



**STATE-SPONSORED INSPECTION AND  
DISPUTE RESOLUTION PROCESS (SIRP)  
Third-Party Inspection Form**

This form to be completed by a commission certified Third-Party Inspector only.

Date of Report: **02/03/08**

**Section 1: GENERAL INFORMATION**

Name of Third Party Inspector: **John R. Joyner**

Inspector ID # **30845**

SIRP File #: **1497**

Date of Inspection: **01/26/08** Time of Inspection: **9:00am**

Homeowner Name: **Ronald and Carol Hemphill**

Address of Home: **240 Canterbury Drive, Austin, TX 78737**

Builder/Remodeler Name: **Clark Wilson Homes, Inc.**

TRCC Registration# **6268**

List name and titles of those present during inspection: **Ronald and Carol Hemphill, homeowners, Robert Bozelli, Watt Law Firm, homeowner counsel, Christopher Copeland and Cory Smith, MLAW Consultants and Engineers, John Joyner, Third Party Inspector.**

Type of complaint:  Workmanship and Materials  Structural  Joint

Unless the homeowner and builder agreed otherwise in writing, pursuant to commission rules, only alleged defects listed in the SIRP request were inspected and no effort was made to determine the existence of other possible defects not listed in the SIRP request, unless a defect affecting the health or safety of the occupant is noted. The standards selected and recommendations listed in section 5 of this report are solely that of the inspector based upon the statutes and commission rules that apply to the SIRP and the inspector's professional judgment.

Signature (Inspector): 

**Section 2: BACKGROUND**

Describe residence as relevant to the inspection.

The residence is a two-story home of conventional slab-on-grade foundation and framing of dimensional lumber. It is clad on the exterior by stone on the first level, all sides, and by stucco or cementitious siding on the upper story. The home was completed in February, 2005, and occupied by the current owners in June of that year.

**Section 3: INTERVIEW COMMENTS**

Describe any findings relevant to the inspection reported and/or indicated by the parties present during the interview.

The homeowners conducted a tour of the residence, pointing out literally hundreds of "defects" that had been designated by various colors of tape. They noted nail "pops", irregularities in drywall finish, separation of drywall at wall and ceiling intersections, and numerous doors throughout the residence that did not close or otherwise function properly.

The builder did not attend the inspection, but was presumed to have been represented by their consultant, MLAW, who did attend in the persons of Copeland and Smith, listed above. Mr. Copeland expressed the belief that the source of essentially all defects in the home was either: 1) the improper support of the roof to floor joists not intended to take such loads, or 2) the deflection of floor joists improperly sized by Capital Pacific's framing supplier.

The homeowner demonstrated two openings cut in the 2<sup>nd</sup>-story ceiling of one bedroom and in the flooring just outside this room. They expressed considerable distaste for any further drywall removal that could further refine the various diagnoses that have been posed by owner and builder engineers.

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**Section 4: ADDITIONAL INFORMATION**

List or identify additional information, attachments, description of references or enclosed documents considered in making the report and recommendations.

The following documents furnished by the homeowner or builder, or compiled by this inspector, were considered in the evaluation of conditions and in the production of this report:

1. SIRP Request Form, signed and dated by homeowner, 10/25/07
2. Home of Texas-10 Year New Home Warranty (and related documents)
3. Report by Mlaw Consultants and Engineers, with revision, dated 5/25/07
4. Structural Condition Survey by Nelson Engineering, dated 8/15/07
5. Photographs taken by inspector, 1/26/08

**Section 5: INSPECTION INFORMATION**

# All Alleged Defect: Framing Inadequacy

We consider all alleged defects to be related to a single issue, framing performance, and have treated them together as a single Alleged Defect in this report.

**Observations/Tests Performed:**

- The "defects" pinpointed by the owner with hundreds of pieces of tape of various colors could generally be categorized as follows:
1. Structurally Inconsequential. We found the vast majority of so-called defects to be so inconsequential that they could not be physically pin-pointed, in some cases by this inspector and even in some cases by the owner him/herself using the tape as a marker. Where an irregularity could be seen, it was often visible only by extraordinary means, such as shining a bright light along the ceiling surface to highlight "waviness." In almost every case with these defects there was no break in the surface finish of the drywall.
  2. Structurally Noteworthy. A number of defects were substantial enough to raise questions of structural performance, although none was so significant as to raise general concerns of structural safety. Most were noteworthy only in their pervasiveness throughout the home and not in the magnitude of any single defect. These were typically characterized by drywall separations at wall-wall or wall-ceiling interfaces, usually 1/8" or less in size, or by ill-fitting or non-functioning doors.

This inspector's own observations of exterior veneers, interior drywall at tell-tale door and window corners, and a general review of levelness readings taken by both the builder's and the homeowner's engineers led to the conclusion that the foundation of the residence has played little or no role in the defects presented. Both MLAWS and the homeowner's structural engineer (Nelson) generally support (continued on Addendum)

**Applicable Standards: Home of Texas Warranty, Section I, Line Item 16; TRCC Performance Standard 304.100(b)(2)(B)**

- In compliance       Out of Compliance-W&M       Out of Compliance-Structural

Repair Recommendations: The builder should proceed with the re-framing of truss T5G as recommended in the report by MLAW. Subsequent to this repair, and the replacement of finishes removed to gain access, the following additional repairs should be completed:

1. Bed, tape and float, retexure and repaint all drywall cracks meeting the paper-tear standard noted elsewhere. The finished repairs should be undetectable from adjacent surfaces.
2. Rehang all doors and frames functioning improperly due to framing movement. Shaving of door panels or other re-shaping of the door-frame assembly is not an acceptable alternative to re-hanging. Doors that fail to latch, that bind with the frame, that are not square with their frame, or that tend to close or open on their own volition would meet the standard for repair.

We believe that many of the "defects" noted by the buyer are the normal result of settling in and that the buyer should be prepared to make modest drywall repairs as they appear over the life of the home. However, should the repairs undertaken by the builder on truss T5G fail to resolve the widespread development of drywall separations and door malfunction, the owner should initiate further claim to the builder, and the builder should investigate and repair, through extensive drywall removal if necessary, other possible causes of the distresses seen in the home, up to the 10-year limit of the HOT warranty.



## SECTION 5: INSPECTION INFORMATION

(Continued from "Observations/Tests Performed")

... this conclusion in their own reports. Unfortunately, neither this inspector's observations nor those of the owner's or builder's engineers clearly and convincingly pinpoint any *other* cause of the problem. The builder's engineer, MLAWS, states its belief that improper framing of a roof truss, designated T5G (resulting in roof loads being carried by floor trusses not intended to carry them) has led to the conditions now visible in the central part of the residence. They have gone on to attribute pre- and post-drywall deflections of floor trusses at the second level as the cause of most other drywall defects claimed by the owner. They generally conclude that these defects are not structurally significant.

The owner's engineer, Nelson, expresses little confidence in either of these diagnoses, and speculates as to several other possible causes, including moisture accumulation in the framing during construction.

We believe the conditions seen in the house are more typical of "racking", a condition brought about by insufficient wind-bracing, and most commonly by inadequate use of structural sheathing. However, without actual removal of interior drywall and insulation, probably in a wide range of locations, we cannot state any more categorically than did MLAWS or Nelson the root cause of the problem.

To a very significant degree, we believe that many of the complaints of the homeowner are the result of an over-reaction to a few real problems and are not related to any structural defect at all. In our opinion, any drywall defect that does not include a breakage or tear in the paper surface falls into this category, and would be, at most, a fit and finish issue and not a structural compliance issue.

The exaggerated nature of the owner's complaints aside, there remain many drywall defects and improperly functioning doors that imply a structural framing deficiency, and the deficiencies already identified by MLAWS should be corrected.

Code/Warranty Provisions Applicable:

TRCC: Performance Standard 304.100(b) (2)(B). "If a structural component of a home cracks, bows, is distorted or deteriorates such that it results in actual observable physical damage to a component of the home, the builder shall take such action as is necessary to repair, reinforce or replace such structural component to restore the structural integrity of the home or the performance of the affected structural system."



Home of Texas Warranty: Section I, line item 16. Major Structural Defects. Our interpretation of this section is that it severely limits the responsibility of HOT on structural issues:

1. It requires “physical damage to one or more...load-bearing segments...” Given the findings of the builder’s engineer, the actual condition is a framing error, not physical damage.
2. The damage must “caus[e] the failure of the specific major structural components”. Failure is not clearly defined.
3. The defect must “materially affect[] the physical safety of the occupants of the Home.” We do not believe this to be the case. However, we still maintain that a structural deficiency exists.

We consider the HOT conditions to rule out 90% or more of the structural deficiencies that TRCC would otherwise include. Nevertheless, we believe the TRCC standards apply and supersede HOT standards.