

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
OCTOBER 6, 2011 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, October 6, 2011 at 3:30 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 Ernst called the meeting to order at 3:52 p.m. and led in the Pledge of Allegiance.

The roll was called and a quorum was present.

PRESENT

Chairman Greg Ernst
Commissioner Wilma Heaton
Commissioner Michael Bridges
Commissioner Patrick DeRouen

FURTHERMORE PRESENT

Chairman Robert E. Smith Lupo

ABSENT

Commissioner Joe Hassinger

STAFF

Louis Capo, Executive Director
Sharon Martiny, Non-Flood

ALSO PRESENT

Gerard Metzger – Legal Counsel
Albert Pappalardo
Charles Curtis – Legal Counsel
John Massicot

APPROVAL OF AGENDA

Commissioner Derouen offered a motion to adopt the agenda, seconded by Commissioner Bridges and unanimously adopted.

APPROVAL OF PRIOR MINUTES

Commissioner DeRouen offered a motion to approve the minutes of the Legal Committee meeting of September 8, 2011, seconded by Commissioner Bridges and unanimously adopted.

OLD BUSINESS

1) Update on Current Litigation

Mr. Curtis informed that there is one active case filed by the Authority which is against the Hartford Insurance Company and RSUI for insured wind loss as a result of Hurricane Katrina. Hartford paid the policy limits of \$10 million and the remainder of the suit is against the excess carrier, RSUI, for excess damages in the range of \$2-3 million. RSUI is readjusting the claim which is in federal court on administrative stay during the ongoing adjusting process.

The active cases filed against the Management Authority are the *Napolitano* case in which the Authority got a favorable judgment last June. The Napolitanos have appealed and it is pending in the 4th Circuit Court of Appeal and briefs are due. The second case is the *Dieter Hugel* case pending in Federal Court for the Eastern District in which a jury trial is set for next August. The plaintiff contends boathouse rental rates were improperly calculated. A similar suit was filed in state court years ago by Mr. Hugel and other boathouse owners/lessees that went through to the Supreme Court and the Levee District prevailed. Mr. Hugel filed the identical suit in federal court. The issue of Res Judicata was raised on the Motion to Dismiss and was granted by the trial court. Mr. Hugel appealed to the 5th Circuit and the 5th Circuit reversed and remanded stating that the record was incomplete and more information was needed. We intend to engage in discovery and file a Motion for Summary Judgment.

Commissioner Ernst questioned if this case was in a position for summary judgment. Mr. Curtis informed the 5th Circuit wants a more complete record. Commissioner Ernst questioned what the discovery was going to include. Mr. Metzger stated that the Motion to Dismiss was expanded into a Motion for Summary Judgment because they brought in a lot of material and it is unknown what else the court needs. I will depose Mr. Hugel, get him to identify everything and request some additional documents. The 5th Circuit did not identify the documents that they are looking for. Charles Justice represents Mr. Hugel and Donald Clotworthy with Baker, Donaldson is the appeal counsel. Mr. Curtis advised he would circulate the Opinion to the Legal Committee members.

The *Flightline* case is a little different because it was filed with the FAA. Flightline is alleging violations of FAA grant assurances mainly stemming from a settlement agreement with AeroPremier. This was filed in the beginning of the year and we have responded. The FAA recently notified that we can expect their ruling in December. The FAA can say the Complaint has no merit or they can say that the Complaint has some merit, request more information and hold an administrative hearing. Those are the only active cases.

The inactive cases are *American Airports Lakefront* which stems from the privatization attempt at Lakefront Airport. American Airports has not really pushed this case, but they ask for a yearly status conference to avoid abandonment. There is no legal work involved but the case is still pending against the Management Authority. Mr. Metzger informed of issues that could lead to a summary judgment. The lease was conditioned on a suspensive condition of FAA approval and we never got FAA approval. This case went before Judge Kern Reese who denied the motion and set a deadline in 2007 for FAA approval. We can re-urge that motion. It is a long time until abandonment and they have not done anything for several years. Mr. Metzger informed of a status conference he attended in June wherein Steve Dwyer's office sent an associate who informed Judge Reese that they were waiting to see what the legislature did and then they would come back. Dwyer & Cambre also represent American Airports Lakefront in the privatization case.

Mr. Metzger stated he would re-urge the motion and point out that the deadline is passed and that the FAA sent out a letter stating that since the former board was abolished there is no one to approve the privatization

for. Commissioner DeRouen questioned what they were seeking in a privatization. Mr. Metzger informed that this was an attempted privatization from years ago. Everything was agreed upon pending FAA approval for the Airport but the FAA declined. Now the entity that tried to get the privatization lease is suing the Levee Board stating the Authority did not provide the FAA what was needed creating a breach of contract, because the Levee Board was obligated to act in good faith and participate in the process. The Levee Board participated until the end, waiting 3 years for FAA approval. We have never deposed anyone from the FAA as this went straight to summary judgment. Chairman Ernst requested that this be deferred until the next Legal Committee for a recommendation on how to proceed.

Mr. Curtis continued with a suit filed by Cedric Richmond to cancel the lease of a covered boat slip at South Shore Harbor. Since Mr. Richmond was elected to congress he has indicated that he is not interested in pursuing the lawsuit and is trying to sell the lease. No dismissal has been reached so it is on the inactive list. There is one more personal injury case almost ready for abandonment.

2) Discussion on legal issues concerning Peninsula Condominiums' proposed lease extension

Mr. John Paul Massicot stated that the request for a lease extension by the Peninsula Condominiums has been ongoing for a long time. The renewal of this effort started in the summer of 2010 requesting a 30 year extension until 2065. The current lease expires in 2035 so we are asking for a 31 year extension to take it through 2066. The Board has the jurisdiction to sell, lease or otherwise dispose such portion of the lands that were reclaimed and other property acquired for the purpose of the improvement under such terms and conditions and by such methods as the Board may deem proper.

Chairman Ernst questioned if there was a specific legal request that Mr. Massicot is making from the Legal Committee. Mr. Massicot informed that he is requesting the Levee Board use its discretion to grant the lease. The Board exercised this discretion twice before involving the Lighthouse Harbor Condominiums. There was an extension of 1 year and 2 ½ months which was then followed by an extension of 15 years. The lessor (Levee Board) was exercising discretion granted under the statutory scheme. It also cited the public lease law to grant extensions of leases where capital improvements are made to property. Lighthouse Harbor Condominiums was involved in litigation against the original contractor for damages. They were successful in collecting against the bond of the contractor and made repairs to the building from mistakes of the contractor to the tune of approximately \$1.3 million.

Chairman Ernst questioned if there was other action taken by the Real Estate Committee regarding this issue. The legal discretion is something for the Real Estate Committee to consider but is there some legal authority this Authority is bound by where we have to do something. Mr. Metzger informed that the Real Estate Committee referred this to the Legal Committee because of the issue regarding whether the Louisiana Public Lease Law was applicable to the Levee District when it came to reclaimed property. It was decided in 1978 by the Louisiana Supreme Court that it is not. Because the public lease law does not apply to this reclaimed property, there is no legal issue that this committee has to consider.

Mr. Massicot informed the reason the public lease law was referenced is because in 1996 the public lease law was stated in the resolution by the Levee Board as the authority for the extension of the Lighthouse Harbor lease. Peninsula Condominiums are asking for the same consideration. Chairman Ernst questioned how the Lighthouse Harbor was treated and their reference to the public lease law. Mr. Metzger informed the resolution adopted in November of 1996 referenced the public lease law and the amendment was done 5 years later in November of 2001 with Lighthouse Harbor. Mr. Metzger did not prepare the resolution in 1996 and when the Amendment was drafted it was known that the public lease law did not apply. Mr. Massicot does not dispute the public lease law does not apply to the leases of the Levee Board but stated that this extension is worth consideration. The public lease law was referenced because it was the basis for the Lighthouse Harbor lease extension and Peninsula Condominiums believe it has certain analogies to the requested lease extension. Mr. Massicot stated the Real Estate Committee deferred this issue to the Legal Committee. Commissioner Heaton stated that the Real Estate Committee was not comfortable with this issue not being vetted at the Legal Committee. Commissioner DeRouen offered a motion to refer this issue back to the Real Estate Committee, seconded by Commissioner Bridges and unanimously adopted.

ANNOUNCE NEXT LEGAL COMMITTEE MEETING

The next meeting of the Legal Committee is scheduled for Thursday, November 3, 2011 at 3:30 p.m.

ADJOURN

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

The meeting adjourned at 4:19 p.m.