

**CITY OF TOLEDO
DEPARTMENT OF LAW**

MEMORANDUM

January 31, 2012

To: Mayor Michael P. Bell *MB 1/31/12*
Thru: Stephen Herwat, Deputy Mayor--Operations *SH 1/31/12*
From: Adam W. Loukx, Law Director
Daniel Hiskey, Manager, Special Projects
Re: **Preliminary Investigative Report- findings and recommendations**

The undersigneds have undertaken a preliminary investigation into various allegations of irregularities within the Department of Neighborhoods ("DON"). As the investigation proceeded it became apparent that the issues within DON were more extensive than initially imagined. Accordingly, this memorandum is not intended to set forth final conclusions and recommendations as more investigation may be warranted as additional information may develop.

The purpose of this memorandum is not to present an expose' of wrongdoing. Nor is this preliminary report intended to assess blame or suggest criminal wrongdoing. Rather this report sets forth observations garnered from our investigation to date and presents recommendations to correct noted problems. Further details as to the basis of the observations described herein are available upon request.

EXECUTIVE SUMMARY:

Serious allegations have been raised both by employees of the DON and from citizens that work closely with DON. The allegations include:

1. Improper bidding processes involving third party bid openings;
2. improper recommendation of subcontractors, i.e. steering;
3. falsification and/or improper handling of critical project documentation;
4. profound violations of financial procedures;
5. favoritism by certain City officials for friends, etc.;
6. improper accounting of "petty cash"; and,
7. lack of responsible inventory control.

Preliminary investigation has, to date, resulted in inconclusive evidence of some of the more serious allegations. However, preliminary investigation has revealed that there are serious issues within DON that should be addressed. These issues include:

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- A systemic failure to monitor certain programs in an effort to insure procedural safeguards were in place;
- Failure to maintain discipline of employees in the face of severe dysfunctionality caused by personality tensions;
- Failure on the part of prior DON leadership to insure that existing procedures were substantially followed;
- Failure to internally address allegations of wrongdoing at an internal level;
- Failure to maintain the integrity and security for files and financial procedures; and,
- Fostering a work environment that discouraged many employees from bringing concerns to management while shortsightedly encouraging other employees to completely disregard the organizational chain of command.

Further, specifically in connection with the Neighborhood Beatification Action Program (NBA) preliminary investigation found:

- Failure to follow the Toledo Municipal Code and City financial procedures in regards to deposit of funds and maintenance of petty cash.
- Profound failure to follow procedures to properly account for equipment inventory.

During the course of this investigation, departmental leadership has changed¹. It is recommended that the new departmental leadership institute, immediately, procedures that will adequately address the issues identified herein. Key recommendations are set out throughout this memorandum in bold font.

BACKGROUND:

On the City website, DON sets forth its mission as follows:

“The Department of Neighborhoods is the lead agency responsible for administering programs, projects and activities related to CDBG, HOME, ADDI and ESG programs. The Department of Neighborhoods provides financial and technical support for the renovation and construction of housing units, revitalizing neighborhoods by enforcing applicable codes and abating nuisances, by becoming involved with citizens, connecting them to their city government and collaborating with those private, public and non-profit entities whose purpose is to enhance the quality of life in Toledo.”

The scope of DON’s responsibilities has shrunk since early 2011 with the creation of the Department of Inspection. As this investigation began, DON was divided into five divisions as follows:²

¹ This memorandum is not written with the purpose of justifying or explaining personnel changes within DON. As indicated, the primary purpose of this memorandum is to advise of potential problems within the Department and provide recommendations that may assist in addressing those problems.

² As will be discussed, there is some evidence to suggest that attempts to accommodate personality differences may have played a critical role in decisions upon how the Department was organized. An organizational chart of the Department as it was configured in late 2011 is attached as Exhibit 1.

- **Division of Housing and Neighborhood Services.** At the onset of this investigation this division listed 17 employees including Manager Jody Prude who has since been removed. The Division of Housing and Neighborhood Services administers most of the grant and loan programs provided by DON. This Division also lists oversight of the “Board-up crew” under its responsibilities.
- **Neighborhood Stabilization Program.** This relatively new division lists eight employees including Manager Ebenezer Osei-Kwame³. As the name suggests, the primary responsibility of this division is the administration of the Neighborhood Stabilization Program.
- **Division of Administrative Services.** This division consists of thirteen employees including manager Bonita Bonds. As the name implies, the Division of Administrative Services provides administrative support for the other Divisions of DON. Importantly, this Division is responsible for monitoring the finances of the Department.
- **Division of Recreation.** Recreation is managed by Sherrie Shipman and lists four additional employees.
- **Neighborhood Beautification Action (“NBA”)** As the name suggests, NBA strives to stabilize certain neighborhoods through beautification efforts. The NBA crews, for instance, cut grass in as many as 4400 lots annually. NBA is run by a manager and has two additional fulltime employees. As will be discussed, the NBA program relies heavily on seasonals to perform its tasks. As many as 50 seasonals are employed by NBA.

Legislation is pending before Council that will divest DON of certain responsibilities by moving both Recreation and NBA to the Department of Public Service. Council action on these measures is expected as soon as January 31, 2012.

The Department was led by a Director and had one commissioner whom had oversight responsibilities for the Division of Housing and Neighborhood Services, the Neighborhood Stabilization Program and the Division of Administrative Services.

The Department oversees several housing programs and is responsible for the disbursement of significant Department of Housing and Urban Development (“HUD”) funds within the City. The Department is funded primarily with federal grant monies and only has a small general fund budget. Programs run and/or monitored through the Department of Neighborhoods include:

- **Neighborhood Stabilization Program (“NSP”).** NSP is designed to stabilize target neighborhoods by acquisition and rehabilitation of foreclosed properties.
- **Community Housing Development Organization (“CHDO”).** CHDO grants are intended to assist Community Development Corporations (“CDC’s”) in acquiring properties for new construction or rehabilitation with the goal of creating low or moderate income housing opportunities.
- **HOME- Lead program.** DON oversees grants to be used to remediate lead hazards.

³ At the commencement of this investigation, the DON organizational chart listed Mr. Osei-Kwame as “manager”; however, it appears that this division operates with dual managers as Larry Anderson, an administrator, seemed to be responsible for many managerial tasks.

- Down Payment Assistance provides loans/grants to assist eligible first time homebuyers in the City of Toledo.

Because DON receives significant federal funding, the activities of DON are subject to a myriad of HUD program regulations and responsibilities. Additionally, the City has developed significant internal regulations and procedures to govern the many programs monitored by the Department.

The scope of preliminary investigations at first was primarily limited to review of activities of the Division of Housing and Neighborhood Services⁴ and, to a lesser extent, the Neighborhood Stabilization Program. Particular attention was given to the administration of the CHDO program by the Division of Housing and Neighborhood Services. As will be discussed, allegations later arose concerning the NBA program. These allegations, therefore, will also be addressed in this preliminary report.

In the wake of several investigative news articles that alleged wrongdoing by persons associated with DON, Agents of HUD and of the Federal Bureau of Investigation ("FBI") (collectively "Federal Investigators") have undertaken a review on behalf of HUD. The Federal Investigators are interviewing personnel and reviewing records⁵. The Federal Investigators have been advised of the City's internal investigation. The City has fully cooperated with the Federal investigators and, where appropriate⁶, shared relevant findings with them. The Toledo Police Department is investigating equipment loss at the NBA "barn" and irregularities with the NBA "petty cash" box.

METHODOLOGY:

This preliminary report and recommendations contained herein are based solely upon observations made from interviews of persons with knowledge and document review.

Items Reviewed

Scores of files, memoranda and other documents have been reviewed over the course of the investigation. Further, reports in the local media have been followed. Given the volume of items reviewed, a comprehensive summary is impractical. Critical documents will be referenced as needed throughout this preliminary report.

⁴ Recently, the Department has been reorganized to increase efficiencies and, in part, to address concerns identified throughout this preliminary report. A copy of the current organizational chart is attached as Exhibit 2. Unless otherwise indicated, references in this report will be made to Divisions within the Department at the time the investigation began.

⁵ The Federal investigator, at the time of this writing, continues to interview witnesses and conduct records review. It appears that the scope of the Federal investigation is more extensive than the scope of the City's internal investigation as it is also looking at the Code Violation Abatement Program ("CVAP") a program administered out of Housing Court. This investigation did not explore matter related to CVAP.

⁶ Subject, in the case of some employee interviews, to the holding of *Garrity v New Jersey*, 385 US 493 (1967).

Persons Interviewed

To date, the investigatory team has contacted and interviewed approximately thirty (30) persons. Persons interviewed include City employees and officials, past and present, as well as third parties.

Additionally, the investigatory team was contacted by several persons who claimed to have information but proved to lack any relevant personal knowledge worthy of reiteration. Further, many "tips" came from various sources. It would be unfair not to credit The Blade as a valuable source of information as its articles on DON provided many productive leads. Where credible, follow-up was done on tips received from sources not identified in this report.

DISCUSSION/RECOMMENDATIONS:

a. Bidding

Background

Internal investigation followed various media reports alleging bidding irregularities in DON. Initially, prior DON leadership was entrusted with the task of leading internal policy review. However, as allegations of wrongdoing became more credible, the Department of Law and Special Projects manager Daniel Hiskey⁷ were asked to investigate the allegations on behalf of the Mayor pursuant to Mayor's investigatory authority as vested by Section 71 of the City Charter⁸.

Initially, investigation focused upon apparent lack of oversight on bidding processes conducted off-site, i.e. outside of Government Center, by third party recipients of CHDO monies. Historically, most bidding for construction projects involving federal grants was done in accordance with City procedure. Contractors selected off of a rotating list were invited to bid. A bid opening was scheduled and bids were opened publicly at the pre-announced opening time and place. Bids were submitted to DON at the City's offices and were secured until opening occurred. Awards were made to the lowest and best bidder that was not more than 15% greater

⁷ Mr. Hiskey was, at the commencement of this investigation, already reviewing "questioned costs" in a 2010 audit report involving the DON. While the undersigned did meet with Federal Investigators to discuss the audit findings, this report will not address issues related to the audit as the Administration has already been briefed on that subject and measures have been implemented to diminish the possibility of recurrence of unfavorable audit findings.

⁸ Section 71. Investigation by the Mayor. The Mayor may without notice cause the affairs of any department or the conduct of any officer or employee to be examined. The Mayor or any person or persons appointed by the Mayor to examine the affairs of any department or the conduct of any office, or any employee or officer shall have the same power to compel the attendance of witnesses, and the production of books and papers and other evidence and to cause witnesses to be punished for contempt as is conferred upon the Council, subject however to any limitations imposed by Ohio Revised Code Chapter 4117 and all labor contracts.

than or lower than of the project estimate. The project estimate was not shared with bidders until bidding was closed.

Prior to November 2011, DON allowed third party developers to act as general contractors on their projects. This practice gave third parties significant control of crucial parts of the bidding process. For instance, third party developers would invite bidders (from the City's approved list) to submit bids directly to the third party developer. The third party developer would be responsible for accepting bids, securing bids until opening, opening bids and selecting a winning bidder. Under this practice the City was to be informed of the date and time of bid opening and a City representative was supposed to attend. Under prior practice, a third party developer could avoid selection of the lowest bidder if the third party developer was willing to finance the difference between the lowest bid and the selected bid.

On November 30, 2011, DON leadership submitted a document titled "Recommendations-Single-Family Projects" to City Council. The recommendations included revisions of then existing practices regarding bidding. In pertinent part the Recommendations stated:

"The Department will continue its current policy requiring sealed bids to be opened at a predetermined date, time and place, but modify the procedures to have Department of Neighborhoods (DON) prepare, distribute, receive at the Division of Purchasing [Department of Finance], open and record bid packages at the Division of Purchasing, *including projects for which the City provides financing, in part or in whole, to a third party partner.*" [Emphasis added.]

This recommendation seemed warranted. However, new DON leadership has revised the November 30 recommendation to provide that invitations to bid on projects estimated at over \$10,000 would be posted on the City website to allow all qualified and interested bidders an opportunity to participate. Moreover, the bids, which would be accepted at DON will be opened publically at a set time and place. Winning bids will be selected based upon a "best bid" criteria.

Third Party Bidding

This preliminary investigation suggests that the City should forever divorce itself from any policy that unnecessarily vests control of any portion of the bidding process to third party recipients of City administered funds. This former practice inhibited meaningful oversight of bidding and fostered situations where allegations of impropriety could not be effectively investigated.

The allegations of impropriety in award of bids have been extensively reported and, therefore, there is little reason to recite them *in toto* within this report. Significant allegations included:

- Failure by third parties to provide a uniform place to contractors to drop off bids;
- Preference of certain contractors over others;
- Bid openings done outside of the presence of City representatives;
- Failure to properly record bids; and

- Failure to maintain the integrity of sealed bids during the process.

Given loose adherence to procedures or lack of adequate procedures, it is virtually impossible to substantiate many of these allegations. However, sufficient evidence of impropriety exists to justify the need to adopt better procedures and vigorously enforce them⁹. The allegations which led to this preliminary investigation provide a case and point.

One contractor alleged that he was asked to drop off bids at a local real estate office rather than at the office of the third party developer. The third party developer insisted, to the contrary, that such instruction absolutely was not given. The third party contractor indicated that all bids were to be dropped off at its offices. While an officer of the third party developer is associated with the local real estate office, no conclusive evidence exists to support the contractor's allegations. Clearly, however, any procedure that would fail to provide for a uniform and secure place to submit sealed bids would be inadequate.

This is especially true in light of allegations that for at least three project addresses: 829 Brookley, 1737 Copley and 4652 S. Detroit - bids were submitted that were essentially identical. Virtually all knowledgeable witnesses agree that the likelihood of complex line-item bids being virtually identical is extremely remote. A probability exists that a bidder was improperly able to access a competitor's bid prior to bid opening. While it has been determined that contractors have properly requested copies of competitor's bids *after* bid openings pursuant to R.C. 149.43, unopened bids are not public records and must be secured.

An additional concern involves the presence of City employees at third party bid openings. City representatives are supposed to attend bid openings. However, it has been alleged by relevant City personnel that the City is not always notified of bid openings and therefore the City is not always represented. Failure to have a City official present at the openings, if that is true, could lead to an inability by the City to insure proper procedures were followed.

By way of illustration, amongst bids that were reviewed were three CHDO projects that were opened on January 20, 2011 at the offices of a third party developer¹⁰. The City rehab specialist involved has indicated that he neither received notice of the openings nor attended the openings. Mileage logs for that City employee seemingly support his statement that he was not present at the openings. However, in stark contrast to the version of events supplied by the City employee, agents of the third party developer claim that the same City employee was actually present at the January 20th openings. While the offices of the third party developer require guests to sign in and are subject to video monitoring, no video or sign-in sheet is available to confirm the third

⁹ As will be discussed throughout, in most cases, conflicting statements make it impossible to conclusively determine which witnesses are being truthful and which are not. However, given the disparity of their accounts it is obvious that there is significant mendacity on the part of some witnesses. Because it is impossible to determine, with certainty, who is lying and who is telling the truth, nothing in this memorandum should be read as accusing any particular witness of dishonesty.

¹⁰ These three bids were for projects at 829 Brookley, 1737 Copley and 4652 S. Detroit and have been the subject of controversy.

party developer's version of events. Moreover, bid opening data sheets fail to show the presence of any City employee¹¹.

Other City employees have likewise suggested that the City was not always present during openings held by third party developers even though specific written policy requires such attendance. In fact, these employees complained to DON leadership about failure of at least one third party developer to invite City representatives to bid openings.¹²

IT IS RECOMMENDED THAT THE NOVEMBER 30, 2011 RECOMMENDATIONS TO COUNCIL BE CONTINUED AS REVISED BY THE NEW DIRECTOR, i.e. POSTED TO THE CITY WEBSITE WITH AN OPENING AT A SET TIME AND PLACE¹³, AND THAT NO BIDDING ON PROJECTS INVOLVING FUNDS ADMINISTERED BY DON BE DONE OUTSIDE THE CITY'S CONTROL.

In many cases, there has been a significant failure by all involved to properly document bid openings. Critical records are, in some cases, missing from files, incomplete, or improperly filled out. This problem is perhaps most evident in "bid opening data sheets". The bid opening data sheets are single page forms that provide columns to break down and compare bids at opening. The forms also provide a space that allows comparison of the bids to the project estimate. There are spaces for insertion of the date of opening, signature of witnesses, etc. These simple forms are self-explanatory in nature and there is virtually no good reason for them to not be completed properly.

Nevertheless, many of these forms are incomplete or improperly completed. In several instances, a City manager, who was not present at the opening, completed the form after the fact based upon telephone calls to the third party developer. The manager signed the form as a "witness" and the form was placed in the appropriate file. This manager, who was disciplined during the course of this investigation, indicated that she was trying to complete the file.

We were unable to identify any prior instances of discipline of a DON employee for failure to follow procedures in regards to record-keeping.

Some question exists as to whether DON employees and third party developers have been sufficiently trained in the necessity of accurate record-keeping and in how to properly complete forms.

IT IS RECOMMENDED THAT ALL RELEVANT DON EMPLOYEES BE TRAINED IN BIDDING PROCEDURES, FILE COMPILATION AND COMPLETING OF FORMS. IT IS FURTHER RECOMMENDED THAT EMPLOYEES THAT CONTINUE TO FAIL TO FOLLOW PROCEDURES BE SUBJECTED TO APPROPRIATE DISCIPLINE.

¹¹ As will be discussed, however, on some occasions, these sheets were signed by a City employee that was not present at the openings.

¹² It was learned during the investigation that one high level member of the DON leadership met regularly with the leadership of the third party developer, in part, to try to encourage compliance with City processes.

¹³ The procedure enacted by new DON leadership will provide for openings to occur on Wednesdays at 3:00 pm in the DON offices in One Government Center.

Generally this investigation was unable to find instances of similar problems where bids were opened within the Department of Neighborhoods as opposed to off-site. However, some issues with in house openings were uncovered. For instance, it was determined that when a manager took over responsibility for bid openings, the process became flawed.

Historically, rehab specialists had invited approved contractors from a bid rotation list to submit bids. When the contractors were invited to bid, they were informed as to a deadline for bid submittal and a time and place for bid opening. Due to management concerns over minority participation, the process was amended. A housing manager began issuing bid invitations and advising contractors as to the time and place of the opening. However, in some cases, bid openings were delayed, without prior notice, to accommodate the manager's schedule.

IT IS RECOMMENDED THAT BID OPENING DATES AND TIMES BE STRICTLY ADHERED TO UNLESS PROPERLY DELAYED THROUGH AN APPROPRIATE PROCEDURE THAT PROVIDES NOTICE TO ALL BIDDERS IN ADVANCE.

Bid Rotation

During the investigation, efforts to review and obtain relatively current information were hampered due to the manner in which lists of contractors, subcontractors, bid rotations and other such listed records were maintained. When it came time to update a list, new data were written over the old on the computer spreadsheet. Accordingly, unless a hard copy of a prior list was kept, the earlier information was lost.

IT IS RECOMMENDED THAT WHEN IT IS TIME TO UPDATE A DATABASE OR COMPUTER MAINTAINED LIST, THE ORIGINAL DATA OR LIST BE PRESERVED TO INSURE PRESERVATION OF HISTORICAL INFORMATION.

A bid rotation program cycle was developed by DON staff ostensibly to "be fair" in how bids were awarded in terms of both MBE participation and workloads in general. While the underlying intent for the development of such "lists" was noble, it has caused numerous complaints from both contractors and subcontractors. More importantly, maintenance of the list is both cumbersome and difficult to explain. In the end, questions over the list eroded DON's credibility in a process which actually sought to create fairness.

IT IS RECOMMENDED THAT DON ENACT NEW BID ROTATION PROCEDURES THAT ARE MORE DIRECT, FAIR, TRANSPARENT AND EASILY EXPLAINED.

It should be noted that newly created bidding procedures, the significance of a rotation list will be significantly diminished. As indicated above, on all projects estimated at a greater than \$10,000 amount will be advertised online and any qualified bidder will be welcome to participate. Bid rotation lists will only be employed when the cost of a project is expected to be less than \$10,000.

b. Steering

Allegations were made that an employee of DON attempted to “steer” a contractor toward using a particular roofing sub-contractor. Further, it was claimed that the City employee asked the contractor to not list the subcontractor’s name on official forms. The employee involved denied any intent to direct the contractor to use a particular contractor but did admit to providing the subcontractor’s name to the contractor when asked to suggest a roofer.¹⁴ No evidence was found to corroborate any further impropriety in this instance.

Clearly, the employee acted, at best, in a manner that gave rise to an appearance of impropriety in the above referenced incident.

IT IS RECOMMENDED THAT DON EMPLOYEES BE STRICTLY PROHIBITED FROM REFERRING CONTRACTORS TO POSSIBLE SUBCONTRACTORS AND SUPPLIERS.

Some allegations involving improper relationships between subcontractors and/or suppliers and DON employees were raised. In one instance, a contractor claimed that a DON employee sought to have him provide half price construction services on a property owned by the employee. While this allegation remains unsubstantiated, such interactions would clearly violate the City’s Administrative Policy No. 40 and State ethics laws.

Other, as yet unsubstantiated, allegations have been made of DON employees giving favorable treatment to certain contractors or suppliers. These allegations range from “hand holding” certain contractors through the process, thereby giving a competitive advantage, to making special efforts to insure more prompt payment of invoices than normal.¹⁵

IT IS RECOMMENDED THAT EMPLOYEES IN DON THAT INTERACT WITH CONTRACTORS AND SUPPLIERS BE RETRAINED ON CITY AND STATE ETHICS LAWS. ALL DON EMPLOYEES MUST ENDEAVOR TO TREAT ALL CONTRACTORS AND SUPPLIERS FAIRLY AND EQUALLY.

Investigation disclosed that at least one DON employee was permitted to operate as a general contractor in the City of Toledo “on the side.” While this employee was not a contractor on City funded projects, the potential for conflict of interest by allowing such incompatible outside employment is obvious¹⁶. Nevertheless, this incompatible outside employment was allowed.

IT IS RECOMMENDED THAT OUTSIDE EMPLOYMENT BY DON PERSONNEL BE CAREFULLY REVIEWED SO THAT NO EMPLOYEE IS PERMITTED TO ENGAGE IN PURSUITS THAT ARE CLOSELY REGULATED BY THE CITY.

¹⁴ The employee accepted discipline over this issue during the course of this investigation.

¹⁵ Allegations of less favorable treatment of disfavored contractors were likewise made. These allegation are likewise unsubstantiated, but range from holding up payments to failure to invite persons to bid.

¹⁶ Aside from the fact that the City Department of Inspection, which was part of DON at the time the outside employment was authorized, would have certain regulatory responsibilities toward this employee, the employee could also be working with subcontractors subject to DON regulation.

c. Communication, staffing and discipline

This investigation revealed serious disfunctionality within the staff of DON. Reports of multiple “blow-ups” between managers and employees and, even in a few cases within the leadership of DON, provide a cause for concern. In fact, it was related that the interaction between one manager and staff member had degenerated to a point where a union representative became a necessary presence at staff meetings. Further, evidence exists that suggest that organization decisions were made primarily to accommodate personality disputes rather than to promote efficiencies.

There is little evidence that discipline was effectively maintained by DON leadership, thereby promoting an atmosphere of divisiveness. Many persons interviewed painted a picture of an atmosphere that created apathy amongst productive workers who felt that raising issues “up the ladder” would be futile as prior complaints had simply been for naught.

Communications within DON management were sorely inadequate and there appears to have been a systemic failure to address issues brewing within the Department. When interviewed, only one member of DON leadership took responsibility for the communication and discipline failures while, in stark contrast, other leaders were quick to suggest lack of support from others.

Serious questions as to the adequacy of training exist as a result of investigations to date. For example, a manager who took responsibility for significant portions of the bidding process, appeared to have little concept of actual bidding requirements. The problem took place on a recurring basis that could have easily been avoided if the manager had been properly trained. As indicated throughout this report various staff members seem wholly unfamiliar with basic City Policies and Procedures. As has been advised, training on the City’s Administrative Policy 40 regarding ethics would be invaluable. Further, employees with responsibility for inventory should be trained as to the City’s expectations for inventory control.

The lack of overall training appears to have been exacerbated by a lack of mutual support at management levels. This is illustrated by allegations of one manager who said that many attempts to gain input from the Commissioner and Director were often ignored.

IT IS RECOMMENDED THAT NEW LEADERSHIP CLOSELY MONITOR AND CONTROL PERSONALITY CONFLICTS WITHIN DON. EXISTING OR NEWLY ENACTED PROCEDURES NEED TO BE FAIRLY AND CONSISTENTLY ENFORCED.

d. File and information Security

When performing detailed reviews of numerous types of files, we rarely found a file for any program or project that was organized in any consistent fashion. Often files were filled with multiple copies of the same information or no copies of pertinent documents. Sometimes, files contained only winning bids, while other files contained all submitted bids. Similarly, as referenced above, sometimes, bid opening data sheets were in the files while in other files they

were absent. Project chronology sheets were likewise included only sporadically in files reviewed. In general, files were confusing to follow and often incomplete. This deficiency caused confusion and necessitated searching for missing data from other sources.

Interviews of DON personnel also revealed that virtually no security measures were in existence to protect project costs estimates and other confidential data. Files with DON have been generally accessible to any staff member at any time.

IT IS RECOMMENDED THAT ALL FILES WITHIN DON BE MAINTAINED IN A PROFESSIONAL AND CONSISTENT FASHION AND THAT ALL INFORMATION BE PLACED IN THE APPROPRIATE FILE AS A BASIC PROCEDURE. IT IS FURTHER RECOMMENDED THAT ALL BID INFORMATION, INCLUDING PROJECT ESTIMATES BE MAINTAINED IN A SECURED MANNER AND THAT ACCESS BE RESTRICTED TO STAFF WITH A LEGITIMATE NEED TO ACCESS THE INFORMATION.

In many instances, DON staff failed to sign and date documents as required by existing procedures. Often, even if documents were signed, the signatures were not accompanied by dates. Lack of responsible signatures and dates on key documents creates difficulty for reviewers to determine "who did what and when did they do it?" This failing is particularly significant when it becomes necessary to pinpoint the chronology of the City's actions. Further, lack of signatures makes it impossible to determine, in some cases, which City employee is responsible for certain actions or even if a City employee actually performed required functions.

IT IS RECOMMENDED THAT DON EMPLOYEES BE REQUIRED TO SIGN AND DATE PROJECT DOCUMENTS AS APPROPRIATE PRIOR TO FILING THE DOCUMENT.

Reasons justifying change orders were often poorly memorialized in the DON files that were reviewed. In fact, it was generally difficult to determine exactly why a change order was presented without extensive file review and/or discussion with the staff member responsible for the file. Because change orders often increase the price of the project, staff should pay particular attention to documenting the specifics as to why the change order was required.

Investigation disclosed several instances where a contractor began a job but, at some point, was replaced with another contractor. The end result of this activity was that the project price increased as the first contractor may have already drawn 30% or more of the project draws by the time he/she was removed from the job. The second contractor could then subsequently draw as much as 100% of the original project bid as well¹⁷.

¹⁷ In cases where contractors were replaced, DON allowed for an increase in disbursed funds to pay the covering second contractor.

During review of NSP files we determined that many of the initial project files did not contain standard project specifications or bid summary data sheets. It was initially believed that this deficiency was simply indicative of the lack of proper file control that has been discussed above. However, it was subsequently determined that some early NSP projects were simply awarded to third party developers without proper bidding and with only general specification detail. This occurred in at least 4 of the initial NSP projects (3634 Willow Run, 2313 Portsmouth, 120 Clifton and 2033 Talbot). It was likewise discovered when attempts were made to trace back payment draws that

IT IS RECOMMENDED THAT CHANGE ORDER DOCUMENTATION PROCEDURES BE IMPLEMENTED AND ENFORCED THAT WOULD REQUIRE SPECIFIC, DETAILED REASONS FOR THE REQUESTED CHANGE. WHERE IT IS NECESSARY TO REPLACE A CONTRACTOR, REASON(S) FOR THE REPLACEMENT SHALL BE DOCUMENTED AND EFFORTS SHOULD BE MADE TO INSURE THAT DUPLICATION OF WORK IS ELIMINATED OR REDUCED. IN CASES WHERE THE FIRST CONTRACTOR IS REPLACED FOR CAUSE, LIQUIDATED DAMAGE CLAUSES OR SIMILAR PENALTIES SHOULD BE PROVIDED FOR BY CONTRACT.

Serious allegations were uncovered that raise the possibility that contractors falsified important program documents in order to create the impression that there was compliance with City goals or procedures. In one instance, it was alleged that a contractor improperly listed minority subcontractors on an NSP project in order to meet minority participation goals. In another case, it was claimed that a non-licensed contractor falsely signed the name of a licensed contractor on key project documents.

IT IS RECOMMENDED THAT GREATER EFFORTS BE MADE TO VERIFY INFORMATION PROVIDED ON KEY PROGRAM FORMS TO INSURE COMPLIANCE WITH CITY AND/OR FEDERAL GUIDELINES.

e. NBA- Petty Cash

Several years ago NBA began selling scrap collected during neighborhood beautification activities to a local scrap yard. Proceeds from the sale of the scrap, which could be in the form of cash or check, were then retained by NBA as "petty cash". This "petty cash" was then spent on everything from equipment to lunches to informal settlement of claims made to disgruntled neighbors. The NBA maintained this 'petty cash' fund for several years until it was closed by the deposit of remaining funds, approximately \$410, to the City treasury in spring 2010¹⁸.

Available records fail to adequately account for all the funds that came into the account¹⁹. Moreover, the account was improperly created and the retention of proceeds from the sale of scrap violated deposit provisions of the Toledo Municipal Code²⁰.

there were instances of replacement of contractors after as much as 30% or more of the project costs had been paid. Sometimes nothing in the file indicated why or when the first contractor had been replaced. The only evidence of the replacement of contractors in these cases was the first draw paid to the second contractor.

As the NSP program matured, this problem appears to have diminished. However, in the cases of concern, the incomplete nature of the project specifications made it impossible to determine whether payments were made for duplicated work.

¹⁸ Interestingly, the manager of NBA that discontinued the "petty cash" practices indicated that the DON Director claimed no knowledge of the existence of the stash of money. However, the prior manager indicated that the same Director not only knew of the fund but also periodically reviewed the books and made expenditures.

¹⁹ Source records show scrap sale proceeds available to deposit into the petty cash at \$6,164.66. However, there are receipts for only \$1,308.83 of expenditures. These numbers would reflect a shortage of almost \$5000 (\$4855.83). Investigation of this issue continues.

BECAUSE THE NBA "PETTY CASH" FUND HAS BEEN DISOLVED THERE IS NO SPECIFIC RECOMMENDATION REQUIRED ON THIS ISSUE.

f. NBA- Inventory Control

NBA equipment inventories have been poorly maintained and monitored. Failure to properly secure and track inventory has contributed to loss of equipment purchased by federal funds and/or program income. There are many causes for the losses. Theft by third parties has occurred both at the NBA "Barn" and in the field²¹. Some witnesses have indicated that precautions against theft have been minimal to non-existent. Failure to secure equipment has been a problem in some of these cases. While a camera was installed to address security concerns, other solutions to the problem of theft by third parties were not implemented due to cost concerns.

Inventory loss could also, to some degree, be due to theft by persons working within the program. While most of the seasonals appear to have been diligent and hard-working, there is evidence that some seasonals were placed with the program despite criminal histories.²² Seasonal and other employees had free access to equipment stores. While investigation thus far has not discovered any actual inventory theft by seasonals, the atmosphere invites inventory loss of this sort. For instance, there is no city employed inventory manager at the barn.

Contrary to early reports, there does seem to have been efforts to report losses where equipment was believed to have been stolen. Investigation discovered that several police reports had been filed. Nevertheless, there were instances where items were stolen and police reports were not made. In at least one instance a seasonal was dismissed due to failure to secure equipment. However, investigation has failed to find any instance of a City employee being disciplined for inventory loss.²³

Due to the volume of work conducted by NBA, significant amounts of equipment breaks down or simply becomes worn out. Obviously, breakage of this sort is expected. However, no accurate record-keeping exists to track when equipment is sent to the City garage for repair or when equipment is simply discarded. This failure to account for the whereabouts of equipment sometimes leads to the absurd result that equipment is considered lost when it is actually at the

²⁰ 191.02. **City employees to deposit money.** It shall be the duty of every board, officer, agent and employee of the City having money in their hands belonging to the City to deposit such money with the Commissioner of Taxation and Treasury upon the taking effect of this chapter, and thereafter such boards, officers, agents and employees receiving money for the account of the City, from any and all sources, shall make daily deposits with the Commissioner of Taxation and Treasury of all such moneys collected, at such time and place as shall be designated by the Director of Finance.

²¹ In one instance a loaded trailer was stolen from the NBA lot, in another instance, a chainsaw was stolen from a NBA truck in the field. At least one thief was apprehended after climbing the fence at the NBA lot and stealing a van.

²² In one instance, TPD was called to the NBA facility to make an arrest of a seasonal on an open felony warrant.

²³ While the Code provides for "seasonals" that are employed directly by the City, the seasonals used by the NBA program are not City employees. Rather, the seasonals referenced in this report are obtained through an employment agency.

garage for repairs²⁴. In the case of discarded equipment, NBA simply sells the worn out equipment for scrap or uses the old equipment for parts without accurately tracking its disposal.²⁵

IT IS RECOMMENDED THAT SECURITY AT THE NBA BARN BE REVIEWED AND FEASIBLE COUNTERMEASURES SUCH AS INSTALLATION OF A CARD ACTIVATED GATE BE EXPLORED. SEASONALS SHOULD NOT BE HIRED WITHOUT BACKGROUND CHECKS. A CITY EMPLOYEE SHOULD BE PLACED IN CHARGE OF EQUIPMENT STORES. ALL EQUIPMENT SHOULD BE MONITORED AND TRACKED²⁶.

g. Syndication

There is evidence to suggest that approved, licensed contractors have lent their names to unlicensed contractors thereby allowing the unlicensed contractors to participate on projects without meaningful involvement by the licensed contractor. This investigation did not have an opportunity to fully study this issue during initial investigation. However, initial observations suggest that the City could benefit from more well-defined procedures to identify and take action where improper syndication is occurring.

IT IS RECOMMENDED THAT DON, THE DEPARTMENT OF INSPECTION AND LAW MEET TO FORMULATE AN EFFECTIVE AND FAIR PROCEDURE TO IDENTIFY AND PREVENT IMPROPER SYNDICATION.

CONCLUSION:

This preliminary report provides only a condensed look at the matters uncovered during the course of negotiations. Many factual allegations, disputes, claims, and reports of incidents are not discussed within the text of this preliminary report. This investigation uncovered or confirmed the existence of many singular irregularities and there is probable cause to believe that other improprieties may have occurred. The Administration has been verbally briefed as to the specifics of most of these matters.

²⁴ Accounts of the "Green Monster" best illustrate the confusion that exists in monitoring of NBA inventory. The story also illustrates a troubling looseness of acceptable requisition procedures.

The "Green Monster" is the name given to a 5000 lb forklift operated by the NBA program. The circumstances in which the forklift was acquired are in themselves remarkable. The forklift appears to have been gleaned from a clean up job undertaken by NBA several years ago and the forklift was kept for use around the "Barn". Ownership of the forklift is, therefore, questionable. Depending on whom we talked to, we learned that the forklift was operational and frequently used or, conversely, that it was an unusable piece of junk. Some say it went to the City garage for repair, while others say the garage wouldn't work on it due to lack of clear ownership. Along the same lines, some do not recall seeing the "Green Monster" in a long time, while others insist it was at the "Barn" as recently as November 2011. At least one employee suggests that it may have been "accidentally" scrapped. The confusions surrounding the whereabouts of the "Green Monster" offers a comedic illustration of a failure to track inventory.

²⁵ The selling of equipment for scrap in this manner is, arguably, in itself, a violation of TMC 187.18 which regulates the disposal of surplus.

²⁶ As noted above, at the time of writing, legislation is pending that would formally remove responsibility for NBA to the Department of Public Service.

In most cases there is insufficient proof as to who acted improperly and, in the case of conflicting stories, which version is more truthful. Determination of criminal wrongdoing, if any, is better left in the hands of law enforcement authorities with jurisdiction. In the final analysis, the types of allegations that we encountered are difficult to corroborate due to an atmosphere that invited misfeasance. In other words, it is virtually impossible to verify employee activities under the oversight system maintained throughout DON. By way of example, files that fail to document which staff member did what and when the action was done, lack of inventory control at NBA, general access to computers and files in an unsecured manner all contributed to a generally chaotic atmosphere were the norm²⁷. This investigation found that practices within DON made it difficult to place accountability on the persons responsible.

Accordingly, the intended purpose of this preliminary report is to identify problems and recommend how those problems may be addressed to prevent recurrence in the future.

It is difficult, within these few short pages, to comprehensively illustrate the depths of the problems within the Department of Neighborhoods. It is likewise difficult within the confines of this preliminary investigation, to give credit where it is due or to thank the many persons within the Department of Neighborhoods that have performed diligently and provided dedicated service throughout their employment with the City.

Specifically, Lourdes Santiago, the current Director of Neighborhoods and Ron Navarro, from the Department of Human Resources, should be thanked for their valuable contributions toward this investigation to date.


Like other Departments of the City, Neighborhoods has struggled with "doing more with less". The importance and magnitude of the mission of Neighborhoods should not be diminished based upon this preliminary report. The Department has, for the most part, responsibly and effectively conducted its mission. The recommendations contained within this preliminary investigative report should not be interpreted as a failure to recognize the valuable contributions of the Department. However, it is hoped that implementation of recommended changes will improve overall efficiency and prevent recurrence of misfeasance within the Department.

Please advise if you have any questions or concerns.

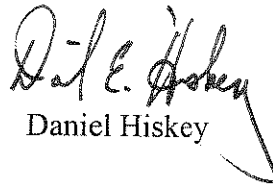
²⁷ In one instance, which took place during the former Administration, a police officer who had cited a DON manager for a driving offense was sent a frivolous Notice of Violation by the Department of Neighborhoods. The Notice of Violation alleged that the police officer's private residence was maintained in a nuisance condition. Investigation undertaken by the prior Administration found that the person who allegedly sent the Notice of Violation had not done so. Rather, some other unidentified person had apparently used her computer and issued the fake and grossly improper Notice of Violation. This incident occurred several years ago and was not comprehensively reinvestigated by this Administration due to the passage of time. However, it presents a startling example as to how lack of security for computer terminals and files prevent responsible follow-up and assessment of responsibility. It also seems indicative of an atmosphere that fostered such rampant misconduct.

1/31/2012

Respectfully submitted;



Adam Loukx



Daniel Hiskey

cc: Thomas Crothers, Deputy Mayor, External Relations
Shirley Green, Director of Public Safety
Lourdes Santiago, Director, Neighborhoods
Ron Navarro, Administrative Analyst 1

Department of Neighborhoods

Kattie Bond - Director

Judy Smith - Secretary 3

Mike Badik - Commissioner

Monica Brown - Secretary 2

Housing & Neighborhood Services

Jody Prude - Manager	
Jill Magginis - Intermediate Clerk	
Lisa Lewis Intermediate Clerk	Mike Baranek Rehab Specialist
Jerry Culkowski Neigh. Dev. Spec.	Dan Sullivan Rehab. Specialist
Alan Cox Neigh. Dev. Spec.	George Weller Rehab. Technician
Charles Turnbough Neigh. Dev. Spec.	Rick Horen Rehab. Technician
Larry Wagner Neigh. Dev. Spec.	Toni Thomas Rehab. Technician
Denise Russell Neigh. Dev. Spec.	Greg McKinley Rehab. Technician
Steven Powell Neigh. Dev. Spec.	John Metzger Rehab Technician
Vacant Relocation Officer	

Neighborhood Stabilization Program

Ebenezer Osei-Kwame Manager	
Larry Anderson Administrator - Adm. Services I	Dave Carleski Historical Environmental Officer
Andrew Sager Historical Review Specialist	Atoi King Intermediate Clerk
Toni Thomas Alternate Rehab Specialist	Ray Verdin Rehab. Technician
Robert Scipjin Rehab. Technician	

BOARD UP CREW

Jack Davis Bldg and Grounds Maint.
Seasonal Worker - If Necessary

Administrative Services

Bonita Bonds - Manager	
Bob Dearing Alt. Senior Accountant	Priest King Graphic Arts
Vacant Staff Accountant	Vacant Staff Accountant
Carolyn Bouyer Receptionist/Clerk Non-Typist	Juethia Fisher Program Monitoring Spec
Brenda Oliver Program Monitoring Spec	Veronica Burkhardt Alt. Admin. Analyst
Vacant Program Monitoring Spec	Gwen Ingram Senior Account Clerk
Lola Williams Program Monitoring Spec	Melody Bell Admin. Technician
Sue Thorpe Senior Clerk	Vicki Kyser Senior Account Clerk
Morton Harris - Administrative Analyst II	
Vacant Program Monitoring Spec	Vacant Intermediate Acct Clerk

Recreation

Sherrie Shipman Manager	
Darlene Herwat Supervisor	
Shawn Sobel Athletic Coordinator	
Aaron Myers Athletics Aide	
Freda Overton Intermediate Clerk	
NBA	
Mike Borsos NBA Manager	
Andy Ferrara Administrator	
Jim Rowan Supervisor	
Seasonals	

Department of Neighborhoods - Organizational Chart

