

# Norry Lynch Risk Recovery Advisors

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November 3, 2020

Mayor John De Neale

Vice Mayor Ron Sutton

Members of the KCB Commission

Re: City Hall

The purpose of this report is to present an accurate history of both the claim and grant processes concerning City Hall, located at 600 W. Ocean Drive, Key Colony Beach, Florida. The claim process concerns the National Flood Insurance Policy (NFIP) and Public Risk Management (PRM), the excess insurer; the grant process concerns FEMA Public Assistance (PA).

For flood disaster payments, NFIP is primary, excess flood through PRM is secondary and PA is tertiary. Separate claims are filed concurrently and each maintains its own damage file. Each also responds to its own rules. PA supports NFIP claims in terms of paying the unreimbursed out-of-pocket deductible and any Actual Cash Value depreciation applied to the loss. Code upgrade is not available under NFIP and available, in a limited way, through PA. Code upgrade coverage is potentially available through PRM if the primary 500K flood coverage is exhausted.

### ---CITY HALL

City Hall was significantly damaged during Hurricane Irma in August 2017. Over the subsequent four months, NFIP and PA undertook several, separate inspections as is routine. The only commonality among the inspections was that each documented only cosmetic damage to the building.

### ---FLORIDA BUILDING CODE - 50% Rule

The Florida Building Code (FBC) governs all buildings in Key Colony Beach. The applicable issue to City Hall is the 50% Rule that requires demolition and reconstruction in the event that damage repair costs exceed 50% of the market value of the building, currently appraised by Monroe County at \$1,052,905.

In the instant case, permitted repair costs to the Administration Area would need to be less than \$526,452.50. The estimated hard cost to pin the slab and rebuild the interior of the Administration Area is approximately \$800-900,000. Be advised that the pandemic is driving local construction costs at about 20% over the norm. By this calculation, the city is precluded from permitting repairs as the cost exceeds 50% of market value.



---FEMA PA - 50% Rule

FEMA calculates its 50% Rule differently from the FBC. FEMA looks at the cost to repair the damage as it existed on the date of loss (excluding current code requirement) and divides it by the replacement cost of the building, including code requirement. Due to the limited square footage of slab damage (approximately 3200 s.f. of a 9000 s.f. footprint), the building does not survive FEMA's 50% rule calculation. Even so, I am close to obtaining authorization for an new elevated replacement structure within the next two or three weeks.

Given that the only permissible alternative is to construct an elevated new building, in the unlikely event FEMA denies the replacement structure, the city will need to determine how to best use any awarded federal dollars to offset the cost of the replacement structure. We will address that issue if replacement of the building is denied.

---THE NFIP

The NFIP retained a contracted adjuster who recorded interior damage to baseboards, tile, doors, contents, etc. Even before the inspection report of December 15, 2017, the floor/floating slab had begun to deflect. In early 2018, NFIP was notified that there was an ongoing problem with the slab.

On August 3, 2018, NFIP issued an engineering inspection of the floating slab and underlying sand foundation. Those findings were that voids under City Hall pre-existed the inundation, therefore the slab failure pre-existed the storm.

In the interim, other inspections were conducted by the excess carrier, discussed in the next section. The NFIP relied on specific foundation-failure exclusions in its policy as well as the pre-existing allegation, however, scouring from wave action is not excluded. Coverage under that aspect of NFIP is currently being sought.

The city hired P.E. Group in April 2020 to re-examine the foundation and render a causation opinion. P.E. Group delivered a report that, while acknowledging stabilized settlement over the years, linked the foundation damage to storm surge and washout of the sand that had been supporting the slab. This was submitted to the NFIP.

In response, the NFIP retained a third engineer who examined the building on October 7, 2020. We await the outcome of this final inspection.

--- EXCESS FLOOD

The excess insurer PRM, whose policy is liable for flood damage that exceeds \$500K as well as code-upgrade costs, has been aware of its exposure from the inception. City Hall could be an expensive outcome for them, given a change in circumstances.

On August 14, 2018, PRM reported Ground Penetrating Radar (GPR) studies of the land under the Administration Offices. Some voids were annotated on the report under both the Admin Area and Marble Hall. The insurer concluded that these 'long-term voids', as it characterized them, were the cause of the foundation failure. In contrast, my position has been that the slab sat on a sand foundation, and that when the ocean receded after the storm, it took enough sand with it to increase the deflection. The insurers chose to ignore evidence of shims supporting file cabinets and anecdotal reports of office chairs rolling downhill after landfall.



--- FEMA PA

PA made several inspections of City Hall in late 2017-early 2018 for a variety of reasons. Initially, PA misled the city's consultant, stating that foundation damage was not eligible. The PA inspector had no authority to make such a determination on-site, and it took FEMA until mid-2019 to acknowledge that a 3200 square-foot section had failed in the Administration Area as a result of the flood.

PA then instructed KCB to go back to the NFIP to reopen the claim as it asserted the insurer(s) owed additional payment.

---CONDEMNATION

The city's position became that while the slab had settled over the years, following Irma, the office could no longer provide a safe working condition as the drywall was deflecting as a result of the slab movement. The Administration Area of the building was condemned.

---HOW DID THIS HAPPEN

The reason for this conundrum is that the city retrofitted the slab in Marble Hall with pin piles in the 1990s. The city elected not to address the slab in the Administration Area even though it had similarly settled. Had the latter's slab been supported by piles, it probably would not have deflected to the degree that it has, and the building would have sustained solely cosmetic damage. Had Marble Hall been left 'as is', both slabs would indubitably have failed, and the building would have easily passed FEMA's 50% Rule, and be on its way to demolition. At present, and for the last two years, I have been arguing with FEMA that the FBC permitting requirements, and compliance with FEMA's Part 9, should justify an elevated replacement structure.

---VOTE TO PROCEED

First, we need to clarify some of the federal jargon used in the grant process. The fact that FEMA refers to a project as Specialized does not mean it is in some way special; rather, it means that the complexity of the issue exceeds the norm. The reference to Specialized does not condone special treatment, for any reason.

Mr. Moonis was aware the city had neither finalized the NFIP settlement nor had received notification of an obligated federal Project Worksheet (PW). When I cautioned him about proceeding with replacement building plan development, he advised that the city wished to proceed anyway, which is certainly the city's prerogative.

---ENGINEERING CONCLUSION

**Each engineer, whether retained by the city or the insurers, has recommended the slab be pinned in order to repair the damage. Each ignores, or is not aware of, the fact that a permit to pin the Administration Area cannot be issued under the Florida Building Code.**

The claim issues are not finalized. The flood insurer may authorize payment for scouring damage. If it does, and the flood claim payment is 500K or more, it will trigger coverage extended by PRM who might deny coverage based on its GPR inspections but might not be on solid ground if the issue were litigated.

Homeowners must be made to understand that the city cannot undertake slab repair as it will violate the FBC, jeopardizing the Building Official's license, the city's continued participation in the Community Rating System, the homeowners' future eligibility to purchase flood insurance, and potentially create a situation where the city may be ordered to demolish the illegal work.

---RECOMMENDATION

At the end of the day, however, all this speculation is premature until FEMA makes its final decision which is promised shortly. Despite the length of time this has taken, mainly because over \$3M of federal money is at stake over an old dog of a building, all I can ask of the Commission is to have a little faith while I sort out the remaining details within the next few weeks.



**Subject:**  
**Attachments:**

Re: City Commission Special Meeting  
KCB City Hall NFIP\_Appeal Issues3.docx

Attached please find my report detailing the complexities of the City Hall claim and how it will be resolved in the coming few weeks.

Kind regards,  
Norry Lynch

On Saturday, October 31, 2020, 09:28:27 AM AST, KCB Mayor <mayor@keycolonybeach.net> wrote:

Norry:

I am in total disbelief! It was my understanding, and Chris told the Commission that we were working toward the "Specialized Project #11458" because we were not under the %50 percent rule as a critical facility. Further, the Commission voted on January 9, 2020 to build a new city hall based on the proposed project and with the new FIRM maps we would be at least 5.7 feet below BFE. It did not make sense to do anything but build new. Also, any plan to repair would include flood barriers and or berms that would preclude the building being an EOC or refuge of last resort.

What do we do, specifically and who do we need to talk to make some sense of this? I am willing to make as much noise as I can with the Governor, Senators, FDEM. We have a very good lobbyist in Tallahassee that I can have working the issue. Do we need to fly to a regional FEMA office to make our case and talk to someone that can make a decision? I would like us to make a plan/timeline to get this project funded.

This is putting our City into its fourth hurricane season in trailers with no refuge of last resort or EOC for our first responders. This is unsafe and unsat. and our State leadership needs to take ownership of this mess.

Lastly, since we have already voted in January to build new, why hold up Tony and cost this city more in A&E?

John

John W. DeNeale

Mayor

City of Key Colony Beach

Fax 305 432 1438

**Subject:**

**Re: City Commission Special Meeting**

I would say both. Another avenue to consider now, however, is that if FEMA approves, hypothetically, \$3.3M, and the city requests an Improved Project down the road wherein FEMA will cap funding at \$3.3M, the Commission could consider building the structure in an alternative material such as metal which would reduce the per square foot price considerably, and give the city the ability to use federal dollars to offset the cost of the 3500 square foot improvement.

So, a Concrete Masonry Unit (CMU) building might run \$400 p.s.f. whereas a metal building might run \$225 p.s.f. Building 12,500 s.f. in CMU would cost \$5M whereas metal would cost \$2,812,500. The city could then clad the metal building with stucco to make it look like a CMU building. The foundation would be less expensive as well as tying down a lighter building is cheaper.

So, as we wait for the FEMA decision, this could be explored as the construction plan development will be different based on the material chosen.

I sent the current design sketch to FEMA as 'preliminary', just a placeholder. Once we obtain the obligation, we need to develop a set of construction bid docs and submit them FEMA at the time we request the Improved Project in order to be able to use the money as the city sees fit. Docs would be completed and ready for submittal sometime in Spring 2021.

The alternative is to build with CMU and assess the homeowners for additional required funds. So, you can approve a 'design' without pinning down the details of how it will be executed. All of this is still theoretical until we know how much funding will be made available to the city.

Norry

On Wednesday, November 4, 2020, 12:29:49 AM AST, KCB Mayor <mayor@keycolonybeach.net> wrote:

Norry,

Thank you for your report.

Even though FEMA knows we have voted to build a new building and that we have an architect working on a design, does it make your case stronger to stop Tony for a month while you work the issue? Or can we at least approve a design contingent on new construction being approved by FEMA?

John

[Mayor@keycolonybeach.net](mailto:Mayor@keycolonybeach.net)

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I do not understand. From our phone call following the conference call, it was my impression that sooner was better. What changed? John

Sent from my iPhone

Begin forwarded message:

**From:** Saara Staten <[execassistant@keycolonybeach.net](mailto:execassistant@keycolonybeach.net)>

**Date:** October 26, 2020 at 12:58:02 PM EDT