

**NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY  
MINUTES OF THE RECREATIONAL / SUBDIVISION  
OBLIGATION COMMITTEE MEETING  
THURSDAY DECEMBER 6, 2012 – 2:30 P.M.**

The regular monthly meeting of the Recreation/Subdivision Committee of the Non-Flood Asset Protection Management Authority was held on Thursday, December 6, 2012 at 2:30 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 Hassinger called the meeting to order at 2:51 p.m. and led in the Pledge of Allegiance.

The roll was called which constituted a quorum.

**PRESENT:**

Chairman Joe Hassinger  
Commissioner Greg Ernst  
Commissioner Stanley Brien

**ABSENT:**

Commissioner John Trask

**FURTHERMORE PRESENT:**

Chairman Robert E. Smith Lupo

**STAFF:**

Louis Capo - Executive Director  
Sharon Martiny - Non-Flood

**ALSO PRESENT:**

Gerard Metzger – Legal Counsel  
Ray Lanceche - Lakeshore  
Robert Druant

**APPROVAL OF AGENDA**

Commissioner Ernst offered a motion to adopt the Agenda, seconded by Commissioner Brien and unanimously adopted.

**APPROVAL OF MINUTES**

Commissioner Ernst offered a motion to approve the minutes of the Recreation/Subdivision meeting of June 7, 2012, seconded by Commissioner Brien and unanimously adopted.

**REPORT ON CURRENT RECREATION/SUBDIVISION ISSUES**

Mr. Capo informed that Boh Brothers is in the staging process with the utility work on Lakeshore Drive to re-establish the utilities. The Notice to Proceed was issued on November 5, 2012 with 150 days from that date to complete the project.

The low bidder (Peabody Construction) for the Mardi Gras Fountain repair was disqualified. After a hearing it was determined that Peabody was still disqualified and notice was issued to Peabody advising of same. Discussions are underway with the second bidder (Wallace C. Drennan, Inc.).

The Lake Terrace Fountain design and repair project has been issued to DEI under the ID/IQ contract. DEI is putting together two packages, one without lights and one with a minimum of 10 lights. Once bid documents are prepared an RFP will be issued.

Chairman Lupo reported that as part of the paving project behind the seawall between the Lighthouse and Orleans Canal, the road in that area will also be striped. Also, FEMA has agreed to raise the parking lot behind Shelter No. 1 so it will drain properly.

### **NEW BUSINESS**

#### **1) Discussion regarding Rev. Patrick J. Williams of St. Pius request to acquire use of land directly behind school building for use and a play area**

Chairman Hassinger noted that adjacent to St. Pius School is open park green space of approximately 35x100 feet adjacent to one side St. Pius. St. Pius requested the Authority allow a fence to be erected in that area to allow pre-kindergarten activities. Fencing is required for licensing purposes so children are protected. The open space area is currently being used by the children. The Authority has been in communication with Lake Vista Property Owners Association to get input on residents' thoughts regarding this proposal.

Mr. Robert Druant, active member of St. Pius, advised that he supports this issue as there are legal requirements regarding elementary schools that state pre-K children be located on the ground floor. The concept would allow St. Pius to have play areas in a protected environment. St. Pius would tear down the barbed wire fence and erect a new fence that would enhance the area. The play area, if approved, would provide a service to the community and allow more pre-K children. This would be a formalization of the present situation with a provision that younger children be located in a fenced-in area to be safely protected. St. Pius would appreciate the Board's consideration and support for this project.

Mrs. Ann DeRouen, parishioner of St. Pius, Vice President of the Pastoral Counsel and Head of the Capital Improvements Committee advised that Father Pat was unable to attend due to the funeral for Monsignor Kern. As more young families move into the area, the early childhood program is expanding and the numbers are at maximum level. The Capital Improvement Committee has explored several options to facilitate expansion of the classrooms. If this request is denied, St. Pius will be unable to expand as there is no other available space to accommodate the early childhood program due to restrictions regarding what grades can be placed on the first and second floor. The State requires St. Pius have a play area within a certain amount of feet adjacent to the classroom along with a certain amount of space per child. The area of land at issue is located between the sidewalk and school building and is Levee Board property. St. Pius would remove the barbed wire fence and erect a new iron fence to enhance the area and the parkway.

Mrs. DeRouen noted that residents she has spoken with have no objections regarding the issue as St. Pius has utilized that area for many years. The area would be used strictly during daytime school hours for no more than one hour along with a brief morning break. The area is currently used for approximately ½ per day. A gated fence could be erected that would allow the general public access when not in use by St. Pius. There has been limited discussion regarding rent and no dollar amount was discussed.

Commissioner Brien noted for the record that he is a member on the Lake Vista Board and this issue was discussed informally, but no vote was taken. The Board was split as many residents feel strongly about the covenants. There was no proposal submitted to use the area, it was strictly whether use of the area would be allowed.

Mr. Metzger advised that rights of the Board to enter into an agreement for use of the space is governed by the Lake Vista Building Restrictions enacted in 1946. The area at issue is part of Ozone Park and this Board and the former Levee Board has no authority to lease or provide exclusive use to a section of the park. Section 14 states that:

“All parks, except Lake Vista Park, and lanes are reserved for the common use of the property owners of Lake Vista and nothing shall be placed thereon or no use shall be made thereof to the detriment, inconvenience or annoyance of the resident or owner of any park or portion or ground or of adjacent properties; however, it shall be understood that the large parks are provided for the use by children of Lake Vista as play areas”.

There is no authority for the Management Authority to amend the Building Restrictions to allow the Board to enter into a Right of Use. The Board approved the servitude for a utility as there is a Revised Statute that applied. Title 45 Section 871 allows utilities the right to use certain public property, including state land wherever located, for utility purposes. That is why the Board had the authority to sell utility servitude space in the parks.

Mr. Metzger stated the issue regarding a fence erected with a gate that is left open so residents can use the area other than the one hour per day is a tough call as there is no jurisprudence on the issue. If the Board had authority to lease the space, rent would be required or it would be a donation of public property and unconstitutional.

Commissioner Hassinger noted that the Building Restrictions pre-date construction of St. Pius School. There are also areas adjacent to St. Pius within the fencing of the school that belongs to the Authority. Allowing St. Pius use of the area for ½ hour per day exclusively is different than a homeowner requesting to lease the area as the Building Restrictions pre-date construction of St. Pius. After St. Pius was constructed, agreements were made to use property that was not part of St. Pius' footprint, i.e., Levee District property, and which property is the subject of a waiver. The previous Levee Board may have recognized the fact that the benefit of a school adds much to the Lake Vista subdivision. The situation St. Pius is in is no different than many catholic schools, which is higher demand for Pre-K classes as high school starts and St. Pius is losing enrollment from 5<sup>th</sup> to 8<sup>th</sup> grades. The area at issue is a minimal “intrusion” on the park space and does not inconvenience or act to the detriment of Lake Vista residents. The Authority will get the benefit of the removal of the barbed wire fence and installation of a new wrought iron fence that would enhance the area. St. Pius has also proposed to maintain an area of green space larger than the space they are requesting which would save the Authority the expense to maintain that area.

Mr. Metzger advised that Authority does not have authority to take certain actions or to amend the Building Restrictions. This issue can be handled by the homeowners in Lake Vista by amending the Building Restrictions to permit usage of the park area. That is the option that is available. The Authority cannot grant exclusive use of the area to St. Pius. Chairman Lupo noted this would be an organized event which is not allowed in the parks.

Mr. Metzger informed that there is no precedent which would require an amendment for erection of a gated fence to allow public access 23½ hours per day to the area. The only guidance to this issue is Section 14 and the language therein. There is no authority to change the Building Restrictions for the former Board or the Management Authority. Commissioner Ernst addressed the area on the south side that is Orleans Levee Board property which is behind a fence and gate within the bounds of the school. Chairman Lupo advised that Orleans Levee District erected the fence as a safety precaution so children would not enter the traffic lane.

Chairman Lupo noted that everyone wants to accommodate a valuable part of this community. This Board does not have the right to make that decision. The decision can be made by property owners of Lake Vista only. Chairman Lupo noted for the record his objection to the full Board taking any action that usurps the property rights of the property owners of Lake Vista.

Mrs. DeRouen stated that the issue could be brought to the Lake Vista Property Owner's Association for consideration as the property is owned by the Levee Board and that is the direction that St. Pius will take. Mr. Metzger advised if use of the area is approved by the Property Owner's Association the Board may not be required to give approval as this will be governed by the Building Restrictions. The Building Restrictions is the operative document and would have to be amended as to the use of the area in Ozone Park by the requisite vote. This Board does not have authority to enter into a lease or change the use of the parks in any way.

Commissioner Ernst questioned Mr. Metzger how St. Pius request differed from what was recently allowed by the Board at West End Park with the Hibernians to have the new monument and the grounds around there maintained as they are not paying this Authority any rent because the Hibernians will maintain the grounds. If St. Pius had the open gate that Chairman Hassinger has been discussing so that other residents can have limited access, isn't that the same thing.

Mr. Metzger noted that St. Pius' request differed from the Hibernians' request to erect a new monument and maintain the grounds as there are no building restrictions governing the use of the neutral ground at West End Boulevard. The Authority is receiving consideration back from the Hibernian's lease.

Mrs. DeRouen informed that the time table is open and does not have to be done by a certain date. It does help St. Pius in planning for the future because open house and enrollment is in January.

Commissioner Ernst suggested the issue and motion be tabled so St. Pius could address the issue with Lake Vista Property Owner's Association and request the Property Owners' consideration as that is part of the problem. Chairman Hassinger requested the issue be tabled to give St. Pius time to address the issue with Lake Vista Property Owners Association. This Authority can also discuss the issue to determine if there is a solution and make sure no action is taken that is volatile of the property owners' restrictions.

Commissioner Ernst offered a motion to table the issue, seconded by Chairman Hassinger and unanimously adopted.

#### **ANNOUNCEMENT OF NEXT MEETING**

Chairman Hassinger announced the next Recreation/Subdivision meeting is scheduled for Thursday, January 10, 2013 at 2:30 p.m.

#### **ADJOURNMENT**

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

The meeting adjourned at 3:36 p.m.