

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
SEPTEMBER 8, 2011 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, September 8, 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 3:47 p.m. and led in the Pledge of Allegiance.

The roll was called by Mr. Capo which did not constitute a quorum until the arrival of Commissioner Heaton at which time the Agenda was adopted and the minutes were approved.

PRESENT

Chairman Greg Ernst
Commissioner Wilma Heaton
Commissioner Joe Hassinger

FURTHERMORE PRESENT

Chairman Robert E. Smith Lupo

ABSENT

Commissioner Michael Bridges
Commissioner Patrick DeRouen

STAFF

Louis Capo, Executive Director
Sharon Martiny, Non-Flood

ALSO PRESENT

Gerard Metzger – Legal Counsel
Albert Pappalardo
Nick Asprodites

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 Legal Committee meeting of July 14, 2011, seconded by Commissioner Heaton and unanimously adopted.

Chairman Ernst advised that due to a lack of quorum the meeting was informational only until a quorum was obtained.

NEW BUSINESS

1) Commercial Land Lease policy concerning government mandatory evacuations

Mr. Pappalardo advised that the final draft of the lease with Lakeview Landings was under way. There were concerns regarding the property

being outside of flood protection for which Lakeview Landings will take full responsibility. There was a concern regarding hurricane situations making the property inaccessible with respect to what happens with the rent. The Authority cannot abate rent under state law and under no circumstances would rent be abated. The previous Board of Commissioners adopted a policy allowing a deferral of rent for those tenants that were impacted by the waters outside of the flood protection during Hurricane Katrina. The prospective tenant requested a similar protection in the lease. Mr. Metzger, Mr. Capo and Mr. Pappalardo believe it is good policy to place that protection in the lease and the following clause should be adopted as a policy of the Authority to be included in leases moving forward on properties which could be impacted outside of flood protection where there are major investments by tenants. The following is the clause which would be entitled "Governmental Ordered Evacuation" as follows:

If at any time during the term of this lease or any Option Term, there is a government mandatory evacuation order for the geographic region in which this property is located, which lasts for more than seven (7) days and the Lessee sustains damages, due to weather or other civil emergency, the Lessee shall be entitled to request a deferral of the quarterly rent due under the terms of this lease. Said request for a rent deferral under these circumstances shall not be unreasonably denied. In no event shall the payment of the deferred rent exceed a period of one hundred eighty (180) days from the Governmental-Ordered evacuation.

This concept was used for tenants along the New Basin Canal who were out of business for a substantial period of time after Hurricane Katrina. This clause gives commercial tenants and lenders the assurance that the Board will not immediately accelerate the lease due to late rent payment. Tenants must request a deferral and that deferral can be measured by the Authority as to the damages incurred. This is not an abatement, merely a deferral which mirrors what was done during Katrina. This policy could be amended in leases for existing tenants. Mr. Metzger added that the landlord now has absolute rights to say "yes" or "no". This provision will establish a conditional right of approval. Commissioner Ernst suggested the rent be deferred for 180 days only. Mr. Pappalardo stated if the city is not repopulated after 180 days the tenant would pay back the rent due and request another deferral.

Upon Commissioner Heaton's arrival, Chairman Ernst called for a motion regarding Item 1 under New Business, Commercial Land Lease policy concerning government mandatory evacuations.

Commissioner Hassinger offered a motion to recommend to the full Board the Commercial Land Lease policy concerning government mandatory evacuations, seconded by Commissioner Heaton and unanimously adopted.

2) Amendment to By-Laws of Non-Flood Protection Asset Management Authority regarding emergency situations

Mr. Metzger advised this item is to insert in the Authority's By-Laws an emergency delegation of authority to the Executive Director. The definition of "emergency" was taken out of the public bid law. Notice of this amendment will have to given to all Commissioners days before a vote is taken for amending the By-Laws. This will come before the Board in the October meeting if this committee recommends this revision.

The second item addresses with the same article in the By-Laws, Article IV, Section 6. The amendment previously discussed regarding emergencies is going to be new Subsection “E”. We are adding Section “E” into Article IV, Section 6(1). The motivation for making this amendment stems from repairs to a sewerage line that had ruptured at the Airport and the Executive Director had no authority to act upon.

Chairman Ernst noted for the record that any amendment to the By-Laws would take 20 days in order for the amendment to be sent to each of the Commissioners. The amendment to the By-Laws will be addressed at the Full Board meeting in October, 2011.

Mr. Metzger added that prior to the meeting the language was discussed regarding the delegation of contractual authority to the Executive Director, under Article IV, Section 6(1), specifically Subsection C.

A unanimous roll call vote was taken to amend the Agenda to discuss Item 2 under New Business.

Mr. Metzger stated that this delegated authority to the Executive Director to enter into a contract up to \$25,000, but he cannot enter into a contract if there is not a line item in the budget. Chairman Lupu added that this Authority needs this flexibility for projects not in a line item budget for the Executive Director to act on. Mr. Capo added that between \$15,000 - \$25,000 he needed approval from the Chairman of the Board which then would be brought to the Finance Committee at the next meeting.

Commissioner Heaton offered a motion to recommend to the Full Board the amendment of the By-Laws regarding emergency situations, seconded by Commissioner Hassinger and unanimously adopted.

Mr. Metzger informed that the Executive Director would issue a letter to all of the Commissioners notifying the Commissioners of this committee’s recommendation and that this matter would be on the Agenda for the October Board meeting.

ANNOUNCE NEXT LEGAL COMMITTEE MEETING

The next meeting of the Legal Committee is scheduled for Thursday, October 6, 2011 at 3:30 p.m.

ADJOURN

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

The meeting adjourned at 4:34 p.m.