



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

MANAGEMENT REVIEW CASE NUMBER: 2011-0007

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

EXECUTIVE SUMMARY

According to a complaint received by the Office of Inspector General (OIG) following the 2006 expiration of the Lake Worth Community Development Corporation's (CDC) lease agreement with the City of Lake Worth (the City), the CDC remained in the same location without an executed lease agreement and since then, the CDC's utility costs have become the responsibility of the City without any further explanation. Based on this information, the OIG initiated a Management Review and identified the following:

- Between January 22, 2003 and September 30, 2006, the City did not collect utility payments from the CDC pursuant to the terms of the executed leases, which designated the CDC as the responsible party. Furthermore, between February 2000 and January 21, 2003 and October 1, 2006 to present, the City did not have an executed lease agreement with the CDC, yet the City continued to incur the CDC's utility costs which resulted in a loss of utility revenues to the City for an approximate total of **\$25,200.00**.
- Between October 1, 2004 and September 30, 2009, while the City owned property in which it could have housed its own employees, the City instead leased those properties to non-profit entities for which it received a total of \$2,339.69 in rental revenue. During the same time period, the City leased commercial space to house its employees, thereby paying substantially higher rates (total of \$324,979.35 paid), for a total cost differential to the City of **\$322,639.66**.

RECOMMENDED CORRECTIVE ACTIONS

Based on the OIG findings, the following corrective actions are recommended:

1. The City take appropriate measures to address the situation with the CDC to determine the desired lease terms and ensure that all contracts/leases are properly executed, effectively monitored, and in the best interest of the City and its taxpayers.

During the course of this review, the City began negotiating lease terms with the CDC, which will include the CDC's responsibilities for rent and utilities. This is expected to be completed by March 2012, with retroactive terms to January 1, 2012.

2. If the City approves a lease agreement with the CDC, measures should be implemented whereby accurate billing information regarding CDC's utility costs can be determined.

In response to the OIG's findings, the City notified the OIG that it had discovered that the CDC's building was actually metered for electric service. The City further notified the OIG that the Water Utility will install a separate water meter to capture the CDC's actual water and sewer usage.

3. Based on the City's executed lease agreements with the CDC, seek reimbursement for utility costs incurred by the City on behalf of the CDC.
4. Prior to any leasing of commercial space for its employees, the City conduct a cost/benefit analysis of leasing commercial property versus using City-owned property.

During the course of this review, the City notified the OIG that the practice of housing City employees in commercially leased spaces has ended. Further, as of December 2010, the City terminated leases with five of the eight non-profit entities identified in the OIG review. In addition to the termination of those leases, the City is currently renovating those same properties in order to house its employees.

BACKGROUND

The Lake Worth Community Development Corporation (CDC) is a non-profit entity whose mission statement, according to its website, is:

To work in partnership with the City of Lake Worth and Palm Beach County towards the redevelopment and revitalization of neighborhoods by providing affordable, safe, and attractive housing to low and moderate income families and individuals; to offer educational programs for the benefit of potential homebuyers and owner-occupants; and to identify needs of the community and work towards solutions.

The CDC is currently located at 1701 Wingfield Street, Lake Worth, Florida where it occupies approximately 1,300 square feet of building space on that property.

According to a complaint received by the Office of Inspector General (OIG) on June 15, 2011, following the expiration of the CDC lease agreement with the City in 2006, the CDC remained in the same location without an executed lease agreement and since then, the CDC's utility costs have become the responsibility of the City without any further explanation.

Based on this information, the OIG initiated a Management Review.

ISSUE REVIEWED AND FINDINGS**Issue:**

The City of Lake Worth did not execute and/or monitor their lease agreement with Lake Worth Community Development Corporation, which resulted in the loss of utility revenue to the City of Lake Worth.

Governing Directives:

Section 2-77(b)(1), (2) and (3), City of Lake Worth Ordinance.

Finding:

The OIG Review found that between January 22, 2003 and September 30, 2006, the City did not collect utility payments from the CDC pursuant to the terms of the executed leases, which designated the CDC as the responsible party. Furthermore, between February 2000 and January 21, 2003 and October 1, 2006 to present, the City did not have an executed lease agreement with the CDC, yet the City continued to incur the CDC's utility costs, which resulted in a loss of utility revenues to the City for an approximate total of **\$25,200.00**.

Based on the OIG's review of information provided by the City, as well as other available records and witness interviews, the following timeline and pertinent information was established regarding the City's lease agreements with the CDC¹:

- **Initial Non-Lease Period** (CDC occupying building; however, no executed lease with the City in place): February 2000 through January 21, 2003, rent and responsibility for utility costs were not assigned.
- **Lease 1:** January 22, 2003 through January 31, 2004, rent of \$1.00 per year, CDC responsible for utility costs.
- **Lease 2:** February 1, 2004 through September 30, 2006, rent of \$1.00 per year, CDC responsible for utility costs.
- **Proposed Lease Agreement:** October 1, 2006 through September 30, 2008, rent of \$1.00 per year, CDC responsible for utility costs.

Lease 3 (Proposed Lease Agreement) was never executed between the CDC and the City and therefore, it appears that the terms and conditions of Lease 2 remain in effect.

¹ The CDC is located at 1701 Wingfield Street, Lake Worth, Florida.

According to the OIG's review of utility bills provided by the City's Utility Department, the following pertinent information was discovered concerning the utility costs incurred at the property where the CDC is located, between the February 2000 and September 2011² billing cycles:

- The City has paid a total of \$284,285.35 in utility costs.
- The CDC occupies an approximate 1300 square foot building in Osborne Park wherein the CDC, several other structures (non-CDC) and the Park utilities share the same meter.
- The City is unable to accurately determine the CDC's share of the utility costs, as the property where it is located has only one meter for the entire property.
- The Utility Department, upon the OIG's request, provided an estimated monthly utility cost of \$180.00 for a building of similar size to what the CDC currently occupies (approximately 1300 square feet).
- Utilizing the Utility Department's estimated monthly utility cost, the City paid an approximate total of **\$25,200.00** for the CDC between February 2000 and September 2011.

Testimony of CDC Executive Director Kathleen La Croix

Ms. La Croix confirmed that the CDC has occupied its current location since February 2000. According to Ms. La Croix, Section 9 of the CDC's executed lease agreements (Lease 1 and Lease 2), designated the CDC as the responsible party for utility costs as quoted below, in pertinent parts:

The Lessee shall promptly pay all...utility charges which may be charged for such services being rendered to the demised premises during the term hereof.

Ms. La Croix stated that although the CDC was aware that they were responsible for utility costs, the CDC had never received a utility bill and assumed that the City did not want the CDC to pay those costs. Ms. La Croix stated that since the City has become aware of this issue, she still has not received communication from the City in regards to the CDC assuming utility costs going forward. Ms. La Croix stated that sometime in January 2007, subsequent to the expiration of Lease 2, she received a copy of the Proposed Lease Agreement for the CDC's review and signature, which again designated the CDC as the entity responsible for utility costs. Ms. La Croix stated that she repeatedly attempted to contact then City Attorney Larry Karns to discuss the CDC's proposed edits; however, she was unsuccessful in doing so.

² It is noted that the OIG received billing information from the City's Utility Department on October 29, 2011, therefore, September 2011 was the most current billing cycle recorded.

On April 3, 2007,³ after not being able to make contact with Mr. Karns, she sent the City a letter, as well as a signed copy of the Proposed Lease Agreement with the CDC's edits and a \$2.00 check to cover the rent for the duration of the Proposed Lease Agreement. Ms. La Croix stated that one of the CDC's edits included striking Section 9 from the Proposed Lease Agreement concerning the CDC's responsibility for utility costs. According to Ms. La Croix, because the CDC had never received a utility bill, the CDC did not believe this section was necessary.

According to Ms. La Croix, the CDC believed that since the City had not made attempts to execute a new lease agreement or asked the CDC to leave the premises, the CDC felt that the City had no problems regarding the lack of an executed lease. Ms. La Croix confirmed that since the City has become aware of this issue, she still has not received communication from the City in regards to entering into a new lease. Ms. La Croix further stated that according to the CDC's records, the \$2.00 check was never cashed by the City.

Testimony of former City Attorney Larry Karns

Mr. Karns refused to be interviewed by the OIG.

Testimony of Assistant City Manager Kathleen Margoles

Ms. Margoles stated that she has been the Assistant City Manager since December 20, 2010 during which time she became aware of the fact that the City had been paying the CDC's utility costs and that there was not a lease in place since the expiration of Lease 2.

According to Ms. Margoles, it is her understanding that the property where the CDC is located also includes other buildings and a park; however, there is only one utility meter for the entire property. Ms. Margoles indicated that since the City was unable to identify utility costs for each of the structures on the property, the City incurred all utility costs.

During the OIG interview (January 5, 2012), Ms. Margoles stated that the City has not taken any actions regarding the CDC's utility costs or the lack of a lease agreement as they were waiting for the OIG report to be finalized. Ms. Margoles stated that "she now realizes it may be in the City's best interest to take action now."

Testimony of City Utility Director Rebecca Mattey

Ms. Mattey stated that depending on the type of meter service required, a meter could cost the City Utility Department anywhere from \$35.00 to \$250.00. Ms. Mattey opined that if there were separate buildings on the property where the CDC was located, she was not aware of the reasons as to why there was only one meter.

³ It is noted that Ms. La Croix did not initiate attempts to contact Mr. Karns until sometime in January 2007, after the City was granted approval to initiate negotiations for a lease renewal.

ADDITIONAL ISSUE REVIEWED AND FINDINGS

Based on the information obtained in the aforementioned section concerning the City's lease agreement (or lack thereof) with the CDC, for \$1.00 per year, the OIG conducted a review of executed lease agreements between the City and non-profit entities. During the review, the OIG discovered that the City was paying to house some of their employees in commercial building space while leasing City-owned property to non-profits entities. The following Additional Issue was identified:

Additional Issue:

The City of Lake Worth leased its own property to non-profit entities at reduced rates, while at the same time the City leased commercial property to house City employees at substantially higher rates.

Governing Directives:

Section 2-77(b)(1), (2) and (3), City of Lake Worth Ordinance.

Finding:

The OIG Review found that between October 1, 2004 and September 30, 2009, while the City owned property in which it could have housed its own employees,⁴ the City instead leased those properties to non-profit entities for which it received a total of \$2,339.69 in rental revenue. At the same time, the City leased commercial space to house its employees, thereby paying substantially higher rates (total of \$324,979.35 paid), for a total cost differential to the City of **\$322,639.66**.

The OIG reviewed all executed lease agreements between the City and private entities of non City-owned property, in which City employees were housed. Upon the OIG's review of those leases, provided by Assistant City Manager Kathleen Margoles (December 12, 2011), the following pertinent information was disclosed:

Table 1

City of Lake Worth Leases for Commercial Property for Employees						
Lessor	Lease Date	Duration		Cost	Square Footage	Utility Responsibility
the City (130 N Dixie, 1st floor)	08/12/04	10/01/04	09/30/09	\$5,416.32/month	4150	the City
the City (130 N Dixie, N side 2nd floor)	11/15/05	11/16/05	11/31/06	\$2,250.00/month	2615	the City

It is noted that the second lease ending on November 31, 2006 appears to be an error.

Based on the figures illustrated in the chart above, it appears that the City was leasing approximately 4,150⁵ square feet of commercial space for its employees at a total cost to the City of \$64,995.84 per year, or \$5,416.32 per month.

⁴ According to information provided by the City,

⁵ It is noted that although **Table 1** includes 2,615 square feet of lease space at \$2,250.00 per month, this figure was not used in the calculations because it was leased on an emergency basis.

In comparison, the OIG's review of the non-profit leases, provided by Assistant City Manager Kathleen Margoles (September 13, 2011), the following pertinent information was disclosed:

Table 2

City of Lake Worth Leases with Non-Profit Entities						
Lessee	Lease Date	Duration		Cost	Square Footage	Utility Responsibility
CDC	08/16/05	02/01/04	09/30/06	\$1.00/year	1302	CDC
For the Children (Wingfield)	10/08/02	10/08/02	10/01/07	\$1.00/5 years	1302	the City
Lake Worth Art League	2008	10/01/08	08/31/09	\$1.00/year	786	\$140.00/month - Art League
Lake Worth Credit Union	2008	10/01/08	08/31/09	\$1.00/year	786	\$124.00/month - Credit Union
Mentoring Center	10/13/08	10/13/08	10/12/11	\$1.00/year	5354	the City
For the Children (Douglas)	10/08/02	10/08/02	10/01/17	\$1.00/15 years	3286	For the Children
PBC Health Department	01/21/09	01/01/09	12/31/18	\$1.00/10 years	5926	PBC Health Dept
Compass	05/16/07	06/01/07	04/30/27	\$1,000.00/year	12102	Compass

It is noted that with the exception of the CDC, the contractually responsible parties paid the costs of their respective utilities.

Based on the figures illustrated in the chart above, it appears that the City was leasing approximately 31,800 square feet of City-owned property to these non-profit entities for which the City received an average total of \$1,004.37 in rental income per year, or \$83.70 per month.

ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, the City of Lake Worth was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Management Review within ten (10) calendar days.

Their written response (attached) is summarized as follows:

Issue

The City is currently negotiating lease terms with the CDC, which will include the CDC's responsibilities for rent and utilities. The City's Utility District is installing a separate water meter to capture the CDC's actual utility responsibilities. This is expected to be completed by March 2012, with retroactive terms to January 1, 2012.

Additional Issue

The practice of housing City employees in commercially leased spaces has ended. Further, as of December 2010, the City terminated leases with five of the eight non-profit entities identified in the OIG review. In

addition to the termination of those leases, the City is currently renovating those same properties in order to house its employees.

As no new information has been presented that would affect the findings in this review, no further activities by the OIG are warranted.

*This Management Review has been conducted in accordance with the ASSOCIATION OF
INSPECTORS GENERAL Principles & Quality Standards for Investigations.*



OFFICE OF THE CITY MANAGER

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February 3, 2012

Donald Balberschak, Director of Investigations
Office of Inspector General
Investigations Section
PO Box 16568
West Palm Beach, FL 33416

OIG Case Number:2011-0007

Dear Mr. Balberschak:

The City of Lake Worth is submitting our response to the Office of the Inspector General Management Review of the Lake Worth Community Development Corporation (CDC) Lease Agreement received January 20, 2012. Two issues were identified in the Management Review is:

1. *The City of Lake Worth did not execute and/or monitor their lease agreement with Lake Worth Community Development Corporation, which resulted in the loss of utility revenue to the City of Lake Worth.*
2. *The City of Lake Worth leased its own property to non-profit entities at reduced rates, while at the same time the City leased commercial property to house City employees at substantially higher rates.*

Response to Issue #1

The City Attorney has initiated negotiations with the Executive Director of the CDC for a lease. The expected date to bring the new lease to the City Commission is March, 2012. The terms under negotiation at this time include a monthly rent, utilities and a lease term of one year, retroactive to January 1, 2012. In the course of the City investigation, it was discovered the building is metered for electric service so the CDC will be instructed to assume responsibility for the electric service, as soon as possible. The Water Utility will install a water meter so the CDC can be billed for their usage of water and sewer.

Response to Issue #2

Though the City of Lake Worth rented commercial space from October 1, 2004 to September 30, 2009 to house Code Enforcement Division staff, this practice has ended. The City moved staff back into City space in October 2009. No City staff is currently housed in rented space. The City terminated a number of leases with nonprofits occupying City space, including the Palm Beach County Health Department, Lake Worth Art League, Lake Worth Credit Union and the Mentoring Center by December 2010.

At this time, the City is in the process of renovating 110 N. F Street (formerly leased to the Palm Beach Health Department), to house the Utilities Department Customer Service Division and the Community Sustainability Department, including the Divisions of Administration, Building, Community Code Compliance, Housing and Property Management Licensing and Planning, Zoning and Preservation, by November 2012. In addition, the City has renovated the Shuffleboard Court Building at 11121 Lucerne Ave. and the Recreation Division has moved into that facility.

Please contact me with at (561) 533-7394, if you have any further questions.

Sincerely,



Kathleen S. Margoles
Assistant City Manager

Cc:

Steven A. Carr, Acting City Manager/Finance Director
Elaine A. Humphreys, City Attorney