

October 19, 2010

TO: Mason County Auditor, Karen Herr

RE: PETITION DEMANDING RECALL OF PORT OF SHELTON
COMMISSIONER, DISTRICT 3, JAY HUPP FROM HIS OFFICE

Summary

The Recall Committee, by and through the undersigned legal voters of the Port of Shelton, County of Mason, State of Washington, do hereby demand the recall and discharge of Jay Hupp, Commissioner District 3, of The Port of Shelton pursuant to the provisions of Article 1, section 33 and 34 of the Washington State Constitution and RCW 29A.56.110, et seq., for acts of misfeasance and acts of malfeasance while in office, and for violation of his Oath of Office.

The terms 'misfeasance', 'malfeasance', and 'violation of oath of office' are used in this petition consistent with the provisions of RCW 29A56.110, pursuant to which 'misfeasance' or 'malfeasance' means *any wrongful conduct that affects, interrupts, or interferes with the performance of official duty*; additionally, 'misfeasance' in office means *the performance of a duty in an improper manner*; and, additionally, 'malfeasance' in office means *the commission of an unlawful act*. 'Violation of the oath of office' means *the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law*. RCW 29A56.110

Allegation of unlawful acts committed by Commissioner Jay Hupp

Allegation Number 1.

On June 1, 2010, Jay Hupp, acting as Commission Chairman, allowed an illegal motion and voted in the affirmative on said motion to knowingly destroy public records (meeting tapes as defined in RCW 40.14.010) in violation of RCW 40.14.070. The minutes of the June 1, 2010 meeting and private tape footage confirm that Commission Chairman Jay Hupp and Commissioner Tom Wallitner were informed by several members of the public in attendance that such an action was in violation of RCW 40.14.060; 40.14.070 and RCW 40.16.010, and would prevent the public from performing proper oversight of the Port of Shelton.

Please see attached June 1, 2010 minutes and DVD.

Allegation Number 2:

On July 6, 2010, Jay Hupp attempted to cover-up his willful injury to public records (RCW 40.16.010) and the purposeful destruction of public records in violation of RCW 40.14.060 and RCW 40.14.070. The destruction of these public records was ordered by Commissioner/Chairman Jay Hupp and Commissioner Tom Wallitner on June 1, 2010. The meeting minutes of July 6, 2010 verify that after illegally moving and ordering destruction of public records on June 1, 2010, that Jay Hupp then attempted to blame the destruction of taped public records on an employee of the Port.

Please see attached July 6, 2010 minutes.

Allegation Number 3:

Commissioner Jay Hupp has repeatedly violated the Washington State Open Meetings Act. The recall committee cites three examples:

On May 29, 2010 Commission Chairman Jay Hupp conducted Port Commission business outside of the Open Meetings Act by e-mail with Commissioner Tom Wallitner and in doing so violated RCW 42.30.20; RCW 42.30.30; RCW 42.30.60; RCW 42.30.070 and RCW 42.32.030,

On June 18, 2010 Commission Chairman Jay Hupp again conducted Port Commission business outside of the Open Meetings Act by e-mail with Commissioners Tom Wallitner and Jack Miles, and in doing so violated RCW 42.30.20; RCW 42.30.30; RCW 42.30.60; RCW 42.30.070 and RCW 42.32.030.

On July 31, 2010 Commission Chairman Jay Hupp conducted Port Commission business outside of the Open Meetings Act by e-mail with Commissioner Tom Wallitner and Port Director John Dobson again violating RCW 42.30.20; RCW 42.30.30; RCW 42.30.60; RCW 42.30.070 and RCW 42.32.030.

Please also find enclosed Washington State Auditor's Office Accountability Report on the Port of Shelton, number 1002284, dated July 2, 2009 and issued on October 5, 2009 by Washington State Auditor Brian Sonntag.

The Recall Committee believes this report will illustrate and prove a repeated pattern of violations of the Open Meetings Act, misfeasance, malfeasance and failure of Commission Chairman Jay Hupp to uphold his oath of office in light of previous violations.

Please see attached e-mails of meetings and State Auditor Report 1002284.

Allegation Number 4:

Jay Hupp, in his role as Commission Chairman, violated the Open Public Meetings Act with regard to the August 16, 2010 meeting by the following actions:

During a public meeting on August 3, 2010, Jay Hupp, Commission Chairman, announced that there would be a meeting on August 16, 2010 for the Port to hear public comment on the proposed Port Resolution, Lease Option Agreement, and Land Lease between the Port and ADAGE LLC.

Commissioner Hupp stated that each person testifying on August 16, 2010 would have to leave the meeting room after their testimony in order to make room for others to testify. This is in violation of the Open Public Meetings Act RCW 42.30.010 and RCW 42.30.030. Commissioner Hupp does not have the power or authority to demand who can or who can not be present at an open public meeting, unless they are being disruptive at the meeting, RCW 42.30.050. Upon completion of testimony many left because of the procedures established during the August 3rd, 2010, public meeting.

Commissioner Hupp further stated that he would only allow public testimony specific to these three proposed ADAGE documents and that each citizen would be required to cite a specific page and provision of the document and limit their testimony to comments on that provision. By requiring such stringent conditions on public testimony, many citizens were intimidated from attending the meeting, believing that only comments which constituted legal analysis of the documents would be allowed and that their general comments as citizens would not be allowed.

In contradiction of his earlier rules, on August 16, 2010 Commissioner Hupp allowed public testimony from a number of citizens who did not speak specifically to provisions of the Option Lease and or the Land Lease Agreement for ADAGE. The citizens who so testified were primarily brought in from outside the County to express an array of opinions regarding jobs, organized labor endorsements, and support for ADAGE. They appeared to have been coached to mention "Section 5.1 of the Ground Lease," though their comments were not directly related to that provision. In allowing one group of citizens to testify in contradiction of rules and guidelines he had established as Chairman for the Port of Shelton, Commissioner Hupp violated the "Appearance of Fairness Doctrine."

This pattern continued throughout the day. Upon reconvening after the lunch hour at approximately 1:30 p.m., Skip Houser, Port Attorney, stated once again that no public testimony would be allowed that did not cite the page and paragraph of the Option Lease Agreement or the Ground Lease Agreement. Once again Chairman Hupp did not stop continued testimony outside the established guidelines. Commissioner Hupp violated his

Oath of Office by not faithfully and impartially performing his duties as Port Commissioner and Chairman, and further acts of malfeasance and misfeasance continued.

Please see minutes of August 3, 2010 and minutes of the August 16, 2010 hearing, and DVD recordings.

Allegation Number 5:

On July 31, 2010 Commission Chairman Jay Hupp violated his Oath of Office and 'Port of Shelton Resolution 10-02' and the 'Port of Shelton Delegation of Authority to the Executive Director' by purposely excluding Commissioner Jack Miles in an illegal e-mail meeting and failing to provide information and research attached to this illegal e-mail in writing to Commissioner Miles as required in Port Resolution 10-02 and the Delegation of Authority.

Commission Chairman Jay Hupp violated his Oath of Office by failing to require the Port Director comply with the third paragraph of Resolution 10-02 which states: "Whereas, this policy is intended to promote the adoption of objectives by the Commission to further the efficiency and effectiveness of the Executive Director working with the Commission as a body". Additionally, Commission Chairman Jay Hupp violated his Oath of Office by failing to comply with the stated purpose of the Delegation of Authority to ensure that "Any and all Commission directives shall be made to the Executive Director by the Commission acting as a body". In circumventing Commissioner Miles, a publically elected official, Commissioner Hupp failed to uphold his Oath of Office.

Please see attached Port of Shelton Resolution 10-02 and Port of Shelton Delegation of Authority to Executive Director.

Allegation Number 6:

On September 23, 2009, Rahn S. Redman, a Port of Shelton resident and voter, made a public records request of the phone records of Port Commissioner Jay Hupp as provided and described in RCW 42.56.010. This included personal cell phone records as some Port business and communications were and are conducted using personal cell phones, texting and electronic e-mail on personal devices.

RCW 42.56.030 states, "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and

its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern."

RCW 42.56.050 provides that, "A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records."

As a result of Commissioner Jay Hupp conducting Port business and communications using his personal cell phone, his phone records are not exempt from public examination and public disclosure listed under RCW 42.56.210 or RCW 42.56.230 and the redaction of these phone records by Commissioner Jay Hupp is a violation of the Public Records Act, RCW Chapter 42.56.

Please see Mr. Redman's attached sworn written testimony, records requests, correspondence and the redacted phone records of Commissioner Jay Hupp.

Allegation No. 7:

During the September 21, 2010, Port of Shelton regular meeting, Commissioner Miles stated to Chairman Hupp that the minutes taken on September 1, 2010 Special Meeting were in violation of the Open Public Meeting Act. Commissioner Miles further stated that Item 4, of the September 1, 2010 Minutes, ACTION/Discussion doesn't comply with the law because it stated only "Matters of interest for all jurisdictions". This description lacks specifics and makes it impossible for citizens to refer to the official Minutes in order to learn what occurred at this meeting.

Commissioner Hupp refuted that proper minutes had not been taken, and stated to Commissioner Miles "that it was his opinion that they were not in violation of the Open Public Meeting Act." By dismissing Commissioner Miles continued efforts to correct the minutes, Commissioner Hupp violated his oath of office. Chairman Hupp refused to correct the minutes thereby denying the legal rights of citizens to review what occurred during the Special Meeting. During the discussion, Commissioner Wallitner stated during the meeting "that he thought they agreed that no minutes were necessary because this was an informal meeting."

The meeting on September 1, 2010 was a joint meeting between the City of Shelton, PUD 3, Mason County, and the Port of Shelton. This meeting was conducted at the Port

of Shelton at their normal place for conducting business and is required to operate under the Open Public Meeting Act, Title 42.30, whenever more than two Commissioners meet to discuss business, RCW 42.30.080.

Under RCW 42.30.010, the people of this state do not yield their sovereignty to the agencies which serve them. The people in delegating authority do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. Those not being present at the meeting have not been afforded the opportunity to review the activities of the September 1, 2010, meeting.

These are further acts and violations of his Oath of Office. See attached minutes of September 1, 2010, and minutes of September 21, 2010, and DVD recordings. The meeting minutes do not accurately describe port business that actually transpired at the meeting as recorded on the tape of the meeting. This is a repeated and ongoing violation.

Allegation No. 8

During the August 16, 2010 Special Meeting, upon completion of public testimony at approximately 1:45 p.m., Commissioner/Chairman Hupp called for an executive session at 2:00 p.m. in violation of RCW 42.30.110(c). The purpose cited in earlier discussion during the Special Meeting, Commissioner Hupp stated “that the purpose of the executive session would be to discuss all the **public input** regarding the Option Lease Agreement, Land Lease Agreement, and the Ports Resolution”.

Commissioner Hupp further allowed at least one representative from ADAGE to be present during the executive session without proper notification. In doing so Commissioner Hupp violated RCW 42.30.110 (c). The ADAGE representative should not have been present to discuss the lease option agreement, land lease, nor the Port’s Resolution during the executive session. Discussion of public input on lease agreements already made public is not a lawful reason for calling a closed executive session under RCW 42.30.110 (c).

In accordance with state law, executive sessions held under RCW 42.30.110 (c): are for the sole purpose of considering the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price.

The public was provided copies of the Option Lease, Land Lease, and the Port’s Resolution two weeks prior to the August 16, 2010 Special Meeting and would have no affect for the calling of an executive session under RCW 42.30.110(c). This meeting should have continued under the Special Meeting, RCW 42.30.080.

Commissioner Hupp further violated the open public meeting act under RCW 42.30.010. The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

These are further acts and violations of his Oath of Office. See attached minutes of August 16, 2010, and DVD taken on August 16, 2010. The meeting minutes do not reflect what actually occurred as shown on the recording.

Conclusion

In light of the foregoing, the Recall Committee hereby demands the recall and discharge of Commissioner Jay Hupp, Port of Shelton, District 3, State of Washington, for acts of misfeasance and acts of malfeasance while in office, and for violations of his Oath of Office.

I certify under oath, on this 19th day of October, 2010, that the foregoing allegations are true and correct, and that I have knowledge of the alleged facts upon which the stated grounds for recall are based. I am also a qualified elector in the Port of Shelton.

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