

**MINUTES OF  
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST  
LEGAL COMMITTEE MEETING  
HELD ON APRIL 20, 2022**

PRESENT: Richard G. Duplantier, Jr., Chair  
Herbert I. Miller, Committee Member

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The Legal Committee of the Southeast Louisiana Flood Protection Authority-East (Authority or FPA) met on April 20, 2022, in the St. Bernard Council Chambers, St. Bernard Parish Government Complex, 8201 West Judge Perez Drive, Chalmette, LA. Mr. Duplantier called the meeting to order at 9:00 a.m.

**Opening Comments:** Mr. Duplantier explained that under the FPA Bylaws, the process to be used for amendment is for the Legal Committee to discuss the proposed amendment at one meeting and proposed amendment would then be submitted to the entire Board for a vote at the next meeting. The Board must have twenty days' notice of any proposed amendment to the Bylaws. Therefore, the Committee would be discussing proposed amendments to the Bylaws today that would be voted on at the May Board meeting.

**Adoption of Agenda:** The Committee approved the agenda as presented.

**Approval of Minutes:** The Committee approved the minutes of the meeting held on January 20, 2022.

**Public Comments:** None.

**Report of Executive Counsel:**

Michelle White, Executive Counsel, explained that the main piece of uninsured litigation discussed at the last meeting was the Robert case. Class certification is being pursued with regards to property owners along the London Avenue Canal. The class certification hearing date had been set, but was continued. The court had hoped for a spring resetting; however, there has been a delay due to the death of the FPA's expert witness (Frank Newell) in the case. This is not an expert intensive case; however, the expert witness plays an important role in the case. The court has allowed time for the FPA to identify an expert, and for the expert to prepare a report, review all of the discovery and prepare for the hearing. At this time, the class certification hearing is set for September 6<sup>th</sup>. The FPA has not yet selected an expert; however, interviews are being conducted of individuals with the particular expertise needed (e.g., land rights, surveying and some engineering). There are no additional developments in this case.

Ms. White advised that at the last Legal Committee meeting the retention of Burglass and Tankersley was recommended for the litigation entitled Jennie Campbell and

Stephen Campbell v. Cycle Construction Company, et al. In this case, the property owners along Bellaire Drive had stormwater inundation in their backyard. Burglass and Tankersley were retained and exceptions have been prepared along with the first response of pleadings. This is very early in the case and no further actions have been taken.

Ms. White advised that since the last Committee meeting there has been two pieces of insured litigation both of which are motor vehicle accidents, one involving a maintenance employee and the other involving a police officer. The case involving the police officer pertains to claimed bodily injury; the FPA already had a claim established for the property damage. The two cases were assigned by the insurer to the Lewis Brisbois law firm, which has typically been handling FPA motor vehicle accident litigation.

### **New Business:**

#### **A. Legal update.**

Mr. Duplantier requested that Ms. White briefly touch on the new cases that have come up since the last meeting.

Ms. White advised that there has been no new uninsured litigation. However, there have been overtures of litigation with respect to the close out of the project undertaken by Kort's Construction. Should the FPA be unable to successfully resolve the dispute between the deductions that the FPA's consulting engineer advised are owed and what Kort's is willing to accept, then the claim may be headed for mediation and/or litigation.

Chris Humphreys, Director of Engineering, explained that staff is reviewing the final change orders for the Kort's Construction project. Initially, liquidated damages and inspection costs recommended by the FPA's engineering consultant totaled about \$260,000; however, this amount was negotiated down to about \$120,000, which would basically cover the FPA's costs. The liquidated damages and costs are due primarily to inclement weather and its aftermath. The contract indicates that the FPA will mediate; however, if mediation is unsuccessful the dispute can go back to the engineer or to litigation. Ms. White added that this is not binding mediation and that the FPA is obliged to mediate in good faith.

#### **B. Draft Amendment to the By-Laws regarding appointment of executive staff.**

Mr. Duplantier explained that the Board members had discussed at various meetings amending the Bylaws regarding the selection and retention of executive staff. Proposed amendments to the Bylaws were developed that would require Board approval of all executive staff appointments in the future. The President would retain the appointing authority subject to the approval of the full Board. The proposed amendments would primarily add a Section 5 under Article 6 to require Board approval of the four main executive staff positions (Administrative Assistant, Executive Counsel, Director of

Engineering and Regional Director). He recommended that the following statement be deleted from the proposed amendment, "Any interim appointee shall not be eligible for the permanent position." This would allow the interim appointee to be considered for the permanent position. In addition, the Committee determined that both paragraphs under §6 should read "...the Administrative Assistant, Executive Counsel, Director of Engineering and/or Regional Director..."

Mr. Duplantier advised that he would make the revisions discussed in today's meeting and would send the revised document to Ms. Boudreaux. He also instructed that the proposed amendments be published to the entire Board at least 20 days prior to the May 19<sup>th</sup> meeting and that they be included on the May 19<sup>th</sup> Board Agenda for approval.

The Legal Committee voted unanimously to recommend that the Board approve the proposed amendments (as revised) to the Bylaws.

There was no further business; therefore, the meeting was adjourned at 9:15 a.m.