

No. 96 - 0380

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

Date: APR 05 1996

Subject Considered:

DESIGNATION OF THE CITY OF MORGAN'S POINT
AS A CATASTROPHE AREA ELIGIBLE FOR COVERAGE THROUGH
THE TEXAS CATASTROPHE PROPERTY INSURANCE ASSOCIATION

DOCKET NO. 2210

General remarks and official action taken:

On March 14, 1996, came on for consideration by the Commissioner of Insurance the matter of a petition requesting the designation of the City of Morgan's Point as a catastrophe area 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 the Insurance Code, Article 21.49 §3(h) to designate a city or a part of a city or a county or a part of a county as a catastrophe area to be served by the TCPIA upon determination, after notice of not less than 10 days and hearing, 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 county or a part of that county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. 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 filed on December 11, 1995, by Mr. David A. Paulissen, city administrator of the City of Morgan's Point, on behalf of the City Council of the City of Morgan's Point. On November 8, 1995, the Morgan's Point City Council passed Resolution 96-03 requesting the Texas Department of Insurance to include the City of Morgan's Point in the area served by the TCPIA and specified the reasons for the request. In response to the petition, the Commissioner held a public hearing under Docket No. 2210 on March 14, 1996, (noticed at 21 TexReg 1793, March 5, 1996) at the Texas Department of Insurance Building in Austin, Texas, to take public testimony on the designation of the City of Morgan's Point as a catastrophe area eligible for windstorm and hail insurance coverage through the TCPIA.

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. Since its inception, the TCPIA has provided 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. Pursuant to Commissioner's Order No. 95-1200 (November 14, 1995), effective March 1, 1996, two areas in Harris County-- the area located east of the boundary line of State Highway 146 and inside the city limits of the City of Seabrook and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte-- are designated as catastrophe areas eligible for windstorm and hail insurance coverage through the TCPIA.

After careful consideration, the Commissioner has determined that the City of Morgan's Point should be designated as a catastrophe area pursuant to Article 21.49 §3(h) of the Insurance Code. This determination is based on the following:

- (1) Resolution passed by the City Council of the City of Morgan's Point.

According to Resolution 96-03 passed by the City Council of the City of Morgan's Point on November 8, 1995 by a majority of the City Council membership:

The City Council of the City of Morgan's Point finds, determines and declares that residents of the City of Morgan's Point who all live east

of State Highway 146 have had difficulty obtaining or found it impossible 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.

The City Council of the City of Morgan's Point hereby requests the Texas Department of Insurance to include the City of Morgan's Point in the catastrophe area serviced by the Texas Catastrophe Property Insurance Association (TCPIA).

(2) The petition filed by the City Council of the City of Morgan's Point. City Administrator Paulissen filed a petition on December 11, 1995, on behalf of the Morgan's Point City Council requesting that the entire City of Morgan's Point, which is located east of State Highway 146, be included in the area served by the TCPIA. According to the petition, because the City of La Porte, which shares a common city limits line with Morgan's Point, has been designated as a catastrophe area, there are serious concerns that unless Morgan's Point is also so designated, the residents of Morgan's Point will be unable to purchase windstorm coverage. The petition states that the Morgan's Point City Council fears that the city's small size and adjacency to La Porte will force the voluntary market to cease coverage in Morgan's Point.

(3) The testimony presented at the March 14, 1996 hearing. Testimony at the March 14, 1996 hearing on the petition was presented by Department Staff and by City Administrator Paulissen. According to testimony by Department Staff, the Department's engineering staff went to Morgan's Point to review construction

standards on housing stock and building codes adopted by the City and to interview local agents. Based on that on-site visit, the Staff testified that:

--The entire City of Morgan's Point is located east of State Highway 146 and is a small city with a population of 350 and has a direct exposure to Galveston Bay.

--The potential for growth is very limited, requiring almost all new construction to be replacement construction of existing structures.

--The housing stock in Morgan's Point is older housing; however, there is no indication such housing stock is any different from older housing stock in other cities in the area, including Seabrook and La Porte.

--The building code in place since 1988 meets current building code requirements of the TCPIA which is the 1973 Edition of the Standard Building Code. The latest edition of the building code adopted by the City of Morgan's Point is the 1991 Edition of the Standard Building Code. The building code is enforced in Morgan's Point.

--Current structures are being insured either in the voluntary licensed market or in the surplus lines market; however, the same fears exist in Morgan's Point, as in Seabrook and La Porte, that future windstorm coverage may not be available which can have a negative effect on real estate values and future construction for replacement of older residences.

-- The inclusion of Morgan's Point into the TCPIA area will not produce a significant additional exposure to the TCPIA.

At the hearing, City Administrator Paulissen testified that owners of the older residences in Morgan's Point are not experiencing problems in securing property insurance because many of these homes are owned by people living in Houston who also have property covered in Houston. The residents with problems in obtaining property insurance, according to Mr. Paulissen, are new residents who

are moving into the area on a permanent basis and buying property, but who have not had insurance in Harris County. All of these residents, according to Mr. Paulissen, are encountering "severe difficulty" in obtaining insurance coverage for their property. Mr. Paulissen also testified that he was personally aware of residents who have had to purchase coverage in the secondary market because coverage was not otherwise available. Mr. Paulissen testified that there was no opposition in the city to the designation of Morgan's Point as a TCPIA catastrophe area.

(4) Staff's recommendation. Staff recommended at the March 14 hearing that the City of Morgan's Point be designated as a catastrophe area served by the TCPIA for the following reasons:

--A greater exposure exists to the residents of Morgan's Point for the potential of severe windstorm losses because of the location of the city directly on Galveston Bay.

--The addition of Morgan's Point to the catastrophe area represents a limited exposure to the TCPIA. Many of the existing structures in Morgan's Point do have insurance coverage, and at the present time there is no reason to believe licensed insurers will not continue to insure those risks. However, it is also evident that some structures are being insured in the unlicensed market at much higher premiums.

--Insurers have in the past freely admitted that they will not write new risks east of State Highway 146, and there is no reason to believe the City of Morgan's Point is an exception.

--The residents of Morgan's Point are fearful that changes such as the building of new structures or the sale of older structures will produce severe availability problems in the purchase of windstorm insurance. As indicated in the hearings on the designation of parts of Seabrook and La Porte as TCPIA catastrophe areas, this is a common fear for the residents all along Galveston

Bay. Staff believes that the fear may be warranted because of the restriction in writing new business east of State Highway 146 by the major writers of homeowners insurance in this area.

(5) The statutory standard in the Insurance Code, Article 21.49 §3(h) is met. The Commissioner finds that the same factors on which the Commissioner determined that the statutory standard was met in the designation of the parts of the cities of Seabrook and La Porte as catastrophe areas also apply to the City of Morgan's Point. The City of Morgan's Point, like the designated catastrophe areas of Seabrook and La Porte, is located entirely east of State Highway 146, and the city is surrounded by Galveston Bay and the City of La Porte. The statutory 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 (a) 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 (b) 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 the City of Morgan's Point 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 the March 14 hearing 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. Like those areas of the cities of Seabrook and La Porte that have recently been designated as catastrophe areas, the City of Morgan's Point is located directly on Galveston Bay. The entire City of Morgan's Point is located east of State Highway 146, and as such, the entire city is 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, including the areas of the cities of Seabrook and La Porte that are located east of State Highway 146. Thus, the Commissioner finds that insurable property within the city limits of the City of Morgan's Point is 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, the City of Morgan's Point is hereby designated as a catastrophe area 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 June 1, 1996. IT IS

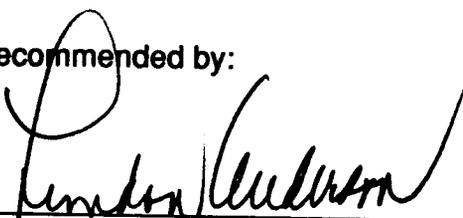
FURTHER ORDERED that the Commissioner shall specify by rule the building code and inspection requirements for structures located in the newly designated catastrophe area to qualify for coverage through the Texas Catastrophe Property Insurance Association.

AND IT IS SO ORDERED.

TEXAS DEPARTMENT OF INSURANCE


of ELTON BOMER
COMMISSIONER OF INSURANCE

Recommended by:


Lyndon Anderson
Associate Commissioner
Property and Casualty Lines