

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY  
LEGAL COMMITTEE MEETING MINUTES  
NOVEMBER 7, 2013 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, November 7, 2013 at 3:30 p.m., in the Lake Vista Community Center, 2<sup>nd</sup> 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.

Chairman DeRouen called the meeting to order at 3:43 p.m. and led in the Pledge of Allegiance. The roll was called and a quorum was present.

**PRESENT**

Chairman Pat DeRouen  
Vice Chair Wilma Heaton  
Commissioner Michael Stack  
Commissioner William Hoffman

**STAFF**

Louis Capo - Executive Director  
Sharon Martiny - Non-Flood

**ALSO PRESENT**

Albert Pappalardo – Real Estate Consultant  
Gerard Metzger – Legal Counsel  
Steve Nelson – Stuart Consulting  
Alton Davis – RCL

**APPROVAL OF AGENDA**

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

**APPROVAL OF PRIOR MINUTES**

Commissioner Hoffman offered a motion to approve the September 5, 2013 Legal Committee meeting minutes, seconded by Commissioner Stack and unanimously adopted.

**OPENING COMMENTS**

Chairman DeRouen did not have any opening comments.

Mr. Metzger advised that a two-thirds roll call vote was needed to go into Executive Session. For the record, the reason for this Executive Session is set forth in the Agenda which is required under the Open Meetings Law in Title 42 §16. Executive Session is allowed as this is a written threat of litigation that the Committee will discuss.

Vice Chair Heaton offered a motion to go into Executive Session, seconded by Commissioner Hoffman and unanimously adopted with a roll call vote.

**EXECUTIVE SESSION**

- 1) **Discussion of written demand and threat of litigation by Lakeview Landings, LLC on claims related to the development of Lot 2-E on Lakeshore Drive in New Orleans and lease with the Non-Flood Protection Asset Management Authority**

Chairman DeRouen stated for the record that no action was taken during Executive Session. The Committee requested additional documentation from the tenant regarding the amount of money spent and documentation that money spent was related to the unanticipated hidden defects as opposed to original project costs.

Vice Chair Heaton offered a motion to amend the Agenda to add a motion. Mr. Metzger advised that the motion is to recommend approval of a settlement with Lakeview Landings, LLC on claims related to unknown conditions on the leased premises subject to substantiation through cancelled checks, detailed invoices and an executed Affidavit. The motion also grants an extension of time to complete construction of the day store and fuel dock on the leased premises.

Vice Chair Heaton offered a motion to add the item to the Agenda, seconded by Commissioner Hoffman and unanimously adopted on a roll call vote.

### **NEW BUSINESS**

#### **1) Motion to recommend approval of settlement with Lakeview Landings, L.L.C. on claims related to unknown conditions on leased premises and for extension of time to complete construction of the day store and fuel dock on leased premises**

Mr. Capo advised that the extension date to complete construction of the day store and fuel dock is June 12, 2014. Chairman DeRouen noted that the documentation included only charges related to the unknown conditions of the leased premises. Vice Chair Heaton advised that an Affidavit would be obtained to attest to that.

Vice Chair Heaton offered a motion to recommend approval of the settlement and extensions of the completion date for the day store and fuel dock, seconded by Commissioner Hoffman and unanimously adopted.

### **OLD BUSINESS**

#### **1) Discussion regarding liquidated damages for the construction delay at the James Wedell Hangar**

Steve Nelson, Stuart Consulting Group, advised that the contractor, GM&R, is approximately 150 to 200 days beyond schedule based on the contract. GM&R advised that the Hangar will be complete early January, which is highly unlikely. The Hangar will be complete towards the end of the first quarter and liquidated damages will be reflected accordingly. GM&R was put on notice when the contract date was exceeded, but the bonding company has not been notified as GM&R continues to move forward. Three main items led to these delays: submittal of the steel building, GM&R had to get a second sub to fabricate the steel truss over the door and GM&R had to find a new supplier for the large steel tank for the fire suppression system after bids were submitted. These items are contractor and internal supplier-related issues. GM&R has had full crews at the site, but a number of issues came up. Liquidated damages are \$1,000 per day. The architect has a supplemental agreement and every day past the contract completion date additional services are tracked separately.

Commissioner Hoffman advised that the Authority has costs that go against the liquidated damage cost of \$1,000. It is not like the Authority is receiving free money. Costs will be paid with that \$1,000 because the Authority is incurring costs due to the delay.

Mr. Nelson advised that this is a FEMA reimbursed project and the Authority may have to enter into a settlement agreement or take the contractor into litigation to recoup that funding. As a reimbursement program, the costs have to be incurred first then reimbursed and then the Authority will have to take the contractor to court. Mr. Nelson informed that the retainage on this project is not physical dollars, it is a obligated project worksheet stating that the federal government will reimburse the Authority a certain amount of money. The PW acts as a Promissory Note from the federal government that states costs will be paid when money is expended.

Commissioner Stack noted that FEMA traditionally reimburses only the cost incurred due to the delay and advised to document and submit whatever fees are incurred. Mr. Nelson advised RCL's additional services will come to the Authority. The Authority has to advise the contractor and that amount is taken out of the liquidated damages assessed against the contractor. RCL is tracking hourly fees and Stuart Consulting time is currently under the FEMA cap.

Vice Chair Heaton addressed the police station property at Elysian Fields and informed the issue of the station being rebuilt at Elysian Fields is under review. The legal issue is that the Memorandum of Understanding (MOU) between the Flood and Non-Flood Authorities has the Non-Flood Authority with jurisdiction and management of that property. If the Flood Authority agreed to rebuild the police station the Memorandum of Understanding would have to be amended so, as requested, Mr. Metzger will review the language so this issue can be presented to the Flood Authority. The Flood Authority has jurisdiction over the police and it is possible that the property on Elysian Fields can be demolished and a new station rebuilt in that location which will cost approximately \$2 million.

Commissioner Hoffman suggested leasing the property to the Flood Authority for \$1 per year. Vice Chair Heaton advised that Mr. Metzger can review the matter and advise of the best approach to take. The Flood Authority will not agree unless the property is under Flood Authority control. Mr. Metzger advised that the Levee District owns the property. This Authority has to adopt a Resolution stating that management and control of that property will be transferred to the Flood Authority. Vice Chair Heaton noted that the property is dedicated in the MOU by an amendment which accomplished that. The MOU has been amended twice through the Division of Administration.

Vice Chair Heaton added that a decision has to be made regarding the old police station. From a public perspective a high profile police station would provide more security for the Airport and the community. There would only be a zoning issue for non-conforming. Mr. Pappalardo advised that a police station can be built anywhere, but there may be sensitivity within the community as to the design of the building. I am trying to get all of the facts together to present to the Flood Authority, which cannot be done until there is a consensus from the Non-Flood Authority. In providing due diligence, the Legal Committee will be advised of this issue.

Vice Chair Heaton stated that there is no motion today, but there would be a Board Agenda item. The Flood Authority is going to make a decision on the police station and this Authority has to something with the Elysian Fields property. The community needs a police station in that location for synergy with the Airport, Universities and with the security it could be a win/win situation.

#### **ANNOUNCE NEXT MEETING**

Chairman DeRouen informed that the next Legal Committee meeting is scheduled for Thursday, December 5, 2013 at 3:30 p.m.

#### **ADJOURN**

Commissioner Hoffman offered a motion to adjourn, seconded by Commissioner Stack and unanimously adopted.

The meeting adjourned at 4:28 p.m.