

To: Mayor Dan Gelber and Members of the City Commission
Joseph Centorino, Inspector General
Raul Aguila, Interim City Manager
Rafael Granado, City Clerk
Rafael Paz, Interim City Attorney

From: John Elizabeth Aleman, Former City of Miami Beach Commissioner, Group VI

Date: March 3, 2021

Subject: John Elizabeth Aleman Written Response to OIG Final Report 20-07 Palm and Hibiscus Island Neighborhood Improvement Project dated February 8, 2021 ("the report")

Dear all,

The purpose of this memo is to respond to OIG Final Report 20-07 Palm and Hibiscus Island Neighborhood Improvement Project dated February 8, 2021 ("the report"), and the author's inaccurate and conspiratorial conclusions made about my policy intentions and the mischaracterization of my advocacy as a City Commissioner standing up and fighting for the taxpayers of Miami Beach on a matter of policy that needed to be corrected.

After hearing my testimony from multiple public meetings as well as under oath during a formal investigation, how or why the OIG chose to invent his own explanation for the impetus of the residential tie-in resolution of 2017 I cannot imagine. I stand firmly behind the residents-first policy for the City of Miami Beach to make extra care and effort for extremely low elevation homes, and to have a flexible resident-focused policy that acknowledges the as-built reality and allows single family homeowners to connect private property infalls to the public stormwater system if they are at or below the new crown of road elevation brought forward as part of their Neighborhood Improvement Project. Allowing existing very low-elevation homes to shed into the public system is practical and prudent and has in fact since been permitted by County DERM for Palm and Hibiscus Islands without a single request for expanded treatment or pollution control, and so it has largely been an academic exercise of documenting connections.

First, though, I must address the issue of the lack of notice that is required by Miami Beach City Code Section 2-256 (h) entitled "Procedure for finalization of Reports and recommendations which make findings as to the person or entity being reviewed or inspected":

".. whenever the inspector general concludes a report or recommendation which contains findings as to the person or entity being reported on, or who is the subject of the recommendation, the inspector general shall provide the affected person a copy of the report or recommendation, and such person or entity shall have thirty working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation"

On page 134 of the report under the section header “Responses of Elected and Appointed Officials and a Representative of the Homeowners Association,” the report states “**former Commissioner John Elizabeth Aleman did not submit written responses to the draft report**” when in fact I was never noticed as is required. In his 2/10/2021 email response to my 2/10/2021 email requesting evidence of copy or notice, Mr. Joe Centorino confirmed “*I have checked with my staff, and it should have been sent to you, but somehow you were left off of the list of more than forty recipients. You were an important voice in this project, so it is especially troubling to me that you were not included. It was our fault, and I heartily apologize to you for it.*”

I do expect that the final “Final” Report will be revised based on this response, as Mr. Centorino has committed “*What I can promise is that I will attach to the final report any response you may want to make to it, include it on our website, and forward it to the Commission prior to its hearing on the subject, which is now scheduled for March 17. I will also correct any inaccuracy in the report that may have been caused by our oversight.*”

This entire letter shall serve as my “written explanation or rebuttal” of the findings of the report.

Clarification #1

On page 51 begins a section titled “B. (April 27 - May 26, 2015)” that continues on page 52 which states “During an interview with OIG staff, City Engineer Mowry said the need to both raise road elevations and develop a policy that allowed the collection of stormwater from private lots was a consensus view that he, Carpenter and Martinez shared and discussed with Robins and members of the Mayor’s Committee and with members of the Flooding Mitigation Committee, **including Commissioner Aleman.**” **This is not accurate; I was not even elected to the Commission until November 2015.** This is a tremendous flaw which calls into question the accuracy of the entire timeline.

Clarification #2

On page 101 the report states “The resolution had not been discussed or approved by the Sustainability and Resiliency Committee; was not accompanied by a Letter to the Commission from Morales that described how the policy would be implemented.”

Neither of these steps, however, were or are customary:

- (1) The bulk of the discussion and policy work at that time having to do with the Stormwater Master Plan and Neighborhood Improvement Projects was conducted at The Mayor’s Blue Ribbon Panel on Sea Level Rise, NOT at the Sustainability and Resiliency Committee.
- (2) When an item is sponsored by a Commissioner, the Administration does not do a memo nor an LTC. It was and remains so that Commissioner-sponsored policy resolutions are passed at Commission first and during the After-Action Meeting, staff is assigned to implement the resolution (in this case Eric Carpenter as assigned). In this way, staff time is not wasted operationalizing policies that are not passed by the Commission.

Moreover, the report omits that the 4/26/2017 Commission Agenda Handouts and Reference Materials did include a letter of endorsement via Email from Scott Robins (Chairman of The Mayor's Blue Ribbon Panel on Sea Level Rise) dated April 24, 2017 RE: R7R Stormwater Resolution, and that I referred to that letter to make the public aware of it during my statements at the April 2017 vote, which was unanimous. Tenured Chair Robins had deep knowledge of the overall program that would support an informed position on whether the Resolution was sound policy. My Commission statement in fact referenced that information:

"I would've normally taken this Resolution through the blue ribbon panel on sea level rise and have them endorse it through all the proper [steps], but I was really concerned because I have been to meetings with Lakeview neighbors, Central Bayshore neighbors, Alton Road and LaGorce neighbors, who are really really concerned about the message that they were receiving which was based on the old policy [...] I thought residents needed to hear this sooner rather than later. So to sort of clean it up and be able to do this now, I did reach out to the chairman of the Blue Ribbon Panel on Sea Level Rise who has endorsed the Resolution."

Clarification #3

Most importantly, I must address the conspiratorial characterization of the intent behind Commission Resolution 2017-29840 which I sponsored and was adopted unanimously by the City of Miami Beach Commission on 4/26/2017. On Page 102, the report states

"Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed, and any new connections of such drains to the system."

This conclusion is pure conjecture and grossly inaccurate. Having now re-listened to the April 2017 Commission Meeting, the October 2019 Sustainability and Resiliency Meeting, and my taped interview with the OIG via Zoom June 29, 2020, I am astounded that the author of this report would ignore all of the testimony at two public meetings and under oath as to (1) the true impetus for the 2017 residential tie-in resolution, and (2) my obvious lack of awareness that private drain connections had been made for every property versus only extreme low-elevation homes.

The residential tie-in resolution was created to provide relief and reassurance to single family homeowners, many of whom were deeply concerned, if not downright scared, that the City was going to make changes to infrastructure that would cause flooding in their homes and was not planning to provide any support or assistance mitigating such flooding.

"Today with the resolution that I presented, that was because of the feedback from residents at the earlier meetings who said "wait a minute, I mean, I don't really care that the County Code says that I can't shed [private stormwater] into the street; it was that way when I bought it, and my house is [...] 30 years old, 40 years old, 50 years old, it was built that way!" You know what? You're right." – Commissioner Aleman, 4/26/2017 Commission Meeting, Item R7R approx. 5:00:45pm

Furthermore, the intent was to provide **connections only for those homes having a finished floor elevation at or below future crown of road:**

[Oct 23, 2019 Sustainability and Resiliency - Miami Beach, FL \(swagit.com\)](#) 1:26:02

Aleman: "Mr. Hefty, you are completely right that the Palm and Hibiscus project was designed and launched without these individual home connections. The result of that of course, the way that Palm and Hibiscus were originally built, as you know, the entire City and probably the entire County is built, is that peoples' personal properties do drain into the public right of way and that goes into the public system. So that is the built condition, right?"

Mr. Hefty: "Yes."

Aleman: "So, therefore, with the original design of Palm and Hibiscus, just elevating the right of way, and that being one of the lowest parts of our City [...] the lowest elevation homes in the City, then homeowners were rightly concerned then, if by built condition their stormwater was always going into the public system and now we elevate the public system, where was their water going to go and what would that mean for their personal property. **And so that was why the Commission endorsed this residential tie-in: if the homeowners finished floor was below, not their yard, not their yard, but their finished floor was below the future crown of road, and they could be concerned about interior home flooding, then we would let them tie into the public system which we had the capacity for. And so that was a huge change in the middle of that project, and you alluded to that. I'm not telling you anything that you don't know.**"

Additionally, from the 10/26/2019 RE:MiamiBeach article [Unpermitted work delays Palm and Hibiscus road work - South Beach \(remiamibeach.com\)](#) which recapped the Oct. 2019 public hearing of the Environment and Sustainability Committee that discussed enforcement action and the unpermitted construction of right-of-way drainpipes before members of the Commission:

"Commissioner John Alemán agreed the **"project was launched without these individual home connections"** and noted Commission action mid-project to allow residents citywide to tie-in to **the public system** to drain water from areas below road crown elevation when roads are raised to mitigate flooding from sea level rise. She asked if the City was clear on what DERM needed or if there was some kind of a stalemate that needed to be dealt with."

"Alemán told Hefty that Miami Beach "can't afford to wait" on its resiliency projects. "So we appreciate your patience when we stumble, if we don't do everything exactly perfectly. Clearly none of us, whether it's on the Commission side or the Administration side think it's okay to do work without permits. None of us think that's okay and we know we've made that mistake in the past and we're doing everything we can to not make that mistake anymore. This situation is really tough for the reasons that I said. **We had a major, major, major design change right in the middle** and we just really need, really need to work together. We really cannot have a stalemate of any kind because people live there, you know.""

Testimony throughout my OIG interview also describes the purpose of the residential tie-in resolution as being constituent focused, and only for low elevation homes, and clearly indicates that I was unaware of the connections for every home in 2017.

[00:37:36] Investigator McGee: “And so just to just to sum up, when you got into this issue, you basically heard about the problem at some community meetings, during your meetings with various parties. And when you focused on it, as I understood you to say, you know, you talk to Bruce Mowry, to Eric Carpenter, and if there's somebody else I'd be happy to hear, but that these two gentlemen basically indicated that the system that they had a solution, it was a possible solution, which is they built the system to accommodate private drains on private property. And that if the city wanted to go in this direction and if you wanted to do that, then the system was built to accommodate it. Did I understand you right?”

[00:38:28] Commissioner Aleman: “I'm going to restate it just in the spirit of absolute accuracy. They informed me, when I came forward with this concept of allowing only those homes that were below 3.7 NAVD with their finished floor, allowing, how could we help them? That they let me know that the capacity, the carrying capacity of the system, was already sized to handle that private stormwater runoff. And they would get to work on an engineering solution to figure out how to put in falls on those private homes.” “The connections were not as I understand it part of the design at that time. It's that the capacity of the main system was adequate.”

[00:39:27] Investigator McGee: “Ok, so they didn't tell you at that time. They didn't tell you that the connections were part of the design.”

[00:39:31] Commissioner Aleman: “No, no, no.”

[00:39:34] Investigator McGee: “Would you be surprised to find out they were?”

[00:39:37] Commissioner Aleman: “I would be surprised to find out they were.”

Additional Observations

One thing that was not explored in this report although I brought it up to the OIG, was the question of whether during the pursuit of permits from DERM for the SFH connections, the City was being asked to reach an even higher standard of water quality than pre-project. Although the as-built environment, as acknowledged in the report, always had allowed private stormwater to drain in the public system, so essentially, no new stormwater flows were being introduced by the project, I understood from staff at the time that DERM was requiring the City to certify that no pollutants from private property would make it into the system, which essentially was a new and stricter requirement. While improving water quality is an admirable and shared goal, there was the question of whether the removal of solid litter and oils etc. by the new system was not already adequate improvement over as-built, and whether there really was any other available technology that could be successful. Hopefully the Administration and DERM have reached some go-forward agreement on this and if not it should be addressed now.

Secondly, during my interview I brought up several suggestions for improving these projects going forward. I find it interesting that none of them made it into the report. If the purpose of the OIG is to help the City improve its processes, procedures and best practices (which is what we discussed when we

created the office in the first place), then an opportunity was certainly missed in capturing all of the suggestions from all of the parties interviewed as to how the City can do better going forward. For example:

1. I suggested that the City obtain Elevation Reports for all residential properties within municipal boundaries. The City should create a database of finished floor elevations by soliciting certificates from residents (most will have done one for their flood insurer) and update the database on an ongoing basis with data from the Building Department, filling in any gaps prior to initiating residential stormwater design efforts. That way the City will know the precise elevation of every finished floor, and be able to design accordingly, and use that data in stormwater / event modeling, and use it to assist residents with the most challenging circumstances.
2. I suggested that the City create a process to help residential property owners identify on their property where they can beneficially engineer to run and collect stormwater, to maximize absorption and enhance the freshwater lens under the City (flowerbeds, backyards, other places so that the water will not store underneath the home, nor enter the actual home, and will not impede ingress / egress from the home to the public right of way). This could be provided as a service to generate ideas for solutions that the property owner can then pursue as part of their private property adaptations.

This report in its prior "final" version dated February 8, 2021 contained inaccuracies as to timeline, as to customary Commission and Administration procedure, and made inappropriate conjecture including the author's conclusion as to the primary purpose of Resolution 2017-29840. The author ignored critical testimony at public meetings and under oath that did not align with his conclusion, and the author omitted critical facts that did not align with the conjecture.

In closing, it is imperative that the Miami Beach Mayor and Commission move forward on our water, sewer and stormwater management infrastructure upgrades. It is critical that our City Administration work effectively with our County, State and Federal level partner Agencies, following all applicable codes and laws. The continued politicization of critical municipal infrastructure and our City's response does not serve the residents. This is not a choice. The coming reality is something we must address. The Inspector General missed a crucial opportunity to help us do what we do better and more efficiently for the residents of our community.

Sincerely,

The Honorable John Elizabeth Aleman

Former City of Miami Beach Commissioner