

83E-E-46

2008-0177

18 McKinley Ct. - GDI

Inn at Diamond Cove

Inn at Diamond Cove, LLC.

on Spreadsheet

1-1-2

AGREEMENT

This Agreement is entered into this 12th day of April, 1991 by and between Diamond Cove Associates, of Portland, Maine; Maine Audubon Society, of Falmouth, Maine; Casco Bay Island Development Association of Portland, Maine; and Island Institute, of Rockland, Maine.

WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential subdivision for property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of single family house lots (said house lots being Phase II of the project), the number of said house lots being 39 under a January 22, 1991 Site Location of Development Application; and

WHEREAS, DCA received Site Location of Development Law approval (hereinafter "Site Location Order") for Phase I of the project from the Maine Department of Environmental Protection (hereinafter "DEP") on December 10, 1986; said Phase I consisting of "townhouse" commercial and residential uses; and

WHEREAS, DCA applied on July 27, 1987 to the DEP for approval of a 70 lot subdivision project under the Site Location of Development Law and said application was denied on December 13, 1989; and

WHEREAS, DCA has appealed the denial of its application to the Maine Supreme Judicial Court, which appeal is still pending; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association, and Island Institute are concerned about the adverse impacts on the visual characteristics, historic values, and the unusual natural areas of Casco Bay and Great Diamond Island associated with Phase II of the project; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association, and Island Institute wish to ensure that DCA will complete Phase II in a manner which will fit harmoniously into the environment and without unreasonable adverse impacts on the visual characteristics, historic values and unusual natural areas on the Island; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society, Casco Bay Island Development Association and Island Institute to the construction of Phase II as proposed in January, 1991; and

WHEREAS, all parties wish to avoid unnecessary litigation, including the now pending appeal of the December 13, 1989 denial; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association and Island Institute wish to provide for a mechanism under which they can monitor compliance with the covenants and restrictions which are intended to retain the visual characteristics, historic values and unusual natural areas on the Island;

NOW THEREFORE: In consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows with respect to the January 22, 1991 Phase II application as amended by this Agreement:

A. Appeal and New Application:

1. DCA will withdraw its pending appeal of the denial of its July 27, 1987 Site Location of Development Application upon execution of this Agreement.

2. Maine Audubon Society, Island Institute and Casco Bay Island Development Association will not in any way oppose or express any reservation about DCA's Phase II application of January 22, 1991, as amended by this Agreement. The obligation of this paragraph shall be broadly construed and includes, without limitation, communications to governmental officials and agencies and to the press, and further applies not only to the organizations identified but also to employees and members of such organizations, acting in their corporate capacities, who participated in negotiating this Agreement.

Maine Audubon Society, Island Institute and Casco Bay Island Development Association and those individuals previously mentioned shall not request a reconsideration of DEP approval of the January 22, 1991 Phase II application as amended by this Agreement and shall not appeal to the courts the DEP approval of the January 22, 1991 Phase II application as amended by this Agreement.

3. In the event DCA makes any changes to its January 22, 1991 Phase II application as amended by this agreement the parties agree that the rights of Maine Audubon Society, Island Institute and Casco Bay Island Development Association to oppose the application are restored without limitation.

4. DCA agrees not to amend its January 22, 1991 Phase II application by adding any proposed lots beyond those contained in the existing application on file.

5. DCA agrees to provide notice of any and all additional DEP or other, State, Municipal or Federal regulatory filings or amendments to Maine Audubon Society, Island Institute and Casco Bay Island Development Association.

B. Design Review Process:

1. DCA agrees that a violation of the Covenants and Restrictions or the Design Review Guidelines shall be a violation of any Site Location of Development Law approval, whether conditional or unconditional, issued by the DEP for Phase II as proposed in DCA's January 22, 1991 application.

2. DCA agrees that provision B.1 of this Agreement shall become part of the Declaration of Covenants and Restrictions and further agrees that conditions concerning scenic impacts which may be imposed by the DEP shall also become part of the Declaration of Covenants and Restrictions.

3. DCA agrees to amend the Design Review Guidelines and the Declaration of Covenants and Restrictions submitted as part of its January 22, 1991 application as shown on the attached revised Guidelines and Covenants.

C. Gun Batteries:

1. DCA agrees that gun batteries Farry, Berry, Weymouth and Carpenter shall be subject to the terms of the Memorandum of Agreement by and between the Advisory Committee on Historic Preservation, the U.S. Environmental Protection Agency and the State Historic Preservation Office dated May 23, 1989 and further agrees that such gun batteries shall be made subject to a restrictive covenant running to the Homeowners Association which prohibits all building upon or physically altering such gun batteries. The Homeowners Association may not release or amend such covenants.

D. Amended Declaration of Covenants and Restrictions; Open Space:

1. All areas shown as open space recreation within Phase II on the plans accompanying the January 22, 1991 application will remain as open space and will not be divided or built upon or otherwise altered from their natural character in the future. Such restrictions on future use of these areas shall be placed in the Declaration of Covenants and Restrictions and with a provision that they not be amended or deleted, without the consent of all Phase II lot owners, Maine Audubon Society, Casco Bay Island Development Association and the Island Institute.

2. The Declaration of Covenants and Restrictions for Diamond Cove, recorded in the Cumberland County Registry of Deeds in Book 8930, Page 243, shall be completely amended by the preparation and recordation of an amended and restated Declaration covering Phase I and Phase II. The amended Declaration shall provide Maine Audubon Society, Casco Bay Island Development Association and Island Institute a limited right to enter upon the common areas of the project upon reasonable notice periodically each year to ensure that there have been no

violations of the covenants and restrictions contained in the amended Declaration which are intended to protect and preserve the visual characteristics, historic values and unusual natural areas of the Diamond Cove project. The amended Declaration shall be in form and substance satisfactory to counsel for Maine Audubon Society, Casco Bay Island Development Association and the Island Institute.

3. Maine Audubon Society, Casco Bay Island Development Association and Island Institute, their successors and assigns shall have the right to enforce and continue to enforce the terms and provisions of this Agreement and of the amended and restated Declaration of Covenants and Restrictions and Design Review Guidelines which are intended to protect and preserve the visual characteristics, historic values, including gun batteries, open space and unusual natural areas of the Diamond Cove project against DCA and its successors and assigns including without limitation the lot owners in Phase II and the Diamond Cove Homeowners Association. Notice of this right of enforcement shall be incorporated into the amended Declaration. The right of enforcement shall run with the land and be binding upon all subsequent owners of the Phase II lots and the common areas.

E. Contract: Authorization:

1. The terms of this Agreement are contractual and not a mere recital.

2. The signatories hereto represent that they are duly authorized to sign this Agreement.

F. Interpretation and Remedies:

The parties agree that the terms of this Agreement shall be interpreted according to Maine law and that an action to enforce this Agreement and the Declaration of Covenants and Restrictions as well as the Design Review Guidelines (as may be amended from time to time) may be brought in a Maine court of competent jurisdiction by the parties.

The parties recognize that this Agreement, and the Covenants and Guidelines require actions with respect to third parties, such as government agencies, the Diamond Cove Homeowners Association, and Great Diamond Island residents. The parties also recognize that breach of many of the terms of the Agreement, Covenants and Guidelines will result in irrevocable harm, harm that is difficult to assess, and/or harm that is difficult to measure financially--this is particularly true with respect to environmental harm. Thus, the parties agree that in most instances specific performance is the appropriate remedy for any breach of this Agreement or the Covenants and Guidelines.

In some instances, however, specific performance may not be adequate to fully remedy the harm created by a breach. In this

situation, in addition to the remedy of specific performance, a party harmed by the breach may seek other legal and equitable remedies.

If specific performance will not in any way remedy harm created by a breach, the parties agree that specific performance is not the appropriate remedy for breach. In this situation, the parties agree that a party harmed by the breach may seek other legal and equitable remedies.

The parties also agree that the breaching party will not challenge specific performance as a remedy for the breach, unless specific performance will in no way remedy the harm caused by the breach.

G. Confidentiality:

The parties to this Agreement agree that the contents of this Agreement may be made public once it is signed and intend that a copy of this Agreement be forwarded to the Maine DEP upon execution.

H. Binding on Successors:

This Agreement is binding on the successors in interest and assigns of the parties.

I. Consents:

DCA shall obtain the consent of its mortgagees and ground lessors of record to the amended Declaration and shall cause such mortgagees and ground lessors, if any, to each enter into a form of consent or joinder agreement to the amended Declaration acceptable to counsel for Island Institute under which such mortgagees or ground lessors agree to be subject to the terms of the amended Declaration.

J. Further Actions and Assurances:

DCA, Maine Audubon Society, Casco Bay Island Development Association and Island Institute agree to each proceed in good faith using their best efforts to accomplish the matters contemplated hereby, including, without limitation, to draft and agree upon a revised set of Design Review Guidelines and an amended and restated Declaration of Covenants and Restrictions which accomplish the matters addressed herein to the satisfaction of counsel for each of the parties hereto. DCA agrees to use its best efforts to obtain the consents of its mortgagees and ground lessors and of any and all owners of lots within the project to the amended and restated Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned have set their hands.

DIAMOND COVE ASSOCIATES

DATED: April 12, 1991

BY: *William L. Plouffe*
WILLIAM L. PLOUFFE, ATTORNEY

MAINE AUDUBON SOCIETY

DATED: April 12, 1991

BY: *Elizabeth L. Lovejoy*
ELIZABETH L. LOVEJOY, ATTORNEY

ISLAND INSTITUTE & CASCO BAY
ISLAND DEVELOPMENT ASSOCIATION

DATED: April 12, 1991

BY: *Jeffrey A. Thaler*
JEFFREY A. THALER, ATTORNEY

DAA0041C

April 24, 2008

Nathan Bateman
The Inn at Diamond Cove, LLC
Bateman Partners, LLC
261 Commercial Street
Portland, ME 04101

RE: The Inn at Diamond Cove

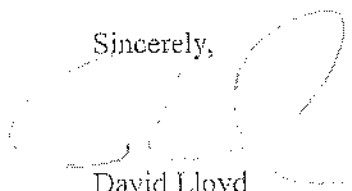
Dear Mr. Bateman,

In reference to the above mentioned project, which is the conversion of the Double Barracks on Great Diamond Island to a hotel use, please be advised of the following:

1. The building was designed under the code criteria of NFPA 101. This code covers Life Safety issues. I have also had preliminary discussions with Steve Dodge, plan reviewer at the State Public Safety Office. We are both in agreement that drawings to date are in compliance with this code.
2. The building is to be fully sprinkled per NFPA 13.
3. The design is in compliance with the IBC CODE 2003 edition. These code criteria will be verified in final construction documentation.

Please understand that all design work in connection with this building will abide by the above code criteria yielding a current code compliant building.

Sincerely,



David Lloyd
Architect

In Reply

Rick Knowland - FW: Diamond Cove

From: Ronald Ward <rw@dwmlaw.com>
To: 'Rick Knowland' <RWK@portlandmaine.gov>
Date: 4/29/2008 1:47 PM
Subject: FW: Diamond Cove
CC: 'Nathan Bateman' <nathan@batemanpartnersllc.com>, David Bateman <david@batemanpartnersllc.com>

Rick- attached is pdf from the architect showing the actual layout of the individual condo units, totaling 20 in all. 6 are 1 bedroom, 8 2 bedroom and 6 are 3 bedroom units. We'll answer your specific question in a separate memo.

The response to your 15 point memo of 4/23 is in processing and assembly of enclosures now.

Ronald N. Ward, Esq.
Drummond Woodsum & MacMahon
PO Box 9781
245 Commercial Street
Portland, ME 04104

207-772-1941
207-772-3627 (fax)
rward@dwmlaw.com

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IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any tax-related matter(s) addressed herein.

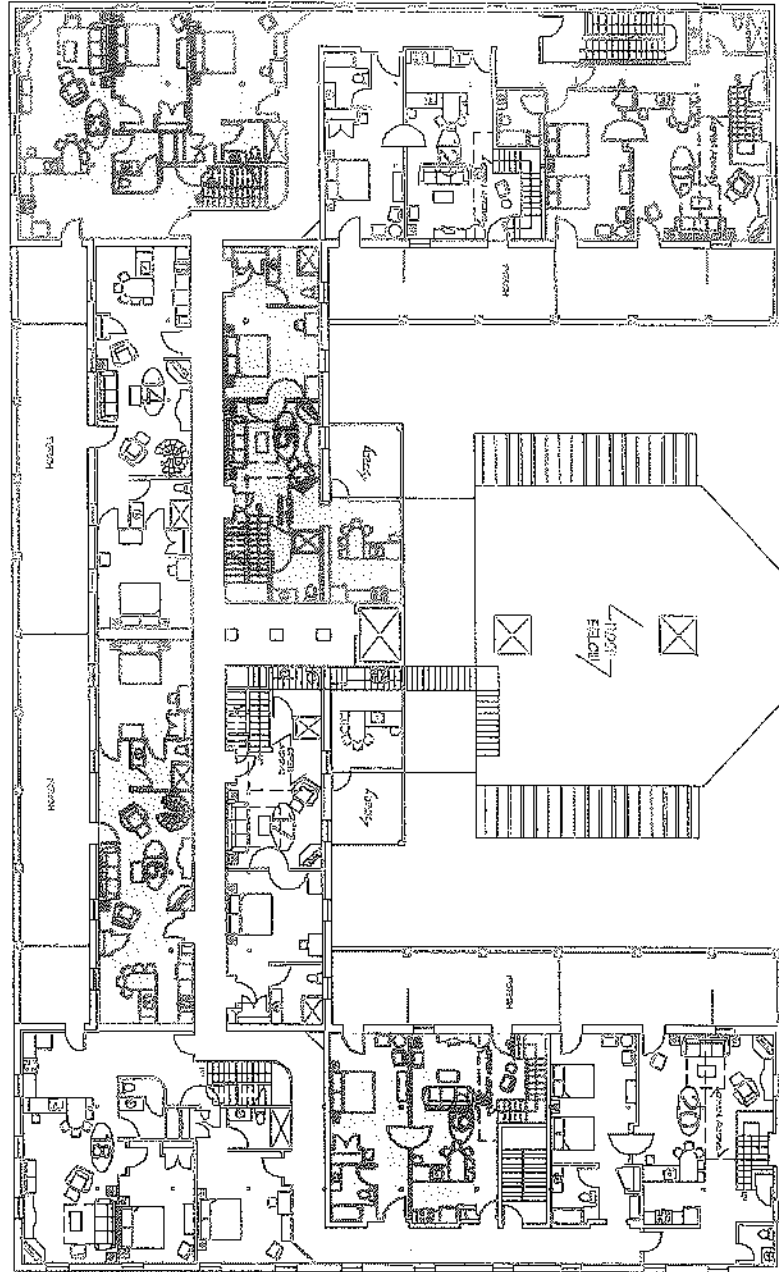
From: Nathan Bateman [mailto:nathan@batemanpartnersllc.com]
Sent: Tuesday, April 29, 2008 11:25 AM
To: Ronald Ward
Subject: FW: Diamond Cove

Nathan Bateman
Bateman Partners, LLC
245 Commercial Street
Portland, ME 04101
Tel: 207-772-2992
Fax: 207-772-1881

nathan@batemanpartnersllc.com

From: David Hickman [mailto:hickman@archetypepsa.com]

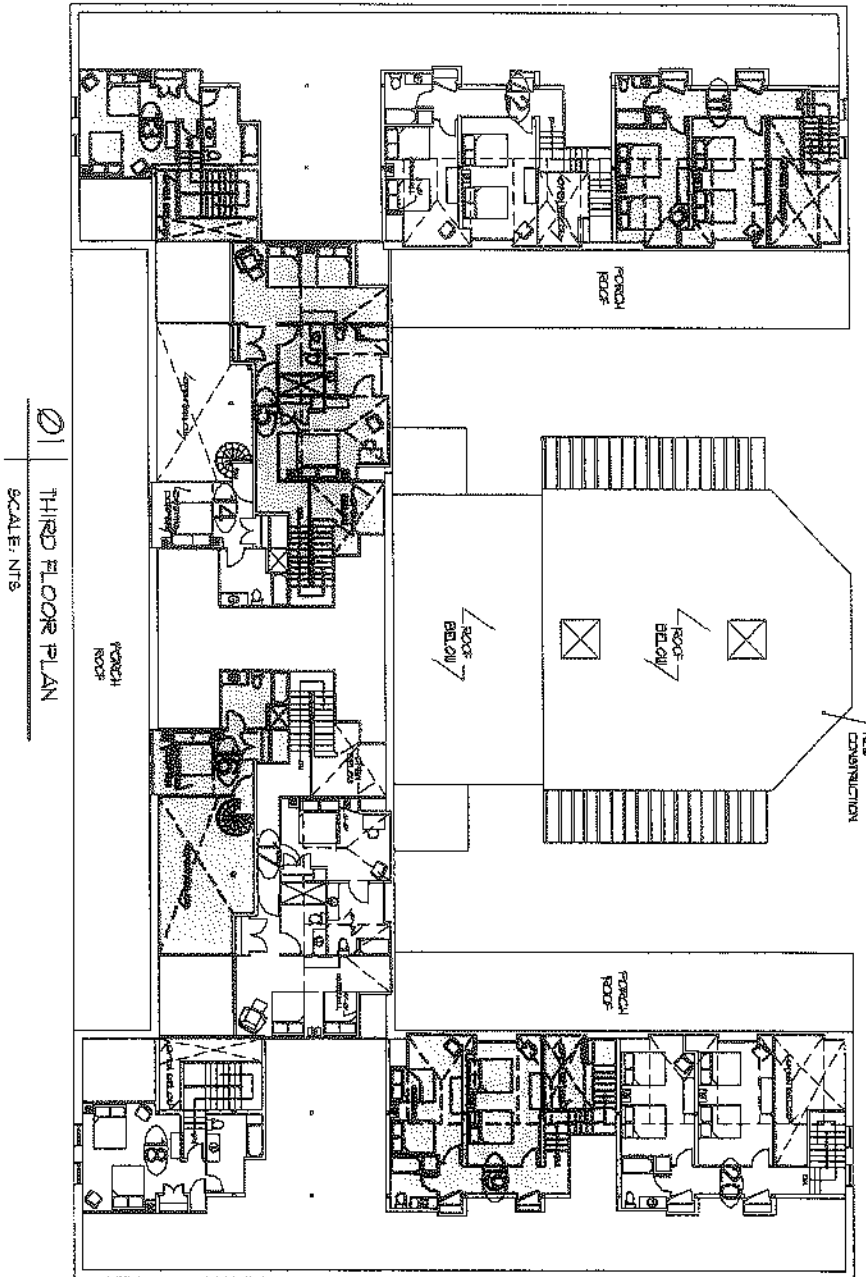
1-2-13



01 SECOND FLOOR PLAN
SCALE: NTS

A02	DATE	PROJECT	OWNER	ARCHITECT	DEVELOPER
	PROPOSED FLANS		The Inn at Diamond Cove, LLC	ARCHETYPE, P.A. ARCHITECTS 4000 West 10th Street Denver, CO 80202 Phone 724-6333	Narman Partners, LLC 1000 14th Street Denver, CO 80202

1-2-4



THIRD FLOOR PLAN
SCALE: NTS

A03	DATE	DRAWN	CHECKED	PROJECT	ARCHITECT	LIBEL/OWNER
	PROPOSED PLANS	16:11:11	16:11:11	16:11:11	16:11:11	16:11:11

Bateman Partners, LLC was created specifically to develop and manage real estate, which the principals have done since 1979. The principals have developed projects in southern Maine in excess of 100 million dollars from 1979 through 2003. Many of these projects Bateman Partners, LLC and or its principals still own and or manage.

The Principals of Bateman Partners, LLC initially developed both elderly and family subsidized housing in conjunction with the New Hampshire and Maine state housing authorities. The focus of development eventually spread to market rate housing and commercial office buildings as the city of Portland grew throughout the 1980's. Recreational developments which included the Falmouth Country Club and its adjacent residential subdivision as well as Diamond Cove, a 193-acre island resort community.

Most recently Bateman Partners, LLC has acted as both the development consultant and partners in the Tidewater Farm and Village project in Falmouth Maine. This project consist of 85 acres of land which was rezoned to allow the construction of 50 single family homes, 22 residential condominiums, 65,000 sq' of commercial office space and a 75 room Inn. At this point in time this development is 50% built out with another 2 years left in construction. The Principals of Bateman Partners are David Bateman, Nathan Bateman, and Aaron Bateman.

David Bateman is the president of Bateman Partners, LLC. Mr. Bateman is a trained architect with extensive experience in the field of design and construction. Mr. Bateman is responsible for all day-to-day management of the Bateman Partners, LLC entities and their assets

Mr. Bateman has extensive experience in the following specific areas:

- Feasibility and market analysis
- Project design and master planning
- Local, State and federal approvals and permitting
- Project financing
- Equity syndication
- Contract negotiation
- Construction supervision and estimating
- Project management
- Sales and Marketing

Since 1979 Mr. Bateman has been responsible for the acquisition, development, and management of real estate projects with a combined development cost in excess of One Hundred million dollars.

Mr. Bateman's personal goal has been to provide Maine with innovative projects, which improve the quality of life for its residents. Whether it be pioneering the concept of "scattered site" family housing, (a method which blends subsidized housing into existing

neighborhoods), creating Maine's first elderly congregate care facility, or through traditional commercial and resort developments, the basic commitment to quality of life has never been compromised.

Nathan Bateman is the Vice President of Bateman Partners, LLC. Nathan holds a degree in Finance and Entrepreneurial studies from Babson College. Nathan assists David Bateman in all day-to-day management of the Bateman Partners, LLC entities and their assets. Nathan responsibilities also include creating feasibility studies for potential projects, obtaining local and state approvals, securing financing and overall all project management.

Aaron Bateman is the Treasure of Bateman Partner, LLC. Aaron holds a degree in Finance from Babson College and maintains a successful property management company in Saco, Maine.

REAL ESTATE PROJECTS DEVELOPED BY DAVID BATEMAN AND BATEMAN PARTNERS, LLC

Subsidized Housing Projects	Development Costs
- Summer Street / 32 units of elderly and family housing Located in Biddeford, Maine	1.40 M
- Presidential Housing / 45 units of elderly housing Located in Biddeford, Maine	2.00 M
- Central Block / 24 units of elderly housing Located in Farmington, New Hampshire	1.10 M
- Bethel Housing / 20 units of elderly housing Located in Bethel, Maine	.98 M
- Pleasant Street / 45 units of elderly and family housing Located in Saco, Maine	2.40 M
- Lincoln Street / 21 units of scattered site family housing Located in Saco, Maine	1.60 M
- Pierson Lane / 68 units of scattered site family housing Located in Biddeford, Maine	4.90 M
- Front Street / 36 units of elderly housing Located in Sanford, Maine	1.90 M
- Falls I / 61 units of family housing Located in Saco, Maine (moderate income)	3.40 M
	19.68M
Commercial Projects	
- Marineast Complex / 87 market rate rental town homes 10,000 sq.ft. Commercial building South Portland, Maine	6.00 M
- Safford House / historic rehabilitation 9,000 sq.ft. commercial office building Portland, Maine	.83 M
- Harbor Plaza / 60,000 sq.ft. commercial office building and 200 car parking facility Portland, Maine	7.50 M

- Lowell St. Medical Building / 30,000 sq.ft. medical building with offices and ambulatory clinic facility Portland, Maine	1.80 M
- Ocean View Retirement Complex / 70 unit congregate care facility Falmouth, Maine (Phase I)	4.50 M
- Bay View Apartments / 71 unit market rate rental complex Portland, Maine	2.40 M
- Falmouth Country Club / 18 hole championship golf course and related private club facilities Falmouth, Maine	4.73 M
- Falmouth on the Green Subdivision / 122 lot residential subdivision encompassing 450 acres, which surround the Falmouth Country Club Falmouth, Maine	5.70 M
- Diamond Cove McKinley Estates / 197 acre resort development Located on Great Diamond Island Portland, Maine	16.00 M
- Cummings Mill / 48 Luxury Apartments Located in the historic Cummings Mill, South Berwick, Maine	5.6 M
- Portland Harbor Hotel / 100 room boutique Hotel located in the "Old Port" Commercial Area of Portland, Maine	13.00 M
- OHM Properties, LLC 6,000 sq' medical office building Located in Falmouth, ME	1.5 M
	69.56 M

Project Currently Under Development / Construction

- Tidewater Farm / 50 lot subdivision and 75 room inn Located in Falmouth, ME	6.00 M
- Tidewater Village / Road and Utility upgrades to support 4 Commercial building pad sites in Falmouth, ME	2.00 M
- TV#2 / 20,000 sq' building consisting of 7 residential condos and 4 commercial condominiums	4.2M
- CCCEA Multipurpose Learning Facility / 6,000 sq' of office space For the University of Maine and Cumberland County Cooperative Extension Located in Falmouth, ME	1.6 M
- 468 Fore Street / 16,000 sq' of office, retail and hotel facility. This facility supports the existing Portland Harbor Hotel Located in Portland, ME	5.7 M
- The Inn at Diamond Cove / 20 unit Condo Hotel Located on Great Diamond Island, Portland ME	6.5M
	26 M



Strengthening a Remarkable City. Building a Community for Life www.portlandmaine.gov

Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

August 15, 2007

Ronald N. Ward, Esq.
Drummond Woodsum & MacMahon
PO Box 9781, 245 Commercial Street
Portland, ME 04104

Re: Inn at Diamond Cove

Dear Ron:

You have inquired as to the procedure for review for the proposal for the redevelopment of the double barracks on Great Diamond Island. After reviewing the document entitled "The Development of the Double Barracks & Hospital," as well as your responses the follow-up questions contained in your email of July 27, 2007, The City's Planning Department has made the following initial conclusions.

From the information provided, it appears that the intention is to run an inn at the location of the barracks building on GDI, which is located within the IR-3 zone. An inn is an allowable use within the zone. However, the definition of "inn" under Section 14-47 states that "guest rooms shall not contain separate kitchen facilities." We recommend that the way to resolve this is to apply for an amendment to the conditional zone to allow for inns that are comprised of rooms with kitchen facilities.

Second, it appears from the site plan that the pool is proposed to be constructed in an area that has been designated as open space. This would also require an amendment to the conditional zone.

The question of site plan review is somewhat complicated. The project would be subject to major site plan review based on the size of the reuse and the site improvements including the gazebo and pool and patio area. The reuse of the barracks building itself may be eligible for exemption from site plan review to the extent that the project remains within the extent of the original building. If the gazebo is going to be greater than 500 square feet, that would bring this project into major site plan review or perhaps it could be construed as a minor site plan and

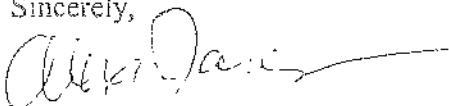
partial exemption. If there is an expansion of the sand filter system, that might also constitute a project component subject to site plan review. We cannot give a definitive ruling on these matters at this time, but if you proceed with the zoning amendment, we will scope out the subsequent reviews on the basis of the materials submitted at that time.

Fourth, in reviewing the original conditional rezoning for Diamond Cove, the commercial uses were shown as clustered around the cove area, while the parade ground buildings were depicted as residential. It does not appear to be specifically restricted to that arrangement, but if a conditional rezoning amendment is pursued, that would eliminate any doubt or debate about the intent of the original rezoning regarding the location of commercial uses.

Finally, the number of units proposed for each building is specifically set forth in the subdivision plan. Building 46 is allotted 14 units. The proposal to increase the number of units in building 46 to 22 units may require an amendment to the subdivision.

As stated previously, these conclusions are based on the information that has been submitted. Please feel free to provide additional information if you feel we have mischaracterized the proposed project.

Please contact me if you have any questions.

Sincerely,

Alex Jaegerman
Planning Division Director

- cc: Joe Gray, City Manager
- Lee Urban, Director of Planning & Development
- Mary Costigan, Associate Corporation Counsel
- Rick Knowland, Senior Planner
- Barbara Barhydt, Development Review Services Manager



Rick Knowland - Inn at Diamond Cove, LLC conditional zoning amendment

From: Rick Knowland
To: rrw@dwmlaw.com
Date: 4/9/2008 4:43 PM
Subject: Inn at Diamond Cove, LLC conditional zoning amendment
CC: Alex Jaegerman ; Barbara Barhydt; Marge Schmuckal; Penny Littell

Ron, I thought I'd give you some quick comments on the Diamond Cove conditional zoning amendments proposed by the Inn at Diamond Cove, LLC. that was submitted yesterday. With a tight time frame before the workshop, I'd like to give you the benefit of initial staff comments.

1. It was stated the wastewater flow data sheet was to be updated reflecting the hospital building but as a stand alone document it falls short on details. Was there a report/memo that accompanied this chart? Is there a narrative that explains how the sanitary waste generated by the barracks and hospital buildings is to be handled? (Remember this project was approved 20 plus years ago so it would be extremely helpful to have written narrative of the existing sewer treatment system, where it is located, what type of system is it, the capacity of the system and DEP license requirements). Does the applicant have a letter from the Maine DEP regarding their review of this project?

2. Comments on text amendment to conditional rezoning of Ft. McKinley:

a. Second paragraph; section "9a" appears to be the wrong reference. We assumed the proposed text would follow under paragraph 1 of the original conditional zoning text document.

b. The paragraph references "residential hotel condominiums" and then "residential condominiums". Which one is it? Should choose which term you'd like to use. Also the use should be defined in the paragraph.

c. What is meant by the "the immediate attendant there to and that portion of the Open Space"?

d. The paragraph should reference that a portion of the dedicated open space shall be used for the improvements noted on the site plan including a swimming pool and the gazebo (food and beverage building). Also how do you deal with the the fact "open space shall be dedicated and reserved as such in perpetuity" according to paragraph 1 of the original conditional zoning?

Other questions/issues:

3. Will there be a separate condo association from the Diamond Cove condo association? If yes, what is the relationship?

4. The paragraph references a separate lot for the hospital and barracks? Unless I'm missing something, this seems unusual in that I don't believe the rest of Fort McKinley has separate lots for buildings. Please explain. I'm not sure what the implications maybe for Fort McKinley as a planned unit development.

5. Do you have a letter of support from the Diamond Cove condo association supporting the proposal?

6. What changes will need to be made to the Diamond Cove condo documents in light of this proposal?

7. A more detailed explanation of the on-site transportation methods for this project in relation to the Diamond Cove condo transportation system would be appropriate.

8. There is a discrepancy between large size plan submitted and the smaller 8 1/2 inch by 11 inch site plan

submitted. Which one is operative? Also the appropriate site plan should have a date on it so it can be properly referenced. We will need an 11 inch by 17 inch copy of the large plan.

9. The original conditional zoning provision was submitted but it was revised a few years ago so I'll get an updated copy to you.

10. The density formula for the IR-3 will need to be verified in terms of the number of existing dwelling units and the hotel condos. You probably have plenty of land area but that calculation needs to take place.

11. A better graphic for the entire project would be appropriate. Perhaps a color aerial (11 by 17) labeling the barracks and hospital location could be provided.

12. The original IR-3 plan for Diamond Cove clustered commercial uses near the ferry landing. This proposal is a change from that plan so I'd suggest you have some type of explanation for this change including the the outside improvements such as the swimming pool and bar/food building.

13. I've not done an exhaustive review of the IR-3 zone development standards that track the policy statements of the IR-3 zone. You'll want to take a look at these relative to your project.

Ron, These are some very quick comments. Obviously the more detailed information submitted in an application, the more complete review comments we can provide. We had initially discussed having one workshop on this item but there are significant gaps in the submission so we'll see how the initial workshop goes.

These comments are focused on the zoning amendment itself and not on the development details of the project.

As other review comments become available, I will forward them accordingly. If anyone on my cc list has comments I've missed, please forward them accordingly.

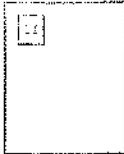
Rick Knowland - Inn at Diamond Cove, LLC zoning amendment

From: Rick Knowland
To: rrw@dwmlaw.com
Date: 4/11/2008 8:23 AM
Subject: Inn at Diamond Cove, LLC zoning amendment
CC: Alex Jaegerman ; Barbara Barhydt; Marge Schmuckal; Mike Murray; Penny Littell

Ron, As a follow-up to my Wednesday comments email, I've gone through our files and found a report prepared by Oliver Associates dated June 2000 entitled "Wastewater Treatment Infrastructure Evaluation" which was prepared for the Diamond Cove project.

If your team doesn't have a copy of this report I'd be happy to forward it to you.

Regarding other comments on the conditional zoning application, I've received a comment regarding mainland parking for this use. Obviously there was a solution some time ago for Diamond Cove but I believe it would be important to refresh our memories on this issue and how the developer intends to address this. This will undoubtedly come up in the review process.



JOHN ELIAS BALDIACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

May 21, 2008

DAVID P. LITTELL
COMMISSIONER

RE: Great Diamond Island Redevelopment Plan

Dear Sirs:

I am getting many calls from Island folks stating that the redevelopment of the double barracks is considerably more extensive than that which was presented to me for analysis by Joe Laverriere of DeLuca Hoffmann Associates in August of 2007. Although this public alarm is generally the norm for such projects, in this case I am somewhat disturbed by the difference between what is being presented to me and what is actually being proposed. So at this time I would like some very clear precise details on what you are intending to do.

In October of 2005 this Department generously renewed the license with a 35,000 gpd monthly average instead of the 40,000 gpd maximum because it was our assessment that meltwater and storm events were regularly causing violations outside of the licensees control. For example, a 5-yr storm event (4.3 inches of rain within a 24 hour period) over the 34,500 sq.ft. surface of the sand filter (assuming 100% inflow) would add 92,719 gallons – roughly 2.5 times the treatment capacity of the system. A modest storm event (1-inch of rain) would add 21,563 gallons in that day.

In August of 2007, Joe Laverriere of DeLuca Hoffmann called me and asked about using the OBD. The island redevelopment at that time, was confined to the double barracks (see attachment A). As Joe explained the project to me, the building was to be used for 20 residential condominiums containing 42 bedrooms. I asked for design flows for both the existing and the proposed wastewater discharges and the flows submitted were based on the following residential occupancy: 5 single-bedroom residential units, 6 two-bedroom residential units, and 8 three-bedroom residential units (20 units containing 42 bedrooms). The DeLuca Hoffman design flows for the proposed development were based on single-family dwellings, but were slightly understated as single-bedroom units may only be reduced to 120 gpd per unit per the *Maine Subsurface Waste Water Disposal Rules*, 10-144 CMR 241 (501.2). The DeLuca Hoffman design flows show a 9,780 difference between the treatment capacity and the existing development. My figures were similar, so, with the assumption that the 1,900 remaining feet of the 4,900 linear feet of sewer would be rehabilitated or replaced, it was my assessment that the development should not cause violations or flows in excess of the treatment capacity of the OBD system.

However, the City of Portland recently contacted me to ask if the treatment system has adequate capacity and whether the renovated barracks may hook into the OBD treatment system. My answer was that, because the barracks was continuously a part of GDI phase I development, the Barracks may use the OBD, provided there is sufficient estimated and actual capacity. My best professional judgment was still that, provided the remaining 1,900 linear feet of old tile was replaced/refurbished to eliminate the inflow/infiltration problem the system had marginally enough capacity and the license would allow it.

The City asked me if it was presented to me as a hotel or condo. This Department was still unconcerned because, using the 100 gpd/bedroom design standard for hotels the design flows were still within the treatment capacity, even when factoring in 9 employees within a 24-hr. period.

PROPOSED USES ASSOCIATED WITH REDEVELOPMENT OF BARRACKS AS RESIDENTIAL						
DESCRIPTION	UNITS	ADF RATE (gpd/unit)	ADF Total (gpd)	144 CMR 241 (gpd/unit)	144 CMR 241 Total (gpd)	COMMENTS
1 Bedrm. Residential	6	90	540	120*	720*	*144 CMR 241.501.2
1 Bedrm. Residential	6	180	1,080	180	1,080	
1 Bedrm. Residential	8	270	2,160	270	2,160	
Totals:	20		3780		3,960	

1 Bedrm. Hotel	6		100	600
2 Bedrm. Hotel	6		200	1,200
3 Bedrm. Hotel	8		300	2,400
9 Employees? (guess)			15	135
				4,335

Now, according to Marybeth Richardson, it would appear that the proposal is indeed a hotel. According to floor plans sent to me, there appears to be a 62-seat glassed-in garden restaurant (reportedly, breakfast only 620 gpd without employees) in addition to the 42 bedrooms. Furthermore, the former hospital (building #19) is also being redeveloped into an additional 12 units (assuming the same ratio – 24 bedrooms), and an islander reports that the proposal includes a swimming pool. If the hospital redevelopment mirrors the double barracks, with restaurant (and pool facilities), there is little or no excess capacity beyond that built into the design flows. I haven't included any calculations for the swimming pool(s). The daily backwash from the swimming pool filter(s) may be substantial. Draining the heavily chlorinated pool into the OBD would create overages (violations) and potential treatment problems. These factors in combination with storm events will likely push the licensees into noncompliance on a regular basis.

So, I am concerned that development at the level proposed will push the limits just a little too far, creating violations of the license and making renewal difficult.

Please submit, in writing, your proposal so that I can provide an accurate analysis.

GREAT DIAMOND ISLAND
WASTEWATER FLOWS TRIBUTARY TO OVERBOARD DISCHARGE SYSTEM
WASTE DISCHARGE LICENSE W035931-41-A-N

CURRENT USES

DESCRIPTION	UNITS	ADF RATE GPD	ADF GPD	COMMENTS
1 BEDROOM RESIDENTIAL UNITS	2	90	180	
2 BEDROOM RESIDENTIAL UNITS	15	180	2,700	
3 BEDROOM RESIDENTIAL UNITS	93	270	14,310	
4 BEDROOM RESIDENTIAL UNITS	9	360	3,240	
RESTAURANT (2 MEALS PER DAY)				NOTE 1
SEATS	161	20	3,220	
EMPLOYEES	18	15	270	
SPECIAL EVENT TENT (ASSEMBLY AREA)				NOTE 2
AVG. NUMBER OF PEOPLE PER EVENT	100	2	200	
ADMINISTRATION / MAINTENANCE BLDG.	2	240	480	
MARINA				
PUBLIC SLIPS	3	30	90	NOTE 3
GIFT STORE				
EMPLOYEES	2	15	30	

SUBTOTAL	24,720	GPD
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PROPOSED USES ASSOCIATED WITH REDEVELOPMENT OF BARRACKS (SEE NOTE 4)

DESCRIPTION	UNITS	ADF RATE GPD	ADF GPD	COMMENTS
1 BEDROOM RESIDENTIAL UNITS	5	90	540	
2 BEDROOM RESIDENTIAL UNITS	6	180	1,080	
3 BEDROOM RESIDENTIAL UNITS	8	270	2,160	

SUBTOTAL	3,780	GPD
-----------------	--------------	------------

TOTAL SEWER FLOW	28,500	GPD
ALLOWABLE III FLOW	3,000	GPD
TOTAL FLOW	31,500	GPD

AVAILABLE OBD SYSTEM TREATMENT CAPACITY	34,500	GPD
EXCESS CAPACITY	3,000	GPD

NOTE 1 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, THE MAXIMUM SEATING CAPACITY IS 161 FOR THE RESTAURANT AND BAR. THE RESTAURANT HAS A TOTAL OF 18 EMPLOYEES SERVING 2 MEALS A DAY (LUNCH AND DINNER). THE AVERAGE DAILY NUMBER OF MEALS SERVED (BASED UPON PEAK MONTHS OF JULY AND AUGUST) ARE:

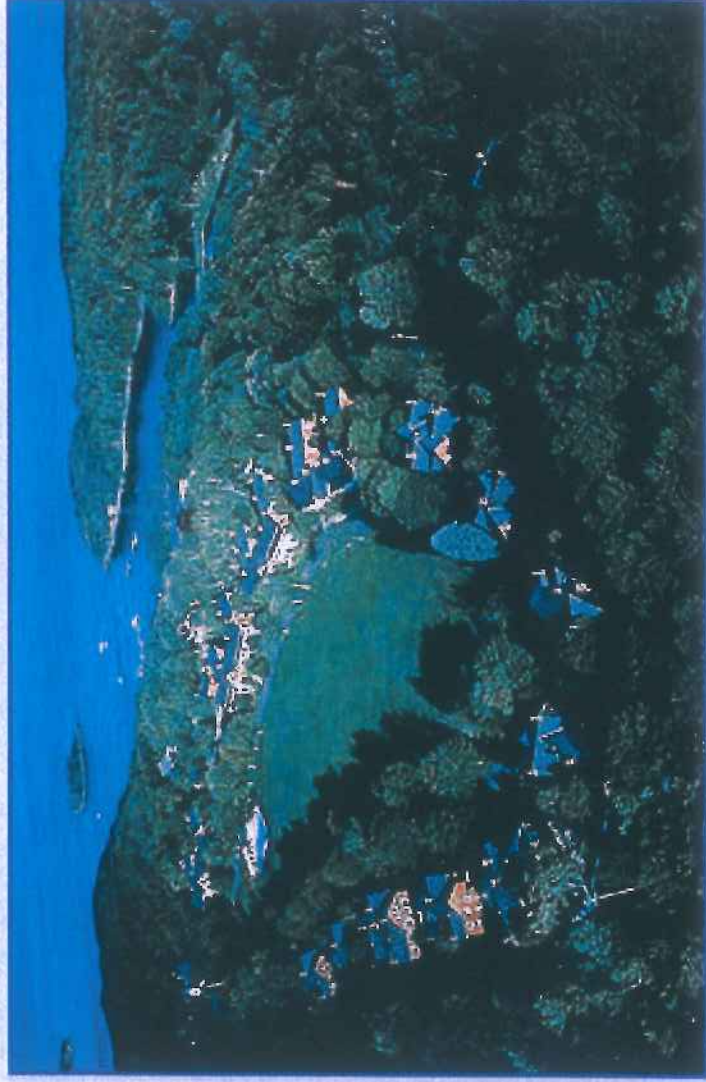
- 100 PEOPLE AT LUNCH
- 100 PEOPLE AT DINNER

NOTE 2 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, THERE ARE A MAXIMUM OF 17 SPECIAL EVENTS IN A FULL SEASON WITH AN AVERAGE OF 100 PEOPLE PER EVENT. THE STAFF AT THE RESTAURANT SERVE THE SPECIAL EVENT ACTIVITY; THEREFORE, SPECIAL EVENT STAFF ARE INCLUDED UNDER THE RESTAURANT.

NOTE 3 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, WHILE PROVISIONS FOR PUMP-OUT ARE AVAILABLE FOR THE PUBLIC MARINA SLIPS, THESE FACILITIES HAVE NEVER BEEN USED BY THE GENERAL PUBLIC.

NOTE 4 - PROPOSED USES ASSOCIATED WITH THE REDEVELOPMENT OF THE BARRACKS BUILDING IS BASED UPON INFORMATION PROVIDED BY DAVID BATEMAN, DEVELOPER OF PROJECT.

THE DEVELOPMENT OF THE DOUBLE BARRACKS & HOSPITAL



The Inn At Diamond Cove

Confidential -- Solely for the Use of
DCHA Homeowners

Background Introduction

Last September a survey was taken of the Diamond Cove Homeowners Association to determine what you wanted the Board of Directors to focus on in the coming year. The number one priority, as ranked by the majority of the homeowners, was to "Develop A Plan To Deal With The Hospital And Double Barracks".

Since that time your board has spent considerable effort accomplishing this mandate, and is pleased to announce that we do have a plan for your consideration.

This narrative will be one of two written communications you will receive from the board, and it will provide a general outline of the development project, including the pros and cons, and our recommendation.

The second communication, planned to be distributed on June 1st, will include a copy of a legal document necessary to amend our covenants to allow the development to proceed, plus a ballot for each homeowner to cast, either in favor or opposition to the project. You will have approximately 3 weeks to cast your vote, and during that time, a series of meetings, along with an email process, will be set up to answer any questions.

This is a complex project. It involves DCHA, the City of Portland, the developer, and all the agencies that govern what takes place at Diamond Cove. As such, it will require your careful review and understanding of all the facts so that you can make a thoughtful decision that is in the best long term interest of Diamond Cove.

The developer has negotiated with the City of Portland a one year option to purchase the Hospital building, and at this time there is no action for the DCHA. Present thinking by the developer is that the Hospital would most likely lend itself to a 3-4 unit residence.

The Project - Double Barracks

- **Name:** The Inn at Diamond Cove
- **Developers:** Hart Hotels and Charles Deslauriers
 - Hart Hotels, Inc. is the developer, owner and manager of hotels and restaurants including the Four Diamond awarded Portland Harbor Hotel. <http://www.harthotels.com/>
 - Charles DesLauriers has been involved in the development of dozens of hotels throughout the United States and Canada.
- **Owners Representatives:**
 - **Construction Manager:** Portland Builders
 - **Development Consultant::** Bateman Partners, LLC
 - **Project Architect:** David Lloyd A.I.A
 - **Project Engineer:** Deluca Hoffman Associates
Joseph Laverriere
- **Concept:** Create a destination condominium hotel operating for 6 month season
 - Renovate the Double Barracks up to 22 condominium units
 - Each unit sell will be able to participate in hotel rental program
 - Units projected to rent for approximately \$350 per night in season.
 - **Development Timeframe:** Construction starts this fall and projected to be completed for 2008 season
- **Services/Amenities:**
 - The Inn at Diamond Cove will have its own swimming pool
 - The Inn at Diamond Cove will operate its own van service
 - The Inn at Diamond Cove will provide its own exterior maintenance
 - The Inn at Diamond Cove will have its own security service.

Double Barracks Project Description

- * The proposed concept is based on a format which has been successfully used in prior developments by this Developer.
- * The double barracks building would be renovated to accommodate up to twenty two (22) condominium units which could be placed into a hotel rental pool.
- * The property would operate as a destination hotel for a six month season each year (May thru October).
- * The plan for the renovated double barracks would provide a main entrance at the rear of the building within the courtyard, framed by the two end wings. An elevator and entry element would be incorporated into a new addition at the center.
- * Directly across from the entry courtyard (on a portion of what currently is open space recreation area) will be a new swimming pool and service bar.

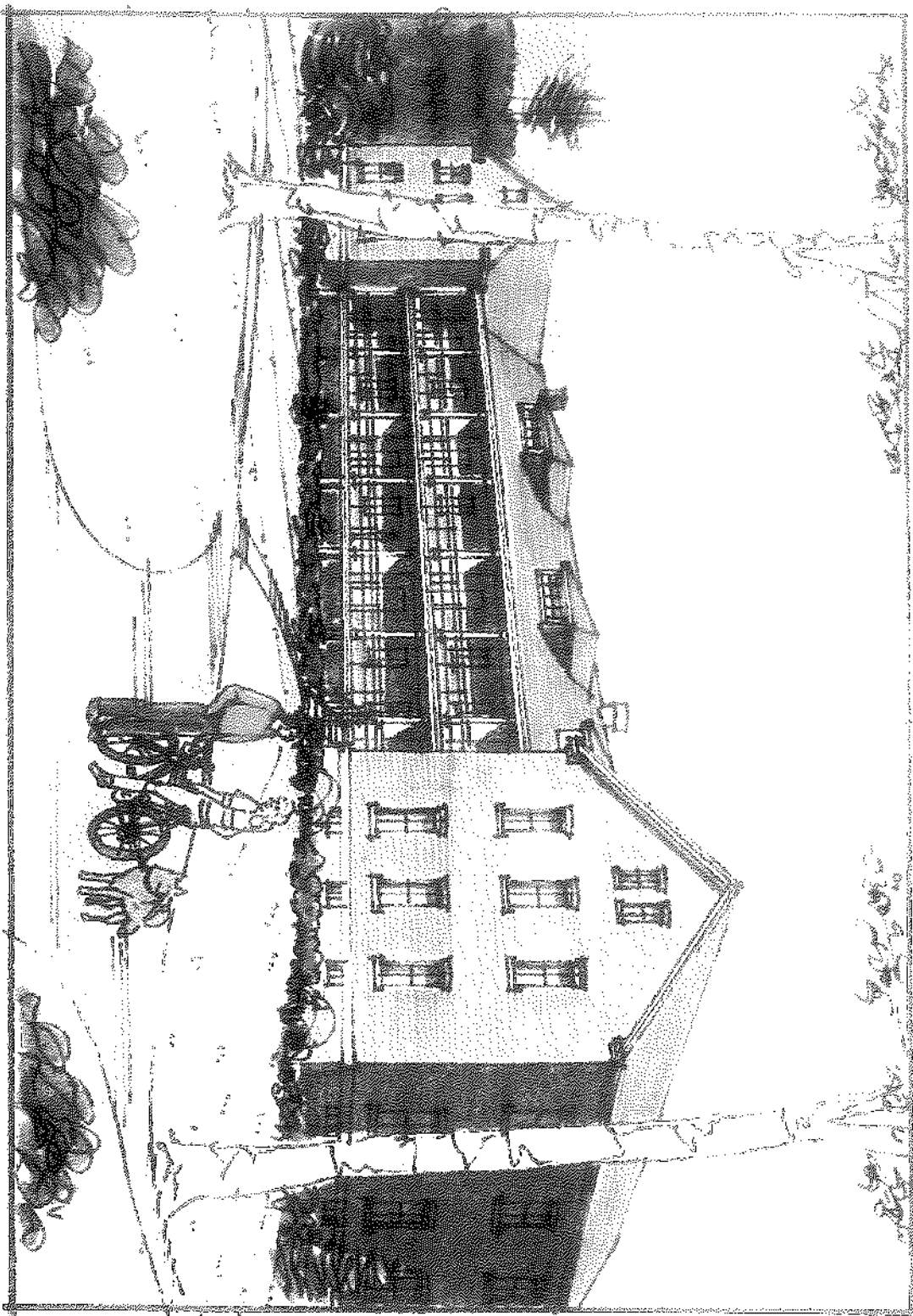
Architect Rendering - Double Barracks



Rear façade facing away from the parade ground

Confidential -- Solely for the Use of
DCHA Homeowners

Architect Rendering - Double Barracks

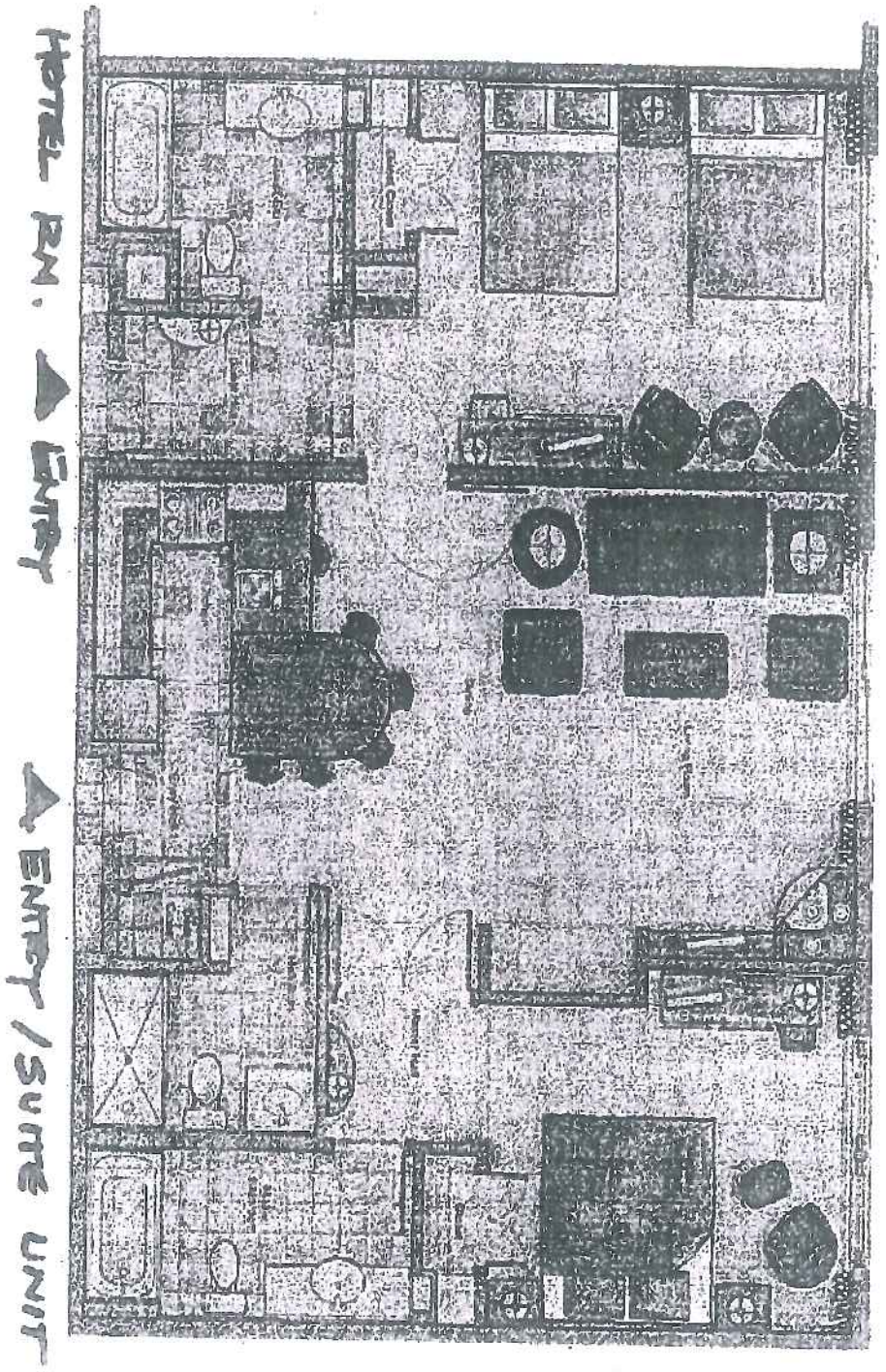


Facade facing the parade ground

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DCHA Homeowners

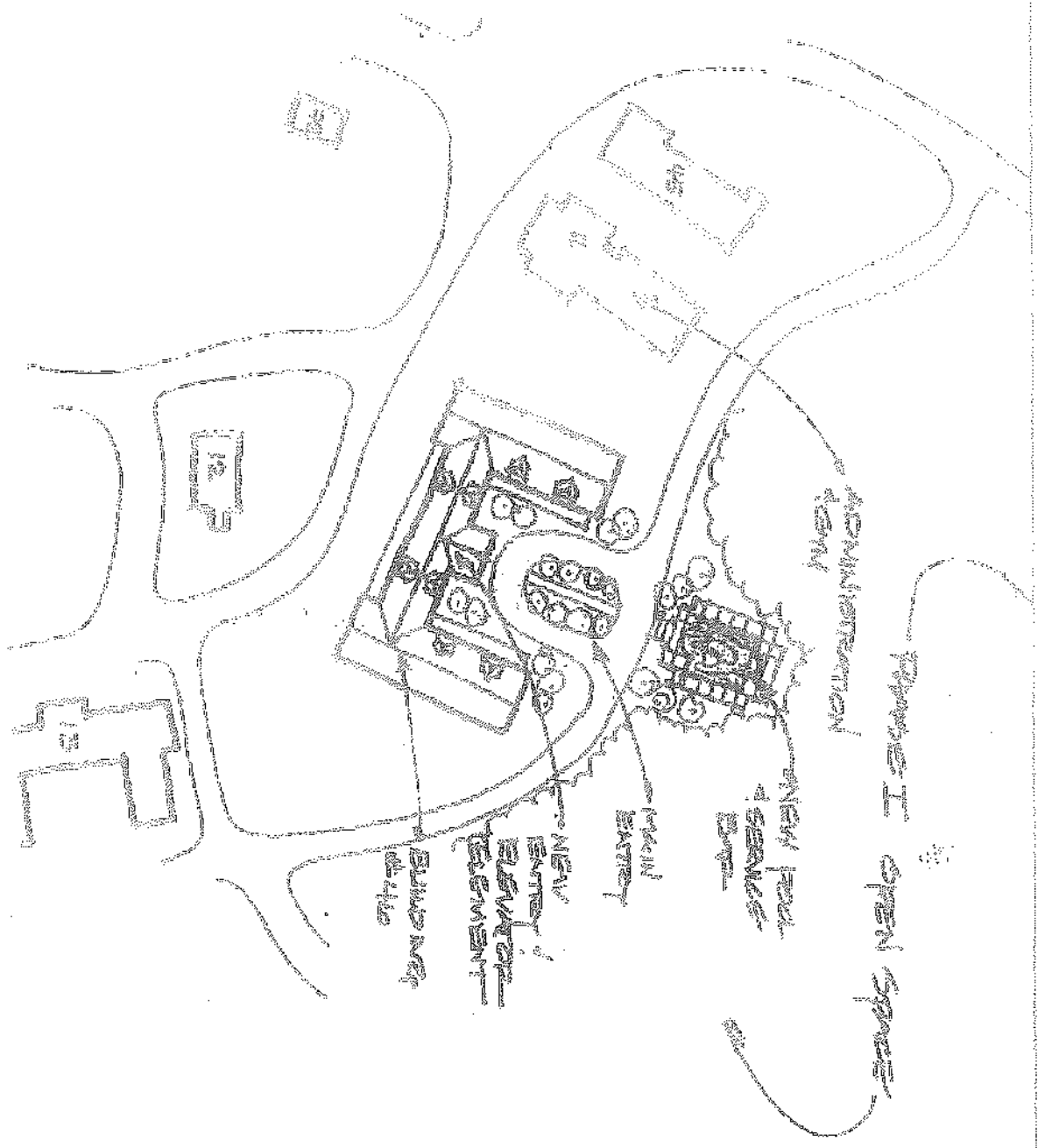
Inn at Diamond Cove: A Two Bedroom Unit

Example



Confidential -- Solely for the Use of
DCHA Homeowners

Yan At Diamond Cove Site Plan



Confidential -- Solely for the Use of
DCHA Homeowners

Benefits To Diamond Cove Homeowners

- **Revenue:**
 - At current rates, the Inn will pay approximately \$130,000 per year in dues, if all 22 units are built, starting upon completion. This represents 17% of total dues presently being collected. Since the Inn will have its own pool and van, thereby mitigating demand on our infrastructure. The additional revenue should provide DCHA more flexibility in covering operating and capital costs.
 - The Inn will pay a negotiated fee for use of the administration building and/or gym for conferences or functions.
- **Property Values:**
 - The Inn will market to upscale clients who could become future home buyers.
 - The relief on escalating dues should make properties more attractive to buyers
 - For those DC homeowners who wish to rent their units through the existing rental program, the possibility exists that corporate conference groups would find that to be an attractive option.
 - The marketing of the Inn will create more awareness of Diamond Cove
 - The elimination of an eyesore should enhance property values.
- **Service Support:**
 - The restaurant, marina, general store, and spa should all benefit from the existence of the Inn. They may also find it beneficial to extend their season.
 - Additional leverage with Casco Bay Lines to improve schedules
 - The Inn may institute a private water transportation service available to DCHA residents
 - With 24 hour security and professional management, issues with excessive, late night noise should be mitigated.

Requirements of Diamond Cove

- Diamond Cove Homeowners Association must agree to the following terms and conditions in order for the development to move forward:

- DCHA will allow the double barracks to exist within the association, and as provided for in the declaration, as a condominium.

- DCHA will waive the previous homeowner's assessments

- Monthly assessments for all units within the Double Barracks will commence July 1, 2008 (projected completion date) or upon the issuance of a Certificate of Occupancy by the City of Portland, whichever comes first.

- Any improvements required on the waste water beds and related equipment will be paid for, up front, by the developer. Subsequently, DCHA will reimburse the developer one half of the cost, up to a maximum of \$100,000, to be paid in equal installments over five years. This reimbursement will start upon the commencement of the monthly assessments. Both parties will work together during the construction phase of any bed upgrades to insure that the work complies with all regulations and is competitively priced.

Requirements of Diamond Cove (Continued)

- DCHA will allow the use of the administrative building and gym to the Inn for functions at a mutually agreed upon fee.
- DCHA will allow the Inn to be responsible for all exterior repairs and maintenance of the double barracks, and will make a pro-rata adjustment to the monthly dues to reflect the value of the work..
- DCHA will cooperate with the developer with the issuance of local, state and federal permits.
- Developer will install a swimming pool for the use of the Inn's owners and guests on a portion of what currently is open space recreation area.
- Developer will operate its own van service to transport guests and owners around the island. The developer will need City approval to operate the same. The Inn also anticipates operating one or two stretch golf carts. The condominium unit owners will not be allowed to own or operate golf carts without approval by both the City of Portland and the DCHA Board.
- Since the Inn will provide its own transportation and operate its own swimming pool, there will be no rental fee assessed.
- Developer will abide by all Design Review requirements, pay all impact and barge landing fees.

Possible Negatives of the Development

- There will be more people at Diamond Cove. For example, if all 22 units are completed, there will be 66 more beds on the island. Existing homeowners would be sharing beaches, tennis courts, parade ground, restaurant, general store, with the additional people.
- The net revenue gain could be reduced by up to \$20,000 per year for the first 5 years to pay for DCHA cost sharing of the waste water upgrade. This assumes that the upgrade would cost \$200,000 or more to construct, which it may or may not. DCHA share is capped at a total of \$100,000.
- DCHA will be releasing all liens on the properties for past assessments due. The current owner, The City of Portland, has indicated that it will not pay any such assessments.
- New assessments on the double barracks building commence upon completion of the project or July 1, 2008 whichever comes first.

Relevant Facts

- Tear Down
 - Both buildings are designated as historic and therefore protected structures. According to the Portland Code of Ordinances for historic buildings, the owner must preserve protected structures. "All structures located in a historic district shall be preserved against decay and deterioration by the owner who has legal custody and control. This includes preserving the foundation, floor supports, structural members, walls, partitions, ceilings, roofs, fireplaces, chimneys, and includes weather protection".
 - For demolition, a Certificate of Hardship from the City of Portland Zoning Board of Appeals is needed. This requires that engineering studies be done, renovation estimates, 2 appraisals, market study, a public hearing where the applicant must make a clear case showing that a delay will result in undue hardship of a unique or exceptional character which could not have been avoided. Undue hardship does not include financial loss. If the condition of the structure is claimed to prevent reasonable use the applicant must prove that such condition is not the result of acts of neglect by the owner or his predecessors in title. As the City of Portland is the owner of the buildings only they can apply for a certificate of hardship. Early estimates of several years ago for a tear down were in the \$500,000 range.

Relevant Facts (Continued)

• Tear Down (Continued):

- Diamond Cove has few opportunities for additional revenue to offset rising costs. Once torn down the potential dues from the existing lots within these two buildings will be gone.
- It is unlikely that the City will consider tearing down these buildings; a.) reduce potential for tax revenue, b.) historical preservation c.) the early estimates of several years ago for a tear down were in the \$500,000 range. Rather the City is more likely to transfer the buildings to a developer, qualified or not.
- The movie theater and one of the officer's quarter's buildings were lost in recent years to fire and vandalism. The double barracks and hospital buildings are the two largest remaining structures of the original Ft. McKinley. A restoration will save a significant historical structure and maintain the character of Diamond Cove.

From: "william d robitzek" <wrobitzek@bermansimmons.com>
To: <rwk@portlandmaine.gov>
Date: 5/9/2008 9:48:19 AM
Subject: Inn at Diamond Cove Project

Rick,

Attached are two documents. The Word document is the DIA's proposal for additional language regarding transportation and enforcement. There are good reasons, which I will be glad to share at the upcoming Workshop, for every element included in this proposal.

The scanned document is intended to correct a statement made by Ron Ward in his recent letter to you and a statement by Mr. Bateman that the so-called Audubon Agreement only affects Phase II. Ron apparently mistakenly sent you the wrong agreement as an attachment to his letter. I am including the Agreement and Amendment referred to at the last Workshop regarding the legal interests of third parties in various aspects of the Phase I development, including the issue of transportation.

If questions, please call my cell, 212-7709. I did not have Penny's email and would appreciate your forwarding this to her.

Thanks,
Bill

William D. Robitzek
Berman & Simmons
129 Lisbon Street
Lewiston, Maine 04240
(207) 784-3576
Assistant: Amy Christiansen x218

-----Original Message-----

From: Berman/Simmons [mailto:Berman/Simmons]
Sent: Thursday, May 08, 2008 7:16 PM
To: william d robitzek
Subject: Scan

This scan has been sent from Konica4.

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender at once.

CC: <mec@portlandmaine.gov>, "Ronald Ward" <rnw@dwmlaw.com>

AGREEMENT

This Agreement is entered into this 1st day of March, 1988 by and between Diamond Cove Associates, of Portland, Maine, Maine Audubon Society, of Falmouth, Maine, Conservation Law Foundation, of Boston, Massachusetts, and Island Institute, of Rockland, Maine.

WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development for property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 134 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

WHEREAS, DCA received Site Location of Development Law approval (hereinafter "Site Location Order") for Phase I of the project from the Maine Department of Environmental Protection (hereinafter "DEP") on December 10, 1986; and

WHEREAS, DCA received approval (hereinafter "Waste Discharge License") for the discharge of 40,000 g.p.d. of wastewater from Phase I of the project from the DEP on December 10, 1986; and

WHEREAS, DCA has applied to the DEP for approval of Phase II of the project under the Site Location of Development Law and said application has been tabled; and

WHEREAS, DCA has applied to the DEP for an amendment to its existing Waste Discharge License to provide for an incremental discharge of 8,500 g.p.d. of wastewater associated with Phase II of the project; and

WHEREAS, DCA has applied to the United States Environmental Protection Agency (hereinafter "EPA") for a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit to serve the project; and

WHEREAS, the EPA has issued a draft NPDES permit, dated December 7, 1988, which draft permit would authorize a flow of 40,000 g.p.d. treated to a "zero fecal coliform" standard from Phase I of the project; and

WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the 8,500 g.p.d. increment to the Waste Discharge License; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society, Conservation Law Foundation and Island Institute to the issuance of the NPDES permit and the 8,500 g.p.d. incremental wastewater discharge; and

WHEREAS, Maine Audubon Society and Island Institute are concerned about a variety of non-wastewater related issues associated with both Phase I and Phase II of the project including but not limited to the capacity of DCA to complete the project in a manner which will fit harmoniously into the environment without adverse impacts on the visual characteristics, historic values and unusual natural areas on the Island; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society and Island Institute to Phase II of the project as that opposition relates to some non-wastewater related issues.

NOW THEREFORE: In consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows:

A. Wastewater Discharge

1. DCA will permanently withdraw its application for an 8,500 g.p.d. increment to its existing Waste Discharge License.

2. DCA will take all necessary steps to amend the draft NPDES permit, dated December 7, 1988, to provide that:

a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.

b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average. It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.

3. DCA will take all necessary steps to amend its DEP Waste Discharge License to provide that:

- a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.
- b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average. It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.
- c. The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the NPDES permit.
- d. DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

4. Independent of the Waste Discharge License, DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

5. The total combined flow from Phase I and Phase II of the project shall not exceed 40,000 g.p.d. and DCA will not petition any state or federal agency to increase its wastewater discharge above 40,000 g.p.d. The combined flow from Phase I and Phase II of the project shall not exceed the "zero fecal coliform" level. This Agreement is not intended to limit DCA's rights to mix Phase I and Phase II wastewater provided that government approvals are obtained. Accordingly, DCA reserves

the right to amend its DEP waste discharge license and the NPDES permit, as drafted or as finally issued, to provide for comingling of Phase I and Phase II wastewater.

6. DCA will take all necessary steps to amend its Site Location Order to reflect the change in location of the waste discharge pipe to Pleasant Cove.

7. DCA will take all necessary steps to obtain a submerged lands lease from the Bureau of Public Lands of the Maine Department of Conservation and an Army Corps of Engineers permit for the discharge pipe location at Pleasant Cove.

8. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose final issuance of the draft NPDES permit, dated December 7, 1988, as above amended, and Maine Audubon Society and Conservation Law Foundation will inform EPA that they agree with issuance of the NPDES permit as amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose a State of Maine certification, under Section 401 of the Clean Water Act, that the NPDES permit, as above amended, will be in accordance with applicable state laws. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, any aspect of the NPDES permit as above amended or the Section 401 certification.

9. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose the above amendments to the Site Location Order and the Waste Discharge License, and Maine Audubon Society and Conservation Law Foundation will inform DEP that they agree with issuance of the Order and the License as above amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose issuance of the Bureau of Public Lands submerged lands lease and the Army Corps of Engineers permit for the relocated waste discharge pipe, and Maine Audubon Society and Conservation Law Foundation will inform the Bureau of Public Lands and the Corps of Engineers that they agree with issuance of the lease and the permit. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, the amendments to the Site Location Order and the Waste Discharge License or issuance of the submerged lands lease or the Corps of Engineers permits.

10. The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. The parties also recognize that DCA intends to have a system for disposing of wastewater in place by June 1, 1989. Therefore, if it appears on April 1, 1989 that the necessary

Governmental authorizations for the wastewater discharge will not be issued to DCA before June 1, 1999. Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver (intended to last not more than 1 year) from the Maine Department of Human Services for the use of holding tanks. Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver. DCA agrees to use said holding tanks only until such time as it may legally discharge the wastewater.

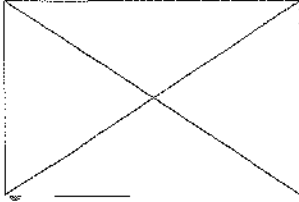
11. In the event that the state and federal agencies, or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the objectives of this Part A cannot be accomplished, then the obligations of the parties under this entire Agreement shall become null and void.

B. Cooperation in Replication

DCA will cooperate with Maine Audubon Society and Conservation Law Foundation in efforts they undertake to have other wastewater treatment facilities replicate the "zero fecal coliform" discharge system by making available to said organizations engineering and performance data for the DCA wastewater treatment facility.

C. Density

DCA agrees to limit the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including currently approved commercial and recreational uses, to not more than 173 and agrees to seek an amendment to its Site Location Order to reflect such a limitation. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to obtain an amendment to its Site Location Order to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.



1. The square area is a square of 16 feet. Each
side is 4 feet. The area is 64 square feet.
2. The square area is a square of 16 feet. Each
side is 4 feet. The area is 64 square feet.
3. The square area is a square of 16 feet. Each
side is 4 feet. The area is 64 square feet.
4. The square area is a square of 16 feet. Each
side is 4 feet. The area is 64 square feet.



F. Disclosures

1. DCA agrees to provide prospective purchasers of "condominium" units and single family house lots with copies of the Declaration of Covenants and Restrictions and copies of all local, state and Federal licenses. DCA will seek to have such a condition placed in its Site Location Order.

G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal any and all issues that may arise during Site Location Law Phase II consideration by the DEP and BEP that are not expressly dealt with by the covenants in this Agreement.

H. Interpretation; Contact; Authorization

1. This Agreement contains all of the agreement of the parties, and any prior arrangements are hereby terminated and superseded.

2. The terms of this Agreement are contractual and not a mere recital.

3. The signatories hereto represent that they are duly authorized to sign this Agreement.

I. Interpretation and Remedies

The parties agree that the terms of this Agreement shall be interpreted according to Maine law and that an action to enforce this Agreement may be brought in a Maine court of competent jurisdiction.

The parties recognize that this Agreement requires actions with respect to third parties, such as government agencies, the Diamond Cove Homeowners Association and Great Diamond Island residents. The parties also recognize that breach of many of the terms of the Agreement will result in irreparable harm, harm that is difficult to assess, and/or harm that is difficult to measure financially--this is particularly true with respect to environmental harm. Thus, the parties agree that in most instances specific performance is the appropriate remedy for any breach of this Agreement.

In some instances, however, specific performance may not be adequate to fully remedy the harm created by a breach. In this situation, in addition to the remedy of specific performance, a party harmed by the breach may seek other legal and equitable remedies.

If specific performance will not in any way remedy harm created by a breach, the parties agree that specific performance is not the appropriate remedy for breach. In this situation, the parties agree that a party harmed by the breach may seek other legal and equitable remedies.

The parties also agree that the breaching party will not challenge specific performance as a remedy for the breach, unless specific performance will in no way remedy the harm caused by the breach.

J. Confidentiality

The parties to this Agreement agree that the contents of this Agreement may be made public once it is signed.

K. Binding on Successors

This Agreement is binding on the successors in interest and assigns of the parties.

IN WITNESS WHEREOF, the undersigned have set their hands this 24th day of March, 1989.

DIAMOND COVE ASSOCIATES

By: David Bateman

David Bateman, Partner

MAINE AUDUBON SOCIETY

By: Karin A. Tilberg

Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION

By: Richard S. Emmet

Attorney

ISLAND INSTITUTE

By: Philip Conkling

Philip Conkling
Executive Director

AMENDMENTS TO AGREEMENT

The Agreement, dated March 2, 1989, by and between Diamond Cove Associates, Maine Audubon Society, Conservation Law Foundation and Island Institute is amended as follows:

P.1 ¶ 2: WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development on approximately 198 acres of the property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 198 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

P.1 ¶ 3: WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the \$,500 g.p.d. or any other increment to the Waste Discharge License; and

P.3 ¶ 3 c: The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the December 7, 1988 draft NPDES permit.

P.3 ¶ 6 2nd sent.: The dollar amount to be guaranteed in such account shall be sufficient to cover the repair, maintenance and reconstruction costs of the wastewater treatment facility adjusted for inflation as determined by the DEP.

P.4 ¶ 10: The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. DCA has stated that it needs a wastewater disposal system in place by June 1, 1989. Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver from the Maine Department of Human Services for the use of holding tanks (such waiver to last not more than 1 year from its issuance, or until such time as it may legally discharge the wastewater, whichever is shorter). Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver.

P.5 ¶ 11: In the event that the 5 state and federal agencies (DEP, DHS, BFL, EPA and ACE mentioned above), or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the permits of this Part A cannot be obtained,

then the obligations of the parties under this entire Agreement shall be null and void.

P.5 ¶ C. Density

DCA agrees to limit permanently the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including the currently approved 5 commercial and 2 recreational uses, to not more than 173 on the entire 198 acre DCA property. DCA shall take all necessary steps to amend to its Site Location Order and its Phase II Site Location application to reflect such a limitation; pending approval of such an amendment, DCA will abide by the limitation herein. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to amend its Phase II Site Location application to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.

P.6 ¶ D sub. ¶ 1. Motor Vehicles and Public Access

1. DCA agrees that no motor vehicles of any kind (automobiles, golfcarts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the Island. The only exceptions shall be fire equipment, ambulances, public safety vehicles and designated "taxis" (shuttle vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. All construction vehicles, equipment and materials must be landed and off-loaded or loaded on DCA property. To the extent that this condition is not already a part of the Site Location Order--paragraph 11--DCA will take all necessary steps to amend the Order to reflect this limitation. Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones. This provision shall become part of the Declaration of Covenants and Restrictions. DEP REC

P.7 ¶ G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal

and all issues that may arise during these in consideration by the DEP, DEP or other agencies that are not expressly agreed to in the covenants of this agreement.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates below indicated.

3/10/89
By: [Signature]
Richard Johnson, Partner
DIAMOND COVE ASSOCIATES

By: [Signature]
Keris Tilberg, Esq.
Attorney
MAINE ADONSON SOCIETY

By: _____
Attorney
CONSERVATION LAW FOUNDATION

March 9, 1989
By: [Signature]
Philip Coppling
Director
ISLAND INSTITUTE

1301F

Whereas the Inn at Diamond Cove LLC has proposed the development of two dilapidated, but historically significant, buildings within the IR-3 zone on Great Diamond Island by the creation of residential condominiums units;

Whereas the ordinances for the IR-3 zone require a transportation plan "primarily with a pedestrian orientation";

Whereas Diamond Cove's use of motor vehicles is restricted by various legal requirements including but not limited to the zoning ordinance, the Conditional Rezoning amendments, DEP site reviews and an agreement with several public non-profit organizations;

Whereas the Diamond Island Association, which represents the residents of the cottage community on the southern side of the island, has raised concerns about the increased traffic burden which the proposed development could place on their road system, environment and culture;

Whereas Diamond Cove's current permissible use of the roads on the southern side of the island is a route traversing the length of the island, through the cottage community, to the state pier at the southern tip of Great Diamond Island, via Nancy Lane, a right of way granted to the City of Portland over private property;

Whereas Diamond Cove has its own pier virtually adjacent to the proposed development;

Whereas the developer's representative, David Bateman, at the public workshop session for this project stated that he "will guarantee that [the developer has] no intention" of using the pier at the southern end of the island "under any circumstances" because "it just can't work for us" and therefore the proposed amendment below is consistent with the developer's plans and intentions,

NOW THEREFORE, the Conditions and Restrictions for Diamond Cove are amended so as to add the following language to section 9(a):

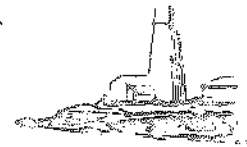
Transportation Restriction. No person or entity ever associated with the properties (described as Buildings 19 and 46) which are the subject of this amendment, including but not limited to their construction, grounds, operations, occupation, management, ownership or use of shall use, operate or cause to be used a motor vehicle south of the boundaries of Diamond Cove, except in case of a fire or medical emergency. This amendment applies, but is not limited, to the use of vehicles for construction, maintenance, service and the common transportation of goods and passengers related to these properties. "Motor Vehicle" as used herein is as defined in 29-A M.R.S. §101 (42) but also includes snowmobiles and all-terrain vehicles.

Notice to Purchasers and Renters. The above language shall be included in the covenants

and rules governing the units in the two properties covered by the amendment. The language shall also be made a part of any materials provided to any prospective purchaser, renter or repurchaser of any of the units.

Other Conditions and Restrictions. All other Conditions and Restrictions previously imposed by the City of Portland on the Diamond Cove development shall apply to these properties and their units, owners and users, including specifically, but without limitation, section 11, regarding the binding of all successors and assigns of the current petitioners, as well as the individual unit owners and users, to all those Conditions and Restrictions as well as to this Restriction.

Enforcement. If there is a separate condominium or owners association relating to either of the two properties, that association and the Diamond Cove Homeowners Association shall, in the first instance, be responsible to enforce this restriction. Violations of the above section, if reported to the City of Portland Code Enforcement Office, shall be prosecuted by it. Any person or entity found in violation of the above restriction shall be liable for a fine of \$500 for the first offense and \$1,000 for each subsequent offense. If more than three persons or entities associated with the properties which are subject to this amendment are found to have violated these restrictions, then the Planning Board may, upon presentation of a request by a property owner on Great Diamond Island, make a recommendation to the City Council to revoke that part of the amendment permitting the rental or use of the properties or any of the units as a hotel or inn. Any property owner on Great Diamond Island may file suit for any damages caused by the breach or for any appropriate equitable remedy, regardless of the actions of the Code Enforcement Office, Planning Board or City Council regarding a breach.



To: Chair Tevanian, Members of the Portland Planning Board, and to
Richard Knowland, Senior Planner
Date: April 18, 2008
Re: The Inn at Diamond Cove, LLC; Conditional Zoning Amendment
Diamond Cove, Great Diamond Island

As one of the original signatories to the agreements governing the development of Fort McKinley, on Great Diamond Island, we are writing to express some concerns regarding the proposed conditional zoning amendment.

Simply stated, the process for restoring the Double Barracks and Hospital buildings to productive property generating real estate taxes and assessments can be expedited by the applicant's strict adherence to the conditions of the Audubon Agreements of 1985 that allowed any development of Fort McKinley to go forward. Those agreements run with the land and are binding upon the original owner, its successors and assigns.

Specifically, our concerns at this point include:

- (1) Wastewater Treatment and Capacity
As Mr. Knowland states in his memo to the planning board, the applicant has submitted insufficient information to date to ensure that the proposed project will comply with standards. We look forward to further information.
- (2) Transportation Services
 - Transportation to and from the proposed development must be limited to and from the dock at Diamond Cove. This condition was part of the original agreement to protect the environment of Great Diamond Island, and it is an even more critical issue today than it was twenty years ago. The isthmus at the State Pier (southern end) has eroded, due partially to increased vehicular traffic. The proposed Inn should not be considering transportation to this dock at all for its guests/tenants or its service needs (laundry, food service, personnel, etc.).
 - Mr. Ward, representing The Inn at Diamond Cove, LLC in his April 8 letter to Mr. Knowland, says that "the Inn will provide its own transportation facilities consistent with the 'transportation plan and golf cart amendments' for Diamond Cove." Transportation services at Diamond Cove are indeed a sensitive issue on Great Diamond Island, and for good reason. On August 16, 2004, the Portland City Council instructed Diamond Cove Homeowners' Association to submit a transportation plan within 60 days as a condition of the rezoning of IR3. Nearly four years have passed and the transportation plan which Mr. Ward references has not yet been approved by the City. In fact, it has not been submitted to or approved by any of the other signatories of the Audubon Agreements.
- (3) Common Land and New Structures
The plan for the Inn includes new structures and the use of common land, both of which are not allowed under the Audubon Agreements. These conditions were laid down to protect the historical integrity of Fort McKinley and the environment of Great Diamond Island. The original owners gave up these development rights in order to gain permits for the rest of their project. The words "in perpetuity" have purpose and meaning.

We look forward to a successful solution for the two derelict properties at Diamond Cove. CBIDA applauds the efforts to restore these historic buildings, but expects the original agreements to be honored. We encourage you to keep the relevant and concerned parties informed: Audubon Society, Island Institute, CBIDA, and the Diamond Island Association.

Sincerely,


Robert Laughlin

President, Casco Bay Island Development Association
grtdia@aol.com 207-799-9285

Rick Knowlan - The Inn at Diamond Cove

From: "Condon, John" <jcondon@acadiabenefits.com>
To: "rwk@portlandmaine.gov" <rwk@portlandmaine.gov>
Date: 4/22/2008 8:21 AM
Subject: The Inn at Diamond Cove
CC: 'David Peadleton' <dop@portlandmaine.gov>

Good morning, have you had any discussions with the developer on Fire and Rescue issues? The Great Diamond Island Volunteer Fire and Rescue Company members do not take shifts for coverage for Rescue. At any given point in time neither of the two EMT's may be on the island. We currently have 5 First Responders and they also may not be on the island. This means that in the event of a medical emergency, the response would be from the mainland via a Paramedic team coming from Portland on the Fireboat. Each year we meet with all of the residents and explain our services and the fact that they are an hour to Maine Medical. We also meet with the owners of Diamond's Edge to make certain they understand the response time. Thanks for your help. John Condon, Fire Captain

John M. Condon, CLU
Acadia Benefits, Inc.
111 Commercial St., 5th Flr.
Portland, ME 04101
P: (207) 761-2426 ext 228
F: (207)761-0976
jcondon@acadiabenefits.com
www.acadiabenefits.com

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From: <byoung@levetrockwood.com>
To: <sh@ci.portland.me.us>, <rwk@portlandmaine.gov>
Date: 5/13/2008 2:36:53 PM
Subject: Conditional Zoning amendment proposed by The Inn at Diamond Cove LLC -Please include in the record for the Workshop on May 12, 2008

Dear Sirs:

I am a property owner at Diamond Cove (Unit 16D) and have reviewed the file for the Conditional Zoning Amendment proposed by The Inn at Diamond Cove LLC. I am writing to express certain questions and concerns that I believe need to be addressed before the proposal can be considered complete and appropriate for consideration on the merits by the Planning Board.

I would ask that this letter be read into the record of the Workshop on this proposed Amendment being conducted later this afternoon.

My concerns are as follows:

1. Wastewater Treatment.

DEP:

Michael Demarest's 5/8/08 email indicates that the DEP has some continuing work and concerns to address. In order for this application be considered to be complete and ready for Planning Board determination, shouldn't the DEP have an opportunity to do that?

Bedroom calculations:

The applicant's materials indicate that at least 8 of the units will have 5 to 7 queen size beds, so will be able to accommodate between 10 and 14 persons. Shouldn't the flow assumptions for these units be based on at least 5 bedrooms, given the bedding configurations? Perhaps the applicant could provide the occupancy rates and head counts that the applicant is using in its investor and financial materials - this might give a sense of appropriate assumptions as to usage?

Sufficiency of the analysis presented to date:

Is the DeLuca -Hoffman Associates April 29, 2008 letter sufficient for the Planning Board to make an informed decision on this matter? It appears to be an informal letter - doesn't a proposal of this scope require a full engineering study and professional opinion to be delivered?

Assumptions as to flow:

The applicant's engineering data appears to rely on information provided by the commercial interests (restaurant), which will have a commercial interest in the Hotel since they will be doing the food service. Shouldn't information be provided by an independent, uninterested party?

2. Open Space.

Planning Board conversion of Open Space to private use:

The Open Space designation was considered to be in perpetuity. What is the authority of the Planning Board to - by a simple zoning amendment proposed by the commercial developer - turn the Open Space over to the commercial developer for primary use of a swimming pool and commercial bar area?

Insufficiency of information as to what is being requested:

In order to make a decision on the Open Space, doesn't the Planning Board need a survey locating the boundaries of the parcel to be converted and showing the improvements to be built?

Otherwise, how do you know how much of the Open Space parcel is the Planning Board being asked to convert to a private use? The plans submitted do not delineate the exact location, nor do they describe precisely the scope of what the use will be, i.e. dimensions of the pool, improvements, one pool or multiple pools (wading), size. These are questions that should be answered.

Effect on neighbors and other residents of Diamond Cove:

The Planning Division's memo of May 9, 2008 indicates that the land now owned in common by the DCCHA will be owned by the privately hotel but concludes that "it is unlikely this loss of land will adversely affect open space at Diamond Cove". In coming to this conclusion, what consideration was given to (i) the effect on the adjacent neighbors and other residents of Diamond Cove that turning an unspecified amount of Open Space into a pool for a 44 room hotel and cabana, and (ii) whether turning this Open Space into private land with a pool and cabana is consistent with the overall original development plan?

Uses of the "cabana".

What will be its dimensions? Will it contain food cooking facilities? Will it serve alcoholic beverages? Is a liquor license required? Will there be restroom facilities? Will this constitute a separate commercial property? The applicant should provide information responsive to these questions before the Planning Board can make an informed decision.

3. Transportation.

To date, the applicant has been unclear about its commitment in terms of intra-island transportation, a particularly sensitive topic for all of Great Diamond Island. Diamond Island Association and Casco Bay Island Development Association, Inc. have expressed concerns about this. Shouldn't this topic to be resolved among the various parties and a consensus reached before this project can be considered in a meaningful way? Otherwise, won't the Planning Board be putting the entire Island back in the uncertain position that it was a few years ago?

4. Parking.

The applicant has submitted a letter from the General Manager of the

Portland Harbor Hotel that it will make parking available to Diamond Cove Hotel guests on the mainland, saying that it has excess parking available. How will this be monitored and enforced?

What happens, however, if the Harbor Hotel no longer has excess parking? Will the applicant provide an easement for parking on the mainland property to be recorded in the land records?

A predecessor related party made a similar promise for mainland parking in the original development 20 years ago, but it was never actually delivered. Should the Planning Board request a firmer commitment, particularly in view of the shortage of parking around the Ferry Terminal?

If no such commitment is received, has an analysis been done of the effects on the Casco Bay Lines Parking Garage, which currently has a waiting list in excess of 150 island families?

5. Commercial uses to be located at the Cove. The original plan was for there only to be 5 commercial units, to be centrally located around the actual cove. From a planning standpoint, is there a basis for now adding a new, high intensity commercial use on the Parade Ground itself?

What is the exact scope of the commercial use that the applicant is proposing, will there be dining services provided at the hotel, at the pool, if so, for what meals? Will there also be a bar? If so, will the dining facility be open for public functions?

6. Safety.

With a public hotel on the island, how will the City provide fire, police and EMT coverage for the public staying at the hotel?

7. Financing.

The applicant has provided a letter from TDNorth that just states that it would "welcome the opportunity to discuss the possibility of financing the project . . . at some point in the future." No specifics are given as to the size of the loan, the term, conditions to financing. This is far from an actual expression of interest in providing specific financing for the project and the Board should require further information as to the status of the applicant's financing in order to assess commercial viability before considering the requested zoning amendments.

Thank you very much for your time and patience.

Very truly yours,

Barbara A. Young



BOARD ORDER
IN THE MATTER OF

December 10, 1986

DIAMOND COVE ASSOCIATES)	SITE LOCATION ORDER
Portland, Maine)	
DIAMOND COVE - PHASE I)	
#L-013160-87/03-A-N)	FINDINGS OF FACT AND ORDER

Pursuant to the provision of Title 39, M.R.S.A., Sections 474 and 485, and Section 401 of the Federal Water Pollution Control Act, the Board of Environmental Protection has considered the application of DIAMOND COVE ASSOCIATES with its supportive data, staff summary, agency review comments, comments from the public, public hearing transcript, and other related materials on file and finds the following facts:

1. Title, Right or Interest

Diamond Cove Associates (the "applicant") owns a 193.4 acre parcel of land on Great Diamond Island in Casco Bay. Great Diamond is a 349-acre island which is part of the City of Portland. The property is described in a deed dated 17 April 1984 and recorded in Book 5424, Pages 277 to 281, Cumberland County Registry of Deeds.

2. Project Description

The applicant proposes to renovate 44 buildings located on the property. 36 buildings will be converted to 134 housing units; 5 will be converted to commercial uses; 2 will be rehabilitated for recreational use; and one will be renovated for maintenance and security uses. In addition, a pier will be reconstructed to provide access to the site, an in-ground swimming pool will be installed, 2 tennis courts will be refurbished and an athletic field will be cleared and recultivated. The buildings, pier, pool, tennis courts and athletic field are depicted on a plan dated 10/25/85 (revised 11/20/85, 1/21/86, and 10/14/86) and entitled "Diamond Cove, Great Diamond Island, Portland, Maine, Phase I Development" (hereinafter "Site Plan").

The proposed construction will occur primarily within that portion of the property which has been zoned Island Residential 3 (IR-3) by the City of Portland. The IR-3 zone occupies about 91 acres of the property and is designated "Lot 3" on the Site plan. The remainder of the site, about 102 acres, is zoned Island Residential 1 (IR-1). The IR-1 zone is designated "Lot 1" and "Lot 3" on the Site Plan. IR-1 is a low density residential zone. Mixed residential and commercial uses are permitted within an IR-3 zone.

The applicant is not now seeking approval for development in the IR-1 zone except for that development which is necessary for support of the IR-3 zone construction, i.e., construction of a chlorine contact shed and the placement and maintenance of sewer lines. However, the applicant may seek approval in the future for development of an undetermined number of single family house lots within the IR-1 areas.

December 10, 1986

DIAMOND COVE ASSOCIATES
Portland, Maine
DIAMOND COVE
#L-013160-87/03-A-N

19 SITE LOCATION ORDER
)
)
) FINDINGS OF FACT AND ORDER

8. A plan for management and protection of the old growth stand of trees referred to in Finding 17 shall be submitted to by the Department by January 31, 1987. The plan shall be developed by a duly qualified forester. The plan shall define the limits of the stand including the edge vegetation necessary for its preservation, and shall specify the requirements for continued preservation management of the stand. Relevant standards for the preservation of distinguished timber stands, requirements for windfirmness, and stand definition shall be used to delineate the stand. The plan shall include appropriate limitations on pruning and tree removal to ensure that the stand will continue to screen the fort buildings when viewed from Casco Bay and the mainland. No road construction, sewer or water line installation or repair, or tree clearing shall occur until the plan is approved by the Department.

The applicant and the Diamond Cove Homeowners Association shall maintain the old growth trees in accordance with the approved plan. The Landscape Plan shall be revised to conform with the requirements of the approved plan.

9. The applicant and the Diamond Cove Homeowners Association shall implement the recommendations of the Department of Inland Fisheries and Wildlife as set forth in Finding 19.
10. Prior to the sale or lease of the first housing unit, Section 7.3 of the General Declaration of Covenants and Restrictions shall be amended to specify that the Association:
- a) will maintain the old-growth stand of pine and hemlock in accordance with the plan approved by the Department of Environmental Protection; and
 - b) will maintain all other common open space, other than the old-growth stand of hemlock and pine, in accordance with the recommendations of the Maine Department of Inland Fisheries and Wildlife as set forth in Finding 19.
11. All power generating, storing and transferring facilities including pump stations shall be investigated and analyzed in accordance with the recommendations of the BOHMC (see Finding 9D of this Order). No housing unit shall be sold or leased until a report of the investigation, including remedial action if necessary, is submitted to and approved by the Commissioner.

DIAMOND COVE ASSOCIATES
 Portland, Maine
 DIAMOND COVE
 PL-013160-87/03-A-R

15 SITE LOCATION ORDER
)
)
) FINDINGS OF FACT AND ORDER

The permissible pruning and tree removal, if undertaken, will reduce the value of the old-growth stand as a visual screen and will expose the parade buildings to view from Casco Bay and the mainland. If the visual screen provided by the stand is maintained, the project will have a minimal impact on the scenic character of Casco Bay. The buildings proposed for renovation are clustered at the interior uplands of the project site. No shoreline development, other than reconstruction of a pier in Diamond Cove (see Finding 21) is proposed.

19. Wildlife and Fisheries

The applicant will obtain a Waste Discharge License to discharge effluent from the proposed sewage treatment system into Casco Bay. The impact of the effluent on the fisheries of Casco Bay is a subject of the Waste Discharge License.

The project site does not contain an important deer wintering area. However, the proposed development will result in the loss of more than 160 acres of habitat that is currently meeting the year-round requirements of an unknown number of deer, and will thereby reduce the capacity of Great Diamond Island to support deer.

To offset the deer habitat losses resulting from the project, the Maine Department of Inland Fisheries and Wildlife recommends:

- 1) The area designated as open space on the Recording Plat be retained in its natural state with no new structures located there. This open space includes and is adjacent to, winter deer cover and will serve as a buffer between it and adjacent developed land.
- 2) Within this open space, maintain oak and apple trees for food value and hemlock and other softwood for shelter values. Since this area is adjacent to winter cover, any activity benefiting deer would have its greatest positive impact here.
- 3) Include Ladino clover in any seed mixture used to reclaim field area. This will provide a supplemental source of deer food, particularly during spring and fall.
- 4) Remove sections of existing fence to allow better deer access to open space area.
- 5) Leave existing snags which provide nesting cavities for birds.
- 6) In developed areas requiring landscaping include such species as crab apple, honey suckle and/or dogwoods in the planting scheme. Not only will these shrubs provide color but also fruits readily eaten by many birds.

From: Rick Knowland
To: Gary Wood
Date: 1/30/03 4:55PM
Subject: Motor vehicle restrictions On Great Diamond Island

Gary, I have read the letter dated 1-21-03 from John Bannon to Jim Cloutier concerning motor vehicle restrictions. As someone who was in the middle of this issue during the Diamond Cove review during the 1980s, Mr. Bannon's letter for the most part is on the mark. There are a variety of regulatory issues specifically related to the Diamond Cove development approval that would not be "undone" if the City Council were to pass an ordinance related to this issue.

I can say without hesitation that if the motor vehicle restriction had not been imposed on this development, Dictar Assoc. (the developer) would not have received City and DEP approval for this development. This restriction was fundamental to protecting the character and environment of the island.

CC: Alex Jaegerman

November 15, 2006

Lee D. Urban, Esq.
Director of the Planning and Development Department
City of Portland
389 Congress Street
Portland, Maine 04101

Peter S. Plumb
John C. Lightbody
Thomas C. Newman
John C. Bannon
Susan D. Thomas
Drew A. Anderson
Richard L. O'Veara
Christopher B. Branson
Michael D. Traister
Barbara L. Goodwin
Timothy H. Boulette
John B. Shamszidine
Sarah A. McDaniel
Thomas L. Douglas
Staci K. Converse
Kelly W. McDonald
Nicole L. Bradick

RE: Traffic Management Plan for Diamond Cove at Great Diamond Island

Dear Lee:

I represent Tony and Judy Savastano, who own property abutting Nancy Lane on Great Diamond Island. The purpose of this letter is to convey to you and the Planning Department the Savastanos' concerns about the interaction between the Diamond Cove Traffic Management Plan, past approvals of the Diamond Cove project, and certain matters currently being discussed before the Casco Bay Island Transit District.

Great Diamond Island's representative on the CBITD board has been urging CBITD to reroute ferry traffic during the winter and spring so as to add two additional stops per week at the State Pier on the southerly side of Great Diamond Island. That representative happens to reside within Diamond Cove. CBITD is scheduled to vote on that measure within a week. Those two additional ferry stops will add two more round trips per week by the Diamond Cove "common transportation vehicles" between the Cove and the State Pier. The only possible route for those round-trips is Nancy Lane.

Because the traveled way of Nancy Lane passes within a few feet of the Savastanos' home, they are the persons most affected by increased vehicular traffic on Nancy Lane. Moreover, the Savastanos' property includes (a) the fee beneath all portions of Nancy Lane from the State Pier to roughly the intersection of Nancy Lane and Nicholas Street; and (b) the fee to the westerly half of Nancy Lane from the aforementioned intersection to a point about 170' northwest of the intersection of Nancy Lane and Sunset Avenue Extension. Although the City properly laid out Nancy Lane in 1960, at that time the City took only a right-of-way *easement*, not the *fee* interest in the land underlying the easement. *City of Rockland v. Johnson*, 267 A.2d 382 (Me. 1970). Because the Savastanos legally own the road bed of Nancy Lane, the City must take into consideration potential harm to the Savastanos' fee ownership of the roadbed when considering whether the proposed Diamond Cove Traffic

Of Counsel:

Peter L. Murray
Amy M. Szeirson
Barbara T. Schneider

E. Stephen Murray
(1941-2001)

November 15, 2006

Page 2

Management Plan will, in the near and distant future, adequately control traffic by "common transportation vehicles" over Nancy Lane.

Although the addition of two round trips per week by the Cove's common transportation vehicles is significant by itself, what concerns the Savastanos even more is whether seemingly unrelated, incremental changes to the ferry service to the Diamond Cove pier will ultimately shift most or all of the ferry stops to the State Pier. Mounting numbers of round-trips by the Cove's "common transportation vehicles" over Nancy Lane to reach the State Pier would cause substantial harm to the Savastanos. In contrast, shifting all ferry service to the State Pier would be of considerable benefit to the Diamond Cove Homeowners' Association (hereafter the "DCHA"), because to do so would effectively relieve the DCHA from having to fund expensive maintenance of, and repairs to, the Diamond Cove pier.

My clients were aware of the harm potentially caused by declining use of the Diamond Cove pier when the City was drafting the 2004 Amendment to the Conditional Rezoning Agreement for Diamond Cove. During the drafting process, I sent to the City the following proposed condition: "DCHA shall maintain in safe and useable condition the present ferry dock servicing Diamond Cove." The City rejected that proposed condition, perhaps believing that the scenario I have been describing in this letter would never materialize. Unfortunately, it *has* materialized, only two years after the Council adopted the 2004 Amendment.

The Savastanos have two major objections to traffic on Nancy Lane caused by increasing numbers of round trips by "common transportation vehicles" between the Cove and the State Pier.

First, the Savastanos are concerned that that traffic will threaten not only their privacy, but the physical integrity of their home and the roadbed of Nancy Lane -- both of which they own in fee. In the past, the City has been relatively slow to repair and maintain Nancy Lane, which often becomes deeply rutted and pot-holed by vehicular traffic, particularly after significant rains. Those conditions raise the risk of accidents near the Savastanos' home and lead to severe erosion of the roadbed. Although the Savastanos have recently had productive discussions with Mike Bobinsky of the Public Works Department about maintenance of Nancy Lane, the control of traffic impacts on Nancy Lane is not within the jurisdiction of the Public Works Department. The City's Planning Department itself must develop a coherent strategy for

November 15, 2006

Page 3

limiting traffic by "common transportation vehicles" on Nancy Lane, and cannot merely rely upon Public Works' ability to make ad hoc repairs to the road.

Second, the situation described in this letter demonstrates the un wisdom of allowing the 2004 Rezoning Amendment effectively to supersede the conditions under which the Diamond Cove project was allowed to be developed in the first place.

For example, the Maine DEP granted a Site Plan of Development Act approval for Phase I of the Diamond Cove development (the condominiums) based upon the developers' representation that they would reconstruct and thereafter maintain the central pier at Diamond Cove. See DEP Site Location Order dated December 19, 1986, #L-013160-87/03-A-N, §§ 11(B), 21. The DEP repeated its requirement of ensuring adequate ferry service to the Diamond Cove pier in its order approving Phase II of the Diamond Cove development (the single-family house lots). See DEP Site Location Order dated June 25, 1991, #L-013160-L3-G-N, § 7(B).

Likewise, Condition 8 of the City's original Order approving the Conditional Rezoning of the Fort McKinley property, dated July 15, 1985, required the developer either to (a) arrange for year-round CBTD ferry service sufficient to meet the needs of Diamond Cove residents; or, if such ferry service were unavailable, (b) provide an equivalent water transportation service *at its own expense*. The 1985 Order did not allow the developer or its successors to shift, to the State Pier and the residents of the southerly side of the island, Diamond Cove's responsibility to provide adequate water transportation for residents of the Cove. Nothing in the 2004 Amendment even *purported* to modify the Cove's responsibility to reconstruct and maintain the Diamond Cove pier and to procure, at its sole expense, ferry service sufficient for the needs of Cove residents.

Accordingly, it is critical for the City, when evaluating the proposed Diamond Cove Traffic Management Plan, to consider not only the present circumstances of the Island, but also the long-term consequences of allowing the State Pier gradually to become the primary, and ultimately the exclusive, means for Diamond Cove residents to obtain water transportation. Such a result would subject residents of the southerly side of the Island to impacts from the Cove's "common transportation vehicles" far beyond anyone's

November 15, 2006

Page 4

contemplation either when the City approved the original rezoning of Fort McKinley in 1985, or when it amended that rezoning in 2004.

In sum, the Savastanos ask the City to do two things. First, the City must insist that the Traffic Management Plan include a condition similar to the one I had proposed back in 2004: namely, that DCHA shall have a perpetual duty to maintain in safe and useable condition the present ferry dock servicing Diamond Cove. Second, the City must strictly enforce Diamond Cove's *existing* responsibility to provide water transportation services sufficient to meet the needs of Diamond Cove residents, at the DCHA's own expense.

Thank you for your consideration of this letter. I know that you will give it your characteristically thoughtful attention.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Bannon", with a long horizontal flourish extending to the right.

John C. Bannon

JCB/dmw

cc: Tony and Judy Savastano

Ultimately there is some likelihood that the City would not be interested in accepting the streets given the ensuing responsibility for providing snow plowing services and other long term maintenance responsibilities. Should the developer petition the City for acceptance of the street, it is likely that the City would require that the streets be paved, that a building be required to house additional equipment needed to serve the project and an underground storage tank be provided for fuel (see Attachment D).

The development will have a pedestrian orientation since the use and storage of automobiles is for practical purposes prohibited. A condition of the IR-3 rezoning is that the operation, use and storage of private automobiles is not allowed in the IR-3 zoned area. As the main pier at Diamond Cove is in the IR-3 zone, autos could not travel through the IR-3 to the IR-1 zone. A shuttle service will be available from the pier to take the residents to their dwellings. Parking areas for golf carts at Diamond Cove and the southerly border (IR-3) of the property are shown on the plan. Recently the developer indicated to staff that private automobiles would in fact be excluded from the IR-1 zone.

The Board may want to consider as a condition of approval, a requirement that private automobiles not be permitted given the pedestrian orientation of the IR-3 and the remainder of the island. Theoretically private automobiles could land at the southerly ferry landing (other side of the island) and drive to Willis Street and into the IR-1 portion of the development.

The primary water transportation route will be from Diamond Cove eliminating possible conflicts with the ferry landing at the southerly end of the island. A condition of IR-3 rezoning was for the applicant to provide for ferry service at Diamond Cove. The Casco Bay Ferry Transit District has previously indicated their interest in serving the development.

A condition of D.E.F. approval was that the developer make 67 mainland parking spaces available to the residences of the first phase. In addition 27 mainland parking spaces are to be made available for the parking demand associated with the commercial uses at Diamond Cove. The parking spaces are to be located in the downtown area.

The applicant has submitted a traffic and parking study for the project conducted by T.Y. Lin International/Hunter-Ballew Associates (cover letter dated 06-01-87, see Attachment F). The report indicates that the typical peak weekday parking demand during the summer months is 70 spaces, while the peak weekend demand during the summer is estimated at 84 spaces. The consultant has conducted a survey of several downtown parking garages and indicates that sufficient off-street parking is available in the general vicinity of the waterfront to meet the

DRUMMOND WOODSUM PLIMPTON & MACMAHON, P.A.
ATTORNEYS AT LAW
500 MAINE SAVINGS PLAZA
PORTLAND, MAINE 04101

DANIEL T. DRUMMOND, JR.
HAROLD E. WOODSUM, JR.
DAVID PLIMPTON
HUGH G. E. MACMAHON
JOHN A. GRAUSTEIN
JOSEPH L. DELAFIELD III
S. JAMES LEVIS, JR.
DANIEL AMORY
ROBERT E. HIRSHON
HARRY R. PRINGLE
RICHARD A. SPENCER
THOMAS H. ALLEN
RICHARD A. CARRIUGLO

RONALD N. WARD
JAY S. BLUMENKOPF
JOHN S. KAMINSKI
KATHLEEN BARRY
GEORGE A. CARMEL
CAROLYN B. HULL
BETH CANTARA RICHARDSON
MARY T. ESPOSITO
WILLIAM L. PLOUFFE
JERROL A. CROUTER
KEITH C. JONES
WILLIAM R. BRITTON, JR.

AREA CODE 207
772-1841

June 24, 1985

*ADMITTED IN NEW YORK ONLY

HAND DELIVERED

David Lourie, Esq.
Corporation Counsel
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: Rezoning of Portland, Maine Islands
Ft. McKinley, Great Diamond Island

Dear Mr. Lourie:

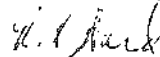
I write on behalf of Dictar Associates (Developer) and Diamond Cove Associates (Land Owner) to provide you assurances regarding our intentions with respect to the above-captioned matter.

First, please consider this letter our request that the Portland City Council ("Council") approve the proposed rezoning of the Ft. McKinley site on Great Diamond Island as finally approved by the Portland Planning Board ("Board") on June 4, 1985. Second, please be advised that we support and will adhere to the conditions imposed upon us and the Ft. McKinley site. Finally, please be advised that we will initiate no action against the City, or subdivision thereof, challenging either the conditional zoning process or the conditions.

The representations set forth above, of course, are conditional upon the Council approving the zoning "package" forwarded to it by the Board. If the Council elects not to adopt the current proposal, or if we are subject to a challenge by another interested party, we must reserve the right to respond as necessary to protect our rights.

We urge that the Council continue with the conditional rezoning process and approve the reasoned conclusions reached by the Board.

Sincerely,



Ronald N. Ward
Attorney for Dictar Associates, Inc.
and Diamond Cove Associates

RNW/dja



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE B
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

- SITE PLANNING AND DESIGN
- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- PERMITTING
- AIRPORT ENGINEERING
- CONSTRUCTION ADMINISTRATION
- LANDSCAPE ARCHITECTURE



April 29, 2008

Ms. Richard Knowland, Senior Planner
Department of Planning and Development
City of Portland
389 Congress Street
Portland, ME 04101

**Subject: The Inn at Diamond Cove, LLC
Conditional Zoning Amendment
Diamond Cove, Great Diamond Island
Wastewater Treatment and Capacity**

Dear Mr. Knowland:

On behalf of The Inn at Diamond Island LLC, our office has prepared a summary of the wastewater treatment capacity available on Great Diamond Island in support of the applicant's requested proposal for the renovation and conversion of the "Double Barracks" (Building #46) and the "Hospital" (Building #19) into residential hotel condominiums.

The current wastewater treatment system consists of a gravity sewer collection system that conveys sanitary sewer flows to three sand filter beds for treatment prior to overboard discharge to Casco Bay. The wastewater treatment system is licensed by the MeDEP (Permit #W006931-41-A-N) to accept and treat 35,000 gallons per day based upon a monthly average.

The existing uses that are currently serviced by the wastewater treatment system and their associated sewer flow rates based upon Table 501.2 of the Maine Subsurface Waste Water Disposal Rules (MSWWDR) are summarized as follows:

2 one-bedroom units @ 90 gpd per bedroom	360 gpd 180
15 two-bedroom units @ 90 gpd per bedroom	2,700 gpd
53 three-bedroom units @ 90 gpd per bedroom	14,310 gpd
9 four-bedroom units @ 90 gpd per bedroom	3,240 gpd
200-seat restaurant with 25 employees	
@ 30 gpd per seat	6,000 gpd
@ 15 gpd per employee	375 gpd
2 administrative offices	480 gpd
Marina pump out	90 gpd
Special event tent	1,750 gpd
Gift store with 2 employees @ 15 gpd per employee	30 gpd
Total flow =	29,335 gpd 29155

It should be noted that the MSWWDR design flow rates are generally conservative. For comparison, our office reviewed the flow meter records for the wastewater treatment system from the period from

Mr. Richard Knowland
April 29, 2008
Page 2

3

October 2005 through March 2008. These flow records were provided by the operator (Diamond Cove Home Owners Association). Based upon a review of this data, the annual records for 2006 showed the highest flow rates over the annual basis; therefore, these records were used on a conservative basis for comparison with flow rates computed from the MSWWR. A detailed summary of the flow records is appended to this letter. In addition, a graphical presentation of the flow meter records is also appended to this letter which depicts the seasonal fluctuations of flow rates throughout the year to the wastewater treatment system.

In general, the period from late fall to early spring (October through April) represents the least occupancy and usage on the island. The seasonal uses such as the marina, special event tent and restaurant are closed and only a limited number of year-round residents remain on the island. The peak period of activity and use on the island occurs during the period of May through September.

As indicated in the daily and monthly flow records, the highest flows during 2006 occurred during the month of May through August. Specifically, the highest monthly average daily flow rates occurred in May with a flow rate of 24,066 gpd, which correlates reasonably well with the 29,335 gpd flow rate computed based upon the MSWWR.

The proposed renovation of the "Double Barracks" will create twenty residential units. These twenty units consist of six 1-bedroom units, six 2-bedroom units and eight 3-bedroom units for a total of 36 bedrooms with a projected daily flow rate of 3,240 gpd (90 gpd per bedroom). Therefore the addition of the "Double Barrack" renovation will result in a total flow of 32,575 gpd (29,335 gpd plus 3,240 gpd) resulting in a remaining surplus flow 2,425 gpd that is allocated to for the future "Hospital" renovation. This surplus future flow allocation amount of 2,425 gpd is more than adequate up to twelve 2-bedroom units.

Based upon a review of the 2006 wastewater treatment system flow records, the existing wastewater treatment system has sufficient capacity to accommodate the projected flows associated with the planned renovation of the "Double Barracks" as well as provide sufficient reserve capacity for the future renovation of the "Hospital".

Please contact our office with any questions you may have concerning this letter.

Sincerely,

DeLUCA-HOFFMAN ASSOCIATES, INC.

Joseph A. Laverriere, P.E.
Senior Engineer

JAL/sq/JN2769/Knowland-4-29-08

Attachments

C: David Bateman - The Inn at Diamond Cove, LLC

	#	Bed Rooms
6 - 1 Bed room units	6	6
6 - 2 Bed room units	12	12
8 - 3 Bed room units	24	24
Total	42	42

42 x 90 gpd 3790

4

	Gallons per Day
Existing Uses	29155
Inflow/Infiltration	3000
Double Barracks Renovation	<u>3790</u>
Total Flow	35945
License limit	35,000
Amount over limit	945 gpd

**DIAMOND BOMB
SANITARY SEWER FLOW RECORDS**

JANUARY 2003

DAY	RAIN (IN)	DAILY FLOW (GALLONS)
1		20,919
2		17,500
3		12,722
4		6,524
5		9,919
6		5,388
7		8,279
8		7,053
9		3,924
10		8,130
11		13,979
12		11,011
13		9,201
14	Y	23,940
15		19,150
16		13,352
17		11,733
18	Y	23,319
19		10,501
20		12,725
21		12,555
22		21,246
23	MA	
24		7,320
25		11,202
26		7,602
27		8,081
28		3,148
29		7,083
30	Y	7,710
31		3,529

TOTAL MONTHLY FLOW	353,957	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	11,767	GALLONS

FEBRUARY 2003

DAY	RAIN (IN)	DAILY FLOW (GALLONS)
1		6,342
2		5,930
3	Y	11,370
4		10,525
5	Y	11,741
6		27,316
7		19,351
8		14,222
9		12,803
10		14,597
11		11,003
12		5,501
13		9,724
14		7,467
15		6,335
16		5,977
17		7,802
18		5,771
19		8,973
20		4,157
21		5,421
22		6,382
23		4,631
24		4,874
25		6,825
26		6,330
27		3,344
28		2,600

TOTAL MONTHLY FLOW	257,511	GALLONS
TOTAL DAYS	28	
AVERAGE DAILY FLOW	12,058	GALLONS

MARCH 2003

DAY	RAIN (IN)	DAILY FLOW (GALLONS)
1		2,325
2		2,827
3		2,254
4		3,172
5		3,385
6		3,400
7		3,181
8		2,433
9		2,793
10	Y	2,539
11		5,053
12		2,727
13		3,553
14	Y	8,453
15		3,024
16		5,714
17		5,703
18		6,473
19		5,415
20		4,522
21		4,321
22		3,822
23		3,384
24		3,900
25		3,946
26		3,478
27		3,003
28		2,788
29		2,549
30		3,589
31		2,570

TOTAL MONTHLY FLOW	112,654	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	3,628	GALLONS

APRIL 2003

DAY	RAIN (IN)	DAILY FLOW (GALLONS)
1		3,173
2		3,018
3		2,802
4	Y	28,512
5		14,965
6		13,514
7		11,237
8		10,579
9		8,527
10		7,705
11		7,072
12		6,418
13	Y	8,437
14		7,234
15		7,450
16		6,713
17		5,964
18		3,452
19		4,908
20		3,523
21		3,872
22		5,188
23		4,941
24	Y	6,300
25		2,850
26		3,605
27		3,850
28		5,021
29		6,056
30		4,674

TOTAL MONTHLY FLOW	185,866	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,229	GALLONS

MAY 2003

DAY	RAIN (IN)	DAILY FLOW (GALLONS)
1		3,519
2	Y	41,884
3	Y	45,487
4		30,169
5		20,139
6		18,628
7		12,693
8		10,524
9		11,337
10	Y	13,410
11	Y	25,255
12	Y	54,843
13	Y	51,135
14	Y	37,880
15	Y	40,392
16	Y	63,483
17		32,703
18		24,137
19	Y	28,872
20		18,313
21		17,870
22		19,535
23		16,590
24		13,849
25		13,051
26		11,273
27		11,232
28		13,920
29		11,274
30		7,683
31		8,097

TOTAL MONTHLY FLOW	748,680	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	24,380	GALLONS

JUNE 2003

DAY	RAIN (IN)	DAILY FLOW (GALLONS)
1		3,001
2	Y	10,201
3	Y	36,539
4	Y	50,365
5		23,612
6		17,350
7	Y	44,635
8	Y	57,441
9		40,094
10	Y	55,675
11		33,053
12		27,232
13		17,014
14		17,353
15		16,230
16		13,400
17		10,150
18		10,372
19		10,553
20		3,945
21		10,018
22		10,161
23		11,749
24	Y	14,723
25		14,542
26		10,005
27		10,254
28	Y	9,083
29		12,500
30		12,311

TOTAL MONTHLY FLOW	554,236	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	21,150	GALLONS

May 15, 2008

Dear Planning Commission,

I wasn't able to attend the workshop held the other day regarding the proposed Inn at Diamond Cove. There are a few issues I would like to bring up surrounding this project.

My husband and I live at 30 West Shore Drive on the perimeter of the Parade Ground on Diamond Cove. We built a home here and have been island residents for five years. Prior to moving here, we had lived in Lagos, Nigeria (for business) and desperately wanted to settle somewhere where there was quiet and peaceful surroundings when our stay there was finished. We were fortunate enough to choose Diamond Cove. Part of that decision was the fact that there were two hundred acres of dedicated open space. The association Covenants and Declaration clearly spelled out that these lands were to remain "open" space in perpetuity. Our understanding of that term, like so many others here, was that that meant the land was held in trust, for all time. How is it then that this project can even be contemplated? If it is approved for one developer, who is to say that it won't be denied for another? A precedent will be set here if the Inn is allowed as planned---and it certainly won't be one that will be favorable to those who had the foresight to protect our land.

The project was approved by the Cove residents, but not by a majority. If the City of Portland had not been allowed to vote, there is a great possibility that the vote would have denied the Inn. The members of the DCHA who pay assessments here don't do so because we receive so many services for them. We pay them, in part, because that money assured us that the two hundred acres of open space would be protected. Do we now get a reduction on our fees? What will happen in the future? What about the water treatment system that certainly, in all logic, cannot handle a condo/hotel? What about the delicate land now supporting an already fragile barge landing? How will it hold up to hundreds of barge landings? We know from building a home here that the average number of barge trips to build just an average home here is about thirty two. Multiply that for demolition, site repair, and then construction? Where will all the construction vehicles be stored? What about a hotel's trash? Who is responsible for its removal and how often will that be? Suffice it to say, the quality of life here on the

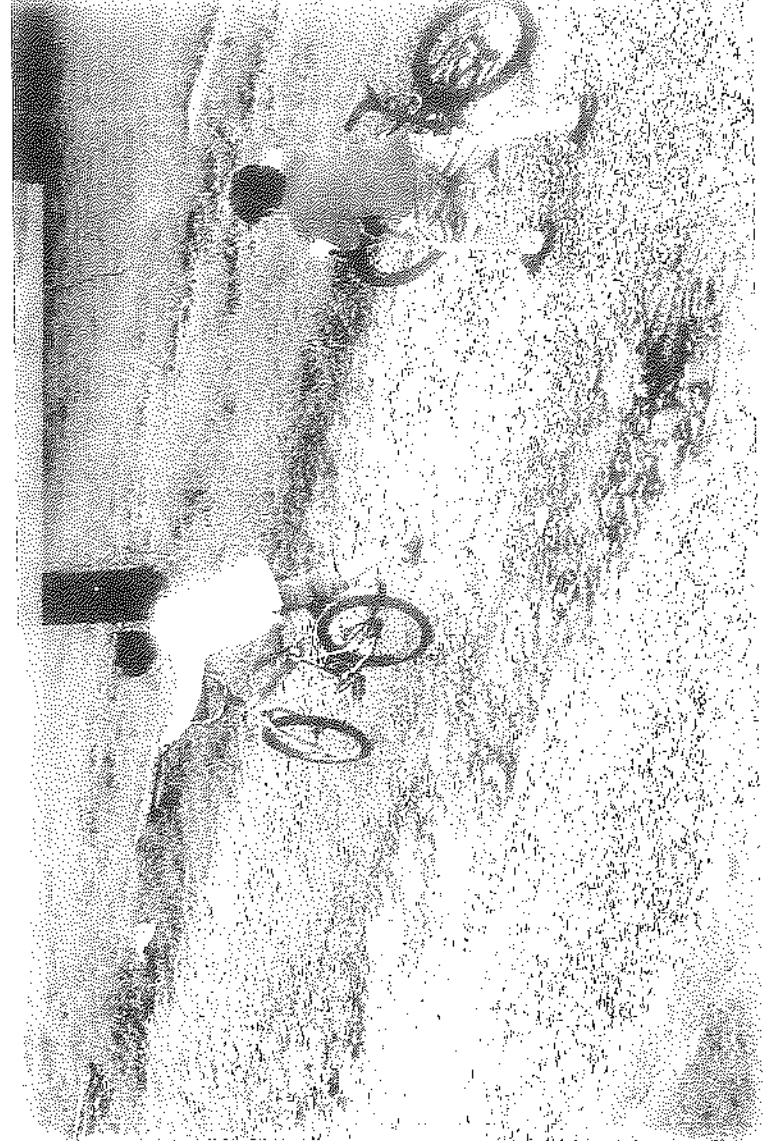
Cove will be greatly diminished. Island living isn't all that easy, but for those of us who willingly chose to be here, for whatever reasons, are greatly saddened by the issue now confronting us. You and other Boards have the authority and duty to uphold what was provided to us by past members--our right to enjoy this island without turning it into a commercial playground. We personally do not know Mr. Bateman since we moved here after his involvement with Ft. McKinley, but what we cannot understand is how this project, with so many unsettled issues, can be allowed to go forward to benefit only a small group of investors who don't live here year round and who don't see the island as home.

We understand that the City would like to rid itself of these two buildings, but this project is not the answer. Please evaluate these, and other, issues carefully before making your decisions. There really is a lot riding on how you vote this. Just what DOES "in perpetuity" mean??

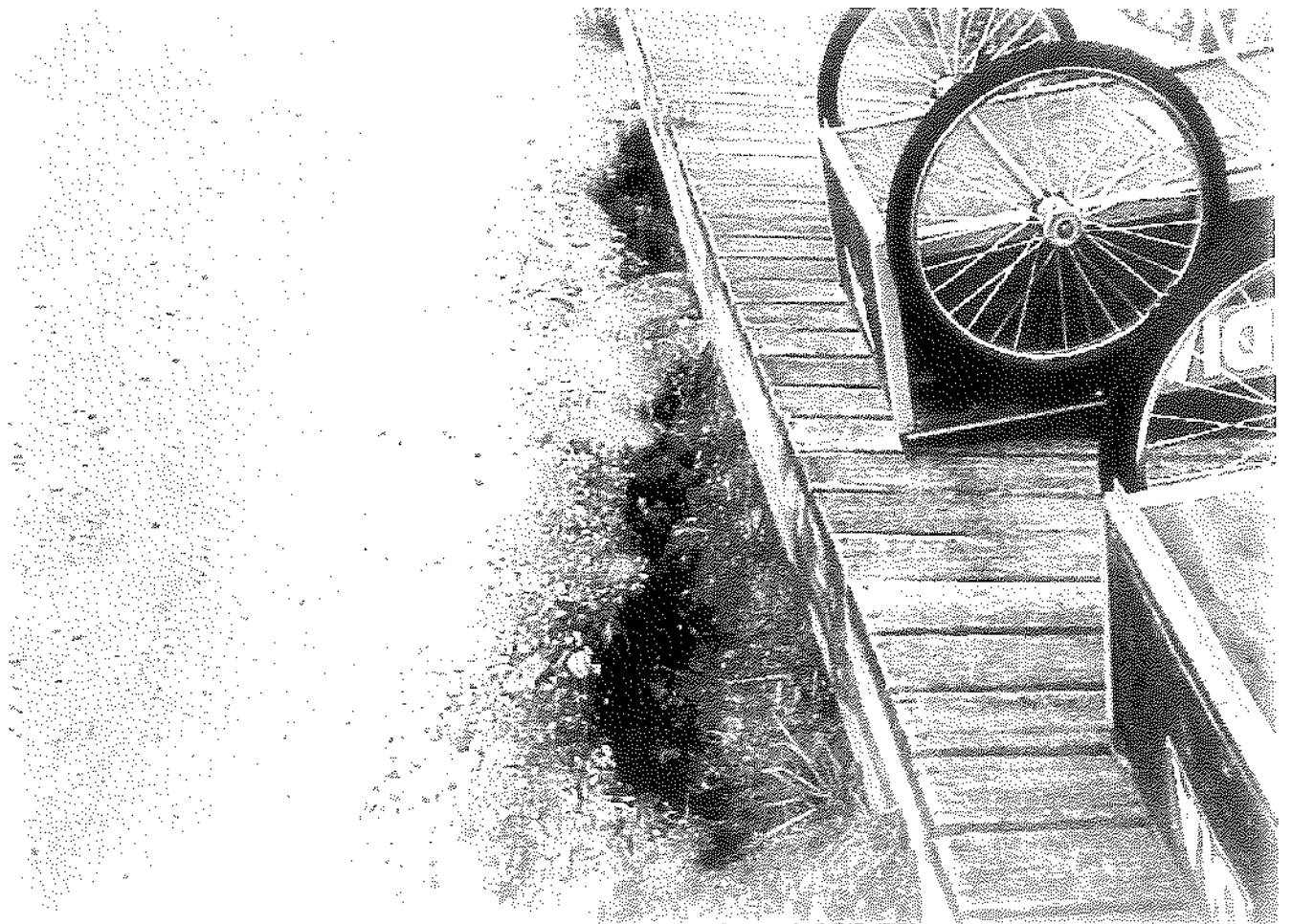
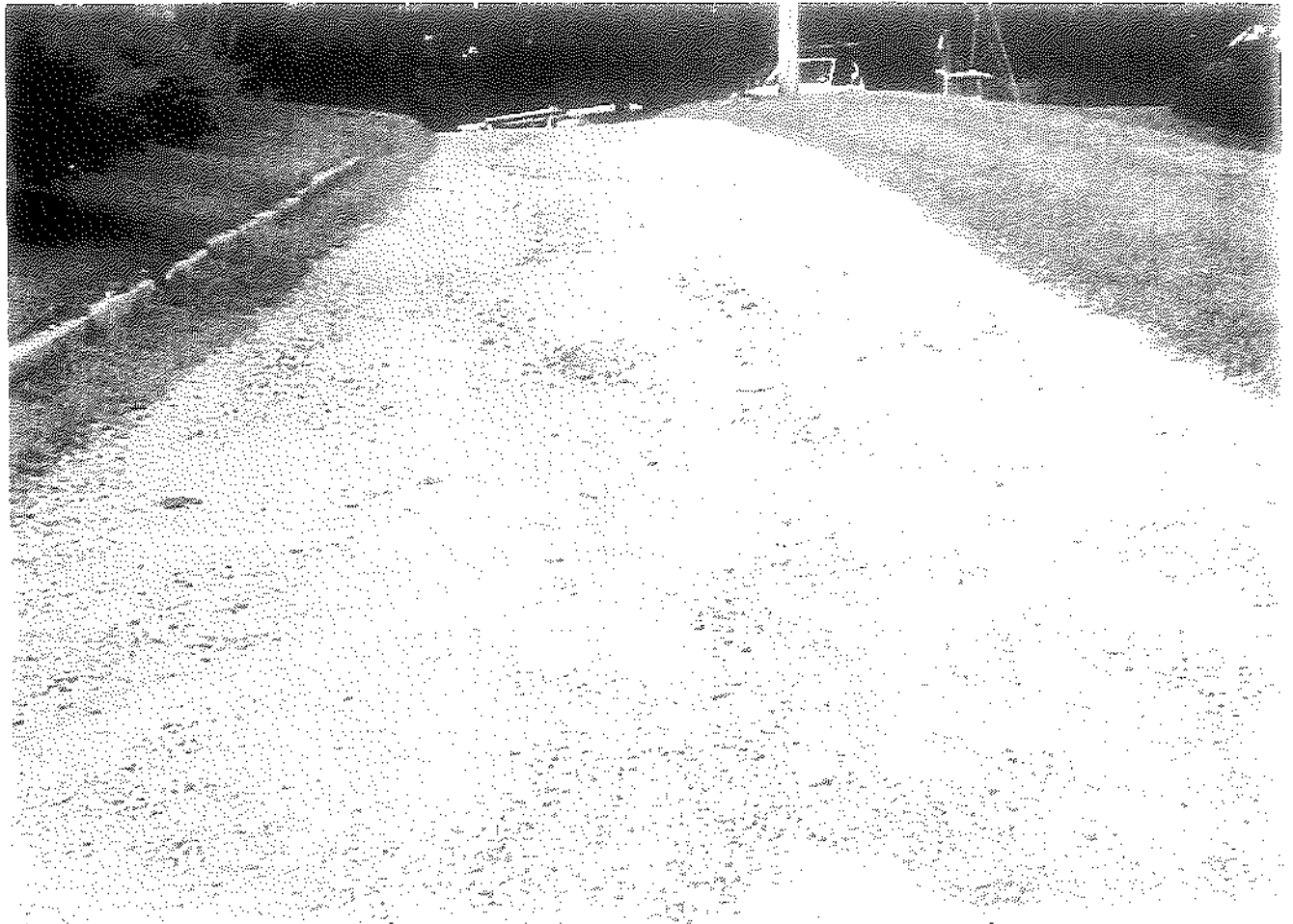
Thank you for your consideration,

Alexandra and Byron Neal
30 West Shore Drive
Diamond Cove
Portland, ME









STATE OF MAINE

BUSINESS AND CONSUMER DOCKET

Location: West Bath

SAGADAHOC, ss.

Docket No.: BCD-WB-CV-08-41

THE FRIENDS OF GREAT DIAMOND
ISLAND, LLC AND JAMES W. FAST,
Plaintiffs,

vs.

THE INN AT DIAMOND COVE, LLC,
DIAMOND COVE HOMEOWNERS ASSOCIATION
AND THE CITY OF PORTLAND,
Defendants.

DEPOSITION of RICHARD W. KNOWLAND, JR.,
taken pursuant to notice dated May 14, 2010, at Portland
City Hall, 389 Congress Street, Portland, Maine, on May 19,
2010, commencing at 1:00 P.M., before Susan R. Berube,
Registered Merit Reporter, a Notary Public in and for the
State of Maine.

Coastal Reporting, LLC
110 Marginal Way, #205, Portland, Maine 04101
(207) 772-6221 or (800) 540-3376

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SIGNATURE PAGE

TO BE COMPLETED BY DEPONENT:

I, Richard W. Knowland, Jr. have read the foregoing pages of my testimony or have had the foregoing pages of my testimony read to me and have noted any changes in form or substance of my testimony together with their respective corrections and the reasons therefor, on the following 11 Errata Sheet(s).

(Signature) Richard W. Knowland, Jr.

(Date) June 7, 2010

TO BE COMPLETED BY NOTARY PUBLIC OR ATTORNEY:

I, _____, a Notary Public/Attorney in and for the State of Maine, hereby acknowledge that the above-named deponent personally appeared before me, swore to the truth of the foregoing statements and affixed his/her signature above as his/her own true act and deed.

(Signature) _____

(Date) _____

My Commission Expires: _____

STATE OF MAINE

BUSINESS AND CONSUMER DOCKET

Location: West Bath

SAGADAHOC, ss.

Docket No.: BCD-WB-CV-08-41

THE FRIENDS OF GREAT DIAMOND
ISLAND, LLC AND JAMES W. FAST,
Plaintiffs,

vs.

THE INN AT DIAMOND COVE, LLC,
DIAMOND COVE HOMEOWNERS ASSOCIATION
AND THE CITY OF PORTLAND,
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Coastal Reporting, LLC
110 Marginal Way, #205, Portland, Maine 04101
(207) 772-6221 or (800) 540-3376

Page 2

1
2 APPEARANCES:
3 For the Plaintiffs:
4 WILLIAM D. ROBITZEK, ESQ.
5 Berman & Simmons, P.A., 129 Lisbon Street, P.O. Box 961,
6 Lewistown, Maine 04243-0961 - (207) 784-3576
7
8 TIMOTHY H. MORTON, ESQ.
9 Kelly, Remmel & Zimmerman, 53 Exchange Street, P.O. Box
10 597, Portland, Maine 04112-0597 - (207) 775-1020
11
12 For the Defendant: Diamond Cove Homeowners Assn.
13 ROY T. PIERCE, ESQ.
14 Pretti, Flaherty, Beliveau, Pachios & Haley, One City
15 Center, P.O. Box 9546, Portland, Maine 04112-9546 -
16 (207) 791-3300
17
18 For the Defendant: The City of Portland
19 DANIELLE P. WEST-CHUBHA, ESQ.
20 City of Portland, 390 Congress Street, Portland, Maine
21 04101-3509 - (207) 874-6480
22
23
24
25

Page 4

1 RICHARD W. KNOWLAND, JR., having been sworn by the
2 Notary Public, was examined and deposed as follows:
3 EXAMINATION BY MR. ROBITZEK:
4 Q Please state your full name for the record.
5 A My full name is Richard W. Knowland, Jr.
6 Q Okay. And you go by Rick?
7 A Rick, yes.
8 Q Okay if I call you Rick?
9 A Most certainly.
10 Q Since that is what I typically call you.
11 A Absolutely.
12 Q As you know, my name is Bill Robitzek and I'm
13 representing Friends of Great Diamond Island, LLC and this
14 is a deposition taken of you because you have been
15 identified by the City as an expert witness. There are a
16 couple of ground rules I would like to go over with you
17 before we get into the deposition. They're pretty
18 straightforward. First is that you have to answer every
19 question with words. You can't use a nod of the head or a
20 hand gesture because our court reporter can't take that
21 down.
22 A Right.
23 Q Likewise, phrases like uh-huh or huh-uh don't get
24 translated very well either, so you will have to use words,
25 okay?

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1 A Absolutely.
2 Q Good. Third, if I ask you a question and you don't
3 understand it, please tell me that and I'll be glad to
4 rephrase it for you, okay?
5 A Sure.
6 Q And, finally, I would ask that you wait until I finish
7 my question before you start your answer and, likewise,
8 I'll wait until you finish your answer before I start my
9 next question as our court reporter can only take down one
10 of us at a time, okay?
11 A Okay.
12 Q You're currently employed by the City of Portland?
13 A Yes.
14 Q In the planning office?
15 A Yes.
16 Q You know that you have been identified as an expert
17 witness in this case?
18 A Yes.
19 Q All right. I'm going to show you a document which I
20 will mark as Knowland Exhibit No. 1.
21 (Exhibit 1, Letter, 3/11/10, marked for
22 identification.)
23 Q I will represent to you that that is an expert
24 designation which we were sent. My first question is were
25 you given a copy of that, if you know?

1 A Yes, I was.
 2 Q And so you're familiar with what it says about the
 3 issues on which you will testify?
 4 A Yes.
 5 Q In a previous designation by the City, both you and
 6 Mr. Jaegerman were lumped together in terms of the
 7 designation and you were both going to be talking about how
 8 the order authorizing amendment to the conditional zone for
 9 the Double Barracks and Hospital were consistent with
 10 existing and permitted uses in the area and also consistent
 11 with the comprehensive plan. Did you know that you were
 12 originally identified on both of those areas?
 13 A Yes, I believe so.
 14 Q And in the current designation, you're not designated
 15 to testify about the consistency of the comprehensive plan;
 16 you understand that?
 17 A That's fine.
 18 Q And do you know whether that was changed because you
 19 have any doubts or hesitation on the issue of whether or
 20 not the ordinance or the order authorizing amendment to the
 21 conditional zone is consistent with the comprehensive plan?
 22 A I have no idea why I was or was not taken off that
 23 particular element that I was supposed to testify on.
 24 Q All right. Let me just focus in on what you have been
 25 identified. You have been identified as an expert to

1 that we'll look at in a minute.
 2 A Right.
 3 Q If I refer to an order or an amendment, I'm going to
 4 be referring to the city council's action in that record
 5 that you have been designated to testify about.
 6 A Sure.
 7 Q Now in terms of the -- the order that was voted on by
 8 the city council, it referred to these two particular
 9 buildings in the IR-3 zone, correct?
 10 A Correct.
 11 Q Aside from this area of Great Diamond Island, does the
 12 IR-3 zone cover any other part of the City of Portland?
 13 A It covers the so-called Ft. McKinley area.
 14 Q All right. But aside from Great Diamond Island, is
 15 the IR-3 zone found anywhere else in the City of Portland?
 16 A On a map, it is the only area in the city in which
 17 that zoning district has been designated.
 18 Q Regardless of whether we're talking about a map or the
 19 zoning ordinances, is there any other part of the city
 20 aside from land on Great Diamond Island designated as an
 21 IR-3 zone?
 22 A That statement is correct.
 23 Q Okay. There is no other area?
 24 A Correct.
 25 Q And then even if we look at Great Diamond Island, the

1 testify on the consistency of the order with existing and
 2 permitted uses in that area. Let me first see if we can
 3 get some common language. We're talking about two
 4 buildings which currently exist in a delapidated state on
 5 Great Diamond Island?
 6 A Yes.
 7 Q They are located in the area of Great Diamond Island,
 8 which is sometimes referred to as Diamond Cove?
 9 A Yes.
 10 Q Are both of these buildings in what is known as an
 11 IR-3 zone?
 12 A Yes.
 13 Q They are commonly referred to as the Double Barracks
 14 and the Hospital building?
 15 A Yes.
 16 Q Okay. And that's what we'll refer to them as here.
 17 In terms of the action that the city council took, you
 18 understand that they voted to approve an order authorizing
 19 amendment to the conditional zone for those two buildings?
 20 A That's correct.
 21 Q And do you know off the top of your head the date of
 22 that order?
 23 A I don't know the date off the top of my head, but that
 24 is easily found.
 25 Q I think it will be contained in one of the documents

1 IR-3 zone does not encompass the entire island?
 2 A That's correct.
 3 Q It encompasses a part of the Diamond Cove development?
 4 A Correct.
 5 Q All right. And can you tell me, please, what are the
 6 existing uses in the IR-3 zone on that part of Great
 7 Diamond Island.
 8 A The existing uses within the IR-3 zone include
 9 residential uses in attached buildings. There also may be
 10 a few scattered single-family dwellings. There is a
 11 restaurant, there is -- there was an art studio. There is
 12 a fire station/public safety building and there may be a
 13 few other miscellaneous support services -- support service
 14 uses on the island, also.
 15 Q Can you tell me before the order was accepted, were
 16 hotels permitted in the IR-3 zone?
 17 A Hotels were not permitted in the IR-3 zone; inns and
 18 lodging houses, I believe, were.
 19 Q All right. And you're familiar with the difference
 20 between a hotel and an inn or a lodging house; are you
 21 familiar with it?
 22 A I am. There are some technical definitions in our
 23 zoning ordinance which I would not be able to repeat
 24 verbatim.
 25 Q All right. Is one of the essential differences that

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1 hotel rooms are not allowed to have kitchen facilities?
 2 A That would be correct.
 3 Q Okay. Whereas, inn rooms or lodging house rooms are
 4 allowed to have kitchen facilities?
 5 A Inns and lodging -- could you repeat that last phrase.
 6 Q Sure, I will break it into two separate questions.
 7 Whereas, inns under the Portland zoning ordinances are
 8 allowed to have kitchen facilities in their rooms?
 9 A Frankly I would need to check the zoning ordinances.
 10 I don't know off the top of my head.
 11 Q How about lodging houses, are they allowed to have
 12 kitchens in their rooms?
 13 A I believe they are not allowed to have kitchens.
 14 Q And so is one of the essential differences between a
 15 hotel and an inn, that hotel rooms are not allowed to have
 16 kitchen facilities?
 17 A A hotel and an inn, I would have to look at that
 18 definition. I cannot say off the top of my head.
 19 Q Okay. You think that inns were permitted in the IR-3
 20 zone?
 21 A Yes.
 22 Q Okay. And is that because you have reviewed the
 23 ordinances in that regard?
 24 A I have looked at them recently. There is probably 15
 25 different uses in the IR-3 zone allowed, I think.

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1 (Exhibit 2, Portion of Zoning Ordinances, marked for
 2 identification.)
 3 Q I'll show you now a document which we've marked as
 4 Knowland Exhibit No. 2 and ask if you recognize that as a
 5 portion of the City of Portland zoning ordinances?
 6 A Yes, it is part of the City zoning ordinances.
 7 Q You see it has a definition for a hotel at the bottom
 8 of the first page; do you see that?
 9 A Yes.
 10 Q You see at the bottom of the second page there is a
 11 beginning of the definition of an inn which continues over
 12 to the next page?
 13 A That's correct.
 14 Q Okay. And then if we look at the third page, that
 15 contains a definition of lodging houses?
 16 A Right.
 17 Q And so in -- strike that.
 18 The order that the city council voted on was
 19 brought about because an application was filed with the
 20 City for a change in the ordinance?
 21 A That's correct.
 22 Q Okay. And that application was filed by The Inn at
 23 Diamond Cove, LLC?
 24 A Yes.
 25 (Exhibit 3, Zoning Amendment Application, marked for

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1 identification.)
 2 Q I'm going to show you what is marked as Knowland
 3 Exhibit No. 3. Does that appear to be a copy of the zoning
 4 amendment application without attachments?
 5 A That's correct.
 6 Q And so this is the zoning amendment that was -- strike
 7 that.
 8 This is the document which basically started the
 9 process of amending the zoning ordinance; is that correct?
 10 A Yes, it did start the process.
 11 Q All right. You will see that the applicant is The Inn
 12 at Diamond Cove, LLC; is that correct?
 13 A Yes.
 14 Q All right. Do you know who the members are of The Inn
 15 at Diamond Cove, LLC?
 16 A The corporate members?
 17 Q Yes.
 18 A I know that David Eateman is involved in it, I believe
 19 there is a hotel group involved in it, which I believe
 20 their last name or the corporate name is Harper. It's part
 21 of the record. I just don't recall off the top of my head.
 22 Q Would you be surprised to learn that in terms of
 23 actual existing paperwork that the only member of The Inn
 24 at Diamond Cove, LLC is Attorney Ron Ward?
 25 A I don't have any information either way.

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1 Q Okay. Did you ever attempt to find out who the legal
 2 members of the LLC were?
 3 A I cannot recall.
 4 Q Okay. Do you know whether anybody at the City ever
 5 attempted to find out who the legal members of The Inn at
 6 Diamond Cove, LLC were?
 7 A I can't recall.
 8 Q Is it one of the requirements in order for an
 9 ordinance to be -- to be passed such as this one that the
 10 identity of the applicant be made public?
 11 A One needs to provide information on right, title and
 12 interest.
 13 Q So, in other words, besides information on right,
 14 title and interest, the City does not require that the
 15 member of an LLC be disclosed?
 16 A I don't believe so.
 17 Q Okay. And so in terms of right, title and interest if
 18 you look at Knowland 3, paragraph No. 4 asks them to
 19 identify the right, title and interest of the LLC, correct?
 20 A Yes.
 21 Q And they identified a purchase and sale agreement with
 22 an amendment?
 23 A Yes.
 24 Q Now at the time that this application was filed, the
 25 two buildings in question were owned by the City of

1 Portland?
 2 A That's correct.
 3 Q And they were in a delapidated state?
 4 A Yes.
 5 Q The City had no then current plan for doing anything
 6 in particular to these buildings?
 7 A That's correct.
 8 Q You didn't have a plan for either demolishing them or
 9 developing them?
 10 A That's correct.
 11 Q All right. And, in fact, what the City did was it
 12 sent out a request for proposals to the public to see if
 13 anybody had a proposal to develop those pieces of property,
 14 correct?
 15 A That's correct.
 16 Q And you did get a proposal in from The Inn at Diamond
 17 Cove, LLC as an entity; is that correct?
 18 A I believe so, yes.
 19 Q All right. And the City was willing to sell the two
 20 pieces of property to The Inn at Diamond Cove, LLC for a
 21 dollar?
 22 A That sounds right.
 23 Q And is it fair to say that the City was concerned that
 24 these delapidated buildings might create some liabilities
 25 for the City?

1 A I think that's accurate.
 2 Q All right. And so as part of the process of getting
 3 their development plan approved, they made this application
 4 for a zoning amendment?
 5 A Yes.
 6 Q Did you understand that also as part of creating their
 7 development, they had also gone to or in the process of
 8 going to the homeowners at the Diamond Cove Homeowners
 9 Association to vote on a change in the declarations and
 10 covenants?
 11 A That was my understanding.
 12 Q Did you understand that that was also a requirement
 13 that the developer put down, that those covenants and
 14 restrictions for the development had to be changed in order
 15 for them to be willing to go forward?
 16 A I believe so.
 17 Q All right. And so essentially with this application,
 18 Knowland Exhibit No. 3, the City understood that this was
 19 the application for an amendment to zoning which if not
 20 approved, would mean that the City would continue to keep
 21 the property?
 22 A Yes.
 23 Q All right. Now in terms of the -- the use of -- this
 24 property as allowed by the amendment that ultimately the
 25 city council passed, would you agree that the use that is

1 A That would be one of the reasons, yes.
 2 Q And the liabilities might include not only assessments
 3 of homeowners' fees but also if somebody got injured on the
 4 premises?
 5 A I can't address that entire question because the first
 6 one I believe you're asking whether the City was concerned
 7 about the expenses involved and I have absolutely no idea.
 8 Q Was the City --
 9 A I know that there were -- there was discussion about
 10 liability issues if someone got hurt and public safety
 11 issues if someone got hurt.
 12 Q It's fair to say the City's position was that it
 13 wanted to divest itself of these properties?
 14 A That's correct.
 15 Q And Mr. -- strike that.
 16 The Inn at Diamond Cove, LLC was the only entity
 17 that came forward with a development plan?
 18 A A viable plan, yes.
 19 Q And The Inn at Diamond Cove, LLC, in fact, had this
 20 property under contract at the time?
 21 A At the time of the application, yes.
 22 Q And it's fair to say that The Inn at Diamond Cove, LLC
 23 made it clear to you and to your office that they would
 24 only purchase the property from the City if the City
 25 approved the development plan?

1 approved in that amendment is specifically tailored to the
 2 needs and requests of The Inn at Diamond Cove, LLC?
 3 A I think that's accurate.
 4 Q Essentially they explained to the City what they
 5 wanted or needed to have in those two buildings and the
 6 amendments to the zoning were built around those needs and
 7 requirements?
 8 A They were built around those needs. I would say that
 9 there was an extensive amount of redrafting from their
 10 original proposal in terms of the zoning text.
 11 Q Essentially the City required that certain changes be
 12 made, correct?
 13 A Yes.
 14 Q But it was understood by the City that if drastic
 15 changes were required by the City, that the developer might
 16 not go through with the project?
 17 A I can't -- I don't think that is an accurate
 18 statement.
 19 Q Okay. Now in terms of the -- the buildings as they
 20 stand today, as of the day of your deposition, no
 21 construction has taken place?
 22 A That's correct.
 23 Q And so they -- they stand, except perhaps for some
 24 additional deterioration, as they did when the application
 25 for the zoning amendment was first submitted?

1 A That's correct.
 2 Q So in terms of at the present time you have
 3 described -- strike that.
 4 In terms of at the time that the application was
 5 filed was a hotel a permitted use?
 6 A A hotel was not a permitted use in IR-3.
 7 Q Was a hotel/inn a permitted use?
 8 A It was not.
 9 Q And is that partly because the IR-3 zone was not
 10 identified as an area where it was a permitted use or was
 11 it because a hotel/inn did not exist as a creature of the
 12 zoning ordinances at the time of the application?
 13 A I would answer your question this way. A hotel/inn
 14 is a fairly new use in Southern Maine and so this
 15 represented a new type of use in the real estate
 16 marketplace, which back in 1985 was not anticipated. It is
 17 a hybrid type of use that is between a hotel and an inn and
 18 a residential use.
 19 Q Hybrid in the sense that a mule is a combination of a
 20 horse and a donkey?
 21 A In that way you might say.
 22 Q If you wanted to buy a horse, you wouldn't be
 23 satisfied with a mule, would you?
 24 A Well, I guess it would depend on what you want but --
 25 Q Well, let's talk about as of April 8, 2008.

1 Q They were proposing a certain use which had never been
 2 recognized by zoning ordinances in the City of Portland
 3 before?
 4 A That's correct.
 5 Q It was not exactly an inn; is that correct?
 6 A That's correct.
 7 Q It was not a lodging house, correct?
 8 A That's correct.
 9 Q Okay. It was not a hotel?
 10 A That's correct.
 11 Q Okay. Now why wasn't it, and if you need to refer to
 12 the zoning ordinances, why wasn't it an inn?
 13 A Because an inn -- let's see, an inn does not allow a
 14 kitchen. Let me just read this. Guest room shall not
 15 contain separate kitchen facilities. An inn does not have
 16 kitchen facilities, whereas, the developer wished to have
 17 kitchen facilities.
 18 Q Okay. And the order then as approved permits kitchen
 19 facilities?
 20 A As part of a hotel/inn, yes.
 21 Q Okay. And why wasn't it a lodging house?
 22 A A couple reasons, there was a limitation on -- well,
 23 it did not have a -- the definition of a lodging house
 24 would not allow kitchen facilities.
 25 Q Is there any other reason why it's not a lodging

1 A Sure.
 2 Q As of that point in time, was a hotel/inn an entity
 3 or a use which was recognized anywhere in the City of
 4 Portland zoning ordinances?
 5 A This is prior to the enactment of the order; is that
 6 your question?
 7 Q That's correct, I am looking at the date on the
 8 application for the amendment.
 9 A That use was not recognized in the zoning ordinance.
 10 Q Was there a hotel/inn anywhere in the City of
 11 Portland to your knowledge as of the date of this
 12 application?
 13 A I'm not aware of any.
 14 Q All right. And so would it be fair to say that the
 15 creation of the hotel/inn category in this amendment was
 16 done in order to facilitate the specific development here
 17 at Diamond Cove?
 18 A Yes.
 19 Q And that is the specific development in the Double
 20 Barracks and the Hospital buildings; is that correct?
 21 A Yes.
 22 Q And the creation of the hotel/inn as an entity or as
 23 a use had to be done in order for this project to actually
 24 go forward, correct?
 25 A Yes.

1 house?
 2 A It's probably in my original staff report that I wrote
 3 two years ago.
 4 Q Well, does a lodging house require that people who are
 5 tenants not occupy it for less than on a weekly or monthly
 6 basis?
 7 A Right, that is what this says in the definition.
 8 Q And you understood that under this hotel/inn plan of
 9 the developer, they would permit overnight guests for
 10 compensation?
 11 A Right.
 12 Q And so that certainly would not be allowed as a
 13 lodging house?
 14 A That's correct.
 15 Q If we look back at the definition of an inn, now that
 16 you see this, what is the difference between an inn and a
 17 hotel?
 18 A An inn and a hotel? The uses are very -- I would say
 19 the uses are very similar. There is a limitation on the
 20 number of rooms for an inn. There is some additional
 21 language in the inn paragraph which is not included in the
 22 hotel definition.
 23 Q Which language?
 24 A I would say the last very long sentence, no owner,
 25 operator, director, employee, shareholder, partner --

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1 Q Etcetera?
 2 A Right, etcetera, all eight lines of it.
 3 Q All right. While you're looking at Knowland Exhibit
 4 No. 2, let's just continue forward, if you look at Section
 5 14-145.14, that identifies the permitted uses in IR-3,
 6 correct?
 7 A 145.14, yes.
 8 Q Okay. It says that lodging houses are permitted and
 9 inns are permitted as well, is that correct?
 10 A Lodges and inns are permitted, yes.
 11 Q All right. If you move forward to the next section,
 12 which is 14-145.15, it says that uses that are not
 13 expressly enumerated herein as either permitted uses or
 14 conditional uses are prohibited?
 15 A Correct.
 16 Q Was a hotel a conditional use in the IR-3 zone?
 17 A No.
 18 Q And it was not a permitted use as well, correct?
 19 A That's correct.
 20 Q And so it was prohibited specifically by ordinance?
 21 A Correct.
 22 Q And hotelminiums didn't exist, so it would have also
 23 been prohibited without a change in the ordinances,
 24 correct?
 25 A That's correct, yeah.

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1 Q Let me ask you about the uscs that existed at the time
 2 the application was filed and also as of the time of the
 3 amendment as passed by the city council. Aside from the
 4 store and perhaps the art gallery, were there any other
 5 commercial uses then in existence in the IR-3 zone?
 6 A I'm not aware of any.
 7 Q Okay. Now when Ft. McKinley was originally subject to
 8 a plan of development, you know that that plan was
 9 submitted by David Bateman through one of his entities,
 10 correct?
 11 A Correct, yeah.
 12 Q And you know that plan of development did contemplate
 13 some commercial uses?
 14 A Yes.
 15 Q It did not contemplate commercial uses, however, in
 16 either the Double Barracks or the Hospital, correct?
 17 A I would like to answer the question this way. There
 18 were five commercial uses that were -- that were to be
 19 allowed under the conditional zone.
 20 Q And those five uses were --
 21 A Were primarily around the cove area where the ferry
 22 landing is.
 23 Q And they were specifically identified buildings,
 24 correct?
 25 A Right, but the ordinance -- but the text does not

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1 specifically say where commercial uses were to be. I guess
 2 we were assuming that they were going to be around the
 3 Diamond Cove area, but there is nothing in the conditional
 4 zoning text that says commercial uses have to be in a
 5 certain area.
 6 Q But in the maps that were shown to the city council
 7 and what was, in fact, looked at by the planning board or
 8 the planning office and approved, that identified the five
 9 buildings which were intended to be used for commercial
 10 uses, correct?
 11 A Correct.
 12 Q And the Double Barracks and the Hospital were not
 13 among those five, correct?
 14 A That's correct, yeah.
 15 Q The five that were identified were, in fact, around
 16 the area where the ferry lands; is that correct?
 17 A That's correct.
 18 Q The two buildings we're talking about here, the Double
 19 Barracks and the Hospital, are, in fact, in the residential
 20 area, correct?
 21 A They are in the Ft. McKinley area.
 22 Q The whole thing is Ft. McKinley, they're in --
 23 A In the parade ground area.
 24 Q And the parade ground is composed of residential
 25 units, correct?

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1 A Yes.
 2 Q Some of those people might occasionally rent out their
 3 units, but are you aware of any of those units that are
 4 owned specifically for the purpose of compensation?
 5 A I have absolutely no idea. I assume there are some
 6 rentals there, but I have no direct knowledge of that.
 7 Q And so you did not do any investigation to determine
 8 whether any individual units around the parade grounds and
 9 any buildings that are in the same area as these two are
 10 used only for rental purposes?
 11 A I did not do an investigation. I have heard though
 12 that people -- people did rent out their condominium units.
 13 I have no idea of the number.
 14 Q Your understanding is that was on a casual basis,
 15 correct, that is, the rental?
 16 A I have heard of people who had rented out their units
 17 and that there was a person at the Diamond Cove parade
 18 ground who would kind of manage the, in quote, rental of
 19 units.
 20 Q Did you understand, however, that the project, The Inn
 21 at Diamond Cove, was going to be a multi-unit building and
 22 all of the units were to be rented out?
 23 A Could you repeat that, please.
 24 Q Did you understand that the use of the Double Barracks
 25 and the Hospital as proposed by the developer was as a

1 multi-unit building that would be rented out and rented out
 2 on a regular basis?
 3 A I would use the term that it could be because
 4 presumably if an owner wanted to just keep their entire
 5 unit for themselves, they could or they could rent it out.
 6 Q Well, if, in fact, it is a requirement of the
 7 developer that you must put your unit into the rental pool
 8 so that it could be rented out by the central renting
 9 agency, that would be contrary to your understanding?
 10 A I am not -- I don't have entire knowledge of what you
 11 just said. That may have been mentioned to me in the past.
 12 I am not entirely sure. I am not sure if someone had told
 13 me in the past that an individual unit would be required to
 14 be part of a rental system where they were required to rent
 15 it out.
 16 Q And if that were so, that would make it different
 17 certainly in use than anything else in the IR-3 zone,
 18 correct, because you understood that if anybody else rented
 19 it out, it was only because they wanted to and not
 20 necessarily on a regular basis?
 21 A I would say this, that when someone builds a
 22 development, whether it is a single-family house or a
 23 multi-family development such as a condominium or a rental,
 24 we really don't get into the question of whether someone is
 25 going to be renting the unit or not. They are dwelling

1 it is definitely unique, I mean there's no doubt about it.
 2 Q Are you saying that a hotel is a lifestyle?
 3 A No, what I'm saying is that this type of use reflects,
 4 I think, the economics of the day and that there may be
 5 people that may want to own a unit and they may want to
 6 stay there for a fair amount of time and they may want to
 7 rent it out for a period of time.
 8 Q What is your understanding as to how this hotelminium
 9 is going to be used, if you have one; do you have one?
 10 A No, I do not. No, I do not have a --
 11 Q You don't know how this hotelminium is going to be
 12 used?
 13 A I know how it's going to be used, yes.
 14 Q Okay. Is that because you have looked at the
 15 submissions of the developer?
 16 A Yes, I have looked at them.
 17 Q Is that your only source of information as to how this
 18 hotelminium is going to be used?
 19 A Probably, yes.
 20 Q And is that -- are those representations on which you
 21 base your conclusion that the use of this property is
 22 consistent with the use of other property in the IR-3 zone?
 23 A Yes.
 24 Q Is there any other basis?
 25 A My knowledge in planning, my knowledge of the

1 units.
 2 Q Is there a difference between a commercial use and a
 3 residential use?
 4 A There is, yeah.
 5 Q Okay. That is pretty well established in terms of the
 6 work that you do in terms of planning and development?
 7 A Yes.
 8 Q And so if I decided to rent my house out and it is in
 9 a residential neighborhood, you wouldn't consider that to
 10 be commercial use?
 11 A That's correct.
 12 Q But, on the other hand, if I was regularly renting my
 13 house out or required to rent my house out, you might
 14 consider that to be a commercial use, correct? Strike the
 15 question.
 16 Let me ask it this way. If I had built my house
 17 for the purpose of renting it out on a regular and
 18 consistent basis, would you consider that to be commercial
 19 use?
 20 A Not necessarily.
 21 Q Okay. So at what point does a hotelminium become
 22 commercial use as opposed to residential use?
 23 A I think this is a hybrid use. I think it is a unique
 24 use. I think it reflects the economics of the day. I
 25 think it reflects a lifestyle and so this is -- you know,

1 comprehensive plan.
 2 Q Okay. Well, the comprehensive plan doesn't have
 3 anything about this project, does it?
 4 A Well, in terms of land use -- in terms of land use
 5 policies, the island land use policies.
 6 Q I understand there are some -- there are some general
 7 policies out there. In terms of speaking about this LLC's
 8 particular development, those policies don't talk about
 9 this particular development, correct? Strike that.
 10 A Prior to the --
 11 Q I will rephrase the question. In terms of -- in terms
 12 of the use of these buildings by this LLC, you're relying
 13 on what they told you as how they would use it, correct?
 14 A That's correct.
 15 (Exhibit 4, Memo, 10/2/08, marked for identification.)
 16 Q Next I'll show you what is marked as Knowland Exhibit
 17 4. I'll ask you to take a look at it. Do you recall that
 18 as part of the process of evaluating this ordinance change,
 19 a series of questions were asked by the city council which
 20 you and other people at the planning office put together
 21 answers to?
 22 A Yes.
 23 Q If you would, please -- well, first of all, this
 24 document here, is this the memorandum from corporation
 25 counsel Gary Wood to the mayor and city council on

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1 October 2, 2008 which addresses some of those questions?
 2 A Yes.
 3 Q If you would, please, turn to page seven. Question 11
 4 is how have we defined for the purposes of this application
 5 the terms residential hotel condominium, unquote, and there
 6 are two questions after that and then you see that there is
 7 an answer after that?
 8 A Yes.
 9 Q And if you go down to the end of that answer, which is
 10 on page eight, after the word hotel is your name, Rick
 11 Knowland?
 12 A That's me.
 13 Q Did you write that answer?
 14 A This entire answer?
 15 Q Yes.
 16 A Let me look at it.
 17 Q Please do.
 18 A Yes.
 19 Q Okay. Turn to page nine, please, the question No. 14,
 20 do you see that question and answer there?
 21 A Yeah.
 22 Q And do you see your name at the end of that?
 23 A Yes.
 24 Q Did you write that answer?
 25 A Yes.

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1 Q All right. Turn to page 10, please. Do you see
 2 question 19 at the bottom of the page?
 3 A Yes.
 4 Q And you see your name at the end of that?
 5 A Yeah.
 6 Q And is that your answer to the question?
 7 A That's correct.
 8 Q And then turn to page 11, please. Do you see question
 9 21?
 10 A Yes.
 11 Q Which asks are condominiums, hotels and inns allowed
 12 in other R zones; do you see the answer?
 13 A Yes.
 14 Q And you see your name at the end of it?
 15 A Right.
 16 Q Did you write that answer?
 17 A Yes.
 18 Q Okay. And you wrote in there hotels are not allowed
 19 in any residential zone; do you see that?
 20 A That's correct.
 21 Q Is that accurate?
 22 A Hotels are not allowed in any residential zone.
 23 Q And that is in the entire City of Portland?
 24 A Yes.
 25 Q Why is that?

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1 A Well, because it's considered to be more of a
 2 commercial use than a residential use.
 3 Q Is that the only reason why hotels are not allowed in
 4 the residential zones?
 5 A I would stand by my answer.
 6 Q All right. And so in what ways are hotels commercial
 7 uses, whereas, inns or lodging houses are not commercial
 8 uses?
 9 A Hotels are generally larger scaled in size, inns --
 10 when we think of inns particularly on the peninsula, they
 11 might be part of a house, they're smaller in size, less
 12 commercial in nature.
 13 Q What do you mean less commercial; they do take money
 14 for the room, correct?
 15 A What I'm saying is in terms of the size of them, they
 16 are generally not the same size as a hotel, they're
 17 smaller.
 18 Q Aside from size, is that the only difference that
 19 distinguishes a commercial use from a residential use in
 20 the City of Portland?
 21 A Okay. Could you repeat that question.
 22 Q In regards to these kinds of establishments, is size
 23 the only thing that distinguishes commercial use from
 24 residential use in the City of Portland? It sounds like
 25 what you're saying because hotels are big, that means

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1 they're commercial, whereas, inns are small, that means
 2 they're residential; is that the only difference between
 3 hotels and inns?
 4 A Are you talking about size, number of rooms; are you
 5 talking about characteristics?
 6 Q I'm talking about -- if you would explain to me -- you
 7 said hotels are not allowed in any residential zone because
 8 they're commercial. Now I'm trying to find out what are
 9 the characteristics of hotels that make them in your
 10 language commercial as opposed to residential use?
 11 A Well, I would say in terms of -- actually inns are
 12 allowed, I believe, in the R-6 zone. Inns generally are of
 13 a smaller scale, smaller number of rooms than a hotel. A
 14 hotel you think of a fairly large building with a lot of
 15 parking associated with it; generally inns, at least our
 16 experience has been, they fit in with a residential
 17 neighborhood.
 18 Q And why do we care about the larger scale in
 19 residential neighborhoods?
 20 A Well, because it could have an impact on the
 21 surrounding neighborhood.
 22 Q In what respect?
 23 A In terms of enjoyment of property, in terms of too
 24 many cars, in terms of light, in terms of the number of
 25 people.

1 Q You mean a transient population?
 2 A I wouldn't say transient population; I would say -- I
 3 would say, going back to my previous statement, concerns
 4 about too much blacktop, too much parking, a large sized
 5 building, things of that -- things of that nature.
 6 Q Could you tell me in the IR-3 zone is there any
 7 building which is as large as the Double Barracks, which is
 8 residential?
 9 A I think the Double Barracks is the largest brick
 10 building.
 11 Q And as configured by the ordinance, does it contain
 12 more live-in units and I'm including lock-out units than
 13 any other building in the IR-3 zone?
 14 A In terms of -- let's see, I believe there were 20
 15 units proposed in that building, so that would probably
 16 have the most number of units of any building on Great
 17 Diamond.
 18 Q Would it, in fact, have the most number of units of
 19 any unit on the entire island, that includes the area which
 20 is not in the Diamond Cove development?
 21 A That's probably true.
 22 Q The IR-3 zone is the zone that is around the outside
 23 of the island on the Diamond Cove side?
 24 A Actually it is in the inside portion, the IR-3 is in
 25 the inside of the Ft. McKinley.

1 reserved for a particular type of use on an island?
 2 A That's correct.
 3 Q Okay. Whereas, if it is on the mainland, it might be
 4 called something other than an inn?
 5 A Right, in terms of zoning, that's correct.
 6 Q They may call themselves --
 7 A They may call themselves an inn but --
 8 Q For zoning purposes it doesn't matter what you call
 9 yourself, correct?
 10 A For zoning -- in terms of the mainland?
 11 Q In terms of the City of Portland.
 12 A I mean you can call yourself something, but it needs
 13 to find a niche in terms of a definition that is allowed
 14 under the zoning.
 15 Q Okay. Next I'll show you what will be marked as
 16 Knowland Exhibit No. 6 and ask you to take a look at that.
 17 (Exhibit 6, Letter, 4/8/08, marked for
 18 identification.)
 19 Q Do you recognize this as a letter dated April 8, 2008
 20 to you?
 21 A Yes.
 22 Q This is from Ron Ward?
 23 A Right.
 24 Q And this is actually the cover letter which went with
 25 the application for the amendment to zoning, Knowland 3.

1 Q It includes the parade ground?
 2 A Yes.
 3 Q Your answer on page 11 of Knowland Exhibit No. 4 goes
 4 on in answer 21 that inns are a unique term to island
 5 zoning; is that true?
 6 A That's true.
 7 Q In other words, there are no inns allowed on the
 8 mainland?
 9 A That term inn, I think, is unique as a definition to
 10 island zoning; there are, however, inns on the mainland.
 11 Q Are they defined as inns under the zoning ordinance or
 12 is there something else that they're called?
 13 A Are you talking about on the mainland?
 14 Q Yes.
 15 A Actually there is any number of things that they might
 16 be called. They might be called a lodging house, they
 17 might be called a hotel, they might be called a motel.
 18 Q But they're not called inns?
 19 A In terms of the zoning -- I guess I would have to look
 20 at, for example, the R-6 because the R-6 allows something
 21 akin to a bed and breakfast and I think some residential
 22 zones also allow smaller scale bed and breakfasts.
 23 Q I'm just trying to understand the sentence that says
 24 inns are a unique term to island zoning. Did you mean to
 25 say by that that in the zoning ordinance the word inn is

1 A Okay.
 2 Q If we look at the bottom paragraph there on the first
 3 page, it says here the original approvals actually
 4 anticipated uses very similar to what is now proposed. Now
 5 that is not accurate, is it, in terms of these two
 6 buildings, they were not intended as hotelminiums, were
 7 they?
 8 A They were not anticipated as hotelminiums, that's
 9 correct.
 10 Q It then goes on to say the zoning administrator has
 11 noted an inconsistency between our proposed use and the
 12 definition of inn in our current ordinances. In other
 13 words, this is definitely or was as of 2008 when this
 14 letter was written, this project was definitely not an inn;
 15 is that correct?
 16 A That's correct.
 17 Q Even though they called themselves an inn?
 18 A Right.
 19 Q Next I'll show you what we'll mark as Knowland Exhibit
 20 No. 7.
 21 (Exhibit 7, Letter, 8/15/07, marked for
 22 identification.)
 23 Q Do you see this is a letter dated August 15, 2007 from
 24 Mr. Jaegerman with a copy to you, but it's directed to Ron
 25 Ward?

1 A Right.
 2 Q And so you would have seen this letter on or about
 3 August 15th of 2007?
 4 A Yeah, I don't remember this letter, but it certainly
 5 looks genuine.
 6 Q And you see in the second paragraph there he talks
 7 again about this issue of inns not being allowed in the
 8 IR-3 zone -- strike that.
 9 You see in the second paragraph there he talks
 10 about what is being proposed would not be an allowable use
 11 in the IR-3 zone?
 12 A Based on the definition, yes.
 13 Q And the definition of an inn would somehow have to be
 14 changed in order to allow for inns that are comprised of
 15 rooms with kitchen facilities?
 16 A Right.
 17 Q Okay. If you would turn to the second page, his
 18 fourth point is that he apparently reviewed the original
 19 conditional rezoning for Diamond Cove and he notes that the
 20 commercial uses were shown as clustered around the cove
 21 areas and that is what you noted before; is that correct?
 22 A Right.
 23 Q He says, quote, while the parade ground buildings were
 24 depicted as residential, unquote; is that correct; is that
 25 what he says?

1 appears to be the -- does that appear to be a section out
 2 of the ordinances for the IR-3 zone?
 3 A Yes.
 4 Q I'm going to use this just because I want to ask you
 5 about one particular thing here. If you turn to the second
 6 page there, the IR-3 island residential zone has certain
 7 requirements to be considered; is that correct?
 8 A Yes.
 9 Q And requirement E is the development plan should have
 10 the capability of meeting the development review standards
 11 of Section 14-145.16; is that correct?
 12 A Yes.
 13 Q Now among those requirements, and if you could turn
 14 the page and see where they start, if you look to the last
 15 page of this document, in order for the IR-3 project to be
 16 approved, the developer has to have financial and technical
 17 capability, correct?
 18 A Financial and technical, yes.
 19 Q Do you know whether before changing the ordinance for
 20 the use of these two buildings, the planning office ever
 21 looked at the financial capability of The Inn at Diamond
 22 Cove, LLC?
 23 A We received a letter from a bank expressing --
 24 expressing interest in financing the project and that they
 25 had reviewed the project and generally under financial and

1 A What -- I don't see it.
 2 Q That is the end of the first sentence.
 3 A That's one part of the sentence, yes, that is what he
 4 said.
 5 Q He says at the end the parade ground buildings were
 6 depicted as residential in the original conditional
 7 rezoning for Diamond Cove, correct?
 8 A Correct.
 9 Q Essentially that would have to be changed in order for
 10 this use to go into the Double Barracks building and the
 11 Hospital building, correct?
 12 A I am not sure if I necessarily agree with that.
 13 Q Well, he said that there would certainly be -- strike
 14 that.
 15 He said that there might be doubt or debate
 16 unless the change were made, correct?
 17 A That's correct.
 18 Q And that's because the two building in question here
 19 were depicted in an area of the island identified as
 20 residential?
 21 A Yes.
 22 (Exhibit 8, Code of Ordinances Section, marked for
 23 identification.)
 24 Q The next document I'll show you is Knowland 8 --
 25 actually now that I'm looking at Knowland 8, that just

1 technical capability and this is actually very similar to
 2 our other ordinances, we -- that is what we review as
 3 documentation.
 4 (Exhibit 9, Letter, 4/29/08, marked for
 5 identification.)
 6 Q I'll show you now what has been marked as Exhibit K 9.
 7 Is this the letter that you reviewed?
 8 A Yes.
 9 Q Aside from this letter, did you have any other
 10 information concerning the financial capacity of The Inn at
 11 Diamond Cove, LLC?
 12 A They may have submitted information on their
 13 development capability of other projects. I don't recall
 14 off the top of my head.
 15 Q Okay. Now I guess I just want to make the question
 16 very clear because I'm looking for a specific piece of
 17 information. I'm focusing here not on Hart Hotels or on
 18 David Bateman or any of David Bateman's other entities or
 19 projects; I am focusing in on The Inn at Diamond Cove, LLC,
 20 which is the applicant, that entity. Aside from this
 21 letter, can you think of any other information which the
 22 planning board or the city council had concerning that
 23 entity's financial capability?
 24 A I cannot think of any other document.
 25 Q All right. If we look at this section in K 8 of the

1 ordinance, it talks about, quote, financial capability
 2 shall include a cost estimate of the proposed improvements;
 3 did you ever receive that?
 4 A I think we did.
 5 Q Proposed construction and permanent financing, quote?
 6 A This would be covered by this document here.
 7 Q That letter, K 9?
 8 A Right.
 9 Q Okay. And, quote, terms of sale or lease of dwellings
 10 and commercial space, unquote, is that covered by the
 11 option to purchase the property from the City for 1 dollar
 12 or is there something else that covered that?
 13 A I don't recall.
 14 (Exhibit 10, Order Authorizing Amendment, marked for
 15 identification.)
 16 Q The next thing I'll show you is marked as K 10 or
 17 Knowland 10. Do you recognize this as the order
 18 authorizing the amendment which we've been discussing
 19 today?
 20 A Yes.
 21 Q And it indicates it was passed on September 15, 2008;
 22 is that consistent with your recollection?
 23 A That is.
 24 Q And in terms of what this order permitted to be done
 25 to the Double Barracks and Hospital buildings, this is what

1 reports that I prepared.
 2 Q Now does this describe -- at least the top half of the
 3 first page describe the Diamond Cove development?
 4 A Yes.
 5 Q Okay. And the last sentence in that first section
 6 says, quote, in contrast, the remainder of the island (the
 7 southerly or village section of the island) had about 72
 8 dwellings as of 2004.
 9 A Yes.
 10 Q Okay. And so what you're referring to there is the
 11 remainder of Great Diamond Island which has not been
 12 touched by the Ft. McKinley or Diamond Cove development?
 13 A Yes.
 14 Q I just want you to identify a couple additional
 15 documents for me.
 16 (Exhibit 12, Planning Board Report, 8/6/08, marked for
 17 identification.)
 18 Q I have shown you what has been marked here as Exhibit
 19 K 12. Does this appear to be the planning board report
 20 without attachments which was submitted by you on August 6,
 21 2008 to the city council?
 22 A That's correct.
 23 Q All right. And you had a hand in writing this?
 24 A Yes.
 25 (Exhibit 13, Planning Board Report, 6/24/08, marked

1 the developer ultimately negotiated with the City was
 2 acceptable to its project?
 3 A This is the proposed text that was -- that was
 4 developed and passed by the city council.
 5 Q Right. And that was in order to permit this
 6 particular developer to go forward with his project and
 7 these two buildings?
 8 A Yes.
 9 Q To your knowledge, did the city council have any
 10 expectation that any developer other than The Inn at
 11 Diamond Cove, LLC would use these two buildings the way
 12 that this order permitted?
 13 A I have no idea what the city council was thinking with
 14 respect to that.
 15 Q In terms of your office, the planning office, were you
 16 aware of anyone else or did you have any expectation that
 17 any other developer would be using the buildings in the way
 18 permitted by this order?
 19 A I know of no other developer that was interested in
 20 these two buildings.
 21 (Exhibit 11, Diamond Cove Questions & Answers, marked
 22 for identification.)
 23 Q Next I'll show you what has been marked as Knowland
 24 Exhibit No. 11 and ask if you can identify that?
 25 A This is a document that appeared in a number of staff

1 for identification.)
 2 Q Let me show you what has been marked as Knowland
 3 Exhibit 13. Do you recognize this as the planning board
 4 report authored by you on June 24, 2008?
 5 A Yes.
 6 Q So this would have been an earlier version of the
 7 exhibit we just looked at?
 8 A Yes.
 9 (Exhibit 14, E-mails, 5/20/08, marked for
 10 identification.)
 11 Q Next I'll show you what we'll mark as Knowland Exhibit
 12 No. 14. Do you recognize this as a pair of e-mails between
 13 yourself and Ron Ward?
 14 A Yes.
 15 Q All right. And they appear to be dated May 20th of
 16 2008?
 17 A That's correct.
 18 Q And just so the record is clear, the one that starts
 19 at the bottom of the first page is your initial e-mail and
 20 the one at the top of the first page is Mr. Ward's response
 21 to you?
 22 A Yes.
 23 (Exhibit 15, Request for Proposals, marked for
 24 identification.)
 25 Q Next I'll show you what has been marked as Knowland

1 Exhibit 15. Do you recognize this as the request for
 2 proposals in which the City asked for sealed proposals for
 3 development projects for the Hospital and Double Barracks?
 4 A This appears to be a genuine document, but I don't
 5 even know if I have seen this before, to be honest with
 6 you. I may have, but I certainly was not involved in
 7 writing it.
 8 Q Then let me ask you if you would turn to page four as
 9 it's marked in the upper, right-hand corner, special issues
 10 says number of housing units, it says, quote, the existing
 11 contract zone for the two properties permits the
 12 development of 14 housing units in the Double Barracks and
 13 9 in the Hospital, unquote. Regardless of whether you have
 14 seen this document before, was that your understanding?
 15 A Yes and no. First of all, it is a conditional zone,
 16 not a contract zone. The original -- there was a chart
 17 that was developed for the project and it indicated the
 18 projected number of units in each building and that is, I
 19 think, what this author was talking about, but the number
 20 of units in each building could certainly vary.
 21 Q Well, I guess I was just trying to focus in on whether
 22 it was your understanding that before the ordinance was
 23 enacted, the documents relating to the Diamond Cove/Ft.
 24 McKinley project had permitted development of 14 housing
 25 units in the Double Barracks and 9 in the Hospital?

1 so that number probably changes from the 9 in the sentence
 2 that you were referring to.
 3 Q Now have you brought any documents with you today?
 4 A I have, yes.
 5 Q Could I take a look at those, please.
 6 MS. WEST-CHUHITA: I think they're just what we
 7 provided to you.
 8 THE DEPONENT: Yeah, it includes my original
 9 report, a copy of the island zoning text and the original
 10 comprehensive plan.
 11 (Exhibit 16, Deposition Notice, 5/14/2010, marked for
 12 identification.)
 13 Q Okay. I'm going to show you here what is marked as
 14 Knowland Exhibit 16. Do you recognize this as your
 15 deposition notice for today?
 16 A Yes.
 17 Q All right. In terms of the documents that you have
 18 brought with you, have copies of those been provided to me?
 19 A They should be, yes.
 20 MS. WEST-CHUHITA: Yes.
 21 Q Aside from those documents, have you reviewed any
 22 other documents regarding this case?
 23 A No, I reviewed the documents that are in that folder
 24 as well as any other background documents.
 25 Q Well, what other documents have you reviewed besides

1 A I think that would be an accurate statement; however,
 2 I would say that that would not necessarily preclude that
 3 there couldn't be more housing units in each building
 4 because they did vary -- because they did vary over time.
 5 Q Are you saying the number of housing units in these
 6 two buildings varied over time?
 7 A No, what I'm saying is the whole development. I think
 8 the number of units in each building when constructed may
 9 have varied a bit from what was originally projected, but
 10 the total number of units in the development was limited
 11 to, I think, 134 or something like that.
 12 Q Right, but I'm just talking about these two buildings
 13 and in terms of what was planned for before the amendment.
 14 A It was projected that there would be 14 units in the
 15 Double Barracks and 9 units in the Hospital.
 16 Q Okay. And when the amendment was finalized by the
 17 city council, it permitted 20 hotel/minimum units with an
 18 additional 16 lock-out units in the Double Barracks,
 19 correct?
 20 A Yes.
 21 Q Did it make any change at all to your knowledge to the
 22 Hospital capacity?
 23 A I think there is a number in the paragraph you're
 24 reading, if you just read that, there is a number there
 25 that has X number of units and X number of lock-out units,

1 what is contained in the folder?
 2 A Primarily the folder, I looked at a map of the Diamond
 3 Cove project, I would say that is about it.
 4 Q Okay. Is the restaurant in the IR-3 zone?
 5 A Yes.
 6 Q Have you produced all documents which you prepared
 7 including but not limited to notes, memos, reports,
 8 calculations, letters, e-mails?
 9 A Yes.
 10 Q Have you had any communications regarding this project
 11 with anyone here in the planning office?
 12 A This project in terms of my deposition?
 13 Q No, in terms of the amendment -- the zoning amendment
 14 which was proposed, the actions of the city council, so on.
 15 A I received any number of calls; I received a huge
 16 number of calls.
 17 Q Is there anything else in writing, and I include
 18 e-mails, in regards to this project which have not been
 19 produced?
 20 A I am not aware -- I mean we had a large number -- a
 21 huge number of written public comments.
 22 Q Okay. Did you communicate with any of the city
 23 councilors in writing, that includes e-mail, about this
 24 project?
 25 A Absolutely not.

1 Q Did you communicate with the city manager?
 2 A I don't recall.
 3 Q Okay. Have you looked to see whether you have any
 4 e-mails --
 5 A I went through all my catalog of e-mails. I mean I
 6 don't remember sending an e-mail to Joe Gray about this.
 7 Q Okay. I'm just trying to find out if you -- if you
 8 did a search, that is fine.
 9 A Yeah, I went through the computer.
 10 Q Okay. And you searched for terms that would relate to
 11 the Double Barracks and the Hospital?
 12 A Yeah, yeah.
 13 Q And so if the documents you produced have no
 14 communications with the city manager, your testimony would
 15 be that you never wrote to him or received one from him, at
 16 least not that was saved?
 17 A Yeah, I don't recall any and I didn't see any in my --
 18 in my e-mail bank.
 19 Q Okay. Did you ever talk with anybody in the
 20 corporation counsel's office about this project?
 21 A Oh, sure.
 22 Q Was there ever anything in writing between you and
 23 anyone in corporation counsel's office about this project?
 24 A There may be e-mails that were part of the planning
 25 board or city council packet. For example, there was the

1 Q So you're saying that residential uses go through site
 2 plan as well?
 3 A That's right.
 4 Q Is that all types of residential uses?
 5 A The key issue is development in general; it is not the
 6 use, it is the development itself, the development
 7 activities which trigger the site review.
 8 Q What are the development activities that trigger site
 9 review?
 10 A There is an addition on to the building; there is a
 11 subdivision; there is a swimming pool that is being
 12 proposed and a cabana.
 13 Q Does the requirement to go through site plan review
 14 have anything to do with the density of the use or the
 15 occupancy?
 16 A There is a couple of triggering mechanisms here, one
 17 is a subdivision, it has to go through subdivision review
 18 and then the changes to the outside of the building, which
 19 are the swimming pool and the cabana.
 20 Q So, in other words, if there hadn't been an addition
 21 or changes to the outside, this project would not have had
 22 to go through site review?
 23 A I think we would have required a review because the
 24 number of units that was originally on that chart on the
 25 map had changed. I would say that that would be a -- I

1 material which was an exhibit from Gary Wood to the city
 2 council which I communicated to him about.
 3 Q That is Knowland 4?
 4 A Right.
 5 Q Yeah?
 6 A I would say that would be the extent of it with the
 7 corporation counsel. If there was any other communication,
 8 it probably would have been in my planning board packet or
 9 the city council packet.
 10 Q Are you aware of any other communications that exist
 11 which you haven't produced which relate to the issue of
 12 whether or not this amendment is consistent with existing
 13 and permitted uses in the area.
 14 A I know of no other communication.
 15 MR. ROBITZBK: Let's take a break for a minute.
 16 We may be done.
 17 (A short break was taken.)
 18 Q I just have a few more questions.
 19 A Sure.
 20 Q In terms of the process that this project is now
 21 undergoing, you understand that it is in site plan review?
 22 A That's correct.
 23 Q Okay. And is site plan review for residential
 24 purposes?
 25 A It's for all types of uses.

1 would say that would be a determination in terms of the
 2 site plan review.
 3 Q Anything else?
 4 A Let's see, we were originally talking about
 5 residential uses for that building and now we have this
 6 hybrid use, which is a hotelminium, which is part
 7 residential and part inn. That would probably trigger a
 8 site plan review. There are multiple factors in here that
 9 trigger a development review.
 10 Q Now in terms of the order passed by the city council
 11 if we put to the side the cabana and swimming pool, does
 12 that order really only affect the -- what exists in the
 13 footprint of the two buildings?
 14 A Yes, because it was an amendment to the IR-3 zone for
 15 those particular buildings.
 16 Q All right. And so if, for example, somebody else in
 17 the IR-3 zone, in one of the other buildings, decides that
 18 he or she wants to rent out his unit and put a sign outside
 19 and say I'm going to rent this out on a nightly basis,
 20 would that be allowed?
 21 A I guess that is something that the zoning
 22 administrator would have to answer. I know that there have
 23 been people that have rented out their houses. I have
 24 never seen a sign there that says rooms for rent or rooms
 25 for rent on a daily basis. I suspect it has happened in a

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1 very low-key fashion. But in terms of the zoning, there is
 2 a pretty specific definition in terms of things you can do.
 3 Q I understand, but you have been designated as the
 4 expert on permitted uses in the IR-3 zone, so what I want
 5 to find out is if I owned another unit in the IR-3 zone on
 6 the parade grounds here and I put a big sign in my window
 7 that says for rent and I took out an ad in the Portland
 8 Press Herald saying rooms for rent and I'll rent it out by
 9 the night or by the weekend or whatever anybody wants to,
 10 is that allowed in that -- other buildings other than the
 11 Double Barracks or the Hospital?
 12 A In the Portland zoning ordinance, there is a provision
 13 for single-family houses, you're allowed to have up to one
 14 or two boarders in the house; so theoretically you could
 15 have a boarder in your house.
 16 Q I'm not talking about a boarder here; I'm talking
 17 about nightly rentals, the same way a hotel room would work
 18 except it would be a hotel suite, I wouldn't be living
 19 there myself and I would be renting out the entirety of my
 20 unit on a nightly basis, is that a permitted use in this
 21 IR-3 zone?
 22 A I would say probably not.
 23 Q And why would it not be a permitted use?
 24 A Why would it not be a permitted use? Because of the
 25 definition in the zoning ordinance.

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1 Q Definition of what?
 2 A I would say there is nothing that -- there is nothing
 3 in the definition of a dwelling unit that would preclude
 4 that. I think the way we get to that is because there are
 5 other uses that offer the opportunity for rental
 6 arrangements, whether they be lodging houses or hotels or
 7 bed and breakfasts and what have you.
 8 Q If I did in my unit in the IR-3 zone, which is not --
 9 my unit is not in the Double Barracks or the Hospital, if I
 10 rented it out on the same basis that rooms can be rented
 11 out in those two buildings, that would not be a permitted
 12 use now, correct?
 13 A I would say if someone put up -- if someone put up a
 14 sign, then they would probably get a letter from the zoning
 15 administrator about that.
 16 Q Because it is not a permitted use?
 17 A In the context of what you're saying, yes.
 18 Q Okay. But if I did that exact same thing but I was in
 19 one of these two buildings, the Double Barracks or the
 20 Hospital, that is now a permitted use on account of this
 21 amendment?
 22 A That's correct.
 23 MR. ROBITZEK: Okay. That's all I have, thank
 24 you.
 25 MS. WEST-CHUHITA: I have nothing.

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1 (Exhibits 1-4, 6-16 in original transcript
 2 only; no Exhibit 5 was marked.)
 3 (TIME: 2:25 P.M.)
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Page 57

1 SIGNATURE PAGE
 2
 3 TO BE COMPLETED BY DEPONENT:
 4 I, Richard W. Knowland Jr. have read the
 5 foregoing pages of my testimony or have had the foregoing
 6 pages of my testimony read to me and have noted any changes
 7 in form or substance of my testimony together with their
 8 respective corrections and the reasons therefor, on the
 9 following 16 Errata Sheet(s).
 10 (Signature) Richard W. Knowland Jr.
 11 (Date) June 3, 2010
 12
 13
 14
 15 TO BE COMPLETED BY NOTARY PUBLIC OR ATTORNEY:
 16 I, _____, a Notary
 17 Public/Attorney in and for the State of Maine, hereby
 18 acknowledge that the above-named deponent personally
 19 appeared before me, swore to the truth of the foregoing
 20 statements and affixed his/her signature above as his/her
 21 own true act and deed.
 22
 23 (Signature) _____
 24 (Date) _____
 25 My Commission Expires: _____

CERTIFICATE

I, Susan R. Berube, a Notary Public in and for the State of Maine, hereby certify that the within-named deponent was sworn to testify the truth, the whole truth, and nothing but the truth, in the aforementioned cause of action.

I further certify that this deposition was stenographically reported by me and later reduced to print through Computer-Aided Transcription, and the foregoing is a full and true record of the testimony given by the deponent.

I further certify that any and all changes in form or substance which the deponent has made, along with any statement of the reasons given by the deponent for making them, have been entered on the deposition by the officer.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this date: May 26, 2010

Dated at *Susan R. Berube, Notary*
Portland, Maine. Susan R. Berube, Notary Public
My Commission Expires: March 23, 2011

City of Portland, Maine

IN THE CITY COUNCIL

AMENDMENT TO PORTLAND CITY CODE

SECTION 14-49 (ZONING MAP)

RE: CONDITIONAL REZONING OF FT. MCKINLEY

WHEREAS, Diamond Cove Associates is the record owner of certain land, with the buildings thereon, situated on the northerly portion of Great Diamond Island and commonly known as the Ft. McKinley property; and

WHEREAS, in the process of a comprehensive land use study and rezoning of the Portland islands by the City, Diamond Cove Associates requested that a portion of said property be rezoned from the R-2 Residential Zone to the IR-3 Island Residential Zone; and

WHEREAS, the Planning Board, pursuant to 30 M.R.S.A. Section 4962(1)(I), and after notice and hearing and due deliberation thereon, recommended rezoning a portion of the property as aforesaid, subject, however, to certain conditions; and

WHEREAS, the City Council hereby finds and declares that said conditional rezoning would be pursuant to and consistent with the City's comprehensive plan and would satisfy the guidelines set forth in Section 14-145.13 of the Portland City Code, all for the reasons contained in the Planning Board's report accompanying this Amendment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE, IN THE CITY COUNCIL ASSEMBLED, AS FOLLOWS:

THAT, the Zoning Map of the City of Portland, Maine (1958), as amended, on file in the Office of the Director of Planning and Urban Development (incorporated into this code by Section 14-49) be further amended as shown on the attached fragmentary map entitled "Fort McKinley Property Zoning Map (Great Diamond Island)", subject, however, to the Conditions and Restrictions attached hereto.

042

AMENDMENT TO PORTLAND CITY
CODE SECTION 14-49 (ZONING
MAP) SECTION 14-49 (ZONING
MAP) RE: CONDITIONAL
REZONING OF FT. MCKINLEY

IN THE CITY COUNCIL


JUNE 12 1985

Given a first reading, Public
hearing held,

JUNE 24 - Public hearing held.
Councilor Smith moved, seconded
MacWilliams to table to July 15th
afternoon City Council Meeting,
passed 7 yeas.

JULY 15 - Removed from the table.
Motion to replace with substitute
amendment, passed, 8 Yeas, and
passed, as amended, 8 Yeas.

Item #98 dated July 15, 1985 is relevant to
this item. Titled Access For Island Sub-
divisions, it refers to this item.

Attest: 
City Clerk



PLANNING BOARD REPORT PORTLAND, MAINE

**Diamond Cove Conditional Zoning Amendment
Great Diamond Island
#2012-411
The Inn at Diamond Cove, LLC., Applicant.**

Submitted to: Portland City Council Public Hearing Date: February 22, 2012	Prepared by: Richard Knowland, Senior Planner Date: February 15, 2012 Planning Board Report #6-12
-------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------

I. Introduction

At a public hearing on February 14, 2012, the Planning Board voted (5 to 0, O'Brien absent) to recommend that the City Council approve conditional zoning amendments proposed by The Inn at Diamond Cove. The amendments would help facilitate renovation of the Double Barracks building into a hotelminium development on Great Diamond Island. The recommendation allows an increase in the number of hotelminium units from 20 to 22 and the number of lock-out units from 16 to 22. The number of bedrooms remains unchanged at 46 rooms. The recommended zoning amendments are shown as Attachment 1-A.

In reviewing the amendments proposed by the applicant, the Board is also recommending further amendments to the hotelminium conditional zoning provisions enacted in 2008 described below. See also Attachment 1-A.

Section 3 (Disposal of Solid Waste) has been revised to reference that solid waste needs to be stored and collected in accordance with Maine DEP approvals and to the extent there is conflict between City and DEP requirements, the stricter provision shall apply.

Section 5 (Transportation Services) a minor change replaces the phrase "Diamond Cove landing point" with "Diamond Cove Pier".

A new section (8. Site Plan Review) has been added, clarifying that nothing within the conditional zoning text is intended to relieve the applicant/owner from

complying with applicable standards under site plan review.

The Board indicated their recommendation is based on an additional finding that the Applicant's representative has stated that the submitted site plan application will clearly state that all solid waste will be stored on the premises.

II. Background

In 2008 the City approved an amendment to the Diamond Cove conditional zoning provisions allowing the conversion of the Double Barracks building into a residential hotel condominium or hotelminium use. At the Board's January 24, 2012 workshop for the hotelminium site plan, the Applicant indicated the number of hotelminium units needed to be increased from 20 to 22 units for marketing reasons. Subsequently an application for a zoning amendment was filed on January 26th. Site plan/subdivision review of the Double Barracks will be deferred until the City Council makes a decision on the zoning amendment.

The 2008 conditional zoning amendment was viewed as the last best chance to renovate the Double Barracks and Hospital buildings. The Applicant observed that "both buildings are substantially deteriorated and a collapse of either would not be unexpected". Given the poor condition of the buildings, residential uses have not proven financially feasible. Consequently these buildings are the last significant brick buildings within the historic Fort McKinley complex not renovated. They are also the largest brick buildings in the complex. Renovation of the Fort McKinley buildings was initiated 20 plus years ago.

Commonly asked questions about the Diamond Cove development is shown as Attachment 1-B.

III. Proposed Conditional Zoning Hotelminium Amendment

Proposed changes to the 2008 conditional zoning amendments include increasing the number of hotelminium units in the Double Barracks from 20 to 22 and the number of lock-out units from 16 to 22. The recommended amendments are shown on Attachment 1-A

The changes are internal only and will not affect the exterior appearance of the building nor the total number of bedrooms originally planned (46).

The specific revisions are in paragraph 2 of the zoning text and shown below:

The Double Barracks may include up to a maximum of twenty-two (22) hotelminium units [with the maximum of lock out units, included as part of the twenty-two hotelminiums and not separate units, not to exceed twenty-two sixteen (22+16)] and the Hospital may include up to a maximum number of twelve (12) hotelminium units [with the maximum number of lock out units, included as part of the twelve hotelminiums and not separate units, not to exceed twelve (12)].

IV. Key Elements of 2008 Conditional Zoning Amendment

The 2008 conditional zoning amendment [entitled “Supplemental Conditions and Restrictions Buildings 46 (“Double Barracks”) and 19 (“Hospital”)] was intended to facilitate the conversion of the Double Barracks and Hospital buildings into a hotelminium. The most significant text changes in terms of development and use involve the following: (1) referencing a residential hotel condominium (hotelminium) as a permitted use, including a definition of the use; (2) use of dedicated open space for a swimming pool and bar/service building; and (3) referencing construction of the bar/service building. Other sections of the conditional zoning text addressed disposal of solid waste; fire protection; transportation services and disposal of sanitary waste.

A discussion of the hotelminium use is provided below as background to the 2012 amendment.

Creation of Hotelminium Use

The 2008 amendment incorporated a new term for a residential hotel condominium (hotelminium) use for the Double Barracks and the Hospital since a residential hotel condominium was not a recognized use in the zoning ordinance. In preliminary discussions the Applicant described the use as an inn. However, as each unit will have kitchen facilities this was deemed inconsistent with the zoning definition of an inn. See excerpt of the inn definition from sec-14-47 below:

Inn: “A building used for more or less temporary occupancy of individuals, who are lodged with or without meals, having ten (10) but no more than fifty (50) rooms. Guest rooms shall not contain separate kitchen facilities...”

The applicant indicated “this project proposes individual, residential condominium units, each of which will have its own separate kitchen facilities, together with limited common amenities.” The condominium units will apparently be sold to investors and the individual units rented for public use similar to a hotel or inn room. There is a management entity that will be coordinating this function including providing a van service, security and maintaining the exterior of the building.

The 2008 amendment created a new term “hotelminium” to address this issue.

“Hotelminium” is defined as privately owned residential condominium units (with kitchens) located within a structure that offers reasonable and customary on-site hotel services which are limited to the unit owners, their guests, tenants in residence and members of the DCHA. The hotelminium may be rented (in whole or in part by virtue of attached bedrooms capable of being independently rented through a “lock out” system from the remainder of the unit) for varying durations to the general public through a centralized hospitality vendor.

V. Land Use Policy

The 2008 review of the hotel/mid-rise amendments included a discussion of land use policy. This narrative is provided as background information since the amendment (although minor) represents a change in the IR-3 conditional zoning for Diamond Cove.

The primary policy document for the islands is *Portland Islands Land Use and Zoning Study*, which was adopted by the City Council (1985) as an element of the City Comprehensive Plan. It was the first comprehensive land use and zoning plan for the islands. The original Diamond Cove conditional zoning was enacted pursuant to this plan. The renovation of the existing Fort McKinley buildings within Diamond Cove was anticipated and was provided for in the approved conditional zone.

The summary and goal statement of the island comprehensive plan is expressed below:

The islands are different from the mainland in terms of the natural features, their resource value, the public services available (or possible), 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.

The purpose of the IR-3 Island Residential Zone as expressed in the comprehensive plan is shown below:

The purpose of the IR-3 would be to allow for planned unit development in a manner compatible with both the natural and built environment. Parcels should not be rezoned to IR-3 unless an applicant can demonstrate that a development plan for the site can meet a series of detailed location and performance standards and is part of a contract or conditional rezoning. These standards would provide guidance to the City on whether a specific site would be appropriate for an IR-3 rezoning.

The comprehensive plan discussion for the IR-3 Contract-Conditional Zoning is shown below:

All IR-3 rezoning should be subject to contract or conditional zoning. Contract zoning is critical to the IR-3 rezoning process in that if a development plan for a proposed rezoning met the IR-3 review standards, the City would require that the zone change be subject to certain conditions through contract zoning that would insure that the final development for the site was in conformity with the land use policies represented in the IR-3 standards. This zoning tool can insure that the representations and assertions of a particular zone change application and development plan that served as the basis for granting the rezoning, are formally carried out in the context in which it was approved. Given the sensitive environmental issues and development constraints on the islands, it is not in the

interest of the City to approve an IR-3 without appropriate assurances that the ultimate development for the site appropriately addresses such development constraints.

The purpose section of the IR-3 Zone (zoning text sec. 14-145.13) is shown below.

The purpose of the IR-3 island residential zone is to allow for a planned unit development in a manner compatible with both the natural and built environment, which provides for adequate circulation and waterfront access, adequate water supply for private use and fire protection, and safe and clean disposal of solid and septic wastes.

The above paragraph also includes sec. 14-145.13(e), which states:

(e) The development plan should have the capability of meeting the development review standards of sec. 14-145.16.

Although Diamond Cove is an existing IR-3 conditional zone and the hotelminium proposal represented an amendment to the conditional zone text, the hotelminium proposal needed to demonstrate the “capability” of meeting these standards.

Note the Board determined in its 2008 review the hotelminium proposal did demonstrate the “capability” of meeting these standards. A discussion of these standards is provided for background information. A more detailed review of these standards will take place during site plan review since the applicant at the zone change stage need only demonstrate the capability of addressing these standards.

A response to the development standards of sec. 14-156.16 is shown below. The Applicant’s response to these standards has been submitted as part of the site plan review process.

Transportation: The transportation standard states in part that “development shall be designed with a pedestrian orientation to minimize the use and dependency on private motor vehicles”. The original 1985 conditional zoning (and subsequent amendments including the 2008 amendments), placed restrictions on the use of motor vehicles which is consistent with this standard. Private motor vehicles are in fact banned from Diamond Cove. The transportation issues on Great Diamond Island (motor vehicles golf carts, common motor vehicles) have been complex and contentious. The 2008 amendments are very specific in prohibiting motorized ground transportation off the Fort McKinley site to the southerly pier. The intent is that owners and visitors of the units will use the Diamond Cove pier for all water transportation needs and not use the southerly pier. See conditional zoning transportation requirement Attachment I-A.

Solid Waste: The applicant indicates all solid waste will be held within the building in a trash room and will be picked and removed in accordance with the Diamond Cove Homeowners Association. Solid waste will be taken off the island in accordance with “present practices” or off the island via the Diamond Cove pier by a private contractor.

The present practices for Diamond Cove involve the City taking solid waste off the island.

Sanitary Waste: This standard has been addressed with Maine DEP approval of a Maine Discharge Elimination System Permit and Waste Discharge License for this project. Sanitary waste will be processed through an existing sand filter treatment system that has an outfall pipe in Casco Bay. The sand filter system serves the entire Fort McKinley complex and is licensed not to exceed 35,000 gallons per day based on a monthly-daily average.

Water: A letter from the Portland Water District indicates "there should be adequate pressure and volume of water to serve the domestic needs of the proposed Inn at Diamond Cove at the point which Diamond Cove is connected to the public system".

Shoreland Area: The project area is outside of a shoreland zone.

Environmentally Sensitive Areas: The focus of the development is the renovation of the Double Barracks which is an integral part of the Fort McKinley development and the primary feature of this site, historically and visually. Site disturbance is limited to the rear of the building where an inground pool, deck and gazebo will be constructed which will not impact any significant scenic vista.

The significant environmental areas cited in this standard have been conserved elsewhere within the IR-3.

Recreation and Open Space Area: The Diamond Cove open space is functionally integrated into the entire development plan. A swimming pool and gazebo (food/beverage) are proposed behind the Double Barracks. This land is owned in common by the DCHA but will be leased by The Inn at Diamond Cove. Given the size and location of this open space it is unlikely this loss of land (as common area) will adversely affect open space resources within Diamond Cove

Financial and Technical Capability: Two letters have been submitted by Katahdin Trust Company in support of the applicant's financial capability. The submission includes an estimated project cost of \$9,392,154. Sources of funding include a first mortgage loan (permanent) of \$5,290,000 and partnership equity (cash) of \$4,102,154. Technical capacity information has also been submitted. See Attachment 2-C.

Environmental Impact Analysis: The project involves renovation of an existing building with very limited site disturbance except in the immediate vicinity of the site. The significant features cited in the above standard has been preserved on other locations of Diamond Cove. It is unlikely that the disturbed area would be rated as significant in terms of its natural features. The amount of vegetation likely to be disturbed within the footprint of the swimming pool/service building area is minimal in the context of the total open space and vegetation preserved within the Diamond Cove development.

Staff has re-read an environmental assessment study filed with the original zone change application. The hotelminium seems consistent with the impacts associated with the

original Diamond Cove development except for a few trees that may be taken down for the swimming pool.

Development Phasing: The renovation of the Double Barracks will be completed without phasing. The Hospital is not part of the current development application and will be renovated at an unspecified date in the future.

Emergency Services: As part of the conditional zoning amendment the applicant is required to install a sprinkler system and a central alarm system for the entire building.

VI. Public Process

The Planning Board held a workshop and a public hearing on this item. Public notice of the public hearing consisted of 258 notices sent to property owners on Great Diamond Island as well as a legal notice which ran in the Portland Press Herald on January 30th and February 6th.

Public notice of the City Council public hearing consisted of 258 notices sent to property owners on Great Diamond Island as well as a legal notice which appeared in the Portland Press Herald on February 8th and February 13th.

VII. Planning Board Recommendation

On February 14, 2012, the Planning Board voted 5-0 (O'Brien absent) that the proposed amendments to the Diamond Cove conditional zoning text are in conformance with the City of Portland Comprehensive Plan and therefore recommends approval of the proposed zoning text amendments to the City Council. The Board's recommendation also includes revisions to sections 3, 5 and creating new section (8) of the zoning text.

The Board indicated their recommendation is based on an additional finding that the Applicant's representative has stated that the submitted site plan application will clearly state that all solid waste will be stored on the premises.

Attachments

1 Staff Comments/Submissions

- 1-A** Planning Board Recommended Diamond Cove Conditional Zoning Amendment Revisions for Hotelminiums (Supplemental Conditions and Restrictions)
- 1-B** Commonly Asked Questions About Diamond Cove

2 Applicant Submissions

- 2-A** Application for IR-3 Diamond Cove Conditional Zoning Amendment (January 26, 2012)
- 2-B** Background Information on Zone Amendment Request by Ronald Ward (January 20, 2012)
- 2-C** Financial and Technical Capacity Information

3 Written Public Comments

ATT 1-A-1

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEE MAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER AUTHORIZING AMENDMENT TO
CONDITIONAL ZONE FOR PROPERTY
IN THE VICINITY OF
DIAMOND COVE, GREAT DIAMOND ISLAND
PORTLAND, MAINE

ORDERED, that the Conditional Zone by and between the City of Portland and The Inn at Diamond Cove LLC and the Diamond Cove Homeowners Association, adopted on _____ and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to read as follows:

SUPPLEMENTAL CONDITIONS AND RESTRICTIONS
BUILDINGS 46 ("DOUBLE BARRACKS") AND 19 ("HOSPITAL")
FT. MCKINLEY, PORTLAND, MAINE
FEBRUARY 22, 2012

The following supplemental conditions and restrictions are imposed by the City of Portland (the "City") on that portion of the Ft. McKinley project ("Project") commonly known as Buildings 46 and 19, together with the ancillary service area, all as depicted on the map attached hereto as Attachment 1 ("Premises"), as conditions of the rezoning of the Premises at the request of The Inn At Diamond Cove, LLC ("IDC")¹, and consented to by the Diamond Cove Homeowners Association ("DCHA"):

1. Existing Conditions. The Premises are a portion of the development commonly known as Ft. McKinley, Great Diamond Island, Portland, Maine which is subject, *inter alia*, to those Conditions and Restrictions recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263, as amended by Order of the Portland City Council on August 16, 2004 relating to ground transportation in and around the Project (collectively, the "Existing Conditions and Restrictions").

2. Supplemental Conditions and Restrictions. Notwithstanding the terms of the IR-3 zoning text otherwise applicable to the Premises, and the Existing Conditions and Restrictions, those buildings designated as Building 19 ("Hospital") and Building 46 ("Double Barracks"), the immediate grounds attendant thereto and a portion of the Open Space, all depicted on the site plans dated June 24, 2008 [consisting of four (4) sheets and

¹ For purposes of this Supplemental Conditions and Restrictions document, "Owner/Manager" referred to herein shall mean, individuals and collectively, the following: IDC, its successors in interest or assigns; individual unit owners, their heirs, successors in interest and assigns; any and all management company retained by or working on behalf of IDC, its successors or assigns and/or individual units owners and their heirs, successors in interest or assigns.

attached hereto as Attachment 2], all may be redeveloped into individually owned and fully equipped condominium units, sometimes known as "hotelminiums" and a supporting pool/services area on the Open Space. "Hotelminium" is defined as privately owned residential condominium units (with kitchens) located within a structure that offers reasonable and customary on-site hotel services² which are limited to the unit owners, their guests, tenants in residence and members of the DCHA. The Hotelminium units may be rented (in whole or in part by virtue of attached bedrooms capable of being independently rented through a "lock out" system from the remainder of the unit) for varying durations to the general public through a centralized hospitality vendor. The Double Barracks may include up to a maximum of twenty-two (22) hotelminium units [with the maximum number of lock out units, included as part of the twenty-two hotelminiums and not separate units, not to exceed ~~twenty-twosixteen~~ (22)] and the Hospital may include up to a maximum of twelve (12) hotelminium units [with the maximum number of lock out units, included as part of the twelve hotelminiums and not separate units, not to exceed twelve (12)]. The units contained within the Double Barracks and the Hospital buildings shall become members of a separate condominium association established for these two rehabilitated buildings, and each unit will also be considered a "lot" within DCHA, subject to all of the applicable restrictions, covenants, conditions, assessments and the like of both DCHA and the newly-established condominium association.

The Double Barracks and the Hospital, both of which may be renovated, are depicted on Attachment 2. The allowable rehabilitation of these buildings may include construction of a new swimming pool and related guest services building on that portion of the Open Space depicted on the site plans, a copy of the relevant portion of which appears as Attachment 2 hereto. The recording of the this Amendment shall be deemed to supplement the Conditions and Restrictions recorded in Book 8928, Page 263 and the "Dedicated Open Space Plan" attached thereto as an Exhibit.

3. Disposal of Solid Waste. All solid waste generated on the Premises shall be collected and disposed of privately, on the mainland, with temporary storage of such waste being handled within the building and disposed of in accordance with all applicable regulations, codes and laws; or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility. All solid waste shall be stored, collected and disposed of in accordance with the Maine Department of Environmental Protection's September 2009 Site Location of Development Act Minor Order (the "DEP Order) for the Inn at Diamond Cove, or successive DEP Order as may be amended. To the extent that there is a conflict between City regulations and the DEP Order, the stricter provision shall apply.

4. Fire Protection. The Double Barracks and Hospital buildings shall be fully sprinkled and have installed, and at all times functional, a central fire alarm system operative prior to the issuance of any certificate of occupancy for the respective building.

² For purposes of this Supplemental Conditions and Restrictions document, "reasonable and customary on-site hotel services" shall include but not be limited to laundry service, linen service, room service, health and fitness facilities, food and beverage service, concierge, etc.

5. Transportation Services. The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service becomes unavailable, the Owner/Manager shall provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof. The Owner/Manager shall also provide suitable ground transportation from points of disembarkment within the Project to the hotelminiums. The Owner/Manager shall not provide motorized ground transportation off the Ft. McKinley Project site and the Owner/Manager, its guests, tenants, invitees and employees shall not operate motorized ground transportation of any kind to travel off the Ft. McKinley project site to the pier at the south end of the island except in the event of an emergency. All such transportation shall strictly conform to all existing ordinances, rules and regulations concerning travel outside of the project site to the public pier at the southern end of Great Diamond Island. All owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove Pier landing-point or the barge landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. The Owner/ Manager shall conspicuously post, and keep posted in each hotelminium units at the Premises, a written notice of the applicable ordinances, rules and regulations. Moreover, the City shall have no obligation to provide mainland parking for any owner, occupant, guest or invitee of any hotelminium unit or any manager or on-site staff thereof.

6. Disposal of Sanitary Waste. The IDC is obligated hereunder to involve the City in all aspects of its sanitation waste licensing, and any modifications thereto, with any local, state or federal agency. This includes providing the City with copies of all information submitted to said agencies and involving the City in all meetings and discussions concerning sanitary waste disposal. No site plan or subdivision application shall be approved by the City unless and until documentation of Maine DEP approval of the sanitary waste system serving the Premises is provided.

7. Interpretation; Conflicts. The within conditions and restrictions are intended to supplement the existing Conditions and Restrictions and amendments thereto, all of which shall remain in full force and effect except as modified herein or as may be modified by further amendment or ordinance duly enacted by the City of Portland. In the event of any conflict between these Supplemental Conditions and Restrictions and the pre-existing Conditions and Restrictions, as amended, these Supplemental Conditions and Restrictions shall control.

8. Site Plan Review. Nothing herein is intended to relieve the applicant/owner from complying with applicable standards under Site Plan Review.

Commonly Asked Questions About Diamond Cove

Below are some commonly asked questions about the Diamond Cove development and IR-3 conditional zoning. The original 1985 conditional zoning text is attached.

What is the size and scope of the Diamond Cove development?

The total land area of the Diamond Cove development is about 190 acres, which occupies the northerly half of Great Diamond Island. The IR-3 zone totals about 92 acres. The IR-3 zone section was approved for 134 dwellings within the historic military buildings although only 79 units have been placed in the buildings to date. The conditional zoning intended to facilitate the rehabilitation of the existing Fort McKinley buildings thus newly constructed buildings were prohibited. Five buildings were originally allocated for commercial uses near the Diamond Cove ferry landing but only a couple of the buildings have been used for that purpose including a restaurant.

Thirty-four buildings within the Fort McKinley complex were originally slated for renovation into residential buildings. Of these buildings only the Double Barracks and Hospital have not been converted into residences.

The IR-1 single-family section of the development has 39 lots with 34 houses on the lots but isn't part of the IR-3 conditional zone.

In contrast, the remainder of the island (the southerly or village section of the island) had about 72 dwellings as of 2004.

Why was the property zoned IR-3 conditional zoning?

As part of the comprehensive island zoning update in 1985, an IR-3 zoning text was created to address large-scale development on the islands. An IR-3 is a specialized island zone that is enacted with a conditional zone. The IR-3 is the only island residential zone that allows condominiums (attached housing). Converting the military buildings into condominiums was the only feasible way to renovate the historic Fort McKinley buildings. Thus the developer requested IR-3 conditional zoning for the property.

The islands are unique landforms with sensitive environmental features particularly the shoreland areas that ring the island. The land development pattern of an island such as Great Diamond is reflective of a rural village rather than a mainland neighborhood. The special development standards of the IR-3 zone and the ability to use conditional zoning were intended to address the unique physical and natural characteristics of the islands.

The IR-3 conditional zone covers the entire Fort McKinley complex, the main complex of former military buildings around the parade ground and the Diamond Cove pier area.

Any other amendments made to the Diamond Cove conditional zoning since 1985?

Yes, the original conditional zoning has been amended three times.

In 2000, the IR-3 zone was expanded to include lot 44. Lot 44 is located near Diamond Cove and was incorporated into the zone to allow outdoor tent events associated with the Diamond Cove restaurant. A proposal for a beachfront bar (Stowaways) was not approved.

In 2004, the conditional zoning was modified to address golf cart issues within the project.

In 2008, the conditional zoning was amended to accommodate The Inn at Diamond Cove proposal.

January 25, 2012

Richard Knowland
Senior Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Site Plan Application Double Barracks (Building 46) - Great Diamond Island; Zoning Text Amendment

Rick:

On behalf of the Inn at Diamond Cove LLC, I am providing below a proposal for a text amendment to the IR-3 Conditional Zoning language, associated with the redevelopment of the Double Barracks Building 46 on the Fort McKinley site of Great Diamond Island.

The proposed text change is as follows:

1. Supplemental Conditions and Restrictions... The Double Barracks may include up to a maximum of ~~twenty (20)~~ twenty-two (22) hotelminium units [with the maximum number of lock out units, included as part of the twenty hotelminiums and not separate units, not to exceed ~~sixteen (16)~~ twenty-two (22) and the Hospital...

If you have any questions or concerns with this application, please let me know and I will address them immediately.

Thank you,



Kevin Cough, Architect
Archetype PA
Portland, ME

PROJECT ADDRESS: Building 46, Double Barracks - Great Diamond Island

CHART/BLOCK/LOT: 83E/F/460

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

Change of number of hotel units within building footprint.

Hotelminium

<p>CONTACT INFORMATION:</p>	<p>Applicant's Contact for electronic plans Name: Kevin Gough e-mail Address Gough@archetypepa.cm work# (207) 772-6022</p>
<p>Applicant - must be owner, Lessee or Buyer Name: The Inn @ Diamond Cove, LLC Business Name, if applicable: Address: PO Box 3572 City/State: Portland, ME Zip Code: 04104</p>	<p>Applicant Contact Information Work# (207) 772-2992 Home# Cell # Fax# e-mail: nathan@batemanpartnersllc.com</p>
<p>Owner - (if different from Applicant) Name: Address: City/State: Zip Code:</p>	<p>Owner Contact Information Work# Home# Cell # Fax# e-mail:</p>
<p>Agent/ Representative David Lloyd Name: Archetype Address: 48 Union Wharf City/State: Portland, ME Zip Code: 04101</p>	<p>Agent/Representative Contact information Work# (207) 772-6022 Cell # (207) 831-8327 e-mail: lloyd@archetypepa.com</p>
<p>Billing Information Name: The Inn @ Diamond Cove, LLC Address: PO Box 3572 City/State: Portland, ME Zip Code: 04101</p>	<p>Billing Information Work# (207) 772-2992 Cell # Fax# e-mail: nathan@batemanpartnersllc.com</p>
<p>Engineer Joseph Laverriere Name: DeLuca Hoffman Address: 778 Main Street, Suite 8 City/State: S. Portland, ME Zip Code: 04106</p>	<p>Engineer Contact Information Work# (207) 775-1121 Cell # Fax#(207) 879-0896 e-mail: joe@delucahoffman.com</p>

Surveyor John Swan Name: Owen Haskell Address: 390 U.S. Route 1 - Unit 10 City/State: Falmouth, ME Zip Code: 04105	Surveyor Contact Information Work # (207) 774-0424 Cell # Fax#(207) 774-0511 e-mail: jswan@owenhaskell.com
Architect Kevin Gough Name: Archetype Address: 48 Union Wharf City/State: Portland, ME Zip Code: 04101	Architect Contact Information Work # (207) 772-6022 Cell # (207) 831-8627 Fax# e-mail: gough@archetypepepa.com
Attorney Ron Ward Name: Drummond Woodsum Address: 84 Marginal Way City/State: Portland, ME Zip Code: 04101	Attorney Contact Information Work # (207) 772-194 Cell # Fax# e-mail: rnward@dwmlaw.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Option to purchase with the City of Portland

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use: Describe the existing use of the subject property:

Abandoned army barracks, vacant.

Current Zoning Designation(s):

IR-3 Conditional Zone

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.


Hotelminium

Site Plan: On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check payable to the City of Portland.

Zoning Map Amendment ___ \$2,000.00 (from ___ zone to ___ zone)	Fees Paid (office use) ___	The City invoices separately for the following: • Notices (\$.75 each) (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council) • Legal Ad (% of total Ad) • Planning Review (\$40.00 hour) • Legal Review (\$75.00 hour) Third party review is assessed separately.
Zoning Text Amendment x \$2,000.00 (to Section 14- 49) (For a zoning text amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example) and language to be added is depicted as underline (example) .	___	
Combination Zoning Text Amendment and Zoning Map Amendment ___ \$3,000.00	___	
Conditional or Contract Zone ___ \$3,000.00 (A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)	___	

Signature of Applicant: 	Date: 1-26-12
----------------------------------------------------------------------------------------------------------------	------------------

Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

DrummondWoodsum

Ronald N. Ward

rnward@dwmfaw.com

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Portland, ME 04101-2480

(207) 772-1544
AT 12-13-1
(207) 772-3622 Fax
(800) 727-1941

Admitted in ME only
www.dwmfaw.com

RECEIVED

JAN 20 2012

City of Portland
Planning Division

January 20, 2012

HAND DELIVERED AND SENT BY EMAIL

Richard W. Knowland, Planner (RWK@portlandmaine.gov)
City of Portland Planning Department
Portland City Hall
389 Congress Street
Portland, ME 04101

RE: Inn At Diamond Cove – Planning Board Workshop
January 24, 2012

Dear Rick:

The following letter is intended to summarize our telephone conferences from yesterday relating to the variation in the number of condominium units contained at the proposed development.

For review purposes, the Project commenced with its application to the Portland City Council for amendment to the pre-existing IR-3 Conditional Zoning text. On September 15, 2008, the Portland City Council issued its Order, amending the relevant text to allow a 20-unit condominium project. The application by the developer was actually submitted as a project containing 20-22 units, but the plan exhibited at that time contained 20 units, including 3-bedroom units, with a total of 46 bedrooms.

Thereafter, the planning for the Project continued and we appeared before the Planning Board in a workshop on January 27, 2009. The plan at that time remained essentially unchanged, although more detailed.

After that initial workshop session, and also after significant additional review and planning, litigation was initiated against the City and the Developer. That litigation was recently successfully resolved in favor of the City and the Developer.

In the evaluation of the change in the marketplace over the course of the litigation, the development team concluded that the 3-bedroom units originally proposed were not consistent with the current marketplace. Accordingly, the 3-bedroom units were revised into 2-bedroom units, such that the total number of units went back to the 22 (with 46

Daniel Anney*
David J. Bealer*
S. Campbell Badger*
Jerrold A. Crouter*
George T. Cihworn*
Jessica M. Emmons††
Peter C. Felint*
Eric R. Feltus†
Anthony T. Frañana*
Sam S. Hallstedt*
Eric R. Heffern††
Melissa A. Hewey††
Michael E. High*
David M. Kallin†
John S. Kaminski*
Edward J. Kelleher*
Jeanne M. Klucaid*††
Peter D. Klein*
Rodney A. Lake*
Benjamin E. Marcus*
Elek A. Miller*
Mona T. Movafeghit†
Michael J. Murray*
Robert P. Nadeau*
Debra J. Nathanson*††
Kimberly A. Paccelli*
Jeffrey T. Plampiano*
William L. Plouffe*
Aaron M. Pratt*††
Harry R. Pringle*
Daniel J. Rose*††
George Royle V*
Gregory W. Sample*
David S. Sherman, Jr.*
Richard A. Shinay*
Christina R. Simpson†
Kathryn Smith, Jr.*
Bruce W. Smith*
Richard A. Spencer††
Christopher B. Stevenson*
E. William Stockmeyer††
Amy K. Tchoa††
Joanne B. Tourangeau††
M. Thomas Tretholm*
Matthew H. Upton†
Gary D. Vogel*
Ronald N. Ward*
Brian D. Willing*
Gerald M. Zolinf

Consultants

Ann S. Chapman
Policy & Labor Relations

Roger P. Kelley
Labor Relations &
Conflict Management

Michael J. Opuda Ph.D.
Special Education

Of Counsel

Joseph L. DeLafield III*
Robert L. Gips*
Donald A. Kopp*
Hugh G. E. MacMahon*
Harold E. Woodsum, Jr.*

* Admitted in Maine

† Admitted in New Hampshire

January 20, 2012
Page 2

bedrooms) referenced at the start of the review process. The change in the number of units has no bearing upon the building footprint or envelope or any of the support systems or public improvements. The Project has always been envisioned as containing 46 bedrooms, and is the number approved by the Maine Department of Environmental Protection in its permits for the Project. The "change" in the Project is entirely internal configuration of the units.

The change in the number of units was not picked up as inconsistent with the original City Council Order until very recently. While the change is technical in nature, we agree that Order should be amended to recognize the current 22 units actually being proposed. Accordingly, we would suggest that Tuesday's workshop go forward on the basis of the 22-unit plan submitted, with the recognition that it will be our obligation to achieve an Amended Order before coming back for final approval. We perceive this to be technical, but what is envisioned by City ordinances.

We look forward to meeting with you on Tuesday and presenting the final design of our Project, which has been in process since 2007.

Sincerely,



Ronald N. Ward

RNW:kjl

cc: Portland Planning Board
Danielle West-Chuta (DWCHUTA@portlandmaine.gov)
Alex Q. Jaegerman (AQJ@portlandmaine.gov)
Inn At Diamond Cove (Attention: David H. Bateman)

*The Inn at Diamond Cove
P. O. Box 3572
Portland, ME 04104*

RECEIVED

JAN 20 2012

City of Portland
Planning Division

January 20, 2012

Portland Planning Department
Portland City Hall
389 Congress St.
Portland, ME 04104

Re: The Inn at Diamond Cove
Additional Information

To Whom It May Concern;

The following information is intended to supplement the materials submitted 12/20/2011 regarding Financial Capacity specifically relating to the Development Partners.

The Inn at Diamond Cove is being developed by the same partners who developed the Portland Harbor Hotel. Since its opening in July 2002 this property continues to be accepted as the leading hotel in Portland. The partners as a group are comprised of three seasoned hotel executives, and two experienced local developers.

The Inn at Diamond Cove is being developed as a specific hospitality product, referred to as a "condominium hotel." The partners have experience in the development, sales, and management of this product (in addition to both franchised and non-franchised hotel venues across the country).

The estimated project cost is \$9,392,154 of which the partnership is investing over \$4,000,000 in equity capital (43.6% of total cost). Additionally, the partnership is purchasing 100% of the condominiums.

A list of project consultants is attached.

The partnership is currently working with Katahdin Trust Company to provide both construction and take-out financing as outlined in their letters of 12/20/2011 and 1/20/2012.

2-0-2

Should you require additional information, do not hesitate to call.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Bateman", with a long horizontal flourish extending to the right.

David Bateman

Managing Member

The Inn at Diamond Cove, LLC

(207) 772-2992

*The Inn at Diamond Cove
22 Condominiums
(44 Rooms & Suites)
Project Team*

Developer

The Inn at Diamond Cove, LLC

Development Consultant
Hotel Management
General Contractor

Bateman Partners, LLC
Hart Hotels, Inc.
Portland Builders

Design Team

Architect
Interior Design

Archetype, PA
Truex Cullins/Partners

Engineering

Civil
Structural
Mechanical

DeLuca-Hoffman Associates, Inc.
Structural Design Consulting, Inc.
Mechanical Systems

Legal

Drummond Woodsum

Accounting

Baker, Newman, Noyes

Market Analysis

Pinnacle Advisory Group

Historic Preservation

Tremont Preservation Services



Community Banking at its Best!

January 20, 2011

Portland Planning Department
Portland City Hall
389 Congress St.
Portland ME 04101

To Whom It May Concern:

Katahdin Trust Company has met with David Bateman several times and has reviewed the available detail of the proposed development on Great Diamond Island, Portland, ME, which involves the historically qualified rehabilitation of the Double Barracks building and associated grounds. Mr. Bateman has submitted project and construction budgets to us for our review. The total project budget is approximately \$9,300,000. Within this figure is an approximate construction budget of \$6,500,000 and Katahdin Trust is prepared to meet financing needs beyond the substantial owner equity investment, subject to review of the final permitting and overall package.

Our credit review will not include review of a sales program as 3rd party sales of condo units are not immediately contemplated in the business plan of Mr. Bateman.

We fully understand that the Project has not yet completed its permitting, but we remain interested in providing the financing. Our interest is driven not only by the perceived marketability of the final product, but also the track record of the principals involved in it. We perceive The Inn at Diamond Cove, LLC to have a strong financial and technical capability to deliver a highly successful project to the marketplace.

We would be happy to update our interest at any point in the process, at your request.

Sincerely

Aaron Cannan
Vice President

Pete St. John
Sr. Vice President

15 Pleasant Hill Road • PO Box 1689 • Scarborough, ME 04074 • Telephone (207) 510-7017 (866) 441-5197 • Fax (207) 883-1205

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PERKINS THOMPSON
ATTORNEYS & COUNSELORS AT LAW

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ONE CANAL PLAZA
PO BOX 426
PORTLAND ME 04112
TEL 207.774.2635
FAX 207.871.8026

www.perkinsthompson.com

February 7, 2012

Portland Planning Board
City of Portland
389 Congress Street
Portland, ME 04101

PHILIP C HUNT
JOHN S. UPTON
PEGGY L. McGEHEE
MELISSA HANLEY MURPHY
JOHN A. HOBSON
JAMES N. KATSIARAKAS
TIMOTHY P. SENOIT
J. GORDON SCANNELL, JR.

FRED W. BOPP III
MARK P. SNOW
WILLIAM J. SHEELS
DAVID B. McCONNELL
PAUL D. PIETROPAOLI
HOPE CREAL JACOBSEN
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LAUREN B. WELIVER

OF COUNSEL
DOUGLAS S. CARR

JOHN A. ORALDO
1956 - 2010

Re: "The Inn at Diamond Cove"

Dear Board Members:

This Firm represents Diamond Island Association ("DIA") with regard to the proposed "The Inn at Diamond Cove" development. As we have stated previously, DIA has not voted to oppose the Inn at Diamond Cove's application. However, it seeks to ensure that whatever is approved, constructed and operated is consistent with City and State approvals and with City of Portland zoning. In this regard, the application's statements regarding transportation and solid waste continue to concern DIA and its members.

At the January 24, 2012 Workshop on this application, DIA raised these concerns to the Planning Board. After the conclusion of that Workshop, I spoke with applicant's counsel, Ronald Ward, Esq., and told him at that time that my client, DIA, had authorized me to work with him to "fine tune" the application materials language to resolve DIA's transportation and solid waste concerns. He said that he would have to check with his client. On Monday, January 26, 2012, I sent him an email reiterating that offer (copy enclosed). To date, I have received no response from Attorney Ward.

Therefore, I am sending this letter on behalf of DIA in advance of the February 14, 2012 public hearing on this application to request that the Planning Board take two actions with regard to this application.

By now, the Planning Board is well acquainted with the history of the cottage community on the southern part of Great Diamond Island that has existed and been represented by DIA since the 1880s. The Board also is well acquainted with the Diamond Cove development on the northern part of Great Diamond Island that began in the 1980s. The Board has seen that in the zoning, planning and land use approvals for the Diamond Cove development, the Portland City Council, the Portland Planning Board and the Maine Department of Environmental Protection attempted to keep these developments separate, with the southern part of Great Diamond Island using the southerly pier for access and the Diamond Cove development using the Diamond Cove Pier for access. However, despite what we believe were clear permits, conditions and agreements, Diamond Cove owners, occupants, guests, contractors and employees and

Diamond Cove supplies have used the southerly pier for other than emergency access. Since the mid-1980s, the relationship between DIA members and Diamond Cove owners and residents has been acrimonious at times, and DIA members have experienced great difficulty in persuading City and State officials to enforce these permits, conditions and agreements, with ambiguities and differences in responsibilities having been cited as reasons not to do so.

Therefore, DIA asks the Planning Board to help ensure that the permits it issues and the conditions it attaches to this new development are clear, unambiguous and consistent with other permits and approvals for this development – so that the planning approvals for The Inn at Diamond Cove will not also become a source of controversy in the future. The Planning Board can do so by taking these two actions:

1. Adopting a definition of the term “Diamond Cove Pier” in the findings of fact that the Planning Board will issue as part of its written decision, and by stating that references in the application materials to “the Diamond Cove landing of the Casco Bay Lines” or to “the Diamond Cove ferry landing” or to “the pier in Diamond Cove” (all terms used at various times by the applicant in its application) or similar terms mean the “Diamond Cove Pier.” The City Council used the term “Diamond Cove Pier” in the IR-3 Conditional Zoning Amendment it adopted on September 3, 2008, and so it makes sense to use this term consistently in referring to the pier. Because this application is for an amendment to an approved subdivision plan, the Planning Board’s definition could tie the term “Diamond Cove Pier” to its depiction on a subdivision plan that is recorded or is to be recorded. For example, the Planning Board’s definition might be “the pier depicted to the right of the legend ‘Diamond Cove’ on a map entitled ‘Plan of Diamond Cove Phase I – Third Amended Sheet 3’ dated February 5, 2001 and recorded in the Cumberland County Registry of Deeds in Plan Book 202, Page 527” (an example of a recorded plan showing the Diamond Island Pier).

2. Attaching a condition of approval that the applicant will store, dispose of and handle solid waste in accordance with the Maine Department of Environmental Protection’s September 2009 Site Location of Development Act Minor Amendment Order (the “DEP Order”) for the Inn at Diamond Cove.

The need for this is shown by what happened at the Workshop.

The IR-3 Conditional Zoning Amendment states in Section 3 (“Disposal of Solid Waste”):

All solid waste generated on the Premises shall be collected and disposed of privately, on the mainland, with temporary storage of such waste being handled within the building and disposed of in accordance with all applicable regulations, codes and laws; or if, in the City’s opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility.

The DEP Order in Section 10 states:

All general solid wastes from the proposed project will be collected and stored within the hotel/condominium facility before being transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine,

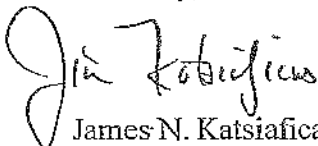
In other words, both the City IR-3 Conditional Zoning Amendment and the DEP Order require solid waste generated by The Inn at Diamond Cove to be collected and stored within the Inn, and the DEP Order requires the solid waste to be "transported by barge or otherwise from **Diamond Cove property to the mainland** for disposal at Ecomaine." The DEP Order does not allow temporary storage or transportation of solid waste on the southern part of the Island.

Archetype's January 3, 2012 Site Plan Application letter with regard to solid waste recited only the first half of the above: "All solid waste will be held within the building in a trash room and will be picked up and removed in accordance with the Diamond Cove Homeowner's Association, of which this project will be a member." It is unknown whether solid waste removal in accordance with DCHA complies with the DEP Order's requirement that solid waste be "transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine." Because Archetype's letter could be read to contemplate using solid waste temporary storage and transportation over the southern part of the Island, DIA asked for a special condition of approval imposing the DEP Order's solid waste provisions. Attorney Ward responded that it was unnecessary because the applicant had to comply with the DEP order.

However, in summarizing the dispute between DIA and the applicant on solid waste generated by the development, the January 24, 2012 Planning Department Memorandum to the Planning Board reads, "The Diamond Island Association indicates waste associated with the hotel/condominium project should be transported off the island from the Diamond Cove side of the island and not cross the southerly end of the island." While DIA did make the statement, DIA did not invent the requirement that solid waste be transported from Diamond Cove property – **it is clearly stated in the DEP Order and is omitted from Archetype's description of the development's solid waste plan.** This is a perfect example of how for the past 25 years clear permit requirements have become "ambiguities" that have led to conflict among these parties and have caused a lack of enforcement. The Planning Board can help prevent this from happening with regard to this new development by attaching the condition of approval requested by DIA.

Thank you for your consideration.

Sincerely,



James N. Katsiaficas

JNK:pal

cc: Richard Knowland, Senior Planner, City of Portland
Diamond Island Association

~~James N. Katsiaficas~~

From: James N. Katsiaficas
Sent: Monday, January 30, 2012 5:25 PM
To: mward@dwmnlaw.com
Cc: RWK@portlandmaine.gov; Nmgleason@aol.com; jmsgdi@myfairpoint.net
Subject: Inn at Diamond Cove Application

Hi Ron:

I'm following up on our brief conversation at the end of last week's Planning Board workshop on the Inn at Diamond Cove application.

As I noted at that time, my client, the Diamond Island Association, has authorized me to work with you to "fine tune" the application materials language to help insure that the terminology and provisions for transportation and solid waste are consistent internally and consistent with other approvals so as to avoid any potential future issues and misunderstandings. Please let me know if that is acceptable to your client.

For example, with regard to transportation, we could agree on a definition of "Diamond Cove Pier" that refers to a recorded subdivision plan and then the Applicant and the Board could use that term consistently.

With regard to solid waste, we could agree to a Planning Board condition of approval, or a statement in your application to the Planning Board which would be restated in the Board's findings, that the applicant will store, dispose of and handle solid waste in accordance with the September 2009 Site Location of Development Act Minor Amendment for the Inn at Diamond Cove.

Reaching agreement on these two matters now would allow the Applicant to make the appropriate submittals in advance of the Feb. 14 2012 Planning Board hearing that would avoid our having to again bring these matters to the Board.

Thank you.

Jim

JAMES N. KATSIAFICAS
ATTORNEY

PERKINS|THOMPSON

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Rick Knowland - RE: Inn at Diamond Cove Application [DWM-Client.FID359749]

From: "Ronald N. Ward" <RWard@dwmlaw.com>
To: "jkatsiaficas@perkinsthompson.com" <jkatsiaficas@perkinsthompson.com>
Date: 2/13/2012 10:49 AM
Subject: RE: Inn at Diamond Cove Application [DWM-Client.FID359749]
CC: "RWK@portlandmaine.gov" <RWK@portlandmaine.gov>, "Nmgleason@aol.com" <Nm...

Jim- sorry for the delay in responding. I don't think we have any issues here. This developer recognizes and agrees to be bound by the terms of all outstanding orders and permits, including those in the City Council's Rezoning Order and the DEP Site Location Order. All of these would be legally binding in any event, but we're happy to confirm that in writing in the final application coming back to the Planning Board for final approval, for example.

What is not within the scope is changing the terms under the heading of "further definition". We now have years invested in this process, which has been entirely transparent, and all of the conditions were formed as the result of that process. We're not sure that specifying the relevant "Pier" is capable of misinterpretation, for example. There is only 1 functioning transportation pier in Diamond Cove, which has been referred to as the "Pier At Diamond Cove" since at least 1985.

Our sense is that we're willing to take a look at whatever drafting you wish to send our way. I'll turn that around quickly, with the caveat that I was felled by some awful bacterial infection from pre- school last week. I'm back in the office today and, presumably, tomorrow, and will be monitoring email traffic, even if the good doctor takes me out of the line-up- Ron

DrummondWoodsum

Ronald N. Ward | Attorney
 84 Marginal Way, Suite 600, Portland, Maine 04101-2480
 voice (207) 772-1941 ext. 503 • fax (207) 772-3627 • (800) 727-1941
RWard@dwmlaw.com | www.dwmlaw.com

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From: jkatsiaficas@perkinsthompson.com [mailto:jkatsiaficas@perkinsthompson.com]
Sent: Monday, January 30, 2012 5:25 PM
To: Ronald N. Ward
Cc: RWK@portlandmaine.gov; Nmgleason@aol.com; jmsgdi@myfairpoint.net
Subject: Inn at Diamond Cove Application

Hi Ron:

Rick Knowland - RE: Diamond Cove

From: <jkatsiaficas@perkinsthompson.com>
 To: <RWK@portlandmaine.gov>, <inward@dwmlaw.com>
 Date: 2/14/2012 1:23 PM
 Subject: RE: Diamond Cove
 CC: <AQJ@portlandmaine.gov>, <BAE@portlandmaine.gov>, <grtdia@aol.com>, <Nmg...

Ron:

I appreciate the effort, but m's proposed amendment doesn't work completely, because in that regard, the City Council Order is more restrictive than the DEP Order. The City Order requires the solid waste to be collected and disposed of privately (unless it's disposed of in an island solid waste disposal facility, which doesn't exist), while the DEP Order is silent on this aspect. I believe the reason the City order calls for private solid waste disposal is that this is an inn—a commercial development. The proposed amendment does make the important point that the applicant must follow the DEP Permit, as well as the City Order, but I think the proposed amendment does more harm than good.

I think the real issue is that the application does not fully comply with the DEP Permit and the City Order, and I will make a suggestion this afternoon to address that. Ron Ward had emailed me yesterday and I spoke with him by telephone yesterday to make that suggestion. He was going to check with his client and call me back, but I have not heard from him.

Thank you.

Jim

From: Rick Knowland [mailto:RWK@portlandmaine.gov]
 Sent: Tuesday, February 14, 2012 1:02 PM
 To: inward@dwmlaw.com; James N. Katsiaficas
 Cc: Alex Jaegerman; Barbara Barhydt
 Subject: Diamond Cove

Ron and Jim, At this afternoon's public hearing on the Diamond Cove zoning amendment, staff will be introducing an amendment regarding solid waste. See Attachment.

We believe this amendment is a statement of fact regarding the DEP approval on solid waste which is clearly more restrictive than the City's requirement. We hope this amendment avoids any confusion as to the ground rules of solid waste absent a massive re-drafting of the text.

Should you have any questions I am available prior to the public hearing.

Susan Sedlin 124 Sunset supports Dino lived here + work
for 20 years oil business COB for 50 years
essential service

Sam 50 Hayes Lane supports Dino depends on Ted

Charles Stockman 127 Sunset best neighbors
truck, city services use K-1

John Carder 1 - Sunset vol. fire dept cap
provides fuel for fire trucks
critical part of providing fire and medical services

Gary Smith 100 Willow Dr
not opposed to a fuel bus
opposed to a change in a residential area
reference a move to public service site
DIA and City have worked hard to move the business
to the DPW site best option is move it to
DPW services
no one is trying to force him out of business
compliance issues
mentions root deep
more state police distinct possibility the 3
truck
physician and medical issue

1. Introduction - The first part of the report should introduce the topic and state the purpose of the study.

2. Methodology - This section should describe the methods used to collect and analyze the data. It should include information about the sample, the data collection process, and the statistical methods used.

3. Results - This section should present the findings of the study. It should include tables and figures to illustrate the data, and a discussion of the results in relation to the research objectives.

4. Conclusion - This section should summarize the main findings of the study and provide a final conclusion.

5. References - This section should list the sources of information used in the study. It should include books, articles, and other relevant materials. The references should be formatted according to the appropriate style guide.

6. Appendix - This section should contain any additional information that is relevant to the study but is not included in the main text.

7. Tables and Figures - These should be included in the report to illustrate the data. They should be clearly labeled and formatted.

8. Summary - This section should provide a brief overview of the entire report, including the introduction, methodology, results, and conclusion.

9. Final Thoughts - This section should provide a final reflection on the study and its implications.

10. Conclusion - This section should reiterate the main findings of the study and provide a final conclusion.

^{Ransom}
Kate Putnam great neighbors provide great services
daughter had her wedding on their lawn

Jennifer Fox 9 Quatermaster Court

if they had to move to another site Weber couldn't stay
in business if Weber didn't run this business marina
would be

Elizabeth Sanders supports Dine

Tom Groat Sunset Ave

releasing can make a safe operation

Roger Robinson if this were a political contest this would be

a no-brainer

should be based on facts

should be looked at objectively

mentions oil spill in abstract

look at the facts look behind the curtain

^{Paul}
~~Paul~~ Bodanovich Sunset

has no aesthetic concerns

are people going to smoke fuel on the ferry if the

business is closed

Question

compliance with the original deed

Betsy W. restrictions are not legitimate. The deed has
no restrictions

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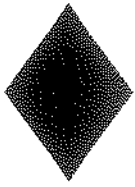
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Diamond Island Association
Founded 1882

September 20, 2013

Dear City Councilor:

This letter is submitted for your consideration by the Diamond Island Association, an association of approximately 80 members who are taxpayers and homeowners on the southern side of Great Diamond Island where the proposed rezoning will occur.

Recently the Portland City Planning Board moved to send before the council an amended application for Conditional Rezoning filed by Betsy Weber. This application asked for rezoning of her property on Great Diamond Island to allow for operation of a fuel business (Dinosaur Enterprises) in a residential area. The original application before the Planning Board asked for rezoning specific to the Weber family only. The current application before the council has been amended to provide that the property be conditionally rezoned for a fuel business, but, not as originally proposed, one limited to the Weber family. The amended application includes language "runs with the land" and allows for "successors and assigns."

There was a neighborhood meeting subsequent to the initial application to the Planning board. The application that was discussed was the initial application to the Planning Board which limited the operation of the fuel business to the Weber family, not the current application.

At the direction of its members, the Diamond Island Association supported our neighbors, the Webers, in their application to keep their family business in operation. When our members learned that the application before the City Council was no longer limited to the Weber family, they were concerned about the potential rezoning of the property for unlimited commercial purposes for operation by any commercial enterprise. With that understanding, the DIA membership passed the following motion at their annual meeting in August, which we are charged with presenting to the Portland City Council:

The Diamond Island Association strongly supported the conditional re-zoning of the Weber property for the operation of their fuel business for their family. The Diamond Island Association does not support the unconditional rezoning of the Weber property for commercial use.

The terms presented in the current application are different from the oral summary of the original application as stated at the conclusion of the Planning Board meeting. Upon review of the current application, the Board expressed the following concerns that we ask that you also consider:

1. There is no provision in the ordinance to **restrict this to a business operated by the owner operator in residence** on the property. If this rezoning is to be right in the middle of a completely residential area, that seems like a reasonable restriction for safety and aesthetic reasons.
2. We note that there are conditions that all state, federal, fire and environmental regulations be complied with. Historically, there has been no enforcement of such regulations and no follow through to make sure that conditional provisions before you are actually complied with. This is of concern to our members for fire, safety and environmental reasons. If there is a fire on the island, it could potentially destroy a significant part of the island and all the houses on it. We have a volunteer fire department which is defensive only. We cannot sue the City if our houses burn down and we have no recourse if the fuel business has not complied with statutory safety regulations or may not have adequate insurance. We are sure that no one expects or thinks that will happen, but we would be neglecting our duty to our membership if we did not expressly **request that there be diligent follow through to make sure that all safety regulations have been complied with.**

Respectfully submitted,

Diamond Island Association Board of Directors by Nancy Gleason, President

Rick Knowland - Fw: Dinosaur Enterprises

From: "Richard A. Molyneux" <richardamolyneux@yahoo.com>
To: RWK@portlandmaine.gov; richardamolyneux@yahoo.com
Date: 9/29/2013 10:51 PM
Subject: Fw: Dinosaur Enterprises

Rick

I know there is a public hearing regarding this on Oct. 7, and I just want to reiterate what I stated in my July 2nd email to you. Dinosaur Enterprises is critical to most of the 121 homeowners of Diamond Cove alone, and the City of Portland should not give a second thought to eliminating this much needed service. I would ask anyone who suggests that this service should not be there who they would call in the middle of a winter storm to fix a oil burner that has shut down or to fill an empty oil tank? How quickly and at what price can they get someone from the mainland?

Sincerely,

Diamond Cove Homeowners

Richard Molyneux, President

Association

----- Forwarded Message -----

From: Richard A. Molyneux <richardamolyneux@yahoo.com>
To: "rwk@portlandmaine.gov" <rwk@portlandmaine.gov>
Sent: Tuesday, July 2, 2013 10:56 AM
Subject: Dinosaur Enterprises

Dear Mr. Knowland,

On behalf of the Diamond Cove Homeowners Association, representing 121 homeowners on Great Diamond Island, I would like to express support for the proposed conditional zone by Dinosaur Enterprises for fuel distribution at 118 Sunset Ave., Great Diamond Island. This is a critical service to the majority of our homeowners with no viable alternative. In the middle of the winter, when it is difficult or impossible to have a fuel truck from the mainland come out to the island, or when a homeowner's furnace stops functioning, the Weber family is always on site and available. To not have this service available will have a significant negative effect on the viability of year around island living. Furthermore, the Webers have always been responsible and honorable providers of fuel services, never exploiting the captive nature of an island market. We strongly encourage the City of Portland to approve the proposed conditional zone for Dinosaur Enterprises.

Sincerely,

Diamond Cove Homeowners

Richard Molyneux, president

Association

Rick Knowland - Ted Weber

From: "Sam Cady" <scady@maineeyecenter.com>
To: RWK@portlandmaine.gov
Date: 9/30/2013 7:58 AM
Subject: Ted Weber

I strongly support the continuation of service with Dinosaur enterprises to support Great Diamond island.

Sam Cady MD

From: Amy Farrell <amy@portisland.com>
To: RWK@portlandmaine.gov
Date: Monday, September 30, 2013
Subject: Dinosaur Enterprises

Rick-

Hope this email finds you well.

Please consider this message my support of Dinosaur Oil Co. and its ability to remain on Great Diamond Island and continue its oil delivery service. As a year round resident and an island real estate broker, it is imperative that this company be allowed to continue its business for current and future homeowners. Ted, his family & his oil business are an integral part of our community and island life. It would cause a major negative impact on many islanders if his oil service was removed from the island.

Thanks for your consideration and support of this important issue.

Kind regards,
Amy Farrell

Amy Farrell
Port Island Realty
Diamond Cove
Great Diamond Island, ME 04109
207 766 3377
207 233 0033

From: Barbara Stanley <barbarastanley51@aol.com>
To: RWK@portlandmaine.gov
Date: Monday, September 30, 2013
Subject: Ted Weber's Oil Delivery

Dear Mr. Knowland,,

My husband and I would like to convey to you the utmost importance of the need and support Of Ted Weber and his services at Diamond Cove from the City.

Having lived on the island for many years and currently owning two oceanfront lots, we are acutely aware of what a loss of Ted's services would mean to those who not only live there, but who have substantial investments in property. Our land values and potential for sales would be greatly diminished without him. Quality of life and the comfort of knowing that Ted is available night or day would be dramatically changed for many who have counted and benefitted from his care. We lived with that comfort for many years and knew that it was a major factor in our being year round residents.

We request that you and the board give your total support to Dinosaur Enterprises and the Weber family, who have unselfishly made it possible for so many people to live at DC. The City's tax revenues should further support the value of the homes and properties which have been greatly enhanced by the valuable services of Dinosaur Enterprises.

PLEASE support Ted Weber and Dinosaur Enterprises!!!!

Sincerely,

Barbara and Jim Stanley

Lot 28 Wood Side Drive
Lot 26 Pleasant Cove Lane

Rick Knowland - Proposed conditional zone for Dinosaur Enterprises, Ltd., GDI

From: "John Tooker" <jtooker@mail.acponline.org>
To: RWK@portlandmaine.gov
Date: 9/30/2013 8:44 AM
Subject: Proposed conditional zone for Dinosaur Enterprises, Ltd., GDI

Rick Knowland
Senior Planner
Planning Division
City Hall, 4th Floor
389 Congress St.
Portland, ME 04101

Dear Mr. Knowland,

As a resident of Diamond Cove (15B), we are very dependent upon Ted Weber and Dinosaur Enterprises, Ltd., for our island oil supply and burner service, a local, reasonable and very reliable service over the years. I sincerely hope the Planning Division and City of Portland will look favorably on Dinosaur's proposal to allow them to continue to operate their fuel distribution and burner service at their current location (118 Sunset Ave., Great Diamond Island) on the island.

Formerly residents of Portland and Cape Elizabeth, we now reside near Philadelphia, coming to the island when we can - it would be a major inconvenience and risk to our property to have to obtain burner and oil service from the mainland during the winter months.

Thanks to you and the Planning Division for your consideration. Please let me know if you have any questions.

Best Wishes,

John Tooker

John Tooker, MD, MBA, MACP
CEO Emeritus, American College of Physicians
Adjunct Professor of Medicine
Perelman School of Medicine at the University of Pennsylvania
190 N. Independence Mall West
Philadelphia, PA 19106-1572
Tel: (215) 351-2825
Cell: (267) 303-1070
email: jtooker@mail.acponline.org
Fax: (215) 351-2829

From: JOSEPH NASH <Jonash65@comcast.net>
To: RWK@portlandmaine.gov
Date: Monday, September 30, 2013
Subject: GDI Oil

Dear Mr. Knowland,

I am writing this email to express my concerns about the Dinosaur Oil zoning issue. The Webers oil service business is an essential part of living on GDI. They have saved me from the cold on multiple occasions in the past seven years and I truly believe their presence on the Island is a safety issue, especially for our many older residents. Please help us in resolving this important matter.

Sincerely,

Joe Nash

From: Donna Schwartz <dishrs@maine.net.com>
To: RWK@portlandmains.gov
Date: Monday, September 30, 2013
Subject: oil deliveries via dinosaur enterprises ltd on great diamond island / diamond cove

dear rick,

again, i would urge the planning board to allow ted weber & family to continue to conduct their business in the same manner and locale as they have from day one!

this entire fiasco has been perpetrated & perpetuated by a few meddling, miserable folks who have nothing on their agenda other than to make everyone else around them just as miserable as they are!

interestingly enough, it is my understanding that before they created this chaos they all converted to other means of heating but prior to that they all depended on ted for their heat source like the majority of us do.

their motives are dark, personal and selfish - in other words, ulterior!

please, pay no mind and let ted and his family continue to do what they have, for as long as they have, in the same giving, sharing manner that they always have done so.

needless to say, i doubt very much that after all is said and done, and after all the time, effort & energy that has had to be expended, and after all the legal fees have been paid yet again, there will be much fruit hanging from the vine for the webers?!

SUCH A SHAME that we allow these folks to get away with causing us all so much havoc, time after time?!?

sincerely,

donna schwartz
diamond cove, gdi

Rick Knowland - Dinosaur

From: Jac <jkenly007@aol.com>
To: RWK@portlandmaine.gov
Date: 9/30/2013 9:27 AM
Subject: Dinosaur

Please do everything in your power to allow Ted Weber to continue his oil business from his home.
Thank you, Dave & Jackie Kenly , residents of Great Diamond Island.

--

Sent from my Android phone with K-9 Mail. Please excuse my brevity.

Rick Knowland - Dinosaur Enterprises

From: Alden Finney <abfinney1@myfairpoint.net>
To: RWK@portlandmaine.gov
Date: 9/30/2013 10:05 AM
Subject: Dinosaur Enterprises

Rick Knowland
Senior Planner Planning Division
City Hall, 4th Floor
389 Congress St.
Portland ME 04101

<!--[if !supportEmptyParas]--> <!--[endif]-->
<!--[if !supportEmptyParas]--> Dear Mr. Knowland, 9/30/2013
<!--[if !supportEmptyParas]--> <!--[endif]-->
<!--[if !supportEmptyParas]--> As a year round resident of Great Diamond Island I support the proposed conditional zone by Dinosaur Enterprises for a fuel distribution service at 118 Sunset Avenue.

As you know this is the only fuel oil delivery business that is located on the Island and the Webber family has operated it for many years. The Webber's have delivered fuel and repaired heating systems at all hours of the day and night and in all weather conditions. They have provided excellent reliable service.

This is a service that should be available on the Island as oil delivery and repair service from the mainland is not always possible because of weather conditions and cost. It is a service important for the continued viability of the Island as a year round community. Zoning on an island needs to be more flexible than zoning on the mainland because the ocean is a barrier to access for all services.

<!--[if !supportEmptyParas]--> <!--[endif]-->
I urge the Portland City Council to support the Dinosaur Enterprises proposal.

<!--[if !supportEmptyParas]--> <!--[endif]-->
Sincerely

<!--[if !supportEmptyParas]--> <!--[endif]-->

Alden J. Finney
92 McKinley Court

Diamond Cove ME 04109

<!--[if !supportEmptyParas]--> <!--[endif]-->
207-766-2988

From: Barb And Bruce Robinson <barbandbruce@verizon.net>
To: RWK@portlandmaine.gov
Date: Monday, September 30, 2013
Subject: In support of Dinosaur Ent.

We have been Diamond Cove residents for a dozen years, and Ted Weber has delivered our heating oil and taken care of our oil burner during all the years. I can't imagine what things would be like without his easy accessibility to Diamond Cove. Obviously his delivery of oil is essential, but the fact that he monitors the heating equipment while we are away in the winter months is equally as important. I would think that he has squatter's rights. He and his equipment have been there for many years. What gives anybody the right to change the rules on him now. He provides an essential service to an established community.

Frederick And Barbara Robinson, 13C Diamond Cove

Sent from my iPad

From: Harmon Smith <hws11@yahoo.com>
To: RWK@portlandmaine.gov
CC: dinosaurenterprises@yahoo.com
Date: Monday, September 30, 2013
Subject: Dinosaur enterprises

Dear Mr. Knowland:

We are leaving for Florida on Saturday so we will be unable to attend the meeting for Dinosaur Enterprises. However, we do wish to show our support and to explain why keeping this business on the island is so important.

In the sixteen years we have been at the Cove, we have never once had to even think about our oil as Ted knows when we need it, and he has never failed to deliver. Furthermore, even though we pay homeowner's fees to Diamond Cove, if something serious went wrong with our house, our first instinct would be to call Ted because he is definitely the person you could trust to handle the situation. Try doing that with an oil company based off island.

We could go on and on with examples of how Ted and his family have come to the aid of the people at the Cove, but that would take too long for you to read. So let me then close by saying that what Ted Weber and his family provide to this community is therefore, irreplaceable.

Donna and Harmon Smith
9A Diamond Cove

Sent from my iPad

Rick Knowland - Dinosaur Fuel - Conditional Zone

From: Bruce LaPierre <Lapierre@wulaw.wustl.edu>
To: RWK@portlandmaine.gov
Date: 9/30/2013 10:43 AM
Subject: Dinosaur Fuel - Conditional Zone

Mr. Knowland, We are property owners in Diamond Cove on Great Diamond Island. We write to support the proposed conditional zone for Dinosaur Enterprises, Ltd., which will allow this important island family-operated business to continue to operate its fuel distribution service at its current location (118 Sunset Ave., Great Diamond Island). We depend on the Webers for our fuel oil during the winter and on their good will and Island spirit year-round. Islands are special places; it takes cooperation to make Island communities work; our island community depends on the Webers. Their fuel oil operation has been a central component of the island for many, many years, and the approval of the Conditional Zone will help maintain our island community. We hope that the City Council will not permit a very small group of islanders (some of whom are already planning to move off the island) to disrupt our community. Bruce La Pierre and Kathryn Adamchick, 36 Hillcrest, Diamond Cove, Great Diamond Island, Maine 04109.

D. Bruce La Pierre
Professor of Law
Washington University
St. Louis, Mo. 63130
314-935-6477
lapierre@wulaw.wustl.edu

Rick Knowland - Dinosaur Oil

From: Lisa Sarpino <gpeach5@aol.com>
To: RWK@portlandmaine.gov
Date: 9/30/2013 6:12 PM
Subject: Dinosaur Oil

Dear Mr. Knowland:

Being residents on Great Diamond Island for 15 years, we can't express enough what a disaster it would be for us homeowners not to have the availability of Dinosaur Oil and Ted Weber. We just had an issue this past weekend that we had to call Dinosaur for and in 20 minutes Ted and Beth were at our house fixing the problem. Had it been winter and we had to depend upon someone coming from the mainland to the island on a weekend would have surely been a nightmare. It would make living on the island, even part time as we do, VERY inconvenient and not to mention disastrous to our home if we can't get immediate attention to the problems. We are secure knowing that Dinosaur Oil is constantly attentive to our house in the winter when we are not there. We would not have stayed on the island for this many years if services such as this were not available.

Lisa Sarpino
gpeach5@aol.com

Rick Knowland - 118 Sunset Ave - GDI Public Hearing

From: "Laura McAndrew" <lmcandrew@cox.net>
To: RWK@portlandmaine.gov
Date: 9/30/2013 6:24 PM
Subject: 118 Sunset Ave - GDI Public Hearing
CC: woowoo_s@yahoo.com

Hello Rick Knowland, Sr. Planner, Planning Division GDI Portland, ME

I am writing in support of a conditional zone proposal for Dinosaur Enterprises for fuel distribution service. The Weber's have been a support pillar of the GDI community for as long as the 3 generations of McAndrew's have resided on GDI. We are now 4 McAndrew families strong and have relied on Dinosaur for fuel and other related services. Dinosaur has always conducted the business professionally and taken care of our community while providing this crucial service. To make note they continue to work diligently to ensure this level of professionalism is maintained and continuously improved. They keep property owner costs down and are onsite to provide emergency service at all hours of the day & night.

As an island resident, the Weber's lively-hood has been directly linked to this business and the service it provides for us, the island's residents and taxpayers. I believe it is the Government's duty to support its citizens who are small business owners, especially in the island communities. It is these small businesses that support the 2nd homeowner taxpayers. I believe the this is no different for the City of Portland. GDI continues to bring additional taxpayers & revenue to the City of Portland as we purchase island properties but maintain additional residences outside of Portland and many cases outside the state of ME. It is imperative that there are the small business owners who support this island community infrastructure by keeping our overall 2nd home costs down so that we can continue to afford island homes.

Every effort should be made to ensure Dinosaur Enterprises continues to operate in good standing within our community.

Thank you for your support,

Laura & Peter McAndrew
0 Valley Ave, GDI

Rick Knowland - Dinosaur Enterprises - Conditional zone request

From: "Ed Wolsk" <ewolsk@aol.com>
To: RWK@portlandmaine.gov
Date: 10/1/2013 6:13 AM
Subject: Dinosaur Enterprises - Conditional zone request

Dear Mr. Knowland,

I am writing to express my concern that Dinosaur Enterprises located on Great Diamond Island continue to be allowed to provide dependable oil burner and fuel distribution services. Please support the proposed conditional zone request on October 7.

Thank you,
Ed Wolsk
100 McKinley Circle,
Diamond Cove
Great Diamond Island.

From: <aweber123@myfairpoint.net>
To: RWK@portlandmaine.gov
Date: Tuesday, October 01, 2013
Subject: Dinosaur Enterprises Ltd rezoning

Dear Rick: Please add my comments to the packet for the Weber's rezoning application.

Dear City Council:

I am writing in support of the rezoning application submitted by the William Weber Family for Dinosaur Enterprises Ltd. located at 118 Sunset Ave, Great Diamond Island.

This application should be approved for the following reasons:

1. to bring the property into compliance with city regulations regarding its current use.
2. to continue operation of this fuel business for the island in a safe and secure location.
3. after 5 years, the majority of the community is in agreement about the rezoning of this site
4. abutters support this conditional rezoning even with the restrictions on property use.
5. any alternative site, should it exist, would also require rezoning and incur a time delay associated with another lengthy process.
6. it is unlikely abutters to other sites would give their support. As a property owner within 500 ft of a proposed DIA owned DEP site, I know I would object.
7. there would be added expenses for lot improvements, i.e. lighting, fencing, leveling, insurance at alternative sites
8. one particular site owned by the DIA and referred to as the DEP site would require a lease agreement, not a license as currently offered, for any business to function there. The DIA has not been willing to negotiate a lease agreement between itself and any business and so in effect this site is not viable.

The objections I have heard regarding the conditional rezoning change are the future commercial use of 118 Sunset Ave. and lowered property values. I believe the proposed restrictions on the rezoning limit the size and type of business to a fuel business with two trucks - exactly what exists today. Lowered property values or fear of not selling have more to do with high city taxes than what has already been established. If it were otherwise, abutters would not have bought there to begin with.

Respectfully submitted
Anne E Weber
73 Diamond Ave,
Great Diamond Island, ME

Rick Knowland - my name is howard finkel i live on great diamond island

From: Howard Finkel <hbfinkell@aol.com>
To: RWK@portlandmaine.gov
Date: 10/1/2013 9:28 AM
Subject: my name is howard finkel i live on great diamond island

my name is howard finkel i live on great diamond island
at 124 west shore drive dinosaur has managed my fuel
oil deliveries and provided emergency and routine service
for my heating and hot water equipment since i built my
residence in 2000

i have found mr weber dinosaurs chief and his daughter
beth to not only be entirely and quickly responsive
to all situations but also to be of important
assistance to the day to day running and maintenance of
my heating system and they run their business in a
completely ethical and straightforward manner

living in an island environment presents the need for
special arrangements what is quickly available on the
mainland takes quite a bit of arranging and expense
on the island absent dinosaur enterprises a rather
complicated and expensive situation would obtain
for fuel oil deliveries and equipment maintenance

i urge the planning division of the city of portland
to approve dinosaurs request for conditional
zoning

please feel free to contact me if further information
would be helpful

Kick Knowland - 118 Sunset Ave Great Diamond Island

From: Mark Zajkowski <drzoms@me.com>
To: RWK@portlandmaine.gov
Date: 10/1/2013 10:01 AM
Subject: 118 Sunset Ave Great Diamond Island
CC: mhz0316@me.com

Mr. Knowland,

I would have love to be at the meeting on October 7 to discuss the proposed zoning changes to the Weber property, but I am out Maine on business that week. I'm quite sure that you are aware of the long standing issues of a few of the DIA board members who continue to fight this, and I would like to offer you a different perspective.

I wholeheartedly support the proposed zoning changes, as do THE VAST MAJORITY of homeowners in the DIA. It is truly unfortunate that a very small vocal minority have used the DIA pulpit to oppose what most of us see as reasonable, common sense zoning modifications for a business that has consistently provided a safe and valuable resource. To the best of my knowledge, there has never been an incident putting the island at risk with this business, and know that the owners are fully committed to appropriate safety and compliance regulations.

Please do not let a very small minority that DOES NOT SPEAK FOR THE MAJORITY OF THE DIA MEMBERSHIP on this issue, despite their claims to the contrary. I urge you to adopt the proposed zoning change for 118 Sunset Ave and settle this matter once and for all.

Warm regards,

Mark D Zajkowski, DDS, MD
Oral & Maxillofacial Surgery Associates
www.maineoralsurgery.com

PLEASE NOTE: The information contained in this message may be privileged and confidential, protected from disclosure, and/or intended only for the use of the individual or entity named above.

Rick Knowland - Dinosaur Enterprises, Ltd.

From: "Richard L. Emerson" <emerson@gagerlaw.net>
To: RWK@portlandmaine.gov
Date: 10/1/2013 11:00 AM
Subject: Dinosaur Enterprises, Ltd.

I am writing to you in connection with the application for a conditional zone for Dinosaur Enterprises, Ltd. which will allow them to continue to operate their fuel distribution service at their current location at 118 Sunset Avenue, Great Diamond Island. I am a property owner located at 158 Diamond Avenue, Diamond Cove, Great Diamond Island.

I am writing to support the approval of the proposed conditional zone for their operations. Dinosaur Enterprises provides a vital service to the property owners on Great Diamond Island and trying to obtain oil delivery and burner service, particularly during the winter and in bad weather, would become a very difficult undertaking for Great Diamond Island property owners. An inability to immediately deal with heating outages and frozen pipes could create a dangerous situation for the local property owners. I urge you to approve the proposed conditional zone as it is a vital and necessary service to the property owners. I thank you for your consideration.

Richard L. Emerson
Gager, Emerson, Rickart, Bower & Scalzo, LLP
2 Stony Hill Road
Suite 208
Bethel, CT 06801
Phone: 203.207.5400
Fax: 203.207.5407
E-Mail: emerson@gagerlaw.net
Website: www.gagerlaw.net

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Rick Knowland - Fwd:Conditional Zone for Dinosaur Enterprises 7 pm Mon Oct 7

From: <gdichaz@aol.com>
To: RWK@portlandmaine.gov
Date: 10/2/2013 2:16 PM
Subject: Fwd:Conditional Zone for Dinosaur Enterprises 7 pm Mon Oct 7

----- Forwarded message -----

From: gdichaz@aol.com
Date: Wed Oct 02 14:09:40 EDT 2013
Subject: Conditional Zone for Dinosaur Enterprises 7 pm Mon Oct 7
To: mfpb@portlandmaine.gov;kdonoghue@portlandmaine.gov;mmm@portlandmaine.gov;cl@portlandmaine.gov;jduson@portlandmaine.gov

From Nan and Charles Stockman 127 Sunset Ave (diagonally across Sunset Ave from the Webers)

We strongly support the proposed conditional zone so that the Webers can continue to provide the fuel service on which we depend. Not only is the existing system working, but it is working well. "If it ain't broke, don't fix it" comes to mind, but even more--don't stop it.

The Webers not only help us when we have an heating emergency and for gas when we need it but also provide gas supplies for the city's ambulance, fire trucks and other vehicles.

People benefit on Little Diamond and both areas on Great Diamond.

The benefits of approval to permit continuation of a very helpful service are clear.

Please vote to approve.

Nan and Charles Stockman

Rick Knowland - Great Diamond Island - Letter in Support of Dinosaur Enterprises Ltd.

From: Benjamin Kelley <bkelley@bradysullivan.com>
To: RWK@portlandmaine.gov
Date: 10/3/2013 10:54 AM
Subject: Great Diamond Island - Letter in Support of Dinosaur Enterprises Ltd.

This email is being sent in support of Dinosaur Enterprises, ltd for their requested conditional use to continue their operation on Great Diamond Island. As an owner of 88 Ingalls Road Diamond Cove, I am just one of hundreds who are dependent upon Dinosaur Enterprises for heating fuel. Given the fact we are an island, this creates an extreme hardship and thereby this zoning request is more than reasonable and in line with the spirit of the ordinance. Please feel free to contact me at (603) 231-1240 if you should have any further questions or wish to discuss the matter with me further.

Ben Kelley

Benjamin S. Kelley

Associate Broker
Brady Sullivan Properties
670 N. Commercial Street
Manchester, NH 03101

Office: 603.622.6223, ext. 9726
Cell: 603.231.1240
Fax: 603.622.7342

Rick Knowland - Fw: Dinosaur Enterprises on Great Diamond Island

From: "Gary L Smith" <gls101@myfairpoint.net>
To: "Rick Knowland" <RWK@portlandmaine.gov>
Date: 10/15/2013 10:45 AM
Subject: Fw: Dinosaur Enterprises on Great Diamond Island
CC: "Jeff Levine" <JLEVINE@portlandmaine.gov>, "Alex Jaegerman" <AQJ@portlan...>

----- Original Message -----

From: Giguere, Steve
To: Gary L Smith
Sent: Tuesday, October 15, 2013 10:11 AM
Subject: RE: Dinosaur Enterprises on Great Diamond Island

I am assigning an inspector to visit the island to look for illegal devices.

*Steve Giguere, Program Manager
Maine Dept. of Agriculture, Conservation & Forestry
Division Quality Assurance & Regulations
207 287-3841*

Recipe to Market: <http://umaine.edu/publications/3101e/>

UMaine Food Technology: <http://foodsciencehumannutrition.umaine.edu/food-technology/>

Food Safety Programs: <http://extension.umaine.edu/food-health/food-safety/>

Other resources for Maine food businesses: <http://extension.umaine.edu/food-health/resources-for-small-food-businesses-in-maine/>

From: Gary L Smith [mailto:gls101@myfairpoint.net]
Sent: Tuesday, October 15, 2013 10:07 AM
To: Giguere, Steve
Subject: Re: Dinosaur Enterprises on Great Diamond Island

Steve,

Have you received an application from William (Ted) Weber dba Dinosaur Enterprises?

The owner of this business is retailing gasoline from a tank mounted in the back of his pickup truck. The SFMO has stated that those type of tanks are intended for private use and not retail sales. The SFMO also stated that many of the pumps used on these type of tanks are marked not for resale. The metering device currently being used is in fact marked not for resale. The SFMO stated that Weights and Measures certifies tanks and dispensers.

Does state law allow this type of operation?

Gary

|

From: Roseann Laucirica <rlaucirica@comcast.net>
To: <nwk@portlandmaine.gov>
Date: Tuesday, October 15, 2013
Subject: Oil Delivery on Diamond Cove

We have owned a house on Diamond Cove for 23 years. I am writing in regard to the hearing on 10/21 to consider a proposed zoning change requested by Dinosaur Oil. It would be disastrous for the Great Diamond Island community if Ted Weber was prohibited from continuing his delivery of oil to the residents. Ted's delivery in a timely manner has been a godsend to the island, and to us personally. Along with the company's dependable delivery of oil, is Ted's prompt assistance when things do go wrong, whether it is a minor or major problem. There are countless times when he has saved us, and other residents, from disastrous results. This is especially important for us since we are not there very often in the winter. This service is not merely a business to Ted and his family, but a commitment to provide security, safety, and genuine care for the island's needs. Ted and his family are upstanding, outstanding neighbors, and have been a mainstay of the island for as long as we have had the good fortune to know them.

Roseann Laucirica

From: Edward Maas <ETMAAS@MYFAIRPOINT.NET>
To: Rick Knowland <rwk@portlandmaine.gov>
Date: Tuesday, October 15, 2013
Subject: Great Diamond Island/ Weber situation

Please forward this statement to all members of the city council, the mayor and anyone else who will be providing counsel on the Weber/Dinosaur Enterprises situation

As full time, year round residents of Great Diamond Island and Portland, and as registered voters in this fair city, we wish to express our complete and emphatic support for the Weber's and Dinosaur Enterprises efforts to secure a zoning change for their property so that they can continue to provide the absolutely critical support to our island community. They, through Dinosaur Enterprises, have provided critical service though the delivery of fuel oil and aid in maintaining our home's heating system over the last 11 years since we have been full time residents of Great Diamond Island.

In our opinion, without this critical ongoing service, Great Diamond Island would become virtually unlivable on a year round basis, becoming merely a summer community, with a commensurate decline in property values and hence tax revenues for the city.

We realize that a very small number of nay sayers exist whose apparent only motive is a personal vendetta against the Weber's. Please do not be fooled by their persistent vocal efforts to convince you that they represent the majority of island residents. THEY DO NOT! Rather, in my informal discussions with virtually all of the island residents that I know, the Weber's enjoy unanimous support.

Again, we request that the city council grant the Weber's request for a zoning change.

Respectfully,

Edward T. Maas
Irene M. Maas

59 Moon Garden Way
Diamond Cove, Great Diamond Island
Maine 04109

From: Helen Withnell <hawoli@vanwright.com>
To: <rwk@portlandmaine.gov>
Date: Thursday, October 17, 2013
Subject: Conditional Zone by Dinosaur Enterprises LTD

Dear Rick

We are home owners at 54 Ingalls Road Diamond Cove. We fully support the application by Dinosaur Enterprises Ltd to continue a fuel distribution service on Great Diamond Island. This company has provided timely and affordable fuel services for many years.

Helen Withnell and Clive Hawkins



Maine Department of Public Safety
Office of the State Fire Marshal
52 State House Station
Augusta, Maine 04333-0052

(207) 626-3880 Telephone
(207) 287-6251 Fax
<http://www.maine.gov/dps/fmo/index.htm>

Application for a Permit for
**Aboveground Storage of
Flammable and Combustible Liquids**

Requirements for aboveground storage of flammable and combustible liquids are in Title 25 MRSA §2481, et seq., 16-219 CMR Chapter 34 *Rules and Regulations for Flammable and Combustible Liquids*, NFPA 30 *Flammable and Combustible Liquids Code*, NFPA 30-A *Code for Motor Fuel Dispensing Facilities and Repair Garages*, NFPA 385 *Standard for Tank Vehicles for Flammable and Combustible Liquids* and NFPA 409 *Standard for Air craft Fuel Servicing*.

The application fee, \$15 per site, must be submitted with the application.

Keep a copy of the application, plans, and specifications for your records.

The permit must be issued before any action to construct the facility is taken. Be sure the permit will be issued BEFORE you spend money! People have been "stuck" because they bought something that could not be approved. Along with what they had paid for the non-conforming tanks and equipment, they had to pay for the compliant tanks and equipment.

Submit Construction Plans including a Site Plan and an Elevation Plan (end and side views) prepared specifically for this installation with this application. The plans submitted are the plans to be used to construct the facility. The facility must be constructed according to the plans and specifications approved by the Office of the State Fire Marshal.

Changing the plans without prior written approval voids a permit issued for a facility.

There are specific requirements for a building or structure to house or protect an aboveground storage tank. Plans and specifications for a building or structure MUST be submitted with the application. Constructing a building or structure not included on the application will void the permit issued according to the application submitted.

Any changes to the plans and specifications submitted with this application must be approved by the Office of the State Fire Marshal prior to their implementation and a copy of the "As Built" plans must be submitted when the original plans and specifications are changed.

The Office of the State Fire Marshal will submit this application to the Maine Department of Environmental Protection to determine compliance with the Wellhead Protection requirements of Title 38 MRSA §1391 prior to its review of the application.

Application for a permit issued under the Permit by Rule program established pursuant to HP 206-LD 253 must be made on an application specific to that program. A permit for a facility that varies in any way from the Permit by Rule process must be made on this application.



Maine Department of Public Safety
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Augusta, Maine 04333-0052

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<http://www.maine.gov/dps/fmo/index.htm>

Application for a Permit for
Aboveground Storage of
Flammable and Combustible Liquids

For Office Use Only:	
Permit #	_____
Date Issued:	_____
Action:	
<input type="checkbox"/> Approved per Plan	
<input type="checkbox"/> Approved per Plan & Inspection	
<input type="checkbox"/> Denied	
By:	_____
Date:	_____
DEP Wellhead Protection:	
<input type="checkbox"/> Exempt	
<input type="checkbox"/> Complies	
<input type="checkbox"/> Does Not Comply	
<input type="checkbox"/> May Be Made To Comply	
<input type="checkbox"/> Waiver Requested	
Fee:	
Amount: \$	_____
Date Recd:	_____
Check #:	_____

Facility:

Facility Name:		DEP Registration #:	
Physical Address:		DEP Registration date:	
City:		County:	
Contact:	Telephone:	Email:	
Total Capacity of Facility: _____ US Gallons			
<small>Plans and Specifications must be certified by a Professional Engineer of Total Capacity of the facility to comply with 105B section.</small>			

Owner of Tank:

Name:			
Mailing Address:			
City:		State:	Zip/Postal Code:
Contact:	Telephone:	Email:	

Permit will be issued to "Owner of Tank" as shown above.

Operator of Tank: Same as Owner of Tank

Name:			
Mailing Address:			
City:		State:	Zip/Postal Code:
Contact:	Telephone:	Email:	

Engineer's Certification:

I, _____, hereby certify that the facility described on this application is designed according to recognized engineering practices, industry standards, statutes, rules, codes, and standards.

Signature

Engineer's Seal

Facility: _____ Town: _____ Application Date: _____

Tank # _____ Page 2 of 2, Set _____ of _____

Chamber Information:

	Chamber 1	Chamber 2	Chamber 3
Capacity	US Gallons	US Gallons	US Gallons
Product <i>Use generic name, not trade name.</i>	<input type="checkbox"/> Alcohol <input type="checkbox"/> Antifreeze <input type="checkbox"/> Asphalt <input type="checkbox"/> Biodiesel B-1 B-74 <input type="checkbox"/> Biodiesel B-75 B-99 <input type="checkbox"/> Biodiesel B-100 <input type="checkbox"/> Crude Oil <input type="checkbox"/> Diesel Fuel <input type="checkbox"/> #2 Fuel <input type="checkbox"/> Gasoline, Aviation <input type="checkbox"/> Gasoline, Leaded <input type="checkbox"/> Gasoline, Plus <input type="checkbox"/> Gasoline, Premium <input type="checkbox"/> Gasoline, Regular <input type="checkbox"/> Jet Fuel <input type="checkbox"/> Kerosene <input type="checkbox"/> Motor Oil <input type="checkbox"/> Vegetable Oil <input type="checkbox"/> Waste Oil <input type="checkbox"/> Other (Specify):	<input type="checkbox"/> Alcohol <input type="checkbox"/> Antifreeze <input type="checkbox"/> Asphalt <input type="checkbox"/> Biodiesel B-1 B-74 <input type="checkbox"/> Biodiesel B-75 B-99 <input type="checkbox"/> Biodiesel B-100 <input type="checkbox"/> Crude Oil <input type="checkbox"/> Diesel Fuel <input type="checkbox"/> #2 Fuel <input type="checkbox"/> Gasoline, Aviation <input type="checkbox"/> Gasoline, Leaded <input type="checkbox"/> Gasoline, Plus <input type="checkbox"/> Gasoline, Premium <input type="checkbox"/> Gasoline, Regular <input type="checkbox"/> Jet Fuel <input type="checkbox"/> Kerosene <input type="checkbox"/> Motor Oil <input type="checkbox"/> Vegetable Oil <input type="checkbox"/> Waste Oil <input type="checkbox"/> Other (Specify):	<input type="checkbox"/> Alcohol <input type="checkbox"/> Antifreeze <input type="checkbox"/> Asphalt <input type="checkbox"/> Biodiesel B-1 B-74 <input type="checkbox"/> Biodiesel B-75 B-99 <input type="checkbox"/> Biodiesel B-100 <input type="checkbox"/> Crude Oil <input type="checkbox"/> Diesel Fuel <input type="checkbox"/> #2 Fuel <input type="checkbox"/> Gasoline, Aviation <input type="checkbox"/> Gasoline, Leaded <input type="checkbox"/> Gasoline, Plus <input type="checkbox"/> Gasoline, Premium <input type="checkbox"/> Gasoline, Regular <input type="checkbox"/> Jet Fuel <input type="checkbox"/> Kerosene <input type="checkbox"/> Motor Oil <input type="checkbox"/> Vegetable Oil <input type="checkbox"/> Waste Oil <input type="checkbox"/> Other (Specify):
Marking: Product Name NFPA 704 Hazard Health (blue) Flammability (red) Instability (Yellow) Special Hazards (white) "No Smoking"	_____ _____ _____ _____ <input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____ <input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____ <input type="checkbox"/> Yes <input type="checkbox"/> No
Is Product Under Pressure?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Normal Vent (Size & Type) <i>Class IA normally Closed</i> <i>Class IB, IC normally closed or flame arrestor</i>			
Normal Vent (Height Above Ground) <i>Class I No less than 12 feet above ground</i>			
Emergency (Vent Size & Type) Emergency vent for Primary Chamber			
Emergency (Vent Size & Type) Emergency Vent for Interstitial Space			
Type of Overfill Protection	<input type="checkbox"/> Level Gauge <input type="checkbox"/> Vent Whistle <input type="checkbox"/> Drop Tube <input type="checkbox"/> Electronic <input type="checkbox"/> Mechanical <input type="checkbox"/> Mech + Elect <input type="checkbox"/> None <input type="checkbox"/>	<input type="checkbox"/> Level Gauge <input type="checkbox"/> Vent Whistle <input type="checkbox"/> Drop Tube <input type="checkbox"/> Electronic <input type="checkbox"/> Mechanical <input type="checkbox"/> Mech + Elect <input type="checkbox"/> None <input type="checkbox"/>	<input type="checkbox"/> Level Gauge <input type="checkbox"/> Vent Whistle <input type="checkbox"/> Drop Tube <input type="checkbox"/> Electronic <input type="checkbox"/> Mechanical <input type="checkbox"/> Mech + Elect <input type="checkbox"/> None <input type="checkbox"/>
Does the Fill Pipe terminate within 6" of the bottom of the tank?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Type of Pump	<input type="checkbox"/> Pressure <input type="checkbox"/> Suction <input type="checkbox"/>	<input type="checkbox"/> Pressure <input type="checkbox"/> Suction <input type="checkbox"/>	<input type="checkbox"/> Pressure <input type="checkbox"/> Suction <input type="checkbox"/>
Is the product heated?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the product under pressure?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Piping Information:

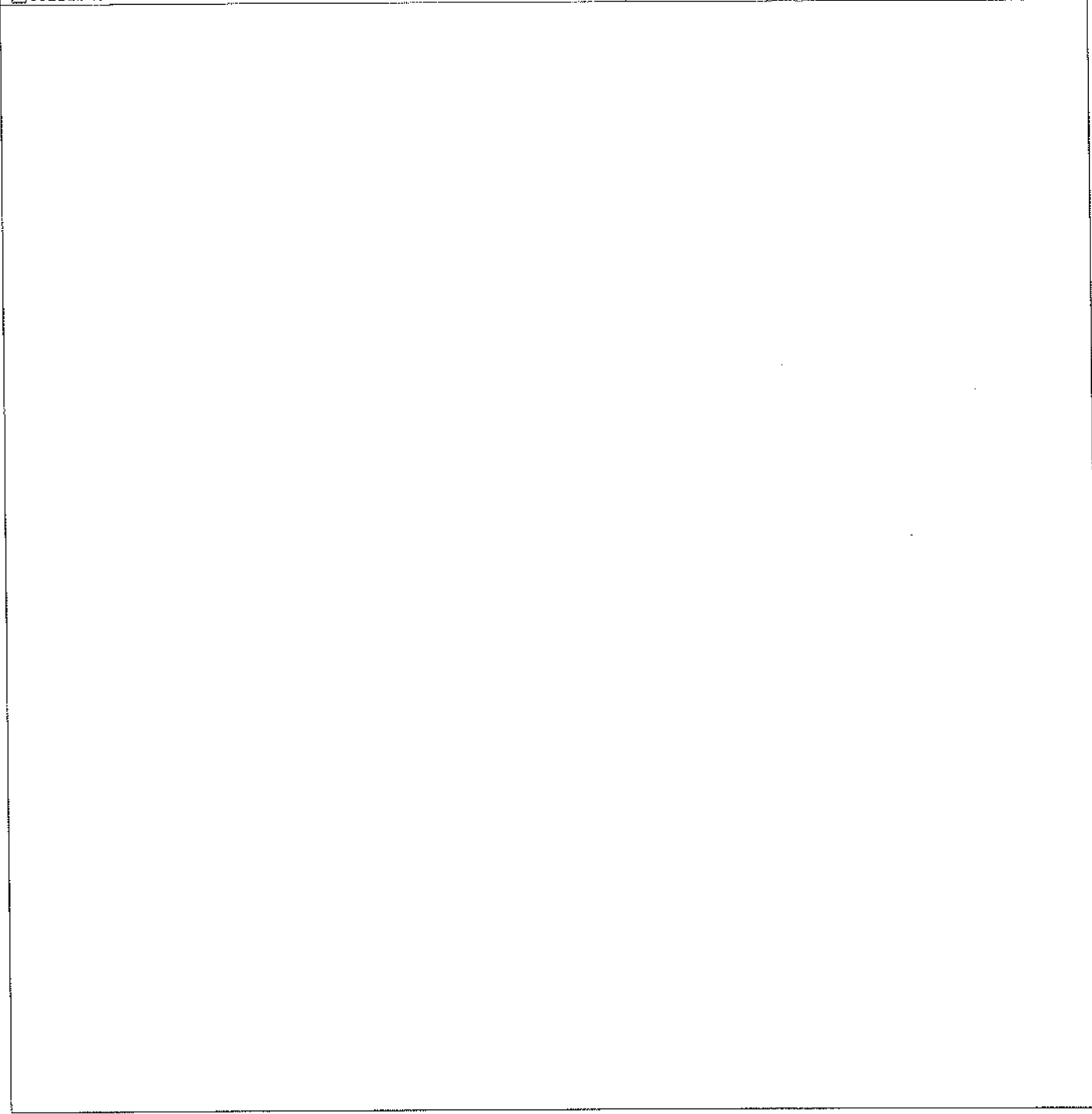
Is any of the piping underground?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Piping Material:	<input type="checkbox"/> Steel <input type="checkbox"/> Other (specify): _____
Leak Detection (Piping):	<input type="checkbox"/> None <input type="checkbox"/> Automatic Tank Gauge <input type="checkbox"/> Manual Monitoring/Secondary Containment <input type="checkbox"/> Other (specify): _____
	<input type="checkbox"/> Electronic/Ground Water <input type="checkbox"/> Electronic/Vapor <input type="checkbox"/> Electronic/Secondary Containment <input type="checkbox"/> Groundwater Sampling <input type="checkbox"/> Statistical Inventory Analysis

Facility: _____ Town: _____ Application Date: _____

Site Plan

Where are the plans to be used to develop the facility?

<p>Show the location of all of the following on this plan:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Tanks and Dikes <input type="checkbox"/> Buildings <input type="checkbox"/> Property Lines <input type="checkbox"/> Public Ways <input type="checkbox"/> Dispensers <input type="checkbox"/> Propane Storage <input type="checkbox"/> Security Features <input type="checkbox"/> Collision Protection 	<p>Show the location of all of the following on this plan:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Electrical Controls and Equipment <input type="checkbox"/> Emergency Electrical Shut Off <input type="checkbox"/> Fire Extinguishing Equipment <input type="checkbox"/> Sump Leak Detection Equipment <input type="checkbox"/> Loading & Unloading Piping 	<p>Indicate NORTH With arrow</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------



Facility: _____ Town: _____ Application Date: _____

Type of Application:

- New Aboveground Storage Facility (No existing permit)
- Change of facility (Attach a copy of existing permit)
 - Add tank(s)
 - Replace tank(s)
 - Remove tank(s)
 - Change Product(s)
- Change of Ownership (Attach a copy of existing permit)
 - Note changes and corrections to a copy of the existing permit, and submit the changes and corrections and copy of the existing permit with the application.

Use of Facility:

- Wholesale Oil (Bulk Plant)
- Retail Oil (Service Station, Convenience Store, Marina, Airport, etc)
- Private Fueling
- Single Family Dwelling
- Multiple Family Dwelling (Including Nursing Homes)
- Public Facilities (Including Places of Assembly)
- Chemical Storage
- Industrial
- Federal Facility
- State Facility
- Town or School Facility

DEP Wellhead Protection:

Section A-1

If you answer "Yes" to any of the following questions, your facility is exempt from the siting restrictions.

- | Yes | No | |
|--------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Was the tank facility installed before September 30, 2008? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Will the facility be used solely to store heating oil that is consumed on site, not resold? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Is the facility replacing an aboveground oil storage facility that was installed before September 30, 2008 that is on the same property? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Is the facility replacing or expanding an underground oil storage facility that was registered on or before September 30, 2008 and is presently on the same property? |
- If "Yes" enter the DEP Registration Number: _____

Section A-2

If you answered "No" to all the questions in A-1, complete this section.

- 1. Will any portion of the facility be installed after September 30, 2008? (If "No", Section A-2 does not apply to the tank(s) you are installing.)
- 2. Will any portion of the facility be located within 300 feet of a private well or water supply? (This does not include a private well located on the same lot as the facility and serving only users living on that property.)
- 3. Will any portion of the facility be located within the source water protection area of a public drinking water well mapped by the Department of Human Services or within 1000 feet of a public water well, whichever is greater?
Maps of source water protection areas are available on the internet at www.maine.gov/dhs/eng/water/index.htm. Public water supplies are defined as any well or water supply where water is obtained, sold, furnished, or distributed to the public for human consumption. The well or water supply must meet one or more of the following requirements to be a public water supply:
 - Serves more than 15 connections, OR
 - Regularly Serves at least 25 individuals daily for at least 60 days of the year, OR
 - Provides bottled water for sale where the water is pumped from on site.
- 4. Does the well or water supply serve a school or community water supply system? (A school is an institution for the formal classroom instruction of children in grades k-12. A community water system is a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.)
- 5. Will any portion of the facility be located within a mapped significant sand and gravel aquifer? As of July 1, 2010, Maine law prohibits installation of ASTs within significant sand and gravel aquifers mapped by the Maine Geological Survey unless a variance is obtain from the Department of Environmental Protection (DEP).

If the answer to #2 or #4 above is "Yes", a new aboveground oil storage facility may not be installed unless the applicant proves there is no hydrogeologic connection between the proposed facility and the water supply at issue. Contact DEP at (207) 287-2651 to obtain information on the procedures to follow to determine if a hydrogeologic connection exists.

If the answer to #3 is "Yes" and the answer to #4 is "No", then a variance from the siting restriction may be granted upon written application to DEP if DEP determines that the proposed installation is designed to exceed minimum regulatory requirements and will effectively minimize releases of oil and the likelihood of drinking water contamination.

If the answer to #5 is YES, Please review Chapter 692, Section (4)-(B) through (E) to determine if a variance may be applicable for the proposed site. Contact DEP for an application for a variance.

For questions about the siting law, please call David McCaskill or George Seel at (207) 287-2651 or visit the DEP Drinking Water Protection website: www.maine.gov/dep/rwm/drinkingwater/index.htm

Facility: _____ Town: _____ Application Date: _____

Tank # _____ Page 1 of 2, Set _____ of _____

Tank Information:

Owner of Tank:		Owner Start Date:
Operator of Tank:		Operator Start Date:
Use of Tank: <input type="checkbox"/> Public Fueling <input type="checkbox"/> Automotive <input type="checkbox"/> Aviation <input type="checkbox"/> Marina <input type="checkbox"/> Equipment <input type="checkbox"/> Other: _____ <input type="checkbox"/> Private Fueling <input type="checkbox"/> Automotive <input type="checkbox"/> Aviation <input type="checkbox"/> Marina <input type="checkbox"/> Equipment <input type="checkbox"/> Other: _____ <input type="checkbox"/> Bulk Storage <input type="checkbox"/> Equipment Supply (Specify): _____ <input type="checkbox"/> Container Storage <input type="checkbox"/> Fuel Production Facility <input type="checkbox"/> Other (Specify): _____		
Nominal Capacity: _____ US Gallons		Manufacturer of Tank:
Tank Material: <input type="checkbox"/> Steel <input type="checkbox"/> Other (Specify): _____		Orientation of Tank: <input type="checkbox"/> Horizontal <input type="checkbox"/> Vertical
Tank Listing: <input type="checkbox"/> UL 80 <input type="checkbox"/> UL 2080 Protected Tank <input type="checkbox"/> UL 142 <input type="checkbox"/> UL 2085 Fire Resistant Tank <input type="checkbox"/> UL 142 with Secondary Containment <input type="checkbox"/> UL 2085 Tank in Vault <input type="checkbox"/> Other (Specify): _____		
Type of Secondary Containment: <input type="checkbox"/> Double Wall Tank <input type="checkbox"/> Dike, Metal <input type="checkbox"/> Dike, Concrete <input type="checkbox"/> Remote Impoundment <input type="checkbox"/> Dike, Earth with Impervious Lining <input type="checkbox"/> None Capacity of Dike or Remote Impoundment: _____ US Gallons		
Vault <input type="checkbox"/> Yes <input type="checkbox"/> No Is the tank in a vault? (A concrete secondary containment dike is NOT a vault.) <input type="checkbox"/> Yes <input type="checkbox"/> No If the tank is in a vault, is the vault listed? If the vault is listed, specify the listing: _____		
Weather Protection: <input type="checkbox"/> Inside a building (submit plans and specifications for the building with this application; More than 50% of wall space is enclosed. Building must comply with NFPA 56 4.3.4 and referenced publications) <input type="checkbox"/> Roof with walls (Less than 50% of wall space, including dike walls, is enclosed.) <input type="checkbox"/> Roof Only <input type="checkbox"/> None		
Electrical Wiring and Equipment: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> None Are electrical wiring and electrical equipment within the hazard area defined by the National Electrical Code, NFPA70, and NFPA 30, installed in compliance with these codes?		
Flood Zone <input type="checkbox"/> Yes <input type="checkbox"/> No Is the tank in a flood zone?		
Collision Protection: <input type="checkbox"/> Barricades <input type="checkbox"/> Bollards <input type="checkbox"/> Other (Specify): _____		
Security: <input type="checkbox"/> Chain Link Fence Enclosure, at least 6 feet high, 10 feet from tank. <input type="checkbox"/> Entire property is fenced. <input type="checkbox"/> Other (Specify): _____		
Distance from tank to: Nearest Important Building: _____ Other Tanks: _____ No less than 25 feet No less than 3 feet Property Lines: _____ Dispensers: _____ No less than 25 feet <input type="checkbox"/> Public Fueling No less than 50 feet Nearest Side of a Public Way: _____ <input type="checkbox"/> Private Fueling No less than 25 feet <input type="checkbox"/> Tank Mounted Opposite Side of a Public Way: _____ Propane Storage _____ No less than 25 feet No less than 20 feet		
Leak Detection (Tank): <input type="checkbox"/> None <input type="checkbox"/> Electronic/Ground Water <input type="checkbox"/> Electronic/Secondary Containment <input type="checkbox"/> Automatic Tank Gauge <input type="checkbox"/> Electronic/Vapor <input type="checkbox"/> Groundwater Sampling <input type="checkbox"/> Manual Monitoring/Secondary Containment <input type="checkbox"/> Statistical Inventory Analysis <input type="checkbox"/> Other (specify): _____		