

NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
MINUTES OF THE COMMERCIAL REAL ESTATE COMMITTEE MEETING
NOVEMBER 3, 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, November 3, 2011 at 1:30 p.m., in the Lake Vista Community Center, 2nd 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 1:35 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 Joe Hassinger

ABSENT:

Commissioner Wilma Heaton

FURTHERMORE PRESENT:

Robert E. Smith Lupo

STAFF:

Louis Capo, Executive Director
Sharon Martiny, Non-Flood

ALSO PRESENT:

Gerard Metzger
Albert Pappalardo
John Paul Massicot
Wesley Mills
Walter Baudier
Jonathan Brisbi
Mickey Weiser

APPROVAL OF AGENDA

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

APPROVAL OF PRIOR MINUTES

Commissioner Hassinger offered a motion to approve the minutes of the Real Estate Committee from September 8, 2011, seconded by Commissioner Brien and unanimously adopted.

OLD BUSINESS

1) Request by Peninsula Condominiums for consideration of lease extension

Mr. John Paul Massicot informed that this is a request for an extension of the current lease to the Peninsula Condominiums. As of January 1, 2012 Peninsula Condominiums are asking for an additional 31 year extension or until 2066 of the current lease. The current annual payment in 2011 was \$32,538.44 which will be revised again in 2015 to a minimum of 20% increase in the annual rent. Capital improvements made by the Peninsula Condominiums are in excess of \$300,000 in the past two years and post-Katrina over \$1 million. The Board exercised this

discretionary authority for Lighthouse Harbor, Arnold and the City of New Orleans case. Peninsula Condominiums have been good tenants for 31 years, paid rent annually, maintained the property, made improvements to the property, maintained insurance with the Levee Board as an additional insured and paid taxes. It is in the best interest of the Board to grant the lease extension to the Peninsula Condominium Association. As of September the property value has gone down. The tax board granted a reduction in the original assessed values of some units originally assessed at \$265,000 to \$235,000. Peninsula originally asked for 25 but is now at 31 years. Why should Peninsula Condominiums make an additional payment to the Levee Board. Mr. Pappalardo reasons that the Peninsula should be required to pay for the residual value of the property at the end of the current lease based on a formula. The public lands lease law does not require such a payment for an extension. Peninsula Condominiums offered to go into the market when the original lease expires and pay whatever the market rate is at that time. It is acknowledged that Peninsula is paying a very favorable rate as the lease is over 30 years old.

Mr. Pappalardo stated that the Authority has precedence for receiving compensation for the reversionary right. The lease for the T-Hangars has been renewed and extended on the Airport through a calculation of the value of the improvements. Rather than taking ownership of the improvements the Authority pushed forward the ownership of the improvements to the tenant which is what we are discussing with Peninsula. The Attorney General ruled the Authority must get compensation for improvements. What the going rate would be 24 years from now is a solution. A similar proposal was made to boathouse owners in a 1998 amendment which stated they pay whatever the rate is at the time. When it came time to codify and put that into action, it produced an 8 year lawsuit as no one agreed what the going rate would be at the end of the lease. The going rate would be the whole rent for the land and improvements in 24 years. I don't know if that would solve the problem for Peninsula. We could work out a blending of compensation by increasing the present rent over time and receiving a lump sum payment.

Mr. Pappalardo will work with Peninsula Condominiums on a solution that will be legal, ethical and moral and will explore other areas where the Authority receives compensation such as he has done over the last 10 years.

Mr. Massicot refers to the Lighthouse Harbor Condominium Association suing the developer and lender due to structural defects found with respect to the building. A suit was filed which lasted approximately 6 years. Lighthouse prevailed and was awarded a seven figure amount to fix the defects. They informed the District they had made the building better as the building was defective from the beginning. Because of the improvements made to the building correcting a fault, the District would not get a defective building back and gave them a 15 year extension.

Mr. Massicott stated that an Attorney General opinion is just an opinion by a lawyer and is not legally binding. We are not bound to a reversionary figure that is a manufactured number. Peninsula found structural defects in the original construction of the 40 balconies which were repaired with the cost of over \$300,000 being assessed against the owners. That is a capital improvement and we can provide architectural affidavits regarding the structural problems with those balconies.

People are able to determine how to establish rental rates all of the time. There are a lot of ways that the devil is in the detail. We can go to binding arbitration, it does not have to be a lawsuit. There are ways this can be worked out. This has been a moving target. Peninsula made offers to avoid a possible lawsuit. The original figure by Mr. Pappalardo was \$600,000 and \$300,000 was the most recent. Peninsula is being told that there will be no lease extension without

giving the Authority cash. Peninsula has been trying to work this out for years. This boils down to a lump cash payment to get the lease extension. Peninsula is open to a nominal payment in keeping with the other public leased lands but not to buy our property in advance from the Levee Board. Mr. Capo informed this was a motion to extend the lease based on a letter submitted on May 26, 2011 for an extension of the lease. The letter states that when the lease expires in 2035 the rent would be increased to prevailing market rate. The recommendation of staff has been summed up by Mr. Pappalardo. Negotiations are the only way to go and try to realize the value of the extension of the reversion rights.

Chairman Lupo commented that this is a business decision colored by an Attorney General opinion. This Board has to make this decision eventually and the committee has to make a recommendation on how to proceed. The attorneys made the point that this is discretionary to this Authority on how to act on reversionary rights because none of them are the same. The way that different boards, authorities or state agencies handled this can be used as a guideline but should not be the only thing this Authority looks at. The experts and lawyers on this Board should look at this as a business decision. The business decision should be based on there being a lease expiring and there should be compensation to the landlord for extending that lease. This is about the value to the Authority of extending this lease which needs to be considered.

Mr. Pappalardo explained that the reversion takes into effect the fact that in 24 years the lease will expire as will the leasehold interest in the improvements. Those 20 condominiums, the building and the land revert to the Levee District who can then exercise their rights to scrape or lease out the present improvements. The Levee District can get rents for individual units for market rate as completed units. As policy and to interpret R.S. 714 the Authority must receive value for anything. It is Board policy to calculate a reversionary figure and if the tenant chooses to accept that amount, the tenant has the extension. If an agreement on a reversion is reached and the tenant is given a 31 year extension, the tenant could do anything he wanted to do over the next 55 years. The tenant re-buys the improvements because they do not own them - we are doing that now. The Authority could wait 24 years to see what they are worth and sell them at that time but this does not work for the tenant because they cannot finance the individual condo units. The lenders want coverage beyond the length of the loan which are 15-30 years. We have tried to accommodate the tenant by pushing this date forward so they can get back into commerce with the unit. The assessor looked at the sales of the units and lowered the assessment because the value has changed over time due to economy, discounts and rate change.

Mr. Metzger advised there was no motion on the table. A motion was needed along with a second to pass this issue to the full board. There were no votes to make a motion to the full board to extend the lease at this time.

NEW BUSINESS

1) Request by Schubert's Marine to modify lease to allow for a restaurant

Mr. Jordan Brimer with Schubert Marine is proposing a modification to Schubert's lease to allow for a restaurant. All ideas to seek other sources of revenue have been depleted. Since Katrina, business has slowed tremendously and the boats have not come back as the area is not conducive for boaters with only one restaurant in the immediate area.

West End was known for its seafood and as a hub where people gathered to enjoy the weather and atmosphere. Schubert's is trying to bring that back and revitalize the West End area with a new restaurant in a great location with a

tremendous view of the marina. This would create traffic, transient slips and jobs and another source of revenue for Schubert's which is desperately needed. The reason for this venture is due to a failing marine economy. There is much underutilized room in the building so this is a great way utilize all of the space. The parts department could be moved to the fuel dock where it is directly on the water to service the boat owners. There is also direct competition with the proposed new fuel dock. There are no restaurants on the West End and the park traffic is slow.

The restaurant will have a nautical theme family restaurant similar to Jaeger's or Sid Mars with 17 spots in front for parking as well as on the park side. The city planner's office informed that park side parking was not an issue because it is a public park. The back of the restaurant has a great view that will showcase the Orleans Marina. There is 130 feet of dockage from Schubert's to the first boathouse along with 100 feet of right of way. The street side will include awnings and added windows along with landscaping and improvements to the actual property. The back dock has great views of the Orleans Marina and gives the ambiance we were all used to in West End. The side view is in between the boathouse and Schubert's. The slip will be decked over and windows will be installed along with outdoor seating. The back of the building will have rollup doors to have the outside atmosphere while being seated inside. The estimated size would be approximately 3,000 square feet on the bottom floor including 13 tables inside and out with a capacity of 150 people. Hours are from 11:00 a.m. to be determined if there is a lunch.

Benefits include increased lease revenue for the Levee Board, sales tax, jobs and revitalization of West End. This will bring people to West End along, getting the boating community active again, improvements to the property and to stimulate the boating economy.

Mr. Brimer advised that the boatyard would still be opened for business although there may not be as much custom work performed. Commissioner Trask stated he was supportive of the restaurant but immediate homeowners may have concerns with the hours of operation and any loud music. Mr. Brimer informed hours would be determined on what boathouse owners suggested. The boathouse owners are supportive and have no issues. The restaurant will close at approximately 11:00 – 12:00 as Schubert's is not trying for late hours and will not do anything that is not wanted in that area.

Mr. Pappalardo stated that the lease would have to be amended to provide for additional revenues converting a portion of the leasehold to commercial as opposed to the industrial rate. Today the committee can determine whether this should be passed to the Board for consideration. At that point the Board can review and determine the advantage in revenue production and retaining this tenant at this location. The residential and boathouse neighbors will want to weigh in on what they feel. Mr. Pappalardo noted for the record there will likely be alcohol served and video poker which goes hand in hand with the operation of a restaurant today. The only other issue is a possible agreement regarding the N1 slip confected with the owners of N2, 3 and 4 and Schubert's regarding enclosing the slip. Mr. Metzger and Mr. Pappalardo will review that amendment to see if Schubert's has to notify the owners with respect to N1.

Chairman Lupo stated that this was a plus for that area and the scale talked about makes good sense. This committee might consider recommending to the Board that this go forward. The Board will want to know that this particular use adheres to all permitting requirements such as parking, the restaurant layout and being a full service restaurant. Regarding the right of way in the water, find out where the right of way is and make sure you are not infringing upon that and that you are not outside of your lease line.

Mr. Lupo also suggested that Mr. Brimer sit down with the council person from the district and the appropriate property owners association to do the homework and incorporate those items into the presentation to make the whole process go smoothly.

Commissioner Hassinger made a motion to pass this issue to the full Board and recommend that the Board consider modification of the lease and instruct that staff to do all work necessary to complete that, seconded by Commissioner Brien and unanimously adopted.

ANNOUNCEMENT OF NEXT MEETING

Chairman Trask announced the next Commercial Real Estate meeting is scheduled for Thursday, December 8, 2011 at 1:30 p.m.

ADJOURNMENT

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

The meeting adjourned at 2:25 p.m.