

No. 95-1200

Official Order
of the
Commissioner of Insurance
of the
State of Texas
Austin, Texas

Date: NOV 14 1995

Subject Considered:

DESIGNATION OF PARTS OF THE CITIES OF SEABROOK AND LA PORTE AS
CATASTROPHE AREAS ELIGIBLE FOR COVERAGE THROUGH THE TEXAS
CATASTROPHE PROPERTY INSURANCE ASSOCIATION

DOCKET NO. 2184

General remarks and official action taken:

On this day came on for consideration by the Commissioner of Insurance the matter of a petition requesting the designation of parts of the cities of Seabrook and La Porte as catastrophe areas eligible for residential and commercial property insurance coverage through the Texas Catastrophe Property Insurance Association (TCPIA).

The Commissioner has jurisdiction of this matter pursuant to the TEX. INS. CODE ANN. art. 21.49. The Commissioner is authorized pursuant to Article 21.49, §3(h) to designate a city or a county as a catastrophe area to be served by the TCPIA upon determination, after notice of not less than 10 days and a hearing, that windstorm and hail insurance is not reasonably available to a substantial number

of owners of insurable property within that city or county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. The 74th Texas Legislature amended Article 21.49 §3(h) in House Bill 2593 (Acts 1995, 74th Leg., p. 4724, ch. 944, § 1, eff. Sept. 1, 1995) to provide that a part of a city or a part of a county could also be designated as a catastrophe area eligible for coverage by the TCPIA. Pursuant to Article 21.49, §5A, the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49 including, but not limited to, maximum rates, competitive rates, and policy forms.

The petition was originally filed on August 19, 1994, by Mr. Jack Fryday, a resident of Seabrook, and some 40 other residents of Seabrook requesting the designation of the City of Seabrook as a catastrophe area eligible for coverage through the TCPIA. A hearing was held under Docket No. 2130 on December 14, 1994 (19 TexReg 9239), at the La Porte City Hall to take public testimony on windstorm insurance availability problems in Seabrook, La Porte, and nearby Galveston Bay coastal communities. Following that hearing, the August 1994 petition was amended on June 28, 1995, to include only the portion of the city of Seabrook located east of State Highway 146 in the request for designation as a catastrophe area. The City of La Porte City Council joined the amended petition on September 5, 1995, requesting that the portion of the City of La Porte located

east of State Highway 146 be designated as a catastrophe area served by the TCPIA. A public hearing to consider the amended petition was held under Docket No. 2184 on October 24, 1995, at 1:30 p.m. at the Seabrook City Community House, 1210 Anders, Seabrook, Texas. Notice of this hearing was published in the October 3, 1995 issue of the *Texas Register* (20 TexReg 8090).

The TCPIA was created by the Texas Legislature in 1971 to provide a method whereby adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of the State of Texas. Currently, the TCPIA provides windstorm and hail insurance to residents of 14 coastal counties who are unable to obtain such coverage in the voluntary market. The 14 counties are: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy Counties. The cities of Seabrook and La Porte are located in Harris County, which is not in the currently designated catastrophe area.

After careful consideration, the Commissioner has determined that those parts of the cities of Seabrook and La Porte located east of State Highway 146 should be designated as catastrophe areas pursuant to Article 21.49 §3(h) of the Insurance Code. This determination is based on the following:

(1) Resolutions of the city councils of Seabrook and La Porte.

(i) Resolution No. 94-25 passed on August 2, 1994, by the Council of the City of Seabrook requests the Texas Legislature to permit property owners in Seabrook and other Harris County communities on Galveston Bay to secure property insurance through the State Insurance Pool, i.e., the TCPIA and to permit property owners in these communities to secure property insurance under the same regulations and conditions as afforded other coastal communities in Texas.

(ii) Resolution 95-20 passed on August 15, 1995, by the Council of the City of Seabrook requests the Commissioner of Insurance to hold any public hearings surrounding the petition in the City of Seabrook and requests the Commissioner to allow all non-conforming structures built prior to January 1, 1992, into the TCPIA without requiring the renovation of the structures to conform to the current regulations of the state and to include a "grandfather" clause in any specifications set by the state for the City of Seabrook.

(iii) Resolution 95-04 passed by the City Council of the City of La Porte on March 20, 1995, declares that residents of La Porte east of State Highway 146 have been unable to obtain windstorm coverage through their regular insurance agents and have had to obtain such coverage in the secondary market at a much higher rate and that lack of windstorm insurance coverage has impacted the redevelopment of the bay area and the implementation of the

Bayfront Master Plan. The resolution requests the Texas Department of Insurance to include the City of La Porte in the catastrophe area serviced by the TCPIA.

(2) The petition as originally filed. The petition as originally filed was signed by some 40 citizens of the City of Seabrook. In the October 24 hearing, Mr. Fryday, who initiated the petition, testified that it took approximately 20 minutes to get the 40 signatures on the petition. The citizens signing this petition averred that:

We, the undersigned, live and/or own property in the City of Seabrook, Texas, a town on the banks of Galveston Bay and Clear Lake. Being so located we are subject to the same potential wave and windstorm action as the coastal counties of Texas. Seabrook, Texas, however, is not a part of the Texas Catastrophe Property Insurance Association (TCPIA).

Not being in the TCPIA makes it very difficult and somewhat costly to obtain windstorm insurance on our homes and other property. There are some insurance companies. . .that will not write windstorm insurance in certain parts of Seabrook. Other companies either exclude windstorm, or insist on very high deductibles for windstorm or charge very high premiums. Our next door neighbors in Kemah, Texas (Galveston County) do not have such a problem because they are in the TCPIA since Galveston is a coastal county.

(3) The testimony presented at the December 14, 1994 hearing in La Porte. At the December 14, 1994, hearing on the petition as originally filed, 22 citizens (16 from Seabrook, 3 from La Porte, 1 from Baytown, 1 from Shoreacres, and 1 from Channelview) testified that there are property insurance availability

problems east of State Highway 146. Their testimony indicated three types of availability problems:

--currently insured by a licensed insurer, but fearful of losing the insurance;

--currently insured by a surplus lines or non-admitted insurer at premiums greatly in excess of rates promulgated for licensed insurers;

--currently uninsured because of inability to find insurance or prohibited cost of available insurance.

The city manager of Seabrook, Mr. Ron Wicker, testified that more than 50 percent of the land area of Seabrook is east of State Highway 146 and that most of the population--more than 50 percent--resides in that area also. Representatives of two insurance companies also testified. Allstate Insurance agreed with the residents of Seabrook and La Porte that there are property insurance availability problems in these two areas and supported the inclusion of both Seabrook and La Porte in the TCPIA designated catastrophe area. Allstate Insurance also testified that they do not currently write residential property insurance on property in Seabrook and La Porte located east of State Highway 146. Farmers Insurance opposed expansion of the TCPIA designated catastrophe areas to the cities of Seabrook and La Porte because, based on their experience, they believe the voluntary market adequately serves the majority of homeowners in these communities. Farmers Insurance also testified that they "still write many homes inside Highway 146." Several citizens at the hearing,

however, indicated that they had been refused coverage by Farmers Insurance because their property was located east of State Highway 146.

(4) The testimony presented at the October 24, 1995 hearing in Seabrook on the amended petition. Eighteen persons testified at this hearing. Ten citizens testified that they supported the designation because of insurance availability problems. Six citizens opposed the designation indicating that they were not currently experiencing availability problems and expressing fear that their insurance rates would increase or that their current insurance would be non-renewed because of the designation. Department staff responded that the designation would not cause rates to increase and that, in fact, many homeowners would experience a substantial reduction in premiums. Staff also responded that insurers currently writing in Seabrook and La Porte were not going to issue mass non-renewal or cancellation notices because of the designation. Representatives of both State Farm Insurance and Allstate Insurance testified that they believed there were availability problems and that they supported letting the individual communities decide whether or not they should be designated as catastrophe areas to be served by the TCPIA. The staff of the Texas Department of Insurance testified that the general market conditions along the Texas coast appear to be restricting more since the December 1994 hearing, citing the following points:

--State Farm Insurance has a business plan in place that reduces writings in Harris County by 4%;

--Farmers Insurance recently filed a business plan with the Department that provides for only replacement policies in certain Harris County areas, including the Seabrook and La Porte areas;

--The four major homeowners insurers in Texas, State Farm, Farmers, Allstate, and USAA, write 80% of the homeowners insurance in the Seabrook and La Porte areas and any actions taken by these insurers will have a major impact on the homeowners insurance market in these areas, both directly as that action affects the availability of insurance and indirectly as it affects the value of existing homes and the sale of new homes.

The Department staff further testified that available policy count data for the City of Seabrook is insufficient to determine insurance availability problems. The staff is unable to obtain accurate policy counts for just the City of Seabrook because of the zip code system used for Seabrook and the surrounding areas. For the City of La Porte, staff testified that while the 1995 data is not yet available for analysis, there appears to be a slight decrease in the policy count, particularly from 1993-1994. Thus, more dwelling units in La Porte were uninsured in 1994 than in 1993. Prior to testimony of local residents, staff indicated an inclination to recommend the inclusion of the areas east of State Highway 146 inside the cities of Seabrook and La Porte in the designated catastrophe area because of the December 14, 1994 public hearing and based on the general market conditions along the coast but deferred any final recommendation until the testimony at the October 24 hearing was completed and analyzed.

(5) Staff's recommendation. Based on testimony at both the December 14, 1994, and October 24, 1995 hearings and an assessment of the general market conditions along the coast, staff has recommended that those parts of the cities of Seabrook and La Porte located east of State Highway 146 be designated as catastrophe areas eligible for property insurance through the TCPIA.

(6) The statutory standard in the Insurance Code, Article 21.49 §3(h) is met. This standard is: ". . .that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within that city or a part of that city or a county or a part of that county, due to such insurable property being located within a city or a part of that city or a county or a part of that county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms." Thus, there are three elements required to comply with this standard: (i) windstorm and hail insurance is not reasonably available; (ii) the lack of availability affects a substantial number of owners of insurable property; and (iii) the insurable property is located within an area that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. The Commissioner finds that these three elements are met on the following bases:

(i) Windstorm and hail insurance is not reasonably available. Not reasonably available" means (i) inability to purchase new or replace existing residential or commercial property insurance either from a licensed agent

representing a licensed insurer or directly from a licensed insurer; and (ii) the only available residential or commercial property insurance is from a surplus lines or non-admitted insurer at premiums greatly in excess of rates promulgated for licensed insurers. The Commissioner finds that there is sufficient evidence to support the conclusion that in those areas of the cities of Seabrook and La Porte located east of State Highway 146 insurers are restricting their writings, and that the surplus lines market is a primary provider of property insurance, and, therefore, the statutory standard of "not reasonably available" is met.

(ii) The lack of availability affects a substantial number of owners of insurable property. The Commissioner is relying on a subjective assessment of current market conditions as a means of estimating the number of property owners who are or may be affected adversely by the lack of availability of residential and commercial property insurance. The Commissioner is also relying on prior legislative determination as a guide. When Article 21.49 was enacted in 1971 to provide windstorm and hail insurance coverage in the 14 first tier coastal counties, the insurance availability problem at that time affected less than 10% of the insurable property in those counties. Thus, based on testimony at both the December 14, 1994, and October 24, 1995 hearings and an assessment of general market conditions along the coast, the Commissioner is of the opinion that the "substantial number of owners of property" standard is met.

(iii) The insurable property is located within an area that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Both the cities of Seabrook and La Porte are located on Galveston Bay. Being so located, both cities, especially those areas located east of State Highway 146, are exposed to the same potential wave and windstorm conditions as other Texas coastal communities which are in counties currently included in the TCPIA designated catastrophe area. Thus, the Commissioner finds that insurable property in those areas of Seabrook and La Porte located east of State Highway 146 are subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that, for the reasons specified herein, those parts of the cities of Seabrook and La Porte located east of State Highway 146 are hereby designated as catastrophe areas pursuant to the Insurance Code, Article 21.49, §3(h), eligible for coverage through the Texas Catastrophe Property Insurance Association. IT IS FURTHER ORDERED that this designation shall be effective March 1, 1996. IT IS FURTHER ORDERED that the Commissioner shall specify by rule the building code and inspection requirements for structures located in the newly designated

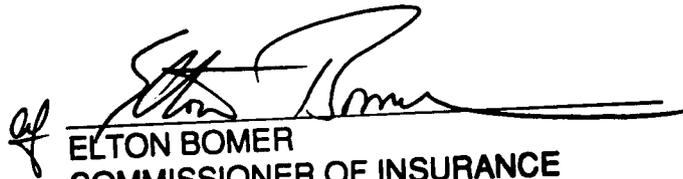
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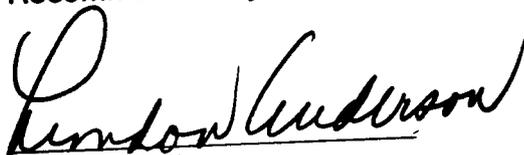
catastrophe areas to qualify for coverage through the Texas Catastrophe
Property Insurance Association.

AND IT IS SO ORDERED.

TEXAS DEPARTMENT OF INSURANCE


ELTON BOMER
COMMISSIONER OF INSURANCE

Recommended by:


Lyndon Anderson
Associate Commissioner
Property and Casualty Lines