

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
APRIL 5, 2012 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, April 5, 2012 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 Stack
Commissioner Joe Hassinger

ABSENT

Commissioner Patrick DeRouen

STAFF

Louis Capo, Executive Director
Sharon Martiny, Non-Flood

ALSO PRESENT

Gerard Metzger – Legal Counsel
Albert Pappalardo – Real Estate Consultant
Ray Landeche

APPROVAL OF AGENDA

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

APPROVAL OF PRIOR MINUTES

Commissioner Hassinger offered a motion to approve the minutes of the Legal Committee meeting of March 8, 2012, seconded by Commissioner Stack and unanimously adopted.

EXECUTIVE SESSION:

Commissioner Heaton offered a motion to go into Executive Session regarding *Richmond v. Board of Commissioners*, seconded by Commissioner Ernst and unanimously adopted.

Upon returning from Executive Session Commissioner Ernst informed that no action or votes were taken.

NEW BUSINESS:

Commissioner Heaton offered a motion to add an item to the Agenda to consider the settlement proposed in *Richmond v. Board of Commissioners*, seconded by Commissioner Hassinger and unanimously adopted.

Commissioner Heaton offered a motion to recommend the Board approve a full and complete settlement of the litigation, recommended by counsel, for a two year extension of the lease with Richmond, seconded by Commissioner Hassinger and unanimously adopted.

OLD BUSINESS

1) Tax sale issues involving Orleans Marina Boathouse W-15

Gerard Metzger, Legal Counsel, informed the Committee that this is a situation with one particular boathouse, but there are two other boathouses in the same situation. In the Orleans Marina property taxes are assessed by the City on the improvements, on the boathouses, they are real property. Jack Dewald was the tenant of Boathouse W-15 who held a long term lease. Mr. Dewald died approximately one year ago and the property was adjudicated to the City for taxes in 1979. The boathouse has a balance due in the amount of \$161,416.24 owed to the City of New Orleans for taxes with interest accumulating. The City has an incomplete title from the adjudication of the property in 1979.

Commissioner Stack questioned how the taxes got to this point. Mr. Pappalardo informed that after Mr. Dewald died his family did not want the lease so the rent was not paid. Mr. Dewald paid the rent until he died but did not pay taxes on the improvements. The Authority's portion of the real estate is not taxed, the land and water bottoms are not taxed.

Mr. Metzger informed that the City has been sitting on this property for 33 years; however, the improvements reverted back to the Levee District, which now has ownership of the improvements, since Mr. Dewald did not exercise his option to extend the lease. Mr. Dewald's heirs renounced the succession which is insolvent. The City advised the Authority to have the property appraised and the City would settle for the fair market value, which would be a large amount of money.

Commissioner Heaton advised the Committee of a Judgment in the amount of \$300,000 awarded to the Authority against the City of New Orleans. The Judgment is a result of a lawsuit filed by the Authority for ad valorem tax proceeds collected by the City of New Orleans, which taxes were never turned over to the former Board. Mr. Metzger revived the judgment within 10 years and it is again approaching revival. Commissioner Heaton suggested working out a set off with the City to swap the boathouse for the \$300,000 judgment that the City never paid. The taxes collected were for a Non-Flood assets and the Non-Flood Authority is proposing a set off with the City.

Mr. Metzger will review the issue as the Authority may be able to work out a set off. This may have been included in the Memorandum of Understanding with the DOA. The Judgment will be reviewed to see where the Authority stands, if the Judgment is enforceable, and when it needs to be revived.

Chairman Ernst stated that this was an option definitely worth pursuing.

Mr. Metzger added that there are other options the Authority can pursue to get the property back in commerce such as having the City sell the property at another tax sale. The purchaser would own the improvements which are on the Authority's property. When the property is purchased at the tax sale, the tax liability will be extinguished and a new lease could be signed. Chairman Ernst noted that if the fair market value is greater than \$161,000, it could be purchased at the second tax sale.

Mr. Pappalardo advised that this is the best boathouse property that the Authority ever came into ownership of. Martha Griset, Real Estate Administrator and Property Manager of the City, recognizes that the Authority wants to get the property back into commerce and advised of a new law that should allow her to expedite the process by avoiding a second tax sale and going directly to the City Council. If Ms. Griset can utilize that law it is possible that it may be accomplished in approximately 4 months. If the new law cannot be applied it may take as long as one year. If there is a lien on the property, Ms. Griset is

entitled to it because Mr. Dewald should have been paying taxes on the improvements. Ms. Griset is an attorney in addition to the City's Property Manager. Commissioner Heaton advised that the City is trying to pass something in order to clean up the blight and expedite the tax issues.

Commissioner Stack addressed the new law and questioned how the City would get their money because that is what they are after. Mr. Pappalardo advised that the City would put the property up for another tax sale. The City would be selling the improvements, but there is no valid lease. The City needs us and we need the City as this would be a sale contingent upon the purchaser signing a lease with the Authority.

Mr. Pappalardo added that the Authority wants to get the underlying lease, but Ms. Griset may have the first lien on the property. The Authority is attempting to get the property back into commerce, but there are other issues that first must be addressed. The major issue is that there is one electric meter and one water meter on the two properties which would have to be separated. Ms. Griset is with the City, which owns the Sewerage & Water Board, and it is possible that the City could provide a water meter so each tenant would have separate meters. Mr. Capo advised that the cost to separate the electric meters is in the \$6,000 range.

The second issue is that Mr. Dewald also defaulted on Boathouse W-14. The estate was leasing the boathouse prior to Whitney acquiring the property at a foreclosure sale. Whitney has been the tenant for 2-3 years and has been paying rent on Boathouse W-14 since Mr. Dewald's death. The boathouse is owned by Whitney through an auction and Whitney has a valid lease. There have been recent discussions with Whitney regarding extending the lease to realize a sale so Whitney can get out of this deal. Boathouse W-15 has reverted and Whitney is paying the rent on W-14.

In discussions with Mr. Capo and Mr. Pappalardo, Mr. Metzger suggested a short term lease for Boathouse W-15 as the property is presently vacant. The City has no responsibility under the Revised Statutes regarding the property. The City is sitting on the property and protecting their interest with what, in essence, is a lien. The Authority could partner with the City and put the property up for rent.

Mr. Pappalardo suggested approaching the City and advising that if the Authority leased the property what is received for the improvements would be remitted to the City and the Authority would keep the amount for the water bottoms and the ground. If the Authority approached the City with this proposal the City would realize that they are getting something out of it. If the Authority leased the property without notifying the City and the City suddenly moved ahead with a tax sale, the Authority would have a short term, dislocated tenant which could possibly create bad publicity that the Authority does not need.

Chairman Ernst requested that Mr. Metzger keep the Committee informed on this issue and prepare an update on the matter for the next Legal Committee meeting on May 1, 2012.

ANNOUNCE NEXT MEETING

Commissioner Ernst announced the next Legal Committee meeting is scheduled for Thursday May, 3, 2012 at 3:30 p.m.

ADJOURN

Commissioner Stack offered a motion to adjourn, seconded by Commissioner Heaton and unanimously adopted. The meeting adjourned at 4:23 p.m.