

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO UNIVERSITY
FILE ID NO.: 2015-CA00016
DATE OF REPORT: SEPTEMBER 18, 2018

The Office of the Ohio Inspector General ... The State Watchdog

“Safeguarding integrity in state government”

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Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2015-CA00016

AGENCY: Ohio University

BASIS FOR INVESTIGATION: Initiative

ALLEGATIONS: Inappropriate Influence; and
State Contracts.

INITIATED: April 20, 2015

DATE OF REPORT: September 18, 2018

EXECUTIVE SUMMARY

On April 20, 2015, the Office of the Ohio Inspector General initiated an investigation to examine whether John Wharton's proposed sale of his home located at 31 Coventry Lane in Athens to Ohio University (OU) and his verbal commitment to make a large financial gift to the Ohio University Athletic Department were both proper and appropriate. This investigation was initiated after The Athens Messenger posted an April 19, 2015, news article summarizing the events leading up to a decision by the Ohio University (OU) administration, "... to not recommend the purchase of 31 Coventry Lane to OU's Board of Trustees and the OU Foundation's Board of Trustees" for presidential housing.

From April 27, 2015, through December 5, 2017, Ohio University provided numerous records requested by the Office of the Ohio Inspector General. During this same period, investigators interviewed current and former university employees, as well as local businessman John Wharton. Investigators learned that Wharton had professional relationships with various members of the Ohio University negotiation team, university management, and the Ohio University Foundation in a variety of capacities, including: as a university and foundation donor; a member of the Ohio Bobcat Club Advisory Board; an intermediary with a local developer; a realtor; and a property manager.

The Office of the Ohio Inspector General determined Wharton's relationships with university staff in conjunction with his history of donating to both Ohio University and to the Ohio University Foundation fostered an appearance of preferential treatment when OU selected a property owned by Wharton to serve as a temporary residence for the family of OU President Roderick McDavis. The Office of the Ohio Inspector General further determined Wharton had discussions with the Athletic Department about a conditional \$100,000 donation contemporaneously to his negotiations with the OU Real Estate Department about a lease/purchase agreement for a property he owned. Accordingly, the Office of the Ohio Inspector General found that there was a reasonable cause to believe an appearance of impropriety occurred in these instances. However, the Office of the Ohio Inspector General found no evidence that McDavis, OU Athletic Director Jim Schaus, and Senior Associate Athletic Director for Development Ryan White had shared Wharton's conversations regarding a

potential financial gift related to the university's proposed purchase of 31 Coventry Lane with OU staff involved with the property's lease terms negotiations.

The Office of the Ohio Inspector General also reviewed expenditures totaling \$317,856.24 paid by the university to the Whartons for expenses associated with the 31 Coventry Lane lease agreement. Contrary to the lease agreement's provisions, the Office of the Ohio Inspector General determined the university improperly issued payments totaling \$20,449.84 to University Off-Campus Housing, a Wharton company. These improper payments included \$5,019.18 for the replacement of the composite decking, and \$14,811.94 for the replacement of the sod, for which investigators were unable to find a university staff request as required by Section 7(A) of the lease agreement.

Lastly, the Office of the Ohio Inspector General issued recommendations to the university and the foundation to evaluate and revise their respective internal control systems to address weaknesses identified during this investigation.

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On April 19, 2015, the Athens Messenger newspaper posted an article summarizing the events leading up to a decision by the Ohio University administration "... to not recommend the purchase of 31 Coventry Lane to OU's Board of Trustees and the OU Foundation's Board for housing for President Roderick McDavis and his wife Deborah." The news article stated this decision was made after university officials "... discovered that [John] Wharton had made a verbal commitment of a large gift to OU's athletic department prior to the lease negotiations." John Wharton is a local businessman, a resident of Athens, Ohio, and (former) owner of 31 Coventry Lane. Prior to the decision by the Ohio University administration, on March 23, 2015, Senior Associate Athletic Director for Development Ryan White created a donor contact report in the Division of University Advancement internal computer system. This report stated, "Wharton was in the process of selling his home to OU ..." and that, "As part of the settlement, John [Wharton] plans to pay off his Walter Fieldhouse pledge and make a \$100,000 commitment to the (student athlete) academic center."

On April 20, 2015, the Office of the Ohio Inspector General initiated an investigation to examine whether John Wharton's proposed sale of his home to Ohio University and his verbal commitment to make a large financial gift to Ohio University's Athletic Department, were both proper and appropriate.

BACKGROUND

Ohio University was established as a public institution on February 18, 1804, in accordance with Ohio Revised Code (ORC) Chapter 3337. The governor of the state of Ohio appoints the board of trustees which consists of nine trustees and two student trustees. The Ohio board appoints two national members to serve staggered board terms. The last member of the Ohio University Board is the chair of the Ohio University Alumni Association board. The student trustees, national trustees and the chair of the Ohio University Alumni Association board do not have the ability to vote on board matters. However, the voting trustees can solicit and welcomes the opinions and advice of the non-voting board members. The Ohio board appoints a president who serves as the university's chief administrative officer.¹

¹ http://ohioauditor.gov/auditsearch/Reports/2017/Ohio_University_16-Athens.pdf.

On July 1, 2012, the Ohio University Board and Roderick McDavis entered into an employment agreement² expiring June 30, 2017, which set forth the terms and conditions for the appointment of McDavis as president of Ohio University.³ The agreement detailed that as president, McDavis would serve as the university's chief executive officer and,

... shall render full-time service as such officer with full responsibility and authority for conducting, directing and managing the affairs of Ohio University in a manner consistent with the policy determinations of the Board of Trustees, and subject to all federal and State of Ohio laws.

Section XII of the agreement between Ohio University and Roderick McDavis provided the following:

As a condition of the appointment contemplated hereby and for benefit and convenience of the University, the President and the President's spouse are required to occupy the house owned by Ohio University located at 29 Park Place in Athens, Ohio ...

Ohio University Foundation

The Ohio University Foundation was established in 1945 as an "institutionally-related, nonprofit, tax exempt, 501(c)(3) organization and is the repository for all private gifts to Ohio University through annual giving programs, capital and special campaigns, and planned or deferred gifts such as bequests and trusts." The Ohio University Foundation Board of Trustees governs the operations of the foundation and is comprised of graduates and friends of Ohio University.⁴

University President's Residence - 29 Park Place

Ohio University acquired 29 Park Place in 1951 and the university president moved into the house in 1952. The residence, as seen in the following photo, was occupied by the Ohio University presidents from 1952 until 2015:⁵

² Roderick McDavis began his tenure as the Ohio University president on July 1, 2004.

³ Roderick McDavis retired as Ohio University president effective February 17, 2017.

⁴ <https://www.ohio.edu/advancement/foundation/>.

⁵ <https://www.ohio.edu/athens/bldgs/presres.html>.



Relevant Ohio University Staff

The Office of the Ohio Inspector General identified the following individuals who were involved in the search for alternative housing for Roderick and Deborah McDavis, the negotiation of the lease terms, and/or the payments issued by Ohio University for expenses associated with the president's residence:

- David Brightbill, chairman,⁶ Ohio University Board of Trustees;
- Dr. Roderick McDavis,⁷ president, Ohio University;
- Deborah McDavis, first lady, Ohio University
- Stephen Golding,⁸ vice president for Finance and Administration and treasurer of the Ohio University Foundation;
- Donna Goss,⁹ director of Real Estate Development, Community Engagement and Economic Development;
- David Averion, manager of the Real Estate Operations/Legal Assistant; and
- Kevin Markielowski, Real Estate Department business analyst.

⁶ Brightbill's term as chairman and board of trustee member ended in May 2015.

⁷ McDavis retired from Ohio University February 17, 2017.

⁸ Golding was appointed to serve as Ohio University's vice president for Strategic Initiatives on April 1, 2016.

⁹ Goss left Ohio University for other employment in July 2015.

John Wharton

John Wharton is a local businessman, resident of Athens, Ohio, and the former owner of 31 Coventry Lane.¹⁰ According to the Ohio Secretary of State’s website, Wharton is listed as the agent/incorporator for the following businesses:

- University Real Estate III was incorporated on March 17, 1997, and operates under the trade names Ohio Realty and University Off-Campus Housing since December 31, 1999. Ohio Realty provides real estate broker services, whereas University Off-Campus Housing is a property management company.
- Broneys, LLC was incorporated on December 3, 2012, to “operate restaurant and bar business, and to engage in any other business authorized by law.”¹¹

Relationships between Ohio University and John Wharton

Records provided by Ohio University to the Office of the Ohio Inspector General indicated that there were relationships between Ohio University and John Wharton. The following table identifies the types of interactions and the existing relationships between Wharton and the university and/or foundation for the five months prior to and during the two months (February and March 2015) that the university was negotiating with Wharton to lease 31 Coventry Lane:

Activity Description	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15
Donations	X		X		X	X	
Purchases from Companies Associated with Wharton	X	X	X	X	X	X	
Ohio Bobcat Club Advisory Board Member	X	X	X	X	X	X	X
Auxiliary Services Center Property Discussions	X	X	X	X	X	X	

¹⁰ This property was leased by the university from Wharton to house President Roderick McDavis and his wife Deborah for the period of March 19, 2015, through June 30, 2017.

¹¹ Articles of Organization for a Domestic Limited Liability County found on the Ohio Secretary of State website.

Continued:

Activity Description	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15
207-209 W. Union Street Negotiations and Purchase		X	X	X	X	X	X
4 University Terrace Negotiations and Lease			X	X	X	X	X
31 Coventry Lane Negotiations and Lease						X	X

The Office of the Ohio Inspector General further determined during this investigation that Wharton and McDavis had known each other since McDavis arrived at Ohio University; Wharton and McDavis met for lunch a couple times a year to talk about sports; and that Wharton assisted Deborah McDavis in renting a property for her mother.

INVESTIGATIVE SUMMARY

During the investigation, the Office of the Ohio Inspector General reviewed records provided by the university and interviewed several current and former Ohio University employees, as well as local businessman John Wharton, regarding the following matters of interest:

- Events leading up to and during the negotiation of the lease terms for 31 Coventry Lane;
- Payments made by the university to the Whartons in accordance with the lease agreement;
- Events surrounding donations, gifts, and pledges made by local realtor and businessman John Wharton to Ohio University; and
- Real estate transactions where Wharton represented one of the parties involved in the transaction with either the university or the foundation.

These interviews were conducted during the period of January 7, 2016, to November 3, 2017. In addition, the Office of the Ohio Inspector General began requesting records from Ohio University on April 27, 2015. Additional requests and responses were exchanged between April 27, 2015, and January 17, 2018. Moreover, investigators requested copies of 13 current or former Ohio University staff email boxes for July 1, 2014, through November 13, 2015.

On November 19, 2015, Ohio University General Counsel John Biancamano contacted the Office of the Ohio Inspector General and expressed concerns with the November 13, 2015, email request. Biancamano explained that the emails could contain protected information including but not limited to, information subject to the Family Educational Rights and Privacy Act of 1974¹² and attorney-client privilege. During a conference call conducted on December 16, 2015, and a follow-up meeting on February 23, 2016, the Office of the Ohio Inspector General and representatives from Ohio University discussed these concerns. During these discussions, the Office of the Ohio Inspector General and Ohio University representatives agreed upon a process to review the emails for content involving protected information, and to filter and remove the protected information from investigative review. Discussions continued from April 14, 2016, through August 30, 2016, regarding the matter of the email review process.

From November 8, 2016, through December 22, 2016, the Office of the Ohio Inspector General received access to the requested email boxes to analyze. On January 18, 2017, investigators notified Ohio University that the email submissions were incomplete. On March 17, 2017, investigators received the remaining email box files for analysis.

Search for the University President's House

Investigators conducted multiple interviews and reviewed numerous documents to understand the events which precipitated Roderick and Deborah McDavis moving from 29 Park Place to the Ohio University Inn and Conference Center (OU Inn) and from the OU Inn to 31 Coventry Lane. These interviews and documents revealed that there had been ongoing discussions among university personnel and board members for several years as to whether Ohio University (university) should continue using 29 Park Place as the president's residence.

During interviews conducted on July 12, 2017 and July 25, 2017, Ohio University Vice President for Finance and Administration Stephen Golding¹³ explained to investigators that back in 2011, he toured 29 Park Place and was informed that the residence had an issue with rodents. After the

¹² A federal law (34 CFR Part 99) that protects the privacy of student education records and applies to all schools, such as Ohio University, receiving federal funds.

¹³ Golding, as vice president for Finance and Administration, was responsible for managing most of the university's financial and administrative operations which included the Real Estate Department.

tour, Golding recalled that he believed 29 Park Place was "... clearly a facility that had not been invested in" and "... clearly was less than ideal for a presidential residence." Golding further recalled that in 2012, a donor had approached the university expressing a willingness to potentially provide a donation to acquire a new residence. As a result, the Ohio University Board of Trustees (board) began considering a search for a better house to serve as the president's residence.

In 2012, the university's Real Estate Department (Real Estate) was tasked with conducting a preliminary study and making a recommendation to the board for a new president's residence. Golding stated that Real Estate's preliminary analysis concluded there were no appropriate residences available for purchase in the Athens' area; the university would likely need to purchase land and build a new residence; and that this approach involved at least a two-year timeframe. Golding noted that while this analysis was being conducted, the donor who had offered a financial gift to acquire a new president's residence changed their mind.

In addition, Golding told investigators that university management conducted several actions in preparation of a new campus master plan¹⁴ and in anticipation that sometime in the future, the university would be negotiating the housing provisions in a contract with a new incoming president. Subsequently, the board toured 29 Park Place, reviewed a March 2014 presentation on alternative uses for the location, and considered future uses of Park Place as it related to the development of the Baker Center.¹⁵ Investigators determined that the board continued to have discussions throughout 2014 and at the January 22-23, 2015, board meeting.

In an interview with investigators, Roderick McDavis explained that while returning from a business trip, he had called his wife, Deborah McDavis, who told him that she had an accident that evening at the house while trying to avoid a bat flying in the residence. Investigators

¹⁴ Ohio University board minutes reflect that discussions about updating the campus master plan began at the March 14, 2014, board meeting; a consultant was hired at the June 27, 2014, board meeting; and that the campus master plan was completed in March 2016.

¹⁵ The Baker University Center connects the upper and lower campuses of Ohio University and is home to "... a student-operated art gallery, student organization offices, centers that support our diverse campus, services, amenities, and university departments." Source: www.ohio.edu/eventservices/baker-center/.

determined from a review of a university pest reporting form that Deborah McDavis' injury occurred on January 26, 2015.

McDavis told investigators that the morning after the accident, he called university Board of Trustees Chair David Brightbill and notified him of his wife's injury. After commenting that this incident was the 16th bat incursion at the house in 11 years, McDavis recalled telling Brightbill that "we can't live at 29 Park Place any longer." During an interview with investigators on October 17, 2017, Brightbill said McDavis was "... very adamant that ... (29 Park Place) was no longer a suitable residence ... for the president." Brightbill explained that he understood and believed McDavis wanted the board to move forward with a decision regarding a new president's residence. On February 4, 2015, the full board was notified of Deborah McDavis' injury via email.

According to a February 6, 2015, daily schedule for McDavis, a notation was entered, "Lunch with John Wharton (Curbside Service at 29 Park Pl)." McDavis explained to investigators that around January 27th or 28th, he called Wharton and invited him to lunch with he and Mrs. (Deborah) McDavis. McDavis said that he intended to discuss available homes in Athens. However, Wharton told investigators that he remembered calling McDavis to set up one of their periodic lunches to discuss sports. Wharton further recalled receiving a call from McDavis' office a day or so later stating that Deborah McDavis would also be attending the lunch.

During an interview on February 13, 2017, Roderick McDavis told investigators that during the lunch with Wharton they discussed available houses with a first-floor master suite. McDavis recalled Wharton stating there were not many homes on the market, but did inform him about two possible properties. McDavis said Wharton also commented he was building a new home, had planned to sell his current residence, and offered to take the McDavises to his current residence at 31 Coventry Lane. McDavis told investigators that he initially declined Wharton's offer to view his house. However, McDavis acknowledged requesting Wharton to drive them past the two available properties Wharton had mentioned. Roderick and Deborah McDavis both stated that after viewing the two properties, they told Wharton that neither property would be suitable. Even though Wharton's current residence was not on the market for rent or sale at the

time, McDavis recalled Wharton offered again, since they were out, to drive the couple to see 31 Coventry Lane. McDavis agreed to see the property. McDavis commented to investigators that Wharton's house sat up on a hill, there was a gate in front of it, everything that the McDavises needed was on the first level, and that "it looked like a president's residence."

After touring the home, Wharton told investigators he believed McDavis returned to his office and called university Director of Real Estate, Community Engagement and Economic Development Donna Goss.¹⁶ During an interview with investigators on November 3, 2017, Goss stated that McDavis' phone call to her was the first time 31 Coventry Lane had been identified as an option for housing for the McDavises. Goss noted that she knew Wharton was living at 31 Coventry Lane, did not know the property was available for lease, and that it was her understanding it was not on the market.

On February 8, 2015, McDavis informed his staff via email that there was another bat incident at 29 Park Place. Golding said that some time during the day, McDavis had called him and stated he had spoken with Board Chairman Brightbill and that he (Brightbill) wanted a review of what properties were available and to be prepared to report their findings to the board. While Golding's initial direction came from McDavis, Golding believed that this direction ultimately came from Brightbill, and that he must have had a conversation with Brightbill.

After speaking with McDavis, Golding said he called Goss to tell her they needed to find a home in Athens that would meet the McDavis' short-term and long-term needs. Golding explained that the short-term needs required the property be suitable for Mrs. McDavis, based on the mobility restrictions directed by her doctor, and be appropriate¹⁷ for a university president. Golding directed Goss to prepare housing option recommendations to present to the board. Golding told investigators that the initial direction provided to him by McDavis and ultimately Brightbill was to find a house to lease that was available for the remainder of the president's

¹⁶ Goss's job responsibilities included but were not limited to, management of real estate leases; acquisitions and dispositions of university property; and representing the university in the Athens Uptown Business Association and the Athens County Economic Development Council.

¹⁷ These requirements included the ability to have a venue for people to gather, reasonable parking, and space around the residence to avoid inconveniencing the neighborhood during an event.

term. This short-term lease would allow the board to evaluate and determine what type of housing would be offered to the next university president. Goss confirmed that Golding provided her with this task and that she began searching for properties with a first-level master suite. Goss acknowledged that during her search, she had conversations with the McDavises regarding what their needs were for a residence.

On February 18, 2015, McDavis emailed to the board a summary of the recent events and informed them that housing options would be presented to the board at its March meeting. Attached to the email was a copy of the statement being released to the media regarding the university's ongoing house search. The media statement noted, "... at this time, no lease or rental agreement has been signed as the Board has not had an opportunity to discuss this issue and make a decision for how it would like to proceed."

According to documents obtained from the university, McDavis' daily schedule for February 25, 2015, reflected "lunch with John Wharton (John will pick you up.)" McDavis noted that this lunch had been on his calendar for two or three months. McDavis noted there were no discussions with Wharton about the president's residence or any gifts Wharton planned to make to the university. McDavis further commented that "a topic John never talked about with me were his gifts to the University."

During the review of university emails, investigators found an email dated February 24, 2015, which indicated a meeting was scheduled to be held at 31 Coventry Lane on February 25, 2015, at 5:15 p.m. Investigators determined that McDavis, Brightbill, Goss, University General Counsel John Biancamano, and additional university employees attended this meeting. Goss told investigators that prior to this meeting, she had spoken with Wharton about his willingness to lease 31 Coventry Lane. McDavis explained to investigators that those attending the meeting at 31 Coventry Lane were involved in the conversations about the university's future presidents' housing. McDavis commented that he did not believe many of the attendees had seen 31 Coventry Lane and that "this was an opportunity for them to see it." Brightbill explained to investigators that he attended the meeting to see the house, the location, and as a board member, to form his opinion first-hand about whether the house was suitable for a university president.

After touring 31 Coventry Lane, Brightbill commented that he "... did feel that it was certainly workable as a, as the president's housing."

While taking a tour of the property with Wharton, Goss stated there had been no decisions made, no discussions of potential lease terms, and no discussions about a purchase option. However, Goss explained later, during her interview with investigators, that it was her understanding that Wharton was planning to list his residence for sale, and she may have had a discussion with Wharton about leasing the property. Goss further told investigators that at the end of the tour, there was a "general nod of heads, if you will, that this kind of fit the bill in terms of what they were thinking about" for at least a short-term and potentially long-term lease.

In the days after the February 25, 2015, meeting, Wharton acknowledged there were conversations between himself and university representatives including Goss regarding 31 Coventry Lane. Wharton told investigators that because of his good relationship with McDavis and the "push back" McDavis received regarding his salary from the faculty senate and other people in the community, Wharton suggested to university representatives that they lease the house with the option to buy.

The university provided investigators with a list of eight additional properties that were considered during their search. Goss confirmed that the first four¹⁸ properties on the list were those she had identified using Zillow or through local realtors. Goss confirmed she drove past two of the four properties. In addition, Goss consulted other people, such as Golding, to evaluate the appropriateness of the other properties. Both Goss and Golding indicated that to the best of their knowledge, no other properties were toured by the same group who had toured 31 Coventry Lane. Golding noted since the university was not recruiting a new president at that time, the McDavises were consulted as to what was suitable for them. Golding added that by the beginning of March 2015, 31 Coventry Lane had become their "default residence" for a future university president's house based on their research to date and what real estate agents told them was available on the market.

¹⁸ The remaining four properties on this list were identified by McDavis during his search conducted on March 13, 2015, and March 14, 2015, after the deal had stalled with Wharton.

Between March 1, 2015, and prior to the March 13, 2015, board meeting, Goss said they were endeavoring to “get a handle on” the terms and conditions to lease 31 Coventry Lane. However, Goss stated that “nothing was agreed upon” at that point. Goss acknowledged to investigators that McDavis would have been aware that they were discussing potential lease terms with Wharton, but that she was unaware of the extent to which McDavis had knowledge of those discussions. Golding explained in a March 20, 2015, email that from the period of March 1, 2015, through March 17, 2015, “... there were several conversations with Mr. Wharton about the house, his interest in renting it and/or selling it, but that was part of our due diligence in addressing the Board’s request to determine what was available in the Athens’ market.” The potential lease terms and available real estate options were presented to the university board of trustees for its consideration at the March 13, 2015, board meeting.

At an executive committee meeting and a board meeting on March 13, 2015, Golding stated that he and Goss provided a verbal evaluation of the identified properties and distributed a document summarizing the properties considered and comparable rental properties. Golding explained to investigators that during the meeting, he and Goss discussed their comments on each of the properties with the board, as well as the opportunity that 31 Coventry Lane represented in terms of meeting the university’s short-term and long-term needs. Golding said he and Goss explained their reasoning or justification as to why 31 Coventry Lane seemed to be the most suitable housing for the Ohio University president based upon availability in the Athens area.

According to records provided by the university, Board Chair Brightbill’s talking points for the executive committee meeting and the board meeting held on March 13, 2015, [\(Exhibit 1\)](#) reflected that he had asked the university Real Estate Department to identify suitable properties for the board’s consideration as temporary housing for the McDavis’ use. After Goss’ presentation and the board deliberated, the board approved Resolution 2015-3464 which stated:

The Vice President for Finance and Administration is directed to identify suitable alternative housing for the President and his wife and to make such arrangements as are reasonably necessary to secure such alternative housing.

After the board of trustees met on March 13, 2015, the university and Wharton had a conference telephone call at 4:30 p.m. to discuss lease negotiations. Golding stated that they discussed the “macro elements of the lease.” Golding recalled Wharton wanted “triggers” should the university not buy the house by a certain date, obligate the university to pay a penalty¹⁹ if they did not purchase the house, and be compensated for leaving the house before his new house was finished. Lastly, Golding noted that Wharton had some “interesting” demands and expectations of the university as it related to providing “remuneration.”

Golding stated it was clear the university and Wharton were at odds over the transaction details. Golding further stated that Wharton,

... clearly felt that he had the University over a barrel because Dr. and Mrs. McDavis had decided that 31 Coventry Lane was the most appropriate house for them. Um ... and he thought that, you know, that the University would simply uh accede to his demands.

Golding stated that at the end of the conference call, the university informed Wharton that they did not have an agreement and that they would have to get back with him. During his interview, McDavis told investigators that he recalled receiving a phone call later that day from university representatives telling him that “... it did not appear that we were gonna be able to um ... uh complete the negotiations for us to live at 31 Coventry Lane.” Goss told investigators that because the negotiations were at an impasse, they resumed their search for a home for the McDavises.

An analysis of email correspondence revealed that on March 13, 2015, and into the early morning of March 14, 2015, Goss was corresponding with individuals and McDavis about other properties. McDavis indicated in an email to Goss at 12:45 a.m. on March 14, 2015, that he had identified four potential properties, which are reflected in the list provided by the university.

¹⁹ Earlier versions of the draft lease terms included terms in Exhibit B for \$250,000 of earnest money to be deposited into an escrow account. The draft lease terms contained terms which specified certain instances, should the foundation not purchase or complete the closing of the purchase on the property, which would result in the foundation disbursing the \$250,000 of earnest money to Wharton.

After reviewing this email during his interview, Golding recalled from conversations he had with Goss that she had told Wharton he was losing the deal because he was not willing to negotiate in good faith. Golding commented to investigators that Wharton “did what he does” and called McDavis.

McDavis confirmed speaking with Wharton on his cellphone while attending the March 14, 2015, Bobcat Bash.²⁰ Handwritten notes provided by the university indicated this call occurred at 11:43 a.m. McDavis stated he told Wharton that he and his wife were not going back to 29 Park Place, they were living at the OU Inn, and “we’re moving on.” McDavis said he believed that his further comments to Wharton that four other properties had been identified and his assertion that the university was moving forward resulted in Wharton saying, “I think we can, we can salvage this.” McDavis recalled asking Wharton whether it would be helpful to talk with board Chair David Brightbill. McDavis said that Wharton replied, “that would help.”

Brightbill confirmed to investigators that he also spoke with Wharton using McDavis’ cellphone during the Bobcat Bash. Handwritten notes provided by the university indicated this call occurred at 11:52 a.m. Brightbill recalled explaining to Wharton during this call that the board was uncomfortable with the penalty clause. Brightbill indicated to investigators during an interview, he provided verbal reassurance to Wharton, “... the Board’s intention was to go forward with the purchase of the property.”

While continuing her search for additional properties the morning of March 14, 2015, Goss told investigators that she had also spoken with Wharton about 31 Coventry Lane. Investigators noted that Goss emailed McDavis at 11:58 a.m. stating, “just a quick note to let you know I believe John W. has reconsidered his position. He may be reaching out to you directly.”

After speaking with Wharton by telephone while attending the Bobcat Bash, McDavis responded by email to Goss at 12:24 p.m. on March 14, 2015, stating that both he and Brightbill had spoken with Wharton and that “John wants to salvage the deal.” After receiving this email, Goss stated

²⁰ The Bobcat Bash was an event held at Zocalo’s Mexican Grill before the women’s basketball championship game. The event started at 11:30 a.m. on March 14, 2015.

she called Golding and told him that after several conversations that morning, they had been given a “second chance.” Golding recalled Goss telling him that Wharton had reached back out to her, understood that he could “lose the deal,” that he had to be “more reasonable,” and that Wharton was willing to “start the conversation over again.”

Goss, Golding, and Wharton attended a lunch meeting at Broneys on March 15, 2015. After his earlier telephone conversation with Brightbill on March 14, 2015, and his conversation with Golding at this lunch, Wharton believed an agreement to lease 31 Coventry Lane could be achieved. Wharton told investigators that he worked with Goss to finalize the lease terms and did not discuss the terms with anyone else. Wharton commented that McDavis was outside of these negotiations and it was his (the president’s) staff negotiating the lease.

An analysis of the records provided showed that university staff and Wharton exchanged multiple versions of the lease agreement between March 16, 2015, and March 19, 2015. Investigators further noted that the lease agreement was also sent to Ohio University Foundation CEO Bryan Benchoff²¹ for review on March 17, 2015. Lastly, investigators noted that there were conference calls held on March 18, 2015, and March 19, 2015, with available Ohio University Foundation board members. According to foundation CEO Bryan Benchoff,²² these calls were held to “inform the Committee of the University’s desire to have the Foundation be a party to the lease/option to purchase agreement and to receive authorization” for Benchoff to sign the agreement.

Investigators questioned both Golding and Goss as to whether there were discussions prior to the signing of the lease agreement within the university Real Estate Department, between them, or with other university staff about entering into the lease agreement with Wharton. Goss was further questioned whether these discussions involved Wharton’s various relationships²³ with the

²¹ Benchoff’s job duties involved overseeing the fundraising arm of the university; alumni services; advancement services; and oversight of the Ohio University Foundation operations.

²² At this time, Benchoff was also the vice president of the Division of University Advancement.

²³ The relationships included, but were not limited to, representing the university in a real estate transaction for 207-209 West Union Street; representing The Beta Chapter of Delta Tau Delta who was discussing leasing a property to Ohio University where Wharton was their agent; representing a member of the Ohio Bobcat Club Advisory Board, and representing a donor.

university and whether the impact of those relationships on the transaction was considered. Goss replied “No” and further commented that each of these transactions were “separate.”

Golding explained to investigators that one cannot live in Athens and not know about Wharton. Golding further commented that in Athens, “you can never take out of the back of your mind the fact that in a small town that there are entangling relationships and entangling alliances that, that um complicate these types of transactions.” Golding told investigators that he believed that the university “... understood that because of Wharton’s omnipresence,” there were concerns “that people might look at this transaction and, and, and question its appropriateness.” However, Golding stated he believed there was a compelling argument from his and Goss’ perspective that “... Coventry Lane, based upon 2+ years of looking at the real estate market, was a suitable facility to lease for the president for the time period that um, for the for the two years.”

When questioned whether the concern of the transaction’s appropriateness was discussed with anyone outside of himself and Goss, Golding replied that he believed so and that it probably came up during meetings with the Ohio University Foundation Board of Trustees. However, Golding did not believe this concern was significantly discussed among the university Board of Trustees. Golding stated the board believed the house, on its merit, was the right house for the university president. Golding explained to investigators that:

... the Board had until April of 2017 to make a decision as to what they wanted to do with the presidential house. And this was a Board decision and the Board had to make the decision to not use 29 Park Place. They had to make the decision that they wanted uh uh- own a house as compared to offer a stipend. And then the Foundation Board had to make a determination based upon an appraised value as to whether or not they wanted to exercise the option. So, in that sense, what we tried to set up in this process was to ensure that we did not um predispose the Board or the Foundation Board from being able to exercise their fiduciary right.

On March 19, 2015, Ohio University entered into an agreement to lease the residence located at 31 Coventry Lane and four adjoining parcels for the period March 19, 2015, through June 30, 2017. [\(Exhibit 2\)](#)

Claims of Quid Pro Quo

The Athens Messenger newspaper article posted on April 19, 2015, reported Senior Associate Athletic Director for Development Ryan White created a donor contact report on March 23, 2015, in an internal computer system which stated, “Wharton was in the process of selling his home to OU.” The donor contact report further stated that, “As part of the settlement, John plans to pay off his Walter Fieldhouse pledge and make a \$100,000 commitment to the (student athlete) academic center.” In response to a request by the Office of the Ohio Inspector General, the university provided investigators with a Donor Contact Report Summary²⁴ and the donor contact report ([Exhibit 3](#)) created on March 23, 2015, which summarized the conversations White had with Wharton, Schaus, and McDavis prior to this date.

White reported in the donor contact report on February 27, 2015, that university Athletic Director Jim Schaus notified him of Wharton’s possible gift to the academic center. White further reported that Wharton was in the process of selling his house to the university and that “... as part of the settlement, John [Wharton] plans to pay off his Walter Fieldhouse pledge and make a \$100k commitment to the Academic Center.” ([Exhibit 3](#)) During an October 23, 2017, interview with investigators, Wharton confirmed that he visited university Athletics Director Jim Schaus’ office on February 27, 2015. Wharton explained as a Bobcat Advisory Board member that he knew the university was conducting a campaign to raise money for the Sook Athletic Academic Center. Wharton said he told Schaus, in confidence, that he and his wife had decided to pledge \$100,000 towards the center. Specifically, Wharton told Schaus it was his intention that if the university purchased his house, he would pledge \$100,000 to the Sook Athletic Academic Center and likely, pay off his previous pledge to the Walter Fieldhouse. Wharton told investigators that this conversation occurred behind closed doors and that he told Schaus his intentions in confidence. Wharton further noted that he had discussed with university representatives leasing or purchasing 31 Coventry Lane prior to meeting with Schaus.

During an interview on May 24, 2017, Schaus told investigators that he remembered shortly after meeting with Wharton, he called White. Schaus recalled telling White, “Good news. John

²⁴ This was released by Ohio University to the public on April 13, 2015.

[Wharton] just barged into my office and basically, you know, mentioned he wanted to do this and I go that's great." Schaus said he did not recall discussing Wharton's potential pledge with anyone else except White. Schaus noted that he had called White to forward the information to White and that it was White's "to handle."

During an interview on May 24, 2017, White confirmed to investigators that Schaus had called him late on a Friday as he (White) was driving home from work. White recalled that Schaus said that, "John Wharton kind of barged in and told me that he may be selling his house to the university, would be in a position to make a gift to the Academic Center, and pay off his Walter Fieldhouse pledge." White believed Schaus may have mentioned the \$100,000 at the time. White further recalled discussing the conversation with "probably my wife," and possibly his staff. White further stated he did not believe he shared this information with Benchoff, Golding, Goss, Averion, Biancamano, McDavis, and "most likely not" his supervisor.

The donor contact report also reported that White had stopped by Wharton's office on March 11, 2015, and that Wharton had stated he "... was hopeful everything would be signed by Friday, March 13." White told investigators that while he was out jogging, he passed the Ohio Realty office's window and saw Wharton in his office. White entered the office and asked Wharton, "oh by the way, you know, is there any news on the sale of your house?" White stated that he asked Wharton whether he was going to make the gift. Lastly, White told investigators he did not share the conversation with Wharton with anyone else.

Wharton confirmed to investigators White's visit to his office and that White mentioned Schaus had shared the conversation between Schaus and Wharton with him (White). Wharton then recalled White saying that he would contact Wharton to complete the paperwork. After White left his office, Wharton stated that he was surprised Schaus would share their conversation with anyone because he had told Schaus about his possible pledge in confidence.

According to the donor contact report, White reported on March 14, 2015, that he had spoken with McDavis "... at length (during the pregame event at the MAC basketball tournament) about some of the issues they were having, but he was hopeful that everything would be resolved

soon.” Investigators confirmed that there was a “Bobcat Bash” pregame event held at Zocalo’s, a local Cleveland, Ohio restaurant, prior to the start of the MAC women’s basketball championship game held in Cleveland, Ohio on March 14, 2015. During the pregame event, White recalled initiating the conversation with McDavis by saying, “I hear that John might be selling the house to the University.” White recalled McDavis replied that, “there is some, some red tape, there’s still some things that need to be resolved from that.” White believed he (White) responded to McDavis, saying, “that’s great,” and he told McDavis that Wharton still owed money on his pledge to the Walter Fieldhouse, and that he was planning to make a \$100,000 gift to the Academic Center.

McDavis confirmed to investigators that he spoke to White prior to his conversation with Wharton on March 14, 2015. When White asked about the status of the house, McDavis stated that he told White, “You’re probably not privy to all this, but this is not gonna happen.” McDavis told investigators he mentioned to White that he (McDavis) had gotten a phone call the previous evening from Golding and was told “this is not working.” McDavis noted that this was the first time that he had heard about a potential \$100,000 gift to Ohio University from Wharton.

During his interview, White was questioned as to whether McDavis had told him that the deal was not going forward. White replied “No. Not that I can recall.” White stated that it was his understanding that the deal was continuing through the bureaucratic process. After returning to Athens from the MAC basketball tournament, White did not recall telling anyone except for maybe Schaus about his conversation with McDavis. White confirmed that he created a donor contact report on March 23, 2015, summarizing his interactions with Wharton and sent the following email:

From: White, Ryan [whiter2@ohio.edu]
Sent: Monday, March 23, 2015 4:55 PM
To: Rogers-Dogbey, Monique
Subject: [REDACTED] John Wharton-Add proposal

Monique,

Can you please add a \$100k Academic Center proposal to his account. There really wasn't an official ask, but hope to have everything signed in a couple months if not sooner.

Thanks,

Ryan

According to the university, the proposal was created on March 25, 2015, and was subsequently canceled on April 6, 2016.

A quid pro quo is defined as “giving one valuable thing for another.”²⁵ In order for a quid pro quo arrangement to exist in this situation, Ohio University would have had to purchase 31 Coventry Lane and Wharton would have had to enter into an agreement or donated \$100,000 to Ohio University.

Instead, investigators found no evidence that McDavis, Schaus, or White had shared Wharton’s conversations regarding a potential gift should the university purchase 31 Coventry Lane with members of the negotiating team²⁶ or other employees within the Division of University Advancement. In addition, the university did not purchase 31 Coventry Lane and did not receive a \$100,000 donation or pledge from Wharton. Therefore, the Office of the Ohio Inspector General found no evidence that a quid pro quo arrangement existed.

Exercising the 31 Coventry Lane Purchase Option

Section 34 of the lease agreement ([Exhibit 2](#)) between Ohio University, the Ohio University Foundation, and John and Joyce Wharton provided that “... the Foundation shall have the right and option to purchase the Property, including the Premises upon the terms described in Exhibit B.” Exhibit B further states that the “... purchase option may not be exercised later than April 28, 2017.”

On March 19, 2015, the university issued a press release announcing the university and the foundation had entered into a lease-to-buy contract with John and Joyce Wharton for 31 Coventry Lane. Shortly after the press release announcement, Ohio University began receiving public records requests from the local news media. Investigators also noted Goss sent a March 20, 2015, email, to university representatives which referenced a rumor being circulated that, “Athletics will be receiving a gift of \$125k from the Wharton’s as a result of our lease/purchase

²⁵ Definition is found at <https://thelawdictionary.org/quid-pro-quo/>.

²⁶ The negotiating team included Vice President of Finance and Administration Stephen Golding, Director of Real Estate, Community Engagement and Economic Development Donna Goss and the General Counsel’s Office.

agreement with them.” Goss further commented in the email that, “There is no such agreement in place.”

Investigators determined that Goss had sent an email on March 23, 2015, to Melissa Dean of the Robert Weiler Company stating that she had attached some information on a property (31 Coventry Lane) the university wanted to have appraised. Goss commented in the email that, “We don’t need the deluxe version, but something more than a verbal to give our Board a good idea of the valuation.” Golding told investigators that he did not believe the appraisal was completed and did not recall ever seeing an appraisal.

In addition to seeking an appraisal on 31 Coventry Lane, Golding said that the university’s and foundation’s “due diligence” included a full assessment of the viability of 29 Park Place; completing the campus master plan; defining how the home could be used in the long-term; and determining how the board wanted to resolve the issue of housing for the current and future presidents.

At the time he signed the lease agreement, Ohio University Division of University Advancement Vice President Bryan Benchhoff said he believed there were conversations that if all the “due diligence” was completed, in place, and the criteria met by the June Ohio University Foundation board meeting, the board could decide to exercise the purchase option.

On March 26, 2015, while researching a public records request, Benchhoff discovered White had entered a donor contact report ([Exhibit 3](#)) into a Division of University Advancement internal computer system on March 23, 2015. Benchhoff then contacted the university General Counsel’s Office and within an hour or so, the discovery was shared with Golding. After speaking with Golding, Benchhoff told investigators he suggested they needed to obtain additional information to determine what had transpired during the conversations between Schaus, White, and Wharton.

During his interview on May 24, 2017, Benchhoff acknowledged speaking with White and believed the conversation was the same day the donor contact report had been discovered (March 26, 2015), or soon after. During the conversation, Benchhoff stated he requested White to recount

for him what had transpired between Schaus, White, Wharton, and McDavis. Benchoff confirmed to investigators that White's description matched the information that White had first reported in the donor contact report. [\(Exhibit 3\)](#) Prior to providing his version of the events, White recalled Benchoff telling him that they had seen his (White's) donor contact report and that there were people alleging it was a quid pro quo situation. White recalled Benchoff stating, "we know it's not." However, Benchoff pressed White to tell him what he knew.

On April 2nd and 3rd, 2015, conference calls were held amongst the executive committee members of the Ohio University Foundation Board to "provide more information to you regarding the subject of previous recent conference calls." Benchoff explained in an email to investigators that these calls involved Golding informing "the Committee that he was not going to request the University Board or Foundation Board to move forward with the 'purchase option' given what we learned in the interim." Benchoff further told investigators that if there were concerns about the perception of the transaction, Benchoff stated his recommendation to the Foundation Board of Trustees would be to not move forward with the transaction due to concerns about the foundation's reputation.

On April 13, 2015, Golding announced in an article²⁷ that,

... in order to avoid even an appearance of impropriety, I have informed the Chair of the University Board and the Chair of the Foundation Board that I will not ask either Board to exercise the option to purchase 31 Coventry Lane, regardless of the results of the assessment of 29 Park Place that will occur in the coming months.

On May 26, 2016, the university sent a letter to Wharton at his request confirming that "... neither Ohio University nor the Ohio University Foundation will purchase the home at 31 Coventry Lane." The university further acknowledged that Wharton has listed his home for sale and provided guidelines to Wharton for scheduling appointments to show 31 Coventry Lane.

²⁷ This article can be found at <https://www.ohio.edu/compass/stories/14-15/4/VPFA-Coventry-announcement.cfm>.

Lease Agreement

On March 19, 2015, Ohio University entered into an agreement ([Exhibit 2](#)) to lease 31 Coventry Lane and four adjoining parcels for the period March 19, 2015, through June 30, 2017. The Office of the Ohio Inspector General reviewed payments issued by Ohio University to John and Joyce Wharton during the period of March 19, 2015, to June 30, 2017 (a 27-month period), and determined payments were made for the following categories:

Category	Total Spent
Monthly Rent Payment	\$ 118,396.77
Furniture Purchase	75,000.00
Property Taxes	28,881.44
Maintenance Expenses	95,578.03
Grand Total:	\$ 317,856.24

Lease provisions – Monthly Lease Payment

On January 7, 2016, Ohio University provided records to investigators containing the initial, revised, and final lease agreement between Ohio University and John and Joyce Wharton. Investigators noted Section 3 of the first version of the lease agreement, created on March 13, 2015, contained a monthly rent of \$4,000, which was the same amount noted in the board presentation materials. Further analysis of emails provided by the university noted that Goss had emailed Wharton on March 17, 2015, stating that she had “two details to work out.” The following is an excerpt from that email:

1. Insurance - Risk Management is recommending that it would simplify processes if you were to continue the existing insurance policy on the house for the time that the property is leased as the expectation is this will be four months or less. Please confirm that you're agreeable.
 - Lessor to continue insurance coverage and cost of insurance premiums

Wharton responded shortly thereafter with the following email to Goss stating, “I have no problem with either of these as long as the rent is increased to reflect the cost of insurance (\$318/month)” Investigators noted that the final lease agreement reflected an increase in the monthly rent by \$318, from the \$4,000 reflected in the initial version to \$4,318. The increase in the rent was equal to the amount requested by Wharton for 1/12th of his annual insurance cost.

Investigators noted that Section 15C of the lease agreement ([Exhibit 2](#)) provided, “at all times during the Term, Lessor shall maintain insurance covering the Property, including, without limitation, all improvements now located on the Property, against loss and damage by fire, vandalism...” Wharton told investigators that during the initial lease term discussions, it was his understanding and recollection that the university would pay for all property taxes, insurance, and maintenance costs for 31 Coventry Lane. Wharton told investigators that he believed his insurance was “\$318 a month.” Wharton explained that he thought this was “ultimately what we decided upon, what was agreed to.”

During an interview with investigators, Goss recalled that the university agreed to cover the cost of the insurance. After being unable to locate this provision in the lease agreement, Goss stated that it was possible that her recollection was incorrect. By increasing the monthly rent to \$4,318 from the initial proposed \$4,000, Ohio University provided Wharton an additional \$318 a month above the proposed rent discussed with the university board of trustees, giving the appearance that the university funded Wharton’s insurance cost through an increase in the monthly rent amount. This action was consistent with Wharton’s and Goss’ recollection of the negotiated lease terms.

Further analysis of insurance costs showed that for the 2016-2017 policy year, Wharton’s insurance cost was \$3,224, which was lower than the premium for the previous year of \$3,819. Goss acknowledged that from her understanding of the lease agreement, had Wharton’s insurance decreased the following year, the costs to the university should have decreased as well. No evidence was found that the university or Wharton approached each other to discuss a reduction in the monthly rent amount in accordance with Wharton’s reduced insurance costs for the subsequent policy year. Investigators further noted the lease agreement did not contain a provision to reduce the monthly rent for changes in Wharton’s insurance costs.

Lease provisions -- Furniture

Section 19 of the executed lease agreement ([Exhibit 2](#)) between Ohio University and the Whartons stated that Ohio University “... hereby purchases all furnishings located in or on the Premises and the Property as of the effective date of this Lease on an as-is basis, which

furnishings are described in Exhibit A.” Payment records showed that Ohio University remitted the \$75,000 payment to Wharton for the furniture on March 20, 2015, in accordance with the lease agreement.

Investigators determined from a review of the final executed lease agreement that Exhibit A was blank and did not contain a description of “... all furnishings located in or on the Premises and the property” as provided for in Section 19 of the lease agreement. [\(Exhibit 2\)](#) Golding explained that, at that time, it was his understanding that an inventory of the furnishings was in progress and was not completed prior to the signing of the lease agreement. Golding acknowledged that in an effort to quickly move the McDavises into the residence, there were one or two things that had not been completed prior to the signing of the lease agreement.

Benchhoff had also signed the final executed lease agreement with a blank Exhibit A. Benchhoff was asked by investigators why he would sign an agreement when Exhibit A was blank. Benchhoff replied that, at that time, the furnishings had not been inventoried. Benchhoff recalled that an unidentified individual had viewed the furnishings and it had been determined the furnishings were worth at least \$75,000. As such, Benchhoff explained he was willing to forgo a formal exhibit being attached after receiving this assurance and signed the lease agreement.

Goss told investigators during an interview that university Director of Interiors Lynette Clouse had toured the residence and performed a cursory assessment. However, Goss was unable to verify whether Clouse’s assessment occurred prior to or after the lease was signed. Goss sent an email to Clouse on March 20, 2015, the day after the lease was signed, stating:

As you may have heard, the University has entered into an agreement to lease a residence for President and Mrs. McDavis at 31 Coventry Lane. The house is being leased to us fully furnished, and I’m requesting your assistance in developing an inventory of the furniture and other furnishings, as well as calculating a replacement value for insurance purposes.

Would you please let me know your availability next week to meet and assess the property to begin the process?

Further review of email correspondence between Goss and other Ohio University employees and interviews conducted revealed the inventory was completed on April 20, 2015, 32 days after the lease agreement was executed. This inventory reflected the furnishings purchased by Ohio

University were valued at \$113,849. After the McDavises left in February 2017, University representatives told investigators that this furniture was distributed to other various university buildings for use.

Lease provisions – Maintenance

Section 7(A) of the lease agreement ([Exhibit 2](#)) between Ohio University and the Whartons provided that the Whartons (the Lessor):

... shall be responsible for all maintenance and repairs of and to the Property and the Premises, including but not limited to ... (iii) the parking area and driveway on the Property, including but not limited to sweeping, landscaping maintenance and snow/ice removal

The Office of the Ohio Inspector General requested the records supporting all payments made by the university for maintenance expenses during the lease term of March 19, 2015, through June 30, 2017. Investigators analyzed the records provided, and identified the following payments made by the university for each of the categories contained in Section 7(A) of the lease agreement:

Contract Provision	Expenditures Associated with this Provision
(i) The exterior, roof, roof drains, gutters, and downspouts and structural portions of the Premises, including the floor slab, bearing walls and foundation	\$13,598.06
(ii) all systems, including electrical, HVAC, gas, mechanical, plumbing, water and sewer, wherever located on the Property or Premises	6,951.83
(iii) the parking area and driveway on the Property including but not limited to sweeping, landscaping maintenance, and snow/ice removal	73,423.99
(iv) usual residential appliances located on the Property.	1,544.16
Illegible Description	60.00
	<u>\$95,578.03</u>

Investigators noted that Section 7(A) the lease agreement ([Exhibit 2](#)) further provided that, the “Lessor shall be entitled to invoice OHIO for actual costs it incurs in providing the maintenance and repair services described in this section that are requested by OHIO.” On October 23, 2017,

Wharton told investigators that during the initial lease term discussions, it was his understanding and recollection that the university would pay for all property taxes, insurance, and maintenance costs for 31 Coventry Lane.

Wharton recalled mentioning to Goss after the February 25, 2015, meeting that instead of the university employees doing the maintenance, his staff could do it, and he would bill the university for the work performed. Wharton explained that his staff would probably save the university money because he did not have to pay prevailing wages and that his staff were not union employees. Wharton added that his staff were very familiar with the property because they had been responsible for its care. Wharton stated that everyone agreed with this proposal. Wharton noted to investigators that emails sent to Goss (on March 4, 2015, and March 17, 2015), specified that he was not going to pay for the maintenance of 31 Coventry Lane.

Both the university and Wharton provided investigators with a copy of an April 17, 2017, email [\(Exhibit 4\)](#) Wharton sent originally to Averion²⁸ in an effort to provide the parties with a “further understanding and explanation of invoices in question ...”, stating:

Throughout this 2 ½ year period, I have attempted to be accommodating to Dr. & Mrs. McDavis and respect their privacy. We didn’t always wait for a request to mow, fertilize, salt the driveway etc. but did respond when requested and feel that our proactive maintenance was noticed and appreciated....

In addition to the work orders he had received,²⁹ Wharton cited emails to University Off Campus Housing (UOCH) sent by Deborah McDavis; the university assistant to the first lady and the Office of the President Tamela (Tami) Erwin; or someone else requesting maintenance work to be performed at 31 Coventry Lane.

²⁸ Averion’s job responsibilities included the oversight of all issues and projects related to the university’s landholdings, including leasehold interests.

²⁹ A work order is a form used by University Off Campus Housing to document maintenance requests and reflects the date the request was made, in some instances who made the request, the item requested, who performed the maintenance, and the associated time spent at the property performing the maintenance.

During a March 23, 2017, interview with investigators, Erwin explained that she contacted UOCH if there were any issues with the interior of the house. Erwin acknowledged being told by Mrs. McDavis via the President's Office Chief of Staff Jennifer Kirksey that UOCH would be providing all exterior maintenance. To request maintenance or repairs, Erwin said that she contacted UOCH to make the request and received either a work order or reference number to track or follow-up on the request.

While analyzing emails provided by the university, investigators noted that Deborah McDavis had emailed Erwin on August 3, 2016, stating that a power outage had occurred at 3:15 a.m. at 31 Coventry Lane. From an analysis of emails and the work orders and invoices submitted, investigators determined Wharton invoiced the university \$2,962.35 in repair costs because of this power outage. Repairs were made to the electrical, security, and gate systems as well as the subzero refrigerator. Wharton told investigators that the source of the power surge had not been identified, but his electrician had speculated it was a lightning strike or a power surge. Wharton then explained that his insurance deductible was \$5,000; the policy would not cover these repair costs; and that he billed the repair costs to the university "because its maintenance."

Erwin stated that she was not involved with the budget for 31 Coventry Lane, did not pay any of the bills, and did not know who did. Investigators requested and received the university employee approval history for select maintenance expenditures paid during the residence's lease term. Analysis of the university's response revealed that university Business Analyst Kevin Markielowski³⁰ approved the selected UOCH invoices.

When processing payments for maintenance expenses at 31 Coventry Lane, Markielowski said Wharton provided the university UOCH work orders and corresponding receipts to support the invoices. These invoices were hand-delivered by Wharton to the university Real Estate Department. Markielowski said that there were two types of maintenance expenses he received for 31 Coventry Lane: 1) Wharton's monthly maintenance costs, and 2) costs associated with items requested by the university.

³⁰ Markielowski's primary job duties involved working with the department's finances including all accounts payable, accounts receivable, and performing analysis of capital lease documents.

During an interview on June 29, 2017, investigators asked Markielowski how he verified that the university actually requested the work performed as specified on work orders for 31 Coventry Lane, and receipts for expenses invoiced by Wharton. Markielowski stated it was his understanding that the university was not required to make a request to Wharton prior to the completion of maintenance work billed by Wharton to the university. Investigators reminded Markielowski that Section 7 of the lease agreement provided, “Lessor [Wharton] shall be entitled to invoice OHIO for actual costs it incurs in providing the maintenance and repair services described in this section that are requested by OHIO.” Markielowski further explained his understanding for the paying the maintenance expenses was that, “... any costs incurred by the landlord will be passed on to the tenant or the responsible party.” Investigators were unable to confirm from interviews with other university employees who had provided this understanding to Markielowski.

On July 25, 2017, Golding told investigators that, if he recalled correctly, that “we had to ask John [Wharton] to do the work.” Golding explained that initially there was an idea that the management company for the OU Inn would provide the maintenance work for the residence. However, Golding thought at the time that, “... he (Wharton) could not, could not presume that he was just going to do it without the university making an indication that, that we wanted him to do that.” Golding recalled the “... expectation was that what you are basically talking about there was mowing the lawn, cleaning up after the winter, readying the house for winter, that type of stuff, and for that we would be obligated to pay.”

During an interview conducted on November 3, 2017, Goss explained it was her understanding that the university would cover reasonable costs for the maintenance of the property during the term of the agreement. Goss was unable to recall whether her requests to Wharton for maintenance or repairs were made by email or by phone. Goss then told investigators that the lease did not require the requests for maintenance and repair services at 31 Coventry Lane be documented in writing. Goss further recalled making verbal requests to Wharton to provide the following types of maintenance and repair services:

- Landscaping;
- Caretaking of the grounds, which included pruning of trees and mulching;

- Pool maintenance;
- Gate repairs;
- Ceiling fan repairs;
- Maintenance of waterfalls and pumps in the ponds;
- Sprinkler irrigation system maintenance; and
- General upkeep.

In addition, Goss recalled that in the springtime there was a good amount of mulching completed “to bring the property on line.” Goss also explained there were several trees on the property, believed at one point a branch had fallen, and that tree trimming and stump removal could have been considered general maintenance of the property. Goss noted that it was the university’s intention to use the property for events and that maintenance included addressing “anything that would have been unsightly.” McDavis told investigators that they had not hosted events at 31 Coventry Lane.

Investigators reviewed the work orders and receipts submitted by Wharton to determine whether the maintenance expense payments totaling \$95,578.03 were for services identified as requested by Golding, Goss, or Erwin and noted the following:

Expenses Requested By	Amount
University Representatives	\$75,038.24
No Evidence of Request or Determined Not a University Expense ³¹	618.67
Unable to Determine from Records Provided	90.00
Grand Total	\$75,746.91

Investigators further identified two expenditures, \$5,019.18 for the replacement of composite decking and \$14,811.94 for the installation of new sod with no corresponding university request for the work to be performed. Investigators obtained further explanations during interviews conducted with Wharton, Markielowski, and Averion to determine whether the work performed was requested by the university.

³¹ This includes \$369.53 of expenses determined to be unrelated to university activities and duplicate amounts totaling \$249.14 invoiced by Wharton and subsequently paid by Ohio University.

Replacement of the Composite Deck

On December 10, 2016, the university paid the Whartons a total of \$5,019.18 for the following expenses associated with work performed on the deck at 31 Coventry Lane:

Date	Invoice Number	Work Order Number	Vendor	Amount
11/10/2016		4439	UOCH	\$ 45.00
11/14/2016			Menards	\$ 2,522.69
11/14/2016	214629		C & E	\$ 52.53
11/14/2016	2138484		Lowes	\$ 37.54
11/15/2016	215215		C & E	\$ 13.45
11/15/2016	215079		C & E	\$ 11.55
11/16/2016	215446		C & E	\$ 22.45
11/17/2016			Menards	\$ 80.03
11/17/2016	215820		C & E	\$ 30.81
11/17/2016	215768		C & E	\$ 10.10
11/17/2016	215949		C & E	\$ 10.10
11/17/2016		4475	UOCH	\$ 465.00
11/18/2016	216150		C & E	\$ 21.65
11/18/2016	216152		C & E	\$ 31.28
11/14-17/2016		5216	UOCH	\$ 1,665.00
			Grand Total:	\$ 5,019.18

Investigators reviewed the above identified receipts and work orders and noted that the existing composite decking was replaced with cedar decking. During the email analysis, it was noted that Deborah McDavis sent an email to Erwin on November 16, 2016, stating:

... also find out from them what kind of work is being done in the back part of the yard right now. Some kind of carpentry is going on but no one has indicated what is being done.

Deborah McDavis sent a follow-up email on November 17, 2016, indicating that she had a discussion with Wharton that morning and further noted “the carpenters are still completing rebuilding the back deck but they’re making progress getting this project completed.” Neither Averion nor Markielowski during interviews with investigators could explain the replacement of the composite decking with cedar decking. Investigators further noted that at this time the university did not own the residence, was leasing the residence, the property was listed for sale

by Wharton, and had been shown to two prospective buyers prior to the deck replacement. Markielowski further stated that he could not say, with McDavis still living there, whether this was something that needed to be replaced or not.

Wharton explained to investigators that the composite deck was replaced because the deck boards were starting to crack, flake, and peel apart. Wharton stated he had directed his staff to go to Lowes and determine whether there were replacement boards available. However, the color used to build the initial deck had been discontinued. Wharton stated to investigators during an interview he was not going to have a “two-tone deck.” As a result, the composite decking was replaced with cedar decking and the university was billed for the expense. After being asked by his attorney whether this was considered maintenance, Wharton commented to investigators that the replacement of the composite decking with cedar decking was not an improvement to the property.

Investigators determined these expenses were billed to the university as maintenance during the time the residence was listed for sale and had been shown to at least two prospective buyers prior to the deck replacement occurring in November 2016. Investigators further noted that the McDavises left 31 Coventry Lane in February 2017, the lease ended June 30, 2017, and as such, the university received little, if any, benefit from the deck replacement.

Sod Replacement

On December 24, 2016, the university paid the Whartons for \$14,811.94 of the following expenses associated with replacing the sod at 31 Coventry Lane:

Date	Invoice Number	Vendor	Items Purchased	Amount
10/5/2016	CTH32417	Columbus Turf	9,720 RTF 30 sod	\$ 2,980.44
10/6/2016	CTH32442	Columbus Turf	1,620 units of RTF 30 sod	\$ 763.42
10/11/2016	46088	Greenleaf Landscapes	sod installation	\$ 11,068.08
			Grand Total:	\$ 14,811.94

During an analysis of university emails, investigators found the following email:

From: McDavis, Deborah
Sent: Friday, September 30, 2016 1:17 PM
To: Erwin, Tamala <erwin@ohio.edu>
Subject: Yardwork began today!

FYI: Tami, the Greenleaf workers are here today digging up some parts of the lawn that they'll likely be replacing. They aren't in the way but just did show up right before noontime. It seems to me they are going to be replacing certain patches of the grass that is dead. I'm not sure that they'll be replacing the whole yard although they are digging up in many places patches of diseased grass.
Maybe they decided to come today because the ground is soft due to the rain.

On December 8, 2016, an email was sent to Erwin by Building Systems Integration Manager Claire Naisby discussing a significant increase in the sprinkler system water bill at 31 Coventry Lane. Erwin replied to Naisby with the following email:

On Thu, Dec 8, 2016 at 3:24 PM -0500, "Erwin, Tamala" <erwin@ohio.edu> wrote:

Hi Claire,

Thank you for the e-mail. ☺ I sent University Off-Campus Housing an e-mail to inquire about the water usage. As I mentioned, during Oct. and Nov. the owner, John Wharton had new sod installed throughout the yard, therefore, I am certain the sprinklers were in use. I will follow-up and get back to you. Thanks!

Tami

Lastly, Deborah McDavis responded to Erwin on December 9, 2016, about the increased water usage at 31 Coventry Lane with the following email:

Tami, I have read this email from Facilities and as far as I can reason, this additional expense has to have come from John's having the entire yard re sodded and the sprinkler systems installed to accommodate this installation. Greenleaf company did come to reconnect the sprinkler system to accommodate the new sodding and then recently, they came to dismantle the system as well. As to whether there is a leak of some kind, we'll have to check with John about that. I agree that the cost is very extravagant and that facilities should have been told about this rise in monthly payment; however, I imagine that John can explain all of this.

Wharton explained to investigators that while mowing the yard, his staff noticed a type of weed growing in the lawn. Wharton stated he requested Greenleaf Landscapes, Inc. evaluate the yard. Wharton stated Greenleaf Landscapes, Inc. told him that it was an "invasive" weed and to

eliminate the weed, that he would have to kill the existing grass, remove the turf, and either reseed or have new sod installed. Wharton noted to investigators that, based on a recent experience with his new residence, he believed the cost of installing sod and the cost of reseeding a lawn with its additional maintenance, was similar. Wharton explained that he chose to install new sod because it resulted in instant grass and was “beautiful.” Investigators found no evidence indicating Wharton consulted the university on which method should be used or what the university was willing to pay to remove the “invasive” weed.

Markielowski told investigators that upon receipt of the invoices, he brought the expense for the sod replacement to his supervisor, David Averion’s attention and questioned whether the university should pay Wharton to replace the grass at 31 Coventry Lane. Markielowski further explained to investigators that in the case of expenses for 31 Coventry Lane,

... that it was always well the President and his wife are still living there—so—and the lease is pretty um open-ended as far as to what and exactly—what are the limitations of the things that can be requested or not.

Markielowski explained that it was determined that since the president was living there, that it was something the university needed to pay. The costs for the sod replacement were included in a payment for the October 24, 2016, invoice. Investigators determined these expenses were billed to the university as maintenance after the residence was listed for sale and after the time the residence was shown to at least two prospective buyers. Investigators further noted that the McDavises vacated 31 Coventry Lane in February 2017 and the lease ended June 30, 2017. The investigation found the university neither requested Wharton to complete this work nor received a benefit for the significant expense incurred for the sod replacement.

Supporting Documentation for Maintenance Invoices

Investigators reviewed the work orders and receipts supporting University Off Campus Housing invoices submitted for payment and noted that the university made duplicate payments totaling \$249.19 and issued payments totaling \$369.53 for expenses belonging to the landlord. In addition, investigators were unable to locate sufficient, detailed documentation for maintenance expenses totaling \$2,122.58. As such, investigators were unable to verify these payments were

made in accordance with the contract. Investigators further noted that the university issued an \$840 payment for a Greenleaf Landscapes, Inc. invoice which included services to be provided on six different dates after the invoice date. Lastly, investigators noted that the university payments excluded \$155.50 of services reflected on UOCH work orders submitted by Wharton.

[\(Exhibit 5\)](#)

Other Concerns

During the investigation, additional issues emerged involving Ohio University's real estate referrals, the lease agreement entered into for 4 University Terrace, the receipt of Broneys' gift cards, and accounting issues with invoices and sales tax.

Potential Real Estate Referrals

On January 14, 2016, the Office of the Ohio Inspector General interviewed Division of University Advancement employees who were involved in real estate discussions with Wharton. Director of Development for University Advancement Catherine Allgood explained to investigators that Wharton had discussed, during a business lunch with another university employee new to the university, "the areas in town he might want to live in." In a separate interview, Division of University Advancement Assistant Vice President for Advancement Services Joe Pauwels told investigators that Wharton provided his wife "a tour of the community when we were considering coming here." Pauwels told investigators he believed the tour was "more as a personal favor to the, the HR³² person that was here at the time." Based on the comments made by these employees, investigators were questioning whether university management directed future, new, and current employees to Wharton's company, Ohio Realty, for real estate services.

On February 9, 2016, Athens News General Assignment Writer Connor Morris forwarded to the Office of the Ohio Inspector General the following email received by another Athens News employee. The email stated [\(Exhibit 6\)](#):

If you check on how many new hires from outside Athens came to university athletics department in past 5 or more years and how many of them used Ohio Realty or Mr.

³² The current university HR director was hired in 2014, which is after Pauwels hiring in 2011.

Wharton to buy their homes, you will be able to see a pattern ... I was told that new employees are specifically told to use Mr. Wharton's real estate firm.

On February 10, 2016, the Office of the Ohio Inspector General incorporated this secondary complaint into the ongoing investigation.

During an October 23, 2017, interview with investigators, Wharton admitted that university Athletics Director Jim Schaus referred people to him. Wharton said if Schaus was hiring a new coach, Schaus would inform the new hire about Wharton's firm and the names of other real estate firms. However, Schaus explained that "... anybody that comes here chooses their own realtor" and that generally when new staff are moving to the area, they already have a realtor. Schaus told investigators that if he were asked by new staff to suggest a realtor, he would recommend both Wharton and Conrath, because they both do a good job. Schaus noted that there was no relationship between Wharton supporting athletics and Wharton being a realtor.

Wharton further confirmed to investigators that he had received requests from various university employees to take prospective candidates on a campus and city tour. Wharton recalled that either he or one of his staff provided this service. In addition, Wharton acknowledged that he provided the following real estate services to university employees:

- Sold a house to Athletic Director Jim Schaus and Vice President of University Advancement Bryan Benchoff;
- Assisted Athletic Director for Development Ryan White in finding a builder for his current residence;
- Assisted Director of Real Estate Development Donna Goss in contacting and negotiating the purchase of her first home in Athens at no cost; and
- Referred former Division of University Advancement employee Scott Koskoski and Goss' son to a local businessman or developer to rent an apartment.

During an interview, Golding told investigators that once the university chose a prospective candidate as a finalist for a position, the university announces to the public the finalists through the media and the dates they will be on campus for interviews. Golding further noted that

Athens is a small town, Wharton is an aggressive realtor, and that Wharton would often reach out to prospective university employees to offer his services. Lastly, Golding commented that this causes a bit of tension within the community because he seems to get many opportunities to sell or lease property.

Finally, investigators reviewed the documentation provided by the university Human Resources Department to new employees during the new employee orientation and the publications made available to new hires.

The Office of the Inspector General found no evidence of new or potential staff being directed to use exclusively Wharton or his company, Ohio Realty, for their realtor needs.

4 University Terrace Lease

In the summer of 2015, Ohio University entered into a lease agreement ([Exhibit 7](#)) with Delta Tau Delta to lease 4 University Terrace for one year beginning on August 15, 2015. This agreement was signed by Goss on behalf of the university on June 4, 2015, and by Wharton on July 13, 2015, on behalf of The Beta Chapter of Delta Tau Delta House Association Building. Investigators noted the property was managed by University Off Campus Housing (UOCH), a Wharton-owned company.

Section 8.4 Pre-possession repairs and requirement of the lease agreement provided:

Landlord shall complete the following repairs and maintenance before Tenant assumes possession, Tenant's designee will approve the repairs and maintenance before possession: ... Entire interior property including dormitory rooms, apartment, hallways, laundry rooms, locker rooms, dining area, theater room, living rooms and office area shall be painted with Tenant approved colors and to Tenants specifications.

Contrary to this provision, the university provided records supporting payments to UOCH totaling \$7,345.74 to reimburse UOCH for 50 percent of the painting costs. Further analysis of university email boxes revealed that Averion had entered into a separate agreement with

Wharton on July 7, 2015, prior to the signing of the lease agreement on July 13, 2015. The following email documents this agreement:

From: Averion, David
Sent: Tuesday, July 07, 2015 11:03 PM
To: Trentacoste, Peter
Subject: RE: 4 University Terrace

Hello Pete:

I spoke to John this morning and we agreed that the entire interior will be painted in a neutral color with the cost to be split in equal shares between the land owner and the university. John is obtaining quotes and will deliver to my office soon. I asked if a color sample could also be obtained.

He also confirmed that window screens would be installed in all windows prior to the university taking possession.

The agreement between Wharton and the university was further summarized in the following July 14, 2015, email Averion sent to Wharton the day after Wharton signed the lease:

Pete asked if you can also reply with agreement that the entire interior will be painted in neutral colors with the cost to be split equally between landlord and tenant, screens for all windows will be provided and keys to all exterior and interior doors will be supplied.

Thank you,
David

On July 14, 2015, Wharton emailed Averion stating, “we will accommodate all of those requirements.” However, this supplemental agreement was not formalized in accordance with Section 22.5 Entire Agreement which provided that:

This written Lease, together with the exhibits hereto, contains all of the representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this lease and the exhibits hereto. This lease may be modified only by an agreement in writing signed by each of the parties.

No evidence was provided supporting that the lease agreement was formally amended in writing and signed by each of the parties authorized to sign the contract in accordance with Section 22.5 of the lease agreement.

Broneys Alumni Grill Gift Card Donations

During the investigation, investigators became aware that Wharton had donated Broneys' gift cards to the university Athletics Department. These gift cards were used by the university and Ohio Bobcat Club employees to take potential athletic prospects and donors for a meal at Broneys, a business identified by the Ohio University Foundation as being associated with Wharton. Further analysis of university emails identified an October 23, 2014, email stating:

The Broney's gift cards have arrived and are available to use. They are with Amy Trout in the Athletics Director suite. Please see the attached memo that explains the updated policy. Let me know if you have any questions.

According to the attached October 23, 2014, memorandum from The Ohio Bobcat Club, past practice by university staff was that Broneys distributed "... these gift cards to various coaches and administrators within the athletic department to be used at their discretion without requiring the documentation of how and when they are being used." The policy further described the process for checking out the gift card and the allowable purchases. The university provided investigators hard copy logs documenting that two \$2,500 gift cards were received and subsequently used by the university Athletics Department and the Ohio Bobcat Club beginning in November 2014.

Investigators reviewed the report released by the Ohio University Foundation of Gifts and Pledges for the Whartons and related entities in April 2015 in response to public records requests submitted by the Athens media. The report reflected that there were no gifts or donations received between September 9, 2014, and January 20, 2015.

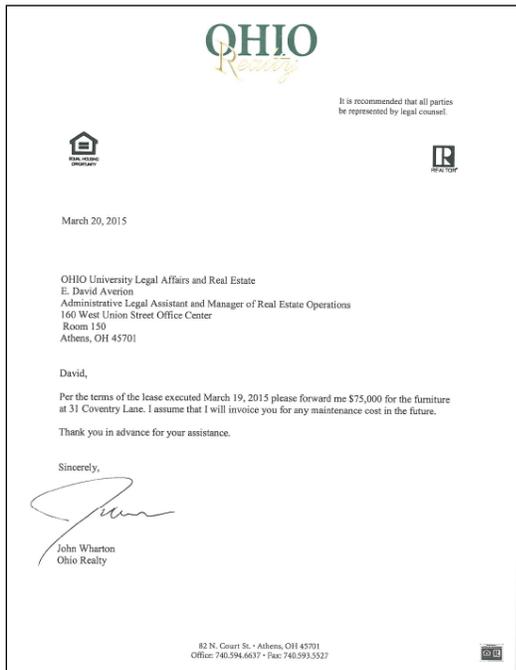
During a May 24, 2017, interview with investigators, Benchoff confirmed that gift cards are considered in-kind gifts and they should be documented in the university Division of University Advancement's computer system giving history consistent with any other in-kind gift. Benchoff was shown the two logs showing the \$2,500 gift card value and Wharton's giving history report which did not reflect the university's receipt of two \$2,500 gift cards totaling \$5,000. Benchoff was unable to explain why the gift cards were not recorded on the giving history and confirmed that the gift cards should have been recorded in Wharton's giving history. On July 20, 2017, the

university notified investigators in an email that, “while the usage of the cards was documented within Athletics, the cards were inadvertently not entered into Mr. Wharton’s giving history.”

On October 30, 2017, the Office of the Ohio Inspector General received records from Wharton listing cash and in-kind donations he or his companies made to the university or the foundation. Investigators compared the list Wharton prepared of his donations to the Ohio University Foundation’s giving history for Wharton and his associated companies. From this comparison, investigators determined the foundation’s records did not reflect \$4,800 in cash and \$3,213.87 in-kind donations made by Wharton and his associated companies.

Accounting Issues - Invoices

While reviewing documentation supporting payments issued to Wharton, investigators noted the invoices for those payments were on letterhead of companies owned by Wharton as seen below:



University Off Campus Housing
82 N. Court St.
Athens, OH 45701
Phone: 740-592-5527 Fax: 740-593-5527

INVOICE

INVOICE #333
DATE: MAY 24, 2016

TO: Office of the President

FOR: 31 Coventry

DESCRIPTION	AMOUNT
University Off-Campus Housing – WO#3998	\$60.00
University Off-Campus Housing – WO#3481	\$75.00
University Off-Campus Housing – WO#4067	\$97.50
University Off-Campus Housing – WO#4016	\$75.00
Nice & Neat #6495	\$321.16
Greenleaf Landscapes, Inc. #44730	\$9,391.39
TOTAL	\$10,020.05

When questioned why the invoices supporting payments issued to John Wharton were from Wharton’s companies and in many instances, were billed to the “Office of the President,”

university Director of Procurement and Finance Laura Nowicki³³ told investigators during a January 7, 2016, interview that she needed to investigate why this had occurred. The university notified investigators in an April 27, 2016, letter that, “the University asked Mr. Wharton to provide corrected invoices for maintenance services, to indicate those invoices are from Mr. Wharton rather than University Off Campus Housing.” Included with the letter were copies of invoices purported to be from Wharton. [\(Exhibit 8\)](#)

Further analysis of purchasing records provided by the university revealed that for certain months, both the Wharton invoice [\(Exhibit 8\)](#) and the UOCH invoice were maintained to support payments made to the Whartons. The university discontinued this practice as of the June 24, 2016, invoice for an unknown reason.

Upon being shown the eight corrected invoices purported by the university to be from him, Wharton told investigators that the invoices were not from him and that he believed they were generated by the university. Wharton explained that his staff prepared the work orders supporting the work performed and that a different member of his staff prepared the UOCH invoice both of which were submitted to the university. Wharton was asked by investigators to confirm with his “office staff whether they had prepared the attached invoices 1-8” Wharton responded on October 30, 2017, that his staff did not prepare the invoices in question.

Investigators noted that it is a good practice to have the vendor name listed on the requisition, purchase order, invoice, and payment agree to ensure that the vendor who was authorized to provide and did provide the goods or services receives the payment.

Accounting Issue – Sales Tax

Further detailed analysis of the invoices and support documentation for university payments issued to Wharton revealed the payments included a total of \$2,797.84 in sales tax. However, the university purchase orders contain a reference to the Ohio University Standard Terms and Conditions on the face of the document. Section 11 of Ohio University’s Standard Terms and Conditions provides, “... the parties acknowledge that the goods and/or services provided

³³ Nowicki left employment with Ohio University in June 2017.

hereunder are exempt from Ohio sales tax and federal excise tax, including federal transportation tax. An exemption certificate is available, upon request, from the University Procurement office.”

An analysis of emails provided by the university noted that university Contract Coordinator Angel Mack had sent a June 15, 2015, email to Averion and Markielowski noting sales taxes were reflected on the receipts and questioned whether a tax exemption certificate was provided to Wharton. Markielowski told investigators during an interview that he recalled having a short discussion with Averion about Mack’s email and then responded, “as part of the terms of the lease, we are required to reimburse the actual costs of maintenance incurred, so I am not sure, but I think this would be the full receipt amount should be reimbursed.”

Averion told investigators that he could not recall whether Wharton was provided a tax exemption certificate, but did recall having a conversation with procurement about this issue, he believed it was resolved, and the university continued the same practice of including the sales tax amount in the total amount paid to Wharton. No evidence was found that the university provided the tax-exempt certificate to Wharton in accordance with Section 11 of the university Standard Terms and Conditions.

OHIO UNIVERSITY POLICY AND PROCEDURE CHANGES IMPLEMENTED

On December 5, 2017, the university notified the Office of the Ohio Inspector General by letter that due to information learned during this investigation, the university had implemented a policy “... outlining the process for initiating, negotiating and administering real estate acquisitions, sales, leases and easement.” The university further stated that, “as a general rule, the local department involved with a lease will have direct responsibility for compliance with lease terms, receipt and review of invoices and approvals of payments.” In addition to the policy, the university provided a copy of a PowerPoint presentation explaining the process being used by the university Real Estate Department to manage the university’s real estate projects.

The recent policy changes and other internal control weaknesses noted during the investigation were considered by the Office of the Ohio Inspector General when developing recommendations to strengthen the university's internal control system.

CONCLUSION

On April 19, 2015, the Athens Messenger newspaper posted an article summarizing the events leading up to a decision by the Ohio University administration "... to not recommend the purchase of 31 Coventry Lane to OU's Board of Trustees and the OU Foundation's Board for housing for President Roderick McDavis and his wife Deborah." The news article stated this decision was made after university officials "... discovered that [John] Wharton had made a verbal commitment of a large gift to OU's athletic department prior to the lease negotiations." John Wharton is a local businessman, a resident of Athens, Ohio, and (former) owner of 31 Coventry Lane.

On April 20, 2015, the Office of the Ohio Inspector General initiated an investigation to examine whether John Wharton's proposed sale of his home to Ohio University and his verbal commitment to make a large financial gift to Ohio University's Athletic Department, were both proper and appropriate.

Investigation into Wharton's Gifts to the Ohio University Athletic Department

During interviews conducted with university staff, the Office of the Ohio Inspector General determined that Ohio University Foundation staff first became aware of a March 23, 2015, donor contact report created by Senior Associate Athletic Director for Development Ryan White on March 26, 2015. This report was first identified by foundation employees while they were assembling records in response to a public records request. Once found, Ohio University Foundation CEO Bryan Benchoff notified both university legal counsel and Stephen Golding, vice president for Finance and Administration and treasurer of the Ohio University Foundation, of the existence of the donor contact report.

White stated that the conversations with Wharton began on February 27, 2015, after Wharton had visited university Athletics Director Jim Schaus and mentioned to Schaus his intentions to

pledge a gift of \$100,000 should the university purchase 31 Coventry Lane. Investigators interviewed Schaus who confirmed the conversation occurred; confirmed he told White; and that it was White's "to handle." White confirmed to investigators that he received a call from Schaus; had spoken with Wharton about the potential gift on March 11, 2015; spoke with McDavis at the Bobcat Bash on March 14, 2015; and that he did not speak with anyone else within the Division of University Advancement regarding these conversations. McDavis confirmed the conversation with White took place and noted at that time he thought the transaction with Wharton was not going forward and they were looking at four other properties.

The Office of the Ohio Inspector General also analyzed email boxes belonging to Schaus, White, McDavis, Golding, Benchoff, and Director of Real Estate Development, Community Engagement and Economic Development Donna Goss to identify when the first conversations regarding the potential gift from the Whartons occurred with members of the negotiation team. Investigators found that Goss had sent an email to the President's Office chief of staff and a representative from the university Communications Department on March 20, 2015, the day after the lease for 31 Coventry Lane was signed. Goss stated in the email that she has learned of a rumor being circulated that, "Athletics will be receiving a gift of \$125k from the Whartons as a result of our lease/purchase agreement with them." Goss further states that "there is no such agreement in place."

Golding explained to investigators that the first time he recalled hearing anything about Wharton approaching Schaus was after the lease had already been signed. Golding explained that he was made aware of the donor contact report summarizing the interactions with Wharton after it was discovered by the Ohio University Foundation on March 26, 2015, when researching records in order to respond to a public records request.

The Office of the Ohio Inspector General found no evidence that McDavis, Schaus, or White had shared Wharton's conversations regarding a potential gift should the university purchase 31

Coventry Lane with members of the negotiating team³⁴ during the negotiations of the lease terms.

Accordingly, the Office of the Ohio Inspector General finds no reasonable cause to believe wrongful acts or omissions occurred in these instances.

Investigation into Wharton's Involvement in the President's Move to 31 Coventry Lane

The Office of the Ohio Inspector General conducted multiple interviews and reviewed numerous documents to obtain an understanding of the events that led up to Roderick and Deborah McDavis moving from 29 Park Place to 31 Coventry Lane on March 19, 2015, and to determine Wharton's involvement in this process. Investigators confirmed that the catalyst to begin searching for alternative living arrangements for the McDavises was because of an injury Deborah McDavis sustained while trying to avoid a bat at their residence on January 26, 2015.

Investigators found through interviews conducted and emails analyzed that Wharton was involved in the search for a new president's residence in the following instances:

- On February 6, 2015, Roderick and Deborah McDavis had lunch with Wharton to discuss available properties and afterwards, drove past two properties Wharton had mentioned. After determining both were unsuitable, the McDavises accepted Wharton's second offer to see his residence, 31 Coventry Lane.
- On February 25, 2015, McDavis, Brightbill, Goss, and other university representatives toured 31 Coventry Lane. From various interviews, investigators learned that no decisions or discussions involving lease terms had occurred during the tour. However, investigators were informed that there may have been a discussion on the length of a potential lease after the tour.

³⁴ The negotiating team included Vice President of Finance and Administration Stephen Golding, Director of Real Estate, Community Engagement and Economic Development Donna Goss and the General Counsel's Office.

- From February 25, 2015, through March 1, 2015, conversations had occurred between university staff and Wharton regarding 31 Coventry Lane and a potential lease agreement. Wharton told investigators that he had recommended to university staff that the university should lease the house to purchase.
- By March 1, 2015, Golding stated that university staff considered 31 Coventry Lane the “default” residence for future university presidents.

Goss told investigators that her search for properties involved searching the internet, reaching out to local brokers (including Wharton), and discussing with the McDavises what their needs were for a president’s residence. Goss stated that she was not aware that 31 Coventry Lane was an option to consider for a president’s residence until after she had received a phone call from McDavis after his tour of the home.

Further analysis revealed that prior to and at the time the university was searching for a president’s residence, members of the negotiation team, university management, and the Ohio University Foundation interacted with Wharton as either:

- A donor;
- An Ohio Bobcat Club Advisory Board and Major Gifts Committee member;
- An intermediary with a local developer to obtain property for the Auxiliary Services project, which was not completed;
- A realtor representing both the university and the seller in the sale of 207-209 West Union Street to the Ohio University Foundation, which closed on March 2, 2015, for which his firm received a commission of \$16,000; and
- A property manager negotiating with the university on behalf of The Beta Chapter of Delta Tau Delta Housing to lease 4 University Terrace to the university for which his company, UOCH, received a fixed percent of the monthly rental payment for its services.

Goss told investigators that Wharton’s interactions or relationships with the university as described above were not reviewed as a whole to determine the impact these relationships may have had on university staff who were negotiating the lease for 31 Coventry Lane. Goss

explained that each of the transactions were considered separate. Golding explained that in Athens, "... you can never take out of the back of your mind the fact that in a small town that there are entangling relationships and entangling alliances that, that um complicate these types of transactions."

Golding further believed it was "understood that because of Wharton's omnipresence," there were concerns "that people might look at this transaction and, and, and question its appropriateness." However, Golding alleged that a compelling argument from his and Goss' perspective "was that Coventry Lane based upon 2+ years of looking at the real estate market was a suitable facility to lease for the President for the time period that um, for the for the two years."

Section 34 of the lease agreement between Ohio University, the Ohio University Foundation, and John and Joyce Wharton stated that, "The foundation shall have the right and option to purchase the Property, including the Premises upon the terms described in Exhibit B." The foundation had the ability to exercise this option until April 28, 2017.

On March 26, 2015, while responding to a public records request, Ohio University Foundation staff discovered a donor contact report completed by the university Senior Associate Athletic Director for Development Ryan White summarizing donor interactions that had occurred from February 27, 2015, through March 23, 2015. Investigators noted that the donor contact report was created on March 23, 2015. This donor contact report listed a potential \$100,000 "commitment" from the Whartons to the university. The report also noted that, "John [Wharton] is in the process of selling his house to Ohio University." Upon making this discovery, Ohio University general counsel notified Stephen Golding that these conversations had occurred between February 27, 2015, and March 14, 2015, which was prior to the signing of the lease agreement.

During an October 23, 2017, interview with investigators, Wharton told investigators that he visited university Athletics Director Jim Schaus' office on February 27, 2015. Wharton explained that as a Bobcat Advisory Board member, he knew the university was conducting a

campaign to raise money for the Sook Athletic Academic Center. Wharton said he told Schaus, in confidence, that he and his wife had decided to pledge \$100,000 towards the center. Specifically, Wharton informed Schaus it was his intention that if the university purchased his house, he would pledge \$100,000 to the Sook Athletic Academic Center and likely, pay off his previous pledge to the Walter Fieldhouse. Wharton also confirmed Schaus' recollection of their conversation to investigators during his October 23, 2018, interview. As of July 17, 2018, Ohio University Foundation's giving history did not reflect Wharton or his companies making a \$100,000 donation.

Prior to the initiation of this investigation, investigators noted that the university had conducted their own internal review, consulted with the Ohio University General Counsel, and discussed the matter with the members of the Ohio University Foundation. As a result, Golding announced on April 13, 2015:

To avoid even an appearance of impropriety, I have informed the Chair of the University Board and the Chair of the Foundation Board that I will not ask either Board to exercise the option to purchase 31 Coventry Lane, regardless of the results of the assessment of 29 Park Place that will occur in the coming months.

The Office of the Ohio Inspector General determined Wharton had discussions with the Athletic Department about a conditional \$100,000 donation contemporaneously to negotiations with the Real Estate Department about a lease agreement with a purchase option for a property owned by Wharton. The Office of the Ohio Inspector General further determined that Wharton's various relationships with university staff in conjunction with his history of donating to both Ohio University and to the Ohio University Foundation provides the appearance that Wharton received preferential treatment by the university when they selected a property owned by him as a temporary residence for the McDavises.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe the appearance of impropriety occurred in this instance.

Lease Agreement Payment Analysis

The Office of the Ohio Inspector General obtained documentation supporting payments made by the university to the Whartons and determined the university issued payments for the following expenses identified in the lease agreement during the period of March 20, 2015, through June 15, 2017:

Category	Total Spent
Monthly Rent Payments	\$ 118,396.77
Furniture Purchase	75,000.00
Property Taxes	28,881.44
Maintenance Expenses	95,578.03
Grand Total:	\$ 317,856.24

Section 7(A) of the lease agreement provided that the:

Lessor was responsible for all maintenance and repairs of and to the Property and the Premises. ... Lessor shall be entitled to invoice OHIO for actual costs it incurs in providing the maintenance and repair services described in this section that are requested by OHIO.

The Office of the Ohio Inspector General interviewed Wharton regarding his negotiations with the university, the lease agreement, and how he identified what types of maintenance requests made by the university would be included on his monthly invoices. Wharton stated that after a meeting at 31 Coventry Lane on February 25, 2015, he and Goss decided that his (Wharton's) staff, instead of the university's, would perform the maintenance work and he would bill the university. Wharton explained that he reiterated his intentions to bill the university for maintenance in emails he had sent to Goss on March 4, 2015, and March 17, 2015, and made it clear to the university that he was not paying for maintenance. After his interview, Wharton also provided a copy of an April 17, 2017, email sent to Averion in which he acknowledged that, "... We didn't always wait for a request to mow, fertilize, salt the driveway etc. but did respond when requested and feel that our proactive maintenance was noticed and appreciated"

The Office of the Ohio Inspector General also interviewed current and former university staff to determine the types of maintenance and repairs the university requested and the process followed to ensure the invoices submitted by Wharton were in accordance with the lease agreement. University Business Analyst Kevin Markielowski explained that based upon the lease, he did not believe the university needed to request the work to be completed. Markielowski noted to investigators that the subject of maintenance was not particularly discussed. Investigators then reminded Markielowski that Section 7 of the lease agreement provided, “Lessor [Wharton] shall be entitled to invoice OHIO for actual costs it incurs in providing the maintenance and repair services described in this section that are requested by OHIO.” Markielowski further explained his understanding for the paying the maintenance expenses was that “... any costs incurred by the landlord will be passed on to the tenant or the responsible party.” Investigators were unable to confirm from interviews with other university employees who had provided this understanding to Markielowski.

Based on these interviews, investigators analyzed emails and work orders and determined that \$75,038.24 of the \$95,578.03 in maintenance expenses paid by the university were requested either verbally by Goss or by a university employee making a phone call or sending an email to UOCH. However, there were two specific repairs, the replacement of a composite deck with a cedar deck (\$5,019.18) and the replacement of the sod (\$14,811.94) which investigators were unable to find a request from university staff.

On December 10, 2016, the university paid Wharton \$5,019.18 for expenses associated with the replacement of the composite deck at 31 Coventry Lane with cedar decking. Wharton explained that the composite deck boards were beginning to crack, flake, and peel apart; that the color used on the deck had been discontinued; and that he did not want a “two-tone deck.” As such, Wharton made the decision to replace the composite deck boards with cedar decking. No evidence was found that the university had requested this work be completed. In fact, investigators found an email sent by Deborah McDavis inquiring about the reason for the carpentry work on the deck and stating, “no one has indicated what is being done.”

On December 24, 2016, the university paid Wharton \$14,811.94 for expenses associated with the replacement of the sod at 31 Coventry Lane. Wharton explained that his staff had noticed a weed in the yard while mowing and that he was advised by Greenleaf Landscapes, Inc. that the only way to eradicate the “invasive” weed was to kill the grass, remove the turf, and either reseed or re-sod the yard. Based on a recent experience with his new residence, Wharton told investigators that he did not believe there was a significant price difference between the two options and chose to re-sod the yard. Investigators found no evidence that the university had requested this work be completed. Instead, investigators found a December 9, 2016, email from Deborah McDavis noting the increased water bills must be “... from John’s [Wharton] having the entire yard re sodded and the sprinkler systems installed to accommodate this installation.”

Investigators discovered that prior to the completion of the replacement of the sod and the composite decking, Wharton had listed his home at 31 Coventry Lane on the market and had shown it to at least two prospective buyers. Investigators found no evidence that there were discussions between Wharton and the university to determine whether the university was willing to incur the expense for the replacement of the sod and the composite decking.

Investigators further noted that while university staff did initially question the sod payment, Markielowski told investigators during an interview,

... that it was always well the president and his wife are still living there—so—and the lease is pretty um open ended as far as to what and exactly – what are the limitations of the things that can be requested or not.

Further review of the supporting documentation in conjunction with the lease agreement and the interviews conducted during this investigation determined the university made duplicate payments totaling \$249.19 and issued payments totaling \$369.53 for expenses belonging to the landlord. Lastly, investigators were unable to locate sufficient, detailed documentation for expenses totaling \$2,122.58. As such, investigators were unable to verify these payments were made in accordance with the contract.

Since Ohio University did not own 31 Coventry Lane, the lease ended June 30, 2017, and the repairs improved the appearance of Wharton's property while the property was listed for sale, the Office of the Ohio Inspector General determined the university should not have paid Wharton totaling \$20,449.84 for: duplicate receipts and work orders (\$249.19); landlord expenses (\$369.53); replacement of the composite decking (\$5,019.18), and the replacement of the sod (\$14,811.94).

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe wrongful acts or omissions occurred in these instances.

Realtor Referrals

The Office of the Ohio Inspector General conducted interviews of the university Division of University Advancement staff in January 2016. Based on the results of these interviews, investigators questioned whether university management were directing prospective candidates or new hires to Wharton's real estate firm, Ohio Realty, for real estate services. Approximately a month after conducting these interviews, Athens News General Assignment Writer Connor Morris forwarded an email to investigators on February 9, 2016, which suggested that the investigators should review how many of the university athletic department new hires from outside of the Athens area in the past five or more years used Ohio Realty to buy their homes, and that "you will be able to see a pattern ... I was told that new employees are specifically told to use Mr. Wharton's real estate firm."

The Office of the Ohio Inspector General determined from an interview with Golding that finalists for university positions and the dates the finalists will be on campus are announced publicly. Golding explained that Athens is a small town, Wharton is an aggressive realtor, and that Wharton often reaches out to prospective employees to offer his services.

Lastly, investigators reviewed the documentation that the university Human Resources Department would provide to new employees during orientation and the publications made available to new hires. The Office of the Inspector General found no evidence of new or

potential staff being directed by the university to exclusively use Wharton or his company, Ohio Realty, for their realtor needs.

Accordingly, the Office of the Ohio Inspector General finds no reasonable cause to believe wrongful acts or omissions occurred in these instances.

4 University Terrace Lease

The Office of the Ohio Inspector General determined that Ohio University signed a lease agreement on June 4, 2015, and Wharton signed on behalf of the Beta Chapter of Delta Tau Delta for the university to lease 4 University Terrace on July 13, 2015. Section 8.4 of the lease agreement provided that the landlord was responsible for painting with tenant-approved colors and to their specifications the entire interior of the property including “dormitory rooms, apartment, hallways, laundry rooms, locker rooms, dining area, theater room, living rooms and office area.”

Contrary to this section, Ohio University issued payments totaling \$7,345.74 to reimburse UOCH for 50 percent of these painting costs. An email analysis revealed that in July 2015, the university and Wharton had entered into a verbal separate agreement whereby the two parties to the lease agreement agreed that each party would pay 50 percent of the painting costs. While this verbal agreement was confirmed by email, it was not memorialized in writing and signed by authorized parties.

The agreement documented through a series emails was contrary to the 4 University Terrace lease agreement, *Section 22.5 Entire Agreement* which provided that the written lease agreement and exhibits state, “... This lease may be modified only by an agreement in writing signed by each of the authorized parties.”

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe wrongful acts or omissions occurred in this instance.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations to Ohio University to strengthen their internal controls in the areas of contracts and leases; accounting; real estate; and donations, gifts, and pledges, and asks that the president of Ohio University respond within 60 days with a plan detailing how these recommendations will be implemented. Ohio University should:

Contracts and Leases

1. Consider the benefits of requiring vendors entering into contracts or leases with the university to disclose existing and ongoing relationships with the university. For those identified, is it recommended that the university implement policies and procedures to document the review of this relationship and the determination of whether an actual or appearance of conflict of interest exists.
2. Consider documenting the results of the analysis performed to verify the monthly lease payments or purchase price is reasonable and any other factors which were considered while deciding whether the lease should be entered or a purchase is made.
3. Consider for future lease agreements including an early termination option involving real estate transactions.

Accounting

4. Consider implementing policies and procedures and providing training to employees responsible for approving and processing payments associated with lease agreements or contracts to ensure that:
 - a. the invoices and supporting documentation comply to the terms of the lease agreement or contract;
 - b. the invoices are printed on letterhead of the supplier providing the service;
 - c. the invoices do not include, when applicable, sales taxes and ensure all suppliers are provided with the university's tax-exempt certificate; and
 - d. the goods or services listed on the invoices are verified received and were not included in a previous invoice.

Real Estate Department

5. Work with the lessor (Whartons) to determine who is the responsible party for each of the expenses identified in this report as duplicate charges; expenses determined to not be the university's responsibility; for services not rendered at the time of payment; lacking supporting documentation; and performed and not billed to the university.

6. Consider the benefits of implementing policies and procedures to be used when selecting a realtor to provide real estate services for the acquisition or disposal of university or foundation properties.

Donations, Gifts, and Pledges

7. Consider implementing policies and procedures and providing training to employees responsible for creating, updating, and reviewing donor contact reports and accepting in-kind gifts to ensure that:
 - a. University employees enter donor contact information into the Division of University Advancement computer systems in accordance with the specified level of detail required by management;
 - b. A review process is implemented to ensure the information entered is reasonable, accurate, and in a timely manner; and
 - c. Address the receipting of, valuing of, notifying of, and the recording of in-kind gifts by the Division of University Advancement that a college, unit, or department has received an in-kind gift.

REFERRAL(S)

During the course of this investigation, the Office of the Ohio Inspector General consulted with the Ohio Ethics Commission. This report of investigation will be provided to the Ohio Auditor of State for review and consideration.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio University
FILE ID #: 2015-CA00016

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
September 18, 2018

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