

**MINUTES OF
LAKEFRONT MANAGEMENT AUTHORITY
REGULAR MEETING OF THE LEGAL COMMITTEE
HELD ON THURSDAY, DECEMBER 10, 2020**

PRESENT: Chair Stanley Cohn
Vice Chair Robert Watters
Commissioner Eugene Green, Jr.

ABSENT: Commissioner Thomas Fierke

STAFF: Louis Capo – Executive Director
Madison Bonaventure – Assistant to the Executive Director

ALSO

PRESENT: David Jefferson Dye – Legal Counsel to the LMA
Wilma Heaton – LMA Chair
Gerard G. Metzger – Legal Counsel to the LMA

The Regular Meeting of the Commercial Real Estate Committee of the Lakefront Management Authority met on Thursday, December 10, 2020 virtually via Zoom. The Committee met after notice was posted and sent to the public and media. The meeting was livestreamed via the Lakefront Management Authority’s YouTube channel. All comments were accepted in writing up until the meeting start time pursuant to the agenda.

Chair Cohn called the meeting to order at 3:45 P.M. and led in the pledge of allegiance. Director Capo called the roll, and a quorum was present.

Opening Comments:

None

Motion to Adopt Agenda:

A motion was offered by Vice Chair Watters, seconded by Commissioner Green, and was unanimously adopted, to adopt the agenda.

Public Comments:

Mr. Van Robichaux, of the Lake Oaks Civic Association, submitted his comments via email:

“The Building Restrictions for Lake Oak Subdivision, Section IX (attached) clearly state that the easement in the rear of the lots is owned by the Levee Board.”

Dana Bix, a resident of Lake Oaks, submitted her comments via email:

“To the Legal Committee of the Lakefront Management Authority:
My name is Dana Bix, and I along with my husband and youngest daughter, have lived at 2480 Oriole Street since July 25, 2019. It was made clear to me upon the purchase of our home that we were not responsible for the alleys, because they are not our property. The boundary for my

property line is our fence. It very clearly states that the alley easement is owned by the Orleans Levee Board in Section IX of the regulations for Lake Oaks.
The alleys need to be maintained regularly by (and at the expense of) the Management Authority.
Thank you,
Dana Bix”

Sallie F. Arnoult, a resident of Lake Oaks, submitted her comments via email:

“As a lifelong resident of the Lake Oaks subdivision, residents do not generally use the easements behind our homes. The only purpose for a resident to go into those easements at this time is to clear the overgrowth behind their respective homes. There are locked gates at each intersection and residents have to get the combination to the respective lock from the Orleans Levee Board Police. However, it is clearly written in the neighborhood covenant that the Orleans Levee Board owns those easements and were implemented for the expressed purpose to run underground wiring now maintained by Entergy New Orleans.

Where we run into difficulties is that rodents now run rampant in Lake Oaks because they multiply in the protection of the overgrown vegetation in the easements where residents either are unable to or refuse to clear behind their homes. Those who do their part have to suffer because of those who do not do their part. In some locations, massive trees have sprouted out of the cement easements. Prior to Hurricane Katrina, our easements were cleared routinely by the Orleans Levee Board. This situation has become quite desperate and the residents of the Lake Oaks subdivision should enjoy the same remedies as the rest of the Lakefront subdivisions. The East End of the Lakefront has never received the same care and consideration as the West End of the Lakefront.

Thank you for your consideration of this matter!”

Commissioner Esmond Carr, a resident of Lake Oaks, submitted his comments via email:

“Tuesday December 8th 2020, I witnessed a presentation by Daniel Hill at the Recreation and Subdivision Committee meeting on the proposed maintenance of Lake Vista “servitudes.” Specifically, the clearing of these servitudes by the LMA at the sole cost of the LMA. At this meeting, I also witnessed not only public comment, but public discourse between the residents of Lake Vista and the LMA. Public comment was not limited to two minutes, nor was it presented at the appropriate time as shown on the agenda, residents were allowed to come up at various times during the presentation to discuss with LMA. I enjoyed this engagement with the community that I am appointed to represent and I back that project to clear unsightly and/or dangerous obstructions from LMA property to the benefit of the community for all neighbors to use. Here we are today, December 10th, and Lake Oaks has an item on the agenda that the neighbors are passionate about and several would like the same opportunity provided to Lake Vista residents. However, in order for Lake Oaks residents to participate, public comment must be submitted in writing and read into record.

At least one comment to be read into record today along with the supporting legal document submitted therein prove this is LMA property which is not denied by the board. These easements under discussion are undoubtedly LMA property. Why then is the LMA consciously disregarding its responsibility to make their own property accessible and free of hazards? Today we consider a cooperative endeavor agreement whereby the neighbors, through the Civic

Association would be required to partially contribute financially to this clearing and continued maintenance. However, as I stated previously, the Lake Vista clearing and maintenance project was presented by the LMA as a project completely funded by the LMA. I support that project. As I have done in Lake Oaks, I will put on gloves, bring my own equipment and assist in the clearing of this property. No resident should be subjected to the unsightly overgrowth and hazards presented by the negligence of this board to maintain its property. I will support equal action for each neighborhood. This board owes an explanation to the residents of Lake Oaks on why Lake Oaks is different. Whatever is discussed today in regards to Lake Oaks should be equal for all neighborhoods. We should not even discuss these items separately. Clearing LMA property should not be based on the neighborhood or the board's preference for one neighborhood over the other. This board should maintain all of its property equally. My final question which was simply ignored and left unanswered on Tuesday: Why is Lake Oaks different?"

Ann Duffy, a resident of Lake Oaks, submitted her comments via email:

"The easements behind houses in Lake Oaks have always been the responsibility of the Levee Board. The Levee Board has cleaned them in the past and I have correspondence from prior Lake Oaks Presidents going back to Max Hearn and Steve Spencer telling them it's time to clean the easements and they did. Joe Hassinger grew up in this neighborhood and he remembers that too.

Now the Levee Board is trying to dodge this responsibility. Lake Oaks is a lake front property and deserves the same consideration given to the other 3 lake front properties The Levee Board Commissioner, Stanley Cohn, elected to protect our interests needs to step up and do so.

Thank you, Ann Duffy, Past President, Lake Oaks"

Casey and Nicholas DiNatale, residents of Lake Oaks, submitted their comments via email:

"As residents of Lake Oaks, I am extremely frustrated with the state of our easements & the LMA's blatant disregard for their responsibility to maintain them. These are LMA property, just as they are in the other lakefront neighborhoods, and safe, unimpeded access for Entergy, Cox & other utilities is a necessary part of maintaining our neighborhoods infrastructure. Provisions for their ongoing upkeep need to be made by the LMA, just as they were for Lake Terrace; it is unconscionable that your board has repeatedly shirked this responsibility in spite of your clear legal obligation.

Thank you,

Casey & Nicholas DiNatale"

Jose Prado, a resident of Lake Oaks, submitted his comments via email:

"Legal Committee Lakefront Management Authority

My name is Jose Prado, I reside at 2442 Killdeer St, in New Orleans, in the Lake Oaks subdivision. I'm writing regarding the clean up and maintenance of the alley ways in our neighborhood. These are utility easements that are owned by the Orleans Levee Board per our CC&Rs attached herein. I have personally called over three times to request that these be cleaned up and have not even received the courtesy of a returned phone call. I don't understand the legalese involved in a Cooperative Endeavor Agreement nor the need for one in this matter, I

guess that's the nature of the legal committee. To me it's a simple matter, you own it, it's your responsibility to keep it clean and maintain it and it has not been done. An example of the negligence thus far is the following, in one of the intersections near my home there is a full grown palm tree that prohibits the proper closure of the gate. Obviously to get to that state it has taken several years of neglect. From time to time this area is infested with rodents. I'm kindly asking the committee to take whatever steps are necessary to correct this situation as soon as possible.

Sincerely,
Jose & Laurie Prado”

Meghana Hemphill, a resident of Lake Oaks, submitted her comments via email:

“To Whom It May Concern:

My husband (copied) and I are residents of Lake Oaks, my family has been here since 2000. Our property does not include the easement, which is clearly owned by the Orleans Levee Board. The Lakefront Management Authority is responsible for keeping their property in Lake Oaks maintained and hazard-free. This is not the responsibility of Lake Oaks homeowners or the Lake Oaks Civic Association.

Meghana & Tim Hemphill”

Harold Matherne, a resident of Lake Oaks, submitted his comments via email:

“Legal Committee members, Cox Cable is in the process of moving their main trunk cables and service pedestals from the curb-sidewalk servitude area to the property owner's side of the sidewalk. This is a huge surprise to everyone in the neighborhood. The pedestals were unsightly at the curb location and will be even worse at the bottom of owners properties.

Was there a review and approval process for this change? Lake Oaks is supposed to have all services located underground. Why isn't Cox being required to install in ground service boxes.”

Regards,
Harold Matherne
2453 Oriole Street”

Jennifer Quezergue, a resident of Lake Oaks, submitted her comments via email:

“I will probably be in transit and may be able to join the meeting later.

My comments are that the excerpt from the document *Lake Oaks Item – Servitudes* says what residents have always assumed and is in print and that is that the rear lots are owned by the Orleans Levee Board. Any entity that owns the property is responsible for the upkeep and that includes the Orleans Levee Board for this right of way. The residents do not own the property just as the residents in Lakeview do not own their alleys. The overgrowth in the servitudes causes serious utility access problems as well as rodent problems. This is a responsibility which Orleans Levee Board should handle. Thank you. Jennifer Quezergue, 504-237-8340”

To serve the sites in the Lake Oaks Subdivision with an electric underground system, transformer vaults will be erected in the rear of lots adjoining an easement owned by the Orleans Levee Board within which the primary cables serving the transformers will be located. These vaults will be constructed of brick or concrete and will be located as indicated on Map of Lake Oaks Subdivision, File No. L.D. 3106.

Legal Counsel's Report:

David Jefferson "Jeff" Dye said that exceptions are set before Judge Kern Reese on February 17, 2021 for the *Boh Bros. Construction Co., L.L.C. v. Orleans Levee District and the Non-Flood Protection Asset Management Authority*, No: 2019-10953, Div. L-6, Civil District Court for the Parish of Orleans.

He said that exceptions have also been filed for the suit brought about by Mr. Sam Haynes, a boathouse lessee. He said Mr. Metzger and himself filed exceptions and a reconventional demand to enforce the lease provision. He said they had answered the suit.

Mr. Metzger indicated that there was a new hearing date for *Lakefront Management Authority v. J & J Partners, L.L.C.*, No. 2020-8075, Division "I-14", Civil District Court for the Parish of Orleans, State of Louisiana. Mr. Dye said the new date was January 13, 2021, and a judge had not yet been assigned to the case.

Executive Session:

1) *Lakefront Management Authority v. J & J Partners, L.L.C., No. 2020-8075, Division "I-14", Civil District Court for the Parish of Orleans, State of Louisiana.*

Chair Cohn proposed that the committee enter Executive Session pursuant to LA Rev. Stat. § 42:16 to discuss the legal issues regarding *Lakefront Management Authority v. J & J Partners, L.L.C.*, No. 2020-8075, Division "I-14", Civil District Court for the Parish of Orleans, State of Louisiana as it involved pending litigation and trial tactics for its court date on January 13, 2020.

A motion was offered by Commissioner Green, seconded by Vice Chair Watters, and unanimously adopted, to enter executive session to discuss the legal issues regarding *Lakefront Management Authority v. J & J Partners, L.L.C.*, No. 2020-8075, Division "I-14", Civil District Court for the Parish of Orleans, State of Louisiana.

Chair Cohn stated that no action was taken during Executive Session, and the Committee reconvened.

New Business:

1) *Motion to recommend Delegation of Authority to Executive Director, Louis Capo, to accept a settlement for the outstanding slip rentals owed by the Roland Von Kurnatowski Succession.*

A motion was offered by Commissioner Green, seconded by Vice Chair Watters, and was unanimously approved to recommend Delegation of Authority to Executive Director, Louis Capo, to accept a settlement for the outstanding slip rentals owed by the Roland Von Kurnatowski Succession.

Chair Cohn said that Commissioner Green discussed in their last meeting that the sale of the Mary Grace vessel should include the recovery of slip rental fees.

Mr. Dye said that at the time of their meeting, the Succession and the bank had agreed that proceeds from the sale would disburse the full amount of the slip rental balance owed to the LMA as of November 4, 2020. He said that the amount was more than \$31,000.00.

He added that the settlement needed to be approved by a judge. He said that he distributed a resolution for the Committee's review. He said the motion and resolution would authorize Director Capo to accept a settlement from proceeds of the sale of the vessel once approved by the judge.

2) **Motion to recommend Delegation of Authority to Executive Director, Louis Capo, to enter into a settlement agreement with the United States Environmental Protection Agency with regards to the JCC Environmental CERCLA site.**

A motion was offered by Commissioner Green, seconded by Vice Chair Watters, and was unanimously approved to recommend Delegation of Authority to Executive Director, Louis Capo, to enter into a settlement agreement with the United States Environmental Protection Agency with regards to the JCC Environmental CERCLA site.

Mr. Dye explained that the LMA was purportedly partially responsible for the disposal of off-specification fuel at the JCC Environmental CERCLA site. He said that the EPA was attempting recoup its expenses from the cleanup of the fuel. He said that the LMA's liability was allegedly the result of 600,000 gallons of off-specification fuel generated by the Airport and sent to the site. He said that the proposed settlement amount totaled \$2,400.00, and the settlement documents must be returned to the EPA no later than December 31, 2020. He said that the payment would be due after 30 days after the EPA accepts the agreement in 2021.

He encouraged the Committee to pass the motion as the cost research the issue would exceed the settlement amount.

3) **Discussion regarding the development of a Cooperative Endeavor Agreement (CEA) between the Lakefront Management Authority, Entergy, and the Lake Oaks Civic Association regarding the maintenance of Lake Oaks Subdivision Alleyways.**

Chair Cohn said the public comments were exclusively about the Lake Oaks alleyways. He said it made him feel as if the community was not in favor of a CEA. He said that the Board was in favor of a way to remedy the situation legally. He said there was a legal opinion that the obligation of the alleyways' maintenance was incumbent upon the owner of the homes, but there is language presented that the Orleans Levee District owns the property and therefore should maintain it.

Chair Heaton addressed the Committee. She said it was her intention to ask the Legal Committee to support the CEA; however, she had learned at the Recreation-Subdivision Committee meeting that the Lake Oaks Civic Association would be hosting a meeting later to discuss the issue that day. She said she would attend to answer their questions to further explain the issue and learn how amenable residents were to the development of a CEA. She said that Mr. Metzger has indicated that the Lake Oaks alleyways and Lake Vista servitudes have a legal distinction. She said that she suggests the Committee discuss the issue once she has forged an agreement with them.

Commissioner Green said he was unsure if there was a path to a CEA if the alleyways in fact belonged to the property owners and was unsure if public dollars could be spent on such an endeavor.

Chair Heaton said that during the original development of Lake Vista the remaining land between homes was never sold, so it remained Orleans Levee District (OLD) property. She said residents of Lake Oaks were frustrated because they felt that due to a legal distinction, they were being treated differently despite the function of the Lake Vista cut throughs and Lake Oaks alleyways operating similarly. She said due to safety concerns for the community, she was exploring the option of a CEA to resolve the issue.

Mr. Metzger said there was a legal distinction because there was no servitude holder for the Lake Vista cut throughs. He said they functioned like the interior parks in Lake Vista because they were open to the public. He explained that despite the Lake Oaks alleyways existing on OLD property, they had servitudes granted in favor of the utility companies and the dominant estates. He said due to the circumstances, it was his firm's opinion that the LMA was not obligated to maintain the alleyways according to the civil code.

Commissioner Green confirmed with Mr. Metzger that both Lake Vista cut throughs and the Lake Oaks alleyways were in fact OLD property. Mr. Metzger confirmed that they both were, and the owner of the dominant estate was the only party obligated to maintain the servitude/alleyway.

Vice Chair Watters suggested that the neighbors are asking for complete parity, and the LMA could not give complete parity given the legal circumstances. He suggested that the LMA could not surrender the land without a sale.

Mr. Metzger said there is a possible solution, but it would need to be constitutional.

Chair Cohn said the issue about the legal distinction, which had been discussed in prior meetings, had not been represented in the public's comments.

Commissioner Green said that a further explanation needs to be given to the homeowners, though some were correct that the OLD owns the land.

Mr. Metzger said he did issue a letter to the LMA on March 11, 2014 explaining the legal distinction.

Commissioner Green said he did not appreciate the tone of the comments asserting that one neighborhood was being treated differently than another. He said there were legal distinctions regarding the LMA's obligations.

Mr. Metzger said the use of the term servitude when referring to Lake Vista's cut throughs was incorrect. He said he has advised staff that the pieces of land are not servitudes at all as they are public property.

Announcement of next Legal Committee Meeting:

1) Thursday, January 21, 2021– 3:30 P.M.

Adjourn:

A motion was offered by Vice Chair Watters, seconded by Commissioner Green, and unanimously adopted, to adjourn. The meeting was adjourned at 4:30 PM.