

## Judge rules in favor of 17th Street Canal homeowners over yard compensation

by Sheila Grissett, The Times-Picayune

Friday May 29, 2009, 7:42 PM

A state court judge has ruled in favor of 17th Street Canal homeowners who sued last year because the government is using some of their backyards for flood control, but not compensating the residents for their loss of use.

Civil District Court Judge Kern Reese issued a verbal decision Friday, so there is no written record to explain his decision-making.

But lawyers for both sides agree that Reese said compensation is due to the 15 residents who sued last July over the Army Corps of Engineers' decision to remove trees and fences from their backyards along the canal's east levee and floodwall.

As a result, those cleared spaces, which range in depth from one foot to 200 feet, must be maintained as grassy, unfenced green spaces. Property owners retain title and pay the property taxes.

Levee officials said the homeowners knew, or should have known, from land surveys and title documents when they purchased the property that there were levee servitudes and restrictions on various portions of their backyards adjacent to the levee.

Because the corps is generally immune from liability, the lawsuit was filed against the Orleans Levee District and the Southeast Louisiana Flood Protection Authority-East, which issued right-of-entry permits the corps required in order to do the work.

"The judge basically agreed with us that it was a 2006 statute that gave them the authority to do what they did, but that they have to compensate the landowners," plaintiffs attorney Randy Smith said.

"This is not about preventing improvements to the levees; it's about the fundamental concept of just compensation for land taken," he said.

Lawyers for the levee districts said they'll recommend asking the Louisiana 4th Circuit Court of Appeals to review the ruling.

Attorney Tommy Anzelmo argued that levee officials had three separate legal authorities for the decisions they made -- including the existence of titles and surveys that he said "clearly showed" levee servitudes on the property of all 15 plaintiffs at the time of purchase.

Corps regulations require that trees, woody shrubs and fences not be allowed on levees, levee toes, or in vegetation-free zones that generally extends six feet away from the toe in densely populated areas.

Although keeping the levees and adjacent safety zones clear is the responsibility of individual levee districts, the corps took on the job as part of its emergency response to Katrina. The corps posits that trees can blow over in a hurricane, opening a path for water that can ultimately cause levee and floodwall failure.

The zones that are cleared must remain unfenced so that they are readily accessible for routine inspections and emergency floodfighting.

"We will surely appeal," regional levee authority president Tim Doody said late Friday, suggesting that if the ruling is upheld, it would likely impact other levee districts as well.

"This can impair our ability to provide flood protection with the limited resources we have," he said.

Smith said he thinks the corps will be obligated to pay the compensation.

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