



**THE CITY OF POUGHKEEPSIE
NEW YORK**

**COMMON COUNCIL MEETING
MINUTES**

Saturday, April 23, 2011 10:00 a.m.

City Hall

I. PLEDGE OF ALLEGIANCE:

ROLL CALL

All Present

II. REVIEW OF MINUTES:

None

III. READING OF ITEMS by the City Chamberlain of any resolutions not listed on the printed agenda.

None

IV. PUBLIC PARTICIPATION: Three (3) minutes per person up to 45 minutes of public comment on any agenda and non-agenda items.

No public participation at this time.

V. MAYOR'S COMMENTS:

VI. CHAIRMAN'S COMMENTS AND PRESENTATIONS:

VII. MOTIONS AND RESOLUTIONS:

- 1. A motion was made by Councilmember Herman and seconded by Councilmember Parise to receive and print.**

Assistant Corporation Counsel Ackerman informed the Council of the resolution before them amending the existing licensing agreement with the Seaway Navigation. He stated that this agreement has been previously approved by the Common Council. There has been an amendment to allow the New York State parks and recreation to allow participation and comments. There are minor changes in language and added suggestions to the license agreement. New York State Parks indicated that it was a matter of Local concern. The amended resolution incorporates some suggestions by New York State Parks.

Councilmember Solomon concerned with agreement, in several places it says that the city will be responsible for all damages sustained by the owner of the tour boat. It doesn't say who will determine the damages nor does it give a range of liability. She stated that she feels that this is potentially disastrous. Also, Exhibit A is still missing, Exhibit A has never has made it to the Common Council. Seaway Navigation has rights from the public dock to the bottom of Main Street as rights to the waters edge. Yet in the amended agreement it says if a spud barge were necessary it could not be any further south than the public dock. The additional footage that he has rights to is all south of the public dock so where would it be?

Assistant Corporation Counsel Ackermann responded that the issue with the damages only would be triggered by the city failing to give notice pursuant to the agreement that they no longer wish to be in agreement with the company. So long as a year's notice is given there will be no damages. Damages would have to be proven by the operator. The actual damages he suffered because of the lack of notice. As far as the area that is under the license, it's just that portion of the dock that he needs for his boat, it's not Southern Waterfront, and it's not down to Main Street.

Councilmember Solomon asked what the range of liability is and where would that spud barge be.

Assistant Corporation Counsel Ackermann responded the range of liability is actual damages. Where the spud barge is, the spud barge is if the city is in default of the agreement and that spud barge would be located somewhere between the two bridges but not south of the public dock.

Councilmember Mallory does liability pertains to the city if the community happened to utilize the dock and the boat operator cannot come in or take off? So

there's no liability for the city for that? So basically the deck hands will know when he is coming in, and people will have to disperse for a short period of time and then go back. Where does the city stand as far as the letter received from parks? So, are you saying that the city does not need to have this agreement reviewed by the state's bonds council? If we move forward with this yes vote and it is approved where do we stand with river keeper and the lawsuit? So you're sharing that we are going to be expanding that dock? This does not need to go back to Seeker or the waterfront advisor committee?

Assistant Corporation Counsel Ackermann responded that liability that **Councilwoman Solomon** was referring to for damages is that which is due to notice. If the public is at the dock and he is unable to return after one of his trips the city is not liable for the public inhabiting him from returning. The deck hands will be there at all times to assist him. No, after further review from parks they indicated that bonds money was not used. It was used for other parts of the waterfront. They were a little confused as to what actually the agreement said. It did not need to be reviewed for bonds council; however what I did do was send it over to bonds council just for review. There is no pending litigation with river keeper at this time. The city has received a correspondence from them. We have reevaluated it, but it is in our opinion that we are free to move forward. What you have to remember is that there is already an agreement in place now, and all we are doing is amending the agreement that was approved previously and entered into. Another thing is that the City Administer Long has been working with DEP, and it appears that we will be able to enlarge the dock. We have someone that will be able to donate additional floating dock so that should be taking place and moving forward quickly to increase the square footage of the dock. Yes, that is my understanding. Yes, it appears that we have someone who is willing to donate dock, and because of the limited increase in square footage it is feasible and can be done. We will have to review that once we get something that is more formal then we will take a look at that.

Councilmember Flowers I just hope that this does go through, and that we do talk with the owner about posting a schedule so that way there is no confusion when the other boaters are out there, and they need to utilize the docks, because it is my understanding that they both can use the dock. I just want to make sure that the public is aware of when he will be coming in and out, because it is my understanding that he will not always have someone there at the dock. The current dock the width of it and the length of it can accommodate other boaters to come in as he comes in and loads and unloads. It is also my understanding that under this agreement that if things do not work out under this agreement as long as we give them a leering notice then we can terminate it.

Chairman Klein This agreement requires Seaway Navigation to have proper insurances in place, and name the city as an additional insurer. In essence this is an agreement that has already been approved. It's just the changes from the state related primarily to the issue of alienation of park lands, and this has been resolved to the

satisfaction of the state. The state has reviewed this agreement and has indicated that it conforms in terms of their requirements, and it's a matter of local concern.

Councilmember Johnson Do we have written correspondence from the New York State SHPO contract in regards to the revised contract? Also when the navigation boat is unable to unload because someone is tied up at the dock then who is going to be held liable? Also was there an environmental review done? Is there a plan B for the spud barge? Is there any place else that we could have located them outside of giving them access to the public dock? There has been a public outcry about giving away a piece of the park.

Assistant Corporation Counsel Ackermann They indicated that they were satisfied with the changes. Issues like that will be addressed at that time. There will be no liability for that. He will have deckhands on the dock when he is out and about. So it will be addressed at that point in time. It is a type two action it's an existing facility that was built for this activity, and no further review is needed. Not at this time the city administrator is working with the operator to make those arrangements should they be necessary. That is out of my scope.

Chairman Klein This is already an agreement that we have entered into. We have a dock and that is what docks are used for boats. The fact that he could have gone somewhere else is not the issue here. Alienation of park land was an issue of the state. They reviewed it and determined that we are not giving away park land. The question of whether this could have been done somewhere or by someone else is no longer to remain.

Mayor There has not been a public outcry against this. A majority of the city supports this great accomplishment and opportunity for our city. This is good smart development. This is nothing new to the City of Poughkeepsie.

Councilmember Mallory When this issue first came up I was in favor of this tour boat, yet after the council meeting on the 15th raising questions about public accessibility, and this possible pending lawsuit from Riverkeeper. Again I voted for this and I support development of the waterfront with smart growth. I will be voting no when it comes to vote.

Chairman Klein asked Mr. Ackerman if there a pending lawsuit? They threatened to sue. There is no lawsuit pending all there is a letter going on right now. The question is whether we wish to make policies and law in this city based upon people and individual groups threatening to sue. That is an issue that each of us has to consider.

Assistant Corporation Counsel Ackermann No lawsuit.

Councilmember Johnson I too initially voted for this, but now that I have seen other facts and circumstances, and the one that really disturbed me is the fact that another boat company was left out of the process it was not opened up to everyone to apply

for this dock , and I find that very uncomfortable. I believe that it should have been open to all. I do not believe in giving exclusive rights to one company over another. This other boat company I have gone on a few of their tours and they were very nice. They were also members of the commerce so I am surprised that they were not contacted and left out of the loop.

Chairmen Klein The other company was not left out of the loop. Both owners were here on April 4th. I believe that going back and renegeing on an agreement that has already been made just because someone has threatened a lawsuit, and some people have commented negatively. I do not think that is moving the business of the city forward. Mary K. Verba was here and spoke to this issue and she does not operate in exclusionary types of operation.

Mayor No one was left out and no one was reached out to. They reached out to the city, the Dutchess County of commerce, Dutchess county tourism. Mr. Noor was denied use of the dock under the Cozean administration. Mr. Noor wanted to place docks next to the Children museum.

Councilmember Flowers It is my understanding that the two companies did sit down and come to an agreement about using the dock and about scheduling, and everyone was ok with it. So as long as other boaters are able to use the docks, and we are not violating any type of legality here, and the other company that had interest can utilize the dock I do not see what the problem is. If there is a problem and it does not work out then we have the option to terminate this contract. We have one season that we can go through if and if does not work out then we can terminate it. This amendment allows us to do that so I do not see what the problem is. As long as we do it within the year or at least give them a year notice we have no damages.

Councilmember Coates The captain indicated that it is his intent to build another dock somewhere down in that facility do we have any update on that, and maybe what the plan is for that?

Mayor Mr. Long has been working with Mr. Pile and Spirit on the Hudson with Captain Noor regarding enhancements to our current dock through possible donations and making our current dock larger. Also Mr. Pile is trying to seek grant opportunities to possibly get a larger dock to be built. Councilmember Flowers makes a good point this allows us if at any point this does not work out. We are amending this contract based on what the state would like us to place into the language of the contract. This is in accordance to what the voting people want. By voting against this you are telling the state that we do not want to be in compliance to what you have asked us to do. We have already made the agreement you are amending the language to what state offices are requesting us to put in. Your vote no is a no vote to the state and that you do not want to be in compliance to them.

**RESOLUTION
(R-11-33)**

INTRODUCED BY COUNCILMEMBER HERMAN

WHEREAS, the City of Poughkeepsie, Dutchess County Tourism and the Dutchess County Regional Chamber of Commerce have been negotiating with Seaway Navigation and Tours, Ltd. to relocate their home port to the City of Poughkeepsie waterfront; and

WHEREAS, the relocation of the port for Seaway Navigation and Tours, Ltd. is expected to draw thousands of tourist a month to Waryas Park and Seaway has agreed to promote local business; and

WHEREAS, the Common Council approved a license agreement on November 1, 2010 with Seaway Navigation; and

WHEREAS, New York State Office of Parks, Recreation and Historic Preservation has requested changes to the license agreement which changes are clerical in nature and acceptable to Seaway Navigation and the City; and

WHEREAS, the Common Council of the City of Poughkeepsie has determined that this resolution constitutes a Type II action as defined by the New York State Environmental Quality Review Act and 6 NYCRR Part 617, and

NOW, THEREFORE,

BE IT RESOLVED, that the Common Council of the City of Poughkeepsie hereby finds and determines that entering into a license agreement with Seaway Navigation and Tours, Ltd. will be in the best interest of the residents of the City of Poughkeepsie and the public at large; and

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to enter into an amended license agreement for the above mentioned operation provided such agreement is in substantially the same form and substance as attached hereto together with such other terms and conditions which the Mayor, City Administrator and/or Corporation Counsel shall deem appropriate, and the Mayor, the City Administrator and the Corporation Counsel are hereby authorized and directed to do all things necessary to give effect to the terms of this resolution

SECONDED BY COUNCILMEMBER PARISE

Official Minutes Common Council Meeting of April 23, 2011

R11-33						
			Yes/Aye	No/Nay	Abstain	Absent
<input checked="" type="checkbox"/> Accepted <input type="checkbox"/> Accepted as Amended <input type="checkbox"/> Tabled	Councilmember Johnson	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember Solomon	Voter	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember Mallory	Voter	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember Flowers	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember Coates	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember Parise	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember Herman	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember Klein	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VIII. ORDINANCES AND LOCAL LAWS: There are none.

IX. PRESENTATION OF PETITIONS AND COMMUNICATIONS: None.

X. UNFINISHED BUSINESS: None.

XI. NEW BUSINESS: None.

XII. ADJOURNMENT:

A motion was made by Chairman Klein and Councilmember moved to adjourn meeting at 10:38 a.m.

Dated: November 15, 2011

I hereby certify that this true and correct copy of the Minutes of the Common Council Meeting held on Saturday, April 23, 2011 at 10:00 a.m.

Respectfully submitted,

Deanne L. Flynn
 City Chamberlain