



**MONTGOMERY COUNTY DEPARTMENT OF PARKS**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Date: April 8<sup>th</sup>, 2010  
Agenda Item # 6

DATE: April 2, 2010

TO: Montgomery County Planning Board

VIA: Mary R. Bradford, Director of Parks  
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SUBJECT: Policy for 3<sup>rd</sup> Party Use of Parkland

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**A) STAFF RECOMMENDATION**

Staff will provide an overview of the terms of several current agreements that allow 3<sup>rd</sup> party<sup>1</sup> use of parkland, and seek guidance on policy development for future agreements.

**B) EXECUTIVE SUMMARY**

The Department of Parks frequently allows various entities limited rights to utilize public parkland and park facilities through leases and other contractual arrangements. Over 200 such agreements are currently in place ranging from park rental houses to major partnerships such as the Maryland SoccerPlex. Often, the Department will solicit an entity to occupy facilities and / or operate programs on its land through a solicitation. Contrarily, it receives several unsolicited proposals each year for use of parkland primarily because the high cost of land and building space in Montgomery County is often the prohibitive factor for governmental, non-profit, or for-profit organizations to run their programs and operations.

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Terms historically used to describe 3<sup>rd</sup> party entities include partners, concessionaires, tenants, curators, and life estates. Policies govern some of these relationships; however review of existing leases indicates considerable inconsistency in the principal terms of the agreements. Many agreements deviate from the traditional landlord – tenant relationship in that the Department waives or discounts rent, or provides resources and /or services that a landlord would not typically provide, at least without fair compensation. The Department’s principle funding source, the metropolitan district tax (aka the Park Tax) is limited in its use by the Commission’s enabling legislation, Article 28. In the worst case interpretation, the park tax, in some cases is being used to subsidize 3<sup>rd</sup> party programs inconsistent with the park tax’ intended purpose. In any event, it appears the Commission in some instances forfeits a revenue source or allocates resources toward 3<sup>rd</sup> party programs whereby a sound argument exists that the 3<sup>rd</sup> party should cover the expense. In summary, the Department as the steward of the extremely valuable and in-demand resource of public parkland has occasionally provided rights of use of that resource to 3<sup>rd</sup> parties at less than fair value without compelling justification. The purpose of this presentation is to review several existing agreements leading to the establishment of a policy to establish parameters for future 3<sup>rd</sup> party agreements.

### **Representative Leases**

See Exhibit A for complete list of current leases. One or more specific leases representative of each category of lease (i.e. park rental house, agricultural lease, partnership, etc.) are detailed in Exhibit B (Power Point Presentation)

### **Existing Framework – Enabling Legislation, Commission Policies, Department Vision and Mission**

#### **Enabling Legislation**

Maryland State Article 28 defines the purpose of the Commission, including the use of the metropolitan district tax (aka park tax) to support parks. Section 6-106 of the article, describing the intended use of the park tax reads:

*The proceeds of the tax, after providing for debt service on bonds issued pursuant to Section 6-101 and 6-105 of this title may be used by the Commission for policing the several parks or other areas under its jurisdiction and/or for the purpose of acquisition, development, beautification, or maintenance of parks and/or other areas and/or the establishment therein of playground and recreational facilities as the Commission determines.*

Article 28 also includes Section 5-110, titled “Leases, permits, and concessions”. It reads:

*The Commission may (1) lease for a term not exceeding 40 years and renew the lease from time to time for additional terms not exceeding ten years each, to any responsible*

*individual, partnership or corporation, any portion of the lands within the metropolitan district, acquired for park purposes under any of the provisions of this article. The Commission may not enter into any lease agreement in excess of 20 years duration without the prior approval of the provisions of the lease by legislative enactment of the county in which the lease property is located in whole or in part. Further, all such lease agreements shall contain provisions for reversion without cost to the Commission of the property and its improvements regardless of whether the improvements were added to the property by the lessee during the term of the lease or any extension of the lease; and/or (2) grant privileges, permits, and/or concessions, and/or enter into contracts relating to the same, with any responsible individual, partnership, or corporation, to engage in any business or enterprise on lands acquired for park purposes within the metropolitan district under any of the provisions of this article; all on terms and conditions the Commission deems advantageous to the development of the park system as a part of the plan for the physical development of the metropolitan district and the plan of the Maryland-Washington Regional District within the metropolitan district. The purpose for which the property is leased, and/or the privileges, permits, and/or concessions are granted, may not be inconsistent with the use of the property for park purposes. Any lease and/or contract executed under the authority of this section shall contain a condition, stating specifically the purposes for which the property is leased, and/or the privilege, permit, or concession is granted. All agreements entered into by the Commission pursuant to this article shall contain provisions forbidding the assignment of the agreement without the consent of the Commission. This article may not be interpreted as a limitation on the Commission's authority to require in any agreement more restrictive provisions deemed by the Commission to be in the public interest. The provisions of this article may not be construed to validate any lease or agreement executed prior to July 1, 1972, which provides for an initial term beyond 20 years duration, nor to permit the renegotiation of any lease or agreement executed prior to July 1, 1972, for the purpose of extending the initial term of the lease beyond 20 years duration. This limitation does not apply to any lease with a nonprofit, service-oriented organization.*

### **Commission Policies & Practices**

Several adopted policies and practices govern various aspects of 3<sup>rd</sup> party agreements. They include the “**Policy for Public Private Partnerships**” adopted in 2007, Commission Practice 6-50 titled “**Use of Commission-Owned Park Houses**” adopted in 1985, and Commission Practice 6-51 titled “**Leasing Commission-Owned Parklands for Agriculture**” adopted in 1983, “**Policy for**

**Alternative Uses of Closed and/or Under-Utilized Park Buildings.”** Policy approved by the Commission, 1992. The three policies are Exhibits C, D, E and F respectively.

Specific provisions of these policies that are most applicable to this discussion include:

From the Policy for Public Private Partnerships:

*A Public Private Partnership (sometimes referred to herein as a "Partnership") is an agreement between the Commission and a private sector entity (sometimes referred to herein as "Partner" or "Private Partner"), through which the skills, assets and resources of the Commission and the Partner are shared in delivering a service or facility for the use of the general public. It is a cooperative relationship between the Commission and its Partner, who agree to share responsibility for achieving specific goals. The Commission and the Private Partner share in the risks assumed and rewards gained by the delivery of the service and/or facility. The roles, risks and rewards must be contractually agreed, setting forth incentives for maximum performance while allowing for the flexibility necessary to achieve the desired results.*

*Not every agreement between the Commission and a private entity is a public private partnership. For example, private donations or private sponsorships of Commission programs do not necessarily create a public private partnership. The proposal by the private entity must be evaluated to determine the true nature of the relationship, and what, if any, risks, resources, and responsibilities are shared. For example, donations may appear to be partnership. But they may be conditional donations instead of partnerships. A concessionaire, where a private party is simply given the right to undertake and profit from a particular activity on Commission property, is not a public private partnership. Leases that do not extend beyond a typical landlord-tenant relationship with the typical rights and obligations of the respective parties are not public private partnerships. And agreements with other public entities do not qualify as public private partnerships. That does not mean that any of those arrangements are not, or should not be guided by a clear set of priorities and establish the roles and responsibilities of each party. But such relationships do not fall within the framework of this Policy.*

*In order for the Commission to efficiently and effectively manage its Public Private Partnership opportunities, all proposals will be vetted through an initial review process. The following questions must be addressed before the Commission considers the substantive benefits of entry into a Public Private Partnership:*

- *Is the proposal aligned with the mission and values of the Commission?*
- *Is the proposed relationship a Public Private Partnership, or is the proposal best served through another arrangement with the Commission?*

From Use of Commission-Owned Park Houses

*“Commission-owned park houses not otherwise covered by agreements made with the grantor at the time of acquisition shall be made available (1) for rent to Commission employees; (2) at the discretion of a Planning Board, for use by public agencies or non-profit organizations or for individuals as part of an approved public program; and (3) for rent on the open market at fair market value.”*

*“All Commission-owned park houses are appraised by independent certified appraisers when acquired, or on an as needed basis. Rental adjustments as appropriate shall be made July 1 each year to reflect changes in the Metropolitan Area market. Annual rental adjustments shall be made on market surveys or other indices of market rents for single family detached houses and apartments.”*

#### From Leasing Commission-Owned Parklands for Agriculture

*Lands acquired by the Commission designated for park development and preservation of open space and stream valley protections may be leased for crop production and livestock grazing prior to planned development.*

*Leases shall be set at rates reflecting fair market value.*

*Rental rates may be established by advertising land for rental and accepting the highest bid submitted by responsible qualified bidders.*

#### Policy for Alternative Uses of Closed and/or Under-Utilized Park Buildings

Selected Closed and/or under-utilized Park buildings will be made available for alternative and varied uses by public and private groups on a temporary basis. These facilities will remain Commission property and may be considered for future public park use.

#### **Department of Parks Vision and Values**

*VISION – An enjoyable, accessible, safe, and green park system that promotes a strong sense of community through shared spaces and experiences and is treasured by the people it serves.*

*MISSION – To protect and interpret our valuable natural and cultural resources, balance the demand for recreation with the need for conservation, offer a variety of enjoyable recreational activities, and provide clean, safe, and accessible leisure-time activities.*

**Partners vs. Tenants – Preliminary Policy Theme**

Our current leases range a spectrum from collection of fair market value to zero rent plus a commitment of park fund resources. Staff proposes development of a new policy that differentiates fair market value relationships from subsidized relationships.

The following matrix demonstrates preliminary thinking on policy development:

<u>Relevance to Parks Mission</u>	<u>3<sup>rd</sup> Party</u>	<u>Rent</u>
Advances / Realizes mission	Partner	Fully or Partially forgiven
Does not advance mission, but has public benefit and is not in conflict with mission	Tenant	Fair Market Value <sup>2</sup>

**Proposed Definitions**

3<sup>rd</sup> Party – an entity other than the Department or general public that is granted limited rights to the use of public parkland through an agreement. The 3<sup>rd</sup> party may be a partner, a tenant, or a permit holder.

Partner – an entity that provides resources to deliver facilities, programs, or services on parkland that advance or realize the mission of the Department of Parks.

Tenant – an entity that provides resources to deliver facilities, programs, or services on parkland that have public benefit and are not in conflict with the mission of the Department of Parks.

Permit Holder – an entity that is granted short-term temporary rights to public parkland for a fee.

Examples of Partners - Maryland Soccer Foundation, Meadowbrook Stables Associates

Examples of Tenants – Park Rental House Occupants, Telecommunication Companies

Examples of Permittees – Park Activity Building Users, Athletic Field Users

**Challenges & Opportunities**

Lease Terms - Leases are contractual agreements. Several existing leases are for terms of up to 40 years, so revision of all lease terms per a new policy will take a long time.

Historic Designation – The Department has a large inventory of historic buildings in disrepair that are in need of stabilization, restoration, and interpretive programming. Historic preservation and interpretation is a core function of the Department, but we will not have adequate tax-supported resources to preserve the majority of the building in our current inventory, not to mention any additional ones we may acquire. We often look to partnerships to bring resources to those buildings, but finding a 3<sup>rd</sup> party with adequate resources to stabilize, restore, and program the buildings is rare occurrence.

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<sup>2</sup> Entity may be subsidized by another governmental agency with common mission

3<sup>rd</sup> Party's Resources - We have historically entered into agreements with entities that have good intentions, but little resources. The perfect lease will not benefit the department if the tenant has no dependable revenue stream.

Policing / Security & Stewardship— Parks cannot abdicate its responsibility for policing and securing parkland through a lease. Some of our most intensive park police efforts occur at leases facilities. We do not recoup costs for policing through rent. Also, Parks can never abdicate its stewardship responsibility for parkland through a 3<sup>rd</sup> party agreement. If there is any violation of law or aggravation of the public, Parks must be accountable and responsive. Most of our environmental compliance issues over the years have stemmed from leased facilities.

Maintenance & Lifecycle Replacement Responsibilities – In some leases, maintenance and lifecycle replacement responsibilities are placed with the tenant. In the past, we often discovered that routine maintenance was not performed leading to early deterioration of facilities, and /or that reserves were not built for lifecycle replacement.

Overhead / Cost – There is significant overhead in soliciting, reviewing, negotiating, and managing leases. These costs have rarely been recouped in the rent. The review and management of large partnerships is time consuming and takes staff away from other work programs.

Inspection – Regular inspection of leased premises is critical to assure compliance with lease terms. We have not, and do not have the resources for an adequate inspection program.

Quid Pro Quo – There are several instances where various Departments of the County Government occupy park buildings under terms requiring less than fair market rent. In renegotiating these leases, we need to be mindful that Parks occupies several County owned buildings at less than fair market rent. There are a number of instances where the County and Commission support each other

Quid Pro Quo Examples

- Great and Small
- BCC Nursery
- Waters House
- Trolley Museum
- Adventure Nature Center
- Agricultural History Farm Park
- Grazing Leases and Hay Permits
- Cell Towers
- Radio Towers
- Parking Lots



Park Foundation – The reconstitution of the Montgomery Park Foundation is an excellent opportunity to bring new resources to those facilities that have commonly been leased.

Formation of Facilities Management Division – In 2009, Parks formed a new Division (the Facility Management Division) in part in recognition of the enormous challenges we have with 3<sup>rd</sup> party arrangements.

### **Conclusion**

- The Commission manages many arrangements across the landscape with little to no standardization regarding terms and fee structures.
- In many instances the Commission subsidizes the operational costs of various entities limiting our ability to infuse dollars into deferred maintenance and improvements.
- A clear definition of what constitutes a Partnership vs. a Tenant needs to be determined and rate structures established for new and renewed entities.
- A standardized lease with a rate structure must be established to demonstrate fairness with all tenants and partners present and in the future.
- Based on the feedback from the Planning Board, staff will return with a draft policy on 3<sup>rd</sup> party agreements.