

**Parks' Agreements Provide Enhanced
Opportunities to Residents and
Major Revenues are Received but more
Attention to Details is Required**

June 2019

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Audit Services Division**

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To the Honorable Chairman
of the Board of Supervisors
of the County of Milwaukee

June 19, 2019

We have completed an audit, *Parks Agreements Provide Enhanced Opportunities to Residents and Major Revenues are Received but more Attention to Details is Required*.

A response from Parks is attached as **Exhibit 3**.

We greatly appreciated the cooperation extended by management and staff of Parks and the vendors we selected for our review, especially Zilli Hospitality Group, during the course of this audit.

Our report reviewed Parks lease and concession agreements with private companies who provide revenue generating business activities. We did this by selecting six vendors and their agreements for a detailed review to draw conclusions on what is working well and what needs improvement. We found that executing these agreements allows Parks to provide services in the community and Parks receives the primary revenue from the contracts. Parks should apply additional attention to the details of the agreements including: requesting and reviewing financial documents to confirm proper payments, documenting modifications to agreements that are entered into, and work with the Department of Administrative Services – Risk Management Division to streamline the Certificate of Insurance process. We included a section that reviewed the agreement Parks has with Zilli Hospitality Group at Boerner Botanical Gardens. Additional attention to this agreement is required as we found issues with profit sharing revenue payments along with a number of practices that did not have clarification in the contract. These practices included offering complimentary items and charging a coordination fee on room rentals. We made 15 recommendations that we believe will help Parks improve its lease and concession agreements and monitoring.

Please refer this report to the Committee on Finance and Audit.

Jennifer L. Folliard
Director of Audits

JLF/mrp

Attachment

cc: Scott B. Manske, CPA, Milwaukee County Comptroller
Milwaukee County Board of Supervisors
Chris Abele, Milwaukee County Executive
Guy Smith, Director, Milwaukee County Parks
Teig Whaley-Smith, Director, Milwaukee County Department of Administrative Services
Kelly Bablitch, Chief of Staff, Milwaukee County Board Staff
Steve Cady, Research & Policy Director, Office of the Comptroller
Janelle Jenson, Legislative Services Division Manager, Office of the Milwaukee County Clerk

ASD

HIGHLIGHTS

Why We Did This Audit

The Milwaukee County Board of Supervisors, adopted a resolution requesting that the Director of Audits conduct an audit of the Department of Parks, Recreation and Culture's lease and concessions agreements with private companies who provide revenue generating business activities.

What We Recommended

ASD made 15 recommendations that, if implemented, will improve the lease and concession agreement function at the Parks. Parks accepted all of our recommendations. Key recommendations include:

- Establish policy and procedures for handling outside agreements.
- Conduct an annual survey of vendor provided services and maintain a complaint log.
- Establish a policy and procedures to execute changes via amendments to agreements or letters of agreement.
- Establish a method to monitor financial terms of agreements and require submittal of all necessary financial documents.
- Work with Risk Management to devise a system to assist the Contracts Manager's review of Certificates of Insurance.
- Establish a system to conduct spot checks of vendors' agreement requirements.
- Establish a system to ensure invoices match agreement terms and work with Community Business Development Partners on Targeted Business Enterprise participation.
- Work with Zilli's to reconcile invoices and commission schedule and recoup funds as necessary.
- Execute a letter of understanding regarding complimentary food and beverage items with Zilli's and recoup revenue as appropriate.
- Execute a letter of understanding on the ability of Zilli's to offer complimentary room rentals.
- Request documentation from Zilli's when a credit for room rental is issued.
- Provide instructions to Zilli's on documentation of sales tax payments if Zilli's will continue to pay on behalf of the County.
- Work with Zilli's to determine chair rental revenues from 2016 to 2018 and recoup funds as necessary and establish a policy and procedures to track use of chairs for future rentals.
- Execute a letter of understanding on the ability of Zilli's to charge a coordination fee for events held at Boerner.
- Remit to Zilli's the overcharge for phone services.

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June 2019

Parks agreements provide enhanced opportunities to residents and major revenues are received but more attention to details is required

BACKGROUND

The Department of Parks, Recreation and Culture (Parks) strives to create and sustain quality parks, facilities and services which offer citizens of Milwaukee County opportunities for recreation, improvement of their physical and mental well-being, and enhancement of their quality of life. Parks oversees the operation and management of a county park system with 15,325 acres, 158 parks, 11 parkways and a 210-mile trail system. The 2019 Adopted Budget for the Parks Department included \$36.9 million in expenditures, \$21.0 million in revenues which results in tax levy funding of \$15.9 million. Parks is budgeted to employ 240 full time employees along with funding for seasonal, hourly and pool positions which are the equivalent of 229 full time positions in 2019 but also has over 300 agreements with outside entities to fulfill its mission.

OVERALL OBJECTIVE

The objective of the audit was to review Parks lease and concessions agreements with private companies who provide revenue generating business activities. We did this by selecting six vendors and their agreements for a detailed review in order to draw conclusions on what is working well and what needs improvement.

WHAT WE FOUND

- Parks was unable to provide an updated master list of all of its contracts, agreements, leases and other formal documents, an estimate of over 300 was provided.
- Of the six vendors and their agreements that we reviewed, we found that Parks collected the primary revenue source owed in the agreements, however, some payments were based on vendors' calculations and were not verified.
- By executing these agreements, Parks is able to provide additional services to the community. Adding an evaluation component such as a survey would provide additional information to Parks on the quality of services provided by vendors.
- During our review we noted a practice of Parks entering into verbal agreements or modifications to the agreements without official documentation.
- The Certificate of Insurance system appears to be flawed and in need of revision and clarification for Parks to perform their required verification function.
- There is no spot checking of vendor required permits and licenses. Allowable onsite inspections or required cleanings are also not occurring.
- Our review of Zilli's invoices found gross sales in an amount which should have triggered an annual commission payment. In April of 2019 Parks invoiced Zilli's for the outstanding amounts and Zilli's paid in May of 2019. In addition, Zilli's provided complimentary food and beverage items but did not include the items in its commission reports. Complimentary room rentals were also noted. The agreement does not clearly address how to handle complimentary items.
- Parks was unable to provide documentation that room rental credits issued by Zilli's were accurate and in compliance with Boerner's room cancellation policies.
- Currently, Zilli's submits sales tax directly to the State. Parks is not currently monitoring to ensure the County's tax liability has been fulfilled.
- Chair rental revenue is not being received in full by Parks when chair rental applications have been submitted by Zilli's to Parks.
- Other Zilli's agreement issues include a coordination fee charged by Zilli's and phone utility charges.

Starbucks -
Red Arrow
Park



Northpoint -
Bradford
Beach



Hands on
Science -
Veterans
Park



Riverwalk -
Pere
Marquette
Park



Bradford View
- Bradford
Beach



Zilli's -
Boerner
Botanical
Gardens



Parks' agreements provide enhanced opportunities to residents and major revenues are received but more attention to details is required.

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Summary

The Department of Parks, Recreation and Culture (Parks) strives to create and sustain quality parks, facilities and services which offer citizens of Milwaukee County opportunities for recreation, improvement of their physical and mental well-being, and enhancement of their quality of life. Parks oversees the operation and management of a county park system with 15,325 acres, 158 parks, 11 parkways and a 210-mile trail system. The 2019 Adopted Budget for the Parks Department included \$36.9 million in expenditures, \$21.0 million in revenues which results in tax levy funding of \$15.9 million. Parks is budgeted to employ 240 full time employees along with funding for seasonal, hourly and pool positions which are the equivalent of 229 full time positions in 2019 but also has over 300 agreements with outside entities to fulfill its mission.

Parks was unable to provide an updated master list of all of its contracts, agreements, leases and other formal documents, an estimate of over 300 was provided.

We requested as a part of our audit, an updated master list of all agreements, lease agreements and other formal documents. Parks was unable to provide a master list although an estimate of over 300 was given. This is due, in part, to a lack of management software. In addition, Parks does not have a policy and procedure manual for contract monitoring. Parks staff has experienced turnover in key positions since 2014. We conducted an audit in 2006 of Parks facilities leases and found similar issues.

Of the six vendors and their agreements that we reviewed, we found Parks collected the primary revenue source owed in the agreements in full and in a timely manner.

We selected six vendors for review and found that Parks received the primary revenue source from each vendor. All but one of the vendors we reviewed had additional financial requirements included in their agreements for items such as reimbursement of utilities, revenue sharing, capital improvements and maintenance funds.

By executing these agreements, Parks is able to provide additional services to the community. Adding an evaluation component such as a survey would provide additional information to Parks on the quality of services provided by vendors.

Prior to executing these agreements, the building at Bradford View and Northpoint were vacant or offered minimal services. The agreements entered into by Parks are providing enhanced services to the community and while Parks currently conducts surveys of customer satisfaction for rentals,

special events and golf, they do not currently include the vendors we reviewed. Adding these vendors to the survey could provide additional information to Parks.

During our review we noted a practice of Parks entering into verbal agreements or modifications to the agreements without official documentation.

The agreement with Bradford View called for the establishment of a maintenance fund in 2012 with a contribution of 1% of gross sales with the fund being used for the purpose of maintaining and enhancing the building, the beach, the parking lot or other areas. We found no maintenance fund was ever established. Our review found that payments of \$40,135 should have been paid. Current Parks staff stated that it was mutually agreed to by the prior Parks Administration that Bradford View would provide various day to day maintenance instead of the monetary contribution. No documentation of what items were performed nor the estimated cost to ensure that Parks received a comparable amount of services equal to the value of the required maintenance fund were provided by Parks. The Northpoint agreement had a similar clause. We found that the maintenance fund was created and funded according to the terms of the agreement. Both Bradford View and Northpoint terminated their agreements but left equipment on site for possible sale to the next vendor. There was no formal agreement executed to facilitate this process and establish ownership and responsibility for the equipment. We did find letters signed by Northpoint and Parks from prior years that formalized minor changes to the agreements.

We found that Parks had language in agreements requiring submittal of documents that would have assisted in contract monitoring but did not obtain the documents from vendors.

Of the six vendors, two had primary payments based upon a percentage of commissions. We found that Parks did not obtain documentation that would allow for an independent verification of the commission amounts submitted to them by the vendors. Parks relied upon information submitted from vendors and did not conduct an independent review to verify the accuracy of the information submitted.

The Certificate of Insurance system appears to be flawed and in need of revision and clarification for Parks to perform their required verification function.

As a part of the execution of a contract, vendors are required to submit Certificates of Insurance (COI) to the Department of Administrative Services – Risk Management Division. The agreements included language establishing minimum contract amounts. In subsequent years, Parks is responsible for the annual collection of COI. Parks was able to provide copies of the COI for only two vendors. We contacted other vendors and received additional COI. Our review found that COI did not match the

levels of coverage amounts listed in the agreement. DAS-Risk Management indicated this can occur when they determine that the coverage amounts on the COI are adequate but an adjustment may not be made to the contract. The amounts in the contract are the minimum requirements. This results in a difficulty for Parks to perform subsequent years' verifications.

There is no spot checking of vendor required permits and licenses. Allowable onsite inspections of required cleanings are not occurring.

Some of the agreements call for vendors to obtain permits and licenses. Parks does not conduct any spot checks to verify if vendors are obtaining the proper permits and licenses. In addition, the Northpoint and Zilli's agreements allow for inspections of the grease cleanings. Parks could not provide documentation that any inspections occurred.

Additional issues found in the monitoring of agreements should be attended to by Parks.

We found that invoices sent to Starbucks did not reflect the receipt of prior payments in the balanced owed section. Some agreements contained language regarding Targeted Business Enterprise participation. We contacted the Department of Administrative Services – Community Business Development Partners who did not have any information on file for the agreements.

Our review of Zilli's invoices found gross sales in an amount which should have triggered an annual commission payment. In April of 2019, Parks did invoice Zilli's for the owed commission amounts of \$1,224 in 2016 and \$5,979 in 2017. Zilli's paid Parks for these items in May of 2019.

We reviewed the data from the Zilli Commission and Room Rental Schedules and found that in 2016 and 2017, Zilli's gross receipts to Parks exceeded the \$500,001 threshold which should have resulted in an additional commission payment of \$1,224 in 2016 and \$5,979 in 2017. In April of 2019, Parks did invoice Zilli's for the owed commission amounts of \$1,224 in 2016 and \$5,979 in 2017. Zilli's paid Parks for these items in May of 2019.

Zilli's provided complimentary food and beverage items but did not include the items in its commission reports. The agreement does not clearly address how to handle complimentary food and beverage items.

We conducted a review of Zilli's invoices to attempt to determine if there was a potential payment owed to Parks for the complimentary items. The agreement does not clearly define whether complimentary items are allowed to be offered to Zilli's customers without being included in the gross receipts. We calculated the additional commission that could be owed to Parks if they were entitled

to the 11% commission on complimentary food and beverage items offered by Zilli's. For 2016 invoices listed \$41,895 in complimentary food and beverages which would result in a possible commission amount of \$4,608 at 11%. For 2017, invoices listed \$42,631 in complimentary food and beverages which would result in a possible commission amount of \$4,689 at 11%. In 2018, the complimentary food and beverage items would have increased total receipts over the \$500,001 threshold in the agreement for additional commission payments. The complimentary food and beverages plus total food and beverage is \$526,766 for 2018 resulting in a possible commission payment of \$2,944 at 11%.

Complimentary room rentals on invoices raise a concern that Parks is not receiving all fees from Boerner Botanical Garden rentals.

In addition to the complimentary food and beverage items, we noted at times complimentary room rentals were listed on the invoices. Parks management indicated that the Garden Room was considered a complimentary item with rentals at Boerner. However, we found additional rooms being listed as complimentary on the Zilli's invoices which would have a direct impact on revenue to the Parks since the entire room rental fee should be remitted to Parks. It was unclear from our interviews and the invoices whether Parks had authorized the complimentary room rentals.

Parks was unable to provide documentation that room rental credits issued by Zilli's were accurate and in compliance with Boerner's room cancellation policies.

In September of 2017, \$6,317 in room rental credits with a stated reason of "overpayment" was listed on the Commission and Room Rental Schedule submitted by Zilli's to Parks. We conducted a review of the invoices for the events with credits and were unable to determine from the invoices why a credit was issued. Parks did not have documentation for the credits or an explanation as to why they were issued. During the period of our review a total of \$8,620 in credits in 2016, \$11,536 in 2017 and \$9,190 in 2018 were listed on the Commission and Room Rental Schedules submitted by Zilli's.

Room rentals at Boerner Botanical Gardens are handled by Zilli's including the collection of the fee and applicable sales tax. While the rental fee is paid to Parks, Zilli's submits the sales tax directly to the State. Parks is not currently monitoring to ensure the County's tax liability has been fulfilled.

Parks is required to pay sales tax on some room rentals per the State of Wisconsin. For room rentals, the applicable sales tax rate for Parks is 5.6%. The agreement between Parks and Zilli's does not contain language that specifies which entity is responsible for the payment of sales tax. The current practice is for Zilli's to collect both the room rental fee and the 5.6% sales tax. Zilli's then pays Parks

for the room rental and remits to the State the sales tax as a part of the company's overall sales tax payment. Parks could not provide any documentation that sales taxes had been paid by Zilli's. We conducted a review of Zilli's July and August 2018 sales tax returns, and found that sales tax is being reported to the State.

Chair rental revenue is not being received in full by Parks when chair rental applications have been submitted by Zilli's to Parks.

During our review of the invoices from Zilli's for the years 2016 to 2018 we noted an issue with the rental of chairs. Clients have an option of renting chairs either from Parks or directly from Zilli's. Both entities charge a \$3 per chair fee. It is unclear if Parks is receiving the appropriate payment from Zilli's when the chairs that are owned by Parks are used.

We received copies of chair rental applications on file at Boerner from Parks staff. We then compared the chair rental applications to Zilli's invoices. We found, in 2016, that payments for chairs of \$6,025 were invoiced by Zilli's with a payment to Parks for chairs of \$1,580, resulting in a remaining \$4,668 in chair rental fees retained by Zilli's. It is unclear from the invoice which chairs were used at the events that were invoiced. We conducted a similar review for 2017 and 2018 chair rental applications and invoices and found in 2017 \$7,438 in chairs fees with a Parks rental application were not received by Parks and in 2018 \$6,490 was not received.

Other Zilli's agreement issues include a coordination fee charged by Zilli's and phone utility charges.

During the course of our review of the invoices from Zilli's we noted that the invoices include a coordination fee that is listed on invoices at either 20% or 21%. The entire coordination fee is charged to the customer and retained by Zilli's. According to Zilli's this fee is used to cover additional costs incurred by them as they manage the event and is industry standard. The agreement with Zilli's does not address coordination fees. In an interview with current Parks staff they were unaware of the coordination fee being charged by Zilli's, however, there has been staffing turnover in Parks administration.

We conducted a review of the utilities payments by Zilli's. The agreement requires that Zilli's pay 33% of all facility gas, electric, sewer, water, fire protection and phone expenses. Zilli's paid in full the amount that Parks invoiced to them for utilities. It appeared during our review that Parks is

overcharging Zilli's for its portion of the phone expense. For 2018 we calculated the overcharge to Zilli's at \$397 due to charges not being at 33% for all accounts.

Background

The Department of Parks, Recreation and Culture (Parks) strives to create and sustain quality parks, facilities and services which offer citizens of Milwaukee County opportunities for recreation, improvement of their physical and mental well-being, and enhancement of their quality of life. Parks oversees the operation and management of a county park system with 15,325 acres, 158 parks, 11 parkways and a 210-mile trail system. The Parks system offers year-round activities including:

- natural areas
- Lake Michigan beaches
- marinas
- food and beverage locations
- community centers
- a nature center
- botanical gardens
- a horticultural conservatory

Recreational activities include:

- tennis courts
- basketball courts
- volleyball courts
- golf courses
- disc golf courses
- family aquatic centers
- indoor and outdoor deep well pools, wading pools, splash pads
- athletic fields
- boat rentals
- ice rinks
- dog parks
- playgrounds

The 2019 Adopted Budget for the Parks Department included \$36.9 million in expenditures, \$21.0 million in revenues which results in tax levy funding of \$15.9 million.

The current mission of the Parks is:

To steward a thriving park system that positively impacts every Milwaukee County Park visitor.

Parks is budgeted to employ 240 full time employees along with funding for seasonal, hourly and pool positions which are the equivalent of 229 full time positions in 2019 but also has over 300 agreements with outside entities to fulfill its mission. According to the 2019 Adopted Budget, Parks describes its contract management functions as, “oversees the development and compliance of Parks’ agreements, memos and letters of understanding, easements, management agreements, and other contractual documents. These tools outline the obligations and opportunities, are building blocks with external partners, and support public-private and intergovernmental relationships.”

Prior Audit Work

In 2006 we published an audit report titled, “An Audit of Milwaukee County Parks Facilities Leases.” Over the years prior to 2006, Parks had administered numerous agreements with third parties for both the commercial and non-commercial use of various Parks locations and facilities. In that audit

we selected for detailed review three highly visible locations at which Parks had revenue generating leases with commercial enterprises. Based on our review we identified the following items:

- No significant errors in calculating base rent or utility expense amounts
- Lax management oversight of Parks lease agreements that was attributed in part to fragmented and limited staff
- Failure to obtain County Board approval for agreements that altered previously-approved lease agreements
- There were issues with timeliness and accuracy of invoices
- Billing for certain costs and obtaining supporting documentation to verify the accuracy of payments based on gross sales was not occurring
- Parks did not obtain required certificates of insurance

In 2016 a Consolidated Facilities Planning Steering Committee was established in response to a 2013 consultant's report titled, "Comprehensive Facilities Plan Consulting Report." This report discussed the process to redesign and implement cultural change that is necessary to transform the County's existing real estate organization into a full spectrum real estate services provider. According to Parks staff, the centralization of all Milwaukee County leases within the Department of Administrative Services - Economic Development Division is being implemented for execution of all Parks leases as a result of the formation of this committee. However, the monitoring function currently remains with Parks.

Audit Approach for Current Review

The Milwaukee County Board of Supervisors adopted a resolution requesting that the Director of Audits conduct an audit of the Department of Parks, Recreation, and Culture's (Parks) lease and concessions agreements with private companies who provide revenue generating business activities.

The Audit Scope section provides a detailed description of the procedures used in the course of conducting this audit (See Exhibit 1). To address the concerns expressed in the authorizing resolution, we focused our review on six vendors and their agreements which were selected via a judgment sample from a Parks' provided list of agreements with a focus on the period of 2016 to 2018. We selected a variety of service area provisions. We used these sample agreements to make observations and recommendations on what is working well for Parks related to their leases and concession agreements and what areas could be improved.

We selected the following agreements for review:







Starbucks at Red Arrow Park – a year-round coffee shop located at a downtown park with an ice skating rink operated by Parks.		Riverwalk – an agreement for pontoon boat rentals at Pere Marquette Park during the summer season.	
Bartolotta's North Point – a burger and custard restaurant located at Bradford Beach at the lakefront during the summer season.		Bradford View – an agreement to provide sand volleyball, a tiki bar and a restaurant at Bradford Beach at the lakefront during the summer season.	
Hands-on Science – a boat rental agreement providing both scooters and jet skis at Veterans Park at the lakefront during the summer season.		Zilli's – an agreement for year-round catering services at Boerner Botanical Gardens in Whitnall Park.	

Table 1 contains a summary of major items within the agreements.

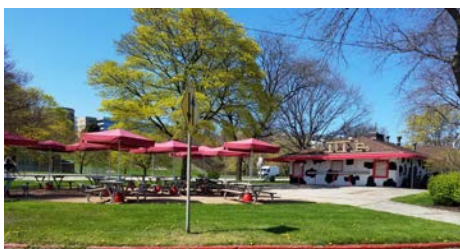
Table 1 Selected Agreements At-A-Glance						
Vendor	Starbucks	Bartolotta's North Point	Hands-on Science	Zilli's	Riverwalk	Bradford View
Location	Red Arrow Park	Bradford Beach	Veterans Park	Whitnall Park	Pere Marquette Park	Bradford Beach
Service Provided	Coffee Shop	Restaurant and Custard Stand	Jet Skis and Scooters (2016 & 2017 only)	Catering at Boerner Botanical Gardens	Pontoon Boats	Volleyball Tiki Bar and Restaurant
Agreement Years	12/02-12/23	4/09-2/18	6/13-3/20	9/13 -9/23	5/14-9/18	3/09-10/18
Type of agreement	Lease	Lease	Service Agreement	Catering Agreement	Service Agreement	Service Agreement
2018 Primary revenue to Parks	\$27,584	\$26,077	\$3,312	\$84,000	\$6,948	\$67,389
Additional payments in agreement	Yes	Yes	No	Yes	Yes	Yes
Agreement still active?	Yes	No	Yes	Yes	No*	No

*Parks has executed a new contract with Riverwalk to continue services.

Source: Audit Services Division created table based on data from Parks Management and review of agreements.

Section 1: Parks collected the primary revenues in the agreements reviewed but did not verify commissions reported by vendors and could not provide an updated master list of agreements.

Parks was unable to generate a list of all of their agreements.



Northpoint Custard Stand. Photo provided by Parks.

Parks was unable to provide an updated master list of all of its contracts, agreements, leases and other formal documents, an estimate of over 300 was provided.

At the start of our audit, the first data set we requested from Parks was a listing of the total agreements, lease agreements and other formal documents from which we could make our selections for review. We were told by Parks staff, in July of 2018, that there was no up to date master listing and they were unable to generate a list of all agreements. This is due, in part, to a lack of management software. The current staff was using an excel spreadsheet for tracking. We found that once our agreement selections were made and we attempted to obtain records, there were a blend of paper and electronic files which did not match.

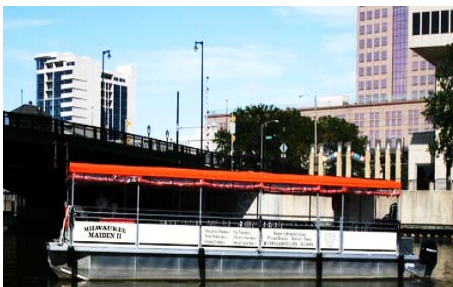
We also requested a policy and procedures manual for the handling of outside agreements but were told by Parks that they did not have a formal policy and procedures manual.

As noted in the Background Section, Parks failure to monitor agreements is not a new issue found by our office. In a 2006 audit titled "An Audit of Milwaukee County Parks Facilities Leases," we noted Parks issues with overseeing and managing lease agreements at three locations. Our 2006 audit found the issues were due in part to contract management duties being shifted among a number of individuals and organizational



Jet Ski. Photo provided by Parks.

Parks does not have a policy and procedure manual for their contract monitoring function.



Pontoon Boat at Pere Marquette Park. Photo found at Riverwalk website.

turmoil in the Parks Department. A month prior to the issuance of the audit, the former Parks Director took steps to bolster the resources devoted to contract management by receiving approval from the County Board to create a contracts manager position to provide a focal point for accountability in addressing the concerns raised in the report. This position was initially filled in 2007 and has been filled by five different individuals since that time, with the current incumbent hired in June of 2018.

While the intent in the creation of the Contracts Manager position was centralization of contract monitoring, during this audit we often were referred to multiple individuals due to their responsibility for a section of a contract. This decentralization may contribute to areas of contracts not being monitored.

In addition to the turnover of the Contracts Manager position, Parks has had high turnover in upper management. In the past five years (2014 through 2018), the following positions have experienced turnover: the Director of Parks, Chief of Operations, Chief of Planning & Development, Chief of Recreation & Business Services, Chief of Administration & External Affairs.

A written and updated policy and procedures manual would have provided incoming staff with a roadmap of who was responsible for agreement compliance, therefore, we recommend Parks Management:

1. *Establish within six months a formal written policy and procedures manual for the handling of outside agreements and develop a tracking mechanism to ensure all agreements are known and being monitored. The documented system should be clear*

about assignments, responsibilities and communication.



Slice of Ice Rink outside Starbucks at Red Arrow Park. Photo provided by Parks.

Of the six vendors and their agreements that we reviewed, we found Parks collected the primary revenue source owed in the agreements in full and in a timely manner, however, some payments were based on vendors' calculations and were not verified.

Table 2 lists the primary revenue source for each vendor within their agreement and the year that we verified payment. We found that Parks received all payments in full and in a timely manner. This conclusion is based, in part, upon commission payments from vendors that were not independently verified by Parks. Two of the agreements, Northpoint and Bradford View, contained a primary payment based upon a percentage of sales. We discuss the verification process in greater detail in Sections 2 and 3.

Table 2
Listing of Agreements and Primary Payment Information for 2018

<u>Vendor</u>	<u>Agreement Payment Language</u>	<u>Amount Owed</u>	<u>Amount Received</u>
Starbucks	Monthly fixed rent set by agreement	\$27,584	\$27,584
Northpoint	5% of gross sales*	\$26,077	\$26,077
Hands on Science	Monthly fixed rent set by agreement	\$3,312	\$3,312
Zilli's	Monthly fixed rent set by agreement	\$84,000	\$84,000
Riverwalk	Monthly fixed rent set by agreement	\$6,948	\$6,948
Bradford View	The larger of \$12,600 or 10% of gross sales*	\$67,389	\$67,389

* Gross sales as reported by the vendor.

Source: Audit Services Division created table based on data from Parks Management and review of agreements.

Of the agreements reviewed, all but one contained additional financial items where payment was owed to Parks. These types of payments included:

reimbursement for utilities, revenue sharing, capital improvements and maintenance funds.

Table 3 displays by vendor the additional revenue items contained in the agreements.

Table 3 Listing of Additional Financial Conditions Found in the Agreements Selected for Review			
Type of Payment	Amount or Calculation Method	Amount Received	Year
Starbucks			
Utilities	Actual Costs	\$19,269	2018
Operating Expenses	\$1,000 annually	\$1,000	2018
Northpoint			
Utilities	Actual costs for electrical from 5/1 – 10/31	\$7,678	2018
Maintenance Fund	1% of gross sales	\$4,536	2018
Hands-on Science			
None			
Zilli's			
Revenue Sharing*	11% of food and beverages in excess of \$500,001	\$7,203	2019
Utilities	33% of gas, electric, sewer, water, fire protection and phone	\$40,531	2018
Capital Improvements	Operator shall invest a minimum of \$75,000 in the 11 th year of the agreement (2024) in capital improvements in the Facility.	N/A	2024
In-Kind Contributions	Up to \$25,000 of in-kind services at up to four events	\$15,769 (in-kind)	2018
Riverwalk			
Utilities	\$450 per season less taxes	\$441	2018
Bradford View			
Utilities	Actual Costs	\$8,000	2018
Maintenance Fund	1% of gross sales – vendor provided day to day maintenance in lieu of payment per verbal agreement	\$0	2018
Capital Improvement Agreement	For 2018, although not required lessee may make additional renovations or improvements to the facility.	\$0	2018
*Parks invoiced Zilli's in April of 2019 for 2016 and 2017 commission payments. Zilli's paid in May of 2019. Source: Audit Services Division created table based on data from Parks Management and review of agreements.			



Veterans Park Lagoon, Starbucks at Red Arrow Park. Photos provided by Parks.



Slice of Ice Rink outside of Starbucks at Red Arrow Park. Photo provided by Parks.

Parks received the primary financial contributions from its vendors but the collection of additional payments owed were more problematic.



Future site of Northpoint Custard. Photo provided by Parks.

Problems with the additional financial terms we identified during our review included a lack of timely invoicing by Parks, a lack of monitoring which was needed to determine the amounts owed to Parks and charges for a shared phone system that were difficult to calculate. This was especially true in agreements where revenue sharing was listed. We found that Parks did not verify and often did not request nor receive detailed sales reports to determine if vendors were actually remitting to Parks correct payment.

While Parks received the primary financial contributions identified in the agreements, timely and in full, the collection of additional payments owed were more problematic. Additional discussion of the financial conditions is located in Section 2.

Due to the ongoing contract with Zilli's and the financial size of the agreement being larger than the other agreements, we have a separate section discussing items we found with the agreement with Zilli's. This discussion is contained in Section 3.

By executing these agreements, Parks is able to provide additional services to the community. Adding an evaluation component such as a survey would provide additional information to Parks on the quality of services provided by vendors.

For both Bradford View and Northpoint prior to the execution of the agreements for services, these buildings were vacant or offered minimal services. The photos to the left show the Northpoint building both prior to the agreement's execution and post agreement.



Northpoint Custard. Photo provided by Parks.

The agreements allow Parks to offer additional services to the community. Adding surveys and tracking of complaints would provide additional feedback to Parks on the quality of services provided by vendors.

Parks currently conducts surveys of customer satisfaction for rentals, special events and golf but not for the contracted services we reviewed. We also inquired if Parks maintained a log of community complaints. We were told by Parks staff that often constituents will notify their County Board Supervisor of a concern or a complaint and that will be forwarded to Parks. Parks does not currently maintain a listing of which complaints are received or for what location.

With the execution of the agreements Parks was able to offer additional services to the community. The addition of a customer satisfaction survey for vendors could provide Parks with additional information on the quality of services offered. It could also provide insight into the preferences of the community for which services should be offered. Maintaining a log of complaints by location would assist in monitoring vendor performance, therefore, we recommend Parks Management:

2. *Conduct an annual customer survey on services provided by outside vendors to determine satisfaction with services offered and seek guidance on other services the community desires to see added to County Parks and maintain a log of complaints.*

Section 2: Increased oversight and agreement monitoring efforts are needed by Parks to ensure the requirements of agreements are met.

A required maintenance fund at Bradford beach was never established. Parks allowed the vendor to perform day to day maintenance instead without a formal agreement.



Bradford Beach. Photo provided by Parks.

The required maintenance fund at Northpoint was established and funded according to the terms of the agreement.

During our review we noted a practice of Parks entering into verbal agreements or modifications to the agreements without official documentation.

The agreement with Bradford View called for the establishment of a maintenance fund beginning with the fourth year of operation which was 2012. Funding was to be 1% of gross sales and the fund was to be used for the purpose of maintaining and enhancing the building, the beach, the parking lot or other areas. We reviewed documents from Parks and determined that no maintenance fund was ever established.

The review of annual payments from Bradford View from 2012 to 2018 determined that \$40,135 should have been deposited into the maintenance fund. In interviews with current Parks staff, it was stated that rather than establish a mutually controlled maintenance fund, there was an understanding between the vendor and the prior Parks administration that the vendor would perform various day to day maintenance items in lieu of payments to the fund. There was no documentation of what items were performed nor the estimated cost to ensure that Parks received a comparable amount of services equal to the value of the required maintenance fund contribution.

The Northpoint agreement had a similar clause which called for a 1% jointly controlled maintenance fund beginning with year four of the agreement. Our review found that the fund was opened in May 2012. In 2018, the ending balance in the fund was \$15,596. According



Bradford Beach. Photo provided by Parks.

Both Bradford View and Northpoint upon conclusion of service provision vacated the premises but left equipment behind for possible sale to future vendors. A formal agreement was not executed regarding the equipment.



Bradford Beach. Photo provided by Parks.

to the terms of the agreement at termination all funds become the sole property of Milwaukee County.

Both Northpoint and Bradford View terminated their agreements but left equipment in the Parks facilities. Parks was in the process of rebidding for these services and the intention was to negotiate a sale of the equipment to the new vendor. However, no formal agreement was executed to facilitate this process and establish ownership and responsibility for the equipment.

The agreements with Northpoint and Bradford View contained a clause that stated, “in the event the lessee remains in possession of the premises after the lease and without any renewal extension, the Lessee shall be deemed to be occupying the premises on a month-to-month basis. All obligations contained shall be applicable.” It was unclear from our discussions with Parks whether they believed both vendors to be under a continuing month-to-month contract while the equipment was stored in County facilities.

We found in the agreement folder for Northpoint, letters signed by both the vendor and Parks that executed mutually agreed upon modifications to the agreement. The letters included items such as extending the agreement, changing mailing addresses and modifying the understanding of the utility payments. These letters were dated 2013 and 2014. See Exhibit 2 for an example of the letters. These letters provide an example of a mechanism that Parks could employ at times to be responsive in its relationship with vendors and documenting minor agreement revisions. Therefore, we recommend that Parks Management:

3. *Establish a policy and procedures to execute amendments to agreements or letters of agreement when establishing practices both not cited in agreements or in variance to what is established in the agreement.*

We found that Parks had language in agreements requiring submittal of documents that would have assisted in contract monitoring but did not obtain the documents from vendors.

Parks did not obtain documentation to verify amounts remitted by vendors were accurate.

Revenue payments to Parks required in the agreements with Northpoint, Bradford View and Zilli's are in part based upon a percentage of sales. In all of these cases, the entities submitted monthly gross sales reports with their payment but Parks did not obtain any documentation that would allow for verification that the amounts remitted by the vendors were accurate. The following terms were found in the agreements:

- Northpoint - required a "detailed sales report, in a format to be agreed upon, shall accompany the commission check."
- Zilli's - requires that the operator submit a sales report including a statement showing gross receipts and an operating year to date reconciliation report.
- Bradford - required a detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid.



Bradford Beach. Photo provided by Parks.

The documents submitted from Northpoint, Bradford View and Zilli's with the monthly payments included a self-generated statement regarding gross sales but Parks never verified the information submitted. The vendors are submitting essentially an excel spreadsheet approved by Parks which only shows the total sales and does not provide details or an ability to independently verify the accuracy of the reports. No receipt of annual activity reports were provided by Parks to the Audit Services Division.



Northpoint Custard. Photo provided by Parks.

As a part of the process to execute a contract, Certificates of Insurance (COI) are reviewed by the Department of Administrative Services – Risk Management Division. In subsequent years, Parks is responsible for receiving COI from vendors.

As a part of our review we requested and received invoices from Zilli's for the years 2016 – 2018. These documents provide an itemized listing of amounts billed to clients and would provide Parks with an ability to verify the payment amounts received from Zilli's. These findings are detailed in Section 3.

In order to ensure that Parks is receiving proper payments, we recommend that Parks Management:

4. *Establish a method or spreadsheet to enable easier monitoring of financial terms of agreements and require submittal of all necessary financial documents from vendors in order to calculate payments owed.*

The Certificate of Insurance system appears to be flawed and in need of revision and clarification for Parks to perform their required verification function.

All agreements that were reviewed include a section regarding the minimum required insurance coverage for the vendor to carry. Prior to the execution of an agreement vendors are required to submit Certificates of Insurance (COI) as a part of the process to obtain signoff from the Department of Administrative Services – Risk Management Division on the agreement. These certificates are provided by insurance companies to vendors and evidence coverages held, limits and policy periods. Upon policy renewal, vendors are to submit their current COI to the department which executed the agreement for review.

We noted numerous concerns and issues regarding the insurance process. We requested copies of the Certificates of Insurance (COI) from Parks for the vendors under review for each relevant year of the agreements. Parks was able to provide us with copies

**Parks was able to provide
Certificates of Insurance for two
out of six vendors.**

of the COI for only two vendors. Parks did have COI on file for Bartolotta's Northpoint and Bradford View. We were able to obtain the COI for other vendors by contacting the vendors directly and requesting the COI.

**The COI coverage levels did not
match the required amounts
listed in the agreements.**

We reviewed the COI that we were able to obtain and found that the levels of coverage amounts listed on the COI did not match the levels of coverage amounts listed in the agreements. According to Risk Management staff, the level of insurance listed in the agreement may not match what is on the COI due to industry standards and that the level in the agreements are typically the minimum required and tend to be universal across County contracts.

Risk Management indicated they review the COI provided by a vendor at the time of signing off on agreements. If Risk Management determines that the level of insurance held by the vendor is adequate they will sign the agreement. The levels listed in the agreement are not adjusted as these are the minimum requirements. The electronic signing system the County uses, Docusign, does not allow for changes to a contract or agreement once the signature process has begun. In order for Risk to adjust insurance amounts on the document, the signature process would have to be restarted.

The review process for COI for additional years within an agreement is not conducted by Risk Management but rather this responsibility lies with the department that has executed the agreement. This results in vendors or their insurance companies submitting COI to Parks in future years to be in compliance with their agreement. Parks then is to verify that the COI are sufficient. However, as noted above, the approved insurance

Some agreements had required insurance that did not apply, such as, required automobile insurance for a pontoon boat company that did not own automobiles.



Northpoint Custard. Photo provided by Parks.

levels may not be consistent with the agreement language but will meet or exceed the minimums required by the County. This results in a difficulty for Parks to perform the verification. For example, we found that Riverwalk had general liability listed in the contract, however upon review of the COI, the vendor had watercraft liability but not general liability.

We also found some contracts had required minimum insurance items in their agreements that were waived by Risk Management. For example, Riverwalk, a pontoon boat provider, had a requirement in the agreement for auto liability insurance. This requirement was waived, according to Risk Management staff, after discussion with the vendor. In an interview with the vendor, it was stated the company does not own automobiles.

Given the issues found with the insurance process, we recommend that Parks Management:

5. *Work with Risk Management to devise a system to allow for the Contracts Manager at Parks to track what insurance is required for each agreement to ensure that when COI are reviewed on an annual basis by the Parks Department proper insurance is held by each vendor.*

There is no spot checking of vendor required permits and licenses. Allowable onsite inspections of required cleanings are also not occurring.

All agreements that we reviewed contained a requirement that the vendor hold all required permits and licenses. Vendors are required to pay property taxes when applicable. The agreements do not require the vendors to submit any documentation to Parks that they have all required permits and licenses. Required items include: building permits, liquor licenses, personal property taxes, and operational permits. Parks does not

Parks does not perform spot checks on vendors to determine if they hold required permits and licenses.

have a system in place to perform any spot checks on these requirements of their vendors.

During the course of our review, we contacted the City of Milwaukee to verify if vendors had required permits. It was a simple process that involved providing the vendor name and location. The staff at the City were then able to provide a list of permits held by the vendor. The City of Milwaukee also has a number of permits available for viewing online.

Parks has not performed allowed inspections for grease related items.

The agreement with Northpoint includes a required annual cleaning of exhaust hoods and grease traps paid for by Northpoint. The agreement with Zilli's requires the installation of a grease disposal control device to properly dispose of fats, oil and grease. According to the Zilli agreement, the improper disposal of these items can lead to build up in pipes and sewers and can cause sewage backups. The agreement allows for inspections of the device by Parks. Parks was unable to provide us with documentation that these inspections occurred.

We believe occasional spot checking of permits and conducting required inspections is a necessary component of contract monitoring, therefore, we recommend that Parks Management:

6. *Establish a system to periodically conduct and document that spot checking of vendors to verify that they are in compliance with all required permits, licenses and payment of property taxes if applicable and conduct any inspection as allowed within the agreement.*

Additional issues found in the monitoring of agreements should be attended to by Parks.

Other issues found at Parks included invoices sent to Starbucks that did not reflect the receipt of prior

payments in the balance owed section. The language on the invoices to Riverwalk for utilities regarding when late fees were to be invoked did not match the terms of the agreements.

The Targeted Business Enterprise requirement varied by agreement that we reviewed. Two of the agreements, Starbucks and Northpoint, were leases and therefore had no requirement. Riverwalk and Bradford View did not contain a requirement. Hands on Science had a goal of 17% and Zilli's has a goal of 10%. We contacted the Department of Administrative Services-Community Business Development Partners to confirm DBE participation. DAS-CBDP did not have any information on file for the agreements.



Slice of Ice Rink outside of Starbucks at Red Arrow Park. Photo provided by Parks.

We recommend that Parks Management:

7. *A. Establish a system to review items within agreements to ensure the invoices issued match contract terms, review invoices for accuracy.*
- B. Work with the DAS-CBDP to ensure vendors are following agreement provisions regarding Targeted Business enterprise participation.*

Section 3: The ongoing agreement with Zilli's at Boerner Botanical Gardens needs additional attention.

Zilli's provides catering and coordination services for events at Boerner Botanical Gardens.

Our review of invoices found gross sales in an amount which should have triggered an annual commission payment. In April of 2019, Parks did invoice Zilli's for the owed commission amounts of \$1,224 in 2016 and \$5,979 in 2017. Zilli's paid Parks for these items in May of 2019.

The agreement with Zilli's, which is ongoing, is to provide exclusive food, beverage, bar, banquet and facility management services at Boerner Botanical Gardens. The financial terms of the agreement also establish that Zilli's will remit all room rental fees it receives at the facility to Parks.

If an event is being booked at Boerner Botanical Gardens and is solely for an outside wedding ceremony or for photos, then Parks coordinates the rental and Zilli's is not involved. If the event is for a wedding ceremony and reception, Zilli's then handles the booking of the facility from the customer. When Zilli's is coordinating the event, the customer fills out the Zilli Room Rental application for Boerner Botanical Gardens. Zilli's bills the client for the room rental fee and related sales tax on behalf of Parks. After the event is held, Zilli's submits the room rental fee to Parks and the Sales Tax to the State of Wisconsin.

The agreement with Zilli's contains a provision for a guaranteed annual payment for the first five years of \$84,000 and \$96,000 for the second five year period and any renewal terms. In addition, the agreement establishes additional payments to Parks based upon the gross receipts by Zilli's at Boerner when gross receipts exceed \$500,000. The agreement defines

gross receipts as the total of all amounts billed by operator for the operation of Catering Services on food and beverage sales. The agreement includes a sliding scale of commission payments owed to Milwaukee County. Table 4 below lists the commission rates based upon the amount of gross receipts from the agreement.

Table 4 Zilli's Agreement Commission Rates	
<u>Gross Receipts</u>	<u>% Paid to Parks</u>
\$500,001 - \$1,000,000	11%
\$1,000,001 - \$1,500,000	13%
\$1,500,000 +	17%
Source: Audit Services Division created table based on data from Parks Management and review of agreements.	



Boerner Botanical Gardens. Photo taken by Audit staff.

As a part of our review we requested and received copies of customer invoices from Zilli's for 2016 through 2018. We compared the total amount invoiced for food and beverages on the provided invoices to the Commission and Room Rental Schedules provided by Zilli's to Parks with their payments. We found that in all years the amounts did not match.

Total food and beverage sales reported on the Commission and Room Rental Schedules for 2016 were in excess of the amounts we found on invoices by \$11,477. Total food and beverage sales reported on the Commission and Room Rental Schedules for 2017 were in excess of the amounts we found on invoices by \$11,613. Total food and beverage sales reported on the Commission and Room Rental Schedules for 2018 were in excess of the amounts we found on invoices by \$8,657.

According to Commission Reports provided by Zilli's, revenue sharing payments should have been paid.

Using the data from the Commission and Room Rental Schedules, in 2016 and 2017 Zilli's gross receipts reported to Parks exceeded the \$500,001 threshold which should have resulted in an additional commission payment of \$1,224 in 2016 and \$5,979 in 2017. In 2018 total food and beverage sales were less than \$500,001 so additional commission payment was not required.

In an interview, Parks staff stated they were not aware that Zilli's should send a payment for 11% commission on gross receipt funds in excess of \$500,001. The agreement does allow for interest and penalties to be collected on outstanding amounts. In April of 2019, Parks did invoice Zilli's for the owed commission amounts of \$1,224 in 2016 and \$5,979 in 2017. Zilli's paid Parks for these items in May of 2019.

Table 5 shows the annual billed food and beverage amounts for the years 2016 to 2018 based upon the Commission and Room Rental Schedules provided by Zilli's to Parks.

Table 5 Annual Food and Beverage Sales and Commission				
<u>Year</u>	<u>Billed Food & Beverage Amount</u>	<u>Billed Food & Beverage above \$500,001</u>	<u>11% Commission Owed</u>	<u>Revenue Sharing Commission Paid</u>
2016	\$511,129	\$11,128	\$1,224	\$0
2017	\$554,358	\$54,357	\$5,979	\$0
2018	\$485,005	\$0	\$0	N/A
Total			\$7,203	\$0
Source: Audit Services Division created table based on data from Zilli's Commission and Room Rental Schedules.				

Due to the potential for missing payments from Zilli's and the variance between the invoices and the Commission and Room Rental Schedule, we recommend that Parks Management:

8. *Work with Zilli's to attempt to reconcile the invoices to the Commission and Room Rental Schedules.*

Zilli's provided complimentary food and beverage items but did not include the items in its commission reports. The agreement does not clearly address how to handle complimentary food and beverage items.

Our review of the documentation on file, as noted earlier, did not contain any documents that would allow for Parks to spot check the accuracy of the reporting of gross receipts. As a part of our review we requested and received copies of customer invoices from Zilli's for 2016 through 2018. During the course of our review of the invoices, we noted that Zilli's often listed complimentary food and beverage items on the invoices.



Boerner Botanical Gardens. Photo taken by Audit staff.

We conducted a review of the invoices to attempt to determine if there was a potential payment owed to Parks for these items. The agreement does not clearly define whether complimentary items are allowed to be offered to Zilli's customers without being included in the gross receipts.

Zilli's provided complimentary food and beverage items to clients. The agreement is not clear on the inclusion of these items in commission payments to Parks.

We calculated the additional commission that could be owed to Parks if they were entitled to the 11% commission on complimentary food and beverage items offered by Zilli's. As we noted above there was a variance between the food and beverage amounts listed on the invoices and the Commission and Room Rental Schedules. We could not verify if any of the discrepancies were due to the inclusion of

complimentary items in the food and beverage total on the Commission and Room Rental Schedule. The Commission and Room Rental Schedules do not include itemized information such as complimentary items. The invoices do include itemized complimentary items.

For 2016 invoices listed \$41,895 in complimentary food and beverages which would result in a possible commission amount of \$4,608 at 11%. For 2017, invoices listed \$42,631 in complimentary food and beverages which would result in a possible commission amount of \$4,689 at 11%.

In 2018, the complimentary food and beverage items would have increased total receipts over the \$500,001 threshold in the agreement for an additional commission payment. The complimentary food and beverages plus total food and beverage is \$526,766 for 2018 resulting in a possible commission payment of \$2,944 at 11%.

Due to the potential for missing payments from Zilli's, we recommend that Parks Management:

9. *Execute a letter of understanding on the ability of Zilli's to offer complimentary food and beverage that is then not included in its commission remittance to Parks and establish a system to periodically conduct spot checking of total sales to verify that the amounts submitted for commission payments are accurate. Recoup revenue from 2016 to 2018, if appropriate.*

Complimentary room rentals on invoices raise a concern that Parks is not receiving all fees from Boerner Botanical Garden rentals.



Garden Room at Boerner Botanical Gardens.
Photo taken by Audit staff.

Our review of invoices noted complimentary room rentals listed, at times, which has a direct impact on revenue to Parks. It was unclear if Parks had authorized these items.

In addition to the complimentary food and beverage items, we noted at times complimentary room rentals were listed on the invoices. Parks management indicated that the Garden Room was considered a complimentary item with rentals at Boerner. However, we found additional rooms being listed as complimentary on the Zilli's invoices which would have a direct impact on revenue to the Parks since the entire room rental fee should be remitted to Parks. It was unclear from our interviews and the invoices whether Parks had authorized the complimentary room rentals.

Table 6 shows the complimentary room rentals by year. It does not include the Garden Room.

Table 6
Annual Complimentary Room Rentals from Zilli's Invoices

<u>Year</u>	<u>Total Complimentary Room Rental Fees</u>
2016	\$275
2017	\$3,475
2018	\$2,518
Total Potential Room Rentals owed to Parks	\$6,268

Source: Audit Services Division created table based on invoices provided by Zilli's.

Due to the concern regarding complimentary room rental fees, we recommend that Parks Management.

10. *Execute a letter of understanding on the ability of Zilli's to offer complimentary room rentals or waive the cost of room rentals at Boerner Botanical Gardens and establish policies and procedures for Zilli's to obtain Parks authority to do so.*

Parks was unable to provide documentation that room rental credits issued by Zilli's were accurate and in compliance with Boerner's room cancellation policies.

Parks was unable to provide documentation that room rental credits issued by Zilli's were accurate.

In September of 2017 \$6,317 in room rental credits with a stated reason of "overpayment" was listed on the Commission and Room Rental Schedule submitted by Zilli's to Parks. We conducted a review of the invoices for the events with credits and were unable to determine from the invoices why a credit was issued. Parks did not have documentation for the credits or an explanation as to why they were issued. During the period of our review a total of \$8,620 in credits in 2016, \$11,536 in 2017 and \$9,190 in 2018 were listed on the Commission and Room Rental Schedules submitted by Zilli's.

Zilli's created a room rental application that varies from the room rental application used by Parks at Boerner. Zilli's is not involved in room rentals at Boerner that do not include any catering. The cancellation and refund policy listed on the Zilli's application does not match Parks' application.

Due to the concern regarding room rental credits, we recommend that Parks Management.

11. *Request documentation from Zilli's when a credit for room rental is issued.*

Room rentals at Boerner Botanical Gardens are handled by Zilli's including the collection of the fee and applicable sales tax. While the rental fee is paid to Parks, Zilli's submits the sales tax directly to the State. Parks is not currently monitoring to ensure the County's tax liability has been fulfilled.



Boerner Botanical Gardens. Photo taken by Audit staff.

The Wisconsin Department of Revenue Sales and Use Tax, Publication 201 and Fact Sheet 2107 states, "rentals of multipurpose facilities may be subject to Wisconsin sales and use tax if the multipurpose facility is used for an amusement, athletic, entertainment, or recreational purpose." Based on Publication 201, Parks is required to pay sales taxes for the following events:



Boerner Botanical Gardens. Photo taken by Audit staff.

Zilli's collects and reports sales tax on room rentals to the State. Parks did not obtain any documentation to verify payment to the State for the tax liability the County incurred.

- Concerts, except when rented to an organization that is exempt from taxes or the facility is rented for resale.
- Parties (e.g., Christmas Party, Anniversary Party, Birthday Party, and Graduation Party) except when rented to an organization that is exempt from taxes or the facility is rented for resale.
- Reunions/Dances.
- Wedding Ceremony with Dance/Reception, and wedding with Dinner and Dance/Reception.

For room rentals, the applicable sales tax rate for the Parks is 5.6%.

According to the Office of the Comptroller, Parks and the Zoological Department report sales tax collection amounts to Central Accounting monthly, which is then used to file monthly sales tax returns with the State of Wisconsin. A State Audit of sales tax was performed on Milwaukee County for the years 2005 through 2010 and found issues with sales tax for the Departments of Parks, Sheriff, and Zoo. The State Audit mentioned, "the additional sales tax was due primarily to sales of utilities and rentals of multipurpose facilities used for amusement, athletic, entertainment, or recreational purposes on which tax was not charged and a valid exemption certificate was not maintained."

The agreement between Parks and Zilli's concerning room rentals does not contain language that specifies which entity is responsible for the payment of sales tax in the clause dealing directly with room rentals. There is a general statement under the Licenses, Alcohol and Taxes section that states, "Operator shall pay all taxes of whatever character which may be levied or charged upon Operator to use Whitnall Park."

During interviews with Parks and Zilli staff we were informed that the current practice is for Zilli's to collect both the room rental and the 5.6% sales tax on the room. Zilli's then pays Parks for the room rental and remits to the State the sales tax as a part of the company's overall sales tax payment.

Table 8 shows the annual room rentals and the estimated tax liability owed by Parks to the State which Zilli's indicated has been paid.

Table 8 Calculation of Annual Sales Tax Liability from Room Rentals at Boerner Botanical Gardens				
<u>Year</u>	<u>Total Room Rentals Revenue</u>	<u>Non-Taxable Room Rental Revenue</u>	<u>Taxable Room Rental Revenue</u>	<u>Sales Tax Owed at 5.6%</u>
2016	\$120,477	\$14,175	\$106,302	\$5,952
2017	\$119,280	\$10,800	\$108,480	\$6,074
2018	\$102,657	\$13,830	\$88,827	\$4,974
Total				\$17,000
Source: Audit Services Division created table based on invoices provided by Zilli's.				



Boerner Botanical Gardens. Photo taken by Audit staff.

In follow-up discussions with Parks staff, they could not provide any documentation that applicable sales taxes on taxable room rentals and set up fees were collected by Zilli's or paid to the State on Milwaukee County's behalf. A representative from Zilli's stated that they collect all sales taxes on all rentals as they are part of the invoices and according to Zilli's they are reselling the room on behalf of Parks. Zilli's sends a payment for the taxes in to the state.

We conducted a review of the invoices from 2016 to 2018 to determine the applicable sales tax on room rentals. In addition, we met with Zilli's and reviewed their sales tax returns for the months of July and August of

2018. Based on accounting records provided by Zilli's, the room rental revenue listed on invoices from rentals at Boerner was included in the gross sales revenue listed in Zilli's returns for these two months.

Based on our review of Zilli's records for July and August of 2018, sales tax is being reported to the State, however, Parks is not currently requiring Zilli's to submit documentation to them that would allow Parks to verify that payment of sales tax collected for room rentals has been paid to the State Department of Revenue. This puts the County at risk should a future sales tax audit be conducted. Therefore, we recommend that Parks Management:



Boerner Botanical Gardens. Photo found at Parks website.

12. *Determine whether Parks or Zilli's should be paying the sales tax to the State of Wisconsin. If Parks determines that Zilli's should pay as a part of its room coordination duties, Parks needs to establish clear instructions on what documentation is needed to verify monthly payments of sales tax to the State for room rentals at Boerner.*

Chair rental revenue is not being received in full by Parks when chair rental applications have been submitted by Zilli's to Parks.

During our review of the invoices from Zilli's for the years 2016 to 2018 we noted an issue with the rental of chairs. Clients have an option of renting chairs either from Parks or directly from Zilli's. Both entities charge a \$3 per chair fee. It is unclear if Parks is receiving the appropriate payment from Zilli's when the chairs that are owned by Parks are used.

Chair rental revenue is not being received in full by Parks when chair rental applications have been submitted by Zilli's to Parks.

We received copies of chair rental applications on file at Boerner from Parks staff. We then compared the chair rental applications to Zilli's invoices. We found, in 2016, that payments for chairs of \$6,025 were invoiced by

Zilli's with a payment to Parks for chairs of \$1,580, resulting in a remaining \$4,668 in chair rental fees retained by Zilli's. It is unclear from the invoice which chairs were used at the events that were invoiced. We did not include chair rentals that were invoiced by Zilli's that did not have a Parks issued chair rental form filled out.

According to an interview with Parks staff at Boerner they do not know if Parks received its money for the use of the chairs because they do not get copies of the invoices. However, Parks chairs are being used for events because according to Parks staff, they set up Parks chairs for use at events catered by Zilli's.

We conducted a similar review for 2017 and 2018 chair rental applications and invoices and found in 2017 \$7,438 in chairs fees with a Parks rental application were not received by Parks and in 2018 \$6,490 was not received.

Based on the lack of full revenue to the Parks for chair rentals from 2016 through 2018, we recommend that Parks Management:

13. *Work with Zilli's to attempt to determine which chairs were used from 2016 to 2018 and recoup funds as necessary. In addition, establish a policy and procedures to track the use of Parks' chairs and receipt of payments from Zilli's for use of the Parks' chairs to ensure proper rental payments are received by Parks.*

Other Zilli's agreement issues include a coordination fee charged by Zilli's and phone utility charges.

During the course of our review of the invoices from Zilli's we noted that the invoices include a coordination

Zilli's charges a coordination fee on all room rentals that ranged from 20 to 21%.

fee that is listed on invoices at either 20% or 21%. The entire coordination fee is charged to the customer and retained by Zilli's. According to Zilli's this fee is used to cover additional costs incurred by them as they manage the event and is industry standard. The agreement with Zilli's does not address coordination fees. In an interview with current Parks staff they were unaware of the coordination fee being charged by Zilli's, however, as noted earlier, there has been staffing turnover in Parks administration.

Table 9 shows the annual coordination fees generated by charging 20% of room rental fees.

Table 9 Annual Coordination Fee Collected by Zilli's Invoices		
<u>Year</u>	<u>Room Rentals</u>	<u>Room Rental only Coordination Fee at 20%</u>
2016	\$120,477	\$24,095
2017	\$119,280	\$23,856
2018	\$102,657	\$20,531
Source: Audit Services Division created table based on invoices provided by Zilli's.		

We conducted a review of the utilities payments by Zilli's. The agreement requires that Zilli's pay 33% of all facility gas, electric, sewer, water, fire protection and phone expenses. Zilli's paid in full the amount that Parks has invoiced to them for utilities.

Parks overcharged Zilli's in 2018 \$397 for phone services at Boerner Botanical Gardens.

It appeared during our review that Parks is overcharging Zilli's for its portion of the phone expense. There are three phone accounts at Boerner. The agreements calls for Zilli's to reimburse Parks for 33% of phone costs. For 2018 we calculated the overcharge to Zilli's at \$397 due to charges not being at 33% for all accounts.

In addition, the agreement calls for the establishment by Zilli's of a separate commercial bank account for the facility. While Zilli's established a separate bank account, deposits from the China Lights events which also occur at Boerner, but are covered by a separate agreement, are deposited into the account. It is unclear if the agreement requiring a separate bank account for the facility should allow for China Lights deposits to be blended.

Since the agreement with Zilli's does not address coordination fees and needs clarification for phone costs, we recommend that Parks Management:

14. *Execute a letter of understanding on the ability of Zilli's to charge a coordination fee for events held at Boerner Botanical Gardens including specifically if the coordination fee should apply to the room rental portion of the agreement.*
15. *Execute a letter of understanding regarding the amount to be charged for phone service due to the multiple phone accounts currently at Boerner Botanical Gardens. Remit to Zilli's the overcharge of \$397 for 2018.*

Audit Scope

The objectives of the audit were to conduct an audit of the Department of Parks, Recreation, and Cultures (DPRC) lease and concessions agreements with private companies who provide revenue generating business activities.

We conducted this performance audit in accordance with 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 our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

- Reviewed relevant regulations, policies, and administrative procedures, budgets, resolutions, and County Board and Committee minutes, and County Legislative Information Center pertaining to DPRC contractual obligations;
- Reviewed applicable County Ordinances and Administrative Manual sections, State Statutes and Administrative Codes to ensure compliance with state and local laws;
- Reviewed relevant audit contractual documents for compliance including a detail evaluation of six contractual agreements selected using a judgment sample to test DPRC's contract monitoring efforts as it relates to each agreement's provisions;
- Verified the accuracy of monthly and commission payments, room and chair rentals, sales tax, telephone and utility payments, credits and refunds, etc. made to the County using the Milwaukee County Financial Databases for 2016, 2017 & 2018 to test the accuracy of the revenue processed;
- Interviewed and corresponded with vendors in order to obtain and review vendor external documents including invoices, financial data, room rental applications, Certificates of Insurance, reports, correspondence, etc. to analyze DPRC contract monitoring practices;
- Interviewed and corresponded with DPRC departmental staff, individuals from other County departments, and relevant City of Milwaukee staff, to get a clear understanding of how operations are performed in relation to contractual compliance and what information is available;
- Conducted on-site tours of the Boerner Botanical Garden Administrative Building to become oriented with the facility layout as it relates to Zilli Hospitality Group (ZHG) catering and rental services; and

- Reviewed ZHG July and August 2018 Sales Tax documents used in reporting revenue and the sales tax on the ST-12 Wisconsin State Sales and Use Tax Form, and reviewed the current sales tax practices utilized by DPRC and ZHG.



Milwaukee County Parks
Ms. Suzanne Carter
9480 Watertown Plank Road
Wauwatosa, WI 53226

Dear Suzanne:

With respect to both the Capital Improvements and Renovation Agreement Between Milwaukee County Department of Parks, Recreation and Culture and Bartolotta Restaurant Group, LLC dated April 1, 2009 and the Lease and Operating Agreement Between Milwaukee County Department of Parks, Recreation and Culture and Bartolotta Restaurant Group, LLC dated April 1, 2009:

- Bartolotta Restaurant Group LLC will execute the first of the 2 year options for BRG Lotta Burger LLC (d/b/a Northpoint). This extension covers March 1, 2014 through February 28, 2016;
- Parties memorialize the understanding that 5.8 Utilities shall read:
Lessee shall reimburse the County for all electrical utilities from May 1st through October 31st of each year. Utility reimbursement payments shall be made within thirty (30) days after receipt of invoice. The County shall pay for utilities from November 1st through April 30th of each year. The County shall pay all water and sewer charges at no cost to the Lessee.
- Parties memorialize the new mailing address for lessee to read:
520 W. McKinley Ave
Milwaukee, WI 53212

Agreed to this _____ day of January, 2013


Bartolotta Restaurant Group, LLC


Milwaukee County Parks, Recreation & Culture

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Audit Services Division

Milwaukee County Parks

9480 Watertown Plank Rd.
Wauwatosa, WI 53226
(414) 257-PARK

Date: June 18, 2019
To: Jennifer Folliard, Director of Audits
From: Guy Smith, CPRP, Executive Director, Milwaukee County Parks
Subject: "Parks' Agreements Provide Enhanced Opportunities to Residents and Major Revenues are Received but more Attention to Details is Required." Audit report response

Below are responses to the Audit Services Division's fifteen recommendations for improved contract management practices of the lease and concessions agreements that Milwaukee County Parks oversees.



1. *Establish within six months a formal written policy and procedures manual for the handling of outside agreements and develop a tracking mechanism to ensure all agreements are known and being monitored. The documented system should be clear about assignments, responsibilities and communication.*

Milwaukee County Parks is currently in the process of developing an employee handbook that is specific to Parks employees. That handbook should make specific reference to contract management and the need for employees to adhere to best practices in overseeing contract compliance. Contract management software is currently being explored, however there are costs associated with purchasing a dedicated contract management software that are not currently budgeted for. Parks will explore better ways of utilizing our current software (Microsoft Excel) and document management systems (OneDrive, Sharepoint, and the County's shared drive network) and workflow management software. Whatever system is used will be updated to include specific staff assignments so that responsibilities are clearly defined.

2. *Conduct an annual customer survey on services provided by outside vendors to determine satisfaction with services offered and seek guidance on other services the community desires to see added to County Parks and maintain a log of complaints.*

Milwaukee County Parks staff currently collects customer service feedback on a number of our own services and will develop a form or process to collect customer service feedback from our vendors and concessions partners, where appropriate. Milwaukee County has developed a Lease agreement template and that template will be updated to include a section that addresses the collection of customer satisfaction data. The Parks Contracts Manager will be responsible for the creation and updating of a customer satisfaction log, which along with the template will be provided to the Audit Services Division within 6 months.

3. *Establish a policy and procedures to execute amendments to agreements or letters of agreement when establishing practices both not cited in agreements or in variance to what is established in the agreement.*

All agreements that are currently used by Milwaukee County Parks exist as templates, including vendor permits and concessions agreements. The Parks Contracts Manager will ensure that all templates include a section that addresses the process by which the parties will utilize as it relates to amendments in the case of issues that arise that are not covered by the governing document. Parks staff already operates in this manner with agreements, and the specific lack of documentation related to a maintenance agreement referenced in the report is caused by a prior administration.

4. *Establish a method or spreadsheet to enable easier monitoring of financial terms of agreements and require submittal of all necessary financial documents from vendors in order to calculate payments owed.*

This recommendation relates to the process of requesting and receiving financial statements so that staff can verify commissions on sales when necessary. For agreements in which there is a commission on sales, going

forward the Parks Contracts Manager will include a section in such a contract that allows for either 1) the County's ability to request an independent third party report that uses generally accepted accounting principles in order to verify reported sales data, or 2) requires that sales data be provided to the County by a certified public accounting firm, or 3) requires submittal of an annual audit or consolidated financial statement produced by a certified public accounting firm. An updated contract template will be provided to the Audit Services Division within 6 months.

5. *Work with Risk Management to devise a system to allow for the Contracts Manager at Parks to track what insurance is required for each agreement to ensure that when COI are reviewed on an annual basis by the Parks Department proper insurance is held by each vendor.*

Milwaukee County Parks will work with DAS-Risk Management and will have a process outlined that will be provided to the Audit Services Division within 6 months.

6. *Establish a system to periodically conduct and document that spot checking of vendors to verify that they are in compliance with all required permits, licenses and payment of property taxes if applicable and conduct any inspection as allowed within the agreement.*

Milwaukee County Parks staff currently conducts spot checks on our own food and beverage operations and will develop a process to similarly verify compliance with our concessions partners regarding contractual items that can be verified by an on-site inspection. For other contractual elements which require performance on aspects that cannot be verified by inspection, Milwaukee County Parks will continue to rely upon contract language that makes these elements requirements of the partner or contractor. Existing contracts that require our partners to obtain all permits, licenses, and payment of taxes also include provisions related to default. Enforcement and inclusion of these sections in contracts will continue to be the practice of the Parks Contracts Manager.

7. A. *Establish a system to review items within agreements to ensure the invoices issued match contract terms, review invoices for accuracy.*

The Milwaukee County Parks Contracts Manager will conduct a review of invoices sent to ensure consistency with the applicable contract. The new ERP system will be fully integrated and accessible to others for verification. A process is being established to have a uniform invoicing system throughout the County that is intended to improve access to data and accuracy. The completion date of this is variable and not within Parks' control.

- B. *Work with the DAS-CBDP to ensure vendors are following agreement provisions regarding Targeted Business enterprise participation.*



Milwaukee County Parks will work with DAS-CBDP and will have a process outlined that will be provided to the Audit Services Division within 6 months.

8. *Work with Zilli's to attempt to reconcile the invoices to the Commission and Room Rental Schedules*

Milwaukee County Parks appreciates and takes seriously the work of the Audit Services Division in this report with respect to the contract with Zilli's at Boerner Botanical Gardens. Parks leadership will assess the recommendations and pursue the most comprehensive method of addressing each recommendation 8 through 15 in a separate agreement. This agreement could potentially be an amendment to the existing agreement in which case it will be presented to the Audit Services Division and approval authorities when it is negotiated between the parties, targeted for the 6-month response date but will be subject to negotiation between the parties.

9. *Execute a letter of understanding on the ability of Zilli's to offer complimentary food and beverage that Zilli's provided complimentary food and beverage items to clients. The agreement is not clear on the inclusion of these items in commission payments to Parks is then not included in its commission remittance to Parks and establish a system to periodically conduct spot checking of total sales to verify that the amounts submitted for commission payments are accurate. Recoup revenue from 2016 to 2018, if appropriate.*

See response to recommendation 8.

10. *Execute a letter of understanding on the ability of Zilli's to offer complimentary room rentals or waive the cost of room rentals at Boerner Botanical Gardens and establish policies and procedures for Zilli's to obtain Parks authority to do so.*

See response to recommendation 8.

11. *Request documentation from Zilli's when a credit for room rental is issued.*

See response to recommendation 8.

12. *Determine whether Parks or Zilli's should be paying the sales tax to the State of Wisconsin. If Parks determines that Zilli's should pay as a part of its room coordination duties, Parks needs to establish clear instructions on what documentation is needed to verify monthly payments of sales tax to the State for room rentals at Boerner.*

See response to recommendation 8.



13. *Work with Zilli's to attempt to determine which chairs were used from 2016 to 2018 and recoup funds as necessary. In addition, establish a policy and procedures to track the use of Parks' chairs and receipt of payments from Zilli's for use of the Parks' chairs to ensure proper rental payments are received by Parks.*

See response to recommendation 8.

14. *Execute a letter of understanding on the ability of Zilli's to charge a coordination fee for events held at Boerner Botanical Gardens including specifically if the coordination fee should apply to the room rental portion of the agreement.*

See response to recommendation 8.

15. *Execute a letter of understanding regarding the amount to be charged for phone service due to the multiple phone accounts currently at Boerner Botanical Gardens. Remit to Zilli's the overcharge of \$397 for 2018.*

See response to recommendation 8.

