

Mr. Powell advised that at the November 18, 1997 meeting, Ordinance No. 5 of 1997 was introduced and scheduled for a hearing at the December, 1997 meeting. Following discussion, upon motion made, seconded and unanimously carried, Ordinance No. 5 of 1997 was adopted as follows, to-wit:

**ORDINANCE NO. 5 OF 1997**  
**HABITABLE DWELLINGS OVER CANE RIVER LAKE PROHIBITED**

**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 stage 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 fulfill 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 recent years which construction has included piers, wharves, docks, boathouses and other facilities extending into Cane River Lake; and,

**WHEREAS**, it is the consensus of the Board of Commissioners of the Cane River Waterway District that the construction of piers, wharves, docks, boathouses and other facilities in accordance with the provisions of Ordinance No. 4 of 1997 is consistent with the safe recreational use of Cane River Lake; and,

**WHEREAS**, it is the consensus of the Commissioners of the Cane River Waterway District that the construction of buildings, improvements or dwellings intended for human habitation which extend out over the average mean sea level (M.S.L.) contour line of Cane River Lake at ordinary pool stage of 98.6 feet M.S.L. at the Cane River Lake Spillway is a violation of the Commission's delegated public trust and potentially violates the responsibility that the Commission has to maintain the health, welfare and safety of the recreational users of Cane River Lake; and,

**WHEREAS**, in addition to the concerns about delegated public trust and the health, welfare and safety of the recreational users of Cane River Lake, there exists a significant legal issue relating to the ownership of improvements constructed on, over or having their foundation in the bed of Cane River Lake; and,

**WHEREAS**, for the aforesaid reasons, the Commission intends to prohibit the construction of inhabited dwellings, buildings or other improvements located on, over or having the foundation located in the bed of Cane River Lake; 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:

In accordance with the provisions of R.S. 34:3261, et seq. of the Revised Statutes of the State of Louisiana the following Ordinance is hereby adopted:

Homes, camps, dwellings and other improvements intended for human habitation, temporarily or permanently to be constructed on or after November 18, 1997, which extend out over the average mean sea level contour line of Cane River Lake at ordinary pool stage as the same is measured at the Cane River Lake Spillway are prohibited.

Homes, camps, dwellings and other improvements intended for human habitation having their foundation in the bed of Cane River Lake are prohibited.

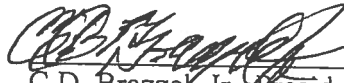
In instances where an inspection by duly authorized agents of the Cane River Waterway District discloses a violation of this Ordinance, the business entity or person deemed to be responsible shall be given an opportunity to correct the noted deficiency and, if upon reinspection, the dwelling, building, or other improvement intended for human habitation is found to still be in need of correction of a previously cited violation, the Commission may seek an injunction from the District Court to enforce the provision of this Ordinance. The proceeding before the District Court shall be an Adversary Proceeding and each party shall have the powers to call witnesses and subpoena documents and records.

In instances where such an inspection discloses a violation of this Ordinance, the business entity or person deemed to be responsible shall be given an opportunity to correct the noted deficiency, and if upon reinspection the previously cited violation is found to still exist, the Commission is hereby authorized after due process in accordance with the Administrative Procedure Act, to impose sanctions as follows:

(1) In the case of a dwelling, building or other improvement intended for human habitation which is constructed on, over or having its foundation in the bed of Cane River Lake in violation of this Ordinance, the Commission may impose a civil compliance order directing the business entity or person deemed responsible for the construction or maintenance of the offending structure to correct the violation noted and impose a fine of \$100.00 per day for each day the violation has not been corrected up to a maximum of \$10,000.00. The fine shall commence on the day following the date specified for compliance in the civil compliance order issued by the Commission.

(2) All fines imposed under this section shall be payable to the Cane River Waterway Commission.

(3) If civil action is necessary to recover fines imposed under this section, the offenders shall be liable for the amount of the fine, legal interest from the date of assessment and all costs of recovery, including attorney fees and costs.



C.D. Brazzel, Jr., President