

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
MINUTES OF THE LEGAL COMMITTEE MEETING
THURSDAY JANUARY 8, 2015 – 3:30 P.M.**

The regular meeting of the Legal Committee of the Non-Flood Protection Asset Management Authority was held on Thursday, January 8, 2015 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 DeRouen called the meeting to order at 3:37 p.m. and led in the Pledge of Allegiance.

The roll was called which constituted a quorum.

PRESENT:

Chairman Patrick DeRouen
Comm. Thomas Fierke
Comm. Leila Eames
Comm. Anthony Richard

STAFF:

Cornelia Ullmann - Chief Operating Officer
Sharon Martiny – Administrative Assistant
Dawn Wagener – Comptroller

ALSO PRESENT:

Gerard Metzger – Legal Counsel
Charles Curtis – Legal Counsel
Steve Nelson – Stuart Consulting Group
Jim Martin – DEI
Walter Baudier – DEI
Richard Lambert – RCL
Alton Davis - RCL

OPENING COMMENTS

None

ADOPT AGENDA

Comm. Richard offered a motion to adopt the Agenda, seconded by Comm. Eames and unanimously adopted.

APPROVAL OF PRIOR MINUTES

Comm. offered a motion to approve the Airport Committee minutes of July 8, August 5, October 7 and November 20, 2014 along with the Legal Committee minutes of April 3, 2014 (*in globo*), seconded by Comm. Cantrelle and unanimously adopted.

The COO requested the Old Business and New Business be heard before Executive Session.

EXECUTIVE SESSION

The COO advised that the first matter is the Richard C. Lambert claim for additional compensation under Cost Curve A. The Authority has received a formal demand.

Red Dot Buildings, Inc. v. GM&R Construction. The Authority was served with a federal lawsuit regarding this matter.

The last item is possible recourse against Belou-Magner or Sharp Electrical related to the fire suppression system at the Terminal Building. As the item relates to potential litigation it qualifies for Executive Session.

Chairman DeRouen offered a motion to go into Executive Session, seconded by Comm. Fierke and unanimously adopted.

1) RCLC claim for additional compensation (Cost Curve A). Formal demand received. La. R.S. 42:17(A)(2)

Additional information was requested from Staff and Richard Lambert's firm. The matter will be placed on the February 2015 Airport, Legal and Finance Committee Agendas and the Board meeting Agenda.

2) Red Dot Buildings, Inc. v. GM&R Construction Company, Inc. et al Case No.: 14-02803; Div.: R Mag. 4

Mr. Metzger was instructed to file responsive pleadings.

3) Discussion regarding possible NFPAMA claims or recourse against Belou Wagner or Sharp Electrical related to the fire system at the Terminal building

Item discussed in Executive Session. No further instruction given or action taken.

OLD BUSINESS

1) Discussion of a Request by West End Resources, Inc. for approval of a Landlord's Estoppel Certificate and Landlord's Release and Consent agreement with Mississippi River Bank in connection with a proposed leasehold mortgage by West End Resources, Inc

Mr. Metzger advised that a leasehold mortgage is a mortgage on the interest that a lessee has in the property. An estoppel certificate is a representation by the landlord that there is a lease in effect, the lease is not in default, and no rent has been prepaid. The COO is required to execute the estoppel certificate. Notice will be given to the lender in the event of default by the tenant so the lender's interest is protected. In the Release and Consent Agreement, the Board agrees to a conditional assignment of the lease in the event of a tenant default. The bank will take over and fulfill obligations under the lease. The bank is granted the right to assign the lease, which assignment can be subject to all terms and conditions currently in the lease, including the 8% transfer fee. The consent form contains a subordination of lessor's lien on collateral the bank has taken. The Authority's Lessor's lien is on movables only and does not affect reversion rights of the Board. At lease expiration, improvements revert back to the Authority (Lessor) because these are land leases. Improvements are owned by the tenants who are fully responsible for all improvements on boathouses.

Mr. Metzger advised that Brisbi's and Blue Crab had financing through FNBC and the release and consent form and estoppel certificates executed in favor of FNBC mirror this form for Mississippi River Bank. Between 2010 and 2014 several of these came before the Board and this is standard operating procedure. M.G. Mayer Yacht Service, Inc./West End Resources leases a commercial location on the west side of Orleans Marina where commercial boat repairs and marine work is performed. West End Resources is mortgaging its intangible incorporeal interest in the leasehold mortgage and this is collateral the lender is taking.

NEW BUSINESS

1) Discussion regarding Boathouse W-11,12,13 (Fairview Realty), which boathouses were to be demolished by Fairview Realty with the understanding that the boathouses would rebuilt by 12/1/14. To date, the boathouses have not been rebuilt.

The COO advised that these three boathouses have not yet been rebuilt. Comm. Green suggested a one year extension to assist the tenant, who is currently paying rent on the boathouses, in selling those boathouses. Mr. Metzger advised that the boathouses were demolished and the pilings removed, which is a benefit to the Authority. The boathouses have not been rebuilt and the date to rebuild has passed. The tenant is currently in default. The lease will expire in 2017, and if the tenant does not exercise the remaining options the Authority will no longer receive rent.

Mr. Metzger advised that the tenant could sign an agreement indicating the terms and consequences if the boathouses are not rebuilt in one year, including that the tenant would be in default. The Agreement will document the file for the public record on this property. Comm. DeRouen noted that this will take the tenant out of default on this provision of the lease.

Comm. Richard offered a motion to extend the date to rebuild the boathouses to December 31, 2015, seconded by Comm. Fierke and unanimously adopted.

2) Discussion regarding amendments to by-laws

Chairman DeRouen noted that the By-Laws must be amended to add the position of Chief Operating Officer (COO) to assume all duties of the Executive Director. The COO can function as the Executive Director for all matters including requirements of Civil Service.

Mr. Metzger advised that the Executive Director, under the Authority's By-Laws, is the appointing authority for Civil Service matters. That position is now vacant and an appointing authority is needed. Often the Chairman of the Board is the appointing authority and may delegate that authority to whomever he desires in the organization. Another option is an amendment to the By-Laws stating that the Chairman is the appointing authority.

Chairman DeRouen advised that the Board must solve the appointing authority issue sooner rather than later. Mr. Metzger suggested creating another position in the By-Laws. Article 4 of the By Laws addresses the Officers of the Board and their duties: Chairman, Vice Chairman, Secretary and Executive Director. The position of Chief Operating Officer was created and the duties are laid out. In the event that the Executive Director position was vacant the COO would be the appointing authority. If there is no Executive Director or COO the Chairman, by default, would be appointing authority.

Mr. Metzger advised that the By-Law issue will not go before the Board as 20 days notice must be given to amend the By-Laws. The COO advised that appointing authority should not be delegated in the By-Laws. Other agencies deal with appointing authority by an Act of Delegation. Larger agencies give appointing authority to the Human Resources Director.

Chairman DeRouen noted that appointing authority is a significant responsibility and should not be with the Chairman; it should be with somebody involved in the day-to-day operations of the Authority. Comm. Fierke noted that the Authority would never have both an Executive Director and Chief Operating Officer. The term Chief Operating Officer could be added after Executive Director along with a slash (Executive Director/Chief Operating Officer). Chairman DeRouen suggested Mr. Metzger use a slash, redline and circulate the proposed change to the Board for discussion in two weeks and a vote at the February Board meeting. This will give the Board time to discuss the issue and see the proposed change. It will also give the Authority time to publish the 20-day notice required to amend the By-Laws.

3) Status of RFP/Qs to be issued in January 2015

The COO circulated the RFQ for Legal Counsel and advised that all Professional Service RFQs will be issued on the same day. The original Board Resolution stated professional service RFQs would be issued every two years. RFQs will be circulated to the committees in charge of the RFQ for review. RFQs will be ready for January 15, 2015.

Chairman DeRouen requested Mr. Metzger not be copied on future e-mail distribution in the future if he has an interest in participating in the RFQ for Legal Counsel. Mr. Metzger advised that he may be responding and would not review the RFQ, which will be put on public record at this Committee meeting.

Comm. DeRouen noted that the RFQ for Insurance Agent of Record was done one year ago and is the most recent RFQ for professional services advertised by

the Authority. The Authority will solicit qualifications from all interested parties and pre-qualify those submittals. When the need arises for a particular issue there is a pre-qualified group on hand. An e-mail is sent to the group requesting a proposal on the particular issue. The COO advised that conflict checks must be performed on legal issues. Some attorneys may not be able to respond. Chairman DeRouen suggested a minimum of \$1 million for malpractice insurance. The malpractice insurance certificate must be submitted with the proposal.

Chairman DeRouen addressed Section 4 (Submittal Requirements) and requested Comm. Fierke review the draft RFQ for Legal Services and provide suggestions on "best value" language. His suggestion is to look at what is submitted, redline what is done so far and forward to Committee members for their input.

Chairman DeRouen proposed the RFQ for Legal Services be reworded to include the "best value" language.

ADJOURNMENT

Comm. Baudy offered a motion to Adjourn, seconded by Comm. Cantrelle and unanimously adopted.

ANNOUNCEMENT OF NEXT MEETING

The next Airport Committee meeting is scheduled for Tuesday, January 6, 2015 at 9:30 a.m. The meeting adjourned at 4:38 p.m.