

**SPECIAL CITY COUNCIL/PORT COMMISSION MEETING**  
**May 24, 2016**

A Special City Council/Port Commission Meeting was called to order in the Council Chambers at City Hall at 6:00 p.m.

**Roll Call:**

Port Commission Members Present: Sangster, Lorenz, Granger and Bronson

Council Members Present: Temple, Couture, Bronson, Riddle, King and Kwiatkowski

Council Members Absent: Lavender

**Discussion of Kokosing Purchase Agreement:**

Port Commission Chairperson Sangster passed out headline copies from the newspaper. He stated he wants to explain where the objective of the Port was and why they did this in the very beginning. He noted in addition to the newspaper copies they also have the study that indicated this was a viable process and have done all the work with the Port of Cheboygan, adding they have a long-term project of creating jobs in manufacturing. Commissioner Sangster stated he first wants to make sure the objective of keeping our eye on the ball objectively when talking about the Port of Cheboygan. He knows today's discussion is regarding land acquisition or sales/purchase agreement discussion and wants to make sure that we don't get too far off and get into what's better for one side or the other. He thinks it's been the objective of the Port Commission to remain on that path. Commissioner Lorenz commented they have been at this and this is a tremendous opportunity for the City and the community of Cheboygan, noting from the Port Commission's perspective it is their job to try and give their recommendations to the City Council so they can make decisions based on what the Commission has discovered. He noted the newspaper articles and six presentations to the City Council about the objectives. He read from the Study stating: "The Port of Cheboygan will be known as the premier port of the Great Lakes, highly effective, efficient, innovative and trust in delivering the community with job creations and economic vitality for Cheboygan." Their mission is to develop a deep water port to foster job creation. Mr. Lorenz then stated he just wanted to concur with Commissioner Sangster and knows there are a lot of tactical details and things that we need to do together, but we don't want to lose sight of the fact that our overall objective is to build this deep water port to create job opportunities and to entice manufacturing to come back to Cheboygan and use the Port, and have a guarantee that they will be able to see the Port 10 to 15 years from now and see vitality and growth happen. He added he thinks it's important to focus on that objective and goals.

Councilwoman Riddle stated at one point and time there was an area for retention for use as a Port for staging. With this as it is set up takes away some of that area and she would like to know what the Port Commission's feelings are as it's in contradiction with the brochure. Commissioner Lorenz replied it is somewhat in contradiction as Councilwoman Riddle stated, but what they have been trying to advocate is the fact that as we sell property, the vision is to have the Port. If, in fact, we have a private party that wants to secure part of the property that the City has for sale, that sale needs to be contingent, the Commission feels, upon having an operating agreement in place that allows the Port to operate for an extended period of time. It is probably in the best interest for a private entity to operate the Port and, in this case, Kokosing has deep water port experience and they have the equipment required. He reiterated that we just cannot sell the property to a private

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entity without having some port operating agreement, which would say “x” amount of that property would be dedicated to Port operations. We need to make sure, as Commissioner Sangster stated, if we end up having a Port operation we need to have an operating agreement. With the potential offer on the table, it needs to contain a contingency for an operating agreement that allows the Port to operate for a period of time. Mr. Lorenz noted that many of the larger port operations at Cleveland, Duluth, etc. are operated by municipalities. There are also some that are very successful ports operated as private businesses.

Commissioner Sangster commented on the document from Attorney Steven Joppich concerning Attorney Joppich’s point on an operation agreement and the purchase offer we have before us, noting the average price per foot regardless of the depth. Also, he then quoted: “I have little choice but to advise the City that it must be very careful about selling the property significantly below market value as determined by a certified market appraisal.” Commissioner Sangster stated he believes the current offer puts the City in a pretty good predicament. Also, he believes the operating agreement needs to come before the sale instead of after the sale. Contrary to what he has been hearing or seeing, he stated from Attorney Joppich’s letter: “Unfortunately, based on our meeting with Kokosing, there does not appear to be any present willingness to agree to either of the above concepts in conjunction with its present desire to purchase parts of the property.” Commissioner Sangster commented Attorney Joppich is under the impression that they are contrary to that or even prepared to come up with some type of operating agreement before sale. This is where it gets a little bumpy with him on these offers. He is not saying we shouldn’t sell or move forward, but the way the current purchase agreement stands today he personally wouldn’t go for it and thinks the Port Commission would not either, considering the below market value amount and it does not do what we have been talking about which is assuring this long-term agreement. Commissioner Sangster then pointed out in the appraisal on page 21, the entity that is actually making this offer was one of the effective comps and that company paid another party \$1,493.00 a foot the property they just bought and we are being offer \$400 and change. He does not think we are getting a fair offer. Attorney Joppich is very clear that we can discount that if there is an operation agreement or something of value in place. Commissioner Lorenz concurred with Commissioner Sangster, stating from Attorney Joppich’s letter: “Similarly, if Kokosing were willing to enter into a port operation agreement in conjunction with its acquisition of portions of the property, that scenario could also justify a reduction in the purchase price.” Commissioner Lorenz then stated the operation agreement has to allow the Port to operate that will allow us to attract manufacturers here in Cheboygan. He thinks in essence it says that it will basically solidify and verify that Kokosing is, in fact, not only willing and able but invested to make sure that the Port does develop and operate. Absent of that, basically all we are doing is doing a great job of buying this Port property and then selling it off to two very good businesses in the community and the end result is no Port.

Mayor Pro Tem Couture commented after hearing Commissioners Sangster and Lorenz speak, which is exactly what he saw in the paperwork, but wondered if anyone is feeling another way. He thinks this is pretty cut and dried from start to finish of where we have been, but feels the idea that we were walking into today was everybody kind of agreed that that’s why we are coming together, so let’s figure out what to counter-offer. Mayor Bronson said his question is what River frontage do we want to sell and what we want to retain? Mayor Pro Tem Couture stated it doesn’t matter whether we retain the middle piece of property or sell it as long we know for sure that that piece of property is going to be used as a Port. He does not think selling without that agreement, if we sell

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at all, is wise. If we do sell it all, that agreement has to be there. If there is somebody else that feels differently, let's get it out there and talk about it. Commissioner Lorenz commented if the City retains 300 feet, it is not a viable option because that is not enough footage for the City to operate a Port. As Mayor Pro Tem Couture said, we have to 800 feet to 900 feet to make it a viable Port operation because the freighters, in general, and barges can be from anywhere from 400 to 800 feet and we need that amount of space. Whether the remaining 300 feet that we have left goes with this agreement or stays independent, it still is not a sufficient amount to operate the Port. We either have to take away some of that purchase property and the City will run the Port or we are going to have the Port property that Kokosing wants to buy and have an operating agreement in that 767 to 800 feet, the 767 feet should be the minimum to have a Port operating. Mayor Pro Tem Couture suggested a clause saying if they decided at the end of the term to cease, then we have the first option to buy that property back at said price. We have to have longevity or control. We don't need control of the property if there is an agreement. Commissioner Sangster commented he has no problem with Kokosing buying 760 feet if we had an agreement before us that looked appealing to everyone. Mayor Pro Tem Couture stated if corporate Kokosing decides to nullify Durocher Marine somewhere down the line, the City of Cheboygan and the Port can't go away. Commissioner Sangster stated he thinks Attorney Joppich is very clear with that, adding he does not feel we are being unjust to Kokosing. We need to retain as much property as we can, or obtain an operating agreement and sell with an operating agreement, but we will need a minimum of 600 to 700 feet of property. Mayor Pro Tem Couture asked who can put together the language for this agreement. Commissioner Sangster stated Attorney Joppich could do the agreement, adding one of his concerns was not having a realtor involved because now we are going back and forth with a lands deal, but the per foot cost and the consideration of that agreement are the deal. The deal will be how binding is that language. He noted Attorney Joppich states that they were not willing, stating from Attorney Joppich's letter: "Unfortunately, based on our meeting with Kokosing, there does not appear to be any present willingness to agree to either of the above concepts in conjunction with its present desire to purchase parts of the property." Commissioner Sangster said he would recommend that Council not accept this Purchase Agreement as it is in its form. Mayor Pro Tem Couture stated first we have to all agree that moving forward with the Purchase Agreement in front of us is not the direction we want to take for set reasons: first, the sales price if we were to sell it is too low; and this is not the direction the Port Commission or Council, he thought, wanted to go with the Port, which is to retain control just by the operation agreement. Whether it's sell the whole piece or sell a partial and retain enough to where we can contain that control for future development. He looks as the Port being the window to the Industrial Park. Someone needs to speak up if we are not all on the same page. If we do agree, we have to figure out if the correct purchase price is the stated value of the appraisal, and then there is said value in this agreement that we come up if it is Kokosing that the agreement is with and we sell them the property. First of all, where do we get the language, what is it buying and how much is it worth to the City to have this agreement for whatever length of term it is out of the purchase price. Commissioner Lorenz stated what Mayor Pro Tem Couture is saying is exactly right. Depending on what the operating agreement looks like and what we want, is probably going to be germane to what the difference is in purchase price. From his experience and speaking with manufacturers, he stated that most manufactures will not locate in an area if they don't have some agreement in place – at least a 15 year agreement because it takes that long to develop a business and if that guarantee is gone they will not locate here. The agreement will not only talk about what the services might be and how the arrangement might be with the City, but it will also talk about the continuity of services and the language that allows the City to get it back if, in fact, they decide they want to go

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and do something else. He thinks that agreement needs to be worked on immediately, if they are willing to. Mayor Bronson stated part of the issue is Durocher said they will operate the Port for the City and in our minds we are thinking they are going to be out partners, but that's not what they mean. The letter from Attorney Joppich states that when we approached Kokosing and said we want to be a partner with them and have an agreement where we work together, they said no that was not what they were interested in. They were interested in owning the land and operating it for you, but we don't want to be a partner with you. Mayor Bronson went on to state his concern is that Durocher gets the land and moves all of their warehouses and buildings down to Lake Street, then the only place to load and offload if their old yard (where they have their stuff now) and then split their property right in half. Commissioner Lorenz replied that's why he thinks it's critical important to define what they operating agreement looks like so it doesn't allow that specific scenario to happen. Mayor Bronson commented we don't know if they want to be partners with us. Commissioner Lorenz stated he thinks Mayor Bronson is absolutely right as far as the partnership goes, but also the agreement could be drawn up so it looks like a partnership but it's defined as an operating agreement that doesn't allow certain things to happen; in other words, they have to define the 750 feet, they have to load whatever comes in and there is a revenue sharing agreement. We need to have this written down so that we are negotiating something other than just an operating agreement. We have to be very specific in what it is because they are going to then come back and forth and say we can do this but we can't do that. He thinks the Mayor is right because that kind of agreement can then allow a partnership to develop. We really need to get that defined and then we have a negotiating tool to say this is what it takes to get this property sold and the City needs the Port to be developed. We will also have that opportunity to see whether or not any private business is willing not only to do the agreement, but to invest in that agreement. Private businesses should be a revenue enhancing opportunity for them. It should be a way for them to grow and add people and jobs. Commissioner Sangster stated the price could go down if they come back to some agreement that says we are going to put 7 ½ million dollars infrastructure in right away. Mentioning 99 year leases, but does not think this is the scenario we are going down. At the end of the day, what are they going to do to get that discount, which is for the protection of the City? He agrees with Attorney Joppich, who was very clear, that that price is unacceptable. It could be acceptable with an agreement or arguable from a legal standpoint.

Commissioner Lorenz then reviewed a scenario. Kokosing is going to look as to whether or not this is the case for them. The 501C(4), the non-profit Port of Cheboygan is ready to go on the road to actually market the Port. The one single thing that we don't have to market that Port right now is that Port operating agreement because if he goes to "Mr. King" and tells him we are ready to have you come locate...Mr. King then asks okay when's the Port open, what are the hours of the Port, is it open year round and how long is the agreement for. If we cannot answer those questions they are going to say thanks for coming, come back later. This is why the operating agreement has to be so very specific. We could put in a general operating agreement and we could unload barges and ships coming in, but to have one specific to attract real jobs and manufacturing in this community which we vastly need, then that's what we are going to have to have. Mayor Pro Tem Couture stated he can't stress how much the handshake/verbal agreement should have been handled in writing.

City Manager Eustice stated we do have a letter of engagement from Kokosing that they would support the Port of Cheboygan and help us grow the Port. Mayor Pro Tem Couture commented none of us have any disrespect or disregard to Kokosing, this is in the interest of the City of

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Cheboygan. We have to make sure we do the right thing, because we put a big investment out there and a big foot forward trying to create something that no other way could be created in anybody's vision. So this is the step forward that we can't go backwards on, in his opinion. It sounds like we need to engage with Kokosing and let them know this is where we are and we have to put in what kind of language we need to have, with or without their help.

Councilwoman Riddle stated it was said there used to be 700 feet of Riverfront property for maintaining the Port and if the operating agreement doesn't happen with Kokosing, then we have to retain a minimum of 700 feet, asking if this is going to be enough. Commissioner Lorenz replied 700 feet is the absolute minimum. In most cases you should be looking at around 800 feet. The Kokosing property we are talking about is right about in the middle, so we need to retain 700 to 800 feet for port operations. Councilwoman Riddle stated that when whoever talks to Kokosing, she thinks initially the most important part before the purchase agreement is the mention of the Port, and if we can't have that agreement then we need to retain 800 feet so we can have a Port. She didn't get involved in purchasing the property so we could sell it off and not have a Port. The most important part about it is for us to have a Port. City Manager Eustice stated is that financially the City of Cheboygan cannot do that. If we retain 800 feet, we will not be able to pay off the land contract and we have absolutely no money to develop the Port. Financially, it's not feasible. Commissioner Sangster commented we are not in the 5-year deal yet, still have the asset and we have not done anything with the property across the River yet. We have not gone out and pursued tenants, as there are people that will rent and make those payments. There is revenue from barges that park there. We haven't even gone to that yet. Commissioner Sangster said the financial side of it to the City is very important, but again you can't rush off and do something like this because it's unlawful to just do that. Councilman Temple stated we are not at the 5-year yet, but are working on the second. Commissioner Sangster replied yes. His goal would be the same that the City would be whole at some point in this deal and still believes it can. With that being said, he thinks we need an operating agreement before we sell. Councilman King asked if we can look at the port operating agreements out there already that we can look at that are working with a city government to see what those look like, because we need to get some language. Commissioner Sangster stated we can look at this at next Port Commission meeting. Councilman Temple commented he thinks we ought to make it the next two weeks. City Manager Eustice stated the next Port Commission meeting is June 6. Mayor Pro Tem Couture stated we cannot put Kokosing off and need to reply on a timely basis. Commissioner Sangster agreed and that it should state based on its premise, we have to reject the offer the way it currently stands. Commissioner Lorenz commented we do have resources that we can tap into for a boiler plate contract to very close to what we need or what we want. Will it be completely perfect? No, but it will be close enough to at least have discussions with Kokosing. He agreed with Councilman Temple's point that the clock is running, so he thinks it is imperative for us to get this done sooner rather than later. The Port Commission can help to get this information, through City Manager Eustice, and get a boiler plate contract and get it ready so we can talk directly with Kokosing on it. City Manager Eustice stated he feels this is exactly what Kokosing wants. He spoke with Mr. Joe VanAntwerp last week and he was willing to talk about shared revenues and will pay the City 10% of what they have on storage, even though it is on their property as a fee to the City. Commissioner Sangster commented this will make it easier for Council to stand up to the taxpayers and say what they reduced the price in value, noting Attorney Joppich noted court cases on this subject. Mayor Pro Tem Couture stated he does not think Attorney Joppich is wrong in any of this; common sense tells you the same thing. Commissioner Lorenz stated he thinks at the end of the day this is a win win –

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we have a great company that can win from this, we have the citizen win from this and we can grow jobs. We need something we can discuss and negotiate. If he were on the other end of it on the business side he would be looking for this right now – something that he can actually look at, talk about and make an agreement. Commissioner Lorenz then stated he does believe we and they can win and do this together. Councilwoman Riddle asked if everything goes according to plan and we have the agreement in place, then is it necessary to retain any of that property, or are all three parcels doable in terms of selling. Commissioner Sangster replied it depends on the language of the agreement. Councilwoman Riddle stated if it depends on the wording of the agreement to her this is very necessary to know. We don't want to sell something off and then shoot ourselves in the foot because we are doing it, so we have to have everything in place and know exactly what is there and whether a portion of that property has to be retained. Commissioner Lorenz commented he agreed, adding he can't speak for Kokosing pointing out the properties Kokosing is buying. He went on to state by having an operating agreement we are going to come to an agreement that the 767 feet is the Port of Cheboygan. He is not sure whether they think they need another 100 feet. He noted that Councilwoman Riddle's question will be answered based on the port operating agreement, explain the agreement will contain how they are physically going to operate the port and what kind of equipment they are going to have. Also they will look at this and will make a business decision based on that piece of property as to whether they need another 100 feet, including looking at the revenue enhancement of what's going to happen. The 300 feet that the City would still have left could still be in play and by itself it is not a piece of property that would do anything for us, but someone else down the line may want a portion of that property, such as Fish & Wildlife. Commissioner Lorenz stated he thinks the operating agreement will determine how things are going to be set up on the property they are going to purchase. There is still a possibility they may want to use part of their own property, which is adjacent to it.

Commissioner Sangster stated he thinks the Port Commission is prepared to send a recommendation to Council that before they get any further into the purchase agreement, there needs to be some form of operating agreement in place before sale. Councilwoman Riddle asked if a boiler plate agreement could be ready in the next couple of weeks. Commissioner Lorenz replied he believes we could. Councilwoman Riddle commented then we will be able to negotiate, which is very important. Commissioner Lorenz stated they have research from B&G International, connections with Duluth and Cleveland, so there is ability to get a boiler plate operating agreement. He noted Kokosing may have something a little different in mind, but the two coming together, they will come up with an agreement that both parties can live with and that becomes the operating agreement.

Mayor Bronson asked if the next Port Commission meeting is June 6 and the City Council meets the following week. City Manager Eustice replied yes, asking if we need to just present a port operating agreement to Kokosing or also have a dollar figure. Commissioner Lorenz stated he thinks there needs to be a discussion of the operating agreement to get some agreement as to what we want, what they think they can do, and then we can value what that operating agreement is worth in itself, and then look at that versus the purchase price. He feels they need to be done in conjunction and does not think they can be done independently. Mayor Bronson commented on putting conditions on the property we are selling versus devaluing. Commissioner Sangster said we are not sure what they put value on and they are going to do what's right for them.

City Manager Eustice stated Kokosing will not come up with the operating agreement; they want

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the City to show them what it wants to do. Commissioner Lorenz stated Kokosing has not been in contact with the manufacturers and developers like we have and we know what the manufacturers and developers want, and this needs to be incorporated into the agreement. The agreement will then be given to Kokosing and we will find out they are interested followed by back and forth, but thinks at least by the end of the day we will come to an agreement as to what those words really mean and what we need to operate the port. City Manager Eustice commented he thinks Kokosing is willing to do that, noting in their meeting with Kokosing Attorney Joppich made some comments about them not willing to work with us. He has a different view of that and thinks they are willing to work with us. Kokosing are not shippers and receivers, but they have the licensing to do that, pointing out they are in the marine contracting business. They are not going to spend any time putting the operation agreement together; they want us to do that. Commissioner Sangster stated that if it is not the desire of Kokosing to be the Port of Cheboygan, then that is not the objective we have been working on. Mayor Bronson interjected the City will wait until after the meeting on the 6<sup>th</sup>. Commissioner Sangster suggested the City communicate with Kokosing on behalf of the Council or City Management in formal writing that this current offer has not been tabled until there is an operation agreement. Mayor Bronson stated also that we are planning on making a counter-offer and that we are working on it. City Manager Eustice stated he will do a letter and let them know what we are working on at this point for a counter-offer.

Mayor Bronson asked if the Port Commission is looking for another member. Commissioner Sangster replied yes, noting he has a recommendation of Mr. Curt Chambers, who has a lot of knowledge from working as the Harbor Master for the Cheboygan County Marina. City Manager Eustice stated there is an application Mr. Chambers will need to complete.

**Adjournment:**

Mayor Pro Tem Couture moved to adjourn the meeting at 6:44 p.m.; supported by Councilman Temple. Motion carried unanimously.

Commissioner Lorenz moved to adjourn the meeting at 6:44 p.m.; supported by Commissioner Granger. Motion carried unanimously.

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Mayor Mark C. Bronson

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Clerk/Treasurer Kenneth J. Kwiatkowski

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Councilman Joseph Lavender

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Councilwoman Winifred L. Riddle

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Councilman Vaughn Temple

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Councilman Nathan H. King

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Mayor Pro Tem Nicholas C. Couture

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Councilwoman Betty A. Kwiatkowski