



City and Borough of Wrangell
Port Commission
AGENDA

Thursday, June 03, 2021
6:00 PM

Location: Borough Assembly Chambers
City Hall

WORK SESSION

Date and Time

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF MINUTES (*MOTION* - Move to approve the Minutes, as presented)

[a.](#) 2021-05-06 Port Commission Minutes

4. AMENDMENTS TO THE AGENDA

5. CORRESPONDENCE

6. PERSONS TO BE HEARD

7. HARBORMASTER'S REPORT

[a.](#) Harbormaster Report June 2021

[b.](#) Meyers Chuck report

8. COMMISSIONER REPORTS

9. UNFINISHED BUSINESS

[a.](#) Update Steve Johnson Court Case

10. NEW BUSINESS

11. NEXT AGENDA ITEMS

12. ADJOURN

Minutes of the Regular Wrangell Port Commission Meeting

Held May 6, 2021

Chairman John Martin called the Regular Port Commission meeting to order at 6:00 p.m. May 6, 2021, via Zoom

PRESENT: Martin, Yeager, Roppel, Merritt, Morrison

Harbormaster Steve Miller was also in attendance.

APPROVAL OF MINUTES

- a. Approval minutes from meeting April 8, 2021

M/S: Merritt/Yeager to approve the minutes, as presented. Motion approved unanimously.

AMENDMENTS TO THE AGENDA - None.

CORRESPONDENCE/PERSONS TO BE HEARD –

- Cody Mills, Alaska Ice Seafoods, Inc. Explained their interest and plans for leasing space in the Wrangell Marine Service Center, gave some background of the company, and explained what the company wants to do in Wrangell.

HARBORMASTER'S REPORT

Miller reported that the haul out goal for the Marine Service Center is projected to be met. Barge ramp and City Dock repairs were discussed. Gave a report of the alternator fire in the Marine Service Center – all safety equipment was readily available and the lift was not damaged. The alternator was replaced within hours and business resumed as usual. Miller was asked about his leadership course, which has been completed and a certificate has been obtained.

COMMISSIONER REPORTS

Morrison asked if youth PFD's are available at every harbor, Miller responded that there are shelters with youth PFD's stored inside at each harbor in town. At Reliance, the PFD's are stored inside the Harbor Department building.

UNFINISHED BUSINESS- Harbor Goals 2021

Miller reported that the Harbor Goals are still in place and progress has been made.

NEW BUSINESS

10a Approval of Assignment of Lease in the Wrangell Marine Service Center for Mill Dock #1 from Steve Thomassen, dba Crab Alaska, LLC to Alaska Ice Seafoods, Inc. dba Fathom Seafoods.

M/S: Roppel/Yeager to approve motion as presented. Motion approved unanimously.

NEXT AGENDA ITEMS – None.

The next Regular meeting June 3, 2021

Regular meeting adjourned at 6:44 p.m.

Harbormaster Report June 2021

Administration- The office still remains busy scheduling haul outs and fielding calls from independent travelers with yachts. We were notified by the State of Alaska DOT that we would be able to use unused money from the Shoemaker Bay harbor project to help fund the new net repair float at Shoemaker. Between the pink salmon disaster grant and the unused funds from the state Wrangell will use very little of its own money to build this float.

Harbors- We have seen a large increase in yacht traffic as the season gets under way. The Harbor may not be at pre covid rates for yachts but we will take any increase. The water line at Heritage Harbor has been fixed with all new 316 stainless steel couplings. Nelson's Diving completed the project in one full day with the help of Harbor crew. The crew is staying busy with dock maintenance and pressure washing.

Port- The Port received our first passenger ship on May 28th most people probably didn't even notice because it was only a 12-passenger ship that anchored out by Heritage Harbor. We will continue to see small ships all season. The Port will also see 5 stops from a larger cruise ship the Silver Muse from August 1st thru September 12th.

Marine Service Center- The marine service center continues to busy and will be until the end of June. We have launched 13 storage boats and pulled 76 boats in the last 2 months. The grand total for haul outs, launches, vessel moves and inspection hauls come to 199 in 42 working days.

Meyers Chuck Report

May 2021

On May 12th 2021 the Mayor, City Manager, Chief of Police, John Martin Port Commissioner and I took a field trip to Meyers Chuck. We met with the wonderful people of Meyers Chuck and learned about their concerns regarding the float system. The biggest concerns were that they need maintenance done and some are critical needs such as their airplane float. This is their life line for the small community. Not only are most of their daily needs and mail brought in by float plane but it is also one of the only means to get people out for medical emergencies.

There are 352 linear feet of floating dock for Meyers Chuck main float. Over the years the community has put barrels under the dock to keep it floating. This year alone they will be putting 100 barrels under the float so it does not sink. They have had to actually wade through water where the ramp lands on the main float. This is really unacceptable and will be addressed. The pilings appear to be in fair condition but we will have to send a diver down to asses below the water line down to the mud line.

At this time, I am working on a plan to move forward with removing the old airplane float and replacing it with a new one. I have contacted a float manufacturer and am waiting for the numbers to come in for the replacement float. The airplane float is 18' X 24' and the approach float is 10' X 37'. I have included pictures for reference. When I first went to step on this float, I thought I was going to fall through. We owe it to Meyers Chuck's residence to make sure they have a safe float system to use. I will be working with other city entities to get a float replacement schedule put together and cost estimates.

Steve Miller

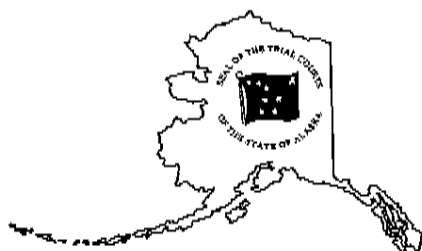
Port Director











Trial Courts
State of Alaska

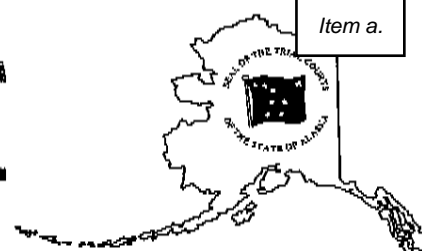


Wrangell Trial Court

P.O. Box 869

Wrangell, AK 99929

Phone: (907) 874-2311 Fax: (907) 874-3509



Trial Courts
State of Alaska

Item a.

DATE: 5/5/2021

Number of pages,
including cover sheet: 5

TO: ☐ Levesque
206-309-0667

☐ Thompson
888-363-1007

FROM: ☐ Clerk ☒ Magistrate

If there are problems or questions,
please call: (907) 874-2311

Message: Please see attached.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT WRANGELL

CITY AND BOROUGH OF WRANGELL,)

Plaintiff(s),)

vs.)

STEVEN JOHNSON,)

Defendant(s).)

FILED in the Trial Courts
State of Alaska First District
at Wrangell

MAY 04 2021

Clerk of the Trial Courts

By _____ Deputy

Case No.: 1WR-19-46 CI

DECISION GRANTING PARTIAL SUMMARY JUDGMENT

The City and Borough of Wrangell (CBW) has moved for summary judgment on its claim against Mr. Johnson for moorage fees in the amount of \$23,508.68. Mr. Johnson admits that he owes the CBW moorage fees, but claims that the amount he owes is \$16,640.63 as a result of an alleged CBW error in measuring his boats.

A party seeking summary judgment has the initial burden of proving, through admissible evidence, that there are no genuine disputed issues of material fact and that the moving party is entitled to judgment as a matter of law.¹ Once the moving party has met the initial burden of showing that there are no genuine issues of material fact, the burden shifts to the non-moving party "to set forth specific facts showing that they could produce evidence reasonably tending to dispute or contradict the movant's evidence and thus demonstrate that a material issue of fact exists."²

In order to prevent summary judgment, the nonmoving party only needs to show that a genuine issue of material fact exists to be litigated, and not a showing that a party will

¹ *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 760 n. 25 (Alaska 2008); *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 517 (Alaska 2014).

² *State, Dep't of Highways v. Green*, 586 P.2d 595, 606 n. 32 (Alaska 1978); *Christensen*, 335 P.3d at 517.

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1 “ultimately prevail at trial”.³ In deciding if the nonmoving party has met their burden, the Court
2 must draw all reasonable factual inferences in favor of the nonmoving party and address two
3 issues. First, whether the nonmoving party’s asserted genuine issues of “material fact” are indeed
4 “material”. A fact is “material” if it is a fact “...upon which resolution of an issue turns”.⁴
5 Second, because the existence of a dispute over a material fact is a question of law, the Court
6 must apply a standard based on reason and common sense in determining whether the evidence
7 proposed for trial is based entirely on “unsupported assumptions and speculation” or is “too
8 incredible to be believed by reasonable minds.”⁵

10 Thus, summary judgment is only appropriate when no reasonable person could discern a
11 genuine factual dispute on a material issue.⁶

13 There is no genuine issue of material fact that Mr. Johnson owes the CBW
14 moorage/utilities/storage fees. Mr. Johnson asserts that there is a genuine issue of material fact
15 on the amount owed because the CBW has the wrong measurements of his vessels. The CBW
16 supports its motion with the following exhibits:

18 Exhibit 1: Mr. Johnson’s answers to Requests for Production

19 Exhibit 2: CBW statement dated July 23, 2020 showing amount due of \$23,508.66

20 Exhibit 3: Affidavit of Steve Miller on OAL measurement of the vessels

21 Exhibit 4: Affidavit of Eric Yancey on OAL measurement of the vessels

22 Exhibit 5: Pictures
23
24
25

26 ³ *Lockwood v. Geico Gen. Ins. Co.*, 323 P.3d 691, 697 (Alaska 2014)

27 ⁴ *Sonneman v. State*, 969 P.2d 632, 635 (Alaska 1998)

28 ⁵ *ConocoPhillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.*, 322 P.3d 114, 122 (Alaska 2014); *Yurioff v. Am. Honda Motor Co.*, 803 P.2d 386, 389 (Alaska 1990); *Christensen*, 335 P.3d at 517.

⁶ *Yurioff* 803 P.2d at 389 (Alaska 1990); *Christensen*, 335 P.3d at 517.

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1 In support of its motion and reply, the CBW points to Mr. Johnson's discovery responses,
2 moorage billing records going back to 2012 and affidavits of the Wrangell Harbormaster, Steve
3 Miller and a private citizen with thirty five years of boating experience, Eric Yancey, confirming
4 the OAL (overall length) measurements of Mr. Johnson's boats at 103 feet for the Lady Gudney,
5 92 feet for the Cirus and 45 feet for the Bonnie Jean.

6
7 Mr. Johnson's response to Request for Production 1 states that "...he concedes that the City
8 of Wrangell accounting and schedule of payments is accurate." Exhibit 2 establishes that the
9 CBW has since August of 2012 consistently billed Mr. Johnson based on the OAL measurements
10 described in the affidavits and that procedure continued through 2019.

11
12 The CBW has thus met the initial burden of proving, through admissible evidence, that
13 there are no genuine disputed issues of material fact and that the moving party is entitled to
14 judgment as a matter of law. Thus, the burden shifts to Mr. Johnson to set forth specific facts
15 showing that he can produce evidence reasonably tending to dispute or contradict the CBW's
16 evidence and thus demonstrate that a material issue of fact exists on the amount due.

17
18 In support of his opposition, Mr. Johnson submits his discovery response asserting that that
19 "Mr. Johnson agrees with the City of Wrangell's account statement on this point, except for the
20 matter of overcharging based on the length of his boats". In addition, Mr. Johnson submits
21 certificates of documentation for the F/V Cirus and the F/V Bonnie Jean. Mr. Johnson's
22 opposition alleges that he "...has repeatedly asserted and will swear that the Lady Gudney is 86
23 feet long, the Cirus is 82 feet long, and the Bonnie Jean is 36 feet long".

24
25 Mr. Johnson's opposition raises two issues. The first is whether the CBW has used the
26 correct vessel length in its billing. The second is whether Mr. Johnson has waived his right to
27 contest the OAL rate that the CBW has used for Mr. Johnson's vessels since 2012.

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As stated above, Mr. Johnson does not have to show that he will ultimately prevail at trial. Instead, he merely has to show that he can produce evidence reasonably tending to dispute or contradict the CBW's evidence. Mr. Johnson has produced evidence in the form of two Certificates of Documentation that that will likely be admissible at trial. These Certificates of Documentation contain a statement of each boat's length. In addition, Mr. Johnson will "...swear that the Lady Gudney is 86 feet long, the Cirus is 82 feet long, and the Bonnie Jean is 36 feet long." The Court does not believe that Mr. Johnson's evidence or argument will prevail at trial⁷, but he has demonstrated the existence of an issue of fact that contradicts the CBW's evidence and thus, the Court cannot grant summary judgment for the full amount that the CBW asserts is due. On the other hand, I can grant partial summary judgment that Mr. Johnson owes at least \$16,640.63.

THEREFORE, IT IS ORDERED that the CBW is granted partial summary judgment that Mr. Johnson owes the CBW not less than \$16,640.63.

Entered this 4th day of May, 2021



Kevin G. Miller
Superior Court Judge

I certify that on May 5, 2021
a copy of this document was provided to:

☒ Plaintiff(s)/Atty: via ☐ email ☐ Court Tray ☐ Mail ☒ Other: 206-309-0667
☒ Defendant(s)/Atty: via ☐ email ☐ Court Tray ☐ Mail ☒ Other: 888-363-1007
☐ Other: _____: via ☐ email ☐ Court Tray ☐ Mail ☐ Other: _____

Clerk: SR

⁷ The Court understands that a vessel's documented length is typically not its length overall and that length overall is the measurement used to calculate moorage. However, neither party has addressed that issue and thus, the Court has no evidence before it on that difference and is not in a position to take judicial notice on this record.