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*Penny Littell- Director of Planning and Development
Marge Schmuckal, Zoning Administrator*

August 15, 2008

James F. Cloutier
Cloutier, Barrett, Cloutier & Conley
465 Congress Street
Portland, Maine 04101-3528

RE: Boone's Restaurant/Harbor's Edge – 030-A-001 – WCZ Waterfront Central Zone

Dear Attorney Cloutier,

I am in receipt of your determination request concerning the site of the former Boone's Restaurant on Custom House Wharf in Portland.

It may be helpful to outline the zoning history regarding the Portland waterfront and Custom House Wharf. The original 1957 zoning on which our current land use zoning ordinance is based originally delineated the waterfront area as an I-3b industrial zone. In April 1983, the land use ordinance was amended to create separate waterfront districts (W-1, W-2, W-3) which allowed marine related uses, residential uses and limited commercial uses such as retail and restaurants. After a City referendum concerning the waterfront and its allowable uses, on May 5, 1987 the voters "stipulated that only marine related uses be permitted within the W-1 waterfront zone" which was the underlying zone for Custom House Wharf at that time. That referendum made many of the existing waterfront uses legally nonconforming, including The Porthole Restaurant and Boones Restaurant. The Portland waterfront was rezoned on January 4, 1993 with new nomenclatures, i.e. WCZ, WPDZ and WSUZ, and with completely revised texts. The current underlying zone for Custom House is currently governed by the WCZ Waterfront Central Zone.

The history of uses for this portion of Custom House Wharf is also an important recognition. Prior to the 1987 referendum there were three (3) distinct uses located in this area on Custom House Wharf: Boones Restaurant, Casco Bay Lines (situated in the middle between the two other uses) and the Porthole Restaurant. This is an important historic fact that has been ignored in your letter which states that only restaurant uses had occupied this area of the wharf. Casco Bay Lines moved to Maine State Pier and vacated their space in November, 1988. Boones Restaurant went out of business in 2005. At that time their kitchen was completely dismantled, with the equipment auctioned off. The area occupied by the Boone's kitchen and the westerly portion of the dining area has been unoccupied since at least 6/12/05. It is my understanding that there are no indication or

plans that the kitchen in this space will be restored now or in the future. On 6/12/05 Boones Restaurant license to operate through the City Clerk's office expired.

It is noted that this office has never received any documentation as to when your client leased this space. Your statement that, "In essence, at all times, the property has been under lease agreement by the owner to others, to operate restaurant facilities on the property. The majority of the property has been continuously open for business for that purpose, other than during portions of 2007 and early 2008 when life safety requirements for the pier structure interrupted business." is not factual. Boones Restaurant which has been the majority area of the space on this portion of the wharf compared to the Casco Bay Lines and the Porthole Restaurant has been continuously unoccupied and dysfunctional since June 2005.

Your reasoning of continued use blurs different City and State authorities and their designated functions as a manner of determining zoning compliance. It is noted that the Assessor's function is that of assessing by State Law. If there is an illegal use in a structure, they will assess that use with no regard to zoning. That is their job. Their assessment of property and use does not legalize any illegal uses. The Land Use Zoning Ordinance is used to determine the legal uses of property. In the same vein, you have asserted that the State Liquor officials have in some manner validated the desired uses your client wants by the combining of liquor license under one domain.

I disagree with your assertion that the area of Boones Restaurant is legally nonconforming and may continue a restaurant use. Under 14-387, I have determined that the restaurant use has been discontinued for more than a period of twelve months. The removal of a restaurant kitchen for more than twelve months renders the restaurant use vacated. The loss of the kitchen under these circumstances is a major determining factor for defining a restaurant. Your client does not wish to restore the former Boones Restaurant kitchen. In fact, it is my understanding your client wishes to use the former Boones Restaurant space, renamed Harbors Edge, not as a "grandfathered" restaurant, but as a different use for a banquet function enterprise. I conclude, therefore, that space shown on attachment #1, labeled "Applicant site plan submittal", has no grandfathered use status and must comply in all respects with current zoning.

You have the right of appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

Marge Schmuckal
Zoning Administrator

Cc: Penny St Louis Littell, Director of Planning and Development
Gary Wood, Corporation Counsel
Joseph Gray, City Manager