

MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

Montgomery County Department of Parks

**Operations/Facilities Management Division
and
Administration/Park Development Division**

**Lease Abatements
Report Number: MC-003-2021**

June 4, 2021

Distribution:

Executive Committee

Elizabeth Hewlett
Casey Anderson
Asuntha Chiang-Smith

Audit Committee

Dorothy Bailey
Partap Verma
Lori Depies
Benjamin Williams

Maryland-National Capital Park and Planning Commission

Megan Chung
Miti Figueredo
Adrian Gardner
John Nissel
Jim Poore
Mike Riley
Joseph Zimmerman

Office of the Inspector General

Renee Kenney
Robert Feeley

Maryland-National Capital Park and Planning Commission
Office of the Inspector General
7833 Walker Drive, Suite 425
Greenbelt, MD 20770

Montgomery County Department of Parks
Operations/Facilities Management Division
and
Administration/Park Development Division

Lease Abatements
Audit Report

Table of Contents

I. EXECUTIVE SUMMARY

A. Background..... 1
B. Objective, Scope and Methodology of the Audit..... 3
C. Major Audit Concerns..... 4
D. Overall Conclusions..... 5

II. DETAILED COMMENTARY AND RECOMMENDATIONS

1. Tenants/Partners Failed to Provide Required Documentation..... 6
2. Georgetown University was not Sent an Acknowledgement Letter..... 8
3. Confirm Adequacy of Reserve Funds..... 9

EXHIBIT
Tenants/Partners Lease Abatements..... 10

I. EXECUTIVE SUMMARY

A. Background

On March 13, 2020 the Maryland-National Capital Park and Planning Commission (M-NCPPC or Commission), Montgomery County Department of Parks (Parks) sent tenants and partners a notice of their decision to close public facing facilities and urged them to follow suit on or before March 16, 2020 for the purpose of preventing the spread of COVID-19. The notice was followed by Maryland's Stay-at-Home Order issued on March 30, 2020. In April 2020, various government agencies initiated loan and grant opportunities for small businesses affected by the COVID-19 closures.

Parks tenants and partners engaged in non-essential public facing businesses shuttered their operations in response to Park's recommendation and the State Order. Shortly after the closure decision, tenants and partners began assessing the impact to their business and looked to Parks for relief. Subsequently, Parks received numerous requests for lease abatements shortly after the March closure decision.

Early in pandemic, Parks management identified an internal process allowing tenants/partners to request **monthly** lease abatements. Per Parks management, due to the swiftness and severity of the pandemic, the process was identified in a very short period of time to meet the needs of their tenants/partners. The goal of the abatement program was to assist tenants experiencing a loss of revenue and avoid potential closure. Approved abatements were covered out of an Enterprise fund (i.e. not supported by tax dollars).

Parks sent response letters to each of the requesters acknowledging receipt of their request and urged them to apply for government loan and grant assistance while their requests were being reviewed.

Parks made the following objective considerations in assessing whether to grant a lease abatement:

- Loss of facility (partial or full loss);
- Primary use of facility (public facing business vs. office/administrative);
- Business enterprise (e.g., school, daycare, dance instruction, equestrian center, etc.);
- Ability to conduct the bulk of business remotely without a substantial loss of revenue;
- Loss of revenue due to loss of use (partial loss or total loss).

Those tenants and partners not considered for a lease abatement fell under the following:

- Did not request a waiver;
- Did not suffer a loss of use of the facility;
- Could reasonably conduct business remotely without a substantial loss of revenue, such as use of the facility is for office/administrative purposes.

Parks two divisions, Facility Management and Parks Development worked collaboratively, under the direction of the Deputy Directors and Director, to ensure abatement requests were reviewed, approved, and processed within established requirements.

The Real Estate Management Section¹ serves as the liaison with Parks Public-Private Partnerships. They are responsible for managing non-lease administration matters such as development plans. They assisted in the beginning of the pandemic to communicate to partners the information about facility closures.

The Facilities Management Division² took the lead in managing and processing of the requests for lease abatements. They are responsible for the administration of tenant and partner leases including collection of rent, enforcement of lease provisions and maintenance regarding the properties.

Upon receipt of a lease abatement request, Parks followed internal agreed upon procedures to assess the request. As part of this process, Parks issued acknowledgement letters to requesters to obtain additional information such as what type and amount of government assistance was being applied for and what amounts were approved and received.

Eighteen (18) tenants received abatements as of March 12, 2021 (end of audit testing period). During that time frame, 12 rounds of lease abatements in the amount of \$271,370³ were approved for Parks tenants/partners.⁴ (Detailed in **Exhibit A**).

Note: This audit was recommended by the Deputy Director of Operations as a replacement to a review of an Enterprise facility. Enterprise facilities were closed during the pandemic, limiting the benefit of a review. As the abatement program was a new program to Parks, Parks management welcomed review and comment by the Office of the Inspector General.

¹ Montgomery County Department of Parks, Administration

² Montgomery County Department of Parks, Operations

³ This amount does NOT include waived replenishment of Commission funds (See Audit Recommendation #3)

⁴ Milligan Enterprises, Inc is not included in the scope of this audit. Rental income is shared between Parks and Prince George's County Department of Parks and Recreation (DPR) (66.6%/33.4% respectfully) DPR is responsible for administering approved lease abatement.

B. Objective, Scope and Methodology of the Audit

Objective

The purpose of the audit was to determine if lease abatements were properly reviewed and approved by Parks management. In addition, audit testing was designed to help ensure all lease abatements complied with the terms of the forbearance agreement.

In addition, the audit scope was designed to identify possible fraud, waste, or abuse within the process(es) being audited.

Scope

The scope of the audit included, but was not limited to, the following audit procedures:

- Reviewed internal procedures for lease abatements;
- Reviewed internal communications and approval documents from Parks senior management;
- Reviewed letters of request for lease abatements to ensure all required documentation was provided;
- Reviewed terms and conditions detailed in the acknowledgement letters;
- Reviewed terms and conditions included in forbearance agreements and addendums; and
- Reviewed correspondence between requestors and Parks throughout the forbearance period.

The audit covered the period from January 1, 2020 through May 31, 2021. Specific audit testing of abatements ended March 12, 2021.

Methodology of the Audit

Inquiry, observation, data analysis, review of legal guidance and virtual meetings were conducted to complete the audit objectives.

The audit was conducted in accordance with the *U.S. Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the established audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

C. Major Audit Concerns

The results of our evaluation and testing procedures indicated no major audit concerns.

D. Overall Conclusions

The results of our evaluation and testing procedures indicate deficiencies in the design or operation of internal controls for administering lease abatements as noted in this report.

We believe all weaknesses identified and communicated are correctable and that management's responses to all recommendations satisfactorily address the concerns. It is the responsibility of management to weigh possible additional costs of implementing our recommendations in terms of benefits to be derived and the relative risks involved.

We wish to express our appreciation to the Montgomery County Department of Parks, Operations, Facilities Management Division and Administration, Park Development Division management and staff for their cooperation and courtesies extended during the course of our review.



Robert Feeley, CFE, CAA, CGFM, CICA
Assistant Inspector General



Renee M. Kenney, CPA, CIG, CIA, CISA,
Inspector General

June 4, 2021

Conclusion Definitions

Satisfactory	No major weaknesses were identified in the design or operation of internal control procedures.
Deficiency	A deficiency in the design or operation of an internal control procedure(s) that could adversely affect an operating unit's ability to safeguard assets, comply with laws and regulations, and ensure transactions are properly executed and recorded on a timely basis.
Significant Deficiency	A deficiency in the design or operation of an internal control procedure(s) which adversely affects an operating unit's ability to safeguard assets, comply with laws and regulations, and ensure transactions are properly executed and reported. This deficiency is less severe than a material weakness, yet important enough to merit attention by management.
Material Weakness	A deficiency in the design or operation of an internal control procedure(s) which may result in a material misstatement of the Commission's financial statements or material impact to the Commission.

II. DETAILED COMMENTARY AND RECOMMENDATIONS

1. Tenants/Partners Failed to Provide Required Documentation

Issue: Parks management did not follow-up with tenants/partners granted lease abatements to determine if they had business interruption insurance and/or the received additional governmental funding as a result of the pandemic.

Parks approved lease abatements for 18 tenants/partners (**Exhibit A**). All tenants/partners that requested relief were approved for an abatement, however, not all received the exact amount of their request.

Parks sent an acknowledgement letter (letter) to each of the tenants/partners upon the receipt of their request. The letter requested additional information to assist Parks in considering their request. Tenants were asked to provide a description of the disruptions occurring to their business as well as answers to the following questions.

- Do you have business interruption insurance?
- Did you apply for any type of government assistance, if so what kind?
- What response did you receive on your request for government assistance?

Fourteen (14) out of 18 (77.8%) of the tenants/partners did not provide a complete response to one or more of the questions and one did not receive an acknowledgement letter (see Finding #2 below). Three (3) tenants/partners did not apply for any type of government assistance.

When we asked Parks why follow-up with tenants/partners was not performed to obtain answers or additional information related to the questions above, they stated, during the initial drafting of the program, they did not have a full understanding of the impact of possible government assistance. They further explained, their main focus was keeping their tenants/partners viable/open. In addition, we were told that at the time, their understanding of the purpose for small businesses obtaining government assistance (Federal, State or Local) loans/grants was to be used only for payroll and operational expenses.

Criteria/Risk: Internal procedures clearly required Parks to use the responses obtained from tenants/partners concerning stimulus funds received through other government programs be reviewed and considered before approving a lease abatement. In addition, internal procedures required submission of tenant/partner income statements or certified financial statements.

Each signed Forbearance Agreement contained a section entitled Government Relief, which stated “If Tenant applies for any governmental assistance, whether as a grant, tax credit, or Small Business Administration loan, the Tenant shall promptly notify the Commission of such application and provide a copy of the same to the Commission; and provide copies of any Government Relief responses received by the Tenant from applicable government agencies.”

Recommendation: As detailed above, tenants/partners were provided abatements without following internal protocols. We recommend Parks senior management in consultation with the Office of the General Counsel (OGC) determine next steps (e.g. reassess approved abatements and require recourse or provide approved waiver to internal protocols).

Issue Risk: High

Management Response: Per the recommendation, senior management is scheduling a meeting to determine any next steps, if any, might be necessary. However, given that there is no precedent for managing the impact of a global Pandemic, staff and management worked together closely to efficiently administer the volume and variety of issues this Department faced. The system that was designed to manage lease abatements was implemented quickly to allow only month-by-month requests, so that they could be evaluated under a 'here and now' lens taking into consideration the progression of the pandemic and its effects. For example, a request submitted in May 2020 was reviewed against full shutdown mandates whereas requests submitted in August 2020 were reviewed under partial to full reopening conditions. All reviews and decisions weighed the same standard conditions (included in the Director memorandums each month), and also considered the effects of the partial or full closures on specific businesses. The data shows now that the indoor, close contact businesses (e.g., dance studios operating in small spaces) required the most forbearance. While the Department experienced revenue losses of over \$250K, the losses were ultimately contained through this approach. The Department made a business decision to not pursue any potential government support these businesses may have received as the funding was largely to support revenue losses and payroll.

Expected Completion Date: July 2021

Follow-Up Date: August 2021

2. Georgetown University was not Sent an Acknowledgement Letter

Issue: A credit was provided to Georgetown University without adherence to Commission lease abatement protocols. A lease abatement was approved, without the issuance of an acknowledgement letter.

The university has a yearly license agreement with the Commission for use of Shirley Povich baseball field located in Cabin John Regional Park. In early 2020 (pre-pandemic), the university made their yearly payment in the amount of \$77,898 for use of the field throughout 2020. In March of 2020, the university inquired about a refund or credit of their payment because they had cancelled their baseball season due to Covid-19. A Forbearance Agreement was signed on June 17, 2020 issuing the university a credit in the amount of \$72,673. Payment of \$5,225 was retained due to the university's usage of the field and other costs.

The Commission's acknowledgement letter is issued to ensure the tenant/partner meets specific requirements prior to abatement, (see recommendation #1). One of the requirements is to disclose any external government funding relief received as a result of the pandemic.

Criteria/Risk: The signed Forbearance Agreement contained the following language "If Tenant applies for any governmental assistance, whether as a grant, tax credit, or Small Business Administration loan, the Tenant shall promptly notify the Commission of such application and provide a copy of the same to the Commission; and provide copies of any Government Relief responses received by the Tenant from applicable government agencies."

Recommendation: Georgetown University was provided an abatement/credit without following internal protocols. We recommend Parks senior management in consultation with the OGC determine next steps (e.g. reassess approved abatements and require recourse or provide approved waiver to internal protocols).

Issue Risk: Low

Management Response: Per the recommendation, senior management is scheduling a meeting to determine any next steps, if any, that might be necessary. The university was credited against a previous license agreement payment as remedy to an advance payment as they were unable to use the field. The licensee did not report any grants, tax credits or SBA loans and it is assumed that none which would have covered this license agreement payment were received. A business decision was made to not pursue an investigation of relief received by the university.

Expected Completion Date: July 2021

Follow-Up Date: August 2021

3. Confirm Adequacy of Reserve Funds

Issue: On June 28, 1999, the Maryland Soccer Foundation Inc. (Foundation) entered into an agreement with the Commission to lease 162 acres of land (referred to as the Maryland SoccerPlex) in South Germantown Recreational Park. Base annual rent is \$1 per year. Under the lease, the Foundation is required to fund a reserve for improvements, replacements, and contingencies as deemed prudent by the Foundation. The Commission has identified three funds, capital, operations, and turf.

In 2020, as a result of the pandemic, the Foundation inquired about suspension of payments into the three funds. On November 5, 2020 a Forbearance Agreement was signed regarding the operating reserve fund only, however no dollar amount was attributed to the Forbearance Agreement. Historically, the Foundation determines the reserve funding amount based on their operational needs. Annual financial statements, which disclose reserve funding amounts, are sent to the Commission's Secretary-Treasurer for review.

OIG was unable to identify any replenishment payments on the Foundations December 31, 2020 audited financial statements. In addition, per the financials, it appears the total reserve decreased from \$750,000 to \$300,000.⁵

Criteria/Risk: Adequate reserve funding protects the Foundation and Commission against unforeseen emergencies. Inadequate reserves may impact future operations.

Recommendation: Based on communications with Parks, oversight of the lease, specifically funding of the required reserves should be strengthened. Management should maintain a schedule of actual and planned reserve payments.

Issue Risk: Low

Management Response: As recommended, the Commission will continue to monitor payments to these accounts and insure they are adequately funded per the agreement moving forward.

Expected Completion Date: July 2021

Follow-Up Date: August 2021

⁵ Per executed lease agreement, operating reserve fund should be fully funded (\$450,000) by 2006. Per the Foundation's December 31, 2020 audited financial statements, as of December 31, 2020 and 2019, the reserve balances totaled \$300,000 and \$750,000 respectively.

**EXHIBIT A
APPROVED LEASE ABATEMENTS**

Tenant/Partner	Forbearance Agreement Amount	Tenant/Partner Provided Notification of Application for Government Assistance	Tenant/Partner Provided Notification of Being Approved for Government Assistance	Tenant/Partner Provided Copies of Government Assistance Documents	Tenant/Partner Provided Response if they had Business Interruption Insurance
Arco Iris Somos, LLC	\$2,261.74	Yes	No	No	No response
Built by Beavers, LLC	11,306.48	Yes	Yes	No	No response
Capital Ballroom, LLC	48,645.80	Yes	No	No	No response
Chabad of Silver Spring, Inc.	2,003.12	No	No	No	No response
Chevy Chase Reggio, LLC	2,492.57	No	No	No	No response
Global Mission Church	1,355.37	Yes	Did not apply for any	Did not apply for any	Responded
Great and Small, Inc.	1,375.00	Yes	No	No	No response
Jack Schore Tennis, LLC	69,314.65	No	No	No	Responded
Meadowbrook Foundation, Inc.	2,386.73	Yes	Yes	No	No response
Miracle League of Montgomery County, MD, Inc.	3,600.00	Yes	Did not apply for any	Did not apply for any	Responded
Paula Baker t/a KEO Designs	2,310.00	Yes	Yes	No	Responded
Positive Outcome Mentoring and Dance, Inc.	29,575.15	Yes	Yes	Yes	No response
Potomac Horse Center, Inc.	11,070.83	Yes	Yes	No	No response
Rock Creek Dance Academy, LLC	3,582.29	Yes	Yes	No	Responded

**EXHIBIT A
APROVED LEASEABATEMENTS**

Westmoreland Citizens Association	755.28	Yes	Did not apply for any	Did not apply for any	(See Note 1 below)
Wheaton Park Stables, Inc.	6,661.89	Yes	Yes	Yes	No response
Georgetown University	72,673.00				See Finding #2
Maryland Soccer Foundation, Inc.		Yes	Yes	No	See Finding #3 Responded
Total	\$271,369.90				

Note 1. Apparently because of an oversight, the Acknowledgement letter sent to Westmoreland Citizens Association did not ask the question of whether they had business interruption insurance.