

## ORDINANCE NUMBER 1 OF 2009

Ms. Fuller advised that at the March 17, 2009 meeting, Ordinance No. 1 of 2009 was introduced and scheduled for a hearing at the April 21, 2009 meeting. Following discussion, upon motion made, seconded and unanimously carried, Ordinance No. 1 of 2009 was adopted as follows, to-wit:

**WHEREAS**, the Cane River Waterway District is a body politic and corporate subdivision of the State of Louisiana, created by Acts 1982, No. 391, R. S. 34:3261, et seq.; and

**WHEREAS**, the Cane River Waterway District was empowered to adopt regulations to preserve the health, welfare and safety of the recreational and commercial users of Cane River Lake; and

**WHEREAS**, the Red River in 1812 was a navigable stream and the State of Louisiana owns the beds of navigable rivers from the ordinary low state of the water on the one side and the low ordinary state of the water on the other side, in accordance with the provisions of LSA-C. C. Art. 456. Cane River Lake continues to be navigable and is therefore considered a public thing owned by the state in its capacity as a public person.

**WHEREAS**, the Cane River Waterway District holds the administration of the state-owned river and lake bottoms as a public trust and is charged with the responsibility of adopting resolutions and ordinances to fulfil its public trust to maintain the health, welfare and safety of the users of Cane River Lake; and

**WHEREAS**, the construction of homes, camps, dwellings and other improvements along both the left and right descending banks of Cane River Lake has markedly increased in the recent years which construction has included piers, wharves, docks, boathouses and other facilities extending into Cane River Lake; and

**WHEREAS**, these constructions occasionally fall into disrepair and a dilapidated condition and present a dangerous condition which endangers the public welfare, and it is the consensus of the Commissioners of the Cane River Waterway District that the continued location of these dangerous structures and remnants of structures is a violation of the Commission's delegated public trust and potentially violates the responsibility that the Commission has maintain the health, welfare and safety of the recreational users of Cane River Lake, all in accordance with Ordinance No. 5 of 1997; and

**WHEREAS**, the Commission is specifically concerned with dangers to boaters that may be created by dilapidated and dangerous structures; and

**WHEREAS**, for the aforesaid reasons, the Commission desires to adopt Ordinance No. 1 of 2009 to provide for the removal of dilapidated or dangerous structures from Cane River Lake when that dilapidated or dangerous structure endangers the public welfare; and

**WHEREAS**, the Cane River Waterway District further proposes to adopt provisions relating to the civil enforcement of this Ordinance, in addition to the provisions of penalties, accordingly:

**NOW THEREFORE, IT IS HEREBY ORDAINED**, in accordance with the provisions of R. S. 34:3261, et seq. of the Revised Statutes of the State of Louisiana, as follows:

#### ABATEMENT OF DANGEROUS STRUCTURES

##### Sec. 1. Condemnation.

The Cane River Waterway Commission may condemn and cause to be demolished or removed any building or structure within the confines of the Cane River Lake when it is in a dilapidated or dangerous condition which endangers the public welfare.

Sec. 2. Notice to owner; absent owner; hearing; notice filed with recorder of mortgages binds transferees.

Before the Cane River Waterway Commission may condemn any building or structure, there must be submitted to it a written report recommending the demolition or removal of the building signed by some official or other person authorized to act in such matters for the Cane River Waterway Commission. The Chairman of the Cane River Waterway Commission, or his designee, shall thereupon serve notice on the owner of the building or structure requiring him to show cause before the Cane River Waterway Commission, at either a regular or special meeting, why the building or structure should not be condemned. The date and hour of the meeting shall be stated in the notice which shall be served at least ten (10) days prior to the date of the hearing, except in case of grave emergency as hereinafter provided. The notice may be served by registered or certified mail, postage prepaid, addressed to the owner at his last known address, as taken from the parish assessor's records or the records of the Clerk of Court for the Parish of Natchitoches. The notice may also be served by the city marshal or by any deputy sheriff or constable having jurisdiction and power to serve legal process where the owner of the building or structure is found in the State of Louisiana, and the officer shall make return of the service as in ordinary cases.

If the owner is absent from the state or unrepresented therein, then the notice shall be served upon the occupant of the condemned building or structure, if any, or the occupant of any other structure upon the property where the condemned building or structure is located, and also upon an attorney at law appointed by the Chairman to represent the absentee. Domiciliary service may be made as in ordinary cases.

In case of grave public emergency where the condition of the building is such as to cause possible immediate loss or damage to person or property, the Cane River Waterway Commission may condemn the building after twenty-four (24) hours' notice served upon the owner or his agent or the occupant and attorney at law appointed to represent the absentee owner.

Any notices served pursuant to this section shall be filed with the recorder of mortgages where the property is located. Once filed, such notice shall be deemed notice to all subsequent transferees. Any transferee of such property takes the property subject to all recorded liens, mortgages, and notices thereunto pertaining.

#### Sec. 3. Decision of the Cane River Waterway Commission; order to demolish or repair.

After the hearing, if, in the opinion of the Cane River Waterway Commission, the facts justify it, an order shall be entered condemning the building or structure and ordering that it be demolished or removed within a certain delay. In any event, except as provided otherwise in this article, the actual demolition shall not commence until at least thirty (30) days after the entry of the order of demolition by the Cane River Waterway Commission.

If repairs will correct the dilapidated, dangerous or unsafe condition, the Cane River Waterway Commission may grant the owner the option of making such repairs, but in such case the general nature or extent of the repairs to be made, the time thereof, and the defects to be corrected, shall be specified in the decision of the Cane River Waterway Commission.

The decision and order of the Cane River Waterway Commission shall be in writing and shall be final unless appealed from within five (5) days as hereinafter provided.

#### Sec. 4. Appeal from decision.

The owner, occupant, agent or other representative of the owner may appeal from the decision of the Cane River Waterway Commission to the district court for the Parish of Natchitoches. The appeal shall be made by the filing of a suit against the Cane River Waterway Commission, setting forth the reasons why the decision or order of the Cane River Waterway Commission is illegal or improper and the issue shall be tried de novo and by preference in the district court. Where a grave public

emergency has been declared by the Cane River Waterway Commission, the owner of the building or structure who desires to prevent the demolition or removal thereof must file his petition within forty-eight (48) hours and must, at the time of the filing of the petition, furnish such bond as may be fixed by the district judge to cover any damage that might be caused by the condition of the building.

Either party may appeal from the judgment of the district court as in other cases.

Sec. 5. Compliance with decision; demolition by Cane River Waterway Commission where owner fails to comply; notice.

The owner or his designated agent may proceed to demolish and remove the building, or have it repaired, in accordance with the order of the Cane River Waterway Commission, provided the owner or his agent executes a contract in writing obligating himself to have the work done within the required time and files with the Chairman, or his designee, a copy of the contract, together with a bond to guarantee performance.

In the event that the owner or occupant of the building or structure fails or refuses to comply with the decision of the Cane River Waterway Commission and fails to appeal therefrom within the legal delays provided herein, then, in that event, the Chairman may authorize his designee to proceed with the demolition or removal of the condemned building or structure, in which case neither the Chairman, Board members of the Cane River Waterway Commission, nor the Cane River Waterway Commission shall be liable for damages.

Prior to the demolition or removal of the building or structure by the Cane River Waterway Commission, the Chairman or some official designated by him shall serve notice on the owner, or his agent, and on the occupant of the building, if any there be, or upon the attorney at law appointed to represent the minor, interdict or absentee owner, giving the time when work will begin upon the demolition or removal of the building, and instructing the owner, or his agent and the occupant of the building to remove any movable effects from the premises prior to the commencement of the demolition.

Sec. 6. Lien and privilege for cost of demolition, removal, and maintenance by the Cane River Waterway Commission; interest; attorney fees.

The Cane River Waterway Commission shall have a privilege and lien upon an immovable and its improvements for:

- (1) The cost to the Cane River Waterway Commission of maintenance of the immovable or improvements; and

(2) The cost to the Cane River Waterway Commission of demolishing or removing, or both, a building or other structure situated upon the immovable or improvements, and all attorney fees incurred by the Cane River Waterway Commission in connection with such demolition or removal.

"Maintenance" shall include but not be limited to removal and storage of fixtures and movables, and trash and garbage removal.

The privilege and lien shall be preserved and enforced only after the owner has refused, after notification by the Cane River Waterway Commission and reasonable opportunity to be heard, to pay the costs incurred by the Cane River Waterway Commission.

The privilege and lien shall be preserved by the filing and recording of an affidavit signed by the Chairman in the mortgage office of Natchitoches Parish. The affidavit shall include a description of the property sufficient to reasonably identify the immovable and a statement of facts listing the approximate cost or costs incurred by the Cane River Waterway Commission.

The privilege and lien shall be enforced by ordinary process in the district court for Natchitoches Parish within three (3) years after it is perfected. Alternatively, the privilege and lien may be enforced by assessing the amount of the privilege and lien against the immovable as a tax against the immovable, to be enforced and collected as any ordinary property tax lien to be assessed against the property; such lien and privilege may be collected in the manner fixed for collection of taxes and shall be subject to the same civil penalties for delinquencies. After the Cane River Waterway Commission has incurred such costs as constitute the lien and privilege on the property, the Chairman, or his designee, may send an attested bill of such costs and expenses which constitute the lien and privilege to the tax collector of the Cane River Waterway Commission, who shall add the amount of the bill to the next tax bill of the owner. The lien obtained by the Cane River Waterway Commission pursuant to proper notification and filing shall include not only the costs provided for in this article, but shall include all attorney's fees and/or all costs of court incurred in the locating of the owner, the notification of the owner, and the enforcement and collection of the amount secured by the lien against the immovable and the improvements. The Cane River Waterway Commission may also recover interest on the amounts secured by the lien, which interest shall be the maximum rate of legal interest provided in Civil Code Article 2924 and shall be computed from the date of recordation of the lien until paid.

The privilege and lien of the Cane River Waterway Commission shall prime all other liens or privileges against the property filed after the notice to the owner to show cause is filed with the

recorder of mortgages, regardless of the date on which the lien and privilege of the Cane River Waterway Commission is perfected, except that the lien and privilege of the Cane River Waterway Commission will not prime other tax liens against the property.

The lien shall not be cancelled until after the payment of all amounts, including costs, attorney fees, and interest.

Sec. 7. Attorney to represent absentee, minor or interdict.

In the event the building or structure is unoccupied and its owner is absent from the state and unrepresented therein, or in the event the building is owned by a minor who has no tutor or an interdict who has no curator, the Chairman shall appoint an attorney at law to represent the absentee, minor or interdict upon whom the notices and other proceedings provided in this article may be served. The attorney shall be paid a reasonable fee to be taxed as costs.

Sec. 8. Individual responsibility of owner.

In addition to the lien and privilege upon the immovable property as set above, the owner shall be personally liable for all charges incurred by the Cane River Waterway Commission for demolition or securing the building or property.

Sec. 9.

This Ordinance shall go into effect upon publication and in accordance with law.

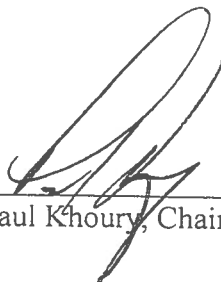
Sec. 10.

Said Ordinance having been introduced on the 17<sup>th</sup> day of March 2009, at a regular meeting of the Cane River Waterway Commission held at 616 Front Street, City of Natchitoches, Louisiana, and after a public hearing held on the 21<sup>st</sup> day of April, 2009, the Ordinance considered, on motion by Danny Matt and seconded by Van Wiggins, to adopt the ordinance, a record vote was taken and the following result was had:

YEAS: Danny Matt, Van Wiggins, Jerry Longlois

NAYS: None

Whereupon, the presiding officer declared the above Ordinance duly adopted and approved this 21 day of April, 2009.

  
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Paul Khoury, Chairman