

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.⁸⁷

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 2014⁸⁸

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.

⁸⁷ Exhibit U

⁸⁸ 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.

<p>Check 1711 2/1/13 \$2,054.88 to Lance Yandell for Costco membership and lamp posts</p>	<p>2/27/13 meeting-Check 1711 approved \$2,054.88 to Lance Yandell for Costco membership and lamp posts</p>
<p>Check 1737 4/17/13 \$2,841.65 to ElectoLite</p>	<p>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.</p>
<p>Checks totaling 5/6/13-1/23/14 \$18,429.96 to Land & Site Contractor</p>	<p>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)</p>
<p>Check 1765 5/16/13 \$5,779.52 to Deepwoods Trucking</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. 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</p>
<p>Check 1755 5/6/13 \$3,065.00 to Hi Lite Maintenance</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.⁸⁹ 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.</p> <p>Actual cost for flag and pole \$2,291.48 Actual cost for installation and lighting \$3,065 Less donations \$1,500 Total actual cost \$3,856.48</p>

⁸⁹ 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>Check 1741 4/17/13 \$1,354.61 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) \$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><u>Review of the MAL Contract dated March 21, 2103</u> 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><u>Add on after contract-see Invoice dated 4/27/13</u> 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 & Park Structures</p> <p>Check 1821 8/22/13 \$2,655.74 to Play & 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 & 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 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 received⁹⁰</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>

⁹⁰ 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><u><i>Review of the MAL Contract dated March 21, 2103</i></u> 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><u><i>Add on after contract-see Invoice dated 4/27/13</i></u> 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&M Landscaping</p>	<p>5/16/13 meeting-Check 1754 approved to H&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.⁹¹

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

⁹¹ 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.

Outstanding Checks and Voiding Checks

Conclusion-I agree that the voided checks were not listed in minutes as having been voided.

Check 1734 4/17/13	Voided lost check to Apex and stop payment was ordered 5/20/13
Check 1743 4/17/13	\$120 to Apex for lamp posts delivered still outstanding
Check 1736 4/17/13	\$250 Chesterland News for park bench ad is still outstanding
Check 1802 7/2/13	Void check to Lance Yandell for Bremec

Sunshine Law Concerns

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

Conclusion-Unfounded

Discussion-The Open Meetings Act requires the park district board of commissioners to take any official action and conduct all discussion and deliberations upon official business only in an open meeting about which advance notice of date, time and location has been given to the public. In the case of special meetings, notice is to be given of the specific topic to be discussed. There are a few exceptions that permit an “executive session” out of the public eye.

“Discussion” has been viewed as the exchange of words, comments, or ideas by the members of a public body.⁹² “Deliberation” has been viewed as the act of weighing and examining reasons for and against a choice.⁹³ Courts have also defined “deliberation” as a thorough discussion of all factors involved, a careful weighing of positive and negative factors, and a cautious consideration of the ramifications of the proposal, while gradually arriving at a

⁹² *Devere v. Miami Univ. Bd. of Trs.*, 12th Dist. No. CA85-05-065 (June 10, 1986).

⁹³ *Springfield Local Sch. Dist. Bd. of Educ. v. Ohio Ass’n of Pub. Sch. Employees*, 106 Ohio App.3d 855, 864 (9th Dist. 1998).

decision⁹⁴ or involving “a decisional analysis, i.e., an exchange of views on the facts in an attempt to reach a decision.”⁹⁵

Thus, the question becomes whether a meeting between a majority of the board of commissioners and another that is not noticed to the public and may not even take place in a public setting is a “meeting” for purposes of the Open Meetings Act.

In the Eleventh Appellate District, which includes Geauga County, the controlling law is found in an opinion authored by Judge Ford. He explained that the Open Meetings Act “is intended to apply to situations where there has been actual formal action taken; to wit, formal *deliberation* concerning the public business.”⁹⁶ If a gathering is strictly of an investigative and information-seeking nature that does not involve actual discussion or deliberation of public business it is not a “meeting” for purposes of the Open Meetings Act.⁹⁷ To date, the Supreme Court of Ohio has not decided the question of whether “investigative and informational” gatherings are or are not “meetings.”

A question-and-answer session between board members and others who were not public officials, such as those meetings with Mr. Allen and Mr. DiFranco are not violative of the Open Meetings Act unless a majority of the board members also entertain a discussion of public business with one another.⁹⁸

I found no evidence that these meeting were anything other than question and answer sessions.

⁹⁴ *Theile v. Harris*, No. C-860103 (1st Dist. 1986).

⁹⁵ *Piekutowski v. South Cent. Ohio Educ. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 379, 2005-Ohio-2868 (4th Dist.).

⁹⁶ *Holeski v. Lawrence*, 85 Ohio App.3d 824 (11th Dist. 1993).

⁹⁷ *Id.*

⁹⁸ *Cincinnati Enquirer v. Cincinnati Bd. of Educ.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.)

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.

Conclusion-Unfounded

Discussion-R.C. 121.22(F) requires the public body to establish by rule a reasonable method by which the public may determine the time and place of all regularly scheduled meetings, and the time, place and purpose of all special meetings. All R.C. 121.22(F) requires is a rule⁹⁹, and the district has such a rule in its by-laws.

The park district by-laws provide 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.

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 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.”

⁹⁹ *Doran v. Northmont Board of Ed.*, 2nd Dist. Montgomery No. 19956, 2003 WL 23011464 (December, 24, 2003).

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.

The district has not complied with the requirement of holding its meetings at the Town Hall for sometime. For the most part, it has complied with posting individual meeting notices or regular and special meetings on the bulletin board at Town Hall and on a board at Parkside. But that being said, the frequency of changes in dates and locations over the past few years is not good practice. Notices have not been regularly posted on the district's website, and over the years of minutes reviewed I have found that there were some meeting without formal agendas

It was explained that meetings are now held at the fire rescue station instead of Chester Town Hall because of issues of access, the security alarm, and space. Meetings for some time were not held at one regular location. They were held at the West Geauga Public Library, the Chester Fire Rescue Station and even at Arabica Coffee House.

Recommendation- Given the resolution to hold meetings on the first Thursday of each month, a list of the meeting dates for the year should be determined at the beginning of each year and then posted. It would be prudent to schedule meetings on a day that does not conflict with other township boards' meetings.

Issue 4-Meeting dates in the minutes frequently are changed to another date.

Conclusion-Agreed.

Discussion and Recommendation-See preceding issue.

<p>Issue 5-Failure to comply with R.C. 121.22(F) requiring the purpose of special meetings to be stated</p>
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Conclusion- I agree that there has been incomplete compliance with this requirement, as demonstrated by the chart below.

Discussion-R.C. 121.22(F) defines each type of meeting and the notice required.

“Regular meetings” are those held at prescheduled intervals.

“Special meeting” is any meeting other than a regular meeting and requires at least 24 hours advance notification of special meetings to all media outlets that have requested such notification, unless there is an emergency requiring immediate official action. If a special meeting is called to discuss particular issues, the statement of the meeting’s purpose must specifically indicate those issues, and the public body may only discuss those specified issues at that meeting. If the special meeting is really a rescheduled “regular” meeting, the statement of the meeting’s purpose may be for “general purposes.” The discussion in these meeting cannot go beyond the stated purpose.

“Emergency meeting” is a type of special meeting. 24-hours advance notice is not required, but the body must immediately notify all media outlets that have specifically requested such notice of the time, place, and purpose of the emergency meeting. The purpose statement requirement is the same as that for special meetings.

7/10/11 notice	Given to notify of a change in the budget planning special meeting date from 7/11/11 to 7/14/11 No minutes of the 7/14/11 meeting located
No notice found	12/2/11 Emergency Meeting held apparent purpose was to buy more holiday lighting
7/6/12 notice	Given to notify of a special meeting-budget hearing meeting on 7/12/12. There is an agenda attached which lists other items in addition to the budget
9/4/12 notice	Given to notify of an emergency meeting for 9/5/12 (no stated purpose) No agenda attached. Five items were discussed; two contracts were approved; checks were approved

4/9/13 notice	Given of a special meeting for 4/13/13 (no stated purpose) and no minutes
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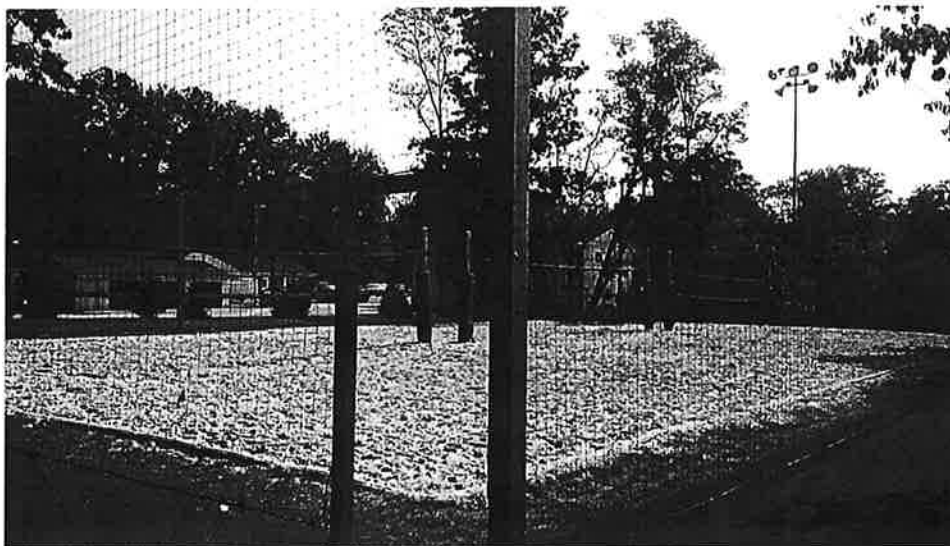
Recommendation-The park district should develop a set of standardize forms and procedure for giving public notices. The last set in recently discovered manual was last revised in 1998 and is out of date.

Issue 6-Failure to comply with R.C. 121.66(F) requiring advance notice of meetings to be given to any person requesting it

Conclusion-I agree with this in part, only because the recently discovered procedure manual lists two media outlets, The News-Herald and The Plain Dealer, with named contacts. I cannot locate any record of any individual or media outlet sending in a request for prior notification and the administrative assistant has no such correspondence.

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

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.





Conclusion-Unfounded

Discussion-The reviewer does not identify any specific permanent improvement. I will analyze three major projects completed at the Parkside location within the past few years- the volleyball court; the pavilion by the volleyball court on the east side of the park and the playground on the west side of the park.

For this discussion I will use the definition of the term, “permanent improvement” found in Ch. 5705:

“Permanent improvement” or “improvement” means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.”¹⁰⁰

This provision, which is paragraph four of the 1993 Agreement is essential to ensure compliance with the township zoning resolution.

¹⁰⁰ R.C. 5705.01

Plans for the volleyball court on the east side of the park were submitted to the township and the county for approval,¹⁰¹ and they were initially made a part of the ODNR grant application.¹⁰²

The pavilion constructed to the east of the ball field falls within this definition, and the project is not in violation of the Agreement inasmuch as the Chester Township Board of Trustees initiated the project, supplied drawings to the park district, and submitted the application for the Ohio Department of Natural Resources Nature Works grant to build the structure.¹⁰³

The playground constructed to the west of the ball field also falls within this definition of a permanent improvement, but I find the provision was not violated by the project either. At the August 23, 2013 township trustees meeting plans and the contract for the playground installation were presented to the township trustees with the funding request by Commissioner Weiss. A resolution funding the project in the amount of \$24,650 was approved by the township trustees.

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

Conclusion-Unfounded in part. I do agree that the fiscal officer certification provision has not been done.

Section 8 provides, "The Park District may not contract for or incur any debts or obligations which result or could result in liens on the parks, parklands, or permanent improvements therein without prior written approval of the Township. Such approval shall be in withheld by the Township until it receives certification from the fiscal officer of the Park District

¹⁰¹ See Meeting Minutes, Chester Township Park District, 3/7/11.

¹⁰² Exhibit P-see last two pages of the exhibit, "NatureWorks Application Adjustment Form."

¹⁰³ Exhibit P-ODNR Letter dated 12/22/11 to Trustee Joyce regarding grant applied for by the Chester Township Board of Trustees and Exhibit Q-email dated 4/3/12 from Trustee Joyce to Commissioner Weiss regarding drawings

that the Park District is in compliance with all applicable provisions of the Ohio Revised Code, including, but not limited to, R.C. 5705.41.”¹⁰⁴

This is a curious section. One may speculate this provision was inserted to avoid mechanics’ liens resulting from non-payment; however, inasmuch as Ohio law prohibits a sale or seizure upon execution of public property, a mechanics’ lien against public works attaches not to the property itself but only to a fund.¹⁰⁵ Thus, it follows that if the park district entered into a contract to build an improvement without having the funds to pay for the contract, the contractor/creditor would have a lien against the park district funds, not against the real property owned by Chester Township. If there can be no lien against the parklands by operation of law, then there is no need to seek prior written approval for improvement contracts.

The certification process by the fiscal officer is necessary, as discussed previously to assure there are sufficient funds to pay the expenditures and thus avoid any liens of the funds.

Recommendation-The park district should assure that its records adequately document that plans, specifications and contracts for any future major projects constituting permanent improvements on township lands have been delivered to the township trustees and that the township trustees approve same. I have already made recommendations regarding the certification process.

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

The six issues raised under this section of the “Review” have already been thoroughly addressed in earlier sections.

¹⁰⁴Certification of funds

¹⁰⁵ *Talco Capital Corp. v. Commn.*, 41 Ohio App.2d 171, 174. (1974).

Conclusion



The NDCL Volleyball Team at practice

Oversight of park districts has been entrusted to the probate court because so many parks began with a gift of property to the public upon someone's death with instruction that the property remain a park in perpetuity. Parks enhance the quality of life in a community. Parks have been the subject of poetry-- "Think of our life in nature, — daily to be shown matter, to come in contact with it, — rocks, trees, wind on our cheeks!"¹⁰⁶ Parks have been championed by great leaders—"The lack of power to take joy in outdoor nature is as real a misfortune as the lack of power to take joy in books."¹⁰⁷

Despite the current controversies surrounding the park lands in Chester Township, it is clear that the people of Chester Township are proud of the park's development, and they want to see their park maintained properly, always with an eye on fiscal responsibility.


¹⁰⁶ Henry David Thoreau

¹⁰⁷ Theodore Roosevelt

I have found that all stakeholders subscribe to this goal, and I stand ready to assist the court and the Chester Township Park District to implement the recommendations in this report.

Respectfully submitted,

Dated: 7/28/14



MARY JANE TRAPP, Master Commissioner