

NON-FLOOD PROTECTION ASSET MANAGEMENT AUTHORITY
Minutes of the Commercial Real Estate Committee Meeting
Thursday March 3, 2016 – 6:00 p.m.

The regular meeting of the Commercial Real Estate Committee of the Non-Flood Protection Asset Management Authority was held on Thursday, March 3, 2016 at 6:00 p.m., in the 2nd Floor of the Lake Vista Community Center located at 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 Green called the meeting to order at 6:05 p.m. and led in the pledge of allegiance. The roll was called which constituted a quorum.

Present:

Chair Eugene Green
Comm. Glenn Higgins

Absent:

Comm. Leila Eames

Staff:

Cornelia Ullmann – Chief Operating Officer
Marlene Wilkerson – Accountant
Melissa Bailey - Accountant

Also Present:

Al Pappalardo – Real Estate Consultant
Gerry Metzger – Legal Counsel
Tom Merric – Peninsula Condominiums
Taylor Butterworth – Peninsula Condominiums

Adopt Agenda

Comm. Higgins moved to adopt the Agenda, seconded by Comm. Green. Motion passed.

Approval of Prior Minutes

Comm. Green moved to approve the November, 2015 Joint CRE/Marina Committee meeting minutes, the December Joint Marina/CRE/Recreation Committee minutes and the January Joint Marina/CRE/Legal Committee minutes, seconded by Comm. Green. Motion passed.

New Business

1) Discussion regarding request to assign lease for 158 S. Roadway N-5

Mr. Pappalardo advised that there is an executed purchase agreement for the sale of the leasehold improvements and the transfer of the lease in the amount of \$200,000 for 158 S. Roadway, which is also known as Boathouse N-5. It was advertised in Multi List and it was exposed to the market. The selling price is \$200,000 with the purchase agreement, which does include the request for and the need for approval of the Board as well as the payment of the transfer fee to the Non-Flood at the time of the transfer. The transfer fee is 8%. That would be a \$16,000 transfer fee.

The COO advised that Eric Hernandez, who is present, represents both the buyer and the seller. He is the agent if you have any questions. Before we have the closing they need to provide the insurance and ensure that the seller is up to date on his rent. It is a relatively straight forward transaction.

Eric Hernandez stated that he was not able to send in something on behalf of the buyer. They wanted to request to get a 32 year lease because right now they are buying with cash, but they plan on financing shortly after. Just to speed things up they are buying in cash and in order to get a loan they probably are going to

need 30 years on the lease in order to get a loan from the bank. They did want to make that request. The COO advised that these were the boathouses at Orleans Marina. Mr. Hernandez did call in with a request because it was something that came up at the last minute. Staff has not had a chance to look at this. I don't think there is a general objection, but one paramount concern is that all leases end approximately at the same time. If there is rehabilitation to be done, it can be done at one time on W. Roadway. Staff and the Real Estate Consultant need time to make a recommendation. We will do our best to do it before the Board meeting. At this point there is a recommendation to approve the lease and if we can get a recommendation as to whether or not to extend the lease, we will address that at that time. Mr. Pappalardo advised that the present lease expires in 2038, which is one of the longest leases that we have. It has 22 years left so if they are requesting a 32 year lease that would be a ten year extension. Mr. Metzger is here. The whole concept of extending leases for boathouses and doing them on an individual basis was litigated some years back extensively and for a length of time. Perhaps Mr. Metzger may want to mention something on the record regarding this matter.

Mr. Hernandez noted that in order to get a 32 year loan, you will need longer than a 30 year lease. If they are going to get a 15 year loan, they would be able to get one with the current lease. They are looking to get a 30 year amortized loan. The buyer is going to live in the boathouse. Mr. Metzger noted that most of the boathouse leases will expire in 2036 and 2037. In the past the board has looked at this trying to have all the leases come to a head at a certain period of time so decisions can be made on what to do with the Marina and the boathouses. If they are expiring one in 2036 and another in 2046 the Authority will not have an opportunity to deal with the whole Marina at one time. The COO advised that there was litigation that went on for a long time with Brad Adams. The Levee District was successful on that. Mr. Metzger agreed and advised that litigation addressed the tenants in the Orleans Marina wanted to extend their leases under the same terms and conditions that existed going back all the way to 1971 and 1972 with only a CPI increase. The Board adopted a Resolution in 1996 that it was going to grant three additional five year options on terms and conditions to be developed. The litigation then was that the boathouse owners argued that they were entitled and had a legal right to extend the leases under the same terms and conditions. One reason for that was there were four lease amendments executed in the mid 1990's which did extend four of those leases under the same terms and conditions. The rest of the boathouse owners came in and advised that they were entitled to that also. That did not work. The Board was permitted to enact new terms and conditions that went into effect upon the expiration of the leases. There was a 30-year lease offered early on which some of the tenants took and signed in the early 2000's that went to 2032 and 2033, but the longest lease is 2039. The relevance of that litigation to this request is the Board has the right to adjust terms and conditions. That is what that litigation resolved. Comm. Green noted that the litigation resolved that the plaintiffs did not have the ability to demand an extension on the same terms and conditions. Mr. Metzger advised that the issue is, does the Authority want to have leases that are extended beyond a given point so that you are not going to be able to have an expiration date on all of them at one time. Mr. Pappalardo added that the second point is in 2039 this boathouse will become the property of the Authority. To push the lease out ten years you are getting into a reversionary problem where you theoretically should be entitled to that boathouse in 2038. If you push it out ten years there is going to have to be compensation paid for any lease extension. We are going to have a very similar discussion on the next Agenda item. The fact is that is a property right of the Non-Flood Authority Board to receive that property in 2038. To push that out ten years, the Authority would be giving up something of value. Mr. Metzger agreed and noted that is going to be an issue on the next item on the Agenda with the Peninsula Condominiums.

Mr. Hernandez stated that when the boathouses on Breakwater Dr. and N. Roadway, if those leases were expiring in 2030 - and I sell a lot of the

boathouses, more than the top five agents – the values went up 25-30% by having a longer lease, longer than 30 years. Many people did not want to invest the amount of money that they were going to invest out there without having a longer lease extension. If you look, you have \$2.2 million that was just spent on Boathouse 91 and 92 by a doctor and you have Dieter Hugel who spent upwards of \$2 million, and Mr. Fisk spent upwards of \$1 million. This all happened after the leases were extended to 2068 because people's investments were protected. If you don't allow for longer leases it is going to – in my opinion – hurt property values and if you look what a boathouse sells for on S. Roadway and the ones that people have walked away from on W. Roadway because of certain issues where the N.O. Municipal Yacht Harbor leases are just a little bit better, their values are a lot better. They do have a better view which definitely helps a little bit, but the fact that somebody has their investment protected until 2068 gives confidence in people wanting to buy these boathouses. The closer we get to the expiration of these leases, the less value these boathouses are going to have when someone is trying to change hands because nobody will have confidence in spending \$300,000. Another issue that I called Mr. Pappalardo about is that the 8% transfer fee also hurts. I have a boathouse that is beautiful; Boathouse No. 15 that is on S. Roadway. They are actually \$535,000, but the \$42,000 transfer fee scares anybody away from even thinking about making an offer on that boathouse. That probably should be talked about, but that is on the Authority to decide if you want to talk about the transfer fee. The COO stated that the Authority is required to have a management plan to address these types of issues. We are at the beginning of that plan. That may be the best scenario for discussing that. First, to make sure that the Authority does not enter into litigation because people perceive that they are being treated differently, but also that we have a cohesive plan including having leases end at the same time. That is what we are facing with W. Roadway. We don't want to go through that again. Mr. Hernandez noted that the Municipal Yacht Harbor leases are almost all uniform. Not everybody took the extension, because it cost \$5,000 and an increase of \$100 per month in their lease fee. Most people did take the uniform 2068 expiration. From my experience, the last two boathouses I have sold on Breakwater Dr. had been \$350,000 and \$375,000. I have one currently under contract for \$200,000 on S. Roadway and I am about to list one on W. Roadway for \$125,000 because the differences in the leases hurts and the difference in the transfer fee hurts. The Municipal Yacht Harbor has a 3% transfer fee where S. Roadway and W. Roadway have an 8% transfer fee which is an extra expense that someone has on top of the fact that this Authority's lease is \$900-\$1,100 per month. A uniform lease longer than 30 years and something changing the transfer fee to be lighter would probably increase more revenue because you probably have more boathouses transferring and the prices of these boathouses will probably go up in my opinion.

Mr. Pappalardo stated that he had no argument with Mr. Hernandez's discussion, but what is important for everyone to realize, and we are blessed to have Gerry here, is the 8% transfer fee was part and parcel of an *in globo* agreement that was litigated in the courts for eight years. It was in effect the methodology that allowed the boathouse owners to get the 15 and 30 year extensions because the 8% transfer fee was part of the reversionary payback as well as a component added to the land and water rate. That was done well before Mr. Hernandez got involved in his current enterprise which he is very successful, but you cannot undo that because this gentleman took it all the way to the La. Supreme Court and it was part and parcel of the whole fabric of advancing those leases and sending them forward. Mr. Hernandez opined if the transfer fee was reduced, there would be more liquidity. The demand for the boathouses would probably increase and confidence in the people buying these boathouses would increase. Even my buyer who is buying Boathouse No. 5 is scared that when she goes to sell, there will be another 8% transfer fee. That is slightly heavy. It does not hurt that much when it is a \$200,000 boathouse, but as these boathouses start to appreciate – and they are starting to appreciate – it is a lot easier with a 3% transfer fee; a lot harder with an 8% transfer fee. Mr. Pappalardo noted that the

annual rent for Dr. Romaguera is approximately \$4,200 annually or \$350 per month. The COO stated that it is not that the extension is out of the question, it is that it needs to be looked at from the reversionary factor and the financial factor. Mr. Pappalardo noted if the extension is granted to one boathouse lessee then you cannot, as a public body, not grant it to the next person and effectively you have boathouses that could be 80 years old. We have seen, as Mr. Hernandez has pointed out we have had some problems that everyone knows about on W. Roadway because those boathouses are very old. The boathouses that we are talking about on S. Roadway were built in 1971. If they are talking about 2038 we are looking at 70 year old structures and if we are talking about pushing them beyond that then it begs to question as to whether or not those structures could even exist at 80 years and whether we are going to have a bunch of boathouses that are beyond their use for life. That is the issue and that is why Mr. Metzger may want to speak to the equity issue. Mr. Metzger added that there is going to be an equal protection argument because that is what they raised in the Brad Adams case also. Mr. Pappalardo noted that one question is if you have deteriorated pilings and deteriorated structure then you have to make sure that those structures are protected and the pilings are sufficiently repaired. At some point, and I am not an engineer, I don't know how many times you can repair a piling or encase it in concrete. At some point I think pilings degrade to the point where they need to be replaced. When you have a structure with a living unit sitting on top of it, it seems to me to be a very difficult exercise. I agree that you have the right to extend as long as you extend on an equal basis to everyone for the same amount. I will point out that if you agree to extend the lease you have an obligation to collect a reversionary value because you are giving up something of value. The request to extend without an exercise of what that present value of that boathouse is to the Authority in 2038 is moot because we have to know what the present value of that boathouse consists of. Mr. Metzger noted that there was a reversionary right that will happen in 2038. If you are going to extend it beyond that, you have to give some consideration to commensurate with the value of the improvements over this attorney general's opinion and that is going to mean some kind of rent increase or some consideration coming in. It will take calculations. Mr. Hernandez noted that all of this was very supplementary to each other. If you all continue to tax people for every little bit on these boathouses you all are going to keep the boathouse values where they are at. How many boathouses did the Authority take back on W. Roadway? Mr. Pappalardo noted it was four boathouses. Mr. Hernandez stated four was a high number. They don't have that on Breakwater Dr. They have one in No. 19 and it is tied up in a FEMA claim, but that does not happen on Breakwater Dr. and the Municipal Yacht Harbor side because their leases are better and the fees are more reasonable. The COO noted that better leases for Municipal Yacht Harbor were a recent reaction to the market not being there for Breakwater Dr. Extending the longer leases was in response to not having a market. Mr. Metzger noted that the Municipal Yacht Harbor is the outer yacht harbor. The harbor this Board has management and control over is the inner yacht harbor. That was their traditional names when they were built. The inner yacht harbor is more valuable than the outer yacht harbor. The Municipal Yacht Harbor was destroyed at least twice in my lifetime. The inner yacht harbor survived Katrina. It is more valuable real estate. You are talking about two different real estate subdivisions with different values.

Mr. Hernandez advised that he had a boathouse under contract on Breakwater Dr. for \$440,000. I have a boathouse under contract on Breakwater Dr. for \$360,000 and the last one that I sold three months ago was for \$400,000 and the one I sold before that was \$350,000. If your boathouses are more valuable, please show me one person that paid more than \$350,000 for a boathouse. Mr. Metzger stated that if there was a hurricane this year, there won't be a Municipal Yacht Harbor if it is a Katrina. Mr. Hernandez advised that is what insurance is for. People rebuilt after Katrina. Somebody just spent \$2.2 million on a boathouse. There is another one upwards of \$2 million about to be built and there was one that was just built for \$1.35 million and none of these are in the

Non-Flood Authority's side. If your side was more valuable people would be paying more dollars. If the leases were better and there were not so many fees, and the leases were more reasonable it is my professional opinion that your value would go up and you probably would change hands more of these boathouses and you would probably be more revenue because every time a boathouse changes hands the Authority receives a transfer fee. If the transfer fee is astronomical – Boathouse 15, it is worth every bit of \$535,000 on Breakwater Dr. Nobody is going to get \$535,000 because it is \$42,000 just for somebody to approve the lease to be transferred and you all are asking more fees to get a 10 year extension. You are crippling the value of those boathouses and the numbers show it. People can say why one is more valuable than the other; if that is the case I would love you to show me where somebody is paying more on S. Roadway or W. Roadway. Four of them have walked away. One person has not walked away, they have nothing. They have a shell that they wanted to sell for \$25,000 – a triple spot – and they cannot even get \$25,000 for a triple spot because somebody is scared to pay \$3,300 per month in lease fees. Mr. Metzger advised that business decisions had to be made here. I know there is one legal issue and that legal issue is that if you extend the lease you have to get some consideration for the value of the improvements because you are in essence not taking the improvements back, extending that and donating as the attorney general of the State of Louisiana has opined 16 years ago. That is a legal matter, but a lot of this is a real estate business matter that has to be seriously looked at. Mr. Pappalardo pointed out that irrespective of the economics of the situation; you have contracts. Those contracts called for you to receive certain sums of money. Those contracts were agreed to. If you gave those contracts up, I don't think the State Legislative Auditor would have his office in Baton Rouge anymore, it would be in this building because you would be giving up a tremendous amount of value that would be patently illegal. You cannot do it. Whether the leases now in retrospect because the outer harbor decided to do cheaper longer leases make ours less attractive today. I don't disagree with what Mr. Hernandez is saying. The fact is that you cannot give those away. That would be like giving gifts away. You cannot do that. The Legislative Auditor would come down on this agency. Comm. Green noted that the problem is that we have before us a matter requesting an assignment of a lease and collection of the transfer fee based on this amendment to the request. I think that we want to go through with the assignment of the lease and then address the issue after. Mr. Pappalardo advised that the Authority could approve the lease as written and submit it. It was not submitted with the amendment, it was submitted as an all cash offer without it being contingent on a loan. You have a verbal amendment to a written contract and that does not work in real estate either.

Mr. Hernandez added the caveat that they are in their inspection period and that may affect whether or not they move forward on the deal. I will get that in writing. The COO advised that Mr. Hernandez was coming to a public agency and expecting staff and real estate consultants to give good advice to get your client what they want and it is not reasonable to do that in two hours. Mr. Hernandez stated that he was not expecting this in two hours. Comm. Green questioned if the motion should be adjusted or withdrew. Comm. Higgins stated that he wanted to withdraw the motion. Mr. Metzger noted that this was an appraisal and financial matter. That is not a legal issue. Mr. Pappalardo advised that the legal issue is the equal protection. Comm. Green noted that there is nothing that can be said that tells him he cannot extend the lease. Mr. Pappalardo stated as long as you get the right rent and it is possible that we could get our expert to appraise the value of this reversion. I can't make a commitment for him. I don't know whether he could do it that quickly. The COO advised that Mr. Hernandez would like to proceed forward and honor the current obligation with the client agreeing to purchase. They are still in the inspection period. He does not have anything in writing. He could get it in writing and if we can circulate that. I don't know if we can do that. They are still in the inspection period. He would request that we go forward with what we have and they can deal with the financing issue.

The Board does not necessarily have to take the issue up. You can ask the item be deferred if it is a deal killer, then it is.

Mr. Hernandez advised that his client requested at the last minute – and I have to apologize that it was the last minute before we came today – that she wanted to finance it. She is buying it for her son. She is putting up the cash now. It is not that easy to get a boathouse loan. To make everything easier on everybody she stated that she would pay cash. She wants to refinance it and amortize it over 30 years after they close on it. I explained to her that without a 30-year lease she would not be able to get a 30-year amortization. If you have 22 years, you can get a 20-year amortization. The COO suggested using other real estate available to make a homeowner's mortgage or an equity mortgage to accomplish that. That is another way to get there. Mr. Hernandez noted that would be if the person had other assets. That would be treating someone with more assets better than somebody who does not. The goal to close the boathouse to transfer the lease is March 22, 2016. I don't know if we can resolve this by March 22nd. Comm. Green stated that the date could be extended so the transfer could be done correctly. Mr. Pappalardo added that the extension of the date would be on their end. You are flexible as far as when you want to hear it. I have a question because Mr. Hernandez has been very straight forward with us tonight. We are telling you that we know as a matter of fact to extend the lease even 10 years is going to require additional sums of money due this Agency. You made a comment a few moments ago that if we asked for more money it could strangle the deal. I can categorically tell you that we cannot extend the lease without a reversionary and an additional amount of money. Since you are a dual agent and you represent both parties if you feel that if we come up – if we spend the money to come up with an expert opinion as to what the sum of money is, that is not going to be acceptable to either party. Comm. Green suggested the Authority spend the money. I will tell you this is something we need to know. If that is the case, this is not the last time we are going to have this issue come up. Mr. Hernandez stated it would be nice because if other parties know, such as myself as someone who sells a lot of boathouses it would be nice to know what it would cost to extend a lease. When somebody is weighing whether they buy a boathouse on Breakwater Dr. or on S. Roadway, they can weigh their options. Again, the additional expenses on top of purchasing the improvements is what is strangling the values of these boathouses and I believe that you would get a lot more money in transfer fees if everything was more reasonable. If I can help in any way, I would love to help with the research. Mr. Pappalardo stated that Mr. Hernandez could help by understanding that it is against the law of the State of Louisiana for this Authority to reduce the transfer fee or to reduce the rental rate. What we are trying to tell you is we believe you, we believe you. Comm. Green questioned if the 8% was in the legal judgment. Mr. Metzger advised that the 8% was not in the judgment, that was in the resolution that was adopted by the Board when the Board approved our right to adjust the terms and conditions. The Board adopted the new Resolution with the new rental rates and the transfer fee. Those leases are in place until 2036 and 2037. Comm. Green clarified that other boathouses not controlled by this Authority have no transfer fee. Mr. Hernandez advised that there was a 3% transfer fee in the Municipal Yacht Harbor with approximately \$325 per month lease. I don't think you guys are ever going to want to adjust what you collect as far as the lease fees, which is still going to hold you down a little bit, but I do believe the transfer fee would probably help move more boathouses which in my opinion would actually generate more money because every time a boathouse transfers there would be money coming in. Comm. Green commented that the 8% is an arbitrary number. It is not something set in stone. We could analyze this and say that it has to be 10%. I would like to know for the record. Mr. Metzger advised that 8% was the number that was worked up by Mr. Pappalardo and approved by the Board. Mr. Pappalardo stated that he remembered testifying as to how we came up with the ultimate rental value. The lease was part of that discussion and testimony. Mr. Metzger advised that he was the lawyer in the Brad Adams case, that is the case it was. I never knew I was going to comment on this because I did not know this

gentleman would walk in here. I will tell you that I read the Brad Adams case enough and I don't want to stand here in a public meeting and argue with Mr. Pappalardo. There are issues here about the extension regardless of whether the 8% was put in stone.

2) Discussion regarding lease extension for Peninsula Condominiums

Our conditions of the lease have changed. The flood insurance has changed. We are outside of the flood wall and totally outside the flood wall now. The base flood elevation has changed, the ability to get flood insurance has changed and the ability to get other types of insurance has changed. The zoning has changed. It used to be zoned office environment availability on the lower floors – that has changed. The perimeter slips - as I have indicated – for the last 10 years have been deplorable. We have lived up to our agreements with the lease and the property and maintaining the property. We have been pretty good tenants over the years. The other entities related to the slips have not necessarily lived up to their agreements with maintaining those slips. It is deplorable and they are in bad shape and has depreciated the value of where we are living. The fact that it is not private anymore, it is public has also depleted the value. The City of New Orleans property tax assessment; that is pretty much a thorn in our side. It had low property values early on and after Katrina the values seem to have gone up. They were basing it on sale prices. The Tax Commission was presented in this document. We refuted the Tax Assessor's evaluation of the property and the La. Tax Commission agreed with us. It is a diminishing value since it has a termination date in 19 or 20 years. The way the City of New Orleans Assessor is attacking the assessment of those properties and the tax bills has been incorrect. The La. Tax Commission has agreed with us that they have been doing it incorrectly. There is a diminishing value, even though it sells for xyz at a certain point in time, the values of these properties has an end date of zero. It is a diminishing value, not a value that is being escalated. That affects the City tax requirements and the payments of taxes. That to me is a big deal and it is difficult to repute the City because it is so difficult to get over there and go through the process. That affected the conditions in which we are living in with the Peninsula condos from the original lease that was set up. What Mr. Pappalardo was indicating to Mr. Lutz – the report that he had given, I am not in agreement with that report. He has us as waterfront property; we are not technically waterfront property. There is a lease between us and the water. We are not waterfront property. To put us in the same category as absolute waterfront property is an error in my opinion, and a more stringent one in favor of his report and not in favor of the Peninsula Condos. We have talked a lot in my report about the roof system, the maintenance on the buildings, the balconys. We changed the roof at a cost of \$300,000. We changed all of the balconies at a cost of \$270,000. We have maintained this building and it is in pretty good shape. It has plaster, it has exterior wall issues that we have been dealing with on a regular basis. We have been maintaining that as we can. The windows are 36 years old and in need of repair. It is hard to get some of these owners to make a lot of improvements when we have a dead-end lease of 19 years. That is why we are trying to get an extension so we can make this place more marketable. When the values go down and you start renting these places out and doing some other things it is not good for the neighborhood, the City, Peninsula Condos or this Authority. That is why we are trying to get the lease extended. The balcony has been replaced, the doors and the exterior plaster; all of these things have been done. The awning in the middle has been replaced along with the chimney caps. All of those things we have been dealing with on a regular basis. The air condition systems have been replaced on a regular basis; 20 units with two units a piece. That has to be maintained. A roof system that we had a 20-year warranty on the roof; you are talking about replacing a roof at almost \$300,000 plus a 3% increase for construction costs for the next 20 years and the Authority is going to be hit with replacing a roof at that time and the same with the balconies; \$270,000 plus a 3% increase for construction costs for the next 20 years. Those types of things start adding up when this reverts back to you. There are a lot of expenses that the Authority will incur if the lease is not

extended and it does not allow us to keep everything in mint condition. That is where we are right now. We maintain the building on a regular basis, we are keeping track of everything that is going on around there. We have public ingress and egress around the perimeter for the slips. That is affecting the security of our building. We have sliding glass doors all the way around so now we do not have any control over anybody coming in, it is just open to the public in general and it affects the value of our property. The value that Mr. Pappalardo had indicated for Mr. Lutz, Mr. Pappalardo has not agreed or has not acknowledged any benefit of the points that we brought to his attention in our letter. He disagreed with all of those points, which I think is unfortunate. One of the big things is the insurance. We have an obligation to get the insurance for the value of the property and you all are equally insured with it. We have liability insurance, flood insurance and homeowners insurance along with individual homeowner's insurance inside the building; all of those things add up. When you are outside the flood wall and your base flood elevation has been raised, not the insurance goes up. Those conditions from the original lease have changed. The conditions around the slips has changed, the conditions with insurance and the base flood elevation from the government's actions has changed the conditions in which we are living in. We keep getting burdened with the effects of that. It costs us more and more money. Now you are saying a reversion of \$2 million, we are talking about buying the place three or four times again. There are 20 units over there and it gets to a lot of money to put up when we are looking at just extending a lease. When you talk about an extension with the reversion, reversion is not specifically called out in that lease. It alludes itself to the fact that it goes back to the Levee Board at that time because it does not say that there is a reversion if you want to extend your lease you have to pay money. I don't know of any other lease around here where you all have accepted money; do you have any documentation where you have accepted money for a lease. I know there are ways around it, but I don't know that you have gotten a specific payment for any lease extensions on any other property that the Authority has.

Mr. Pappalardo advised that Mr. Metzger (Legal Counsel) could comment on 63 boathouses. It was the subject of an eight year court fight and we did get paid for the reversion and that was the central core argument. Comm. Green questioned the average selling price of a condo.

Mr. Merric advised that the average selling price of a condo is anywhere from \$350,000 to \$300,000. I don't know the exact number. Mr. Pappalardo advised that Mr. Lutz's report utilizes some comparables from within the condo regime. I think he comments on one for \$284,000. Let me also mention - and I am not here to defend Mr. Lutz's report because it would not be appropriate for me to do for you - I can point out certain areas. The original developers were the ones that split the slip leases away from the condominium association, created the condominium association; the Levee District had nothing to do with that. There were two separate leases from the very beginning. Effectively, we took those slips back on the reversion some years ago. I would agree with the fact that those slips were in horrible condition. The COO can tell you that ever since then as finances permitted we have been working to get those slips back in shape. That is a fact that they were split out, but that had nothing to do with the Levee District. The original developer made two separate leases and they decided to keep the slip leases and keep them to 45-50 years. Mr. Merric advised that those were some owners and developers that owned parts of the building. They owned a couple of the units so they decided at the last minute to break up the lease. Otherwise, we would have had a lease with the slips and the whole nine yards, but they broke it up because the units were not selling. That is the way that I understood it. They broke it up shortly after or before the lease was being signed for the property. My problem with that is they had some obligations to maintain those slips. They had some obligations to the Levee Board to maintain those slips. They did not maintain them. Katrina hit and they still did not maintain the slips. In fact, they charged slip owners the cost to put electrical power services back to the building, which was part of the leases initially. When

the Authority did not renew their lease, I don't understand why you did not make them repair the slips back to some decent condition prior to not renewing their lease. I don't understand how that works. It seems like if they did not maintain them, and they were falling down; you could not walk on them, they were wobbling, the boards were missing and they were in deplorable condition when the Authority took them over. Mr. Pappalardo advised that the Authority took the reversion because the slips were in horrible condition, and it was very contentious. It was a very contentious reversion. The fact is that they did not want to give them up even in light of the fact that they had not lived up to their lease. The Authority felt that it was in the best interest of the Authority and the best interest of these people to take those slips back and use Authority money to fix them up because these people demonstrated that they did not care. All they wanted to do was collect rent and not fix the slips. Mr. Merric agreed and noted that they were not living at the condominiums. I don't disagree with you. The east side is fixed up. Mr. Dixon did a good job fixing the east side, which happens to be on my side. I had no influence there, it just happened to be. It has worked out pretty good. It has been ten years since Katrina. I know the slips at Municipal Harbor; they are talking another ten years. We are talking about ten years from Katrina and we are still in deplorable conditions around the Peninsula Condos. We are living up to our agreements with the lease. We are just asking for a little bit of assistance in trying to get our lease extended so we can make the place more marketable and put a few dollars into it and make it look a little nicer. We have the restaurants overlooking us and they complain about us all the time and we complain about them all the time because they get noisy. We are good citizens and we are trying to maintain the property. We are having some issues related to conditions that are beyond our control and the conditions that have changed since the lease was initially signed. Those conditions, for the amount of money you are talking about for reversion, you are talking about a 30-40 year old building and you are talking about another 60 year old building.

Comm. Green noted that he wanted to make sure the Authority gave you as much time as you need, but the problem is that you are suggesting to me that things are so negative, but then we want to have them for 54 more years. A 35 year extension plus the remaining 19 years. Very honestly, I read Mr. Lutz's report. I can't say that I have a reason other than if Mr. Pappalardo is telling us that something is inaccurate to look at it. You are basically asking us for you to have the ability to continue leasing at your present rate for the next 54 years.

Mr. Merric noted that the Committee talked about being fair with people and you talked about the boathouse lawsuit, that is a boathouse that is over water and a little bit different than what we are dealing with. The Lighthouse, they got an extension in their lease at some point in time; I think another 15 or 16 year lease extension. What they did is almost the identical letter to what I sent. It was done some period back and they got a lease extension with no money. The reason they did that is the lease extension for the Lighthouse which is directly across from us on the Lighthouse side where the Lighthouse is. They got a lease extension and specific in their lease they reference the same Louisiana Statute related to lease lands that I referenced in my report. It would be prudent for you to read at least the information that I put together. It is 50 pages and there is a lot of documentation that is worth reading. It was set up before Lutz's report and when you read Lutz's report and you read what I did; he tried to do it point by point description and refute things that we put in here. The Lighthouse lease was extended 15 years and the Lighthouse lease was extended for the use of the Louisiana State law that allows an extension on property if you put in x amount of dollars. We put in over \$1.5 million in this property trying to keep it upgraded and maintained. Under the Louisiana law for those types of properties we automatically would qualify for a lease extension. Since they qualified automatically for a lease extension since they put \$1 million into their property, why wouldn't we. We are only 100 feet from them. Why wouldn't we automatically qualify? Since the government has changed the base flood elevation, we are currently lower than the base flood elevation.

Mr. Pappalardo advised that when the Lighthouse Harbor Condos were built, they had defects in the construction. There was litigation that lasted multi years between the condominium association and the original developers and possibly the financing company. I don't know how long the litigation is; perhaps Mr. Metzger remembers. The condominium association prevailed and secured a multi-million dollar judgment that was to correct the structural flaws that were built into the building. They came to the Board and presented that they had a building that had defects that had they not corrected the structural defects that went through a court hearing – and it may have been on appeal – that they would not have won the judgment. What they did was put that money directly into correcting. They presented to the Board that by doing that they made a whole building that would have been a faulted building and may not have been able to live out its useful life. This is all in the court record. The Board at that time, after hearing that testimony and understanding that they won that long running lawsuit, granted them an extension of the lease because they improved the structural condition of the building. There has been a long standing misinterpretation by Mr. Merric's predecessors that somehow that lease extension that was granted across the canal was extended on a willy nilly basis and it was not extended for those reasons. That was the reason. Mr. Metzger can address the fact that it was subject to a court judgment. Mr. Metzger advised that was an accurate conviction of what happened with Lighthouse Harbor. There was a resolution adopted by the Board and this deals with the reclamation zone and the authority of this Board to lease and sell property in a reclamation zone is not subject to the public lease law of the State of Louisiana. That is very unique for this body. Mr. Merric had referred to Title 41 which provides if you put so much money in capital improvements in a building you are entitled to an extension of the lease. That law is not applicable to this property. That law is not applicable to this property. It was not applicable to Lighthouse Harbor and it was not applicable to the boathouses. Mr. Merric clarified that it was not applicable and noted it was in the lease. It is in the lease extension. They reference that. Mr. Metzger advised that it was referenced erroneously. Title 41 does not apply to the reclamation zone. I'm sorry. We went down this avenue and we have been down this road. Mr. Merric stated that there is nothing in the guidelines relating to you guys on how you determined on how you extend a lease. There is nothing that prohibits you from using the State law. You can use it; it doesn't say that you cannot use it. It does not prevent you from using it. Mr. Metzger advised that it is not applicable. If we were to fold on that issue we would be giving up the plenary authority (complete authority of this Board) to lease and sell reclamation zone property. In Arnold v. The Board of Commissioners, that goes to the Jefferson Parish line.

Mr. Merric noted that there is nothing that prohibits the Authority from using that law. You could use that as guidelines if you wanted to because you have no guidelines right now. Mr. Metzger noted a difference because of what happened with the building at Lighthouse Harbor was capital improvements to give the building integrity to last to get value to reversionary interest at the expiration of the lease. What you all have done is maintenance obligations that are called for under your lease, that you are required to do to maintain the building so when the building does revert at whatever point and time that it will be in its normal condition with ordinary wear and tear accepted. This is the exact issue that was confronted by the Board with the boathouses. Sixteen years ago we obtained an Attorney General's (AG) Opinion. The Board asked for that because it wanted to be fair. The Board also adopted a Resolution stating it would follow the Attorney General's Opinion which prior to that was not always the case. What we were directed to do by the AG at that time – and we had the situation with the boathouse tenants which sounds just like what we are going through here. The issue was whether the District could grant lease extensions without taking into consideration the rental value of the improvements to the leasehold. The AG opined that an extension of the District's water bottom leases in the Marina without serious consideration for the value of the improvements would be subject

to challenge under Article 7, Sec. 14(A) of the Louisiana Constitution. That was the extent of the opinion. On the heels of this there were letters written from various tenants that stated they fixed and maintained their boathouses. They are obligated to do that, that is not additional consideration. You have to look at obtaining additional consideration for an extension of this lease. That is the issue I was asked to comment on. I had to make my point on Title 41 because the public lease law does not apply to this property. Mr. Merric stated that he respected Mr. Metzger's opinion on the issue. I am saying there is nothing that prohibits the Authority from using those types of criteria to initiate a lease extension for the Peninsula Condominiums. You can use it or you don't have to use it or there could be some compromises in there. For us to come up with \$2 million to get a lease extension is just unworkable for us. We have too many other issues we have to deal with such as the conditions to the lease that was originally signed have changed. If we do that type of arrangement, we will have had the worst lease of all times if we had to come up with that kind of money. We currently have the best lease out there. If we take this approach and come up with \$2 million, which we cannot do, we will have the worst lease of all times. It will be totally reversed. The COO advised that the advantage that this lease has, and that Mr. Lutz was asked to quantify in order for the Board to make a proper decision is that I believe Peninsula Condos is \$1.14 per square foot. Lighthouse is paying \$2.87. It is a lot easier to understand if you go by the square footage. Mr. Merric noted that it is a good lease right now. I have no problem acknowledging that. I was asked to come up with this report, which I did, for the Peninsula. I gave it to the committee. Each mind is a little bit different than Mr. Lutz's. I will send you a copy of this report. It would be good reading. Mr. Lutz came up with his report and I requested with this letter, under the same terms that we had which were similar to what the Lighthouse letter was because I did a little research on it. This wording is about the same as what the Lighthouse used when they got their extension. The only reason this was done in that regard was basically to get a reaction to continue with the lease and try to get an extension. I didn't want to go to a full page letter to ask for an extension and come up with some terms. I needed some help because you will come up with the terms to present to use, I assume, and we can agree or not with them. It is a waste of time to tell me to produce \$2 million. There are compromises that could be considered such as forgetting the lease that we currently have and use rates that other tenants are paying for the next 19 years. We may be able to come up with some money to soften the approach or we could leave the lease as is and agree on an amount for reversion and extend so there is a marketable place. There are avenues for negotiation. Coming up with \$2 million as suggested in Mr. Lutz's report is financially not possible.

Taylor Butterworth, Secretary/Treasurer, questioned the largest reversion the Authority had ever taken? Mr. Pappalardo advised that could be determined by reviewing all 60 boathouses and do math. Peninsula Condos was the first lease and the reason you are in an enviable position having a lease of advantage. This is the first lease that comes up for this reversion. Mr. Butterworth agreed that it was a good first lease, but it was an agreement between two parties. It is a lease that all are bound by. Mr. Pappalardo noted that Peninsula is the first major property that comes up for reversion. The Authority is not taking advantage of Peninsula because of that. There are other leases coming behind that we have to deal with accordingly. For me to give a professional opinion on the cost of reversion to this Board is inappropriate. There is no requirement that the amount has to be a lump sum. Chair Green noted this is a 35-year extension to an existing 20-year remaining period, which equates to \$40,000 per year. We are hung up on a lump sum. It is clear to me that if you look for an extension of 35 additional years to what remains someone has to pay. Mr. Pappalardo stated if Peninsula offset the \$2.75 million by the \$815,000 we are dealing with \$1.9 million. That \$1.9 with 19 years equates to \$100,000 per year for 20 units, which is \$5,000 per unit per year over the next 19 years, and then they don't have to buy it again for 36 years. That is what they are missing. Once that is paid it is there for another 36 years and all they are doing is paying land rent at the current

land rate. Mr. Merric stated there are ways to negotiate this so it is amicable for everybody to come to terms with. I am asking for an approach where we can all agree to this. If we get the total numbers down and acknowledge some things in the letter with Mr. Lutz and let him agree to some of the issues, it would be wise. We can come to terms with that over a longer term basis. That is something we are shooting for to move on. We don't want to be stuck with a 19 years lease and unable to sell the condominiums because it is unmarketable. We are trying to get it up to maximum number of what the lease terms were at the time, 55 years. This brought it back to the original lease. We are trying to get more than 19 years. Mr. Metzger advised that the maximum lease is 99 years. Mr. Butterworth advised that Peninsula would agree to get the lease above the 35 year total, which will give breathing room for the time being.

- 3) **Discussion regarding economic development along West Roadway**
- 4) **Discussion regarding utilizing one year option for real estate consultant services by Mr. Al Pappalardo**

Public Comments

Announce Next Commercial Real Estate Meeting

Chairman Green announced that the next Commercial Real Estate Committee meeting is scheduled for Thursday, April 7, 2016 at 1:30 p.m.

Adjournment

Comm. Higgins offered a motion to Adjourn, seconded by Comm. Green and unanimously adopted. The meeting adjourned at 8:18 p.m.