

**DPOA Open Board Meeting
7 July 2009**

President Mario Feola called the meeting to order at 3:05 PM in the Diamondhead Country Club in accordance with the Bylaws Sections 5.5 and 5.7.

Board Members present: President Mario Feola, Vice President Jim Hunt, Secretary Nicole Boisdore', Treasurer Gordon Walker, Ex-officio Don Kraemer. Directors: Don Crosby, Durell Pellegrin, Bert Schnadelbach and John Yarbrough. Absent: Stewart Nutting – proxy to Boisdore' and Gerald Ward – proxy to Feola.

Guests: General Manager John Enxing, Comptroller Pam Tomasovsky, and approximately 100 POA members.

Minutes of June 2nd were unanimously approved by e-mail. A correction was made to record absence of Kraemer. Kraemer move to approve as corrected, Walker second. Motion passed unanimously. Vote unanimous.

General Manager's Report: John Enxing

POA Corporation Gross Revenue for June 09

- Golf - \$6595 better than budget
- Country Club - (\$1492) worse than budget
- Recreation – \$4065 better than budget
- Tennis – (\$976) worse than budget
- Marina – \$1480 better than budget
- Airport – (\$1968) worse than budget
- Total - \$7703 better than June 09 budget, up 9.2% from June 08
- **Total - 53% drop from last month**

Facilities

- Pier house building in progress. Looking for a Labor Day opening
- Country Club landscape and flower beds maintenance

Airport

- MDOT and FAA inspection report attached
- ID #09-1 and 09-4 are immediate repairs
 - Allen Specialty will begin striping June 13th thru June 20th
 - Facilities will pull lights from Westside of RWY
- ID#09-2 and ID#09-03 are fall 2009 projected

Golf Course Maintenance

- Golf equipment discussion in upcoming budget session
- Tree removal bid from Taylor Tree

Country Club

- Unexpected maintenance repairs to burners for the boiler and A/C issues

Walker noted that we have the golf course maintenance equipment coming up for the lease with Jacobsen of several hundred thousand dollars in early spring 2010. We need to make sure that we stay on top of that and we get everything done that we need to do, so that we won't wind up not having the equipment that we have leased and are waiting 6 weeks and we don't have the new stuff. Walker requested that Enxing pays close attention to the issue. Enxing agreed.

Financial Report: Comptroller Pam Tomasovsky: full financial report follows the minutes

OLD BUSINESS

1. Approval of the previously budgeted funds for canal easement maintenance. *(Secretary's note: Due to my involvement in the motion and issue below, and in the interest of fair and accurate reporting, I appointed Betty Blakeney, our POA administrative assistant, as my agent, to assist me in the taking of the minutes as allowed by the bylaws. Blakeney took detailed notes which matched up with my basic ones and the following information on item number one was transcribed from a live recording.)*

The Agenda was taken out of order by Feola to request that Hunt and Boisdore' remove the item from the Agenda, stating questions concerning ownership, insurance, maintenance, security, public use, liability, priority dredging, usage fees, etc. Feola emphatically stated that he does want to see the canals dredged but he requires at least 60 days researching the above issues. An attorney, Paul Newton, of the firm Newton and Hoff, LLC, was asked to draft an opinion regarding the ownership of the canals and the legality of spending POA funds to maintain them. Feola stated that regardless of what Newton comes up with, he sincerely wants the canals dredged for everybody, and wants them passable. Feola asked Hunt to pull his motion. Hunt stated that he did not expect this request and stated that a great deal of thought has been given to this subject. He stated that the canals, as common areas to the community are as important as the runways, golf courses, tennis courts, etc. Hunt stated that we have already received a legal opinion regarding ownership by attorney Pepper Pearson, of the prestigious firm Page, Mannino, Peresich, and McDermott. They have successfully represented the POA on previous issues. Pearson read the Covenants, Takeover agreement, and Special Warranty Deed a little more carefully than we have in the past 34 years. The ownership of the easement is ours and we have invested money over the years in the canals, a small amount, which mainly has been band aid surgery. There are approximately 17 different points that silt drops in from the north and spreads down to the mouths of the canals and Paradise Bayou. Hunt stated that to take more time after the time that we have taken already is unnecessary and simply delays the project. It is vital that we get started as soon as possible, as the Pier House is opening soon, and we must provide access. Dannie Ladnier that did the work on the piers has approval of the DMR to run maintenance on the canals. The board budgeted \$100,000 to begin to try and help the Southside get straight. We have spent \$10,000 on beautifying the circle and entrance medians. \$100,000 is a minimal amount of money in the 9

million dollar POA budget compared to what is spent elsewhere is Diamondhead. **Feola stated that Hunt wanted to continue with the motion.** Kraemer moved to table the motion till the September meeting. Boisdore raised a Point of Order that tabling cannot be used to kill a motion that has yet to be formally proposed or seconded. Kraemer asked if the proposal had been moved and seconded. Feola stated that it had been. **Kraemer moved to table the proposal until the September meeting.** After being recognized, Walker stated his belief that the motion to table was out of Order, since it was clearly intended to cut off debate on this matter. Kraemer stated that there is no discussion, according to Roberts Rules of Order on a motion to table, however, one can ask that it be declared out of order. Feola asked for a second. **Yarbrough second.** Boisdore' called the question.

Yeas: Feola, Kraemer, Pellegrin, Ward, Yarbrough

Nays: Boisdore, Crosby, Hunt, Nutting, Schnadelbach, Walker. Motion failed.

Feola directed the return to the original proposal. **Hunt moved to approve the distribution of funds to begin to bring the waterways south of I-10 into compliance with the supplementary agreement, by maintaining dredging prioritized by the worst level of silting in and heaviest usage as detailed in the proposal on implementation given to the board. Boisdore' second.** .

Discussion ensued. **Crosby** opined that we have already budgeted this money and that as far as he was concerned it was a done deal early on. He stated that we could dance around many attorneys' opinions but we have been maintaining the canals for the last 30 years before Katrina, and there was no need to wait any further. **Schnadelbach** stated that he did not think that any of Feola's questions were severe enough to answer that would prohibit us from dredging the canals. He stated that the canals are part of Diamondhead's transportation plan, along with the streets; waterways and aviation are all part of transportation. The POA is responsible for transportation maintenance. **Boisdore'** voiced support for the motion, stating her belief that all legal avenues were thoroughly researched and taking exception to the Page Mannino opinion being dismissed after they have been touted as experts on POA matters by the administration on recent previous issues. She stated that Hunt has worked and done a yeoman's task for at least the past four years. DPOA requested dredging assistance from FEMA Post K, first the original request and also 2 appeals. All were denied on the basis that the canals are the "privately owned recreational facilities of a property owners association," which renders them ineligible. Also contacted for assistance were DMR, the Coast Guard, every elected county official, Gene Taylor's office, State Senator David Baria, State Representatives JP Compretta and Jessica Upshaw. Hunt has been assisted by professional lobbyists and lawyers pro bono and every government answer has been "no." During the recent rezoning issue a Special Warranty deed was found that was apparently previously unseen. It granted the POA a perpetual nonexclusive easement for ingress and egress and access above and across the waterways south of I10. She stated that in MS law, the owner of an easement has the obligation to maintain it regardless of the owner of the real property that the easement lies within. Diamondhead owns the easements on the canals and they are private recreational facilities and common areas. **Walker** stated that the POA had taken responsibility for the canals for many years Pre-K. The request to Page Mannino was to officially establish the financially responsible party. There are invoices proving that money was spent on canal maintenance. If Mr. Newton opines that we cannot spend POA funds on this project, perhaps previous boards could be found liable for spending POA money illegally. He stated that in 2004 and 2005 the

POA spent almost \$40,000 on maintaining the canals. He stated his belief that this attempt at delay was unnecessary and absurd and asked that the board support the motion. **Kraemer** said that the canals have been a problem for almost 4 years, and questioned why the action must suddenly be done today. He speculated that if the canals are found to be public waterways then they are owned by the State of Mississippi. He opined that the POA needed to get somebody to say whether the canals are ours or belong to the State and then get permission to clean them. He disagreed with the idea that the waterways are needed to get to the Pier House, stating there was no need to dredge the "Paradise Canal" from the Jourdan River to get one or two people from Bay St. Louis or Waveland per year to the Pier House. Purcell on occasion has admitted in the past that they own the canals although now they state they are public waterways. He agreed that the POA was given a nonexclusive easement in a property deed that was filed but stated if the entity that owns an easement needs to maintain that property, then we need to maintain the first 20 feet of all 4500 lots in the community of Diamondhead. He opined that when it was voted to spend \$100,000 on the Southside it was never said that X number of dollars would be spent to clean the canals. He said that his intention was to try and help the Southside look better. He suggested that the remaining \$90,000 be used to pave in front of the Pier House. He asked for a 60 day cooling off period to get just a little more information regarding the ownership of the canals. **Yarbrough** voiced his support for getting the canals cleared and doing it as quickly as possible. He expressed his desire for edification from a second attorney, Newton, who has been working on a Covenant Renewal project and looking at the covenants and other documents of the POA in depth. He said Newton referenced a Board Resolution in 1985 regarding the canals. There is a 2008 letter from the attorney of the Purcell Corporation, stating the canals are public property. Purcell's claim is in conflict with the position that FEMA and MEMA took when they turned down requests to do the clearing, and those are significant factors. He stated that he was unclear on the issue of the nonexclusive easement, and that to the best of his recollection, Newton's preliminary letter to the board did not address the issue. He stated his desire to seek funding from other sources to get the project completed and also expressed a desire to seek education on the actual dredging process and procedure and he stated that the rating system and schedule presented were not specific enough in his opinion. He opined that the Board is in fact remiss if we do not have information at hand. He stated his hesitation to spend \$90,000 without some good answers. **Pelligrin** stated that he had no comment. **Hunt** stated that the money had been budgeted and the canals have to be done. He expressed displeasure with the statement of another board member that we are committing "political suicide" by spending these funds on the canals. He stated his perception that politics were being played prior to the meeting to delay this vote and stated that he wanted to do what was right for all the interests in Diamondhead. He asked the board to support the motion. **Feola** repeated his original statement several times, saying that he wants the canals dredged, but before he spends \$90,000 or \$85,000 or \$50,000 he needs some answers. He stated that he didn't know the legal answer and that he is not an attorney, but he has a document, from Purcell stating that the canals are public navigable waterways. That document is available for everyone to look at. He stated that in the minutes of a meeting of the Board of Directors in 1985, Mr. Smith the President, felt that maintaining the canals would necessitate increasing the maintenance fees as the dredging of the waterways would be very costly and recommended refusing them from

Purcell. Feola stated that he wants to see a future budget for dredging, so that we don't do a little maintenance dredging and not do it properly. He asked the board not to be divided but to work together but stated that his vote would have to be at this point, no.

On the motion on dredging the canals immediately by starting with the \$90,000.00 that was appropriated to the Southside recovery effort.

Yeas: Boisdore, Crosby, Hunt, Nutting, Schnadelbach, Walker

Nays: Feola, Kraemer, Pellegrin, Ward, Yarbrough,

Motion passed 6-5

2. Potential RV Park Update:

Schnadelbach stated that 3 months ago he presented a concept to this Board that would convert the old Tennis World into a RV Park. At that time the Board approved it in concept and suggested that there be more study made towards that. ***Schnadelbach*** distributed a detailed report to present the findings of this study, stating that we could recognize revenues that would replace the cost of years 3, 4 and 5. (Note: this report is available to the POA membership at the POA office.) He requested that the board grant him authorization to present this to the budget committee so we can look into it with next year's budget.

Boisdore moved that the RV Park concept be allowed to be addressed during the budget meetings for 2010. **Walker** second. Discussion ensued: ***Pellegrin*** stated his concern that \$40.00 a night be a bit unrealistic and suggested plugging in lower numbers. ***Schnadelbach*** stated that he had averaged out the numbers, the cost at the other facilities in the area, and based on the quality of his concept, the numbers are in line. ***Yarbrough*** complimented Bert on his report and expressed his support. **Kraemer** stated that the POA can't make money on the golf course or Country Club and now we are going to try to make money in an RV Park. Next month he will present a lease proposal to use the property for soccer and football fields. ***Hunt*** stated that this was an outstanding plan and that perhaps the lost "snowbird" business on the golf course would return and that this project has an opportunity to be a money maker. ***Walker*** stated that it should be presented to the Budget Committee. It could include usage of facilities. ***Feola*** stated that the plan was exceptionally well thought out and stated that this is how plans should be thought out and presented to the board. ***Boisdore***' stated she supported bringing the concept before the budget committee. ***Crosby*** complimented the report and recommended considering it as part of budget.

Yeas: Boisdore, Crosby, Hunt, Nutting, Pellegrin, Schnadelbach, Walker, Ward, Yarbrough

Nay: Kraemer. Motion passed 10-1.

NEW BUSINESS

1. Pier House Audit

Feola stated that building the Pier House is a major expenditure of POA funds, but will result in positive cash flow to the POA. The Treasurer and Comptroller are to review all Pier House expenditures beginning several weeks ago. This audit would take place 90 day after finish. The approximate cost is \$2000 for an independent audit firm to see where we spent the money. There may also be a need for a construction audit. **Feola moved to expend \$2000 for a Pier**

House audit. Hunt second. Discussion ensued with **Crosby** asking why an audit is needed. He asked if Feola was suspicious of any wrong doing. **Feola** stated that he had requests of an audit from several Directors and it was a part of checks and balances. **Schnadelbach** asked that it include change orders. **Boisdore'** was in favor of the financial audit. **Walker** stated that he was in favor of the financial audit and that in his opinion; the Treasurer and Comptroller have been left out of the handling of the Pier House finances. He noted that Feola had approved all checks. He also stated that he did not agree with the need for a construction audit. **Hunt** stated that they have tried to keep everyone in the loop and to make sure everyone agrees and understands. They have gone back for re-bids. Change orders are at a minimum and only in writing. The purpose of the audit is to assure the POA membership that numbers have been looked at. **Kraemer** complimented Feola, Hunt, and Boisdore' for their work on the project and expressed support for the financial audit. He stated that he did not see a need for a construction audit. **Yarbrough** expressed the construction audit was an assurance that the contractor did what the architect told them to do. **Pellegrin** stated that he wants to see it open and that was supposed to be in July and now it's September. He stated support for the financial audit. **Feola** stated that the figures are in the hands of the Comptroller. He stated the need for oversight on engineering. Spacing of stairs was 16" and the specs are 12". Also he believes the overhang is greater than it should be. This created his opinion that the construction may need to be reviewed. He expressed the desire to see a punch sheet stating that everything was done properly.

Motion to expend \$2000 for a financial audit passed unanimously.

At 4:10 PM, Kraemer moved to adjourn the meeting. Walker second. Meeting adjourned.

At 4:20 PM the board went into Executive Session.

At 5:25 PM the board came out of Executive Session.

Respectfully Submitted,

Nicole L. Boisdore'
Secretary