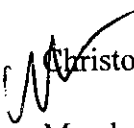




Memorandum

19 West Flagler Street ♦ Suite 220 ♦ Miami, Florida 33130
Phone: (305) 375-1946 ♦ Fax: (305) 579-2656
visit our website at www.miamidadeig.org

To: Honorable Carlos Alvarez, Mayor, Miami-Dade County

From:  Christopher Mazzella, Inspector General

Date: March 18, 2009

Subject: OIG Final Report Re: *Circumvention of Miami-Dade County Building Department's Plans Review and Inspection Processes on a Residential Construction Project*, Ref. IG07-24

Attached please find the Office of the Inspector General's (OIG) final report regarding the above-captioned matter. The OIG investigation determined that contractor Jimmy Lynn Fraley violated procedures required by the Florida Building Code, which were established to prevent substandard and illegal construction, and circumvented the rules until he was forced to comply by the Building Department.

Additionally, the OIG found that the Building Department, while diligent in its efforts to address and correct issues brought to its attention regarding the construction project, did not effectively communicate inspection deficiencies. The Building Department also failed to adequately monitor the progress of the construction project in order to prevent the contractor's persistent and continuous circumvention of the rules. In the OIG draft report, we recommended that the Building Department enforce established procedures and randomly field check enforcement cases to prevent these types of issues from recurring.

The OIG received discretionary written responses from both the Building Department and Mr. Fraley, which are attached as Appendix A and Appendix B, respectively. In response to our recommendations, the Building Department has now undertaken to modify and develop enforcement procedures to detect and address occurrences of contractor non-compliance. We believe that the Building Department's response adequately addresses our concerns. Accordingly, we will not be asking for follow-up reports in this matter.

Attachment

cc: Hon. Dennis. C. Moss, Chair, Board of County Commissioners, Miami-Dade County
Mr. George M. Burgess, County Manager
Mr. Alex Munoz, Assistant County Manager
Mr. Charles Danger, Director, Miami-Dade County Building Department
Mr. Dennis Morales, Chief of Staff, Office of the Mayor
Mr. Charles Anderson, Commission Auditor
Mr. Jimmy Lynn Fraley (under separate cover)
Clerk of the Board (copy filed)

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
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INTRODUCTION & SYNOPSIS

In March 2006, the Miami-Dade County Office of the Inspector General (OIG) received information alleging that a general contractor and former Miami-Dade County and City of Homestead building inspector, Jimmy Lynn Fraley, was circumventing permitting and inspection processes on a residential construction project in the Redlands with the assistance of his brother, former Miami-Dade County building inspector Richard K. Fraley, Jr. For ease of identification, Jimmy Lynn Fraley will hereinafter be referred to as "Mr. Fraley," and Richard K. Fraley, Jr. will be referred to as "Richard Fraley."

The OIG referred the matter to the Miami-Dade County Building Department (Building Department) and, thereafter, actively monitored the Building Department's efforts to address the issues. In April 2007, the complainants returned to the OIG and, in addition to renewing their allegations against the Fraley brothers, alleged that the Building Department had failed to prevent Mr. Fraley from constructing a house without the proper permits. The complainants further alleged that the Building Department also failed to prevent Mr. Fraley from continuing construction on the house without an approved set of plans, and failed to prevent Richard Fraley from assisting him in circumventing the inspection process.

The OIG's investigation found that during the course of the construction, Mr. Fraley violated procedures required by the Florida Building Code, which were established to prevent substandard and illegal construction, and circumvented the rules until he was forced to comply by the Building Department. As more fully discussed below, the OIG investigation determined that the allegations against Richard Fraley were not sustained. Additionally, the OIG found that the Building Department, while diligent in its efforts to address and correct issues brought to its attention regarding the construction project, did not effectively communicate inspection deficiencies. The Building Department also failed to adequately monitor the progress of the construction project in order to prevent the contractor's persistent and continuous circumvention of the rules.

The Building Department provided a discretionary response to the draft report, which adequately addressed the concerns identified by the OIG investigation.¹ The response described a number of additional enforcement and review procedures, which are summarized on page 10 of this report that the Building Department plans to implement to prevent issues of contractor non-compliance from recurring.

¹ Mr. Fraley also provided a discretionary response to the draft report, in which he denied all the allegations against him.

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BACKGROUND

Jimmy Lynn Fraley

Jimmy Lynn Fraley is a state certified general contractor, and has maintained his license since November 1990. He is also a state certified plumbing contractor and a standard inspector. According to the State of Florida Department of Business and Professional Regulation (DBPR) database, these licenses are also current and active. Mr. Fraley was previously licensed by Florida as a provisional building inspector and as provisional plumbing inspector. Mr. Fraley is currently doing business as J. L. Fraley LLC, a Florida limited liability company that was incorporated in June 2004. He is the registered agent and manager of the company. (Exhibit 1)

Between November 1993 and August 1995, Mr. Fraley was a Miami-Dade County building inspector. He was also formerly a City of Homestead building inspector, having served in that capacity from October 2004 to October 2006. (Exhibit 2)²

OIG INVESTIGATION

During the course of the investigation, OIG Special Agents reviewed records from the Building Department, the Miami-Dade County Department of Planning and Zoning, and the Miami-Dade County Water and Sewer Department. OIG Special Agents also interviewed County officials from the above-referenced offices regarding the permitting, plans review, inspection and zoning processes.

The information received from the complainants and the OIG's findings are summarized below:

- 1) **Mr. Fraley obtained a building permit for a 2,700 square foot home but actually built a 4,000 square foot home. Why didn't the Building Department revoke the permit and issue a new one?**

OIG Special Agents obtained and reviewed Building Department records for the construction project, located at 27600 SW 172 Avenue. Our review of these records revealed that on October 2, 2003, an application for a building permit was submitted to construct a new, single-family residence at the Redlands location. The new residence is

² In his discretionary response, Mr. Fraley contends that he was a Homestead Building Inspector from November 2003 to November 2006, in contrast to the information contained in the Homestead personnel records which are attached as Exhibit 2.

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listed as "Model B" of a previously approved set of "Cookie Cutter" plans submitted by S&S Developers of Florida, Inc.³

In the section of the application marked *Type of Improvements-Description of Work*, the space provided for the square footage is left blank. However, a review of the original Cookie Cutter application and floor plan for Model B revealed the square footage as 2,226 square feet (under air), with the total square footage listed as 2,772 square feet. Because the plans review revealed no corrections or changes to the model's floor plan, the Building Department, relying upon the information provided in the Cookie Cutter application and floor plan, issued a master permit listing the total square footage as 2,772 square feet. (Exhibit 3) Subsequent to the issuance of the master permit, an application to revise the approved plans was submitted on March 30, 2004. According to the proposed site plan, the new square footage is listed as 3,200 square feet (under air), with a new total square footage of 4,843 square feet. (Exhibit 4)

Building Department officials stated that square footage information is taken directly from the information submitted in the plans. The plans examiner, during his or her review, should make sure that the square footage is correct in the database. If a contractor desires to modify a project to increase the square footage after it is approved, the building code allows the contractor to apply for a revision to the plan.

In this case, it was not necessary to revoke the existing permit because the plan revision was processed in accordance with the Department's procedures. After the initial approval and issuance of the permit, Mr. Fraley submitted proposed revisions to enlarge the house. Once the proposed revisions were reviewed, approved and paid for, they were validated and became the approved plan of record. Because the revisions resulted in an increase to the square footage, the plans examiner was responsible for updating the information within the database to show the appropriate numbers. The revised plan shows the square footage as 3,200 square feet. This number is consistent with what currently appears as the square footage in the Building Department database. (Exhibit 5)

2) Mr. Fraley's brother, Richard Fraley, was a Miami-Dade County building inspector who performed and approved inspections on Mr. Fraley's project.

Richard Fraley is a former Miami-Dade County building inspector. He worked for the Building Department from 1993 to August 15, 2006, when he voluntarily resigned. During his tenure of employment with the Building Department, he worked as a field unit building inspector and also as a building inspector in the Unsafe Structures Unit.

³ The Cookie Cutter program was designed to expedite the plan review process for the construction of a model home that is being built on a repetitive basis.

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OIG Special Agents reviewed the permit issuance history for this project and found a total of seven permits that were issued to the project. (Exhibit 8) OIG Special Agents then reviewed the inspection histories of those permits and found no record of any inspections performed by Richard Fraley for the project. Building Department officials also reviewed the inspection histories and stated that Richard Fraley did not perform any inspections on this project.

3) Building inspectors performed inspections using plans that were not approved by the Building Department.

As previously described above, Mr. Fraley, on March 30, 2004, submitted an application to revise the original plans that were approved in January 2004. The revised plans affected the five major construction components—building, electrical, structural, plumbing, and mechanical—and proposed to add an additional 500 square feet to the house, increasing its size to approximately 3,200 square feet. Accordingly, construction on the project should have ceased in all areas of the project affected by the proposed changes until approved by the Building Department.

OIG Special Agents examined the plans processing history for the revised plans and found that the Building Department's review—with corrections and changes—took almost two years to complete.⁴ (Exhibit 9) Nevertheless, according to Building Department records, there were five active open permits on the project while the review was being conducted: master, plumbing, electrical, roofing, and window. OIG Special Agents then examined the inspection histories for those permits and found that 21 inspections were requested. Of these 21 inspections, 8 inspections were cancelled and 11 inspections were approved or partially approved. One inspection was rejected because the inspector requested the revised plan. (See Exhibit 8, the permit issuance history)

Based upon the above-described information, sufficient evidence exists to support the allegation that inspections on the project were performed and construction continued while the proposed revised plans were still under review and not yet approved. Accordingly, the OIG investigation sought to determine how building inspectors were able to conduct inspections prior to March 13, 2006—the date the review on the proposed project revisions was completed—since the originally approved plans were for a 2,700 square foot home, significantly smaller than the 3,200 square foot home proposed in the revised plans.

⁴ The review began on March 31, 2004, and final approval was not given until March 13, 2006.

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During its review of this matter, Building Department officials concluded that Mr. Fraley had shown building inspectors a non-approved set of plans, placed inside the permitted set so as to appear to already have been approved. When the Building Department discovered this, Mr. Fraley was ordered to stop work until the plans were approved. When the review was complete, Mr. Fraley picked up the plans without paying for the revisions. Building Department officials stated that payment [for the plans] validates the plans, and that validation in turn renders the previous plan null and void. Building Department officials further stated that all inspections made subsequent to the revision, but prior to the validation, were made using the revised plans; thus, building inspectors unwittingly approved work on the expanded area of the house. Additionally, Building Department officials stated that upon discovering that the revised plans had not been validated, an inspection hold was immediately placed on the master permit and the contractor/owner was assessed a double permit fee in accordance with the Florida Building Code. (Exhibit 10)

- 4) During construction the project was red-tagged for constructing the roof without a permit. Even with the red-tag in place, Mr. Fraley continued to build in violation of the red-tag.**

A "red-tag" refers to a notice that a contractor/owner receives from the Building Department for a violation of the building code. The notice is officially known as a Stop Work Order (SWO) and is presented on a red tag-style card. Violating an SWO may subject an individual to certain penalties as prescribed by Section 114 of the Florida Building Code. (Exhibit 11)

OIG Special Agents reviewed Building Department enforcement records and found that the project had been red-tagged three times by the Building Department, twice for working without the proper permits, and once for failure to call for mandatory inspections.

Enforcement Case #1 – Working without a Permit

Enforcement case number 2005036883 was opened on August 30, 2005, after the Building Department received a complaint alleging that roofing work had commenced without a permit. The Building Department conducted an inspection and confirmed that the roof was constructed without a roofing permit. On the same day the enforcement case was opened, a Notice of Violation (NOV) and an SWO were issued to Mr. Fraley for working without a permit, which is a violation of Section 105.1 of the Florida Building Code. (Exhibit 12) In order to comply with the NOV and the SWO, Mr. Fraley needed to obtain a permit for the roof within 30 days from the date of their issuance before the work could proceed. Building Department records revealed that an

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application for a roofing permit was submitted on September 2, 2005, and that on September 6, 2005, a permit was then issued for the roof. (See Exhibit 8, the permit issuance history)

Enforcement Case #2 – Failure to Call for Mandatory Inspections

Section 109 of the Florida Building Code provides that “construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved.” Enforcement case number 2005050164 was opened on September 9, 2005, because Mr. Fraley failed to call for mandatory inspections before concealing work. (Exhibit 13) As a state licensed general contractor with over 15 years of construction experience, Mr. Fraley knew or should have known that the roofing work should not have been concealed without the required inspections. On the same day the second enforcement case associated with the project was opened, an NOV and an SWO were issued to Mr. Fraley for failing to obtain mandatory roofing inspections, in violation of Section 109.3 of the Florida Building Code. In order to comply with the NOV and the SWO, Mr. Fraley was required to pay a fine for violating the Florida Building Code. In addition, Mr. Fraley was required to provide an engineer’s report within 30 days from the date of the issuance of the NOV and the SWO certifying the materials used and the installation of those materials in accordance with the Florida Building Code. On November 4, 2005, a building inspector randomly selected a section of the roof for the contractor to plug in order to conduct an inspection to verify the report. After inspecting the materials and the work, the inspector determined that the roof was in compliance with the Florida Building Code.

Enforcement Case #3 – Working without a Permit

The Building Department received a separate complaint alleging that Mr. Fraley continued work on the construction project despite having not yet obtained approval of his revised plan. In response to the allegation, the Building Department sent a building inspector supervisor to conduct a field inspection. The building inspector supervisor confirmed that the existing construction was beyond the scope of the approved permit, and opened enforcement case number 2006096316. On March 2, 2006, Mr. Fraley was issued an NOV and an SWO for working without a permit, in violation of Section 104.1 of the Florida Building Code. (Exhibit 14) The issuance of the NOV and the SWO forced Mr. Fraley to finally act to get approval for his revised plan, which was granted, as previously mentioned, on March 13, 2006. On April 6, 2006, a building inspection supervisor met Mr. Fraley at the job site. The building inspector supervisor verified that the approved, revised plan was at the job site, conducted a review of the revised plan, and then verified that the work complied with the revised plan.

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- 5) Mr. Fraley built a larger home than was originally approved. The Building Department failed to collect the appropriate impact fees after approving the revisions.**

Building Department officials stated that after this matter was brought to their attention, they conducted a review to determine whether the information they received was correct. Their review revealed that once the revised plans review was complete, the plans had not been reviewed for additional impact fees for the increase to the square footage. This information was forwarded to the Department of Planning and Zoning, who is responsible for determining and assessing impact fees. OIG Special Agents reviewed the Building Department records and found that on June 7, 2006 a hold was placed on the master permit for the impact fees. (Exhibit 15) Mr. Fraley was advised of the outstanding impact fees, and on June 8, 2006, he paid the outstanding impact fees and the inspection hold was released on the same date. (See Exhibit 10)

- 6) The original address assigned to the property was 17200 SW 276 Street. The address was later changed to 27600 SW 172 Avenue. Before the address was changed, Mr. Fraley had several unresolved issues with the Water and Sewer Department. How was he able to get a permit without addressing these issues?**

Building Department officials stated when plans are submitted to the Building Department for review, the plans are issued a processing number that is valid for 180 days from the date of the application. If the process number expires, all approvals received under the process number become void and the plans must begin the review process as if starting over again. The contractor can request an extension of the process number by submitting a written request, along with the plans, to the building official. If granted, the process number will be renewed (extended), otherwise a new process number is issued.

OIG Special Agents reviewed the permit application history for the property and found that the original address assigned to this property was 17200 SW 276 Street. According to Building Department records, on January 26, 1996, an application and plans were submitted to construct a new 4,071 square foot, single family residence. These plans were reviewed by the Planning and Zoning and Fire Departments. Building Department records revealed that the Planning and Zoning Department did not approve the plans, and that review by the Fire Department was not applicable. The plans were retrieved by Mr. Fraley in March 1996, pending corrections. The process number expired and Building Department records revealed no evidence of any additional submissions or reviews under this process number. (Exhibit 16)

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On August 16, 1996 another application was submitted by Mr. Fraley to construct a new 2,458 square foot, single family residence. The new plans were reviewed by the five major construction components (building, structural, mechanical, electrical, and plumbing) and the three applicable County departments (Planning and Zoning, Environmental Resource Management, and Fire) Four of the eight components were disapproved during this review, thereby requiring corrections to the plans and additional approval from the Health Department. The Fire Department component was deemed not applicable. The plans were retrieved by Mr. Fraley in November 1996, pending corrections to the above-noted components. The process number expired and Building Department records revealed no evidence of any additional submissions or reviews under this process number. (Exhibit 17)

On October 2, 2003, seven years after the last application, Mr. Fraley submitted an application for a new 2,700 square foot, single family residence. The plan began its review through the five major construction components, as well as four applicable County departments. Four of the nine components were disapproved during this review requiring corrections. (Exhibit 18) After several reviews and corrections, the plans were approved and a permit was issued on January 5, 2004 to build a 2,700 square foot, single family residence at 27600 SW 172 Avenue.

Based upon the foregoing facts, it appears that Mr. Fraley complied with all of the Florida Building Code requirements needed in order to obtain the permit for the 2,700 square foot residence.

7) The original plans and the revised plans did not include a chimney. How and when were the trusses redesigned to accommodate a chimney?

OIG Special Agents reviewed the truss plans that were designed by John A. Ilter, P.E. The truss plans were signed and sealed by Mr. Ilter on May 11, 2004 and the project name is listed as "S & S DEV/FRALEY - RES", which is a reference to the previously approved Cookie Cutter plans used by Mr. Fraley to obtain his master permit. This review revealed no evidence of a chimney in the truss designs. OIG Special Agents then reviewed the original plans that were approved on January 5, 2004. This review also revealed that the Cookie Cutter model does not show or make reference to a chimney. (Exhibit 19)

Building Department records revealed that on December 30, 2004, Mr. Fraley submitted an application for the truss plans to be reviewed. Those plans were disapproved on January 4, 2005. As previously stated, process numbers are valid for 180 days from the date of the application. This process number expired and Building Department records revealed no additional submissions or reviews for this process

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number. On July 28, 2005, more than six months after the first denial, Mr. Fraley submitted an application for the truss plans to be reviewed. Those plans were approved on July 28, 2005. The final approved truss plan does not show or make reference to a chimney in the design. (Exhibit 20)

OIG Special Agents reviewed the revised plans that were submitted on March 30, 2004 and later approved on March 13, 2006. This review revealed a chimney on the roof truss/tie beam layout and a fireplace in the plan detail. Further review of the revised plans revealed four identical copies of page #3, A-1, that shows two fireplaces were added to the revised plans on or about February 14, 2005. (Exhibit 21)

In response to an email from the complainants, Building Department officials reviewed the plans and stated that the original plans show a chimney in the construction of the residence on page S-3. The OIG review of the original plans found no evidence of a page S-3, as the pages in this plan are numbered A0 through A4 and A6 through A8. (Exhibit 22) The pages to which Building Department officials are referring appear in the revised plans approved on March 13, 2006, wherein there is evidence of two identical drawings marked #8, S-3—one with a chimney, and one without a chimney. One Page #8, S-3, marked "REVISION" in the area labeled "DATE," shows a small rectangle that was added to the detail and labeled fireplace/chimney. The other page #8, S-3, marked "03:12:03" in the area labeled DATE" does not show a fireplace/chimney. (Exhibit 23)

Based upon the foregoing facts, it appears that the trusses were not redesigned to accommodate the chimney/fireplace because the original plan approved on January 5, 2004 does not have a chimney in the plan detail, and the truss plan also does not have a chimney in the plan detail, despite the contractor adding them to the proposed revised plans on or around February 14, 2005. Moreover, Mr. Fraley knowingly constructed the chimney and installed the fireplaces after the truss plan was approved without them (July 28, 2005), prior to the approval of the revised plan (March 13, 2006), and without a permit.

The remaining question addressed by the OIG investigation concerned whether plans reviewers, inspectors, and a field inspection supervisor failed to see the chimney and fireplace during their numerous reviews and field inspections. A closer look at the enforcement history on this project revealed that the Building Department opened another enforcement case, #20070113257, on August 30, 2007, in reference to the two fireplaces, after it had issued a Certificate of Completion for the house on January 17, 2007. (Exhibit 24) The NOV cites the specific violation as the installation of two fireplaces without the required permit. Mr. Fraley complied with the NOV by

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obtaining a permit for the fireplaces on October 26, 2007. The Building Department noted that the violation had been corrected and closed the enforcement case.

RESPONSE TO THE DRAFT REPORT & OIG COMMENT

This report as a draft was provided to the Building Department and to Mr. Fraley for their discretionary written responses. The OIG received responses from both the Building Department and Mr. Fraley, which are attached as Appendix A and Appendix B, respectively. We appreciate receiving the responses.

In its response, the Building Department concluded that Mr. Fraley “intentionally and repeatedly violated the Florida Building Code.”⁵ The Building Department also acknowledged that it had erred in failing to prevent Mr. Fraley’s widespread circumvention of the rules. To that end, the Building Department also addressed recommendations made in the draft report concerning the development of enforcement procedures to prevent these types of issues from recurring. Specifically, the Building Department pledged to review existing plan review and inspection procedures and revise them as necessary; review existing inspector training protocols and assess the feasibility of implementing additional quality control measures; and improve communications with inspectors and plans examiners regarding “problem jobs.”

Mr. Fraley, in his response, made personal attacks on an individual whom he claimed was the source of the allegations against him. He also raised detailed defenses to the numerous enforcement cases brought against him, which we decline to summarize here. Upon review of the response received from Mr. Fraley, we do not believe that material changes to the draft report were necessary.

CONCLUSIONS & RECOMMENDATIONS

The OIG investigation uncovered evidence to substantiate the allegation that the Miami-Dade County Building Department failed to prevent a general contractor from constructing a house without the proper permits, and failed to prevent the contractor from continuing construction on the house without an approved set of plans. The OIG investigation did not uncover evidence to substantiate the allegation that the contractor’s brother assisted him with circumventing the inspection process.

⁵ The Building Department stated its intent, of its own volition, to forward copies of the OIG Final Report in this matter to the Florida Department of Business and Professional Regulation, the Florida Building Code Administrators and Inspectors Board, and the Miami-Dade Building Code Compliance Office with a request that appropriate action be initiated against Mr. Fraley.

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During the course of the construction, the contractor, Mr. Fraley, did violate procedures required by the Florida Building Code, which were established to prevent substandard and illegal construction. Throughout the entire project, Mr. Fraley consistently violated those procedures by continuing construction without proper permits, failing to call for mandatory inspections, and working beyond the scope of his permit. Mr. Fraley circumvented the rules until he was forced to comply by the Building Department. Additionally, the OIG found that the Building Department, while diligent in its efforts to address and correct allegations of construction-related violations brought to its attention, failed to effectively communicate inspection deficiencies and other problems to the plans reviewers and inspectors. In addition, the Building Department failed to adequately monitor the progress of the construction project in order to prevent Mr. Fraley's continuous circumvention of the rules.

The Building Department operates, in part, on the honor system of licensed professionals, both those who are customers of the Building Department, and those who are employed by the Building Department. The employees of the Building Department have a duty to uphold the building code and ensure that the rules and procedures established therein are adhered to. The plans reviewers and inspectors are but a few of these employees who exist to maintain the integrity of the system. It is clear that Mr. Fraley's actions in this matter were inappropriate and may have violated the provisions of his licenses; however, it is the Building Department's responsibility to ensure that every plan that is reviewed and every project that is inspected strictly complies with the approved and validated plan of record.

The OIG recommended in the draft report that the Building Department enforce established procedures and randomly field check enforcement cases to prevent these types of issues from recurring. In response to our recommendations, the Building Department has now undertaken to modify and develop enforcement procedures to detect and address occurrences of contractor non-compliance. We believe that the Building Department's response adequately addresses our concerns and will not, accordingly, require follow-up reports regarding this matter.

OIG FINAL REPORT

APPENDIX A

Response from the Miami-Dade County Building Department

IG07-24

Memorandum



Date: FEB 09 2009
To: Christopher Mazzella
Inspector General
From: George M. Burgess
County Manager
Subject: Response to OIG Draft Report - IG07-24

Attached please find the response to findings of OIG Draft Report No. IG07-24 from Charles Danger, P.E. Director, Building Department dated January 30, 2009.

Attachment

c: Alex Muñoz, Assistant County Manager
Charles Danger, P.E. Director, Building Department

Memorandum



Date: January 30, 2009

To: George M. Burgess, County Manager
County Executive Offices

From: Charles Danger, P.E., Director
Building Department

Subject: OIG Draft Report No. IG07-24

A handwritten signature in black ink, appearing to read "Charles Danger", written over the subject line.

The purpose of this memorandum is to respond to the findings in the OIG Draft Report No. IG07-24.

The Florida Building Code was established on the principle that the safety of the public is of paramount importance. Its primary goals are the preservation of life and property from windstorm, fire and other life safety hazards. The minimum construction standards contained in the code were developed to ensure the realization of these goals through efficient and effective enforcement of its provisions.

For most citizens in Miami-Dade County, purchase of a home will represent the largest purchase in their lifetime. Although construction of a home involves the collaborative efforts of design professionals and licensed contractors, the public relies on the Building Department to protect them from inadequate, shoddy and unsafe construction through a system of plan reviews and inspections. Competent plan reviews and inspections are necessary to maintain public confidence in construction practices and the role of the Building Department in administering the permitting and inspection process.

As a state certified contractor in two trade categories, Mr. Fraley certainly is conversant with the requirements of the Florida Building Code. In addition, Mr. Fraley has intimate knowledge of all aspects of the permitting and inspection process based upon his history of employment as a Building Inspector with Miami-Dade County and several municipalities. Certainly, Mr. Fraley knew right from wrong when he constructed his home. Nevertheless, he intentionally and repeatedly violated the Florida Building Code. Unfortunately, as noted in the report, the Building Department was unable to "prevent the contractor's persistent and continuous circumvention of the rules."

Although Mr. Fraley to some degree may have used his higher level of knowledge of the permitting and inspection process to circumvent the code, the Building Department acknowledges it made errors in this case. The Building Department will use this as a learning experience to improve its performance by doing the following:

1. Review existing plan review procedures with the department's plan examiners and revise procedures as necessary;
2. Review existing inspection procedures with the department's inspectors and revise procedures as necessary;

3. Assess the feasibility of the implementation of quality control measures including, but not limited to, random spot checks and inspections of problematic jobs and enforcement cases by supervisors;
4. Review existing inspector training protocols to ensure appropriate emphasis is placed on the necessity of ensuring that an approved plan is on the job site for the scope of work to be inspected and the plan has been validated;
5. Review existing procedures to determine the feasibility of improving communication with inspectors and plans examiners regarding problem jobs; and,
6. Review existing procedures regarding the stamping and handling of plans to avoid the use of plans in the field which have not been validated.

In addition to the foregoing measures, the Building Department will forward copies of the OIG's Final Report on this matter to the Florida Department of Business and Professional Regulation, the Florida Building Code Administrators and Inspectors Board and the Miami-Dade County Building Code Compliance Office with a request that the report be reviewed and appropriate action be initiated against Mr. Fraley to require him to show cause why his contractors' and inspector's licenses should not be suspended or revoked for his actions in this matter.

I can assure you that the Building Department is committed to providing the highest quality service to the public. While mistakes were made in the handling of this matter, there are many dedicated employees in this department performing effective work and delivering excellence every day. We will continue to strive to improve our performance in an effort to ensure the integrity of the construction process and in turn continue to earn the public's confidence.

CD:RJS/mv

cc: Alex Muñoz, Assistant County Manager, County Executive Offices
Juliana Salas, P.E., Deputy Director, Building Department

**OIG
FINAL REPORT**

APPENDIX B
Response from Jimmy L. Fraley

IG07-24

VIA E-MAIL: liup@miamidade.gov
VIA FAX: (305)579-2656

March 7, 2009

Miami-Dade County
Office of the Inspector General
19 W. Flagler Street, Suite 220
Miami, FL 33130

The following is my response to the OIG Draft Report, IG07-24.

First, I will address your complainant. My neighbor, Christopher Saucier, has been stalking and harassing my family, including my wife and children for the past three and a half years. Mr. Saucier is a very disturbed individual who has displayed extremely bizarre and erratic behavior towards my family, including being caught numerous times at my children's school. This individual has become fixated and obsessed with my wife and children, and in light of the OIG report, also with the project of building my home. In 2005 the court granted a restraining order against Mr. Saucier for an order of protection for my wife. The court allowed the order to expire when his behavior somewhat subsided. However, in 2008 Mr. Saucier's stalking and harassing escalated to the point that, once again, the court placed another restraining order against Mr. Saucier and it remains in effect at this time. The State Attorney's Office has also brought charges against him in criminal court and are pending at this time.

BACKGROUND - Jimmy Lynn Fraley

On page two, paragraph two, your report stated incorrectly that I was a Building Inspector in the City of Homestead from October 2004 to October 2006. The correct dates are from November 2003 to November 2006.

OIG INVESTIGATION

3) The plan revision had already been approved for structural and plumbing and no work had gone beyond that scope. The main change from the approved set of plans to the revision is the enlarging of the square footage of the home. Contrary to what you allege in this part of your report, I did not, at any time, place the partially approved set of plans inside the permitted set to deceive any inspector. Several of the inspection comments on the permit inspection history even make mention of the pending revision, which proves the inspectors were aware of the pending revision.

4) At no time did work continue when a "red tag" or SWO/NOV was in place.

Enforcement Case #1 - The master building permit was already obtained for construction. Due to an impending tropical storm there was an immediate need to have the roof "dried-in". The building code states you have thirty days to pull a subsidiary permit such as roofing when a master

building permit is in place. This was also in the midst of Hurricane Katrina and its aftermath.

Enforcement Case #2 - In your report it appears you are referring only to the roof work without a permit. That enforcement case was prior to this one and was already closed due to obtaining a roof permit and a roofing inspector plugging a section of the roof and inspecting the underlayment for proper materials. Your report states that on "November 4, 2007, a building inspector randomly selected a portion of the roof for the contractor to plug..." , that would be incorrect since on that date in 2007 all permits, including the roof and the building had already received their final inspection and CO and we were occupying the home. In fact you are incorrect about this enforcement case as it was only for not obtaining a window permit and calling for that inspection. The window permit was obtained and an engineer report was produced for the inspections.

Enforcement Case #3 - After the hold was removed from Enforcement Case #2 I was told by the Building Department Supervisor that I could continue the project while I worked on the corrections for the plan revision as asked for by the plans processing department. Then the third enforcement case and stop work order was issued. The pictures from this enforcement case show plumbing work and alleges that it goes beyond the scope of work approved and work without a permit. This was incorrect due to the fact that the plan revision had already been approved for the plumbing and in fact was not any different from the original set of plans approved and the plumbing permit had already been obtained prior to the issuance of any enforcement case. It also stated that work had continued which was incorrect since this work was had been done prior to Enforcement Case #2 being issued. The revision was approved in the remaining areas and paid for.

5) Apparently, this was an oversight that the Building & Zoning Processing section did not properly assess the required additional impact fees when the revision was processed and approved. When I paid for the revision, there were many items listed that were included in the total amount remitted. I trusted that the amount the Miami-Dade County cashier section required me to pay was correct. This was not intentional on my part. When I was made aware of the additional balance owed, I paid it in full. I would, however, like to know how your complainant knew that there were additional impact fees due since this information is not available for viewing on the website, how was this information obtained?

7) The original plans did not include a fireplace/chimney; however, the revision did include it. The fireplace/chimney installation was drawn taking into consideration the design of the trusses and was deliberately designed not to interfere with the trusses. No alterations or redesigning of the trusses were necessary. The plans for the revision contained the fireplace/chimney that went through the Mechanical Section plans processing. When the NOV was issued regarding this in August, 2007, I learned that the Mechanical Section Plans Processor should have input a code when the revision was processed and approved that would have required that a "Miscellaneous Category" Mechanical Permit be obtained. This was in addition to the Mechanical Permit for the categories of A/C-unlimited, heating, and mechanical ventilation that was obtained prior to the revision approval. In no way did I try to conceal the fireplace/chimney installation during construction. It was in plain-open view (and on the approved plans) during construction and was

inspected during that time.

CONCLUSIONS & RECOMMENDATIONS

This report incorrectly alleges that I constructed a house without permits. Since I had obtained a valid master permit prior to construction this disproves the allegation. I did have an approved set of plans and a revision in process, that the Building Department and Inspectors were aware of. At no time did I try to deceive anyone regarding the pending revision. In this line of work I have first hand knowledge of how the process works in the field and what is commonly accepted and practiced when a revision is in process for a project. This was simply routine when the revision is similar to what I did on my project, just enlarging the square footage and when the building is not in violation of the Building Code. The time line of such revisions are typically caught up by the end of the job for final inspections. This goes on every day in the field, is commonly practiced and accepted, and is not an unusual circumstance. There was no work completed that was substandard or illegal or in violation of the Florida Building Code procedures.

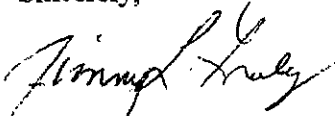
I also call to your attention to the time frame of this project which was in late 2005 and early 2006 when South Florida had a terrible hurricane season with three storms, Katrina, Rita, and Wilma back to back with several more tropical depressions and other weather systems during that same time period. The Building Department and Plans Processing Sections were very difficult to navigate due to the amount of work generated from the rebuilding due to the storms. It took a great deal of time to get anything processed and/or inspected with inspections being routinely carried over due to the sheer volume of inspections.

As a note of interest and to prove my point of what is generally accepted and practiced in the field please review the following. Just recently in my neighborhood, (27820 SW 172 Avenue) a large detached garage building was constructed on a piece of property with an existing residence. During construction I notice the sequence of the slab being poured, the shell being constructed, and the windows and several large roll up garage doors being completely installed. After the windows and doors were installed, the building stuccoed and painted, during an inspection an inspector finally noticed that a window permit had not been obtained and noted it on the permit inspection history comments. At that point the building was virtually ready for a CO. Sometime later a window permit was obtained and a final inspection was requested, at which time, the inspector approved it, even though at that point all the work was concealed. There were no comments made on the permit inspection history to state an Engineer Report was required since work was concealed, it was simply approved by the inspector. After further inquiry on the internet it was revealed that even though no permit was obtained prior to installing and concealing work on the windows and doors, there was no "red-tag", stop-work order, or even a NOV issued. In addition to this, I noticed that there was a concrete drive-way installed in the right-of-way and on the property as an entrance to the building. I know that you must record in public records a notice for a Public Works Agreement, as well as obtain a Public Works Permit, and have the Public Works department complete a base inspection before the concrete is poured, and a final inspection, none of which were obtained according to Miami-Dade public records. Even though

there was no Public Works permit obtained, nor the required inspections performed, and no recorded document regarding the Agreement with the county for work in the right-of-way, this building received all final inspections and has been completed.

For the record, I want to state that I reviewed your report and prepared my response in a matter of a few weeks since receiving your report. I would like it duly noted that your office had three years to review this data and submit their findings, but only allowed me a short time to respond.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmy L. Fraley". The signature is written in a cursive style with a large, prominent initial "J".

Jimmy L. Fraley