

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
JUNE 9, 2011 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, June 9, 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 3:44 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 Michael Bridges
Commissioner Joe Hassinger
Commissioner Patrick DeRouen

FURTHERMORE PRESENT

Chairman Robert E. Smith Lupo

ABSENT

Commissioner Wilma Heaton

STAFF

Louis Capo, Executive Director
Sharon Martiny, Non-Flood

ALSO PRESENT

Gerard Metzger
Albert Pappalardo

APPROVAL OF AGENDA

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

APPROVAL OF PRIOR MINUTES

Commissioner DeRouen offered a motion to approve the minutes of the Legal Committee meeting of April 7, 2011, seconded by Commissioner Hassinger and unanimously adopted.

OLD BUSINESS

1) **By-Laws of Non-Flood Protection Asset Management Authority**

Chairman Ernst noted that this is the second time the draft By-Laws were to be addressed. The By-Laws were last reviewed in April at which time a number of Legal Committee members had conflicts. The Legal Committee meeting in May was cancelled. At this point, everyone has reviewed the By-Laws and we are able to make a recommendation to the full Board to go forward with the By-Laws

and make the necessary changes. Mr. Metzger made changes to the prior draft and highlighted what those changes were.

Mr. Metzger informed that new legislation has been incorporated into the By-Laws. References to Title 38 and Section 330.12 were covered for the purpose of this Board and the offices that were established. The Flood side's By-Laws were used as a base for this Authority's By-Laws.

In the Definition section, the Management Authority in Article 3 is described for purpose of functions. Appointment and Qualifications of the Authority Members, Powers and Duties of the Management Authority is taken directly from Title 38, Section 330.12. One addition that was made after the first meeting was to add a provision into Article 3, Section 6, Subsection 5 on Page 4 regarding a per-diem for commissioners as well as reimbursement of expenses. Language regarding reimbursement and travel expenses was taken directly out of the statute.

Types of Meetings and the procedures; in abiding by the open meetings law there are posting of agendas and compliance with the open meetings law. Mr. Metzger incorporated everything to insure this Board is acting in compliance with the open meetings law. Voting is voice voting only, no proxies. Emergency Meetings - (Article 3 Section 7); if an emergency meeting is called, the person who called the meeting is responsible for recording and/or making notes of the meeting.

Article 4 - removal of the three officers - will take a 2/3 vote of the members. Chairman Ernst addressed Article 4 Section 6 - Duties of the Executive Director - which gives the Executive Director authority to enter into contracts without having to come before the Authority. Mr. Metzger informed that the Executive Director has carte blanche authority up to \$15,000; \$15,000-\$25,000 the Chairman or Vice Chairman is notified for approval and then taken to the full Board. The Executive Director shall give a report on any contract that is signed.

Mr. Capo advised that at each Finance Committee meeting the check register would be produced for the previous month which will reflect every check that was cut. Mr. Metzger stated that this report would go to the Authority at its meeting for the Finance Committee.

The chairman is in control of the appointment and removal of committee members because of the number of people on this Board. Chairman Lupo questioned the number of members that represent a meeting of the Board. Mr. Metzger stated that any member of a committee can sit in on any other committee and this would not constitute a quorum. If two members of a committee met with Chairman Lupo it will not violate the open meetings law because he is not a member of the committee. Mr. Metzger stated that if two committee members met together with the Chairman, who was a member of the Committee that this would be a potential problem.

Mr. Pappalardo questioned if a meeting requested by Chairman Lupo to inspect the Levee District's real estate assets would come under the open meetings law. A bus was to be engaged for a drive-around look at all of the assets. Mr. Metzger informed that would represent a quorum so there is concern regarding all members of the Authority on a bus together. Mr. Pappalardo suggested we advertise the inspection tour as a public meeting in accordance with the open meetings law. The bus that is retained has 19 seats. There are 14 members of the board leaving no room for the public or the press. Mr. Metzger suggested calling Kathleen Allen, Chief Counsel at Ethics, for her opinion. This law is strict and you definitely want to be in compliance with it. Chairman Ernst called for a motion to recommend the By-Laws, subject to the minor corrections, to the full Board for approval. Commissioner Hassinger offered the motion to recommend

the By-Laws to the Full Board, seconded by Commissioner DeRouen and unanimously adopted.

NEW BUSINESS

Mr. Capo advised that he is scheduled for two court appearances along with Mr. Pappalardo for Monday, June 13, 2011 to testify in the Jay Napolitano lawsuit involving the AT&T platform in Lake Vista. After Hurricane Katrina residents were looking for telephone communications. The Board gave AT&T servitudes for several different sites. The platform in Lake Vista was placed in Lot 36-C. This is one of the main parks, however a resident adjacent to the park claims the platform has diminished and devalued his property. Bell South offered a settlement and Mr. Napolitano declined that settlement. Mr. Napolitano inquired if the Authority was willing to move the platform to another location agreeable with Bell South. Bell South advised that this would be too expensive and elected to leave the box where it is. Mr. Pappalardo and Mr. Capo are subpoenaed regarding how Lot 36-C was valued when the previous Board entertained offers and bids on that property. Mr. Metzger informed that in the Pre-Trial Order, issues need to be identified. Jay Napolitano sued the Levee District and Bell South claiming that Lake Vista building restrictions were violated. In the Pre-Trial Order inserts there was no issue claiming damages against Orleans Levee District, the Management Authority or the Division of Administration. Mr. Metzger will move that the action be dismissed because no issues were raised in the Pre-Trial Order. This is a judge trial in Civil District Court with Mr. Curtis and Mr. Metzger representing the Orleans Levee District.

Chairman Ernst noted that he was copied with a lawsuit filed 2 days ago. Mr. Metzger informed that this is the *Kindred* lawsuit which arises out of a new flood wall being constructed at the marina. The plaintiff is claiming the vibration is damaging the property. Chairman Ernst commented that this will be the model for many lawsuits to be filed arising out of construction and the Authority is going to be in the middle of these lawsuits. Mr. Metzger advised that in the document to gain entrance to build the permanent pump stations, the Corps' did not agree to hold the local sponsor harmless but they waived their sovereign immunity. It just waives it, it does not exonerate the Authority. Chairman Ernst noted that if the Authority is sued we will have to have to defend it and there is the issue of a \$25,000 deductible.

1) Discussion of the cooperative endeavor agreement between Flood and Non-Flood divisions of Orleans Levee District for the maintenance of Lakeshore Drive.

Chairman Lupo informed of an agreement by the Flood side to enter into a cooperative endeavor agreement to fund the maintenance of Lakeshore Drive to a maximum of \$700,000. The Authority has cut the police from the budget and the Flood side has agreed to take over some police functions. The Flood side committee has recommended 24 policemen which may be negotiated. There are 105 miles of levee and over 100 flood protection structures. They may reconsider and take all of them. Moving forward we've gotten a verbal commitment from the Chairman and a member of the Flood Board to lobby that when their millage comes up that we go to the city and apply for 1 proposition that has 2 millages. That becomes a permanent revenue stream to do things that are obligations of the Orleans Levee District. The agreement for Lakeshore Dr. is for two years and the Flood side has the right to review it. Non-Flood will do the work and we submit invoices which the Flood side will pay. The Flood side is doing this because of tremendous pressure from our legislative delegation. They understand this situation better than the government. The Flood Board has tunnel vision and thinks only about their flood protection. Unfortunately there is a bigger picture that has to be addressed.

Commissioner Bridges questioned if both of the bills were deferred. Chairman Lupo advised that there were three bills: one that was \$3.5 million out of General Fund, one from Senator Morrell that requires the Flood side to put in reserve \$20 million for damages that might be caused to the surrounding neighborhoods resulting from the pump stations and one from Rep. LaRousso to have 20% of the slip fund money go to this Authority. He took that part out with the understanding that this verbal agreement that Chairman Doody stated on the record under oath that is what he was going to do. This is the same bill that has the 20/80 split which is still in there. 20% goes to the litigants if we would sell and this Authority would keep 80% if something is sold. But we assured them that nothing is being sold because that is not what you do. When the zoo was hit nobody said to sell the animals and sell the zoo; they went out and they voted for a millage and turned it into something spectacular. It's the same kind of assets we have here. You don't sell these things because they were destroyed by the storm, you put money into them and later on they do generate money for the Flood side. But there is no way they are going to generate money for the Flood side in the condition they are in right now.

Commissioner Ernst addressed the cooperative endeavor agreement which is going to be negotiated stating that he wants to make sure that the Board is not giving up our authority to manage and have responsibility for the Non-Flood assets. The Flood side cannot spend a nickel on anything that isn't classified a flood asset. The Flood side convinced their Board that space between the back of the seawall and the toe of the levee (Lakeshore Drive) is a flood asset. It took 30 to convince the Corps of that. The Flood side can claim that for their purposes but it doesn't change the Memorandum of Understanding, that requires this Authority's agreement. Chairman Lupo stated that with the Flood side, everything is a two year funding deal. Commissioner DeRouen stated that the Flood side has agreed they would not alienate or encumber any part of Lakeshore Drive. Chairman Lupo informed that at one point, the Flood side said they did not want things put back into commerce along Lakeshore Drive, such as the Mardi Gras Fountain, that Flood side may have to take over the responsibilities for some day. This Authority will do what is needed with Non-Flood money such as putting the fountain back into the shape in which it needs to be. Mr. Lupo informed that he will meet with the Flood side's attorneys and Mr. Metzger and make sure that all of these concerns are correct in their resolution so this Authority can work from the resolution to the cooperative endeavor agreement.

ANNOUNCE NEXT LEGAL COMMITTEE MEETING

The next meeting of the Legal Committee is scheduled for Thursday, July 14, 2011 at 3:30 p.m.

ADJOURN

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

The meeting adjourned at 4:34 p.m.