

ATTACHMENT B

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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of:)

FOSS MARITIME COMPANY AND) Hearing Examiner File Nos.
PORT OF SEATTLE) S-15-001; S-15-002
from an interpretation) (Directors Interpretation
issued by the Director) 15-001)
Department of Planning)
and Development)

Administrative Hearing - Excerpted Testimony of Mr. Greg Englin
before
HEARING EXAMINER ANNE WATANABE

August 14, 2015

TRANSCRIBED BY: Bonnie Reed, CET
Reed Jackson Watkins
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A P P E A R A N C E S

1
2
3
4 Foss Maritime, Appellant
5 DAVID R. WEST
6 Garvey Schubert Barer
7 1191 Second Avenue, 18th Floor
8 Seattle, Washington 98101
9
10 JACK MCCULLOUGH
11 McCullough Hill Leary, P.S.
12 701 Fifth Avenue, Suite 6600
13 Seattle, Washington 98104
14
15 Port of Seattle, Appellant
16 TRACI GOODWIN
17 PO Box 1209
18 Seattle, Washington 98111
19
20 PATRICK SCHNEIDER
21 Foster Pepper
22 1111 Third Avenue, Suite 3400
23 Seattle, Washington 98101
24
25

1 A P P E A R A N C E S (continued)

2

3 ELEANORE BAXENDALE

4 City Attorney's Office

5 701 Fifth Avenue, Suite 2050

6 Seattle, Washington 98104

7

8

9 Puget Soundkeeper Intervenor

10 PATTI GOLDMAN and MATTHEW BACA

11 Earthjustice

12 705 Second Avenue, Suite 203

13 Seattle, Washington 98104

14

15

16

17

18

19

20

21

22

23

24

25

E X A M I N A T I O N I N D E X

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4 MR. ENGLIN:

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- 1 Q. Um-hum?
- 2 A. -- it's a marketing product.
- 3 Q. So a cargo terminal to your mind, though, has a different
4 meaning than just a marine terminal?
- 5 A. I don't know if I could really even answer that because a
6 cargo terminal you could have a cargo terminal that's land
7 side, that's inland. It doesn't have -- it's not the same
8 as having a marine terminal, because marine terminal implies
9 that there's water dependent use as well.
- 10 Q. And so with respect to Terminal 91, is this graphic
11 indicating to you that there is a cargo terminal function
12 and a marine terminal function?
- 13 A. What it indicates to me is that while there's a cargo --
14 somebody designated it as a general purpose marine and cargo
15 terminal. They kind of lumped in a lot of different
16 concepts here.
- 17 Q. And what concepts would they be including in that in your
18 mind?
- 19 A. Well, they call it three -- they're almost three different
20 things. They call them a -- or three combined things:
21 General purpose marine, cargo terminal and commercial
22 moorage.
- 23 Q. Now, my understanding from your testimony from yesterday and
24 today is that the Port will provide berthing for any kind of
25 vessel at any of the Port's facilities that are not leased

1 or to which you have secondary berthing; is that right?

2 A. That would be accurate.

3 Q. And how many facilities on Elliott Bay are available for
4 that kind of berthing?

5 A. I'd just have to count them out.

6 Q. So is it everything that is shown on the first page of
7 Exhibit 21?

8 A. Unless they were under -- unless they were under an
9 exclusive lease.

10 Q. Right. So there you would have the rights by secondary
11 berthing?

12 A. Correct.

13 Q. Does that include -- I think you testified that that does
14 include Pier 66 when you were describing the pictures; is
15 that right?

16 A. Yes.

17 Q. And it includes Pier 69.

18 A. Yes.

19 Q. Do you know what permits are available for Pier 66 from the
20 City of Seattle?

21 A. No.

22 Q. And do you know what permits are available or have been
23 issued for Pier 69 by the City of Seattle?

24 A. No.

25 Q. Do you know what permits have been issued by the City of

1 Seattle for Terminal 91?

2 A. My understanding it's a cargo -- it's permitted as a cargo
3 terminal and as a passenger terminal, passenger facility.

4 Q. Um-hum. So if I'm understanding you correctly, a cruise
5 ship could be assigned by the Port to a berth at Terminal 5
6 if there were space for the cruise ship at Terminal 5?

7 A. In theory, yes.

8 Q. And if it was --

9 A. Except that it's -- I'm not sure whether or not that that's
10 permitted as a passenger terminal, that special delineation.

11 Q. So it would have to be permitted as a passenger terminal in
12 order to allow a cruise ship to berth at Terminal 5?

13 A. Possibly.

14 Q. Are you aware of that before -- do you know when the Port
15 obtained a permit for a passenger terminal at Terminal 91?

16 A. No.

17 Q. Is it your understanding that cruise ships have berthed at
18 Terminal 91 since the year 2000?

19 A. Yes.

20 Q. When you're assigning berthing, is it dependent on what the
21 permits the City of Seattle has issued for a particular
22 site?

23 A. No.

24 Q. Except that you mentioned a minute ago that maybe at
25 Terminal 5 it would need a passenger terminal permit?

- 1 A. In the case of cruise vessels, like large cruise vessels,
2 that's handled through Cruise Terminals of America. And so
3 generally speaking, that would be, you know, handled
4 somewhat separately from me assigning a berth to a cruise
5 vessel.
- 6 Q. Thank you for the clarification.
- 7 And the Port doesn't exercise any control over how
8 American Cruise -- give me the name again, I forgot.
- 9 A. Cruise Terminals of America.
- 10 Q. Cruise Terminals of America, you don't exercise any control
11 over how they do their berthing?
- 12 A. I don't handle that portion of the business in terms of
13 negotiating the relationship between us and Cruise Terminals
14 of America.
- 15 Q. So is there somebody else that would manage that portion of
16 the business?
- 17 A. Yes.
- 18 Q. And who would that be?
- 19 A. Mike McLaughlin.
- 20 Q. Do you know why the Port gets permits sometimes for its
21 activities?
- 22 A. No, I'm not involved in the permitting.
- 23 Q. Who would be responsible for that?
- 24 A. Probably would be -- it could be someone within our
25 permitting group and environmental, Paul Meyer or someone to

- 1 Q. At all?
- 2 A. Right.
- 3 Q. Can you look at the Port's Exhibit 9 and on the third
4 page -- of the third page there, it ends in the number 36,
5 the Port's Exhibit, not the City's. Sorry.
- 6 A. Oh.
- 7 Q. There's a lot of binders to manage.
- 8 A. Which one?
- 9 Q. All right. Exhibit 9.
- 10 A. Okay.
- 11 Q. Third page is page 36, and if you go up from the bottom,
12 about the fifth one up from the bottom is at either terminal
13 or Pier 18.
- 14 A. Yes.
- 15 Q. And it says barge: Klamath, 360. Can you tell me what that
16 is?
- 17 A. Yeah, that's the Crowley Maritime barge, the Klamath and the
18 barge 360, it looks like or it's barge Klamath. They're
19 moored over at the T-18 mooring dolphins and they're just
20 there, they're just identical.
- 21 Q. So do you know whether they have cargo on them or not?
- 22 A. No.
- 23 Q. I want to go back to the superyachts, the Serene, you
24 thought she was.
- 25 A. Yes.

1 Q. How would you classify that boat?

2 A. As a yacht, a non-cargo vessel.

3 Q. Is that a recreational vessel in your mind?

4 A. I don't know if I would characterize it as a recreational
5 vessel or how to characterize it. Just (inaudible) a class,
6 it's a superyacht.

7 Q. Do you know, is there a leasehold -- I think you testified
8 there's a leasehold for the fishing fleet?

9 A. There are preferential use agreements for many of the
10 fishing -- some of the fishing fleets.

11 Q. And do they have a permit for that particular use, do you
12 know?

13 A. Not to my knowledge. It's a -- in what way? What permit?

14 Q. A permit from the City of Seattle?

15 A. I don't know.

16 MS. BAXENDALE: I have no further questions, thank you.

17 THE COURT: All right. Mr. Baca.

18 MR. BACA: Yes, I have a few questions.

19

20 C R O S S - E X A M I N A T I O N

21 BY MR. BACA:

22 Q. Good morning, Mr. Englin, my name is Matt Baca. I represent
23 the environmental intervenors.

24 A few moments ago you testified that different vessels
25 could be involved in cargo operations, I believe. What does

1 that term mean to you, "cargo operations"?

2 A. It means the movement of various types of cargo from the
3 vessel across the dock or from vessel to vessel.

4 Q. Okay. How many cargo terminals are under your purview,
5 specifically cargo terminals?

6 A. Well, my understanding is they're all potentially cargo
7 terminals with the exception of the mooring dolphins.

8 Q. Okay.

9 A. You could, in theory, move cargo across any of the piers.

10 Q. Okay. So when you think of that term "cargo terminal," is
11 that the defining characteristic to you?

12 A. What? Moving cargo?

13 Q. Yeah.

14 A. Yes.

15 Q. Okay. And is that definition based on the Seattle Municipal
16 Code?

17 A. No, it's on generally accepted concept of moving cargo from
18 vessel across piers.

19 Q. Okay. Is it your understanding that all these places hold
20 permits for cargo terminals?

21 A. I don't know if they hold -- if they hold permits for all of
22 the terminals or not.

23 Q. And if they -- regardless of whether they do have cargo
24 terminal permits, could they also have other permits?

25 A. I would assume so, I don't know. I actually don't know that

1 much about the actual permitting aspect of the business.

2 Q. You also testified this morning about your understanding of
3 which permits Terminal 91 has, do you recall that?

4 A. Yes.

5 Q. And when did you formulate your understanding of which
6 permits Terminal 91 has?

7 A. That's been -- in general, it's been for many years; I
8 couldn't tell you exactly when.

9 Q. Switching gears a little bit. Am I correct that you handle
10 the placing of many types of vessels in many locations in
11 the Port of Seattle?

12 A. Yes.

13 Q. Have you ever not allowed a vessel to moor at Terminal 91
14 because Terminal 91 didn't have the right kind of permit?

15 A. No.

16 Q. Have you ever not allowed any kind of activity of Terminal
17 91 because Terminal 91 didn't have the correct kind of
18 permit?

19 A. No.

20 Q. In your view, are there any limitations on the types of
21 vessels that can moor at Terminal 91?

22 A. No.

23 Q. In your view, are there any limitations on the types of
24 activities that could take place at Terminal 91?

25 A. Operationally there are some constraints, we can't -- we've

1 agreed to not move containerized traffic, you know, taking
2 container ships over at Terminal 91, and there's just
3 operational constraints, water depth, et cetera.

4 Q. And aside from operational constraints, are there legal
5 constraints?

6 A. No, not to my knowledge.

7 Q. You testified yesterday about the -- I might get the
8 pronunciation wrong, the Hanjin Copenhagen, I believe; do
9 you remember that?

10 A. Yes, um-hum.

11 Q. What sorts of repairs will that vessel be making at
12 Terminal 91?

13 A. Well, they are done with their repairs and they've departed.
14 They were shifted over to Terminal 5 to conduct their
15 repair, they completed those repairs, and then they were
16 underway the next port of call.

17 Q. And were there any limits on the types of repairs that could
18 be conducted at Terminal 91 or Terminal 5?

19 A. Not to my knowledge. They were also under a captain of the
20 port order to conduct those repairs.

21 Q. What does that mean?

22 A. That means that the captain of the port from U.S. Coast
23 Guard told them that they could not leave the port until
24 they conducted those repairs.

25 Q. And what does leave the port mean? Does that mean --

- 1 A. Depart the Port of Seattle.
- 2 Q. Okay. So they could move from Terminal 91 to Terminal 5,
3 for example, but just not leave Seattle?
- 4 A. Correct.
- 5 Q. All right. Let's talk about a hypothetical cargo terminal
6 that only has a permit for a cargo terminal, assume it has
7 no other permits. Does that permit impose any limits on the
8 kind of vessel that can call there to your knowledge?
- 9 A. No.
- 10 Q. Does it impose any kind of limit on the activities that can
11 take place?
- 12 A. No.
- 13 Q. And now specifically turning to Terminal 5, are you aware of
14 what kind of permit Terminal 5 has?
- 15 A. General understanding is it's a cargo terminal.
- 16 Q. Okay. And does Terminal 5's cargo permit -- or cargo
17 terminal permit impose any limit on what kind of vessel can
18 call there?
- 19 A. Not to my knowledge.
- 20 Q. Does it impose any limit on the kind of activities that can
21 take place there?
- 22 A. No.
- 23 Q. All right. Shifting back to Terminal 91, you talked a
24 little bit about Marel, I believe is the name.
- 25 A. Yes.

- 1 A. Yes.
- 2 Q. Do repairs and maintenance happen at the fishing home port
3 during the off season?
- 4 A. Yes.
- 5 Q. What kind of repairs and maintenance?
- 6 A. Almost anything and everything that doesn't require a haul
7 out into a shipyard into a dry dock.
- 8 Q. So what are an example of some things that they have done in
9 the past?
- 10 A. Replace piping, replace conveyers, repair the main engines,
11 the compulsion systems, repair hydraulic systems.
- 12 Q. Would it be safe to say that some of those fishing vessels
13 save some of these more major types of repairs for the off
14 season?
- 15 A. Yes.
- 16 Q. All right. Shifting gears one last time. Do you recall
17 discussing yesterday the transshipping tariff?
- 18 A. Yes, I think so.
- 19 Q. All right. Do you know --
- 20 A. Are you talking about the tariff? I remember discussing the
21 tariff.
- 22 Q. Yes.
- 23 A. Okay.
- 24 Q. Do you recall transshipping specifically?
- 25 A. No.

1 outward wharfage.

2 Q. Okay. What does the word transshipment mean to you?

3 A. Moved from one -- you know, moved.

4 Q. Okay. Have you heard the term transshipment of cargo
5 before?

6 A. Yes.

7 Q. Is a drill rig something that you would consider a cargo
8 vessel?

9 A. Yes. It may be.

10 Q. In what way?

11 A. Well, it could transship materials for its operations. So
12 it could actually take on cargo and move it between point A
13 to point B.

14 Q. Okay. Do you -- what would you say the primary purpose of a
15 drill rig is?

16 A. Primary purpose, I assume, is to drill.

17 Q. Okay.

18 MR. BACA: No further questions.

19 (Conclusion of Englin requested testimony at 10:57:56)

20

21 (Beginning of requested Englin testimony starting at
22 11:18:09.)

23 THE COURT: All right. We're back on the record. So
24 Mr. McCullough.

25 MR. MCCULLOUGH: Great. Thank you. We'll keep this

- 1 A. Yes.
- 2 Q. -- in this example?
- 3 A. Um-hum.
- 4 Q. And you believe that that is within the scope of allowable
5 cargo terminal operations under your existing permits?
- 6 A. Absolutely.
- 7 Q. You were also asked about whether you could imagine that
8 there were any limits on kinds of activities that could be
9 conducted on the upland portion of the terminal, and I think
10 your answer was no?
- 11 A. No.
- 12 Q. Now, just to be clear for the record, does that mean that if
13 I wanted to build an apartment building on Terminal --
- 14 A. No.
- 15 Q. -- 91, I could do that?
- 16 A. No.
- 17 Q. Or an arena?
- 18 A. No, no, it has -- no, it would -- no, there are side boards
19 obviously --
- 20 Q. Would that be within the limits of the cargo terminal and
21 other permitted uses?
- 22 A. To build an arena or --
- 23 Q. No, no, no, I mean -- you said, no, there were no limits and
24 I'll let you clarify.
- 25 A. Okay, yes. No, obviously there's limits to what you can do

1 out on a cargo terminal. You know, you can't --

2 Q. Are those limits related to your permitted uses?

3 A. Yes.

4 Q. And then, finally, you had testified -- I think you were
5 asked the question about a cruise ship whether a cruise ship
6 that came into the harbor could moor at Terminal 5.

7 A. Correct.

8 Q. And your answer was?

9 A. No. Well, I guess --

10 Q. Could moor --

11 A. A cruise ship could moor over at Terminal 5 for sure.

12 Q. Okay. Right. So -- and that is because it would be --

13 A. An acceptable use.

14 Q. So presumably -- now, when was the -- there is a permit for
15 a cruise ship facility as Terminal 91; is that right?

16 A. Yes.

17 Q. And has that been there for a hundred years, I mean the
18 permit?

19 A. No.

20 Q. Okay. The -- so I'm going to ask you to open up the Foss
21 exhibits to Foss Exhibit 89; do you see the book there
22 that...

23 A. Okay.

24 Q. And you see this is the City of Seattle analysis and
25 decision of the director of DPD?