

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
JULY 14, 2011 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, July 14, 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 3:30 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 Patrick DeRouen
Commissioner Wilma Heaton

ABSENT

Commissioner Joe Hassinger
Commissioner Michael Bridges

STAFF

Louis Capo, Executive Director
Sharon Martiny, Non-Flood

ALSO PRESENT

Gerard Metzger – Legal Counsel
Albert Pappalardo

APPROVAL OF AGENDA

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

APPROVAL OF PRIOR MINUTES

Commissioner DeRouen offered a motion to approve the minutes of the Legal Committee meeting of June 9, 2011, seconded by Commissioner Heaton and unanimously adopted.

Chairman Ernst addressed the Agenda consisting of the By-Laws which were addressed at length in the April Legal Committee meeting. There were a number of changes made following the April meeting, however, due to a lack of quorum in May the meeting was cancelled. Commissioner Hoffman made recommendations which have been incorporated. Everything has been adequately addressed in the prior meetings and the committee is ready to make a recommendation regarding the By-Laws to the full Board. Chairman Ernst requested Mr. Metzger to note the changes for the record that have been made to the last draft incorporating what Commissioner Hoffman requested.

OLD BUSINESS

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

Mr. Metzger informed that Commissioner Hoffman itemized six recommendations, five of which have been incorporated into the By-Laws. The recommendation not incorporated dealt with having the Chairman of the Board as a member of each committee which would pose an open meetings law problem if the Chairman of the Board met with two commissioners on the same committee. Revisions requested by Commissioner Hoffman are included in Article 4, Section 6.1.C where the Authority Chairman or Executive Director can enter into contracts without a resolution. For contracts under \$15,000 no approval is required; between \$15,000-\$25,000 written approval is required from the Chairman or the Vice-Chairman of the Management Authority. Regardless of whether it was \$15,000 or \$25,000 it has to be in the budget. This does not require ratification, just a notification to the full Board. The Executive Director shall give a report on any contracts that he enters into at the next Finance Committee meeting who will then report it to the full Board via the minutes under the Finance Committee report.

Commissioner DeRouen questioned if the Chairman of the Board can make a quorum during a committee meeting. Mr. Metzger informed the Chairman of the Board could not make a quorum because he is not a member of the committee. The Chairman may participate at meetings, listen and discuss issues, and vote but he cannot make a quorum. This is being done so he would have the opportunity to meet with two committee members and not be in violation of an open meetings law. Mr. Capo stated that having the Chairman as a standing member of all committees complicates matters if there is something that needs to be discussed prior to a committee meeting. This was the only recommendation by Commissioner Hoffman that was not included.

Mr. Metzger informed that the Police Committee was deleted because the Management Authority does not have that responsibility any longer. Commissioner Heaton suggested having an HR or Personnel Committee. Mr. Capo informed that if personnel matters were discussed, 24 hours notice is required to the employee with the employee having the option of an executive session. Currently, there is a hiring freeze in place and a request must be made to the Finance Committee for a position. Mr. Capo will present in the August meeting a complete organizational structure with employees, staffing and future needs of staffing which will be sent to the Finance Committee. Mr. Capo suggested forming a policy committee and informed that we are still following the rules and regulations under the Orleans Levee District. When action is taken against an employee, the employee has certain rights. There is a grievance process outlined and set forth by the Civil Service. The policy rules and procedures are in need of change to bring them more within this Authority's needs. Some things such as the drug policy and harassment policy will not be changed. Commissioner Heaton stated the Executive Director's job is to implement the policy of the Board and he can't do that if other people have different perceptions of what the policy is.

Mr. Metzger continued with the By-Laws and addressed the last revision authorizing the Executive Director and one employee of the District to have check signing authority which will be established by resolution of the Board. Article 6, Section 3, states all checks will be signed by the Executive Director and one of the following: an Authority member or an employee of the District or by resolution of the Authority. Mr. Capo informed that he has the authority to sign checks along with Mr. Dixon and the Chairman of the Finance Committee. The Airport Director retired so we need to remove him from the check signing authority. Any check over \$200 requires two signatures.

Commissioner DeRouen questioned if the Finance Committee reviews the general ledger disbursements. Mr. Capo informed this will be required starting in August wherein the disbursements will be reviewed consisting of all checks issued for the month of July. There are two checking accounts: a payable checking account and a payroll checking account along with a LAMP account (Louisiana Asset Management Pool). The FEMA account shows money that enters into the FEMA account and what goes out. To transfer money Ms. Wagener submits a transfer form with Mr. Capo's signature that lists the account the money is going out of and the incoming account. The Finance Committee regularly will question what monies are in certain accounts and will review the accounts.

Commissioner DeRouen questioned if there was a yearly audit performed. Mr. Capo informed that an audit is performed each year and the Authority is currently in that process with Silva, Gurtner & Abney, who were approved by the State Legislative Auditor. The auditors review all accounts, especially FEMA, since that is federal money. The auditors also review the FAA rules, which is a single audit act (A-133) to make sure that those federal funds are accounted for.

Mr. Metzger noted an auditing revision requested by Commissioner Hoffman, in Section 4. Commissioner Hoffman requested notation in the body of the rules that the audit is combined with the audit of the Flood side. The auditor shall be the legislative auditor or certified public accountant or firm of certified public accountants as required under Title 38, Section 30.12. Each year there is an audit and audit comment process wherein if the Authority did something wrong, an audit comment is required to explain what happened. Mr. Capo informed that the Silva, Gurtner & Abney's auditor in charge is Becky Hammond who was with the firm who did our first audit so she is very familiar with the process.

Mr. Capo informed that one audit report is issued under the Southeast Flood Protection Authority. There is East Jefferson, Orleans Levee District (further split into Non-Flood and Flood) and Lake Borgne. There is an audit on all four of those components which is then rolled into one governmental fund. It is hard to break out our policy because it is combined with the Flood side. The Airport, New Basin Canal and the marinas are all separate. Once they do the audit of all those four different components they roll that into the Southeast Flood Protection Authority. Commissioner DeRouen made a motion to forward the By-Laws to the full Board, seconded by Commissioner Heaton and unanimously adopted.

NEW BUSINESS

1. Gerard G. Metzger contract renewal for fiscal year 2012

Mr. Capo informed that Mr. Metzger's contract is up for renewal. In January all professional service contracts were put in line with the current fiscal year. The contract was approved for Mr. Metzger's firm for January through June 30, 2011. The contract is expired and we are asking for approval to renew Mr. Metzger's contract for the current fiscal year from July 1, 2011 through June 30, 2012. Mr. Metzger's litigation rate will remain the same (\$150 per hour) which is less than the Attorney General's rates. The non-litigation rate is \$120 per hour which has been his ongoing rate with the Authority. Mr. Capo noted that in the budget approved in March of this past year there is \$140,000 assigned to Legal Services. In the past, Mr. Metzger's firm averaged approximately \$220,000-\$240,000 per year. Chairman Ernst stated that the bottom line in the budget as far as approving the contract is \$140,000, we have to get the contract in line with the budget and the rates are going to remain the same.

Mr. Capo informed that the budget will have to be revised. There is the \$700,000 coming in from the Flood Authority and there is also the police matter. At some point within the next 60-90 days the budget has to be revised and if we need to amend Mr. Metzger's budget going forward we would do so at that time. The request to amend the budget would be made through the Finance Committee.

Since the Legal and Finance Committee is on the same day, both agendas can be noted with the budget revision. Mr. Capo stated that the requirements placed on Mr. Metzger's firm are far greater than the prior Board. Mr. Metzger is required at every meeting and we rely on Mr. Metzger on a daily basis. The \$140,000 will not carry us through the full fiscal year.

Commissioner Heaton noted that based on experience of the District, legal expenses are going up, not down which is an issue for the Finance Committee that would result in an amendment and an adjustment to the budget. Commissioner DeRouen stated for the record that Mr. Metzger's rates are extraordinarily low and Mr. Metzger's firm does a very good job which is evidenced in the day to day work product that exists for the committees and the Board. I would like to make that observation and comment to the full Board that going forward, I think the Authority needs to do something about the rates. Commissioner Heaton stated that the Authority has two things going for us: a rate far below the Attorney General approved rate and a rate for someone who has a wealth of institutional knowledge and history that does save us money and those two factors should be acknowledged.

Commissioner DeRouen questioned why there was a different rate for transactional and litigation. Mr. Metzger informed when this was enacted, this was the concept in 2000. Mr. Metzger noted that his rate for private practice is \$175 per hour and stated for the record that he really appreciates the work and working for the Authority. I love the work that I get from the District and this is the law that I want to practice. Chairman Ernst concurred with Commissioner DeRouen and commented that it would be appropriate to adjust Mr. Metzger's transaction rate at the appropriate time to catch up with the litigation rate. We are getting a good value for what the Authority is paying for. Mr. Capo informed that he will bring this to the committee at the appropriate time and when the budget increases. Chairman Ernst asked for a motion to approve Mr. Metzger's contract as it previously was budgeted at \$140,000 per year. Commissioner DeRouen made a motion to approve Mr. Metzger's contract, seconded by Commissioner Heaton and unanimously adopted.

ANNOUNCE NEXT LEGAL COMMITTEE MEETING

The next meeting of the Legal Committee is scheduled for Thursday, August 4, 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.