

**MINUTES OF
LAKEFRONT MANAGEMENT AUTHORITY
MARINA COMMITTEE MEETING
HELD ON TUESDAY, JUNE 15, 2021**

PRESENT: Chair Stanley Brien
Vice Chair Renee Lapeyrolerie
Commissioner Esmond Carr
Commissioner Howard Rodgers

ABSENT: Commissioner Thomas Fierke

STAFF: Louis Capo – Executive Director
David Martin– Director of Engineering & Operations
Madison Bonaventure – Assistant to the Executive Director/Board Secretary

PUBLIC: Wilma Heaton – LMA Chair
Gerry Metzger– Legal Counsel to the LMA
Scott Hedlund – Legal Counsel to TKTMJ, Inc.
Karl Hudson– Orleans Marina Tenant
Chris Fenner – Stuart Consulting Group, Inc.
Tom Long – Orleans Marina Tenant

The Marina Committee of the Lakefront Management Authority met on May 18, 2021 at the New Orleans Lakefront Terminal Conference Center located at 6001 Stars and Stripes Blvd., New Orleans, Louisiana, 70126.

Chair Brien called the meeting to order at 3:36 P.M. and led in the pledge of allegiance. Executive Director Louis Capo called the roll, and a quorum was present.

Opening Comments:

The Committee inquired about the vacant Harbor Master position. Director Capo advised that potential hires had been interviewed; however, he anticipated that they would be advertising for the position again.

Director Capo informed the Committee that the Assistant Marina Manager, Mr. Ricardo Gutierrez, was out on leave, but Ms. Michelle Hitter and Ms. Helaine Milner were working in the marina offices and coordinating with him.

Director Capo introduced David Martin, the new Director of Engineering and Operations: Mr. Martin has a bachelor's in Civil Engineering from Louisiana State University and is a professional engineer. He had been employed with H. Davis Cole, an engineering consulting firm, since 2007. He has experience with municipal projects, including drainage and structural engineering. Mr. Martin also has experience with FEMA reimbursable disasters. Director Capo

was enthused to have Mr. Martin on the team so the LMA did not lose any gains made under the previous Director of Engineering and Operations, Mr. Daniel Hill.

The Committee welcomed Mr. Martin. Mr. Martin expressed his excitement to serve.

Motion to Adopt Agenda:

A motion was offered by Commissioner Lapeyrolerie, seconded by Commissioner Rodgers, and was unanimously approved to adopt the agenda.

Motion to Approve Minutes:

A motion was offered by Commissioner Rodgers, seconded by Commissioner Carr, and was unanimously adopted to approve the minutes of May 18, 2021.

Director's Report:

Director Capo showed photographs of the Orleans Marina parking lot and bulkhead. He expressed concern about the Orleans Marina bulkhead and parking lot issues. He said that it was his understanding that the worsening condition of the bulkhead could threaten its overall stability, and additional sinkholes were appearing in the parking lot. He explained that it was his understanding that the Flood Protection Authority – East (FPA) was handling the issue. He added that the deterioration of the bulkhead was undermining services such as electrical and water supply.

Commissioner Lapeyrolerie asked who was responsible for the bulkhead and recalled encountering the bulkhead and parking lot issues on her tour with Director Capo when she was first appointed to the Board. Director Capo said the MOU does not assign which agency was responsible for the maintenance of the bulkhead, and it was the LMA's position that the bulkhead should be maintained by the FPA since its proximity to the floodwall could threaten the floodwall's stability.

Commissioner Heaton addressed the Committee. She explained that when she found out about the bulkhead's critical condition, she brought it to the attention of the FPA as their representative and reminded them of the proximity of the bulkhead to their floodwall. She said she understood that they had performed some testing and were preparing to repair the bulkhead.

Commissioner Carr recalled that the FPA had performed some repair work on a drainage issue causing a sinkhole near the floodwall in Orleans Marina and understood that the new parking lot sinkhole issues and bulkhead issue were separate and apart from that prior repair performed by the FPA. He remembered that Director Capo mentioned the critical condition of the bulkhead at the last Board Meeting.

Commissioner Lapeyrolerie requested more information before the Board Meeting regarding the status of the repair and expressed concern about the unknown status of whose responsibility it was to execute the repair. Director Capo said it was his intention to make the Committee aware

of its worsening condition and agreed that the LMA needed an update from FPA staff. Mr. Metzger offered that a resolution may be necessary to memorialize the issue.

Commissioner Heaton returned to the meeting and updated the Committee that she had just spoken to the consultants hired by the FPA to work on the bulkhead issue, and they had been waiting on permitting for the repair from the U.S. Army Corps of Engineers (USACE) and had verbal approval from FPA staff to proceed with bidding out the repair of the bulkhead for a permit fix in the vicinity of Piers No. 1 and 2. She advised she requested a statement in writing to share with the Committee.

Commissioner Lapeyrolerie asked for more details. Commissioner Heaton said she understood that Linfield, Hunter, and Junius, Inc. had studied the site and advised them that it must be repaired. Commissioner Lapeyrolerie asked if FPA staff was willing to bring the repair to the Board for their approval. She confirmed that was the case based on conversations she had with staff and that plans were underway by the FPA to repair the bulkhead.

Public Comments: None

New Business:

1) Motion to recommend approval of the Trash Pick-Up Service Contract at the Orleans Marina and South Shore Harbor Marina for FY2022 with Employment Development Services, Inc.

A motion was offered by Commissioner Carr, seconded by Commissioner Lapeyrolerie, and was unanimously adopted to recommend approval of the Trash Pick-Up Service Contract at the Orleans Marina and South Shore Harbor Marina for FY2022 with Employment Development Services, Inc.

Director Capo explained that the contract was expiring with EDS, Inc., and staff recommended that they proceed with the renewal.

Commissioner Lapeyrolerie asked why there were multiple contracts with EDS, Inc. instead of one contract with all locations included. Director Capo explained that the multiple contracts allowed for proper invoicing for cost allocation.

Commissioner Carr commended EDS, Inc. for their hard work.

2) Motion to recommend approval of Change Order No. 4 to the Contract with TKTMJ, Inc. for Orleans Marina North and East Wall Slip Repair and Construction project to align the contract completion time to actual completion time with no additional fees or costs.

A motion was offered by Commissioner Rodgers and was seconded by Commissioner Carr to discuss.

Chris Fenner, the Engineer of Record for the project, addressed the Committee. He gave a brief background on the project. He explained that the project was delayed by another 227 days due to the delayed installation of an Entergy transformer to power the new slips. He explained that the

updated completion date for the project was October 16, 2020. He said the contractor had contacted Entergy representatives again via email about the transformer two months before the original completion date about the installation of the transformer, but it was not until April 27, 2021 that the transformer was installed. He said substantial completion was accepted on April 29, 2021. He explained that approving the change order would resolve the issue of the additional time that the contractor needed to accommodate the finishing touches that had to be done after the installation by Entergy.

Commissioner Carr asked about the timeline of communication with Entergy. Mr. Fenner explained there were several communications via email and phone that transpired over a span of several months and that the contractor was available for questions as well.

Commissioner Carr asked Mr. Fenner if he knew the first step necessary to notify Entergy about power connection/installation. Mr. Fenner said he had been involved with the design aspect of the project. Commissioner Carr asked when the load list was submitted to Entergy. Mr. Fenner responded that it was sometime in 2019. Commissioner Carr disagreed and said there was a load list submitted in February of 2021 by a Mr. Chris Cross.

Mr. Scott Hedlund, Legal Counsel to TKTMJ, Inc., introduced himself to the Committee. He explained that Mr. Cross was an electrical subcontractor to TKTMJ, Inc. He said that the initial contact Stuart Consulting Group, Inc. to Entergy was made in 2019 before the project was bid. Mr. Hedlund explained that while the project was ongoing, his firm began communications with Entergy about installation of the transformer in August of 2020 as a follow-up to the communications Stuart Consulting Group, Inc. had with Entergy. Mr. Hedlund said that Mr. Mark Baquet of Entergy requested the load sheet again to confirm the specifications in January of 2021.

Commissioner Carr asked if the contractor was accusing Entergy of 227 days of delay at a cost of \$113,000.00 to the agency for foregone liquidated damages. Mr. Hedlund said he was not accusing Entergy of anything and noted that TKTMJ, Inc. was also working on the new Municipal Yacht Harbor restoration project and similarly only received a transformer for that marina one week before the one for the one for LMA's project (originally requested in March of 2019). Mr. Hedlund said that what was relayed by Entergy was the demand caused by seven named storms and COVID-19 pandemic circumstances caused significant delays in service.

Commissioner Carr said he had spoken to the distribution manager with Entergy earlier that day, and he told him that the load list was not received until January 25, 2021, and a work order was created on January 28, 2021. He felt the request was accommodated timely.

Mr. Fenner indicated that a site visit was conducted by his firm with Entergy, Mr. Hill, and TKTMJ, Inc. on September 11, 2020 to discuss electrical needs in relation to the transformer for the project. Commissioner Carr asked if all proper paperwork had been submitted by the contractor at that time. Mr. Fenner said that was his understanding, and at some point, they were informed that Entergy did not have the load sheet; however, they had emails showing they had sent the document previously for review.

Commissioner Carr continued to question the timeline and brought up the issue of liquidated damages. Mr. Hedlund took the position that the liquidated damages, if still in effect, would be non-compensable anyways for the delay was not caused by the owner or the contractor. He said

that delays caused by the owner could be compensable, which there were owner-caused delays at the beginning of the project, and they did not ask for liquidated damages. He explained that the owner, engineer, nor contractor could control the timeline of the public utility company.

Commissioner Carr said the project was originally a 180-day project that was expanded to a 630-day project and wanted accountability for the \$125,000 in lost rental revenue. Commissioner Carr felt due to his experience as an engineer that worked for the public utility company, Entergy could not be blamed considering the circumstances.

Mr. Fenner explained that there was tremendous effort on the contractor's part to request the transformer, and his engineering firm supplemented those efforts.

Commissioner Carr continued to question timelines and completion of stages of the project and discussed it with Mr. Hedlund. Mr. Hedlund explained that the first change order could have been compensable because the owner did not have all the boats removed from the worksite in time, and they had to wait a month for the Authority to approve vibration monitoring as well. He explained that in working in good faith with Mr. Hill who had inherited the project, they did not seek liquidated damages from the LMA. He mentioned that there were delays associated with demobilization due to seven named storms and COVID-19 pandemic issues. Mr. Hedlund advised that he had since checked some emails and the very first communication with Entergy began back in 2018 to discuss requirements and specifications.

Commissioner Carr felt as if scope had been significantly reduced throughout the project. Mr. Hedlund contested that assertion and offered to discuss all the backup associated with the change orders and explained the circumstances relating to the condition of some of the pilings and bulkhead concerns and extensive labor that took place. Mr. Hedlund described the causes and terms of the change orders.

Commissioner Brien wanted to revisit why liquidated damages were not appropriate in the case of the change order before the Committee. Mr. Metzger explained that a non-compensable item is considered an excusable item caused by an act of God or circumstances caused by a third party. He said if the facts given by Mr. Hedlund and Mr. Fenner were accurate and/or proven, then they had a basis to make a claim for the extension of time without being liable for liquidated damages. Mr. Metzger recommended that the Committee refer the issue to the Legal Committee for further discussion.

Commissioner Lapeyrolerie asked if Stuart Consulting Group, Inc. had performed design work or just construction administration services. Mr. Fenner said they did perform engineering design; however, the construction administration services were performed under a separate contract. She felt his firm's role would have been to stay on top of the utility company for timely installation.

Commissioner Carr continued to question the timeline of the project. He agreed that it was best to refer the issue to the Legal Committee.

Commissioner Brien asked if the slips were ready. Director Capo understood that they were, but closeout of the project was needed and finishing details needed to be addressed.

Commissioner Lapeyrolerie made a substitute motion to refer the recommendation of approval of Change Order No. 4 to the Contract with TKTMJ, Inc. for Orleans Marina North and East Wall

Slip Repair and Construction project to align the contract completion time to actual completion time with no additional fees or costs to the Legal Committee. The motion was seconded by Commissioner Rodgers.

Commissioner Brien advised that more data was needed for the Legal Committee to thoroughly review the issue such as the communications which were referenced in the discussion and other documentation. Commissioner Carr offered that a summary could be helpful. Mr. Martin said it would be helpful to see which items affected the critical path.

Commissioner Carr suggested that the contractor should have explicitly outlined when Entergy would construct and install the transformer. Mr. Hedlund said that is not their standard practice to explicitly call that item out in their schedule because they cannot predict how long it would take for Entergy to design and build a transformer. Commissioner Carr said that they could have made an estimation in their schedule.

Commissioner Carr began reading a schedule from his mobile device and discussed discrepancies with the schedule with Mr. Hedlund. Mr. Hedlund said that he could not verify the information on Commissioner Carr's mobile device, but the schedule he was reading from may have been an as-built schedule.

Mr. Metzger advised that it may be best to have the Legal Committee review all the information that was being referred to and discussed. He had doubts that all the information could be collected in time for review by the Legal Committee in two days. He said it may need to be discussed next month. Mr. Metzger asked if the project was fully complete.

Mr. Hedlund advised that it was; however, there was an issue due to the fact that the state-of-the-art ground fault interrupter system (GFI) was not compatible with the design in that the slips each have their own meters, and when power is established at an individual meter, it reads the powering of the new meter as a fault and shuts the system down. He said it would presumably be an issue each time a new tenant is onboarded into a new slip. He advised that the project was built to specifications and advised that there was a meeting the next day with Mark Baquet of Entergy, the Engineer of Record for the project, a representative from Eaton, and a representative from TKTMJ, Inc. to discuss a possible solution to the GFI issue.

Commissioner Lapeyrolerie asked why the item was coming before the Committee and Board after it had been completed. It was Director Capo's understanding that the project had not been accepted. She understood that it had been signed off as a substantially complete project. Mr. Fenner explained that once a project is signed off as substantially complete, then the clock stops on the days of work and the project is considered suitable for use.

Mr. Hedlund said it was communicated to him that the change order was a housekeeping measure. Commissioner Lapeyrolerie did not understand why the change order did not come before the Board sooner. Commissioner Carr felt it was mismanagement of the project on the LMA's part. Mr. Metzger said it is not unusual for change orders to come about between board meetings or after more details are worked out. Commissioner Lapeyrolerie asked why staff did not bring the change order forth before the June meetings. Director Capo explained that he thought Daniel Hill, the previous Director of Engineering and Operations, had effectively communicated the delays in the project.

Commissioner Lapeyrolerie expressed concern about how the projects had been managed and how they would reflect on the LMA as many professional service providers were local businesses.

Mr. Fenner said back in October of 2020, there would have been no way to predict how long it would have taken Entergy to install the transformer, so it would not have been appropriate to ask for a change order at that time.

Commissioner Carr revisited the previous change orders. He requested additional preparedness for change orders for Board approval. Director Capo explained that in October of 2020 Mr. Brad Vanhose, the Harbor Master at the time, informed the Committee that the project had been delayed due to three storms in the region during that period. There was also a discussion in December of 2020. He said in April of 2021, staff had informed the Committee that they were still waiting on Entergy to install the transformer. Commissioner Lapeyrolerie said that while the Committee has been receiving updates, it was not substantial information relating to the contract time extension needed.

Commissioner Carr asked if the slips could be occupied. Mr. Metzger suggested it may be wise to resolve the GFI issue before leasing the slips. Commissioner Carr expressed frustration regarding the GFI issue and the project having been signed for as substantially complete.

Commissioner Brien called for a vote. All were in favor to refer the recommendation of approval of Change Order No. 4 to the Contract with TKTMJ, Inc. for Orleans Marina North and East Wall Slip Repair and Construction project to align the contract completion time to actual completion time with no additional fees or costs to the Legal Committee. The motion carried.

Announcement of next Marina Committee Meeting:

1) Tuesday, July 13, 2021 – 3:30 P.M.

Adjourn:

Commissioner Rodgers noted that he had received a communication via email from Director Capo and had also received some information via mail. He asked if it would be discussed at the full Board Meeting. Director Capo said they may, and they have an attorney evaluating the situation.

A motion was offered by Commissioner Carr, seconded by Commissioner Lapeyrolerie, and was unanimously adopted, to adjourn. The meeting was adjourned at 4:46 PM.