



June 11, 2014

Mr. Rick Knowland, Planner
City of Portland Planning Authority
4th Floor City Hall
389 Congress Street
Portland, Maine 04101

Subject: IMT Expansion and Canal Landing Boat Yard Coordination

Dear Rick:

On behalf of New Yard, LLC we are reaching out to you to express our frustration with yesterday's IMT workshop cancellation. The New Yard Team was prepared to relay our understanding of the status of discussions with the MDOT as they relate to our concerns on vehicular access and utilities services to the remaining New Yard Property. Foremost, the workshop was an opportunity for New Yard and its Principal Manager, Phin Sprague, to express his support for the IMT expansion, yet also provide information about various outstanding issues needing resolution, prior to any approvals. Most importantly we believe there is a direct linkage between the IMT application and the requirements for an Amended Site Plan for the New Yard site, which, in our opinion, should be part of the ongoing IMT review process. As you are aware, we have not yet had the opportunity to supply the City with any Amended Site Plan materials, as we have the list of unresolved items as conveyed to you in our most recent letters. Our team is working hard to cooperate with the MDOT; however, several issues remain partially unresolved.

New Yard was prepared to express several themes yesterday to the Board so that they would have an understanding and appreciation of the challenges created for New Yard as part of the IMT expansion process. Mr. Sprague was prepared to offer the following comments (as taken in the first person):

- *First and foremost, my reason for being here today is not about me. Rather, I want to ensure that we can all realize the vision, goals and economic development priorities that have been established by the State of Maine, the City of Portland and my business, which directly employs 45 local people today and many more through businesses we contract with.*
- *The amended site plan for my business (New Yard) is inextricably tied to the State's application because it involved my willingness to relocate my business operations and work with the State to accommodate their goals specific to the International Marine Terminal.*

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- *We have acted in good faith and have been accommodating to several parties during this process. Therefore, we are requesting that the Planning Board co-join the applications submitted by the State with our pending application that will allow us to move forward with construction of our second building once the State receives its permit.*
- *Frankly, we are concerned by the State's most recent position spelled out to us last Thursday regarding denial of infrastructure easements to the remainder parcel despite our track record of flexibility and accommodation. Some progress is now being made.*

In order for our business to survive or secure additional financing, we need to demonstrate that we have access to electricity, gas, and water, including uninterrupted service from the existing water main.

We also need these easements, even if temporary, to secure the minor site plan review due to the eminent domain proceeding and with that review in hand secure the construction permits to build the building that has now been the subject of three Planning Board reviews since it was originally permitted.

Time is of the essence and no matter how strong financially, a private sector business cannot withstand what is now quickly appearing to be over two years of extra costs and delays due to the process we are involved in.

- *As you all know, our new facility will allow our business to continue growing and employing more people. Moreover, New Yard will provide the port of Portland with a vital piece of infrastructure that will accommodate the repair of larger marine vessels, something that every successful port needs and Portland currently lacks.*

All of this remains at risk, however, if the State refuses to demonstrate the same commitment to flexibility that we have demonstrated from the very beginning.

- *From our perspective, flexibility has always been the main ingredient needed to ensure that the State of Maine, the City of Portland, Eimskip and Portland Yacht Services could realize their goals. You have our assurance that our team remains flexible and dedicated to moving forward in delivering what we promised more than a year ago.*

So, you can see that yesterday's meeting would have been a good opportunity to perhaps work through various issues and bring some clarity to the process. This seems true for not only any unresolved New Yard issues but also several outstanding issues related to IMT application completeness, the concrete wall, and other items we heard as part of the brief communication and Board discussion that did occur at the meeting.

To date, the New Yard team has participated mostly in email and telephone communications with the MDOT/IMT team as we work towards resolutions of our issues. However, we have not yet seen any specific materials from the MDOT related to design measures, etc. for the access and utility issues we've outlined. I took a brief moment on Tuesday afternoon to review

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the recently resubmitted plan set for the IMT expansion (submitted on 06.06.2014) and it appears that these recent plans have yet to incorporate solutions to the access and utility services for New Yard's remaining parcel. Specifically, we have requested a New Yard access easement that would go directly through the NGL facility. MDOT has now agreed to this in writing but it is not shown on the plans. We are also seeking to resolve how water, sewer, natural gas and power will be delivered to New Yard's existing 5.03 acre site. Currently, the IMT documents only include a TEMPORARY electrical service from within the IMT site to New Yard's remainder parcel. MDOT has agreed that the power line can remain until more permanent access can be obtained elsewhere, but it is not shown on the plan. We have yet to resolve ultimately how a permanent power/communications feed into the New Yard site will be provided. Our current thinking is that water, sewer, power and gas services may require extensions from Commercial Street across land currently owned by Portland Terminal Company and crossings of the proposed IMT rail line. MDOT has agreed to this but again there is nothing on the plans or any other record to confirm it. We acknowledge that the current IMT plans include FUTURE access and utility crossing provisions that would benefit New Yard (as outlined in the Settlement Agreement); however, these crossings and utility provisions do not specifically address the immediate needs of New Yard's remainder parcel, in our opinion.

Our current objectives include the completion of an Amended Site Plan package for New Yard's remainder parcel for submission to the Planning Authority. In our opinion, these materials should be reviewed and approved concurrent with the IMT Expansion application, so that there is assurance that the typical Site Plan standards set forth in the City's code are satisfactorily met. To this end we foresee making a submission to the City imminently, but MDOT needs to do the same. As you can imagine, we have new plans to prepare and materials to assemble (once again an effort that has become a burden to New Yard, despite multiple previous planning submissions and reviews; all due to the IMT proposal).

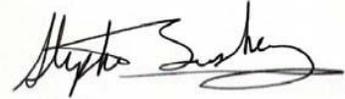
We welcome the City's ability to assist in this planning process and we remain committed to working with the MDOT towards resolution of the technical items outlined in our May 20th letter. We also understand that the project is tentatively scheduled for a Public Hearing and PB action at the June 24, 2014 meeting. We encourage the Planning Authority to consider this information and the needs of New Yard and to keep any proposed action on the IMT proposal linked to approval of New Yard's amended site plan which will be forthcoming to your attention in the upcoming weeks. We hope that New Yard's Amended Site Plan can be handled at the staff level, to expedite the whole process. For everyone's sake we fervently hope that all issues will be resolved so that both site plans can proceed on June 24th.

We remain committed to assisting the process and arrival at a successful resolution to these outstanding issues in a timely manner.

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Sincerely,

FAY, SPOFFORD & THORNDIKE

A handwritten signature in black ink, appearing to read "Stephen R. Bushey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen R. Bushey, P.E.
Senior Principal Engineer

SRB/cmd/smk

Attachment: Schematic Plan

c: Phin Sprague, New Yard LLC
Bob Flight, New Yard LLC
Peter Plumb, Murray, Plumb and Murray
Joel Kittredge, MDOT
Toni Kemmerle, MDOT
Craig Morin, HNTB