drawings are delayed due to the weather. 4/17/13 meeting-resolution approved to spend \$1000 for more gravel 9/12/13 meeting-Check 1839 to Deepwoods Trucking \$519.79 for more gravel
Check 1755 5/6/13 \$3,065.00 to Hi Lite Maintenance	2/27/13 meeting -The minutes reflect a resolution passed approving the "purchase and installation" of new flag pole and flag from The Flag Store for \$2,500 and two residents have donated \$500 each toward the new flag pole. <sup>89</sup> 2/27/13 meeting: Check 1722 to The Flag Store \$1,000 5/13/16 meeting: Check 1753 to The Flag Store \$1,291.48 Check 1755 to Hi Lite Maintenance \$3,065 to install flagpole and lighting.  <b>Actual cost for flag and pole \$2,291.48</b> <b>Actual cost for installation and lighting \$3,065</b> <b>Less donations \$1,500</b> <b>Total actual cost \$3,856.48</b>

<sup>89</sup> Exhibit S-Chester Township Park District Donations 2103, which reflects 3 donors for a total of \$1,500.

<p>Check 1770 5/16/13 \$3,337.70 to Sherwin Williams</p>	<p>This is the materials portion of the staining and painting project examined earlier with the estimated cost \$17,000 2013 payments \$16,809 (\$191 under budget)</p>
<p>Check 1741 4/17/13 \$1,354.61 to Sherwin Williams</p>	<p>\$12,080 to MAL \$4,729 to Sherwin Williams</p>
	<p>2/27/13 meeting-resolution approved contract with 1 (MAL) of 2 contractors for wash, treat and stain park structures in the sum of \$8,530 4/17/13 meeting under "Staining Park Structures"-minutes refer to a resolution passed at the 1/24/13 meeting approving MAL Enterprises to stain and paint all park structures in the amount of \$7,530. Minutes also reflect discussion of additional work to be added including power washing gazebo bricks and power washing all park fencing and oil staining. Resolution passed to approve an additional \$1,970.</p> <p><b><u>Review of the MAL Contract dated March 21, 2103</u></b> 2/5/13 proposal price \$7,560 with a 50% draw upon acceptance \$3,780 2/10/13 amended proposal adding \$970.00-TOTAL NOW \$8,530 3/20/13 additional amendment adding \$1,000-TOTAL NOW \$9,530</p> <p><b><u>Add on after contract-see Invoice dated 4/27/13</u></b> An addition \$2,550 was added for painting bathrooms, service garage, and power wash brick walkways TOTAL NOW \$12,080 N.B. invoice shows and \$325.00 donation discount to the walkway power washing</p> <p>4/17/13 meeting-resolution approved a draw to MAL \$3,500 to complete painting, staining and power washing services 4/17/13 meeting: Check 1733 dated 4/9/13 to MAL Enterprises \$3,780 Check 1741 to Sherwin Williams \$1,354.61 Check 1747 to MAL Enterprises \$3,500 5/16/13 meeting: Check 1757 to MAL Enterprises \$1,300.00 Check 1782 to MAL Enterprises \$3,500.00</p>
<p>Check 1803 7/2/13 \$2,655.74 to Play &amp; Park Structures</p> <p>Check 1821 8/22/13 \$2,655.74 to Play &amp; Park Structures</p>	<p>6/28/12 meeting a park bench donation project is first discussed 6/19/13 meeting-Six park benches have been donated and installed and patron's displays have been ordered. 7/2/13 meeting-Check 1803 approved to pay Play &amp; Park \$2,655.74 for 6 park benches 7/31/13 meeting-Twelve park benches have been installed "primarily paid for through the donations" and the district "will assume an estimated \$500" for the twelve benches 8/22/13 meeting-Check 1821 approved to pay Play &amp; Park \$2,655.74 and</p>

	<p>commissioners acknowledged Chester Auto Body for donating the labor to mount the twelve plaques on the benches. There was no quantification of the donated labor reflected in the minutes.</p> <p>\$8,750 in park bench donations have been received<sup>90</sup></p>
<p>Check 1787 6/13/13 \$3,750 to Chesterland Electric</p>	<p>3/21/13 meeting-Resolution approved to contract with Chesterland Electric for the expanded parking area \$5,315.00. No mention in the minutes of any other quotes received. Commissioner advised that Peerless submitted a quote and Check 1774 to Chesterland Electric \$4,500.00 for parking lot project approved.</p> <p>6/19/13 meeting-Check 1787 to Chesterland Electric \$3,750.00 to pay the balance for the parking lot project plus "extras." Total cost \$8,250.00 Approval of extras not reflected in the minutes.</p>
<p>Check 1728 3/21/13 \$1,237.50 to The Pruning Company</p>	<p>The requisition form and attached invoice is for consulting services for January, February and March at \$45 per hour</p> <p>2/8/11 meeting-Three applications for position of Forester were received and resolution passed to select Dave Allen and the arborist consultant No mention in minutes of contract terms.</p> <p>3/7/11 meeting-Minutes mention commissioners review a document submitted by Mr. Allen stating his available services and rate, but no specifics given. The document is apparently the 3/2/11 rate letter from The Pruning Company, LLC setting Mr. Allen's rates of \$45 per hour for consulting services and \$60 per hour for tree care services.</p>
<p>Check 1769 5/16/13 \$1,252.50 to The Pruning Company</p>	<p>This was for pruning work and inspection.</p>
<p>Check 1713 2/7/13 \$1,450.00 to Peerless Electric</p> <p>Check 1723 3/13/13 \$1,450.00 to Peerless Electric</p>	<p>Check 1713 to Peerless \$1,450 approved for ½ of the purchase option for the holiday lights. It is presumed that this stems from the resolution passed at the 1/3/13 meeting to "fund the holiday lighting/decoration project up to \$5,500 the 2013 budgeted amount".</p> <p>Check 1723 to Peerless \$1,450 for the second payment toward the holiday lights/purchase</p>
<p>Check 1759 5/6/13 \$3,500 to Podogil Excavating</p>	<p>2/27/13 meeting-police chief and road department support the revised parking plan and resolutions approved to spend up to \$2,500 for Podogil Excavating to revamp the driveway and up to \$750.00 for additional gravel for the horseshoe driveway. Mr. Parker's survey and drawings are delayed due to the weather.</p> <p>4/17/13 meeting-resolution approved to spend \$1000 for more gravel</p> <p>9/12/13 meeting-Check 1839 to Deepwoods Trucking \$519.79 for more gravel</p>
<p>Contracts approved to MAL Enterprises 2/27/13 \$8,580</p>	<p>2/27/13 meeting-resolution approved contract with 1 (MAL) of 2 contractors for wash, treat and stain park structures in the sum of \$8,530</p> <p>4/17/13 meeting under "Staining Park Structures"-minutes refer to a</p>

<sup>90</sup> Exhibit S-Chester Township Park District Donations 2013 list

<p>4/17/13 \$1,970 \$12,080 paid to MAL in 2013 and approved dollar amount was exceed by \$1,530</p>	<p>resolution passed at the 1/24/13 meeting approving MAL Enterprises to stain and paint all park structures in the amount of \$7,530. Minutes also reflect discussion of additional work to be added including power washing gazebo bricks and power washing all park fencing and oil staining. Resolution passed to approve an additional \$1,970.</p> <p><b><u>Review of the MAL Contract dated March 21, 2103</u></b> 2/5/13 proposal price \$7,560 with a 50% draw upon acceptance \$3,780 2/10/13 amended proposal adding \$970.00-TOTAL NOW \$8,530 3/20/13 additional amendment adding \$1,000-TOTAL NOW \$9,530</p> <p><b><u>Add on after contract-see Invoice dated 4/27/13</u></b> An addition \$2,550 was added for painting bathrooms, service garage, and power wash brick walkways TOTAL NOW \$12,080 N.B. invoice shows and \$325.00 donation discount to the walkway power washing</p> <p>4/17/13 meeting-resolution approved a draw to MAL \$3,500 to complete painting, staining and power washing services 4/17/13 meeting: Check 1733 dated 4/9/13 to MAL Enterprises \$3,780 Check 1747 to MAL Enterprises \$3,500 5/16/13 meeting: Check 1757 to MAL Enterprises \$1,300.00 Check 1782 to MAL Enterprises \$3,500.00</p>
<p>Check 1754 5/6/13 \$1,560 to H&amp;M Landscaping</p>	<p>5/16/13 meeting-Check 1754 approved to H&amp;M \$1,560.00 toward repairs to volleyball court area</p>

**Specifics-Apparent Expenditures of Public Funds Outside the Authority of the Park District Jurisdiction**

**Conclusion-**The park district should not be faulted for its good will efforts toward the township especially when the improvements are to other Chester Township property and buildings adjacent to Parkside. In one instance the park district used materials left over from a project. Why not use materials already paid for with Chester Township funds to improve the township campus area adjacent to the park? I can find no prohibition for this practice, so long as the park district quantifies the donation and reflects the value of donation (time and materials) in its minutes.

<p>Check 1751 \$620.60 to</p>	<p>5/16/13 meeting-Check 1751 to American Rail Road Tie for \$620.60 6/19/13 minutes reflect "goodwill efforts by commissioners" including</p>
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American Rail Road Tie for patio stones for Chester Fire Dept.	fire station patio, painting the road department building “efforts assumed by Park Board to improve the overall appearance of the Township campus adjacent to the Park.”
Three checks totaling \$1,250 to Sal Charlillo to relocate flower baskets along 32 and 306 and within Parkside Park	See earlier discussion of banners and hanging flower baskets. The total to Charlillo \$1,250.00 to remove and rehang banners and baskets for Chester Township was a donation to the township by the park district.
Landscaping services to Town Hall	6/19/13 minutes reflect “goodwill efforts by commissioners” including fire station patio, painting the road department building “efforts assumed by Park Board to improve the overall appearance of the Township campus adjacent to the Park.”
Install a patio and landscaping behind the fire station	5/16/13 meeting-Check 1751 to American Rail Road Tie for \$620.60 6/19/13 minutes reflect “goodwill efforts by commissioners” including fire station patio, painting the road department building “efforts assumed by Park Board to improve the overall appearance of the Township campus adjacent to the Park.”

**Specifics-Checks Cashed Prior to Park Commissioner Approval**

**Conclusion-** I agree with the finding in the “Review” as to the list of 23 checks cashed before minutes reflect approval.

**Recommendation-**This will be rectified with the switch to the fund-based accounting system.

**Specifics-Questionable Signatory Authority**

**1. Check 1834 to Land & Site for \$1,936.97 cashed without any commissioner’s signature**

**Conclusion-** I agree with the “Review” finding. In fact, no one signed the check.

**2. Checks 1748,1781,1806,1807,1780,1808,1818,1784 signed by one commissioner and administrative assistant**

**Conclusion-** I agree with the “Review” finding as to who signed those check; however, in 2009, the commissioners voted to require two signatures on checks without specifying which signatories are required. A review of some of the cancelled checks over the last few years

indicates that checks drawn on the park district account at Charter One are being signed by either two commissioners or by a commissioner and the administrative assistant, who is also bonded.<sup>91</sup>

As noted earlier, I confirmed the propriety of this policy with the state auditor, who advised that unlike townships, the Auditor of State has no real set recommendation on the number of check signers when it comes to park districts. If the park district has a set policy about signatories and the number of signatories, it should follow that policy. If it does not, only one signature from an authorized signatory would be required.

**Recommendation-** As a result of my investigation and discussions with other park districts and with the state auditor and now that there are two additional commissioners available, I recommend that all checks be signed by two commissioners and the fiscal officer.

#### **Specifics-Check Amount/Payee Discrepancies**

**Conclusion-** I agree with the “Review” findings as to the 6 checks listed. The administrative assistant’s response is that she has a 96% accuracy rate regarding typos in her minutes. Out of 164 checks written 6 were inaccurately described in the minutes for an error rate of .0366%.

**Recommendation-**The new fund-based accounting system, as opposed the “Quick Books” system the park district has had in place for sometime. This should help ameliorate the relatively small error rate. It especially needed with the substantial increase in the number and size of projects, which brings with them an increased number of invoices, checks, records to be maintained by a part-time contractor. One commissioner should be tasked with financial oversight to assist the fiscal officer and to assure the accounting process and best practices are being followed. In accordance with recommendations made to other park districts by the Auditor of State, that commissioner would:

- Review the monthly reconciliations to help assure that the bank and book reconcile and are in agreement with the check register

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<sup>91</sup> Minutes of the Chester Township Park District, December 21, 2009

- Review the year-end financial statement to verify agreement to the activity recorded in the books, to the reconciled bank to book balance, and to the check register. Any variances between these documents should be investigated and resolved
- Periodically review the accounting records and bank statements to help assure receipts are being recorded and deposited timely

6/19/13 meeting	Check 1797 (Actually check 1796) to KT Custom Logos \$538.99 for park bench plaques. Check 1797 was a check to Ms. Vitale for \$682.17
6/19/13 meeting	Check 1788 to Chesterland News for \$250. Actually the amount was \$400 for a Memorial Day ad
6/19/13 meeting	Check 1796 to Ruth Chapman \$100 actually a check to KT Custom Logos for \$538.99. Cannot find any check written to Ruth Chapman
7/31/13 meeting	Check 1812 to Sal Charillo [sic] for \$291 actually a check to Chesterland Electric for \$291.18
12/19/13 meeting	Check 1857 to Chesterland News for \$45.62 actually a check to All-Ways Flasher for \$45.62
6/19/13 meeting	Check 1798 to Margaret Vitale for \$682.17 was actually a check to Mulberry Creek Greenhouse for \$335

### Miscellaneous Questions & Concerns

#### Property Disposition-

#### Issue 1-Two More Park Signs-Where Are They?

**Conclusion-**Two additional signs were approved for purchase but never purchased. The contract price for the initial sign that is now installed at the corner of S.R. 306 and S.R. 322 was \$3,000, and \$3,000 was paid in three installments.

3/21/13 meeting	Resolution passed to purchase a new Parkside sign from Guthrie and Check 1732 to Guthrie Designworks \$1,200 approved (for down payment on the initial sign at a cost of \$3,000)
4/17/13 meeting	Resolution approved to purchase two more Parkside signs from Guthrie for \$1,200 (But these were never purchased) Check 1745 to Guthrie Designworks \$600 approved (for the second payment on the initial sign)
5/16/13 meeting	Check 1766 to Guthrie Designworks \$1,200 approved (for the final payment on the initial sign)

**Issue 2-“Determine what, if any, ORC requirements regulate the park commissioner’s [sic] of property and verify compliance.” Also, where is the old flag pole that was at the corner of SR 306 and SR 322?**

**Conclusion-** I am assuming from the reference to R.C. 501.10, Acceptance of Property; sale or donation of property and equipment, the “Review” is inquiring about any similar code section applicable to a park district.

As explained earlier, R.C. 1545.11 provides that the board may accept donations of money, property, or may act as trustee of land, money or other property, and use the donation or property to be held in trust as either stipulated by the donor or as provided in the trust agreement. The probate court judge must approve each donation or trust before it is accepted by the board.

Park benches have been donated and installed; however, the Probate Court file reflects only one park bench donation was submitted to Judge Grendell for approval. A new flag pole was installed and donations were accepted for that project.

As noted earlier, the park district does maintain an inventory list of personal property.

The “old flag pole” that was removed from the corner of 322 and 306 became the subject of a barter. At the July 31, 2013 meeting a resolution was approved to barter the old flag pole valued at \$300 for services valued at \$800 from Todd Thornston of American Asphalt to clean up the new garden along S.R. 322 in front of the parking area of the new east park section; thus discounting the clean up services by \$500.

In park records there is a letter dated March 18, 2014 from David Wilkes, President of Hi-Lite Maintenance Inc. valuing the old flag pole between \$250 and \$300.00.

I presented this barter to the state auditor, who opined that “[w]hile “bartering” is not a recommended way of doing business on a regular basis, all entities are encouraged to find discounts for purchases whenever possible. As long as the entity does not have a specific policy governing purchases, the situation does not require a formal contract/competitive bidding, and/or

no related parties of someone associated with the entity are involved with the vendor offering the discount over another potential vendor, this practice would be acceptable. The scenario you present does not, to me, seem to pose any issues.”

### **Bonding**

**Issues 1 & 2-Verify that the park commissioners are bonded for \$5,000; that their bonds have been approved by and filed with the county auditor; and that Mr. Yandell’s bond is still “active.”**

**Conclusion-**My first task was to locate the bonds for the current commissioners. Commissioners, Clay Lawrence, Joseph Weiss, Jr., and Lance Yandell are bonded, but the bonds have not been filed with the Geauga County Auditor. In fact, no bonds of any park districts’ commissioners have been filed with the auditor’s office for some time. The bonds of Commissioner Yandell and Margaret Vitale were issued but not signed by them. Once I brought that to their attention the bonds were signed. They are in the custody of the park administrative assistant. The two new commissioners, Al Parker and Ruth Philbrick, are also now bonded.

No bonds have been revoked.

Bonds should be filed with the Geauga County Auditor as required by statute.

### **Payroll**

**Issues 1 & 2-There is no withholding from Ms. Vitale’s wages nor is PERS being paid for her.**

**Conclusion-**There is no withholding tax taken from her check or PERS contributions made by the park district because Ms. Vitale was hired as an independent contractor. I can find no record of any park district secretary being hired as an employee. I inquired of Russell Township Park District, and its secretary, Ms. Palmer, is an independent contractor. The Russell Park District has obtained a legal opinion verifying the propriety of this arrangement.