



Provincetown Public Pier Corporation

Minutes

The Provincetown Public Pier Corporation Public Meeting of Wednesday, July 14, 2021 at 5:00 p.m. in the Judge Welsh Hearing Room of Town Hall, 260 Commercial Street, Provincetown, MA 02657.

Members Present: Jamie Staniscia, Chair, Herbie Hintze (HH); Scott Frasier (SF); David Colton and Beau Gribbin.

Other Attendees: Doug Boulanger (DB), Facilities Manager; Jamie Demetriou (JD), Office Manager; Don German(DG); Harbormaster

Public Present: Parasail Tenant

Agenda (Discussion may ensue; votes may be taken)

Review Minutes

Minutes of June 23, 2021

JS: Motion to approve the minutes as presented.

DC: Seconded.

Voted: Unanimously.

Public Statements

None

Agenda Items

Continued discussion on Personal Watercraft from MacMillan Pier

Gregg Corbo of Kopelman & Paige and counsel to the Provincetown Public Pier Corporation stated there were two specific issues with uses to address. The first issue was whether or not those who have licenses to operate businesses at the pier are authorized to sublet their spaces upon approval of the board and second; whether or not an operation that rents out jet skis by operation by members of the public or other similar businesses are authorized to operate from the pier. In reviewing this, it was his understanding that the Jet Ski Business that wishes to begin operating from the pier, which would rent out jet skis to the public and individual members, would operate the jet skis in the harbor and then return them to the same location. He reviewed a number of documents with respect to this issue including Chapter 13 of the Acts of 2000 or the Special Act that created the Pier Corp and the Chapter 91 License that authorizes the town to use the pier as well as the standard float space license agreement. Based on his review of these documents he reached the opinion that a

jet ski business to rent out jet skis to individual members of the public for operation by members of the public is not an authorized use of the pier. He also reached a further conclusion that a business that is authorized to use the pier may be further authorized by the board to sublet a portion of their space provided that they continue to use the space for an authorized use and the sub-licensee also uses the space for an authorized use.

There were no precedent set cases so it made it harder to determine by having to read documents and then form an opinion. The court would render a decision if challenged. There is a potential avenue of dispute if challenged.

SF: He asked would the operation be different if they were proposing a business that had an employee of the business in the front seat of the jet ski and a passenger in the back seat.

Atty Corbo: That could be. In some of the Coast Guard documents that he reviewed there was an operation called a jet pack that has an operator on the jet ski and the jet ski pumps water into the jet pack and the person flies into the air which he believes the Coast Guard considers these to be passenger for hire because the jet ski part of it is operated by the tour company or the owner of the vessel.

Marcello Subashi: Would it be the same as a guided tour if the jet ski operators who are renting them are guided by someone they have for hire and guides and directs them to where they need to go to use them.

Attorney Corbo: It would have the same result because you would still have members of the public operating vessels and control of the vessels are still turned over to a member of the public as opposed to control of the vessel being subject to the owner or the owners crew.

Marcello Subashi: His company would have control over the jet ski and where they go but the operator would have control over the power. Would this change the operation to be allowed?

Attorney Corbo: This would be a question he might want to defer to the Coast Guard on as to whether they consider this to be operated as a passenger because the business owner would have control but would put the business in a situation where they would have to have a licensed captain operating the vessel.

Marcello Subashi: He believes you don't need a license you only need to be 16 years of age to operate a jet ski.

JS: The issue before the board is whether jet skis are an appropriate use of the pier which has very defined uses in the Chapter 91 License. The Harbor Regulations would allow the operation of a jet ski business but from other locations in Provincetown if so desired.

Attorney Corbo: The only question before the board today is the operation of a jet ski business from the pier.

Motion: Herbie Hintze moved based on the recommendation of Town Counsel the Pier Corp vote to turn down the jet ski proposal from MacMillan Pier.

Seconded: David Colton

Roll Call Vote: David Colton-Yes; Scott Frazier-Yes; Jamie Staniscia-Yes;
Herbie Hintze-Yes; Beau Gribbin-abstain. (4-0-1)

Float Space 11 and 1E Sublease to other users

Attorney Corbo stated the second issued he looked at in addition to what types of uses are allowed, there is also an issue of who may use the pier. In this respect it says the Chapter 91 License is quite specific in that it says the pier shall be maintained by and shall only be available for passenger pickup and drop off and the delivery of supplies by and to the water transportation providers and the commercial fishermen identified in Special Condition #6. Special Condition #6 identifies eleven specific businesses that are authorized to operate from the pier. It is his opinion those 11 operators are the only ones that are authorized to operate from the pier. There are provisions in the license that authorize those operators to transfer their interest in those businesses with the approval of the board and is something that can continue to be permitted as long as those spaces are operated by the entities identified in the license. There's nothing in the license that says those operators need to use the entirety of their space or that they are prohibited from sublicensing to third parties. Given the level of details that goes into the license, it was his opinion if this was something that was prohibited it likely would have been said and; it was his understanding it has been the practice of the board to allow sublicensing in exchange for a fee provided that the authorized user identified in the Chapter 91 License is still using the portion of the space. It was his ultimate opinion, subject to the discretion of the board, the board would have the authority to authorize an authorized user to sublet a portion of their space as long as the original user is using a portion of the space and; the original user and the sub-user are both conducting businesses or types of businesses i.e. passenger for hire businesses that are specified in the Chapter 91 License.

JS: The question is, at the board's discretion, there is no guarantee that sublets are allowed.

Attorney Corbo: That was correct. There is nothing that provides a unilateral right of the license holder to sublet their space out to anyone else. The Chapter 91 License is specific that those individuals need to be using the space. It was his opinion any sublicensing that is allowed has to be approved by the board.

SF: Special Condition #7 of the license describes the terms under which a transfer of use can be made. At the time it was written the thinking may have been around the sale of the companies and the transfer of use from one party to another party through a transaction. The license does get into a long definition of things that comprise the transfer of use including contract and lease. There is a process and the board does have to vote on it. The only thing that can be used to deny such a transfer of use via contract for lease or sale or transfer of stock is a felony conviction of either the buyer or the seller or through tax delinquency or owing the town fees. How is this reconciled.

Attorney Corbo: The way he would interpret that is the owners of the businesses can transfer their interests in those businesses to someone else, whether by ownership or sale or assignment subject to the approval of the board of Selectmen but the new operator would have to operate under the original business name and; that the business would still have to be the type of business that is allowed under the previous sections of the license. Although the grounds on which the board can deny a transfer are limited it does not mean the interest

can just be transferred to anyone for any purpose. It would still have to be for a purpose that is consistent with the license i.e. a passenger for hire vessel business.

Pier Manager Report

DB: The pier is still extremely busy with activity. All Cranes are currently in operation as well as the ice machine. The NAO Santa Maria will not be arriving this weekend due to repairs. Their next visit to town will be July 28 – Aug. 2nd. Winkler has completed the pile installation. There are still several items to complete the project, such as H bars for gangways and pile guide installs. Payment of final invoices are being held until work is completed. The Cavalho Crane barge will now go out to auction as surplus equipment and all sealed bids are due by August 2, 2021. He is working with JD and Town Hall to close out FY21.

JS: He asked what the minimum bid would be and DB said \$20,000.00

SF: He would like to see the Audit done as soon as possible.

HH: Any idea when the cranes will leave the pier? DB said there is going to be questions regarding 1E with respect to moving it over slightly and expanding it but it is in the works with plans at the expense of the owner. He is working on getting the crane removed.

Harbormaster's Report on 7/14/2021

DG: He said two weeks ago on a Saturday he received a phone call at home about a possible oil spill. He tried to get down to the pier but it took him 20 minutes to go two blocks due to the traffic. The issue was if needing to deploy the oil boom and it took 20 minutes to go two blocks how long would it take to go to the pier to get into the Harbormaster truck, drive to DPW to load the unit and then get back to the pier to load it into the boat and deploy it. It probably would have been an hour and a half and a lot could happen at that time. He said it was suggested by the Pier Manager to contact the Police Department to see if they could get an escort. The Chief of Police was contacted and he said he was short staffed and could not guarantee an escort. Even with an escort trying to get through Conwell Street on a really busy day could still be trying. The trailer is about 20 feet x 8 feet.

SF: It might be best to look into small booms. They are used in other docks that are only 5' x 3' that are pulled from a box right from the pier.

BG: The oil boom could be taken out of the trailer and stored under the area of the Harbormaster Office. DB said the trailer would be a safer and dryer space. DG said there are other components that are required so it would make sense to keep it all in the same area. SF stated one area to store the trailer could be in the town parking lot over by the Courtesy Float area.

DG: M3 Utility Boat needed repairs on the engine. He also stated he would like to go on record stating the distance from mean low water at Long Point out to the #3 green buoy is 1/5 of a mile. This means that any jet ski activity would need to be 25% the distance between the buoy and the mean low water mark. This would be 25% further out than the distance between the buoy and the beach.

Office Manager Report

The weekly trap sheds are still being booked with still a few week openings in August with September open. Any small maintenance issues with the Trap Sheds David Costa takes care of immediately. JD is requesting the sale of water and juices for next season staying away from sugary drinks. The bottles will not be plastic as several companies now make plant based bottles that are fully recyclable. She and Chris Maxwell covered the office for early morning storm watch standby. The Plaques for Louis Ribas and Kelly Cromwell have been delivered. John DeMatteis and harbormaster staff continue to monitor transient boats that require invoicing.

SF: It might be a good idea to notify the families of those in recognition of the plaques so they could be in attendance if they choose to.

Continued Marine Services Agreement Review

The board discussed the concerns about keeping it in a contractual document.

JS: His question was with Human Resources regarding defining the difference or similarities between Pier Corp and town employees. DB mentioned he would get that information for him.

SF: The Pier Corp should come up with a protocol for how the budget is developed. DB said the MSA money is not just the Harbormaster money. In the past the funds were a lump sum protocol and things were not covered.

DC: Clearly there should be a process in place for all items that are budgeted by the Pier Corp. The protocol should not be included in the MSA. How the Pier Corp arrives at it should not be a subject of an agreement the Pier Corp has with the town.

JS: If the Pier Corp is addressing it as a Contract for Services, the Pier Corp would be listing the services they will provide and if it goes beyond that then they would be outside of the contract and the town would have to pay more.

DG: If someone bequeathed a new patrol boat to the Harbormaster Office and it needed more crew, he would not go to the Pier Corp and say he needs additional staff, he would go to the Select Board and say he needs additional staff. It's up to the Select Board as to where they put it.

SF: John DeMatteis works for the Pier Corp yet is Deputy Harbormaster so it might be best that he is a town employee.

DG: He stated its all semantics to him because he, Doug and Jamie all have a really good working relationship and any one of them can disappear at any time because mother nature does that. Right now it works well. John DeMatteis is in the Pier Corp Budget but works directly for him and that is not an issue because they loan staff to each other.

SF: There is real money on the table and it's best to have procedures and memorialize them. DC agrees however he feels certain procedures do not belong in the contract.

JS: It is agreed upon with drafting the contract with the town for the Marine Services Agreement that it should be kept as simple as possible as to what services the Pier Corp will be providing and at what cost.

DB: He will put together an outline to be expanded on if necessary.

Directors Statement

SF: He mentioned the rate schedule had been postponed as a result of the pandemic. That is no longer the case. It would not affect the contracts the Pier Corp already issued. He might propose a motion for the next meeting that they rescind their decision and implement as of the first of August the rate sheet in Appendix B in the Harbor Regs.

JS: It would be helpful to have a list that might estimate how much additional revenue the Pier Corp would receive not affecting the tenants that already have an agreement.

HH: He wanted to thank the staff for doing an excellent job on the pier.

JS: He is on the pier and he sees the staff working very diligently and would also like to thank them for a job well done.

Adjournment

HH: Motion to adjourn the meeting at 6:15 p.m. Seconded: DC.

Vote: 4-0-0 Herbie Hintze: Yes David Colton: Yes Jamie Staniscia: Yes

Scott Fraser: Yes BG: no vote