



**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**

**CONTRACT OVERSIGHT NOTIFICATION
(2011-N-0003)**

SEPTEMBER 20, 2011

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

Lake Worth Casino Construction/Rehabilitation Permitting

ISSUES

In response to a complaint, dated June 23, 2011 concerning compliance with Federal Emergency Management Agency (FEMA) and Florida Department of Environmental Protection (DEP) requirements, Florida State Building Codes and local ordinances relating to the Lake Worth Casino project, OIG staff reviewed the project's construction plans, flood maps, and building requirements.

As to the FEMA requirements, the existing Casino building appraisal, submitted by Anderson & Carr, Inc., identified the Casino project as located within FEMA Flood Zone V8. Florida State Building Codes and local building codes mandate that new construction and substantial improvements located within Zone V8 comply with more stringent foundation requirements than those associated with other FEMA Flood Zones. Specifically, new construction and substantial improvements within Zone V8 require pilings – a column of wood, steel or concrete that is driven into the ground to provide support for a structure. However, a review of the FEMA map by OIG staff and communication with FEMA representatives revealed that the Casino project location was within Flood Zone C and not V8. Thus, the requirement for pilings was not applicable.

After meeting with OIG staff on August 16 and reviewing the FEMA Flood Zone map, the Anderson & Carr appraiser concurred with OIG staff that the Casino project was located within Flood Zone C and not Flood Zone V8. The Anderson & Carr appraiser indicated that an updated report would be issued to the City of Lake Worth identifying C as the correct Flood Zone.

As to the DEP requirements, the Casino project site is partially seaward of the Coastal Construction Control Line which triggers considerations of environmental impacts such as impact on the dune system, vegetation removal and erosion. Sand erosion would normally require pile foundation. However, since the Casino is landward of an existing seawall, the piling requirement is not applicable per Florida Building Code 3109.4.1. Regardless of Lake Worth's identification of the project as a rehabilitation and not as new construction or substantial improvement, DEP's evaluation and the permit issued were based on such environmental issues, not structural requirements.

As to the Casino project’s classification, Morganti Group, Inc, (Construction Manager), REG Architects, Inc. (Architectural/Engineering), and city project officials erroneously classified the Casino project as rehabilitation and not new construction or substantial improvement. In accordance with Section 161.054, Florida Statutes, when structural improvement costs, less non-structural interior finishing costs and costs to comply with code specifications, equal or exceed 50% of the market value of the structure before the improvements, the improvements are to be classified as “substantial”. To determine the project’s classification, Morganti Group Inc. included the market value of the Casino building, pool complex, bus shelter, and impact fees which totaled \$2.8 million (an improvement value of 43%). However, only the structure being improved – the Casino building – should have been included (an improvement value of 96%).

Morganti’s Determination of Improvement Value for Classification as Substantial Improvement

Structural Improvement Costs	\$ 6,000,000
Less: Non-structural Interior Finishing Costs	(1,403,700)
Less: Code Specification Compliance Costs	<u>(3,412,019)</u>
Value of Improvement	\$ 1,184,281

	Appraisal Values Used to Determine Substantial Improvement	Appraisal Values That Should Have Been Used to Determine Substantial Improvement
Sub Total Casino Building As-Is	\$ 1,232,776	\$ 1,232,776
Sub Total Pool Complex	1,365,261	-
Bus Shelter	<u>37,268</u>	<u>-</u>
Total Depreciated Cost of all Improvements	\$ 2,635,305	\$ 1,232,776
Add for Impact Fees (as per William Watters)	<u>125,000</u>	<u>-</u>
Total Market Value	\$ 2,760,305	\$ 1,232,776
Improvement Value as a Percentage of Market Value	43%	96%

The substantial improvement calculation results, using only the Casino building, exceeded 50% of the market value. Therefore, the Casino project should have been classified as substantial improvement, not rehabilitation.

RECOMMENDATIONS

We recommend that:

1. Casino project plans, surveys, and appraisals be evaluated to ensure the effect of Flood Zone C is reflected, where applicable, in specifications, surveys, plans, appraisals and any other documents relating to the project; and
2. Casino project documentation be submitted to appropriate persons or entities for review to ensure the project scope and success will not be affected by the above noted errors, or other undisclosed errors/discrepancies.

RESPONSE FROM MANAGEMENT**Lake Worth's Responses:**

Responses are attached to this report.

OIG Response:

The City's September 9th response to the OIG's findings does not accurately address the issue. The OIG is not suggesting that the City appeal the classification of this project as a rehabilitation rather than new construction to the Board of Appeals, the Circuit Court, the Florida Building Commission, the Construction Industry Licensing Board, or any other entity.

The City's September 16th response acknowledges the incorrect flood zone; however, the project was erroneously classified as rehabilitation. As a result of these errors, the OIG is recommending that errors relating to the initial stages of this project be reviewed to determine: 1) why they occurred; 2) if the project scope will be affected by them (or other undisclosed errors); and 3) to make sure they do not impact the ultimate success of the project.

The OIG will continue oversight of the Casino project and issue reports when necessary.

From: Kathleen Margoles [kmargoles@LakeWorth.org]
Sent: Friday, September 09, 2011 4:19 PM
To: Alan Russell W.
Subject: RE: How are we doing with our Management Inquiry

We have discussed your draft notification with our Building Official.

His response, and we concur, is:

*"Thank you for your observations in this matter. However, pursuant to Florida Statute 553.775 official matters of code interpretation can only be decided by the local Building Official, local Board of Appeals, Florida Building Commission (in order). Appeals to such determinations may subsequently be filed with the Circuit Court. However, since, as you noted in your finding, the subject building is not located within a Special Flood Hazard Area; it seems improbable for the City to seek a **more stringent** interpretation from the CBAA than what is actually required by law. It should also be noted that the Construction Board is not qualified or empowered to evaluate the quality of construction designs or quality of plan review staff performance. Allegations of deficient plan review should be directed solely to the licensing authority, which in this case is the Construction Industry Licensing Board Building Code Administrators and Inspectors Board".*

If you have any questions, please let me know. Thank you,

Kathleen S. Margoles
Assistant to the City Manager
City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

Office-561-533-7394



OFFICE OF THE CITY MANAGER

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September 16, 2011

Office of Inspector General
PO Box 16558
West Palm Beach, FL 33416

Subject: Office of Inspector Contract Oversight Notification (2001-N-004)

Dear Mr. Docette:

The OIG response in Contract Oversight Notification (2001-N-004) states “Classifying the project as rehabilitation appears to have been an attempt to circumvent the FEMA and Florida Building Code requirements...” The City Manager is adamant there was never any effort to circumvent FEMA and Building Code requirements. Original budgets included an allowance for pilings. The City decision to designate the project as rehabilitation was made with serious consideration of all the available facts as to the condition of the building. The OIG did discover the Appraiser had used the incorrect in the Appraisal. The flood zone designation, inaccurate or not, was not germane to the rehabilitation decision.

The City acknowledges that the incorrect flood zone designation appeared in the Appraisal report but asserts this did not affect the plan review and will not affect the ultimate success of the project. As part of the permit and plans review process for the Casino Rehabilitation project, staff utilized the 1982 Edition of FEMA Flood Insurance Rate Maps, which are the editions currently utilized by the City. With the 1982 FEMA maps, the Casino location is within a “C” Zone. As such the plans were reviewed for compliance with the requirements of this category. The misrepresentation of the Casino being located in a “V” Zone as found in the property’s appraisal prepared by Anderson & Carr had no bearing and no impact on the plans review. The error was outside of the City’s control and the individuals within the City who were responsible for coordinating the work of Anderson & Carr are no longer with the City. The only information utilized from the appraisal as part of the building permitting process was the appraised value of the Casino buildings to determine whether or not the proposed work exceeded the threshold for a substantial improvement. Based on the appraised value of the buildings and the documented costs provided by the contractor at risk and verified by the architect of record, the improvements as proposed and permitted did not exceed the substantial improvement threshold. The building is progressing per the approved plans, and the City has not documented any other discrepancies with regard to the plans. The Building Division is monitoring the project closely and there are bi-weekly meetings and site visits of other City staff to ensure that the project proceeds per the approved plans. We do not anticipate encountering any other issues at this time.

The Building Division is committed to providing the appropriate level of training and certifications to staff to ensure improved levels of service and accuracy. The upcoming budget contains several action steps to support the training and certification of staff, which are outlined in the Goals and Objectives for the Building Division’s Fiscal Year 2012 budget. Other

improvements in plans review are anticipated through a full reorganization of the Community Development Department as the Department for Community Sustainability. The newly organized Department provides a seamless interaction among seven (7) Divisions that were previously situated in three (3) different Departments. Staffing efficiencies, improved oversight and increased opportunities for review of projects will all be positive benefits of the reorganization.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen S. Margoles". The signature is fluid and cursive, with the first name being the most prominent.

Kathleen S. Margoles
Assistant to the City Manager