

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

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

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

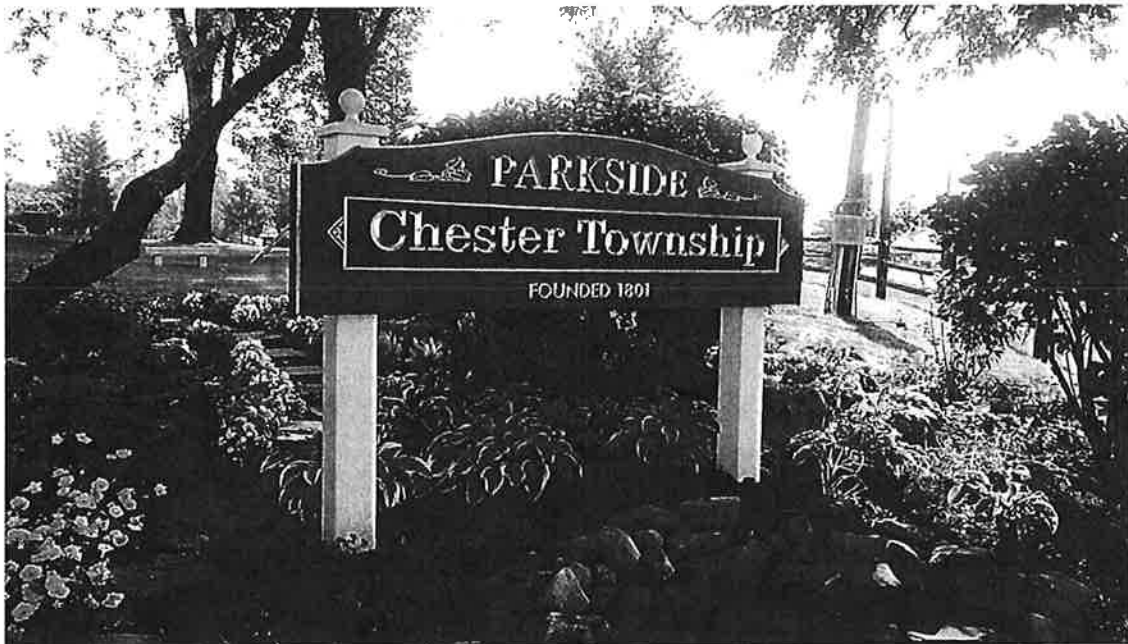


TABLE OF CONTENTS

	<u>Page</u>
Executive Summary of Findings and Recommendations	7
Introduction to the Analysis of the “Chester Township Park District 2013 Review	16
Formation of the Chester Township Park District	16
By-Laws of the Chester Township Park District Board of Commissioners	18
Composition, Oaths & Bond Requirements.....	18
Board Officers.....	19
Employees, Consultants and Contracting for Goods and Services.....	19
Meetings and Public Notices	20
Expenditures	21
Check Signing Authority & Authority for Expenditures by One Commissioner ..	22
The By-Laws are Supplemented with Additional Provisions of R.C. 1545.....	24
Expansion of the Board of Commissioners	24
Adoption of Park Rules, Regulations & Penalties	24
Power to Enter Into Certain Contracts	25
Annexation and Public Highway Improvements	25
The Power to Levy Taxes	25
Legal Counsel	26
Park Lands	27
Written Agreements Between the Park District and the Township Trustees.....	27
What are the Chester Park Lands?	29
Other Park Districts in Geauga County	30
Funding Sources.....	30

The Chester Township Park District 2013 Review	33
Analysis of the Review	36
Recent Significant Vendor Payments in 2012 and 2013	36
Issue 1– Play and Park Structures	36
Issue 2– H&M Landscape.....	39
Issue 3 –DiFranco Landscaping	41
Issue 4 –Electrical Contractor Payments	42
Issue 5 – Tree Work and Arborist Charges	45
Recent Commissioner Actions Resulting in Increased Spending	47
Issue 1 – Dragging Ball Infield	47
Issue 2 – Hiring Dave Allen of the Pruning Company	48
Issue 3 – Land & Site Contractor Services & Professional House Cleaning Service.....	49
Issue 4 – Peerless Electric Monthly Inspections.....	49
Secretarial Costs.....	50
Deviations from 2013 Stated Park Projects	51
Potential Ohio Revised Code Issues	59
Issue 1 – Compliance with R.C. 1545.22(B)(1) and (2)	59
Issue 2 – R.C.5705.45liability for wrongful payments from public funds	59
Issue 4 – R.C. 5705.41(D)(1) certification of available funds.....	59
Issue 5 – R.C. 5705.38(A) passing an annual appropriation resolution on or after the first day of each fiscal year	59
Issue 3 – Actual Expenditures Exceeded Appropriation Authority for 2013 In Violation of R.C. 5705.41(B)	67

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	68
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?	69
Issue 8 – R.C. 117.38 Report to the Auditor of State with newspaper notice when filed.....	71
Issue 9 – Does R.C. 5705.30 Requiring Public Notice and public hearings prior to adopting the annual budget apply to the park district	71
Financial Discrepancies	72
Issue 1 – 2014 “carry over balance”	72
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	72
Issue 3 – 2014 Beginning Balances show receipt of \$174,680.77 vs. bank statements show deposits of \$174,803.07-\$122.20 discrepancy	72
Issue 4 – 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	72
Issue 5 – Five checks issued in 2012 were not listed as approved for payment in the minutes	73
Apparent Overage of Spending Authority	73
Apparent Expenditures of Public Funds Outside the Authority of the Park District Jurisdiction.....	77
Checks Cashed Prior to Park Commissioner Approval	78
Questionable Signatory Authority	78
1. Check 1834 to Land & Site for \$1,936.97 cashed without any commissioner’s signature.....	78
2. Checks 1748, 1781, 1806, 1807, 1780, 1808, 1818, 1784 signed by one commissioner and administrative assistant.....	78

Check Amount/Payee Discrepancies	79
Miscellaneous Questions & Concerns	80
Property Disposition	80
Issue 1 – Two More Park Signs – Where Are They?	80
Issue 2 – “Determine what, if any, ORC requirements regulate the park commissioner’s of property and verify compliance.” Also, where is the old flagpole that was at the corner of SR 306 and SR 322?	81
Bonding.....	82
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. Yandall’s bond is still “active.”.....	82
Payroll.....	82
Issues 1 & 2 – There is no withholding from Ms. Vitale’s wages nor is PERS being paid for her	82
Outstanding Checks and Voiding Checks.....	83
Sunshine Law Concerns.....	83
Issues 1 & 2 – January 2013 meeting: Commissioners Yandell and Weiss with park arborist, Dave Allen at Arabica Coffee House in Chester and August 9, 2012 minutes reflect a meeting between Commissioners Weiss and Bidwell and contractor DeFranco [Sic] at the baseball field regarding renovations.....	83
Issue 3 – Violation of R.C. 121.22(F) – the commissioners changed their meeting date to the first Thursday of each month at the April 2, 2012 meeting and violated the rule at least 17 times from May, 2012 through December 2013	85
Issue 4 – Meeting dates in the minutes frequently are changed to another date.....	86
Issue 5 – Failure to comply with R.C. 121.22(F) requiring the purpose of special meetings to be stated.....	87
Issue 6 – Failure to comply with R.C. 121.66(F) requiring advance notice of meetings to be given to any person requesting it.....	88

Perceived Noncompliance with the 2/25/93 agreement between the Chester Township Board of Commissioners and the Chester Township Park District	88
---	----

Issue 1 – Failure to obtain prior written approval from the Chester Township Board of Trustees prior to constructing or altering any permanent improvement and failure to submit plans and specifications at least 60 days before construction commences	88
--	----

Issue 2 – Failure to comply with Section 8 of the Agreement.....	90
--	----

Perceived Noncompliance by the Board of Park Commissioners with their By Laws	91
---	----

Conclusion to Report and Recommendations.....	92
---	----

Appendix.....	Appendix 1-157
---------------	----------------

Exhibit A, Chester Township Park District 2013 Review, (revised 3/5/14).....	1
Exhibit B-Russell Township Park District sample year end & year beginning minutes	31
Exhibit C-RTPD sample cash balances spreadsheets	36
Exhibit D-RTPD sample receipt documentation	39
Exhibit E-RTPD sample warrant approval with certification.....	43
Exhibit F-Lake Metroparks Resolution No. 2013-010	46
Exhibit G-April 1, 2014 “funding” letter from the township trustees	59
Exhibit H-Judge Grendell’s April 3, 2014 letter to the trustees	62
Exhibit I-By Laws of Chester Township Park District Board of Commissioners	65
Exhibit J- Agreement of April 4, 1985	77
Exhibit K-Agreement dated February 25, 1993.....	80
Exhibit L-Chester Township Real Property Inventory	84
Exhibit M-Chester Township Park District Inventory List6.....	86
Exhibit N1 through N10-emails and letters received from the public &attendance list from public meeting with Master Commissioner held on June 26, 2014.....	88
Exhibit O-notice of June 26, 2014 meeting	113
Exhibit P-ODNR Letter dated 12/22/11 to Trustee Joyce regarding grant applied for by the Chester Township Board of Trustees.....	115
Exhibit Q-email dated 4/3/12 from Trustee Joyce to Commissioner Weiss.....	125
Exhibit R-Chester Township Park District Project Estimates dated 2/7/14	127
Exhibit S-Chester Township Park District Donations 2013 list	129
Exhibit T-2014 Annual Park District Budget	133
Exhibit U-FY2014 Beginning Balance/FY2013 Chester Township Park District Annual	135
Exhibit V-Chester Park District Requisition.....	137
Exhibit W-Minutes of Chester Township Park District, 9/27/12	139
Exhibit X-3/19/14 request from Ms. Vitale for approval of a park bench donation.....	141
Exhibit Y- Letter from Messrs. Dave Puruczky and Rich A. Levin to the Park Commissioners and Charter One deposit slip and statement.....	146
Exhibit Z- Notice of special meeting-budget hearing set for July 12, 2012	150
Exhibit AA- Charts of expenditures prepared by Ms. Vitale in response to the “Review” and my inquiries.....	152

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."¹ 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 politic². 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.

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

² 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.³ 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 board⁴ 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

³ Minutes 6/12/84 and 6/14/84 meetings

⁴ 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 manual⁵, 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:

⁵ *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”⁶ 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

⁶ 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.⁷ 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.⁸ While the Lake

⁷ 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

⁸ 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.⁹

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

⁹ 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.”¹⁰ 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.¹¹

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.

¹⁰ *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.
¹¹ 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...”¹² 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.”¹³ 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.¹⁴

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.”¹⁵

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.

¹² *Creation of a Park District*, p.1.

¹³ *Id.*, p.3.

¹⁴ *Id.*, p.2.

¹⁵ 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.¹⁶

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.¹⁷ 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-laws¹⁸ 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.

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

¹⁷ Chester Township Park District Record of Proceedings, Organizational Meeting, June 12, 1984.

¹⁸ 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.¹⁹ 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.

¹⁹ 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.²⁰

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.

²⁰ 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.²¹

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.”²² 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.²³

²¹ It must also be noted that the minutes from 2008 are missing.

²² Minutes of the Chester Township Park District, April 23, 2014

²³ 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.”²⁴ 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.²⁵ 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.

²⁴ Minutes of the Chester Township Park District, January 24, 2013

²⁵ 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.²⁶

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.²⁷

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."²⁸ The board may also set penalties for violations of a by-law or rule, with certain limitations on the severity of the penalty.²⁹ The penalties are to be paid into the treasury

²⁶ R.C. 1545.05(B)

²⁷ Minutes of the Chester Township Park District, April 23, 2014.

²⁸ R.C. 1549.09

²⁹ R.C. 1545.09 (B)(2)

of the park board.³⁰ 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.³¹

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.³²

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.³³

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

³⁰ R.C. 1545.09(C)

³¹ Id.

³² R.C. 1545.10

³³ 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.”³⁴ There is also a provision for tax anticipation notes to meet current expenses and debt charges.³⁵

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.³⁶ 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.³⁷ Mr. Burt concluded

³⁴ R.C. 1545.21

³⁵ R.C. 1545.211

³⁶ 1927 OAG 279

³⁷ 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 prosecutor³⁸; 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.³⁹

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 resolution⁴⁰ 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.⁴¹ The park district commissioners agreed to “use, operate, maintain, develop,

³⁸ 1994 OAG 035

³⁹ 1996 H 268, eff. 5-8-96

⁴⁰ Record of Proceedings before the Chester Township Board of Trustees, April 4, 1985

⁴¹ 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.”⁴²

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.”⁴³

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.⁴⁴

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.⁴⁵

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.⁴⁶

⁴² Id., p. 1.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id., p. 2.

⁴⁶ 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.⁴⁷ 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

[^]The Park District has not been asked to maintain

^{*}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.

[#]Henry House property-There has been discussion by the township trustees of making this part of the Parkside campus

⁴⁷ 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 Conservancy⁴⁸; 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.⁴⁹ Additional levies approved by the electorate and not in excess of two additional mills per levy may be sought.⁵⁰

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"

⁴⁸ Letter from zoning commission to Mr. Tom Stanley dated September 1, 1993.

⁴⁹ R.C. 1545.20

⁵⁰ 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.”⁵¹

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 ⁵²

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.”

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

⁵² 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	\$28,602.13*	\$16,090.08	\$1,289.76	\$60,290.25
	(\$4,262.00)^				

*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 \$12,077.53.⁵³

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),"⁵⁴ 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.

⁵³ See Exhibit M, Chester Township Park District Inventory List

⁵⁴ 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, 2014.⁵⁵

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.”⁵⁶

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

⁵⁵ 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.

⁵⁶ 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, letters⁵⁷ or at a public meeting.⁵⁸ 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.

⁵⁷ 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

⁵⁸ See Exhibit O-notice of June 26, 2014 meeting

Analysis of the "Review"

"Recent Significant Vendor Payments" in 2012 and 2013⁵⁹

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-

⁵⁹ 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 th 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. ⁶⁰
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 approved 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. ⁶¹
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.

⁶⁰ Chester Township Board of Trustees Resolution 2012-489.

⁶¹ 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.

Park District Meeting Date	What the Records Reveal
4/2/12 meeting	ODNR NatureWorks ⁶² 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 ⁶³ . 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

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

⁶³ 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)