

NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY  
MINUTES OF THE COMMERCIAL REAL ESTATE COMMITTEE MEETING  
JULY 14, 2011 – 1:30 P.M.

The regular monthly meeting of the Commercial Real Estate Committee of the Non-Flood Protection Asset Management Authority was held on Thursday, July 14, 2011 at 1:30 p.m., in the Lake Vista Community Center, 2<sup>nd</sup> Floor, 6500 Spanish Fort Blvd., New Orleans, Louisiana after due legal notice of the meeting was sent to each Board member, the news media, and a copy of the call was posted.

Commissioner Trask called the meeting to order at 2:15 p.m. and led in the Pledge of Allegiance.

The roll was called and a quorum was present.

**PRESENT:**

Chairman John Trask  
Commissioner Stanley Brien  
Commissioner Wilma Heaton

**ABSENT:**

Commissioner Joe Hassinger

**STAFF:**

Louis Capo, Executive Director  
Sharon Martiny, Non-Flood  
Charles Dixon – Marina Manager

**ALSO PRESENT:**

Gerard Metzger  
Albert Pappalardo  
John Paul Massicot

**APPROVAL OF AGENDA**

Commissioner Heaton offered a motion to adopt the agenda, seconded by Commissioner Brien and unanimously adopted.

**APPROVAL OF PRIOR MINUTES**

Commissioner Brien offered a motion to approve the minutes of the Real Estate Committee from June 9, 2011, seconded by Commissioner Heaton and unanimously adopted.

**OLD BUSINESS**

**1) Request by Peninsula Condominiums for consideration of lease extension**

Mr. John Paul Massicot, representing Peninsula Condominiums, informed that Peninsula Condominiums proposal was submitted May 26, 2011 and is requesting the same consideration as the Lighthouse Harbor Condominiums. Peninsula Condominiums recently completed approximately \$600,000 of work; overall since Katrina approximately \$1.3 million in capital improvements. Peninsula Condominiums is experiencing problems moving property with some units on the market for over a year due to the fact that people can only get a 15 year mortgage as the condominiums are under 25 years on the balance of the lease. Banks require at least a 5 year period over and above the mortgage period on the lease which really limits the marketability of the properties.

Proposals with regard to capital improvements have been tabled until we have a more stable situation regarding the lease. Peninsula Condominiums is requesting the 30 year extension and plan on being good tenants for a very long period of time for the Levee Board.

Mr. Metzger informed that the proposal has been reviewed by Mr. Pappalardo and him. This proposal is a request for an extension under the same rental terms with a CPI increase only which is typical with all ground leases. The lease has a reversion clause which means at the termination of the lease the improvements revert to the Levee District. This was also the issue involving the Orleans Marina boathouses wherein an Attorney General's opinion was requested regarding the proper way to extend such a lease. The opinion stated that in order to comply with the Louisiana Constitution and the Prohibition Against Donation of Public Property consideration has to be commensurate with the value of the improvements. This policy has been adhered to by the Management Authority and former Board.

Peninsula Condominiums fulfilled its obligations and made repairs, but the repairs made were obligations under the lease to maintain and repair the property. Chairman Trask commented that this seems like routine maintenance versus an actual improvement and Mr. Metzger agreed. Mr. Metzger informed that Peninsula Condominiums put a new roof on which is maintenance and repairs under the lease to the improvements which have to be returned when the reversion occurs. There is a maintenance and repair obligation in the lease. That is the substance of the Authority's position, the real estate consultant, staff and legal counsel.

Mr. Massicot stated that some terms on the Peninsula Condominium lease need to be negotiated. The parties have never come to an agreement in negotiations regarding a rental increase. Chairman Trask questioned if the requested 30 year extension is the same rate as the original lease. Mr. Massicot informed the proposal would go at the end of the current lease ending in 2035 at the current rate. The current lease is \$3.35 since 1981 with the CPI increase. The extension beyond 2035 would be for 30 years, beyond that to 2065 would be negotiated at the prevailing rental rates at that point. Mr. Metzger stated that under the Attorney General's opinion at that time you would have to factor in the value of the improvements also. Mr. Massicot commented that the Attorney General's opinion is just an opinion and there is a specific statutory scheme which was used to grant the extension to the Lighthouse Harbor on the basis of capital improvements. This statute states there is no reversion in a lease extension. The only thing considered is the capital improvements. It is designed to encourage a tenant to maintain the property and get the advantage of capital improvements made. Peninsula Condominiums have done \$600,000 in capital improvements which included renovating the balconies on each of the 20 units. Each unit contains three balconies. This was a capital assessment against the owners of the condominiums to make the balconies stronger and larger, which is absolutely a capital improvement. There were also main deck that was expanded and additional portions were improved in order to have better use by the owners and their guests. These things went into that \$600,000 which was an assessment against the owners to make these capital improvements. We have complied with the statute and therefore don't have to pay a reversion. This Board has the Authority to grant us that extension as it is discretionary. There have also been two roofs put in. One was due to Katrina repair. We then went back and realized we were only getting a 5 year guarantee and because of additional savings on construction we made an assessment against the owner to put on a \$300,000 roof with a 25 year warranty, which is longer than we have on the lease.

Mr. Massicot stated that Peninsula Condominiums have been good tenants and continue to make improvements. This is not painting or making routine repairs, this is an assessment against the owners for capital improvements.

Commissioner Heaton questioned the financial reality of the Authority if the lease is not extended. Mr. Metzger informed that there is a lease in effect in which rent is to paid until the lease expiration in 2035 with an obligation in the lease to maintain the property. Mr. Massicot addressed maintaining the property and stated that there is a contest over what constitutes adequate maintenance. If there are three years left, how much money do you think will be put into that property 5 or 6 years from now? How many times must the property be painted or weathered? As far as the association is concerned, without an extension of the lease it is going to be the cheapest minimum requirements the law requires. If an extension is given, you will have a good tenant that will maintain and stand out for 50 years to come.

Mr. Metzger informed that the statute that Mr. Massicot was referring to is part of the Louisiana Public Lease Law which applies to the lease of all public property by a state agency. There is an exception that deals with the Orleans Levee District former Board and the reclamation project along the Lakefront and recognized in the case of Arnold v. Board of Commissioners and the Orleans Levee District in 1978. The Louisiana Supreme Court confirmed this six years later and the Louisiana Public Lease Law does not apply to property in the reclamation zone. That property that we are talking about has been considered in the reclamation zone since there was a transfer of administrative rights by the City of New Orleans to the Board of Commissioners of the Orleans Levee District in 1959. That statute is not applicable and even if it were, it is discretionary. We have gone down this road for 12 years and Mr. Pappalardo has negotiated with a number of different people to work out rental terms that will keep the rent in compliance with the Attorney General's opinion on ground lease extensions.

Mr. Massicot commented that this is discretionary and that same discretion was used to extend the lease at Lighthouse Harbor. There is no prohibition against applying this statute or the lease would no longer be valid since it was the basis of the extension of the leased Lighthouse Harbor. Mr. Metzger stated that the statute never should have been cited because it is not applicable to reclaimed property, the very lease you have would be null and void if so that lease was not advertised pursuant to the Louisiana Public Lease Law. There was no advertising to bidders. Mr. Massicot commented that there have been proposals from Mr. Pappalardo and Mr. Capo, but they have responded without anything. It has been a situation where we keep bidding against ourselves.

Mr. Pappalardo stated there have been discussions before Mr. Massicot got involved. The last number discussed was \$350,000 in June of 2010. Subsequent to that, Peninsula countered with \$200,000. Mr. Pappalardo addressed the lease and stated that there is a parcel of ground that in 1981 someone bought the improvements. At the end of the lease you get the ground and the improvements back. In 2035 you have the right to rent that land or scrape the land if the land is worth more and that improvement is going to be 55 years old at that time. Real estate improvements have an economic life. The Authority is sympathetic to the tenants and understands what they are going through but to bring an extension with no benefits would completely negate the reversion in 2035 and would be against the public law. The individual that the Authority has dealt with at Peninsula Condominiums did not understand or want to pay for the reversion. Every lease the Authority has with an extension when the lease is up we have gotten paid for the reversion.

Mr. Pappalardo informed that Peninsula Condominiums has the cheapest lease in the marina; 95 cents a square foot as opposed to \$2.00-\$3.00 a square foot. The present rate and a CPI or 20% increase every five years 20 years from now puts them at  $\frac{1}{2}$  -  $\frac{1}{3}$  of all other leases in the marina. Commissioner Heaton commented there is a fiduciary responsibility to the public to get the most we can from a property within the market.

Commissioner Heaton questioned if June, 2010 was the last time negotiations took place regarding Peninsula Condominiums. Mr. Pappalardo informed that there had been conversations with Ms. Eagan since, but there has been no formal offer made. Mr. Massicot informed an offer was made in August to pay \$150,000, which figure was based on the Revised Statute. Mr. Pappalardo rejected the offer so Peninsula Condominiums then offered \$200,000 in October of 2010, which Mr. Pappalardo also declined. The \$350,000 figure that Mr. Pappalardo mentioned was a vague figure and was to be considered. There was also \$600,000 thrown out two years ago by Mr. Pappalardo.

Mr. Massicot commented that the Authority has the discretion under the Statute as to whether an Attorney General opinion may or may not apply. We have been going back and forth for 12 years and there are issues that need to be resolved. Mr. Massicot informed that he is unsure what the fair rate is and this needs to be investigated. Peninsula Condominiums have never paid a reversion. Chairman Trask commented that there are disagreements that need to be resolved.

Commissioner Heaton commented that the Board has a responsibility to use careful discretion to do what is in the public's interest. There is a Board in place to do the necessary due diligence. We may not come to an agreement and the Board may just have to make a hard decision. Commissioner Heaton requested a hard number that our real estate guide can highly recommend within the next 60 days to get this nailed down. This is going to be something for the full Board to get the detail because they are looking to us for information and I want the full picture of what our options are. The Board is very serious about this and we will take a look at it and try to be as fair as possible.

Commissioner Brien stated he did not feel comfortable going forward as there are many differences that need to be examined which need to be brought to the Legal Committee and Mr. Pappalardo. Mr. Massicot commented that Peninsula Condominiums has prepared thoughtful written proposals signed by the Association that were submitted in August and October of 2010. Mr. Capo informed that in every instance where the Condominium Association requested a meeting, we have met with them and have done multiple work-ups on numbers. We have met with Mr. Snyder and Mr. Massicot and were very accommodating and open to working with them. The issue is the numbers which Mr. Pappalardo and Mr. Capo have worked on. There is a formula that Mr. Pappalardo devised to arrive at the \$350,000 number.

Chairman Trask commented that it sounds like the difference of opinion between the \$350,000 and \$200,000 hinges on the disagreement on the interpretation of the Lighthouse versus Peninsula. Mr. Pappalardo stated that this was two separate issues. If Mr. Massicot is correct and Mr. Metzger is incorrect, there is no need for a number. If the statute prevails, this is a non-issue because Peninsula Condominiums has already made the contribution in the repairs. Mr. Metzger, Mr. Pappalardo and Mr. Capo have studied this for years in every substantive ground lease where there are substantive new improvements that would revert to the Levee District. Mr. Metzger is absolutely of the opinion that the statute does not apply. Mr. Pappalardo suggested not to entertain both issues at the same time and send this to the Legal Committee along with Peninsula Condominiums' current proposal.

Calculations are a moving target as we are dealing with different discount rates. It is useless to say it is \$350,000 because it was \$350,000 a year ago. If we get to the point that everyone agrees that the statute does not apply, we will look at how we value the reversion. Mr. Pappalardo stated he was willing to not only look at a cash payment up front, but in the increase in the present rental. Any blending or combination of getting us that reversion that works for the tenant and works for us, I can recommend. I am going to suggest to you that it is not in your best interest to go down that road until they thoroughly get whether their legal proposal is correct. Chairman Trask recommended to send all of the items to the Legal Committee and requested a motion. Commissioner Brien offered a motion to send the Peninsula Condominium Lease proposal to the Legal Committee, seconded by Commissioner Heaton and unanimously adopted.

**ANNOUNCEMENT OF NEXT MEETING**

Chairman Trask announced the next Commercial Real Estate meeting is scheduled for Thursday, August 4, 2011 at 1:30 p.m.

**ADJOURNMENT**

Commissioner Brien offered a motion to adjourn, seconded by Commissioner Heaton and unanimously adopted.

The meeting adjourned at 3:00 p.m.