

NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
SPECIAL LEGAL COMMITTEE MEETING MINUTES
MARCH 21, 2011 – 6:00 P.M.

A special meeting of the Legal Committee of the Non-Flood Asset Protection Management Authority was held on Monday, March 21, 2011 at 6:00 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 6:02 p.m. and led in the Pledge of Allegiance.

The roll was called by Mr. Capo and a quorum was present.

PRESENT

Chairman Greg Ernst
Commissioner Joe Hassinger
Commissioner Wilma Heaton

FURTHERMORE PRESENT

Chairman Robert E. Smith Lupo

ABSENT

Commissioner Michael Bridges

STAFF

Louis Capo, Executive Director
Sharon Martiny, Non-Flood

ALSO PRESENT

Gerard Metzger
Ben Meyers

APPROVAL OF AGENDA

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

APPROVAL OF PRIOR MINUTES

Commissioner Hassinger offered a motion to approve the minutes of the January 13, 2011 meeting, seconded by Commissioner Heaton and unanimously adopted.

Commissioner Ernst informed that Commissioner Bridges is out of town and would not be able to attend tonight's meeting. This meeting was called following the Board meeting on Thursday, March 17, 2011 pursuant to a motion by Commissioner Heaton to defer a resolution before the Commission to approve a contract for legal services for Fisher & Phillips, L.L.P., particularly for Mr. Keith Pyburn, to provide specialized legal services regarding Civil Service for the Board.

NEW BUSINESS

Discussion to Retain Special Counsel for Civil Service Matters

Commissioner Heaton requested that this item be deferred because there is an issue with the rate being \$50.00 above the Civil Service rate. Commissioner Heaton advised that she is not advocating for a particular firm but there was an issue of the rate being much higher than the Attorney General's approved hourly rate since it had not gone through the Legal Committee. Commissioner Heaton wanted to know what the extenuating circumstances were. Commissioner Heaton stated that she did speak with Mr. Capo to see if there was some other reason we had to use this firm since she was aware of firms that were experts in Civil Service matters. Commissioner Heaton reiterated that she is not opposed to the firm but to the Authority paying above the Attorney General's rate in these dire economic times unless there are extenuating circumstances that she is not aware of. Commissioner Heaton stated that she is not an attorney and is open to the Committee's input on this issue.

Chairman Ernst stated for the record when the issue was presented he did question the rate suggested for this firm. Not knowing that there were other options it was agreeable to Commissioner Ernst. Knowing there are other firms who are willing to render their services for a lesser rate, this is something the Committee needs to consider.

Commissioner Heaton mentioned she did not speak with any particular firm, but she did forward an example of a Civil Service contract under a public agency for a complex Civil Service matter which was executed under the Attorney General rates.

Commissioner Hassinger questioned if the Committee, by voting tonight, would give Mr. Capo the authority to retain a particular lawyer. Commissioner Heaton advised that the Committee could not do but the Committee could recommend to the Board a particular firm. Tonight's Legal Committee is discussing something that is not binding; it is a recommendation from the Legal Committee to the Full Board. Commissioner Heaton requested the deferral until this matter could be discussed as an Agenda item for the Special Board meeting. This did not have to wait one month for the regular Board meeting.

Commissioner Hassinger commented that on tonight's Agenda is not just the issue of whether to retain Fisher & Phillips, but who in their place if Fisher & Phillips is not retained.

Mr. Capo agreed that there would have to be an alternate firm. Mr. Capo informed the Committee that he received Commissioner Heaton's sample contract entered into by the Flood Authority. Mr. Capo informed that he contacted the firm, Middleberg, Riddle & Gianna, and their rate is \$175.00 which is in agreement with the Attorney General. Chairman Ernst questioned if this was the regular rate or were they willing to handle this case for the Attorney General's rate. Mr. Capo informed that the firm was willing to handle the case for the Attorney General's rate.

Commissioner Hassinger commented that we are facing severe budget difficulties, we have no funds sufficient to run the operation and Commissioner Hassinger appreciated the fact that a firm stepped up and offered to do the work in compliance with the Attorney General rate required. It is Commissioner Hassinger's opinion that the Authority could not afford to retain Fisher & Phillips because of the requested hourly rate. Chairman Ernst concurred with Commissioner Hassinger and stated if there was an attorney willing to do the work needed for the Authority at the official Attorney General's rate, under the financial circumstances that this Commission faces as this time; it is the right

thing to do. The Authority should proceed in this direction rather than retaining a firm which the Authority would have to request Attorney General approval for an increased rate.

Mr. Capo informed that the proper procedure would be a recommendation to the Full Board to recommend the firm of Middleberg, Riddle & Gianna not to exceed the rate of the Attorney General's office. This contract could also be capped if the Committee desires to do so. Mr. Metzger advised that a cap would have to be placed on the contract in compliance with the Attorney General's guidelines. Commissioner Hassinger questioned what the cap would be on the contract. Mr. Capo informed that a \$25,000 cap would be placed on the contract with the firm of Fisher & Phillips through June 30, 2011. Legal contracts currently are run through June 30, 2011 to coincide with the fiscal year and fiscal budget.

Commissioner Hassinger offered a motion to retain the firm of Middleberg, Riddle & Gianna at the rate of \$175.00 per hour with a \$25,000 cap on the contract to handle Civil Service matters for the Authority through this fiscal year, seconded by Commissioner Heaton and unanimously adopted.

Commissioner Heaton requested that the Executive Director prepare a resolution for the Board expressing that the Attorney General rate would not be exceeded also stating that this firm has expertise in Civil Service matters. The public needs to understand that the Authority is concerned about the dollars and not shopping services for professionals. The Authority is aware that there is a firm that can perform the necessary services for the hourly rate approved by the Attorney General's office who also has a track record on these matters. Commissioner Heaton stated it is in the best interest of the Authority to retain a law firm that is qualified in this area of law that would perform their services according to the Attorney General rate.

Chairman Ernst questioned if Mr. Capo had the experience of working with Mr. Weinberger in past cases. Mr. Capo stated that he has worked with Mr. Weinburg and is comfortable with the services performed. Chairman Ernst called for a motion to secure legal services. Commissioner Hassinger offered a motion to retain the firm of Middleberg, Riddle & Gianna, seconded by Commissioner Heaton and unanimously adopted.

Mr. Capo stated that expenses were incurred with Mr. Keith Pyburg and the firm of Fisher & Phillips and requested approval to submit payment for expenses incurred. Commissioner Heaton requested Mr. Metzger review the costs and submit to the full Board that the work was reviewed and the costs are approved for the services rendered. Mr. Capo stated that the costs are minimal, in the amount of approximately \$3,500, and a recommendation to the full Board was needed to pay the costs incurred. Commissioner Heaton questioned if a motion was needed to suspend the rules to amend the Agenda. Mr. Metzger informed that this would be the procedure as a recommendation would be needed.

Commissioner Heaton moved to amend the Agenda to accommodate the motion to pay costs incurred by with Mr. Keith Pyburg and the firm of Fisher & Phillips, seconded by Commissioner Hassinger and unanimously adopted.

Chairman Ernst called for a motion to approve the recommendation to pay the fees of Mr. Pyburn. Commissioner Hassinger offered the motion, seconded by Commissioner Heaton and unanimously adopted. Chairman Ernst called for Public Comments and hearing none informed the next meeting of the Legal Committee is scheduled for Thursday, April 7, 2011 at 3:30 p.m.

Commissioner Hassinger offered a motion to adjourn, seconded by Commissioner Heaton and unanimously adopted. The meeting adjourned at 6:20 p.m.