

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
SEPTEMBER 5, 2013 – 3:30 P.M.**

The Legal Committee meeting of the Non-Flood Protection Asset Management Authority was held on Thursday, September 5, 2013 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.

Chairman Scott called the meeting to order at 3:32 p.m. and led in the Pledge of Allegiance. The roll was called and a quorum was present.

PRESENT

Chairwoman Nyka Scott
Commissioner Michael Stack
Commissioner William Hoffman

ABSENT

Vice Chairman Patrick DeRouen

STAFF

Louis Capo - Executive Director
Sharon Martiny - Non-Flood

ALSO PRESENT

Albert Pappalardo – Real Estate Consultant
Gerard Metzger – Legal Counsel
Chuck Dixon – Marina Director
Steve Nelson – Stuart Consulting
Mike Gillen – South Shore Harbor Marina Tenant
Al Herrera – South Shore Harbor Marina Tenant
Brook Weber – South Shore Harbor Marina Tenant
Gail Materne – South Shore Harbor Marina Tenant
Karl Hudson – Orleans Marina Tenant
Ray Landeche - Lakeshore

APPROVAL OF AGENDA

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

Chairwoman Scott requested to amend the Agenda to discuss possible damages issues involving the Terminal Building. Commissioner Hoffman offered a motion to adopt the Agenda as Amended, seconded by Commissioner Stack and unanimously adopted. Mr. Metzger advised that a unanimous roll call vote was needed to add an item to the Agenda. After a unanimous roll call vote the item was added to the Agenda.

APPROVAL OF PRIOR MINUTES

Commissioner Hoffman offered a motion to approve the minutes of the Legal Committee meeting of May 2, 2013, seconded by Commissioner Stack and unanimously adopted.

OPENING COMMENTS

Chairwoman Scott advised that there were several things to cover on the Agenda as there has been no Legal Committee meeting in several months.

NEW BUSINESS

1) Discussion to determine if alternate/improved project funds due the Airport from FEMA could be utilized for other non-airport needs, projects or purposes.

Mr. Nelson advised that Mr. Pruitt contacted Andy Velayos and laid to rest the question regarding paying the Authority back for funds loaned to the Airport. Mr. Pruitt informed Mr. Velayos that the Authority has taken monies from alternate projects (Naval Reserve Facility) and put those monies into the Terminal Building. The Authority would like to request that monies from the Walter Wedell Hangar be used to pay back the money loaned from the Authority to the Airport. Mr. Pruitt submitted the question via e-mail to Mr. Velayos who agreed. Mr. Nelson stated that as a Civil Engineer that seems to put to rest the issue of whether or not you can utilize funding from Walter Wedell for other projects off of the Airport.

Mr. Nelson informed that those funds total approximately \$2.5-\$3 million. Of the \$2.5-\$3 million there is \$500,000 in NFIP penalties. Once Walter Wedell is utilized as an alternate, the Authority will be reimbursed that \$500,000 and the funds can be used for operating expenses. The remainder must be used for permanent projects under FEMA's alternate project policy. Funds could be used for work on the Marinas, Airport, Lakeshore Drive or the Lake Vista Community Center.

Mr. Nelson advised that these funds have an obligated PW so there is a base line. However, it will be approximately eight months before funds are available. Funding should be maximized in the PW to ensure the Authority gets as much as possible for the Walter Wedell Hangar. Projects will then be identified for those funds. At that point FEMA will give specific projections with specific dollar values on those projects.

Chairwoman Scott questioned how much money the Authority needs to be reimbursed for projects. Mr. Capo informed that \$11 million was submitted to the FAA, but that number will go up. Approximately \$7 million was FEMA monies and \$4-\$5 million from operations. Commissioner Hoffman questioned how the Authority would get the \$7 million from FEMA applied to those projects that the Authority loaned to the Airport. Mr. Metzger noted that the FAA advised the Authority could take money from an airport project that has a PW and move the money to a project off of the Airport. There is a PW on the Walter Wedell Hangar.

Commissioner Hoffman noted the Authority loaned funds from the Bally's settlement account to the Airport which were applied to Airport projects. The Bally's funds that were loaned for Airport projects should be put back into the Bally's fund. Mr. Nelson stated that if the Authority loaned monies to the Airport, FEMA does not care where it came from. When FEMA reimburses, the reimbursement can be used for anything.

Commissioner Hoffman questioned why the Walter Wedell Hangar money could not be put in the Terminal to pay back the Authority. Mr. Nelson advised that those monies were donor monies from the Naval Reserve facility, which was dedicated to a FEMA facility project.

Commissioner Stack questioned why the FAA had any authority over FEMA funding and why the opinion from Mr. Velayos is important. Mr. Metzger advised Mr. Nelson deals with FEMA not the FAA. The Authority will be taking FEMA funding going into an Airport project, putting those funds into the Terminal and backing that out for use in the operating account for another project. The concern was that the FAA would assume this was revenue diversion or taking money off of the Airport, which the FAA is very touchy about. The question was asked up front out of an abundance of caution. Commissioner Stack agreed with Commissioner Hoffman that money put into the Airport facility should be put back in the Bally's account. I don't know why it would be restricted at this point because that is taking money out of the Authority and there are no FEMA funds involved.

Commissioner Hoffman added that all funds put into the Airport came out of the Bally's account as those were the only funds the Authority had. Now the Authority is attempting to learn how the Airport can repay that loan. Mr. Capo advised that losses on the Airport came out of the Bally's account.

2) Discussion of the standard lease and leasing procedures for any spaces leased in the Airport Terminal Building

Chairwoman Scott noted that standardized leasing was suggested at the Airport Committee so everybody is treated fairly. Mr. Metzger advised that he is preparing with Mr. Pappalardo a standard building office lease. The lease will be a net lease. The Authority will take care of repairs as opposed to the lease being a triple net lease. There are currently three leases being negotiated thus far.

Al Pappalardo, Real Estate Consultant, advised of two standard leases; one for the Restaurant and one for office tenants in the Terminal Building. Pass throughs are included in Terminal leases for energy and insurance and can increase or decrease each year depending upon the actual costs. Issues still to discuss are the opening and closing times for the office building and how that will work with the restaurant in the event of a special party. Security and janitorial service should also be provided for tenants in the Terminal Building.

There is approximately 13,000 s.f. of leasable office space in the Terminal Building. The three prospective tenants account for approximately 20% of that 13,000 s.f. If all three leases are signed, revenues at the Airport will be increased by \$51,600 per year. A meeting will be scheduled with the Legal Committee Chairwoman to discuss marketing the remaining 80% office space to a commercial agent community. Using a commercial agent will require entering into a listing agreement so agents can be paid commissions for any tenants that are placed in the Terminal Building.

Mr. Pappalardo advised that Terminal Building lease rental rates are based on rates of Class "A" buildings such as the Entergy Center and Poydras Center who advertise between \$17.50 and \$19.00 per s.f. The cheapest lease in the Terminal Building, with the pass throughs, is \$17.39. The \$17.39 does not include build-out costs. The most expensive leases are \$24.89. There is no tenant allowance or build-out allowance.

3) Discussion regarding Ad Valorem Tax Assessment on Boathouse N-28

Mr. Metzger advised that the Authority received a tax bill in December of 2012 from the City of New Orleans for improvements on Boathouse N-28. Boathouse N-28 is the former Board's rescue boat site and the District owns the improvements at that site. Boathouse N-28 was leased in the 1990's. Assessor Williams began assessing taxes on the improvements and noted that the boathouse was not used for public purpose because it was leased to a private individual. The amount of the tax bill is \$3,623.13 and the boathouse will shortly be sold at a tax sale. A Resolution was prepared in 2012 authorizing the institution of legal proceedings to question the legality of the tax. This was subsequently postponed and the matter remains unresolved. The Notice of Tax Sale is September 10, 2013.

The usual way to attack a tax is to pay under protest and sue within 30 days. This is a governmental entity that is a taxing authority and this is a legality challenge, not an amount challenge. Mr. Metzger suggested filing a Declaratory Judgment suit, ignore paying the tax and have the tax rescinded and held unconstitutional. The chance of success is 90% based on the issue of whether this is exempt under the Louisiana constitution because this is for a public purpose.

Chairwoman Scott noted that if the bill is paid under protest, collection from the City can be very difficult, especially if we have three years to redeem the property. Mr. Metzger advised that the Authority has three years to redeem the property if it is sold to an individual. If the Boathouse is sold to the City of New Orleans there is no three year limitation and it could be redeemed at any time.

Mr. Metzger recommended filing a lawsuit to question the entire tax issue. This issue was last discussed in January of 2013 and a Resolution was prepared. The Resolution never passed because the matter was postponed indefinitely.

Chairman Scott requested this be put on the Agenda for the next full Board meeting. Commissioner Hoffman offered a motion to recommend the Board start legal proceedings on the tax issue, seconded by Commissioner Stack and unanimously adopted.

4) Discussion regarding issues with contract for Terminal Construction

Mr. Nelson advised that currently the contractor is approximately 160 days plus past the contract completion date. A Fire Marshall walk through is slated for September 23, 2013. It will be early October when the Authority has a facility that is considered finished. The Terminal looks really good, but there are key components that need to be completed prior to the building being issued a Certificate of Occupancy. No final payment has been issued to Belou-Magner. A 5% retainage was withheld per their contract. In addition, we have withheld liquidated damages in an estimated amount with a completion date in September or early October. Belou-Magner has liquidated damages on top of retainage that total approximately \$600,000 to date. As soon as Belou-Magner got to their legal completion date they were notified in writing, Belou-Magner's bonding company was notified on multiple occasions and every change request was reviewed. Belou-Magner has been provided with notification of what was awarded and what was denied throughout the course of the project.

ANNOUNCE NEXT MEETING

Chairwoman Scott informed that the next Legal Committee meeting is scheduled for Thursday, October 3, 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 4:01 p.m.