

From: Dave Owen [dave.owen@maine.edu]
Sent: Thursday, August 08, 2013 11:35 AM
To: Puleo,Stephen; Doucette,Patricia
Subject: Fwd: a few thoughts on the waterfront ordinance controversy

Steve and Patty - I just sent this note to Tex and got an out-of-office autoreply, so I thought I'd send it to you as well.

Best,
Dave

----- Forwarded message -----

From: Dave Owen <dave.owen@maine.edu>
Date: Thu, Aug 8, 2013 at 11:30 AM
Subject: a few thoughts on the waterfront ordinance controversy
To: chaeuser@southportland.org
Cc: Natalie West <nataliewest2013@gmail.com>

Dear Tex –

I'm writing in reference to the proposed waterfront ordinance, and specifically in response to fears that it will shut down a wide range of activities on South Portland's waterfront. As a concerned resident—and as someone who teaches statutory interpretation—I think those fears are misplaced, and that South Portland should read the proposed ordinance only as excluding the creation of new petroleum transport facilities.

As I understand it, the fears center on section 4(b) of the ordinance, which states that “[n]o new or expanded facility shall be constructed on an existing pier located in or extending seaward of the shipyard district.” Read purely in isolation, that language could be construed to prohibit most new construction on existing piers.

But a cardinal rule of statutory interpretation is that language should be read in context, not in artificial isolation. Here, the context is significant in several ways. First, the purpose of the proposed ordinance, which clearly emerges in other parts of section 4 and in every other part of the ordinance, is to control the construction of new petroleum transportation facilities. The city therefore would be acting perfectly appropriately if it read section 4(b) in accordance with that broader purpose. Second, the proposed ordinance clearly acknowledges the importance the city places on other existing uses, including other industrial uses. Obviously the proposed ordinance is designed to limit expansion of one category of industrial use. But it would be quite odd for an ordinance to specifically state that “the City desires to encourage traditional marine uses,” and then prohibit a broad swath of those same uses. Again, the city would be more reasonable, and much better off, interpreting the proposed ordinance in a way that harmonizes the prohibition in section 4(b) with the rest of the ordinance, and with the rest of the city's code.

As I think you know, I am a big fan of the overall planning vision that you and your colleagues have articulated for the city. I'm excited to live in a city that is encouraging smart, diverse,

mixed development, and I think the city's future development plans should include continued industrial land use. I can understand why you would worry about any proposed ordinance that would interfere with that vision. Here, however, I don't think the interference is a real threat—unless the city chooses to adopt and act upon a strained reading of the ordinance. Because there's no need to do that, I think South Portland could pass this ordinance, sustain its existing land uses, and continue to grow in smart ways in the future.

Sincerely,

Dave

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