

PORT COMMISSION SPECIAL MEETING – October 2, 2006

A SPECIAL meeting of the Port of Port Townsend Commission at the Port Administration Office Conference Room

Present: Commissioners – Beck, Sokol, Thompson
Executive Director – Crockett
Deputy Director – Pivarnik
Marine Facilities Director – Radon
Auditor – Taylor – excused
Attorney – excused

I. CALL TO ORDER

The meeting was called to order at 9:00 AM.

II. APPROVAL OF AGENDA

A Single topic Special Meeting relating to tailgating in Boatyard and Shipyard. Commissioner Beck made a motion to approve the agenda. Motion passed unanimously.

III. PUBLIC COMMENTS NOT RELATED TO THE AGENDA

None

IV. NEW BUSINESS: Tailgating in Boatyard and Shipyard.

Commissioner Sokol stated that tailgating was, and had always been an integral part of the Marine Trades and had historically been part of business in the Port. The issue had been brought front and center by the situation involving John (Mike) Hogan, DBA, Ocean View Services. Due to Mr. Hogan's failure to comply with Federal and State regulations, and after repeated oral and written warnings by Port staff, Mr. Hogan's tenancy with the Port had been terminated effective September 30, 2006, at 12:00 Midnight. The decision to evict was upheld at the September 27, 2006 regular meeting as no action was taken to rescind the eviction notice. The eviction action also applies to Mr. Hogan in a tailgating capacity as the Port, stated Mr. Sokol, has the right to restrict individuals from operating a business within the Boat Haven if they are found to be out of compliance with Federal, State, local laws, and BMPs as outlined by the Port of Port Townsend. Frequent violators can be determined as "persona non gratia". The lack of a previous eviction notice should not be construed to mean that the Port has forgiven repeat offenders.

Commissioner Sokol stated that he does not have, has not had in the past, nor does he expect to have in future, any business or financial relationship with Mr. Hogan.

Commissioner Sokol made a motion that John Hogan's eviction be considered to cover him in any entity or status including any kind of contractor, A.K.A. tailgater, and that he and all his employees be banned from the Port of Port Townsend's Boat Haven.

V. COMMISSIONER COMMENTS:

Commissioner Beck commented that he would hate to see all the years of hard work building up both yards, the livelihoods earned, and the revenue generated for the community, destroyed due to violations or non-compliance. The Port, he reminded, did not write the ordinances for noise pollution and environmental issues but is required to comply with those ordinances. Being out of compliance with Federal and State regulations could result in fines and penalties and put both the boatyard permits into jeopardy. Other Ports have shut down their yards because of the expense of these permits and he does not want a similar situation here.

Commissioner Beck stated that he did not have any business dealings with Mr. Hogan

Commissioner Thompson stated that Mr. Hogan has been, and is a valuable component in the shipyard scenario and has brought business into the shipyard. If banned from the yard, his employees would be unable to carry on and the jobs he has lined up for this winter and would not be completed. Mr. Thompson proposed that Mr. Hogan post a \$10,000 bond, either in dollars or in an equal amount of machinery or equipment. Mr. Hogan would forfeit the bond if he was found to be out of compliance with sandblasting regulations, rules for containment of sandblast debris, or if he violates the City Noise

Ordinance. Mr. Thompson requested that Mr. Hogan issue an apology to Port staff. Mr. Thompson stated that as the work performed attracts large revenue jobs, he would like to see it continue but with the modification of Mr. Hogan's behavior.

Commissioner Thompson stated that he did not have any direct business dealings with Mr. Hogan.

A discussion followed regarding the dollar amount of bond required, loss of revenue to all the businesses if the shipyard was shut down due to loss of permits, the fact that machinery or equipment was not a viable cash substitute and how regrettable it was that compliance had not taken place in the past.

VI. PUBLIC COMMENTS

Francois (Frank) L. Fischer, spoke on behalf of Mr. Hogan, and requested the Commission think strongly about the action taken at this meeting as it was his belief that such action would not stand up in court, would not effect the way the Port is being run and that it is substantively and procedurally defective. The issue, in his opinion, was not about tailgating, but about Mr. Hogan, who has brought much revenue into the Port and is being singled out for unfair treatment. Such treatment, he stated, raises the issue of potential liability not just through damages to Mr. Hogan, but also through Mr. Hogan's inability to fulfill his contracts with boat owners, as the Port has placed an injunction on lifting boats from the water for Mr. Hogan. Mr. Fischer provided background on the relationship between Mr. Hogan and the Port. . He suggested that the Port cooperate with Mr. Hogan to mediate the problem, to provide a construction solution and allow Mr. Hogan to continue working to honor his contracts as a tailgater until such time he is reinstated as a tenant. He concluded by stating that the Port Attorney may want to be consulted to see if the action taken would hold up in court should a legal action result.

Matt Fleming, owner of the "Wild Thing" stated that he had brought his boat here to be worked on by the skilled labor that Mike Hogan and his company provide and if Mike isn't here then he will have to take his boat elsewhere.

Tyler Thompson stated that although Mr. Hogan can be difficult to deal with, he and his employees perform skilled, and necessary, work. He considers it a failure on the part of the Port to lose such skill and would like to see Mr. Hogan remain. His belief is that the Department of Ecology tries to work with lots of big business and help control the affluent released into the environment, (as in the copper possibly released through sandblasting activity), and therefore does not believe the boatyard permits are in immediate jeopardy. He wondered about the relative merit of construction of a sandblasting facility and its benefit to the people of the county as opposed to the reconstruction of the Port Administration building. He stated that he has received numerous warnings about letting wood chips fall to the ground, but since no fines are given out he has not taken it as seriously as if there were a \$1,000 fine assessed with each warning. He stated that repeated warnings without fines have no impact.

A brief discussion followed regarding types of bonds, whether or not Mr. Hogan would be willing either to set up a bank account or to post a bond, to follow clear instructions regarding what is expected of him, following the Best Management Practices, and putting into place mechanism for dealing with a violation and methods of enforcement of regulations.

Ray Forsman commented that the Port of Port Townsend solicits business to come to Port Townsend by going to boat shows, etc, and that heavy steel work is becoming a thing of the past as in Seattle.

Walt Trisdale stated that he has heard much opposition to this eviction and that people are forming opinions without really knowing what is going on. He thinks Mr. Hogan's business would have been better located in another portion of the yard. He stated that there is a real need for commercial work but that it needs to be done right.

Bill Perka stated that he believes Mr. Hogan to be a hard worker and that steel work is a hard, dirty job, but a necessary one. He appreciates the position taken by Commissioner Thompson. He stated that Mike has enabled fishermen to do their jobs by getting their boats ready on time, etc.

Martin Mills stated that it is the Port's responsibility to facilitate his livelihood. He would like to see the Port build a containment shelter. He is upset about the current way in which leases are handled and stated that the general feeling is the small business is being pushed out. He believes that Mike Hogan should be given the chance to continue with his business and that the Port should try to work with him.

Tim Hoffman stated that he was upset at the possibility of the Port eliminating the space next to his business where he parks boats and doesn't feel that the Commissioners are really behind small businesses.

Teresa Hoffman remarked that this is one of the last traditional places to have work completed. That people come from all over the world to attend the Wooden Boat Festival. She believes that Mr. Hogan's employees should be allowed to come back and finish the contract. She stated that all the businesses are concerned with what will happen next. She stated that the Port needs to work with the businesses.

Ms. Hughes stated that someone has to be responsible for the environment and that people need to consider the ramifications of what they do. She believes that Mr. Hogan has been given a fair chance to comply and that it is too bad that it has come to this but that someone has to be responsible.

Virgil Smith stated that he does not believe that Ocean View Services is responsible for all the copper found in the Workyard as every boat in the harbor has copper paint on the bottom to curtail marine life building up.

David Griswald, Port of Port Townsend Trade Association, stated his opinion that it is a failure in management since the problems are of long term duration. He feels the 20 days eviction notice is unfair both to Mr. Hogan and his employees. His belief is that the Port should somehow arrange for Mike to complete his contracts.

Mike Gruber, Haven Boat Works, stated that unless someone has worked in that part of the yard, they don't know what is going on as Mike's business borders on the wetlands and it is a pretty sensitive environment. Mr. Gruber has seen dumping of bilge water into the wetlands. He believes that if Mike is going to continue to work, it should be done right.

Tim Hoffman stated that if tickets had been issued there would be a clear track record of warnings issued and not every business would be threatened by the actions of one business.

Chad Errman (sp) stated that he had hauled out here because of the price that Mike had been able to quote him.

Peggy Ann Bierbaum, sees a serious problem with process and authority as she thought this meeting was about tailgating in general and not to single out Mike Hogan. She stated that livelihoods hang in the balance. She asked that action be deferred.

Ray Forsman asked if the Commissioners had discussed this topic beforehand amongst themselves.

Mr. Sokol stated that there had been no discussion between the Commissioners regarding this topic outside of this meeting, that the Commissioners are very conscious to follow the intent of the Public Meetings Act, which precludes any discussion.

Mike Hogan stated that he had never promoted or given permission to anyone to dump anything into the wetlands and if it had been done, it was without his knowledge. He stated that if he had been told about the containment issues that he had been remiss in not taking appropriate action. Staff routinely checked out his containment, he thought that he had fixed problems quickly. He stated that perhaps there had been miscommunication filtering down to his end and that had not realized the severity of the situation. He stated that he would like to continue business in whatever capacity the Port would accept. He reiterated his intention to do a better job with containment, to follow the noise ordinance and to adhere to any other rules and regulations. He offered an apology saying it had never been his intent to offend any of the Port staff.

Executive Director Crockett suggested that as legal action had been discussed and since the Port's attorney was not in attendance, further discussion should be postponed until Mr. Harris was consulted.

Discussion followed regarding the meeting of September 27, 2006 wherein no action was taken to rescind the eviction notice, tailgating in general, the warnings issued in the past, the Port's right to evict if necessary, shortcomings in not having a fixed procedure in

place for violations, bonding and allowing Mr. Hogan to continue business to honor his contracts and the Port seeking legal counsel, the number of his contracts, formulating rules and procedures. The posting of a bond was discussed and the necessity of Mr. Hogan bringing his month-to-month tenancy current and the assurance that no further violations occur.

At this time a vote was taken on the motion made at the beginning of the meeting. The motion died with a tally of 1 Yes, 1 No and 1 abstaining.

Discussion followed which included the agreement signed by all tenants, leases, environmental issues, rules and regulations, possible legal action, Dept. of Ecology permitting, direction to staff and additional instruction to tenants regarding BMPs.

Commissioner Thompson made a motion to direct staff to work with Mr. Hogan and to allow him to continue working in the Boat Haven following all Federal, State and Local laws and Port of Port Townsend Best Management Practices, realizing the need to establish a cash bond, the dollar amount to be determined, that any additional space needed for equipment be tied to the boat owner, and that failure to comply with these conditions will result in immediate eviction of Mr. Hogan's company, Ocean View Services.

Motion passed unanimously.

Commissioner Sokol followed up with the general subject of tailgaters as independent contractors and the need for them to be in compliance with all Federal, State and local laws and should have a valid City of Port Townsend business license, a Master License # from the State of Washington, a Federal Tax ID # and liability insurance and any other information pertinent to normal business practices. Discussion followed.

VII STAFF COMMENTS:

Mr. Pivarnik stated enforcement of the magnitude discussed would add significant cost to doing business.

Director Crockett stated that his office door was always open and he was available to answer questions or talk about rumors at any time.

VIII COMMISSIONER COMMENTS:

Commissioner Beck remarked that the need to tighten rules and regulations had arrived.

X. NEXT MEETING

October 11, 2006, 1:00 PM, workshop preceding at 9:30 AM, in the Port of Port Townsend Administration Commission Room, 375 Hudson Street, Port Townsend.

XI. EXECUTIVE SESSION

None

XII. ADJOURNMENT

The Special Meeting adjourned at 11:14 AM

ATTEST:

President

Secretary

Vice President