

October 31, 2014

Barbara Barhydt, Development Review Manager
Planning Division, City of Portland
389 Congress Street
Portland ME 04101

RE: Petition for Discontinuance of Portion of Cleeve Street,
Great Diamond Island, Portland, Without Public Easement

Dear Ms. Barhydt:

Diamond Island Association (DIA) owns and operates a community center and library at Elwell Hall on Great Diamond Island. DIA wishes to restore a porch and balcony that long had been a part of this building, but which had been removed in the early 1960s. However, a portion of Elwell Hall is within a right of way of a portion of an accepted but unbuilt and unused City street – Cleeve Street. DIA owns the lot on the opposite side of this portion of Cleeve Street, so that discontinuance of this portion without retention of public easement would provide DIA with a sufficient combined lot area to meet all side and rear setbacks and lot coverage requirements to permit the porch and balcony restoration.

Therefore, in accordance with State law (23 MRSA § 3026), Diamond Island Association (DIA) hereby petitions to have that portion of Cleeve Street between the westerly boundary of Crescent Avenue and the easterly boundary of Casco Bay or Bay Avenue, which serves now as the westerly terminus of said Cleeve Street, together with the triangle of land between Cleeve Street and the southerly boundary of Diamond Avenue, all located on Great Diamond Island within the City of Portland and all as more generally depicted with hatch marks on the plan entitled “Boundary Plan, 8 Crescent Avenue, Great Diamond Island, Portland, Maine 04109” dated September 5, 2014 and prepared by Northeast Civil Solutions for Diamond Island Association, attached as **Exhibit B**, discontinued by the City of Portland **without retention of a public easement**.

Discontinuance of that portion of Cleeve Street without retention of a public easement will not impair public access to the water. As the enclosed photographs and City GIS view show, there is no path over Cleeve Street – in fact, tables are there. Access to the water traditionally has been over the portion of the accepted Diamond Avenue that is along the DIA/Elwell Hall lot, and this access will continue as it always has occurred.

PHILIP C. HUNT
JOHN S. UPTON
PEGGY L. McGEHEE
MELISSA HANLEY MURPHY
JOHN A. HOBSON
JAMES N. KATSIARCAS
TIMOTHY P. BENOIT
J. GORDON SCANNELL, JR.
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LAUREN B. WELLYER
JOSEPH C. SWISKI

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Cleeve Street was dedicated by the recording in the City Clerk's office on November 8, 1892 of a Plan in the City Clerk's office Volume 1, Page 224. The street was accepted by the City on November 8, 1892. (See copy of Street Record attached as **Exhibit A.**)

The only party owning property abutting the portion of Cleeve Street and the triangle to be discontinued is the Diamond Island Association.

We are obtaining letters from public utilities having lines or pipe or cables on Great Diamond Island – Portland Water District, Central Maine Power Company and FairPoint -- detailing whatever interests they have in the portion of Cleeve Street proposed to be discontinued. Copies of our letters to those utilities are enclosed, and we will provide responses from those utilities when they are obtained.

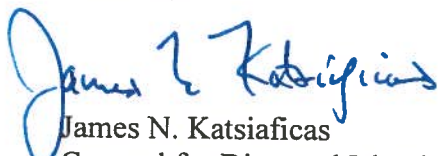
We understand that City Islands Liaison Michael Murray will supply a list of all property owners owning lots in the subdivision (**Exhibit C**) shown on the 1892 plan (copy of plan attached; here, this means all property owners whose lots are on the "public" side of Great Diamond Island) whose addresses appear in the City's assessment records, which list includes all owners of property abutting the portion of Cleeve Street proposed to be discontinued.

Also enclosed is the standard waiver and indemnification agreement provided by your office, signed by DIA President, Lyn Sala.

By separate letter to City Planning & Urban Development Department Head Jeffrey Levine and Planning Division Director Alex Jaegerman (copy enclosed), DIA is requesting a waiver of the \$2,000.00 fee that the City typically requires to cover your administrative costs and costs of providing notice to said property owners and mortgagees; therefore, no fee is enclosed with this application. DIA is acting on behalf of its more than 80 members to bring this discontinuance petition, and the additional land will permit expansion of Elwell Hall, a building that serves as a community center and library for the southern half of Great Diamond Island.

DIA hereby requests that the City take all further action necessary to complete discontinuing the above-described street. Please inform us if it is necessary for DIA to provide you with any further information, or take any further action. DIA understands that the matter will be brought up before the Planning Board for workshop and public hearing, that the Planning Board will make a recommendation to the City Council, and that final action on the street discontinuance will be made by the City Council.

Sincerely,


James N. Katsiaficas
Counsel for Diamond Island Association

cc: Jeffrey Levine, Planning & Urban Development, City of Portland

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Alex Jaegerman, Director, Planning Division, City of Portland
Danielle West-Chuhta, Corporation Counsel, City of Portland
Lyn Sala, President, Diamond Island Association
Michael Burton, Diamond Island Association

EXHIBIT A

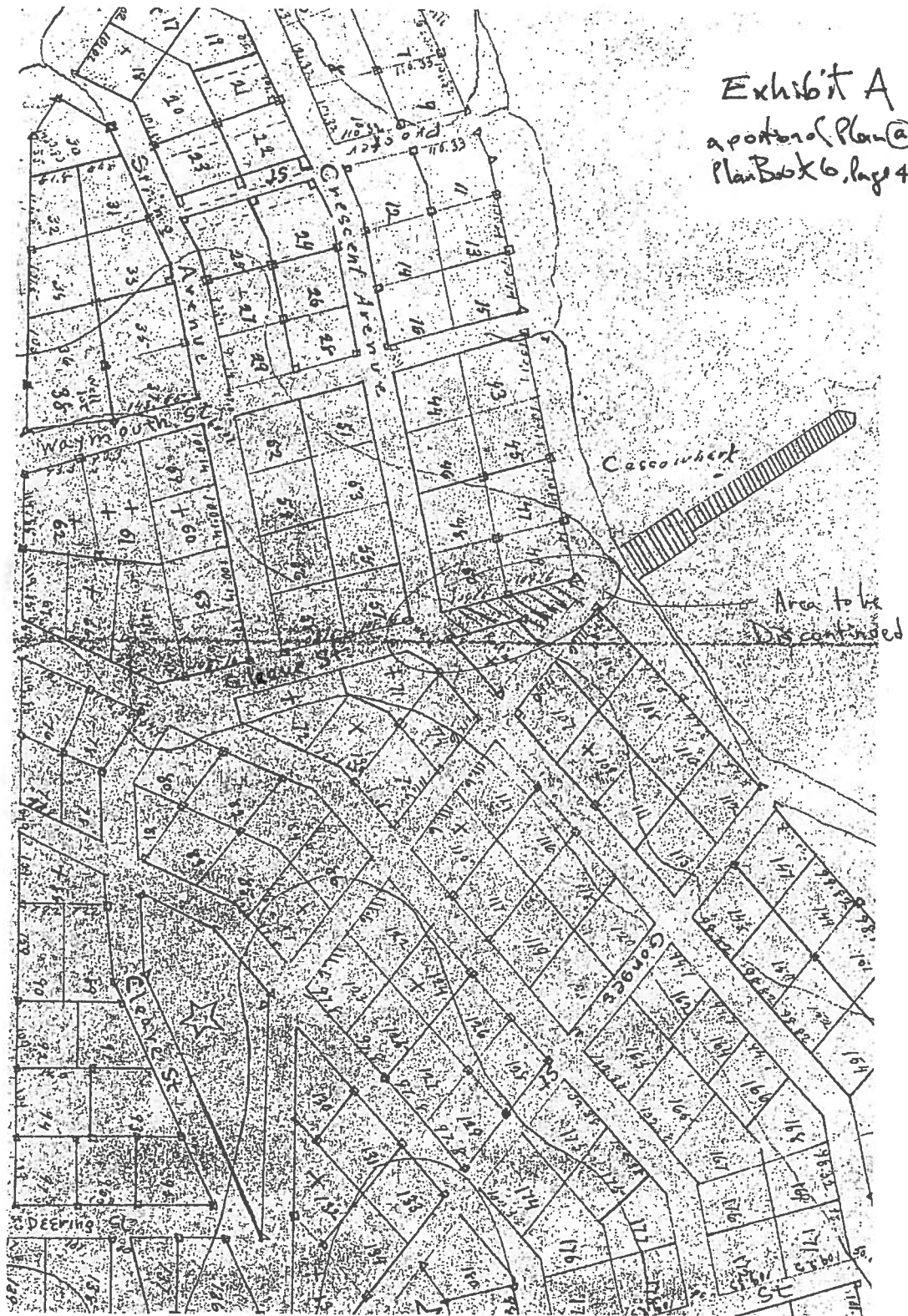


Exhibit A
a portion of Plan @
Plan Book 6, page 4

GREAT DIAMOND ISLAND

Name

Section

To

DATE	DESCRIPTION	BOOK	PAGE
Nov. 8, 1892	All streets shown on Plan $\frac{362}{6}$ Acceptance	1	224
Sept. 1, 1960	Mancie Lane $\frac{235A}{54}$ Public Landing to Valley St.	2	291
Sept. 1, 1960	Nichols Street - from Mancie Lane $\frac{76}{76}$ Northeastly	2	292
Jun. 21, 1961	Nancy Ln - Public Landing to Valley St. - Cent. of Taking $\frac{256}{256}$ C.C.R.D.		$\frac{2611}{217}$
Jun. 21, 1961	Nicholas St. - Nancy Lane Northeastly - Cent. of Taking $\frac{256}{256}$ C.C.R.D.		$\frac{2611}{219}$

Street Record

(Exhibit B is
The Boundary
Plan)

EXHIBIT C

Property Owners in the Subdivision

[To be completed by City of Portland Islands Liaison]

WAIVER AND INDEMNIFICATION

WHEREAS, Diamond Island Association, a Maine corporation in good standing, has requested the City of Portland to discontinue the portion of a certain way known as Cleeve Street westerly of Crescent Avenue, along with the triangular area between Diamond Avenue, Cleve Street and the abutting property owned by Diamond Island Association, pursuant to 23 MRSA § 3026 *et seq.*

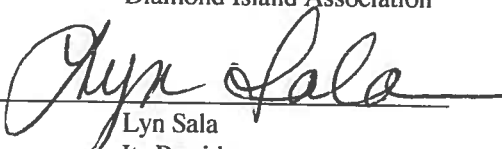
WHEREAS, the City of Portland as a condition precedent to the discontinuance of the way requires a waiver of any claims which Diamond Island Association may have against the City for such discontinuance, and further, requires indemnification against any claims of third persons arising out of or resulting from the discontinuance of said way;

NOW, THEREFORE, in consideration of the City of Portland discontinuing said proposed town way, Diamond Island Association for itself and its successors and assigns, agrees as follows:

1. Diamond Island Association hereby waives any claim for damages which it may now or hereafter have against the City of Portland arising out of or resulting from the discontinuance of this way by the City pursuant to 23 MRSA § 3026 *et seq.*;
2. Diamond Island Association hereby agrees to indemnify and hold harmless the City of Portland against any claims by any third party against the City of Portland for damages arising out of or resulting from this discontinuance of said way by the City of Portland pursuant to said statute.

IN WITNESS WHEREOF, the **DIAMOND ISLAND ASSOCIATION** has caused this Agreement to be signed and sealed in its corporate name by Lyn Sala, its President, thereunto duly authorized, the day and year first written below.

Dated: 9-30-14

Diamond Island Association
By: 
Lyn Sala
Its President





