

## **Memorandum**

**Planning and Urban Development Department**

**Planning Division**

**To:** Chair Morrissette and Members of the Portland Planning Board

**From:** Richard Knowland, Senior Planner

**Date:**  September 21, 2012

**Re:** Dinosaur Enterprise, LTD. Fuel Storage Contract Zone; Sunset Avenue; Great Diamond Island

**Project #:** #2012-576 **CBL:** 83A-K-5-10

**Meeting Date:**  September 24, 2012

1. **Introduction**

A workshop has been scheduled to consider a proposal by Dinosaur Enterprises Ltd. for a fuel distribution service on Great Diamond Island. The applicant is requesting a contract/conditional zone to allow this use in a residential zone. The application, site photos and proposed conditional zoning text are shown as Attachments 2­a, 2­b and 2-C. Attachment 1-A includes a map of the island.

Public notice of the workshop consisted of mailed notice to all property owners on Great Diamond Island, notice to the Interested Parties List and an agenda ad appearing in the 9-17 and 9-18th editions of the Portland Press Herald.

1. **Findings**

**Existing Zoning: IR-2 residential zone**

**Proposed Zoning: Contract zone to allow an existing fuel distribution business**

**Proposed Use: Fuel distribution service**

**Lot Area: 21,643 sq. ft.**

**Lot Address: 118 Sunset Avenue**

**Assessors C-B-L: 83A-K-5-10**

**Site:** The site is located within the southerly or village area of Great Diamond Island in a residential area with lot frontage on Sunset Avenue and Crescent Street. The site is a short walk from the public ferry landing and is south of the Diamond Cove property.

The property slopes down from Sunset Avenue to Crescent Street.

The site consists of a single family residence on the Sunset Avenue side of the property and equipment associated with the fuel distribution business including two fuel trucks parked in a driveway on the Crescent Street side of the property and a portable fuel tank adjacent to Sunset Avenue.

The Crescent Street frontage of the property is about 100 feet from the 250 foot wide shoreland zone or about 350 feet from the shoreline edge.

1. **Background**

The proposed zone change is intended to allow the continuation of a fuel distribution service on Great Diamond Island in a residential zone that Ted Weber (Dinosaur Enterprises) has been operating on the site since 1988. Dinosaur provides gasoline and heating oil to Great Diamond Island residents and is the only source of fuel on the island. Fuel distribution uses are not listed as a permitted use in the IR-2 zone. The City has given notice to the property owner of this zoning violation and has required this issue be resolved by moving the operations to an appropriately zoned site or seeking a zoning amendment to allow the use at the Sunset Avenue site, thus the reason for the rezoning application.

Dinosaur provides fuel services to Island residents from the Sunset Avenue site. These services are provided primarily from two fuel trucks (2,400 and 3,000 gallon capacity) and a gasoline trailer (225 gallon capacity) parked at the site. Heating oil, kerosene and gasoline/diesel are the primary products sold by Dinosaur, provided through oil truck deliveries, or dispensing gasoline from the gas trailer on-site.

Dinosaur does not maintain regular business hours and is more active during the summer months when more people are on the island. The logistics of providing fuel to an island are challenging and while Great Diamond has a limited number of cars and trucks, fuel service is needed to run these vehicles as well as to heat homes. The applicant indicates that similar fuel services have been provided on the island since World War II “without significant incident”.

The Dinosaur zone change application states: “This letter will serve as the formal application…. to allow the continuation of the current fuel distribution services from the sunset Avenue site, conditioned as outlined below. The discussion with this operation has actually continued for years, and most recently included discussions with the Diamond Island Association (“DIA”) regarding the “DPW Site” [Public Services site] on land licensed by DIA to the City of Portland. Those discussions, for a number of reasons, never reached the point of agreement and Dinosaur has since continued the attempt to reach a mutually agreeable resolution.”

Later it states: “Dinosaur was formally challenged by the City regarding this family operation on December 21, 2011 when the earlier proposal to move the Dinosaur business to the DPW site, licensed to the City by DIA, collapsed. Several reasons for the collapse were referenced but the primary reason is that the City and DIA could not find common ground on the detail. With respect to Dinosaur, those negotiations were initiated by an earlier challenge to our right to continue our long-standing business because of the City’s zoning regulations. We argued that Dinosaur was grandfathered, but ultimately agreed to join a discussion with the city to find a means that met the needs of all.”

The Board should be aware the application does not disclose that after collapse of discussions with DIA and the City regarding moving Dinosaur to the Public Services site, the DIA Board subsequently passed a motion at their June 24, 2012 meeting stating that “the Diamond Island Association will support the conditional zoning of the DPW site in order to locate and be limited to a fuel distribution business”. Planning Staff was not aware of this offer until Wednesday. While the applicant is free to pursue his application for the Sunset Avenue site, Planning Staff had been previously told that the DPW site was not an option for this use because of opposition from the DIA.

**IV. Applicant Contract Proposal**

The applicant requests a contract rezoning allowing the current Dinosaur business to continue at the Sunset Avenue site. The application indicates that Dinosaur is in favor of a contract that would include the following conditions.

The terms of this agreement terminate if Dinosaur or the immediate Weber family discontinue the operation for at least 12 months.

The term of this Agreement terminate if Dinosaur or the immediate Weber family transfer the business or assets of the current business to unrelated third parties.

The term of this agreement terminate at any time the current business is transferred off the current Sunset/Crescent Avenue location.

The business of Dinosaur be limited to the current uses, both in type and scope, such that impacts on surrounding properties, if any, not be expanded.

On Friday, the applicant’s proposed conditional zoning text was forwarded to the City. See Attachment 2-C.

Staff would suggest that a condition be added requiring documentation of all applicable federal, state and local licenses and permits from related agencies to park fuel trucks and to operate the fuel distribution activities on the site. Since the existing fuel pump on Sunset Avenue is likely within the public right-of-way, a condition should be drafted requiring that all equipment shall be located on the site and not within a street or other property.

**V. Fuel Distribution Use**

The applicant indicates the fuel distribution use consists of two fuel delivery trucks and a small fuel tank on a trailer. Home fuel deliveries presumably take place off-site while gasoline is dispensed on the site as vehicles or equipment drive-up for refueling. While the scale of this operation is smaller than typical mainland operations, basic procedures and methodologies need to be documented given the type of material handled and stored on the site. Karen Townsend of Woodard and Curran has outlined potential local, state and federal regulations that apply to a fuel dispensing operation. See summary below and Attachment 1-B. Information on such permits was not submitted as part of the original application. The applicant should provide documentation on the status of permits they have obtained, applicability of other permits and if additional permits are required, the time frame for obtaining such permits. Provision of these permits could be incorporated into the contract zone.

Summary of comments from Woodard and Curran are shown below:

**Federal** regulations require facilities prepare and implement an Oil Spill Prevention, Control and Countermeasure (SPCC) Plan. The oil trucks would be classified as mobile refuelers under the rule and the gas trailer would be classified as a bulk storage container, based on the assumption that it remains in this location when in use dispensing fuel. As a bulk storage container, the gas trailer must be equipped with sized secondary containment, whereas a mobile refueler is only required to meet the general secondary containment provisions of the rule, which may consist of passive or active containment methods. Passive containment would include dikes, berms, and diversionary structures, and active containment could include the use of absorbent booms, or drip pans.

**Maine State Fire Marshall’s Office** (SFMO) regulates aboveground tanks with a capacity of 60 or more gallons that store flammable or combustible liquids. Because the tank is used to store and dispense fuels motor fuels, it would be subject to NFPA 30A Motor Fuel Dispensing Facilities and Repair Garages, which requires secondary containment and appropriate appurtenant devices (eg. level gauge, audible high level alarm, and shut-off valve).

**City of Portland** issues permits for flammable and combustible liquids in accordance with the Fire Prevention Ordinance. Application did not indicate if they have obtained permit coverage or submitted a completed Application for the Storage, Use or Handling of Hazardous Materials, and Flammable and Combustible Materials.

A review of the Peaks Island Fuel site plan file approved administratively in 2011 referenced a Spill Prevention, Control and Countermeasure Plan. The approved site plan includes a 4 space concrete fuel truck parking area with curbing to form a containment dike.

**VI. Land Use Policy**

The applicant is proposing a commercial use not permitted in a residential zone. Great Diamond zoning districts include two residential zones (IR-1 and IR-2), one business zone (I-B) and a planned unit development-mixed use zone (Diamond Cove IR-3). With an application to allow a a commercial use outside an I-B zone on the island, it is appropriate to review existing zoning districts and land use policy.

IR-2

The site is located in the IR-2 residential zone which does not allow a fuel distribution use. The policy statement of the IR-2 zone is as follows.

“The purpose of the IR-2 island residential zone is to protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services available…”

I-B

Fuel distribution is a commercial use and would qualify as a permitted use in the I-B zone.

The policy statement of the I-B zone is as follows.

 “The purpose section of the I-B island business zone is to provide limited areas on the islands for retail and service establishments that serve primarily the needs of the local island market area.”

There is an existing I-B Island Business zone on Great Diamond adjacent to the southerly public ferry, but it is limited to only 3 or 4 properties and there are no commercial uses located within the zone. Given the decidedly residential character of the district and proximity to the shore, it may not be a good fit. While all of Portland’s Islands have business zones near public ferry landings, the reality is that most are either underutilized or have few businesses (except Peaks) because of limited business activity.

With limited land on an island it can be a challenge to find appropriate places for commercial uses not totally contained in a building which may feature large trucks, outside storage of equipment and supplies, etc. This has been an ongoing issue on Peaks Island where there has been discussion over time of creating a special zone for “contractor type” uses away from the main I-B zone and residential areas. The Public Services facility was relocated to the middle of the island away from the village area to address this type of concern.

An effort to consolidate Dinosaur with the existing Public Services facility on Diamond Avenue offered promise in terms of clustering similar types of uses in one location on the island but that too requires a zone change. While the Public Services facility is a municipal use and permitted in the IR-1, Dinosaur is a commercial use. Public Services leases property from the Diamond Island Association and although at one point negotiations to allow Dinosaur seemed stalled, the Diamond Island Association Board as recently as June 24, 2012 voted to support relocation of Dinosaur to the Diamond Avenue Public Services facility.

The zoning request must be evaluated for consistency with the Comprehensive Plan. The comprehensive goals and polices that were adopted as part of the Portland Island Study state the following:

**Portland Islands Goals:**

* The Portland Islands pose a completely unique situation for land use planning and zoning. Unlike most other densely inhabited islands on the Maine coast, which are separate municipalities, the Portland islands are similar to the neighborhoods of a large, urban mainland municipality and pose strong contrasts of urban vs. rural and seasonal vs. year-round living. Similarly, unlike other areas of seasonal home concentrations in the rural Lakes regions of the State, the islands are subject to spillover growth pressures from the ‘city’, and invite comparison to the mainland’s relatively high level of public services in terms of streets, sewage, schools, waste collections, fire protection, police and libraries.
* The islands are different from the mainland in terms of the natural features, their resource value, the public services available (or possible), and the people who reside and work there. The City’s land use policies and regulations should reflect this essential difference.
* The overall land use goal is to balance future growth and development on the islands to preserve those essential natural, physical and social factors that contribute to the islands unique value and character.

 **Portland Islands Policies**

* Portland's islands are unique and valuable natural areas and villages. Each island is unique, with individual community needs and aspirations. There are those most sparsely or seasonally populated, such as the Diamonds and Cushing , serving as summer retreat and vacation homes, to those that support a more significant year round population, such as Peaks ( within commuting distance of downtown Portland) and Cliff (an hour's boat ride away). Island residents are striving to sustain the mix of jobs, housing, education and culture of their unique and independent-spirited island community. [[1]](#footnote-1)
* Encourage development of a type, scale, diversity and density appropriate to the circumstances, environment, infrastructure, and service capabilities of each island.
* The City should adopt a policy for future development that minimizes the dependency on and intrusion of private automobiles on the islands.
* Protect groundwater aquifer resources from degradation or depletion as a result of the cumulative impact of development. Groundwater resources shall be managed so that the islands can be self-sufficient in reliance upon natural systems for water supply and sewage disposal. (Planning Board Report #70-89, see editor’s note, footnote 1)
* Islands are unique landforms, which have particular fragile environmental characteristics. These environmental conditions pose upper limits to the level of development that can be supported in harmony with the islands’ environment. In addition environmental conditions and logistical constraints pose challenges to provide basic services such as solid waste disposal and other community services that are available or possible. Such concerns, including groundwater issues, are significant enough to dictate a policy of low-density development for the islands. (Planning Board Report #70-89, see editor’s note, footnote 1).

**Summary:** The southerly end of Great Diamond Island is almost entirely residential. The exception is the Public Services yard (permitted as a municipal use in the IR-1) located on Diamond Avenue. The existing I-B zone on the southerly end of the island has no commercial uses and the lots are very close to the shoreline. Non-residential uses on the Diamond Cove side of the island include a fire station, a restaurant and small store.

Fuel services are an essential community resource. Fuel is critical in operating a variety of equipment ranging from fire trucks, construction equipment to lawn mowers. While groceries can be bought on the main land and transported on the ferry, obtaining fuel for heating and motor vehicles is more complicated. Fuel may not be transported on the ferry and must be delivered by private boat/barge. The transportation, storage and distribution of fuel requires specialized trucks and equipment. The City of Portland uses Dinosaur to fuel their trucks, equipment, ambulance and fire engine. At any one time there maybe 8 to 12 City vehicles on the island supporting basic public services.

The applicant is proposing a contract/conditional zone on a property that has been used for fuel distribution in some form since 1988 in a residential zone. While the specific application is for the Sunset Avenue site, the Public Services site on Diamond Avenue could consolidate “big truck uses” in one location avoiding several facilities in different locations in a relatively small residential area. The phrase “to protect the character of existing developed residential neighborhoods” in the purpose section of the IR-2 offers an important context in evaluating the zone change proposal along with the comprehensive plan policies for the Islands.

**Attachments**

Staff Attachments

1-A. Great Diamond Island Map

1-B. Memo from Karen Townsend (Woodard and Curran) Revised 9-20-12

1-C. Letter from Diamond Island Association dated 9-19-12 of Meeting Minutes (6-24-12)

Applicant Submissions

2-A. Original Contract zone Application Submission dated 8-22-12

2-B. Site Photos and Area Maps

2-C. Proposed Conditional Zoning Text dated 9-21-12

2-D. E-mail from Ron Ward dated 9-20-12

2-E. Background Information on Dinosaur Operations submitted 9-20-12

2-F. Public Comment

1. Editor's Note: While the basic plan for Portland's Islands was written in 1985, the goals and policies evolved in the intervening years with increased attention to the uniqueness of each island. These policies reflect these changes. The first two policies listed here are found in Planning Board Report #70-89, Planning Board Report Recommendation to Adopt the Portland Islands Groundwater Management Study as part of the Comprehensive Plan of the City of Portland and To Adopt Zoning Amendments to the Land Use Code.

26 [↑](#footnote-ref-1)