

83E-E-46

2008.0177

18 McKinley Ct. - GDI

Inn at Diamond Cove

Inn at Diamond Cove, LLC.

on Spreadsheet

ARCHETYPE, P.A.
ARCHITECTS
4115 S. 25th St. P.O. Box 11000
Denville, NJ 07834 Phone: (973) 731-4000
Fax: (973) 731-4005



The Inn at Diamond Cove, LLC

A-2.01

ELEVATIONS

NOT FOR CONSTRUCTION

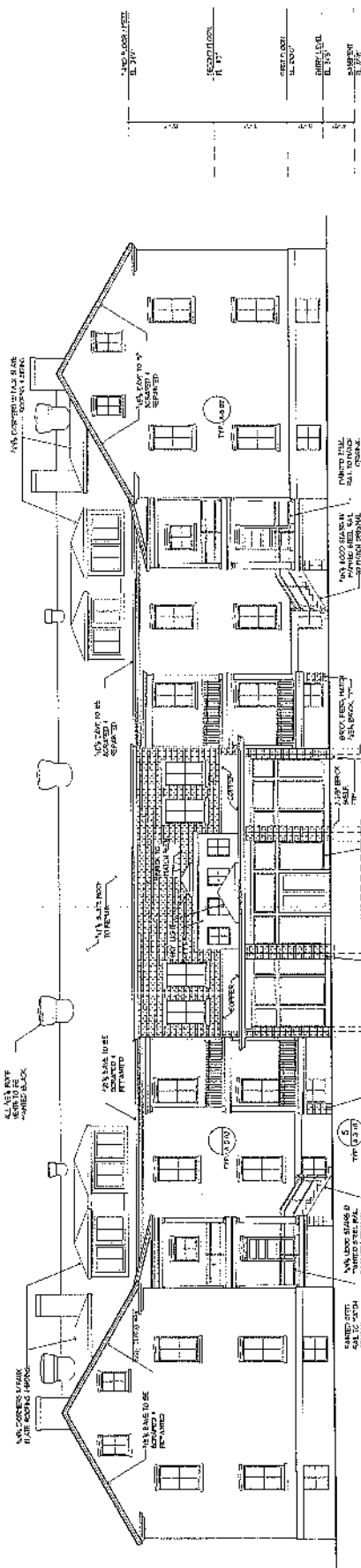
THE RSN AT
DIAMOND COVE, LLC

ARCHITECT, P.A.

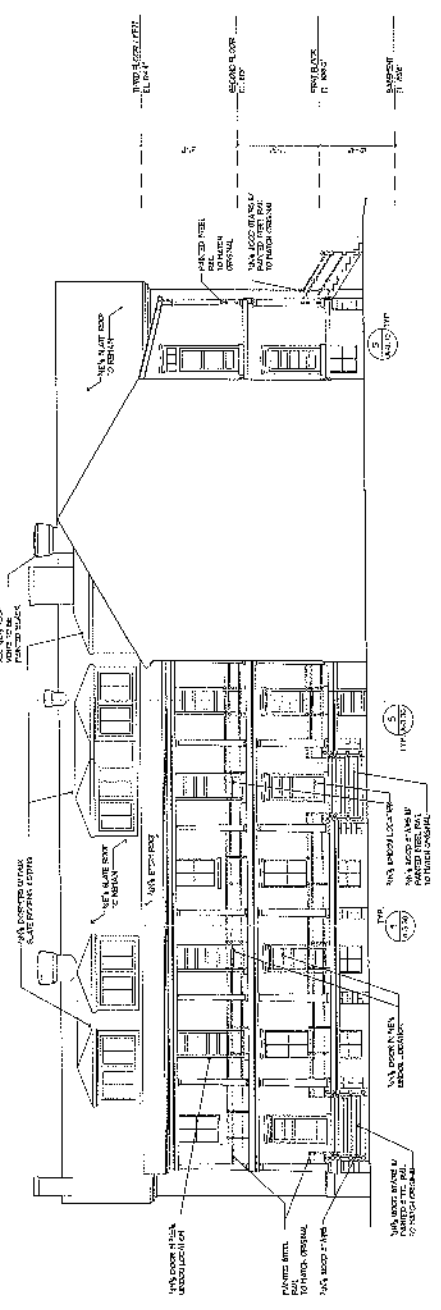
BATEMAN
PARTNERS, LLC

48 DASHWAY STREET, WYOMING, DELAWARE 19780
(302) 773-4033 FAX (302) 773-4038

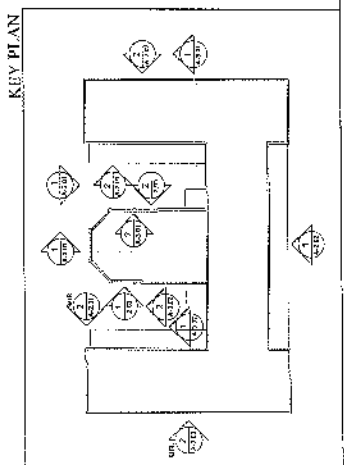
255 CONVENT STREET, PHILADELPHIA, PA 19106



1 | NORTH ELEVATION
SCALE: 1/8" = 1'-0"



2 | EAST ELEVATION
SCALE: 1/8" = 1'-0"



KEY PLAN

A-2.02

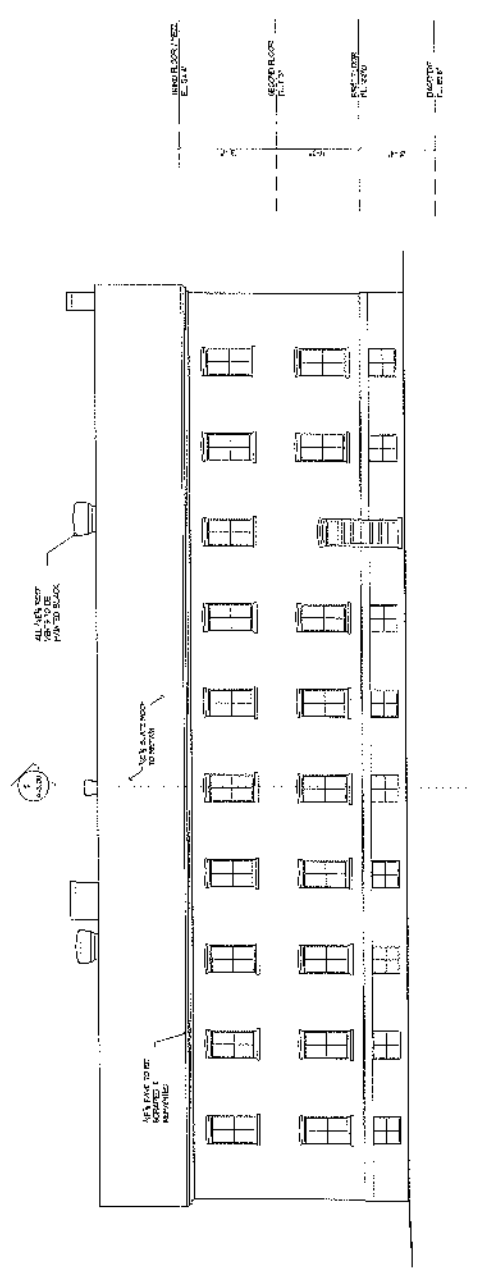
ELEVATIONS

NOT FOR CONSTRUCTION

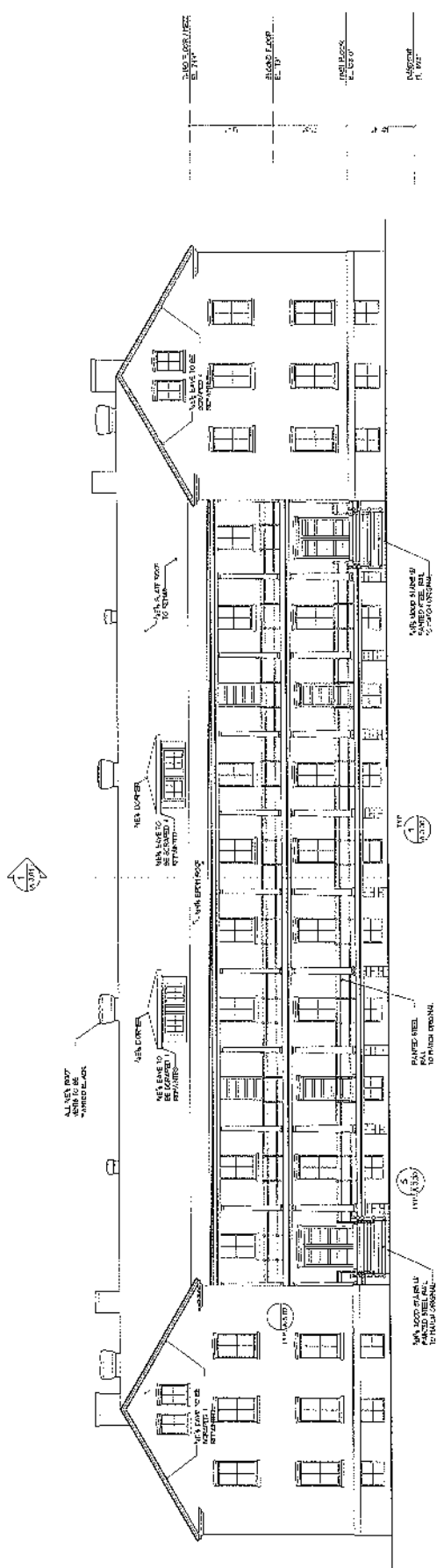
THE INN AT DIAMOND COVE, LLC
ARCHITECTS, P.A.
BATEMAN PARTNERS, LLC

Architects
Diamond Cove, LLC
4915 Peachtree Dunwoody Road, Suite 300
Atlanta, Georgia 30328
Phone: 404.394.1111
Fax: 404.394.1111

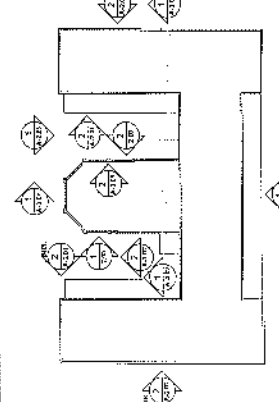
2 | EAST ELEVATION - MISSISSIPPI BAYS - ELEV.
SCALE: 1/4" = 1'-0"



1 | SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



KEY PLAN



A-2.03

EL ELEVATIONS
NOT FOR CONSTRUCTION

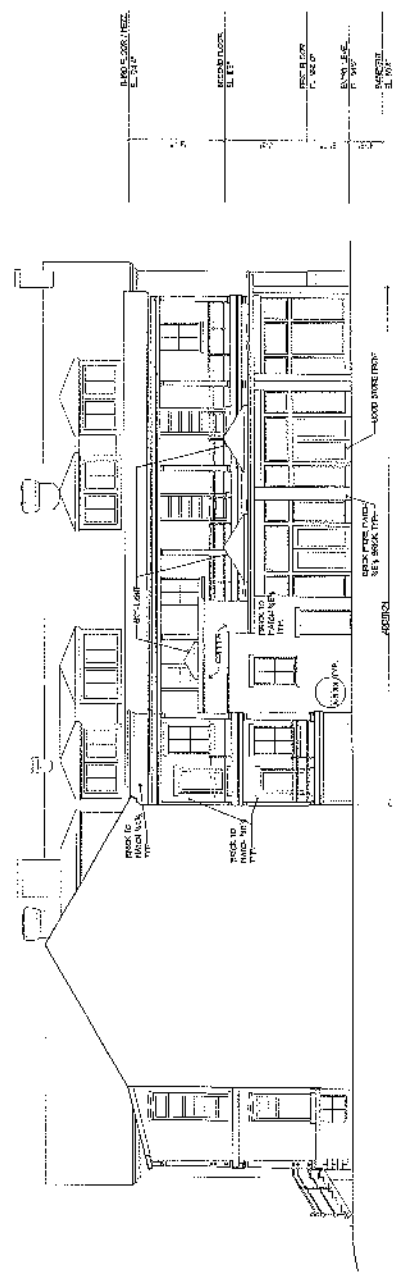
Date: _____
Scale: 1/8" = 1'-0"

Project: THE INN AT
DIAMOND COVE, LLC
Address: Mackeys Ct., Over Bland, Va. 22651

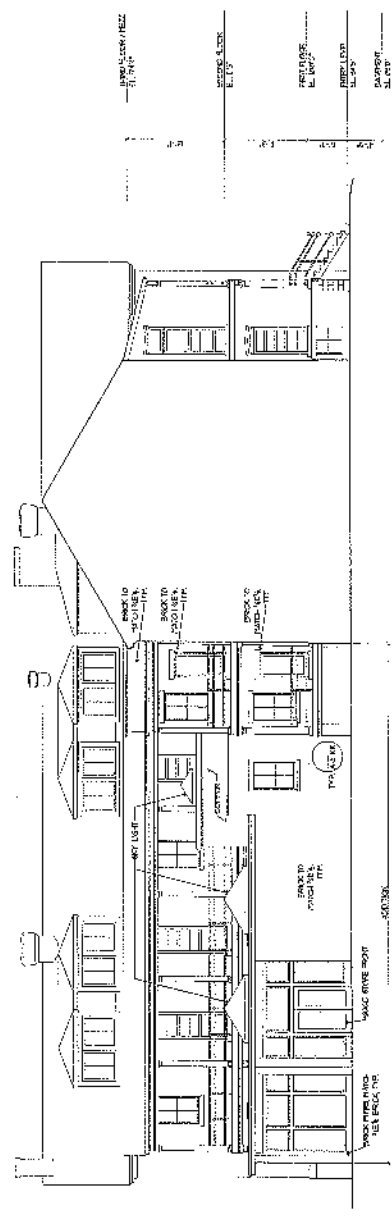
Architect: ARCHTYPE
ARCHITECTS, P.A.
15 Prince Street, Portland, Maine 04101
(603) 773-8212 Fax: (603) 773-8285

Client: BATEMAN
PARTNERS, LLC
215 Commercial Street, Portland, ME 04103

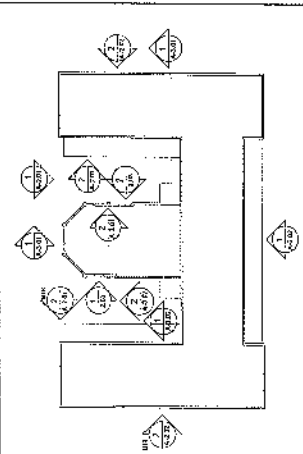
2 EAST ELEVATION / INCREASING WEST ELEV.
SCALE: 1/8" = 1'-0"



1 SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



KEY PLAN



Rick Knowland - FW: Diamond Cove

From: Ronald Ward <rnw@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, 6 2 bedroom and 8 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

CONFIDENTIALITY NOTICE: This email message is confidential and is subject to the attorney-client privilege and to every other applicable privilege. If you are not the intended recipient, please reply to the sender that this message was misdirected, delete this message and do not retain any copies. The sender and the intended recipient do not waive any privilege by reason of any inadvertent misdelivery of this message.

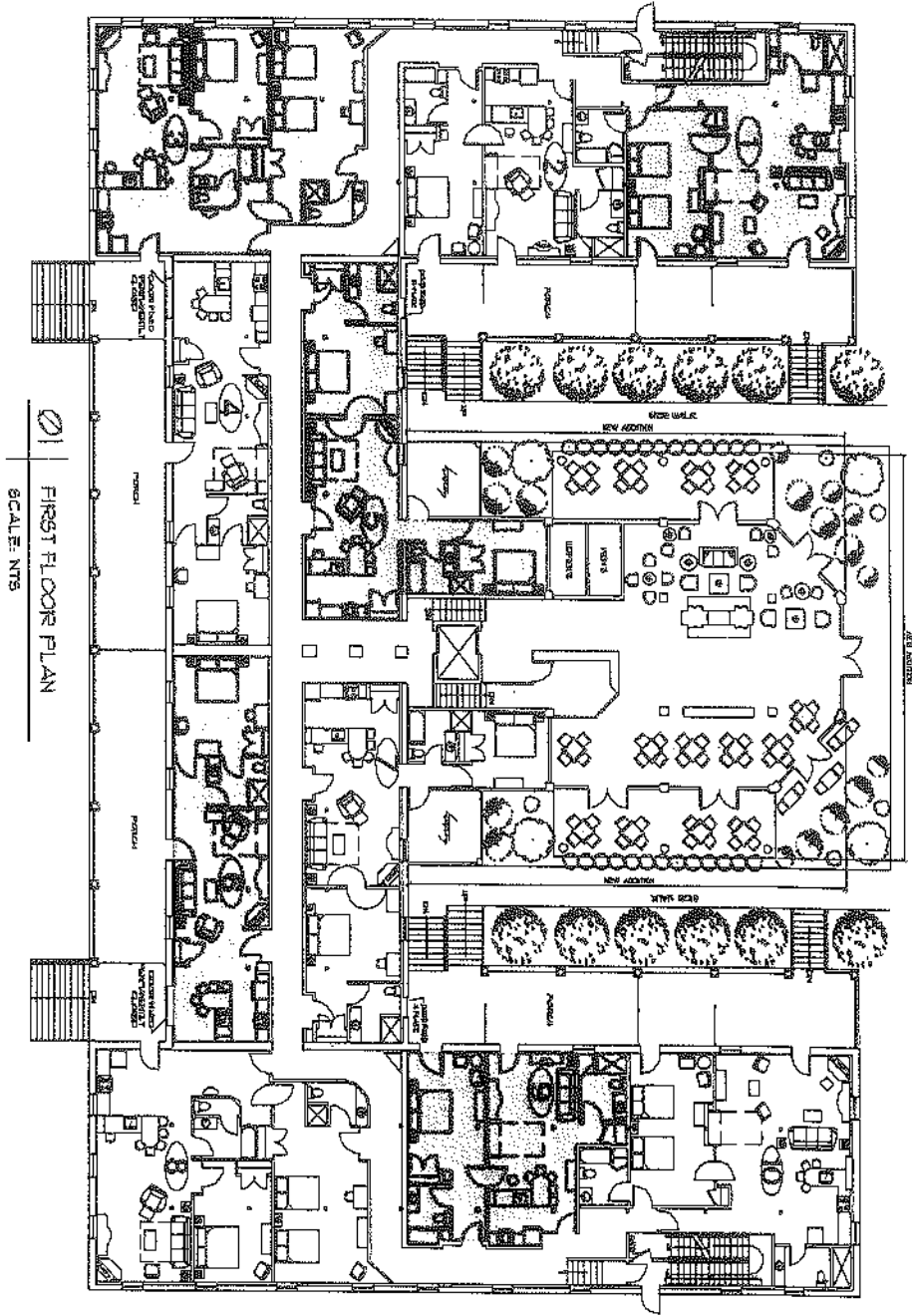
IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties 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

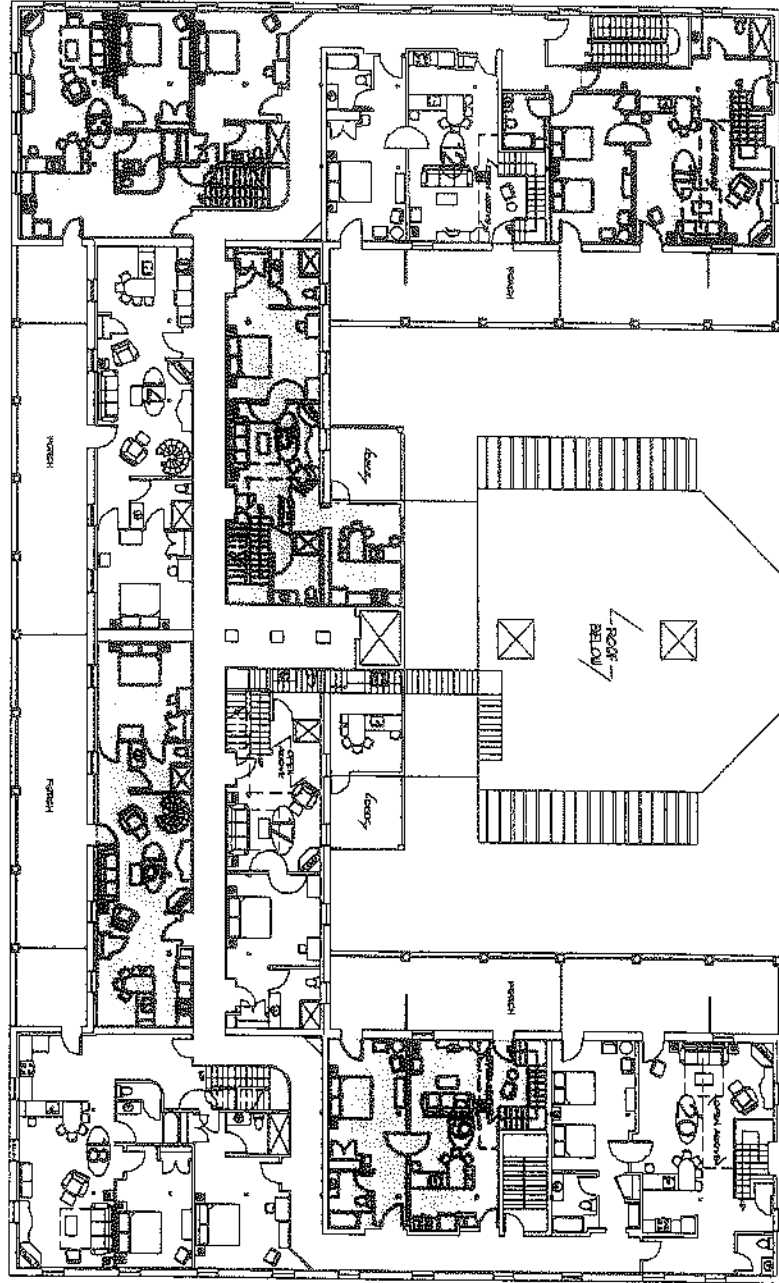
nathan@batemanpartnersllc.com

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



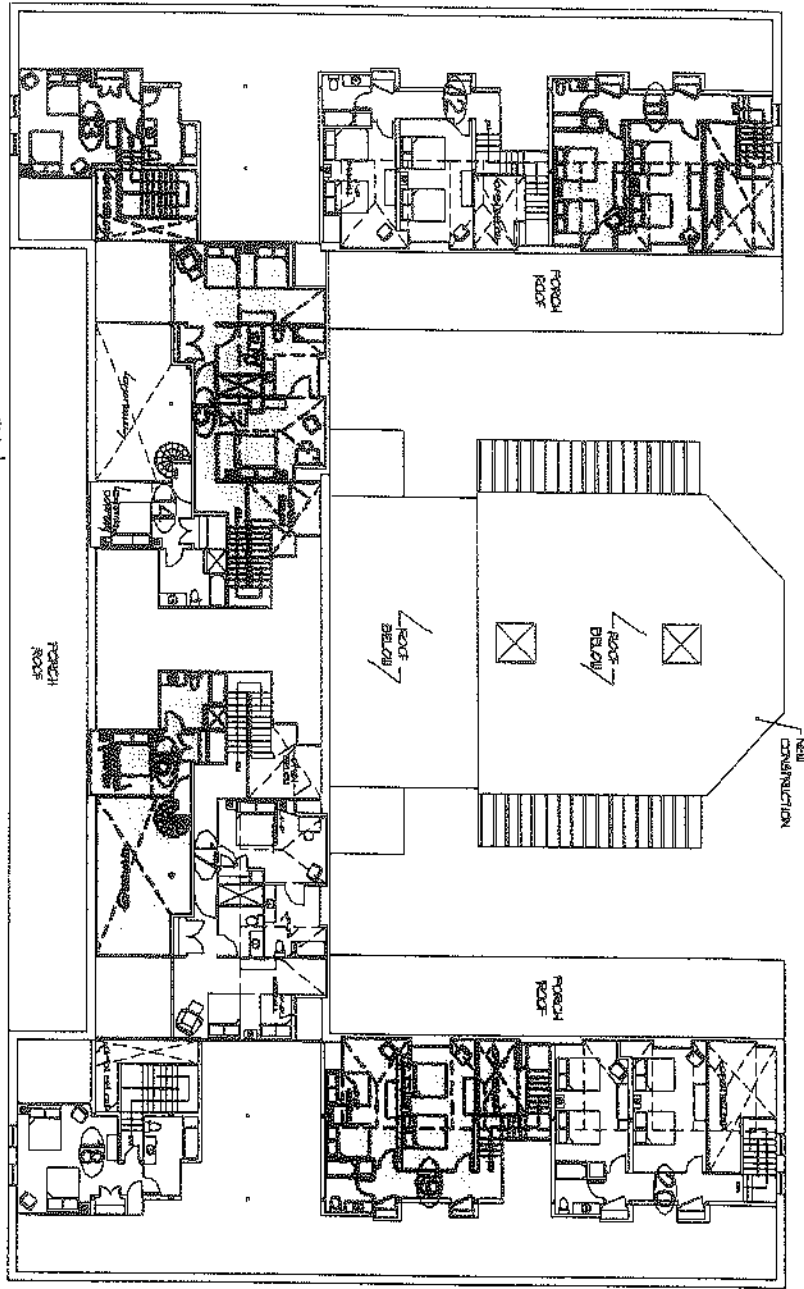
FIRST FLOOR PLAN
SCALE: NTS

A01	PROPOSED PLANS	DATE: 1/1/06	DRAWN BY: [unintelligible]	CHECKED BY: [unintelligible]	PROJECT: The Inn at Hammond Cove, LLC	ARCHITECT: ARCHETYPE, P.A. ARCHITECTS	OWNER: Habeman Partners, LLC
						ADDRESS: 1400 [unintelligible] [unintelligible]	DATE: 1/1/06



SECOND FLOOR PLAN
SCALE: NTS

A02	DATE: 11/15/11	PROJECT: RICK KNOWLAND	CLIENT: THE TRUST AT DIAMOND COVE, LLC	ARCHITECT: ARCHETYPE, P.A. ARCHITECTS 1000 W. 10th St., Suite 1000, Miami, FL 33135 Tel: 305.375.1100	DESIGNER: GABRIEL PEREZ, LLC 2000 W. 10th St., Suite 1000, Miami, FL 33135 Tel: 305.375.1100
	PROPOSED PLANS				



01 | THIRD FLOOR PLAN
SCALE: NTS

A03	DATE	REV	DESCRIPTION	PROJECT	ARCHITECT	DEVELOPER
	PROPOSED PLANS			The Inn at Diamond Cove, LLC	ARCHETYPE, P.A. ARCHITECTS 14 Littleton Street, Suite 200, Littleton, CO 80120 (303) 778-6332 Fax: (303) 778-6456	Gateman Partners, F.L.C. 3400 Corporate Center Boulder, CO 80501

BATEMAN PARTNERS LLC

DEVELOPERS & CONSULTANTS

261 COMMERCIAL STREET
PORTLAND, MAINE 04101

TELEPHONE (207) 772-2992
FAX (207) 772-1881

Bateman Partners, LLC was created specifically to develop and manage real estate, which the principals have done since 1979. The principles have developed projects in southern Maine in excess of 100 million dollars from 1979 through 2008. 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



DELOCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

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

1-N-1

1. SITE PLANNING AND DESIGN
2. ROADWAY DESIGN
3. ENVIRONMENTAL ENGINEERING
4. PERMITTING
5. AIRPORT ENGINEERING
6. CONSTRUCTION ADMINISTRATION
7. LANDSCAPE ARCHITECTURE

May 22, 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
Response to your comment concerning Wastewater Capacity dated 5-20-08**

Dear Mr. Knowland:

On behalf of The Inn at Diamond Cove LLC, our office has prepared response to your email comments concerning the available wastewater capacity for the project. A summary of the comment and our response is provided below:

Comment: *Wastewater treatment... The infiltration issue hasn't been addressed. There have been apparently minimal discussions between the development team and Michael Demarest of the DEP concerning this subject. I've talked with Michael several times over the last couple of weeks including as late as today. The wastewater flow rates are recorded on a daily basis so if pipes were upgraded as mentioned by David at the public hearing this should be a relatively easy exercise to address. If infiltration remains an issue then how does the developer intend to address it? Fix the pipes? Put the double barracks building on a separate system design? I'm sure there is a solution but it hasn't been identified yet. We don't necessarily need all the details of the solution but we need to have a solution identified.*

Response:

At this point, there has not been a formal submission to the MeDEP for the proposed Inn at Diamond Cove. There have been several discussions with various staff members at the MeDEP concerning this project since August of last year. In preparation of a permit application to amend the Site Location of Development Permit with the MeDEP, the applicant has requested a Pre-Application Meeting with MeDEP to discuss the proposed renovation of the "Double Barracks" building as well as the future renovation plans for the hospital building. It is our understanding that Michael Demarest will be in attendance at the Pre-Application Meeting. Obviously, the wastewater capacity of the existing OBD system is an important issue for this project.

As currently stated, 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 on the island are estimated to generate 29,335 gpd of wastewater, which results in 5,665 gpd of reserve capacity that is available for the renovations of the "Double Barracks" and Hospital buildings as well as any sources of inflow/infiltration.

Mr. Richard Knowland
May 22, 2008
Page 2

As part of the original development of the Diamond Cove project, the developer's replaced and lined significant portions of the sewer system in order to reduce the amount of illicit flow (infiltration and inflow) into the existing sewer system. Upon completion of this work, the existing sewer system still experienced excessive amounts of illicit inflow. As a result, the developer's continued to make improvements to the system to further remove sources of illicit inflow, which included eliminating several building roof drains, building foundation drains, etc.

Prior to 2006, the developer's performed a relatively extensive evaluation of the sewer collection system in an effort to identify and isolate the source of the remaining illicit inflow to the system and determine the collection system was not the primary source of illicit inflow, but rather from the filter beds themselves. Specifically, the surface area over the existing sand filters was not graded to promote sheet flow of rainwater or snow melt away from the fields. In addition, the surface material over the sand filters did not include at least 6 to 8 inches of loam to further reduce infiltration of stormwater into the system. In actuality, rainwater or snow melt water ponding over the beds resulted in excessive quantities of infiltration into the system.

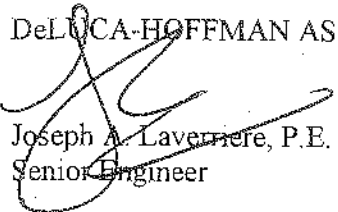
In 2006 the developer's performed a relatively extensive reconstruction on the sand filter beds to correct settlement of the surface material over the beds. The surface over the beds were reconstructed with approximately 12-inches of loam thickness and graded (raised) to promote surface drainage away from the fields. Since these modifications were performed to the filter beds, the rate of flow through the system has been reduced significantly as measured by the effluent flow meter and shown on the daily flow reports submitted to the DEP. Based upon these daily flow records, the sewer system's average monthly flow rate since 2006 has consistently been below the 35,000 gpd limitation contained in the Waste Discharge Permit.

A comprehensive review of the daily flow data records and system wide improvements will be provided as part of the upcoming permit process with the MeDEP. Based upon a review of the wastewater treatment system flow records since 2006, it is the applicant's opinion that there has been considerable efforts made to reduce illicit inflow throughout the sewer collection system and that 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-5-22-08

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



TD Banknorth, N.A.
One Portland Square
P.O.Box 9540
Portland, ME 04112-9540
T: 207 761-8500
Toll Free: 800 462-3666
TDBanknorth.com

April 29, 2008

Mr. Richard Knowland
Planning Division
City of Portland
389 Congress Street
Portland, ME 04101

Re: The Inn at Diamond Cove, LLC

Dear Mr. Knowland:

TD Banknorth, N.A. has reviewed preliminary financial and project information on the development to be known as The Inn at Diamond Cove.

TD Banknorth, N.A. has not issued a commitment to provide construction financing for this project. The bank would welcome the opportunity to discuss the possibility of financing the project with the project owners at some point in the future.

If you need any additional information, please call.

Sincerely,

A handwritten signature in black ink that reads 'David A. Bronson'.

David A. Bronson
Senior Vice President

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

05/09/08

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans for a Condominium Hotel located at Diamond Cove, Building 46, on Great Diamond Island.

Meeting Location: Portland Harbor Hotel, 468 Fore St, Portland, Maine 04101
Meeting Date: 05/20/08
Meeting Time: 5:00pm

The city code requires that property owners within 500 feet of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions please call 207-772-2992.

Sincerely,

The Inn at Diamond Cove, LLC

Note:

Under section 14-32 (C) of the City Code of Ordinances, an applicant for a major development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting at least seven days prior to the Planning Board public hearing on the proposal.

Neighborhood Meeting Certification

I, (applicant/consultant) hereby certify that a neighborhood meeting was held on (date) at (location) at (time).

I also certify that on (date at least seven days prior to the neighborhood meeting), invitations were mailed to all addresses on the mailing list provided by the Planning Division, including property owners within 500 feet of the proposed development or within 1000 feet of a proposed development in an industrial zone and the residents on the "interested parties" list.

Signed,



5/20/08 (date)

Attached to this certification are:

- 1. Copy of the invitation sent
- 2. Sign-in sheet
- 3. Meeting minutes

The Inn at Diamond Cove, LLC

Neighborhood Meeting Minutes

5/29/08

Date: 5/20/08

Time: 5:00 P.M.

Location: Portland Harbor Hotel

Attendance: David Bateman, Nathan Bateman, Gerard Kiladjian, David Lloyd, Neighbors Please see attached sign in sheet.

At 5:15 P.M. David Bateman welcomed neighbors to the meeting and introduced the project Architect David Lloyd.

David Lloyd gave a presentation of the building including interior and exterior project impact boundaries and process with approval with the National Park Service for Historic Tax Credit Program.

David Lloyd and David Bateman invited the neighbors to ask questions.

Questions Asked

Tom Maas "What where the front porches originally made of?"

Answer: Wood

"What will be the new surface?"

Answer: We will be replicating porches with painted wood but with a composite decking material.

"Can you use Azak material for siding?"

Answer: This is not well received by the National Park Service.

"Are there any zoning issues for the pool?"

"What will be the demographics?"

Answer: This is a high end Hotel four star equivalent.

Shafer Bean "Can you match the existing brick?"

Answer: Yes, and this is requested by the National Park Service

"Will there be any liquor service?"

Answer: Yes, Probably

Roger Blatty "Can you repair the roof with slate and copper?"

Answer: Yes, this has been explored and the slate roofing will be saved.

Over all very positive group of neighbors that appeared to be excited about the renovation and look forward to the completed project.

- Attachments
1. Copy of letter sent to neighbors.
 2. Signed Certification that letters were mailed 5/12/08 using City of Portland provide labels.
 3. Sign-up sheet for the meeting
 4. Fax received from Barbara A. Young

Sign-Up Sheet
 The Inn at Diamond Cove, LLC
 Neighborhood Meeting
 5/20/2008
 5:00 Portland Harbor Hotel

Name	Signature	Date
Irene Maas	Irene Maas	5-20-08
Laurie Shea	Laurie Shea	5/20/08
Downy Schwartz	Downy Schwartz	5/20/08
TOM MAAS	TOM MAAS	5/20/08
Pete McCullum	Pete McCullum	5/20/2008
Ethel Bean	Ethel Bean	5-20-08
DOWNEY SHEA	Downey Shea	5/20/08
Peter Phlaty	Peter Phlaty	5/20/08
Robert McWhelmer	Robert McWhelmer	5/20/08
Schafer Bean	Schafer Bean	5/20/08
John Conner	John Conner	5/20/08
John Howard	John Howard	5/20/08
Pam Macomber	Pam Macomber	5/20/08
Peter Macomber	Peter Macomber	5/20/08
Mantra + Walter Jackson	Mantra + Walter Jackson	5/20/08
Dave Kenly	Dave Kenly	5/20/08
Nathan Buteman	Nathan Buteman	5/20/08



FACSIMILE MESSAGE

To: Bateman Partners LLC	Fax: 207-772-1881
cc: Portland Planning Board and Richard Knowland	Fax: 207-756-8258
From: Barbara A. Young	Date: May 20, 2008
Client No. 00000-011	No. Pages: 1
Re: Conditional Zoning Amendment Proposed by The Inn at Diamond Cove LLC	

Remarks:

I understand that a "Neighborhood Meeting" is being held today regarding the above referenced proposal. Please note the following:

1. As a Parade Ground homeowner at Diamond Cove, we never received notice of this meeting, as I believe is required under the Planning Board's regulations. Having just learned of it from a neighbor, I am unable to arrange my schedule at the last minute to attend. Given the deficiencies in the notification, others may similarly not have received notification.
2. I have substantial concerns about this zoning amendment as currently proposed, including as to wastewater treatment, traffic, use of open space, and the commercialization of the residential Parade Ground area.

Please include the above in the minutes and attendance sheet of the "Neighborhood Meeting" to be submitted to the Portland Planning Board.

Thank you.

Barbara A. Young
16D McKinley Court
Great Diamond Island

330 Harbor Road
Southport, Connecticut 06890

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity above named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it 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 immediately notify us by telephone, and return the original document to us at the above address via the U.S. Postal Service. Thank you.

EDWARD J. SUSLOVIC (MAYOR)
 KEVIN J. DONOGHUE (1)
 DAVID A. MARSHALL (2)
 DANIEL S. SKOLNIK (3)
 CHERYL A. LEEMAN (4)

CITY OF PORTLAND
 IN THE CITY COUNCIL

JAMES I. COHEN (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
 SEPTEMBER 3, 2008**

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 (20) 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)] 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.

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.

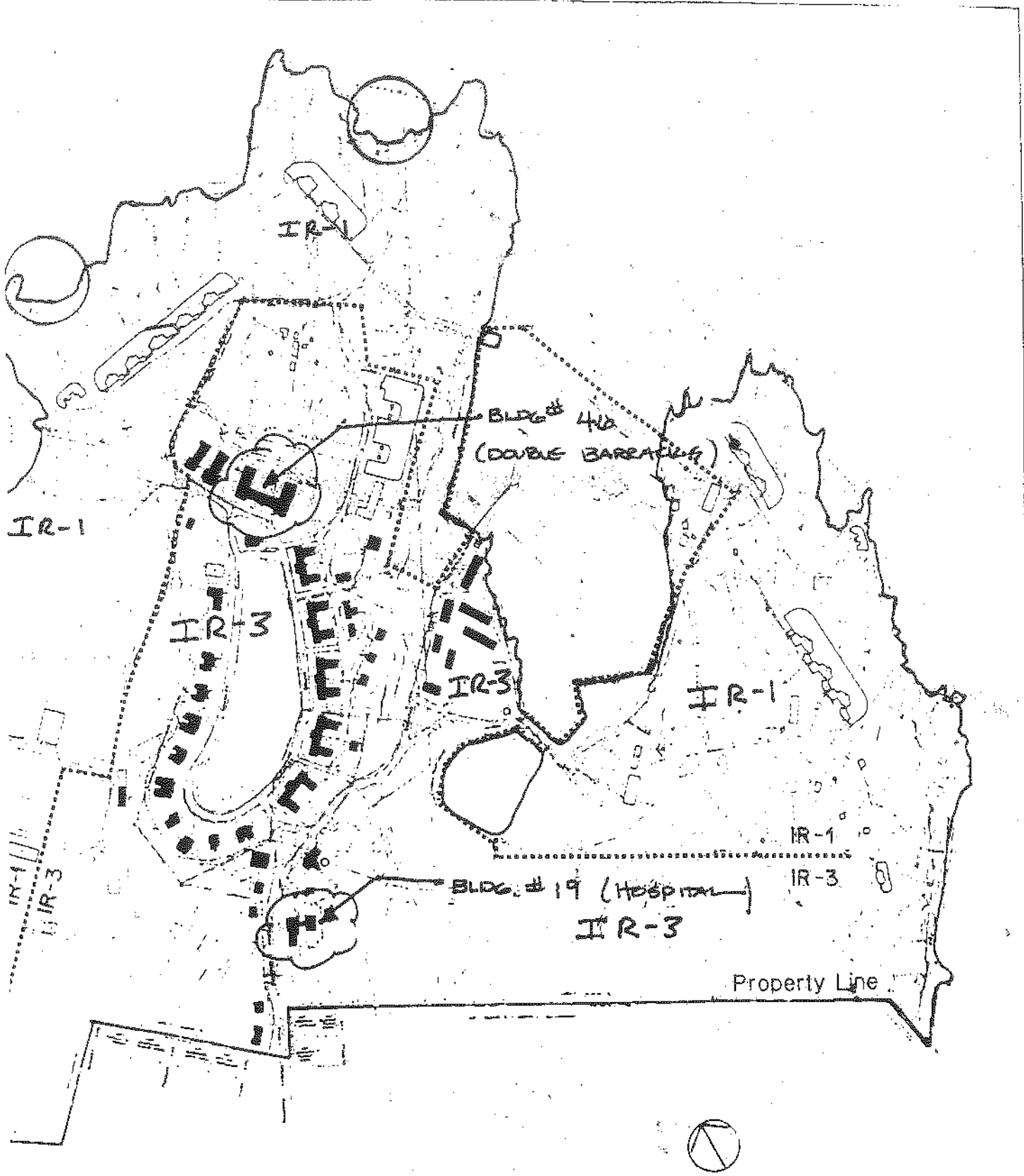
5. Transportation Services. The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) on

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.

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 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 southerly 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 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. All purchasers of units at the Premises shall receive specific notice of the applicable rules and regulations, including the potential sanctions for failure to comply. 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.

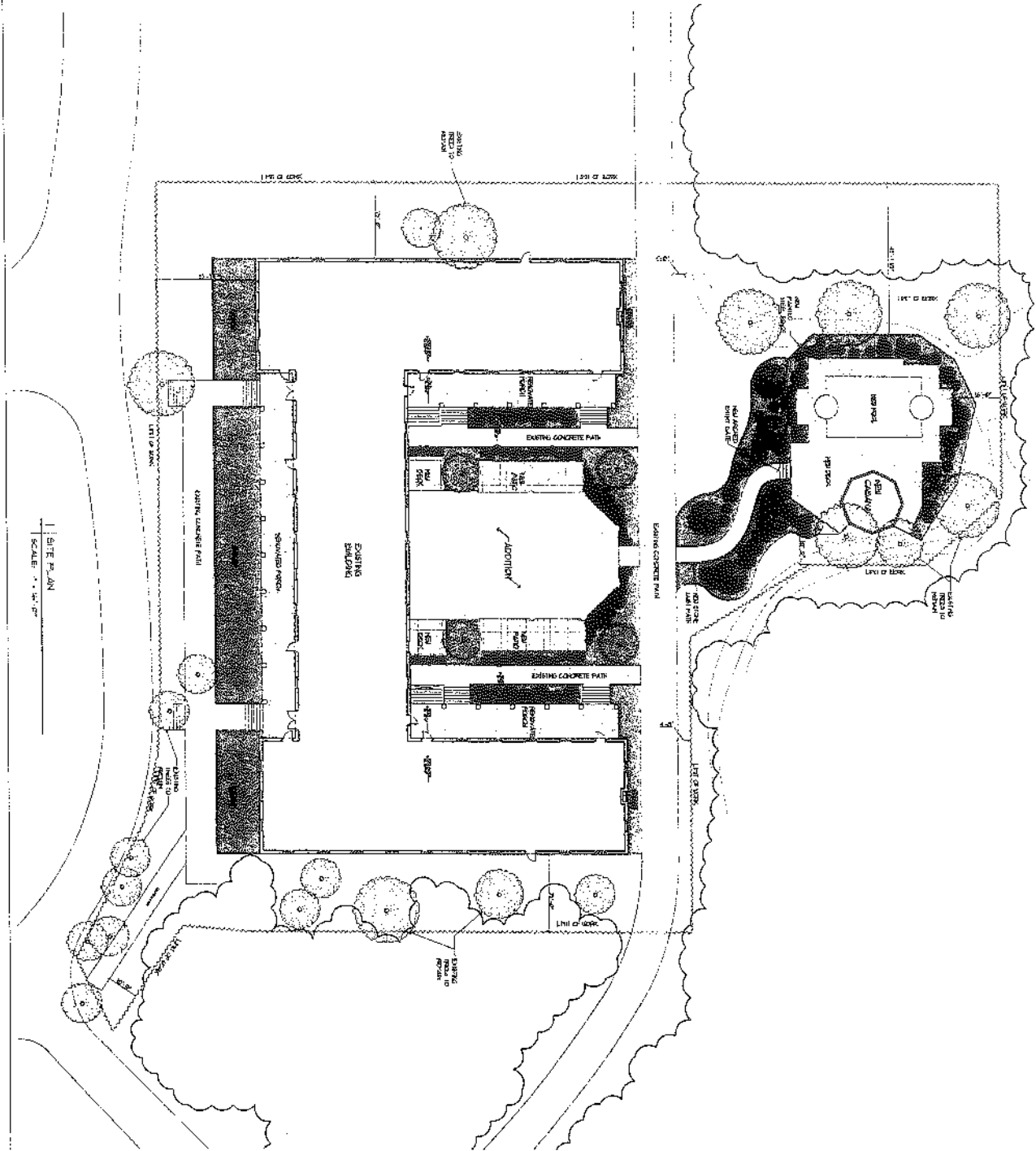
6. Disposal of Sanitary Waste. The IDC is obligated hereunder to involve the City in all aspects of its sanitation waste licensing, and any modifications thereto, with any local, state or federal agency. This includes providing the City with copies of all information submitted to said agencies and involving 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.

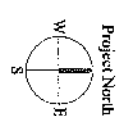


Property Plan

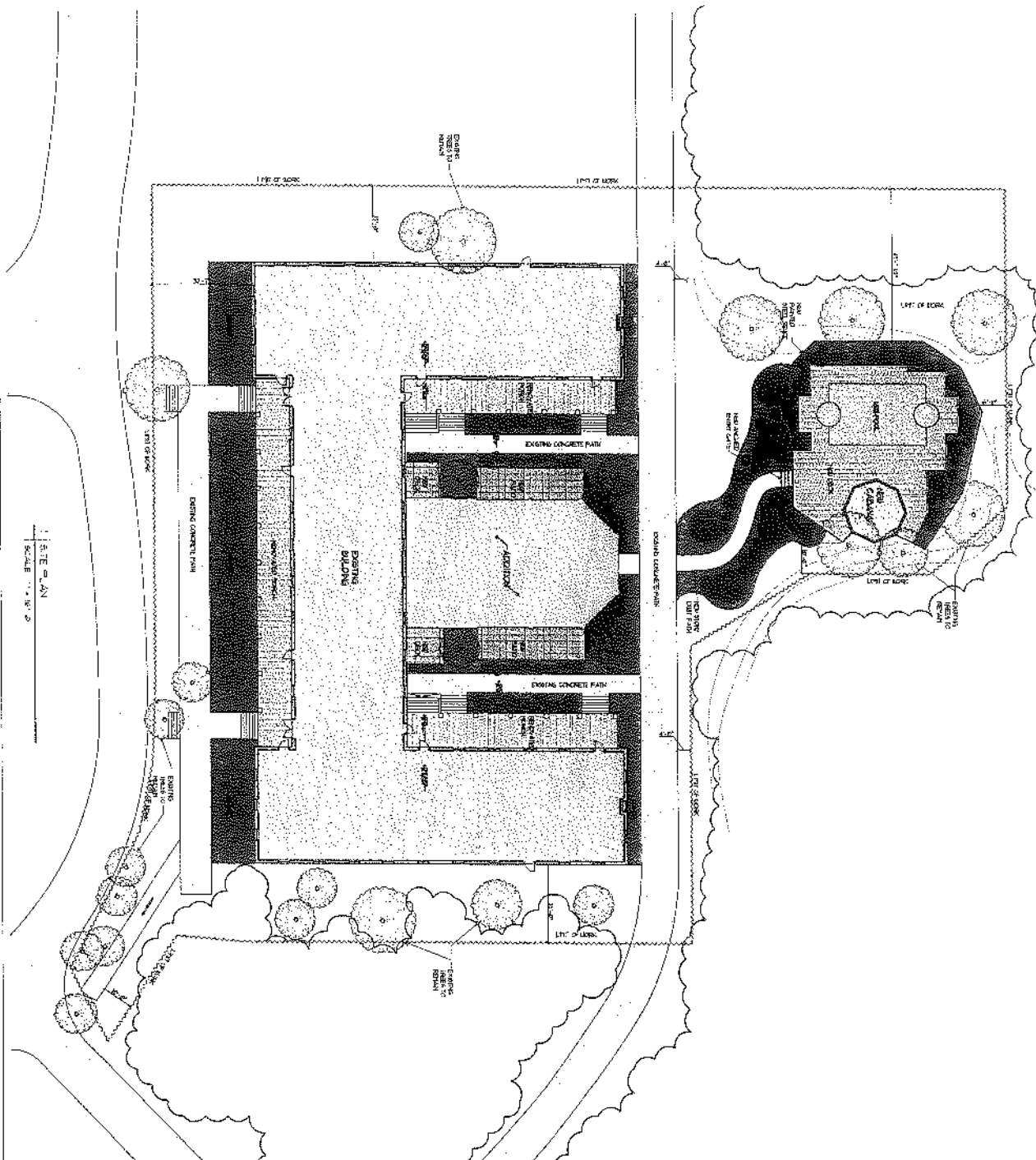
Scale 1" = 500'



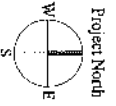
SITE PLAN
SCALE: 1/8" = 1'-0"



A-0.10	NOT FOR CONSTRUCTION	Date: _____	Scale: 1/8" = 1'-0"	Project: THE INN AT DIAMOND COVE, LLC	Architect: ARCHETYPE ARCHITECTS, P.A.	Owner: BATEMAN PARTNERS, LLC
	SITE PLAN	Revisions: _____		Metairie, Ct, Green Island, Maine	48 Union Wharf Portland, Maine 04101 (207) 772-6022 Fax: (207) 772-4836	245 Commercial Street, Portland, ME 04101



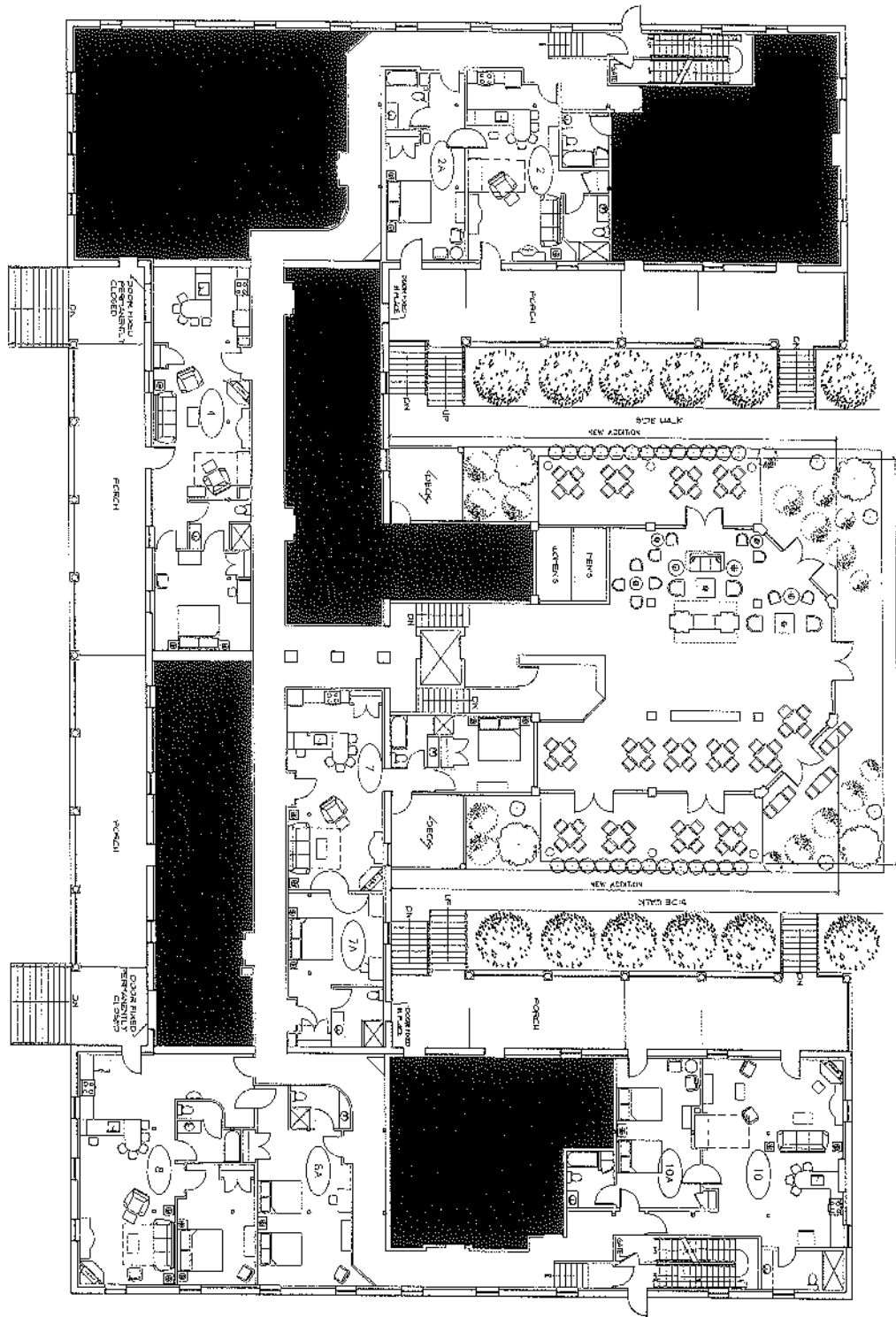
1" = 10' PLAN
SCALE 1/8" = 1'-0"



A-0.10	NOT FOR CONSTRUCTION	Date: JUNE 24, 2008	Scale: 1/8" = 1'-0"	Project: THE INN AT DIAMOND COVE, LLC	Architect: ARCHETYPE ARCHITECTS, P.A.	Owner: BATEMAN PARTNERS, LLC
	SITE PLAN	Revisors:		Mckinley Ct. Great Beyond Street, Meant	48 Union Wharf Portland, Meant 04103 (207) 772-6022 Fax (207) 772-6006	103 Commercial Street, Portland, ME 04101

1st FLOOR PLAN
SCALE: 1/8"=1'-0"

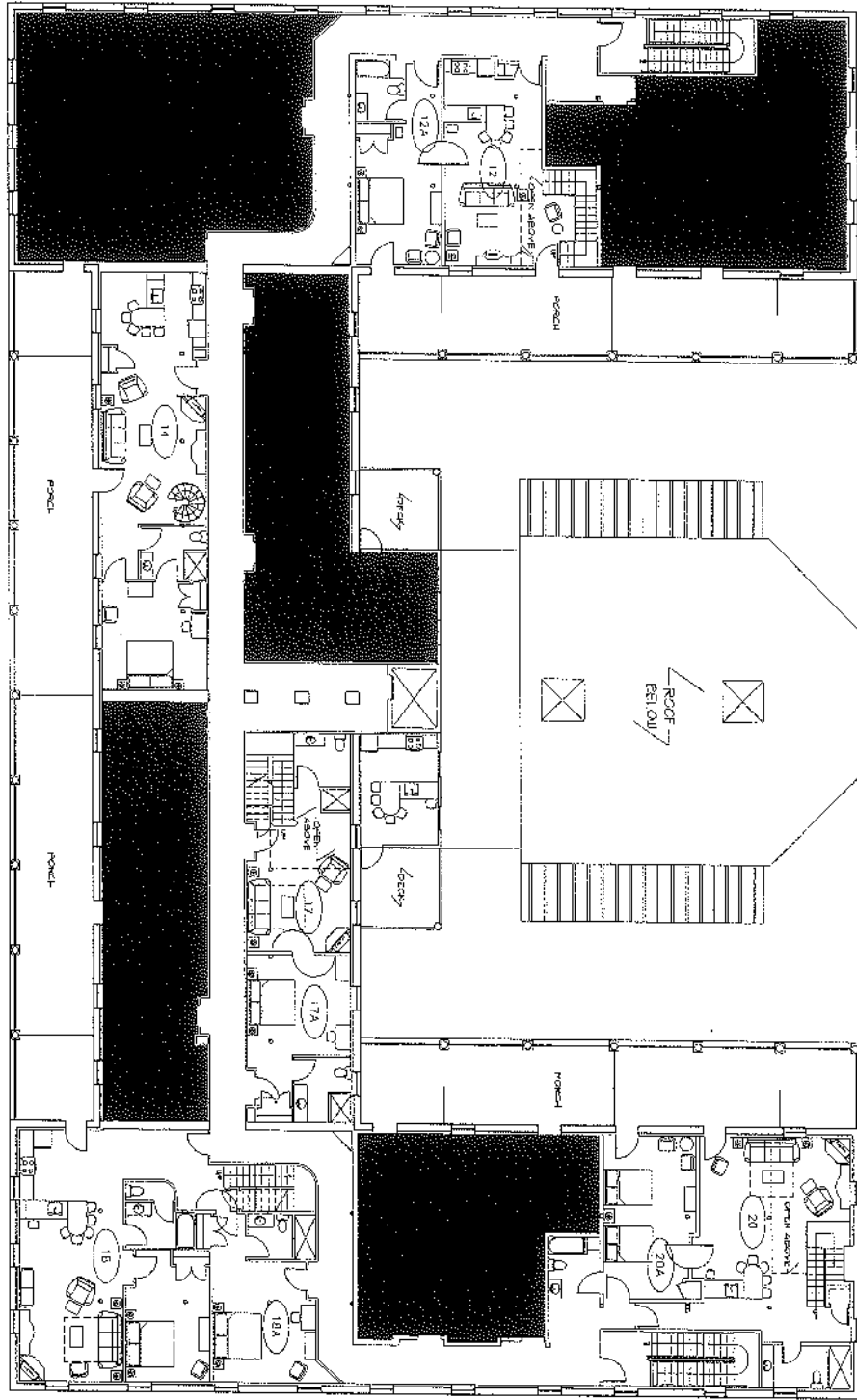
GROSS AREA: 6531 SF



A02	Date: October 22, 2007	Scale: 1/8"=1'-0"	Revisions: 1. HATCH FOR CONSTRUCTION 1/22/06	PROJECT: The Inn at Diamond Cove, LLC Perth Amboy, NJ	ARCHETYPE, P.A. ARCHITECTS 45 Union Street Perth Amboy, NJ 08861 (732) 772-6922 Fax: (732) 772-4636	DEVELOPER: Bateman Partners, LLC 245 Commerce Street Perth Amboy, NJ 08861
	<p>JUNE 24, 2008 PROPOSED 1ST FLOOR PLAN</p>					

2 | SECOND FLOOR PLAN
SCALE: 1/8"=1'-0"

GROSS AREA - 142846 SF



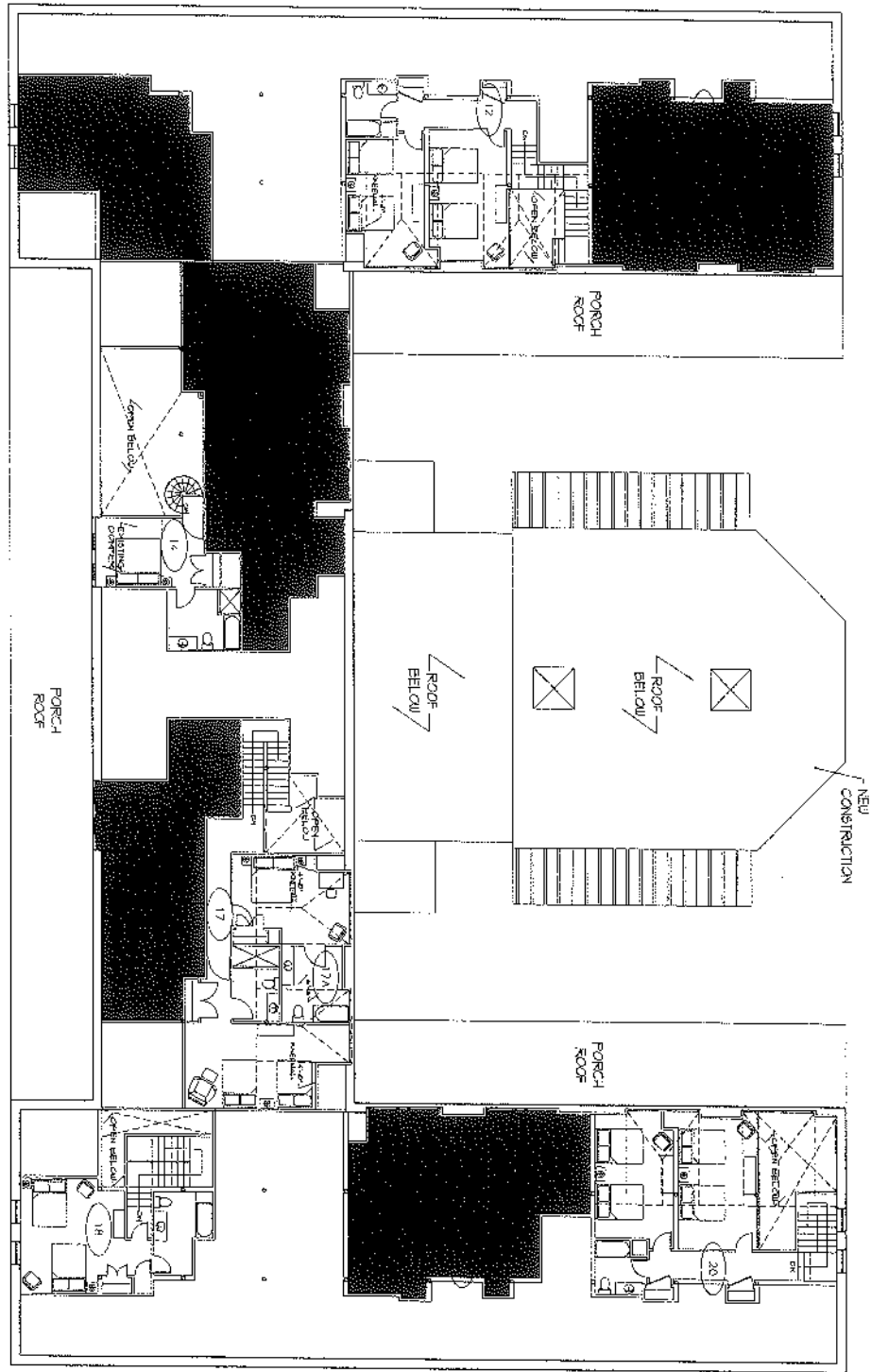
A03

Date: October 22, 2007
 Scale: 1/8"=1'-0"
 Revision: ISSUED FOR CONSTRUCTION 10/22/07
JUNE 27, 2008
PROPOSED
2ND FLOOR PLAN

PROJECT:
The Inn at Diamond Cove, LLC
 Portland, ME

ARCHETYPE, P.A.
ARCHITECTS
 48 Union Wharf Portland, Maine 04203
 (207) 772-6022 Fax (207) 772-4836

DEVELOPER:
Bateman Partners, LLC
 245 Commercial Street
 Portland, ME 04103



② THIRD FLOOR PLAN
SCALE: 1/8"=1'-0"

GROSS AREA = 17140 SF

A04	Date: October 22, 2007	Scale: 1/8"=1'-0"	Revisions: ISSUED FOR CONSTRUCTION - 06/08	PROJECT: The Inn at Diamond Cove, LLC	ARCHETYPE, P.A. ARCHITECTS 45 Union Street, Portland, Maine 04101 (207) 773-6071 Fax: (207) 773-6856	DEVELOPER: Bateman Partners, LLC 245 Commercial Street Portland, ME 04101
	JUNE 24, 2008 PROPOSED 3RD FLOOR PLAN			Forland ME		

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.

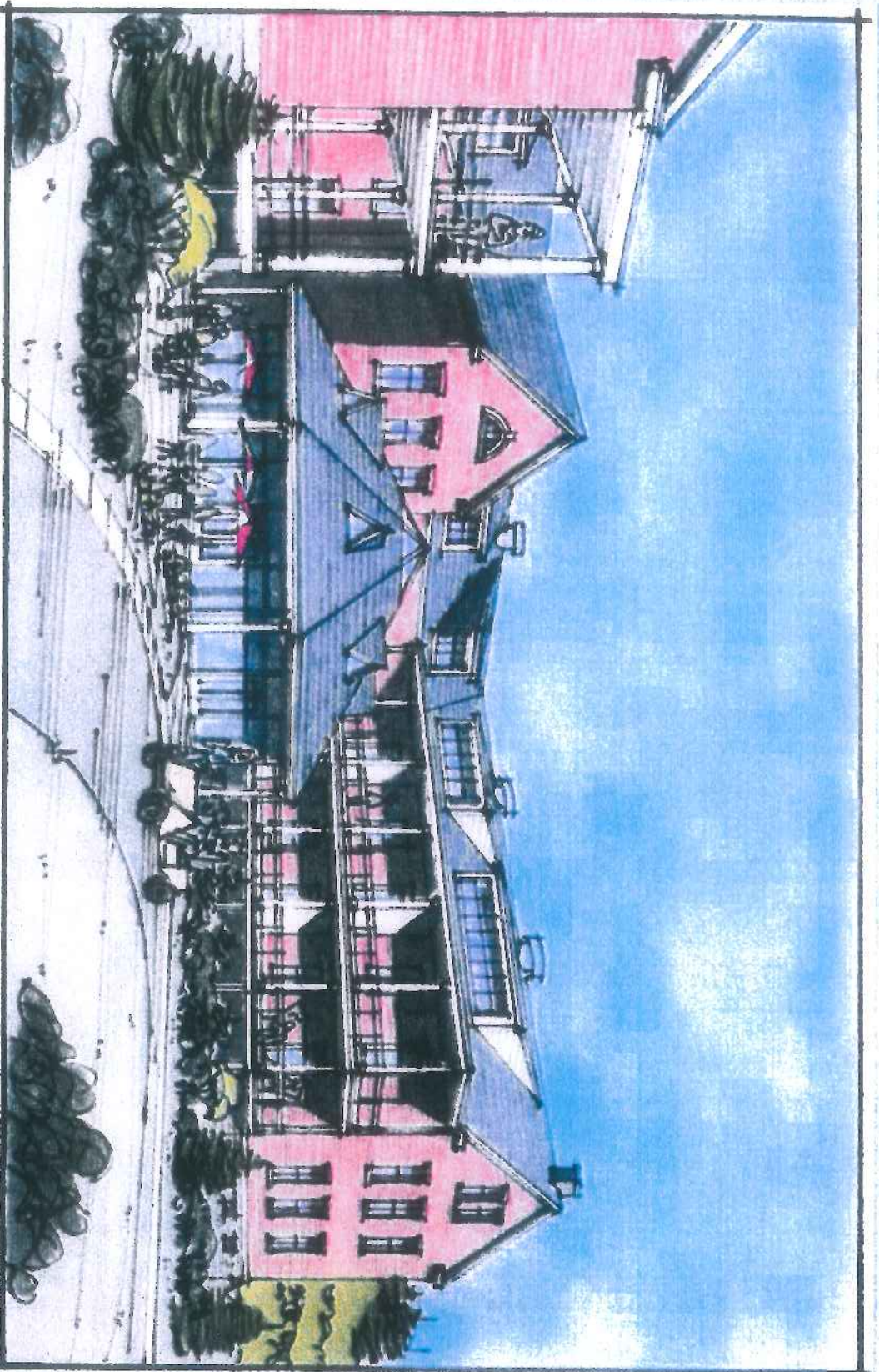
The Project - Double Barracks

- 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.

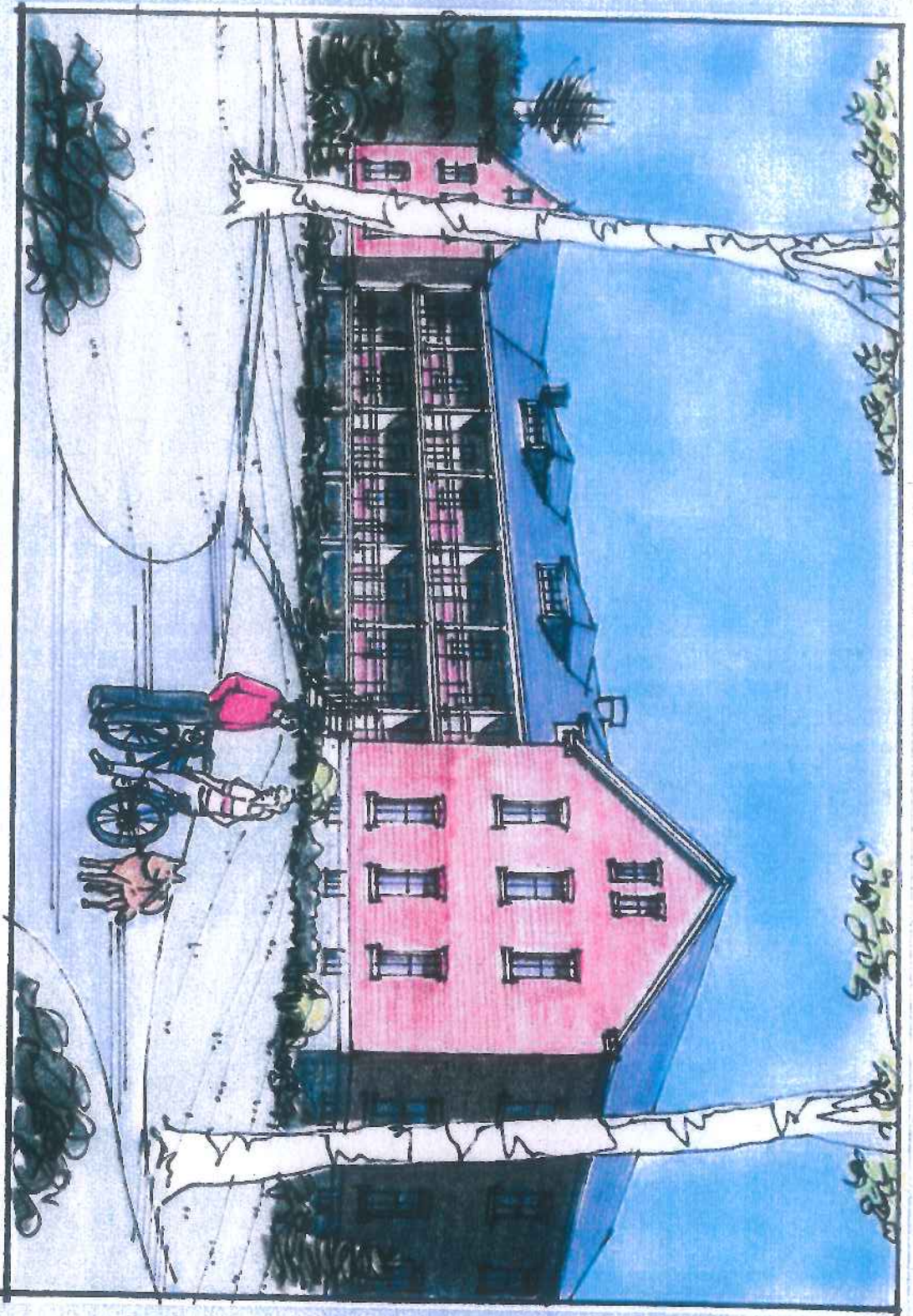
Architect Rendering - Double Barracks



Rear façade facing away from the parade ground

Confidential -- Solely for the Use of
DCHA Homeowners

Architect Rendering - Double Barracks

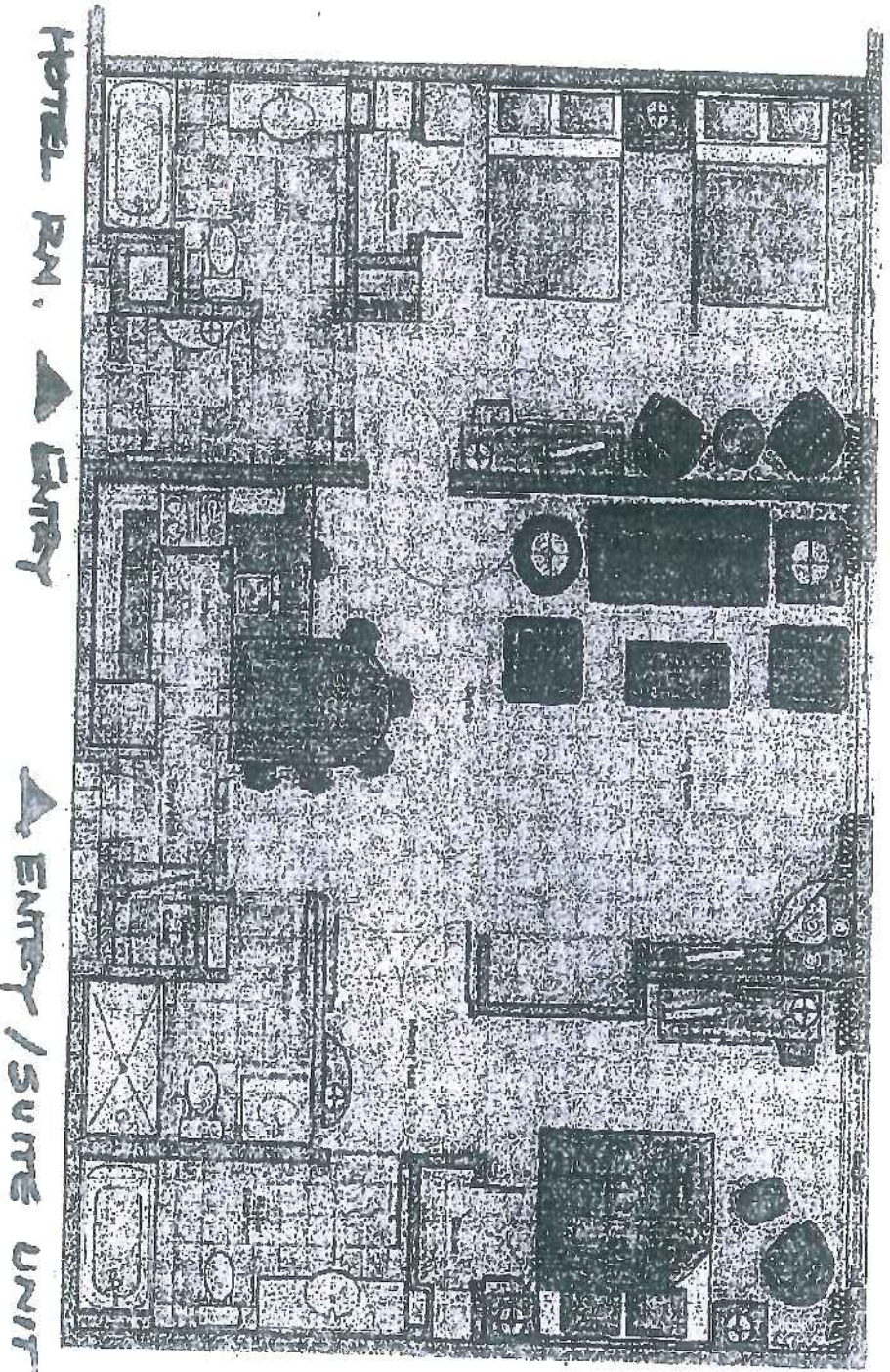


Facade facing the parade ground

Confidential -- Solely for the Use of
DCHA Homeowners

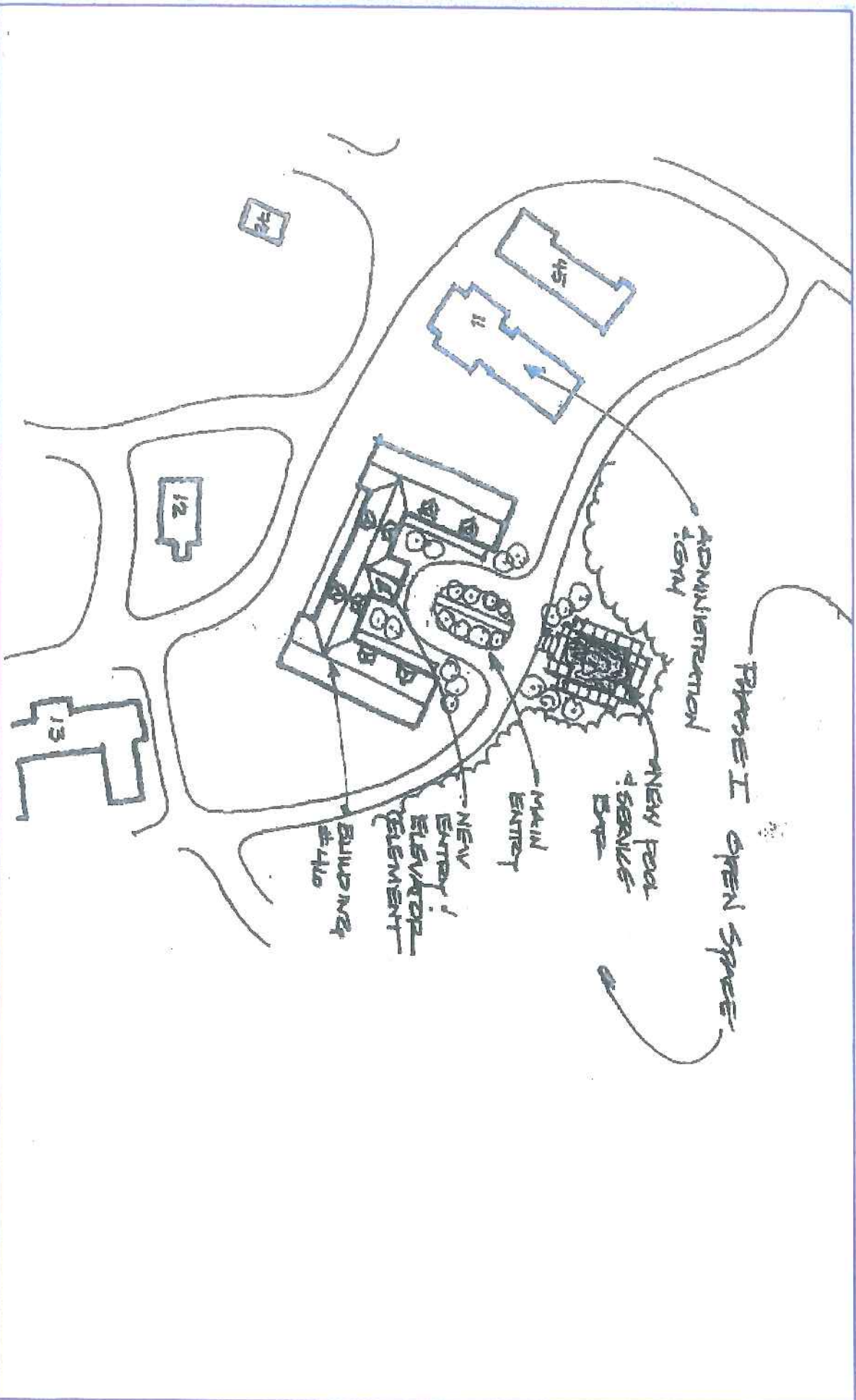
Inn at Diamond Cove: A Two Bedroom Unit

Example



Confidential -- Solely for the Use of
DCHA Homeowners

Inn 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 unpaid 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.

Relevant Facts (Continued)

- Liability
 - DCHA is not, and never has been in the chain of title on these buildings. The City of Portland has claimed that it does not have physical possession, only “tax title”. While our attorney does not agree with the City’s legal theory, that it may not be held liable for its negligence in the operation or maintenance of these buildings, that does not necessarily prevent DCHA from being brought into a lawsuit were someone to be injured in one of these buildings. Cost of a legal defense would be significant.
- Leverage
 - Perhaps the most important element of this proposal is the fact that DCHA DOES NOT OWN THESE BUILDINGS AND THEREFORE HAS ABSOLUTELY NO SAY AS TO WHO THE CITY OF PORTLAND SELLS THEM TO. As we are not the owner of the buildings our goal is to influence, rather than control, what happens to these buildings.

Conclusion

- The goal of the board of directors was to determine what could be done with these buildings that would be in the best interest of the Diamond Cove community. Recognizing our limitations -- we do not own the buildings and cannot control who they are sold to or the caliber and quality of the renovation, it is our belief that the development team and proposal achieve the goal you set.
 - ✓ It brings in new revenue up to 17% of our present total assessment.
 - ✓ It uses little of our infrastructure, is open 6 months (~~defere~~), and is fairly self sufficient.
 - ✓ The Inn's business model will attract guests who could be future buyers of property.
 - ✓ It will be professionally managed. The owner/developer is substantial and has a track record of operating quality projects. The owner's consultant knows Diamond Cove better than anyone else and therefore has less of a chance of not finishing the project.
 - ✓ We eliminate any potential liability related to someone getting hurt in one of these abandoned buildings.
 - ✓ We improve our relationship with the City by working together to make this successful. We increase the viability of the restaurant and the general store.

Conclusion (Continued)

- In return, we will have to be willing to share some of our part of the island with an increased number of people, something Diamond Cove was originally designed to do.
- Having recently learned of the final details of the proposed project, the Board now feels it is the best option available to DCHA. It allows the homeowners to have meaningful input into a project which could improve the revenue stream and help maintain the existing infrastructure, help property values, have minimal impact on existing infrastructure and eliminate a potential eyesore and potentially dangerous situation which currently exists with the Double Barracks and the Hospital buildings.
- No one on the board has any personal financial investment or involvement in this development. You, the homeowners, will ultimately decide by your vote if you want to see these buildings developed as outlined. Again, the developer can still buy and develop these properties in a somewhat different fashion without our approval. Your affirmative vote will allow us some degree of influence over the final product.
- Our by-laws require that 2/3 of the home owners cast an affirmative vote for this to be approved. A **NON-VOTE IS RECORDED AS A NEGATIVE VOTE**. It is important that you participate in the voting so that a decision that is reflective of the community's true wishes is made.

Respectfully,

DCHA Board of Directors



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

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.

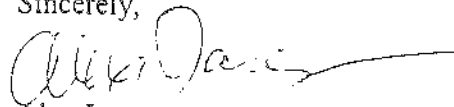
Fourth, in reviewing the original conditional rezoning for Diamond Cove, the commercial uses were shown as clustered around the cove area, while the parade ground buildings were depicted as residential. It does not appear to be specifically restricted to that arrangement, but if a conditional rezoning 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: rnw@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

2-10-2

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 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: rnw@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.

Rick Knowland -

From: "Demarest, Michael" <Michael.Demarest@maine.gov>
To: <amy@batemanpartnersllc.com>, <joe@dclucahoffman.com>, "Rick Knowland" <RWK@portlandmaine.gov>
Date: 7/8/2008 4:05 PM
Subject:
CC: <pcgleason@aol.com>, <trlucke@earthlink.net>, "Richardson, Marybeth" <Marybeth.Richardson@maine.gov>



STATE OF MAINE
 DEPARTMENT OF ENVIRONMENTAL PROTECTION

DAVID P. LITTELL
 COMMISSIONER

RE: Proposed Barracks Redcvelopment, Great Diamond Island

Dear Sirs:

It was a pleasure meeting with you at the Portland DEP office last month. The meeting was valuable in that I was able to meet each of you in person, get a glimpse of the big picture and get an idea of the particular OBD licensing issues that need to be addressed. As you know from my email sent June 18th, the issues fall into four distinct areas: Site evaluation, possible conflicts with the previous site license, new discharges, and inflow/infiltration (I/I). Since then, one more issue has come forth; the need to transfer the license to the current owners of record. Apparently McKinley Partners Ltd. Partnership has ceded their title completely to the Diamond Cove Homeowners Association. To complicate matters, I don't believe the current developers have demonstrated their right, title and/or interest (RTI).

I came to the meeting having briefly reviewed the (physical) DMR sheets for the previous five years. My impression at the time of the meeting was that the I/I was being addressed. However, once I committed the values to a spreadsheet, a different picture has emerged.

DATE	BOD5	TSS	SS_mg/L	FECAL_MO col/100ml	FECAL_DAY col/100ml	PH	VOL AVE	VOL MAX	TCR	COMPLY
Lic. Require	30 mg/L	30 mg/L	0.3	30 col/100ml	50 col/100ml	>6.0 & 9.0	35000 gpd	Tx Capacity	1	
Jan-06	< 2	< 1	< 0.1	NODI	NODI	6.4-6.5	11425	23946	NODI	
Feb-06	< 2	13	< 0.1	NODI	NODI	6.4-6.5	12068	41970	NODI	Tx cap
Mar-06	< 2	15	< 0.1	NODI	NODI	6.4-6.5	3819	8453	NODI	
Apr-06	< 2	5.5	< 0.1	NODI	NODI	6.4-6.5	6629	16612	NODI	
May-06	2.6	< 1	< 0.1	1.4	3	6.4-6.5	24065	61264	0.24	Tx cap
Jun-06	< 2	< 1	< 0.1	1.2	2	6.4-6.5	21151	56675	0.46	Tx cap
Jul-06	< 2	< 1	< 0.1	< 1	1	6.0-6.4	20611	44492	0.13	Tx cap
Aug-06	< 2	1	< 0.1	< 1	< 1	5.6-6.2	12600	21204	0.2	
Sep-06	6	6	< 0.1	< 1	< 1	5.8-6.4	6626	18248	0.78	pH
Oct-06	< 2	< 2	< 0.1	NODI	NODI	5.8-6.2	15857	69120	NODI	pH, Tx cap
Nov-06	< 2	< 1	< 0.1	NODI	NODI	6.2-6.4	19834	58945	NODI	Yes
Dec-06	< 2	< 1	< 0.1	NODI	NODI	6.4-6.5	10138	23458	NODI	Yes
2006 Avg.							13735.25	37032.25		
Jan-07	< 2	< 1	< 0.1	NODI	NODI	6.4-6.5	8962	27000	NODI	yes
Feb-07	< 2	< 1	< 0.1	NODI	NODI	6.4	4307	6376	NODI	Yes
Mar-07	< 2	< 1	< 0.1	NODI	NODI	6.3-6.8	8882	28600	NODI	Yes
Apr-07	< 2	< 1	< 0.1	NODI	NODI	6.4-6.6	12583	71578	NODI	pH, Tx cap
May-07	17	1.1	< 0.1	< 1	< 1	6.2-6.3	11042	24893	0.74	Yes
Jun-07	< 2	< 1	< 0.1	< 1	< 1	6.3-6.4	9836	19036	0.88	Yes
Jul-07	2	1	1	< 1	< 1	6.3-6.4	10304	16241	0.42	Yes
Aug-07	< 2	4.1	< 0.1	< 1	< 1	6.3-6.4	12313	25096	0.13	Yes
Sep-07	< 2	3.8	< 0.1	< 1	< 1	6.3-6.4	5704	11334	0.82	Yes
Oct-07	< 2	4	< 0.1	NODI	NODI	6.3-6.4	9526	33351	NODI	Yes
Nov-07	NODI	NODI	< 0.1	NODI	NODI	6.3-6.4	11431	26741	NODI	Yes
Dec-07	< 2	< 2	< 0.1	NODI	NODI	6.3-6.4	11070	30604	NODI	Yes
							9663.3333	26737.5		
Jan-08	< 2	< 1	< 0.1	NODI	NODI	6.2-6.3	20237	64770	NODI	Tx cap
Feb-08	< 2	< 1	< 0.1	NODI	NODI	6.2-6.3	22596	79339	NODI	Tx cap
Mar-08	< 2	< 1	< 0.1	NODI	NODI	6.1-6.4	21410	67451	NODI	Tx cap
May-08	< 2	< 1	< 0.1	NODI	NODI	6.3-6.4	14609	39577	NODI	Tx cap
Jun-08										
Jul-08										
Aug-08										

Sep-08										
Oct-08										
Nov-08										
Dec-08										
							19713	62784.25		

Although I do not have a copy of the daily discharge records, I would imagine that the majority of the high readings were a direct result of the higher-than-normal precipitation during those months. However, without daily flow records, I cannot say how much is direct absorption by the sand filter versus the I/I from the campus. I would surmise that any development plan include at the very least, a capping off of the hospital piping, which you identified as the major source of I/I.

I have reviewed the Phase I development as approved under Site Location Order #L-013160-87/03-A-N, which approved the renovation of 44 buildings as follows: 36 units to be developed into 134 housing units, 5 buildings to commercial uses, 2 to be rehabilitated for recreational use, and one to a security/maintenance facility.

From my perspective as the project manager of the OBD Licensing Program, the DEP can approve the use of the existing unused treatment capacity because the redevelopment of the barracks (and hospital) was in the Phase I site license and in theory, there exists some unused actual or estimated treatment capacity.

Because a site evaluation has been done for the existing development, the Department will require a determination by a LSE/PE that there is no feasible subsurface alternative to the use of the OBD by the proposed development, and demonstration that the estimated or actual discharge will not cause the Phase I development to exceed the licensed (35000gpd monthly average) or treatment capacity of the system. We will also require the applicant to address the inflow and infiltration problems because, storm events are causing overages of the treatment capacity and have substantially raised the gpd monthly averages. Additionally, it would appear that island folks have added a substantial number of bedrooms to their existing homes, which are not just violations of the license, but also impact the ability of the applicant to meet either the estimated or the actual discharge volume limits.

Please be advised that, the inclusion of fifty tables to serve meals at the hotel by the restaurant or by the pool as proposed would appear to be an expansion of the existing restaurant, therefore clearly prohibited under the law. The presence of private kitchens within the barrack "units" are well within what was originally envisioned. We would support the provision a continental breakfast by the Hotel because we see that as well within the normal practice.

Sincerely,



Michael Demarest
Overboard Licensing Program
Division of Water Quality Management
Bureau of Land and Water Quality

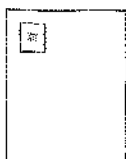
UGUSTA
7 STATE HOUSE STATION
UGUSTA, ME 04333-0017
(207) 287-7688
AY BUILDING, HOSPITAL
E.

BANGOR
106 HOGAN ROAD
BANGOR, ME 04401
(207) 941-4570
FAX: (207) 941-4584

PORTLAND
312 CANGO ROAD
PORTLAND, ME 04103
(207) 822-6300
FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE
SKYWAY PARK
PRESQUE ISLE, ME 04769-2094
(207) 764-6477

FAX: (207) 764-1507



JOHN ELIAS BALDACCI
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: 6 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 to 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	8		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 W006931-41-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	53	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				NOTE 3
PUBLIC SLIPS	3	30	90	
GIFT STORE				
EMPLOYEES	2	15	30	

SUBTOTAL	24,720	GPD
----------	--------	-----

PROPOSED USES ASSOCIATED WITH REDEVELOPMENT OF BARRACKS (SEE NOTE 4)

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

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

TOTAL SEWER FLOW	28,500	GPD
ALLOWABLE I/I FLOW	3,000	GPD
TOTAL FLOW	31,500	GPD

AVAILABLE O&D 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
160 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.

City of Portland, Maine
Code of Ordinances
Sec 14-145

Land Use
Chapter 14
Rev. 2-21-01

Sec. 14-145.12. Other requirements.

Other requirements include the following:

(a) *Offstreet parking*: Off-street parking shall be required as provided in division 20 (off-street parking) of this article.

(b) *Shoreland and flood plain management regulations*: Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.

(c) *Storage of vehicles*: Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 15-92, § 13, 6-15-92)

DIVISION 7.3 IR-3 ISLAND RESIDENTIAL ZONE

Sec. 14-145.13. Purpose.

* 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 following guidelines shall be considered, among others, in establishing an IR-3 zone:

- (a) An IR-3 zone should have a minimum land area of twenty (20) acres;
- (b) A site for an IR-3 zone should be able to accommodate a higher density of development by providing buffers from surrounding areas on a substantially sized parcel for which natural amenities are capable of being conserved in a development plan for the site;
- (c) IR-3 zones should not be established unless issues of municipal services, including infrastructure, education, and police and fire services and other municipal services can be appropriately and adequately addressed;

(d) The differences in scale and intensity of uses between existing development and the IR-3 zone, and the cumulative impact on the overall density of the island, should be mitigated by appropriate open space and buffer areas; and

* (e) The development plan should have the capability of meeting the development review standards of section 14-145.16. See next page.

(Ord. No. 29-85, § 1, 7-15-85)

Sec. 14-145.14. Permitted uses.

The following uses are permitted in the IR-3 island residential zone:

- (a) Planned unit development, including:
1. Single-family detached dwellings;
 2. Single-family attached dwellings provided that new construction shall be limited to no more than six (6) attached dwellings per building;
 3. Lodging houses, with more than two (2) but not more than nine (9) lodging rooms;
 4. Inns, provided that the total number of rooms does not exceed fifty (50);
 5. Restaurants;
 6. Retail businesses or services;
 7. Campgrounds, excluding recreation vehicles, licensed by the State of Maine Department of Human Services provided that:
 - a. No tent shall be located within seventy-five (75) feet of the perimeter of the site;
 - b. The land area of the site shall not be less than the equivalent of five thousand (5,000)

Sec. 14-145.15. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
(Ord. No. 29-85, § 1, 7-15-85)

* Sec. 14-145.16. Development review.

↓
In addition to other applicable requirements, no development shall occur nor shall any new use be established unless the planning board finds that the final development plan for the site is in compliance with the following development standards:

(a) *Transportation*: The development shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles. Appropriate areas on the site shall be designated, as necessary, for parking of common service vehicles, golf carts or bicycles to serve the transportation needs of residents and visitors. The internal circulation plan shall also be coordinated with the existing island street network to ensure adequate access for emergency and service vehicles.

A project construction plan shall be developed indicating the anticipated number and types of vehicles such as construction equipment, supply-delivery and service vehicles needed for undertaking the construction of the project. Documentation shall be provided as to the proposed transportation route such as roads, piers, beaches, sand bars and the impact of construction related activities on the routes.

The development shall not have a substantial adverse impact on the capacity of existing island docking facilities. The developer shall demonstrate that an adequate water transportation system, including docking facilities, exists or will be provided.

(b) *Solid waste*: Adequate provision for off-island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the project: compaction and

reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

(c) *Sanitary waste*: All sanitary waste from the development shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewerage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal, state and local water quality and groundwater standards.

(d) *Water*: The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one (1) or more comprehensive groundwater analyses and reports prepared by qualified professionals and including assessment of current groundwater aquifer conditions, the impact of the proposed development on the groundwater aquifer, and recommendations for mitigation of potential impacts caused by the development.

(e) *Shoreland areas*: The development shall preserve the natural features of the shoreland area by minimizing the disturbance of existing vegetation and slopes, avoiding development in areas subject to erosion and sedimentation, and conserving scenic views and vistas to and from the site.

(f) *Environmentally sensitive areas*: The development plan shall preserve significant resources of the site by integrating open space into the development plan and by conserving such features as scenic vistas, historic man-made or natural features, existing vegetation, wetland areas, shoreland areas, ground water, natural wildlife habitat, and recommended or registered State of Maine Critical Land Areas, as well as other environmentally sensitive areas.

(g) *Recreation and open space*: All open spaces on the site shall be functionally integrated into the development plan by

virtue of such features as passive and active recreational opportunities, accessibility to residents, preservation of natural site amenities and resources, orientation to achieve energy conservation or solar access, use as a buffer between housing clusters and to screen the development from surrounding areas.

(h) *Financial and technical capability:* The applicant shall demonstrate sufficient financial and technical capability for undertaking the proposed project. Financial capability shall include a cost estimate of the proposed improvements, proposed construction and permanent financing, and terms of sale or lease of dwellings and commercial space. Technical capacity shall include the experience and expertise of the developer in implementing projects of similar scope.

(i) *Environmental impact analysis:* The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife, botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

(j) *Development phasing:* If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this section, planned unit development standards, and site plan and subdivision review requirements.

(k) *Emergency services:* The development shall not place an unreasonable burden on the ability of the city to provide police, fire and other emergency services.



BK 8928 PG 0264

7/25/85

CONDITIONS AND RESTRICTIONS

The following conditions and restrictions are imposed by the City of Portland (the City) on Diamond Cove Associates (the Owner) as conditions of the rezoning of the property described on the map attached hereto (the Premises) from the R-2 Residential Zone to the IR-3 Island Residential Zone:

1. Development limited. The development, use and occupancy of the Premises shall be limited to one hundred thirty-four (134) dwelling units and other permitted uses, and uses accessory thereto. Except for the reconstruction, renovation and repair of existing buildings and structures, and the construction of minor additions and improvements thereto, there shall be no construction or development of any new principal building or structure on the Premises. All portions of the Premises identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity.

2. Completion of development. The development of the Premises as aforesaid shall be substantially completed within three (3) years after the issuance of all licenses, permits and approvals required and requiring final action by any administrative agency, board or commission, including but not limited to subdivision, site plan and site location of development approvals, but not including building, plumbing, electrical or similar permits, which licenses, permits and approvals shall hereafter be diligently pursued; provided, however, that the time for performance hereunder shall be extended for the time during which performance is delayed by reasons wholly beyond the Owner's control, including but not limited to strikes, lock-outs, labor disputes, inability to procure materials, failure of power, riots, war, insurrection, administrative or judicial delay and similar reasons, but not including financial hardship or business conditions; provided, further, that the Planning Board may, after notice and hearing, extend the time for performance hereunder for up to one (1) additional year if it finds that substantial progress has been made toward completion, and that there is a reasonable likelihood of substantial completion within the time as extended.

3. Maintenance of streets, walks and landings. All streets and ways, walks and pedestrian rights of way, and landings, floats and docks on the Premises, including but not limited to those to which the public has a right of access, shall be kept reasonably safe and passable at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that the City may, from time to time, designate such areas as need not be kept clear of ice and snow when or where, in its opinion, the public health, safety and welfare do not require it; provided, further, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including

but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

4. Maintenance of utilities. All utilities and related infrastructure and improvements on the Premises, including but not limited to water, power, communications, sewers and drains, surface drainage ways, street lights and hydrants, shall be kept fully operational and in good repair at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

5. Disposal of sanitary waste. All sanitary waste generated on the Premises shall be collected and disposed of on the Premises by means of a community sewer and secondary treatment system which complies with all applicable federal, state and local regulations, and at the Owner's expense.

6. Disposal of solid waste. All solid waste generated on the Premises shall be collected and disposed of on the mainland or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility, in a manner which meets all applicable federal, state and local requirements, and at the Owner's expense.

7. Fire protection, public safety and emergency services. Before occupancy of the Premises, or any portion thereof, the Owner shall, at its own expense, provide to the City:

- (a) a fully equipped "Quint truck", so-called, or its equivalent, for fire protection purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City under a written net lease-purchase agreement in a form mutually satisfactory to the parties and upon commercially reasonable terms, at the end of which lease term title to said vehicle shall be transferred to the City free and clear of all liens and encumbrances, and at no additional charge;
- (b) a fully equipped multi-purpose truck van, for public safety and emergency purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City for its useful life under a written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar (\$1.00); and

(c) a building or buildings, or portions thereof, suitably located on the Premises, for permanent maintenance and storage of said vehicles and related apparatus and equipment, and housing of at least two (2) City personnel associated therewith, which facility shall conform to City specifications and be leased to the City under a ninety-nine (99) year written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar (\$1.00), and delivery of possession on a "turn-key" basis.

Upon the City's occupancy of said facility, the Owner shall, at its own expense, provide at all times thereafter a number, not to exceed two (2), of qualified private personnel equal to the number of City personnel then assigned thereto, which private personnel shall be on the Premises and available at all times on an on-call basis to assist said City personnel in the rendering of fire protection, public safety and emergency services on or to the Premises; provided, however, that nothing herein shall constitute any representation or commitment by the City to provide any particular level of staffing or services. Said private personnel shall be trained and equipped for such purposes by the City and at its expense, and shall be under the direction and supervision of authorized City personnel at all times while so engaged; provided, however, that in no case shall said private personnel be deemed agents or employees of the City for any purpose, including but not limited to workers' compensation, unemployment compensation, tort claims liability and collective bargaining; provided, further, that notwithstanding the foregoing, in the event that the City is held liable for any claim arising out of or relating to any actions of said private personnel, which actions were not pursuant to and consistent with the directions of authorized City personnel, the Owner shall indemnify and save forever harmless the City from and against any and all such claims.

8. Water transportation service. The Owner 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 Diamond Cove via a suitable docking facility on the Premises and on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service is or at any time becomes unavailable, the Owner shall, at its own expense, 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.

9. Restrictions on motor vehicles. Except for vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles, no motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles, shall be operated or stored, temporarily or otherwise, on the Premises.

10. Applicability of other laws. The development, use and occupancy of the Premises shall be subject to all other applicable laws, ordinances, regulations and requirements of the City as they may from time to time exist, and neither these conditions or restrictions nor the performance of any obligation hereunder shall constitute compliance therewith or prevent the enforcement thereof, any violation of which shall also constitute a breach of these conditions and restrictions, any breach of which shall also constitute a violation of Chapter 14, Article III (Zoning) of the Portland City Code.

11. Successors bound. These conditions and restrictions shall bind the Owner, its successors and assigns, of or to the Premises, or any portion thereof or any interest therein, including but not limited to any security interest, and any person in possession or occupancy of the Premises, or any portion thereof, and shall inure to the benefit of and be enforceable by the City. The Owner shall, at its own expense, record a copy of these conditions and restrictions in the Cumberland County Registry of Deeds, and shall, by deed, covenant, declaration of condominium or other recorded or recordable instruments, as appropriate, ensure that these conditions and restrictions are enforceable by the City against all such successors, assigns and persons. Nothing herein shall be deemed to limit the Owner's right of alienability of the Premises, or any portion thereof, subject to these conditions and restrictions, which conditions and restrictions shall run with the land and be binding upon the Owner, its successors and assigns, as their interests may appear.

12. No reliance or estoppel. Nothing in these conditions or restrictions shall constitute any representation or commitment by the City to retain the zoning classification of the Premises, or shall entitle the Owner to rely thereon for any purpose, or shall estop the City from any future rezoning or exercise of other authority with respect to the Premises. Nothing herein shall be deemed to preclude the Owner from petitioning the City for any future rezoning of the Premises or other property in the vicinity thereof; provided, however, that nothing herein shall constitute any representation or commitment by the City to grant such a petition or otherwise act thereon.

13. Breach. In case of any breach of these conditions and restrictions, and except as otherwise hereinbefore provided, the City shall, after giving written notice to the Owner and a reasonable time to cure not to exceed six (6) months, refer the same to the Planning Board, which shall, after notice and hearing, make a recommendation to the City Council whether to rezone the Premises, or any portion thereof, which recommendation shall be advisory only.

14. Declaration of invalidity. In the event that these conditions and restrictions, or any portion thereof, are declared invalid for any reason by a court of competent jurisdiction, the City shall invoke the same procedure as hereinbefore provided for breach of these conditions and restrictions.

2-H-5

-5-

IK8928PGU268

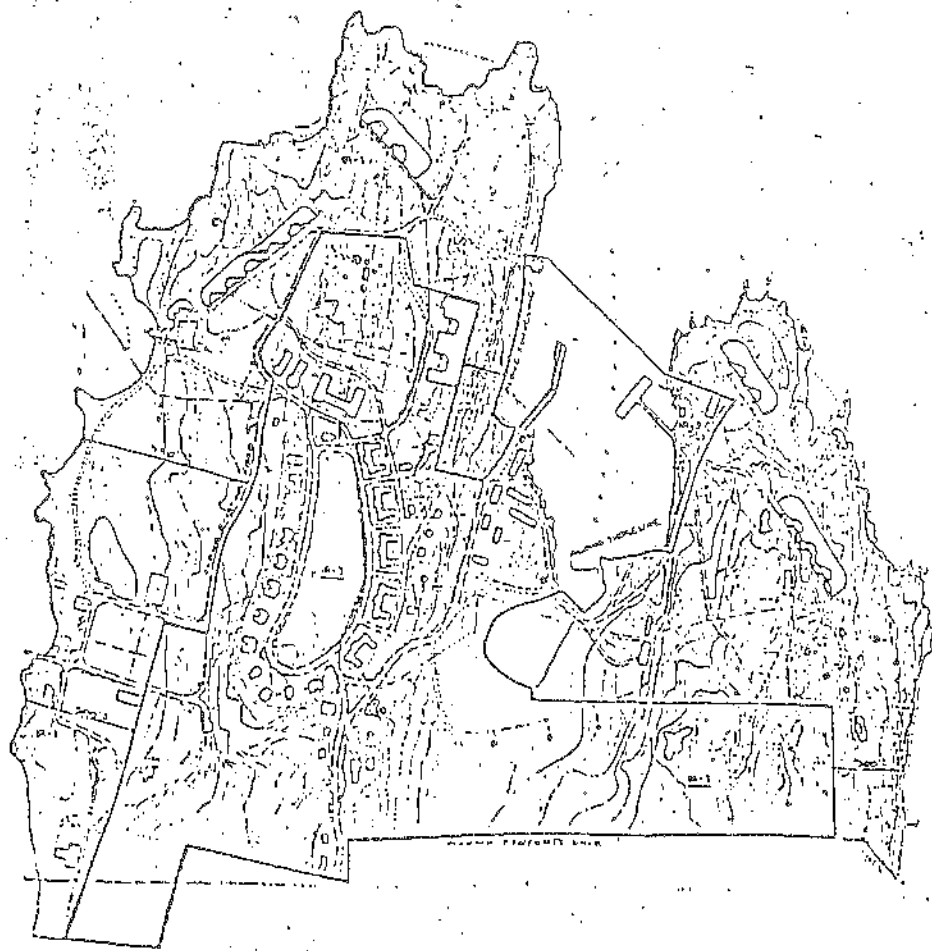
7/15/85

15. Remedies not impaired. No failure or delay by the City to enforce any of these conditions and restrictions shall impair any remedy available for breach hereof, or constitute a waiver of or acquiescence in any breach hereof, the remedies for which shall be cumulative.

BK 6928 PG 1269

7/15/85

FORT MCKINLEY PROPERTY ZONING MAP
(GREAT DIAMOND ISLAND)



NOTE: SHORELAND ZONE LINE EXTENDS INLAND A DISTANCE
OF 250 FEET FROM THE NORMAL HIGH WATER MARK
OF THE BAYS, COVES, SOUNDS, INLETS AND OPEN
WATERS OF CASCO BAY.
(49)

BK B928PG0270

7/15/85

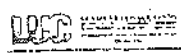
Diamond Cove

GREAT DIAMOND ISLAND

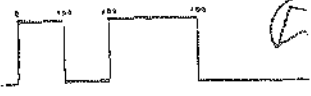
PORTLAND, MAINE

DEVELOPER: DICTAR ASSOCIATES

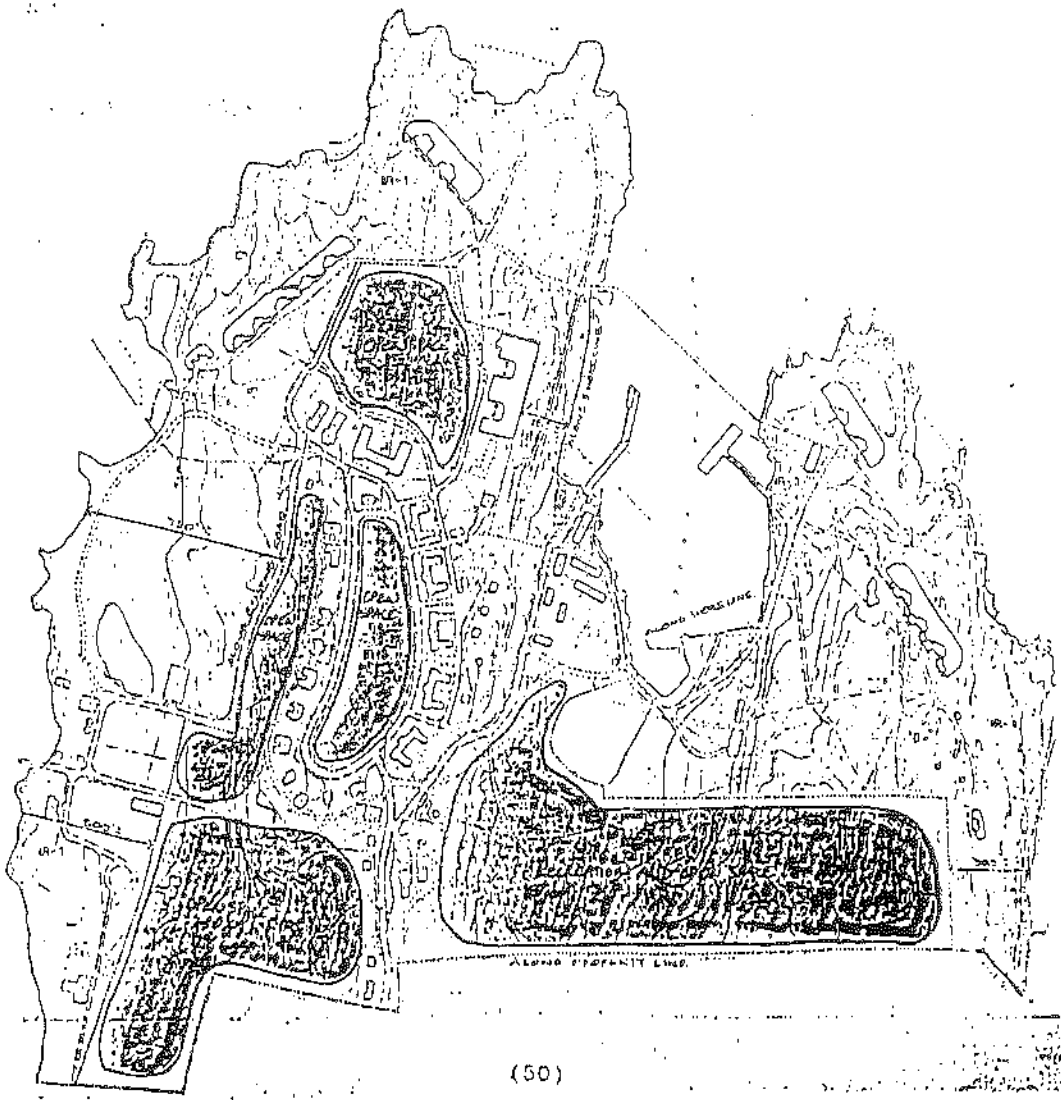
PORTLAND, MAINE



Consulting Engineers, Draftsmen and Surveyors



DEDICATED OPEN SPACE



(50)

BR 8928PGD271

AMENDMENT TO "REVISED CITY
CODE SECTION 14-29 (ZONING
MAP) SECTION 14-49 (ZONING
MAP) RE: COMPLETION
REZONING OF FT. WASHINGTON

IN THE CITY COUNCIL

JUNE 12 1985

Given a first reading. Public hearing held.

JUNE 26 - Public hearing held. Councilor Smith moved, seconded MacMillans in 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 #88 dated July 15, 1985 is relevant to this item. Titled Motion for Island Subdivisions, it refers to this item.

Jane Durgin
SEAL

Jane Durgin
Atrcats
City Clerk

SEAL

STATE OF MAINE
CUMBERLAND, SS.
JANUARY 27, 1986

Personally appeared the above-named Jane Durgin and acknowledged the foregoing instrument to be her free act and deed in her said capacity.

EMILIE COMMON

Emilie Common
Notary Public
Comm. Exp. 11-16-88

RECEIVED
1985 SEP 28 PM 3:32
CUMBERLAND COUNTY

Robert

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 2nd day of March, 1989 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, 1989, 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.

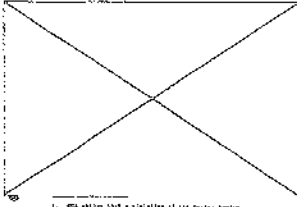
11. In the event that the state and federal agencies, or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the objectives of this Part A cannot be accomplished, then the obligations of the parties under this 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 above is a schematic of the Survey System
 and is not to be used as a guide for the location of the
 Survey System.

2. The above is a schematic of the Survey System
 and is not to be used as a guide for the location of the
 Survey System.

3. The above is a schematic of the Survey System
 and is not to be used as a guide for the location of the
 Survey System.

4. The above is a schematic of the Survey System
 and is not to be used as a guide for the location of the
 Survey System.

5. The above is a schematic of the Survey System
 and is not to be used as a guide for the location of the
 Survey System.

6.

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. Integration; Contract; 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 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.

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 2nd day of March, 1989.

DIAMOND COVE ASSOCIATES

By: David Bateman
David Bateman, Partner

MAINE AUDUBON SOCIETY

By: Karin R. Tilberg
Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION

By: Richard S. Earnest
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 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

P.1 ¶ 9: 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. 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 ¶ d 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, BPL, 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. D.C.P. RET

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

any and all issues that may arise during Phase II consideration by the DEP, BEP 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]*
DIAMOND COVE ASSOCIATES
Richard Dobson, Partner

By: *[Signature]*
MAINE AUDUBON SOCIETY
Karin Tilberg, Esq.
Attorney

By: _____
CONSERVATION LAW FOUNDATION
Attorney

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

1381P

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):

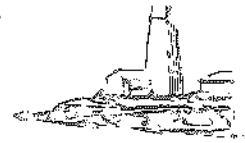
Transportation Restriction. No person or entity ever associated with the properties (described as Buildings 19 and 46) which are the subject of this amendment, including but not limited to their construction, grounds, operations, occupation, management, ownership or use of shall use, operate or cause 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 Knowland - 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 Pendleton' <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 Dairmond'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

CONFIDENTIALITY NOTICE: This email message, including attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information or otherwise protected by law. Any unauthorized review, use, disclosure, distribution or forwarding of this message or it's attachments is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

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 DCHA 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 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



DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

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 38, M.R.S.A., Sections 474 and 483, 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 6424, 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 90 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
#L-013160-87/03-A-N

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'Meara
Christopher B. Branson
Michael D. Traister
Barbara L. Goodwin
Timothy H. Boulette
John B. Shumadine
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. Sneirson
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 unwisdom 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 CBITD 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.P. 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
900 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 LEVIE, JR.
DANIEL AMORY
ROBERT E. NIRSOM
HARRY R. PRINGLE
RICHARD A. SPENCER
THOMAS H. ALLEN
RICHARD A. CARRIUGLO

RONALD N. WARD
JAY S. BLUMENROFF
JOHN S. KAMINSKI
KATHLEEN BARRY
GEORGE A. CARMEL
CAROLYN B. HULL
BETH CANTARA RICHARDSON
MARY T. ESPOSITO
WILLIAM L. FLOUFFE
JERROL A. GROUTER
KEITH C. JONES
WILLIAM A. BRITTON, JR.*

AREA CODE 207
772-1241

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:

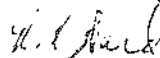
I write on behalf of Dictar Associates (Developer) and Diamond Cove Associates (Land Owner) to provide you assurances regarding our intentions with respect to the above-captioned matter.

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

From: Demarest, Michael <Michael.Demarest@maine.gov>

To: pgleason@aol.com

Cc: RWK@portlandmaine.gov; joe@delucahoffman.com; Richardson, Marybeth <Marybeth.Richardson@maine.gov>; Albert Frick <afa@maine.rr.com>

Subject: Questions about the redevelopment of the Barracks, Gteat Diamond Island;

Date: Mon, 5 May 2008 10:41 am

Attachments: 6931(DiamondCove)Barracks2ndFIPlan_040208.pdf (245K), 6931(DiamondCove) Barracks1stFIPlan_040208.pdf (421K), 6931(DiamondCove)Barracks3rdFIPlan_040208.pdf (164K), 6931 (DiamondIsl_McKinley)DeLucaHoffman_SewerFlows_080207.pdf (8K)



Dear Ms. Gleason:

I hope the attached information helps. As was discussed, there are only three options for the Barracks: Publicly Operated Treatment Works (POTW), a subsurface wastewater disposal system or the existing overboard discharge (OBD).

To connect to the OBD, the developer has to prove that there is not a subsurface option, that the Barracks was continuously authorized within their DEP site license, and that the development will not push them over the discharge limit (estimated design flow or actual). In order for the actual flows not to exceed the limit, the licensee has to address the existing I/I problem that already is causing overages during the spring melt and heavy precipitation events.

I doubt a POTW is a viable option in the current economy.

Although Albert Frick did do a site evaluation in 2004, it was for the entire development. It occurs to me that the Barracks may be small enough to have its own subsurface system because two sand filters were never constructed, but I don't think I have enough information on the soils at this particular location. I suspect they may not be suitable, but that is a Licensed Site Evaluator / P.E.'s job.

I have not received a determination on whether the Barracks redevelopment has continuously been authorized in the site license, but am trying to figure that out.

I will forward any specific findings as soon as I can.



DeLUCA-HOFFMAN ASSOCIATES INC.
CONSULTING ENGINEERS

776 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

3

Mr. Richard Knowland
April 29, 2008
Page 2

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 MSWWDR. 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 MSWWDR.


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

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

42 x 90 gpd 3790

4

	Gallons per Day
Existing Uses	29,155
Inflow/Infiltration	3,000
Double Barracks Renovation	<u>3,790</u>
Total Flow	35,945
License limit	35,000
Amount over limit	945 gpd

**DIAMOND COVE
SANITARY SEWER FLOW RECORDS**



JANUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		20,843
2		17,300
3		12,732
4		5,594
5		8,918
6		8,338
7		8,273
8		7,053
9		8,524
10		8,128
11		14,078
12		11,011
13		9,201
14	Y	23,846
15		19,155
16		13,632
17		11,735
18	Y	23,618
19		16,301
20		12,729
21		12,585
22		21,845
23		N/A
24		7,889
25		11,202
26		7,502
27		8,061
28		8,145
29		7,383
30	Y	7,716
31		8,528

TOTAL MONTHLY FLOW	353,697	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	11,797	GALLONS

FEBRUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		6,242
2		6,038
3	Y	41,870
4		40,828
5	Y	41,741
6		27,510
7		18,651
8		14,888
9		12,938
10		11,007
11		11,008
12		8,601
13		8,784
14		7,497
15		6,636
16		6,977
17		7,602
18		6,771
19		6,875
20		6,187
21		6,431
22		6,582
23		4,891
24		4,874
25		6,545
26		5,335
27		3,844
28		2,680

TOTAL MONTHLY FLOW	337,811	GALLONS
TOTAL DAYS	28	
AVERAGE DAILY FLOW	12,088	GALLONS

MARCH 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		2,689
2		2,687
3		2,854
4		3,178
5		3,685
6		3,480
7		3,161
8		2,423
9		2,793
10	Y	2,988
11		3,086
12		2,787
13		3,963
14	Y	8,453
15		6,684
16		5,744
17		5,703
18		5,473
19		5,415
20		4,529
21		4,321
22		3,922
23		3,384
24		3,600
25		3,945
26		3,478
27		3,003
28		2,786
29		2,649
30		3,098
31		2,670

TOTAL MONTHLY FLOW	118,854	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	3,828	GALLONS

APRIL 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,173
2		3,018
3		2,682
4	Y	16,612
5		14,858
6		13,314
7		11,287
8		10,579
9		8,827
10		7,708
11		7,075
12		6,418
13	Y	6,437
14		7,284
15		7,450
16		6,713
17		6,854
18		5,432
19		4,938
20		3,523
21		3,872
22		5,188
23	Y	4,941
24	Y	6,300
25		2,950
26		3,605
27		3,650
28		5,021
29		6,056
30		4,574

TOTAL MONTHLY FLOW	198,886	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,629	GALLONS

MAY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,810
2	Y	61,384
3	Y	46,487
4		30,166
5		20,189
6		16,428
7		12,633
8		10,624
9		11,337
10	Y	16,413
11	Y	25,266
12	Y	64,843
13	Y	61,136
14	Y	37,800
15	Y	40,382
16	Y	53,483
17		32,703
18		24,157
19	Y	26,872
20		16,313
21		17,870
22		19,535
23		16,550
24		13,848
25		13,051
26		11,273
27		11,232
28		13,920
29		11,274
30		7,863
31		8,097

TOTAL MONTHLY FLOW	746,088	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	24,088	GALLONS

JUNE 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		6,001
2	Y	10,201
3	Y	36,839
4	Y	40,368
5		25,812
6		17,350
7	Y	44,685
8	Y	67,444
9		46,094
10	Y	66,675
11		33,883
12		27,332
13		17,044
14		17,395
15		16,030
16		13,469
17		10,180
18		10,372
19		10,853
20		8,645
21		10,019
22		10,161
23		11,749
24	Y	14,723
25		14,542
26		10,885
27		10,254
28	Y	9,083
29		12,500
30		12,311

TOTAL MONTHLY FLOW	634,488	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

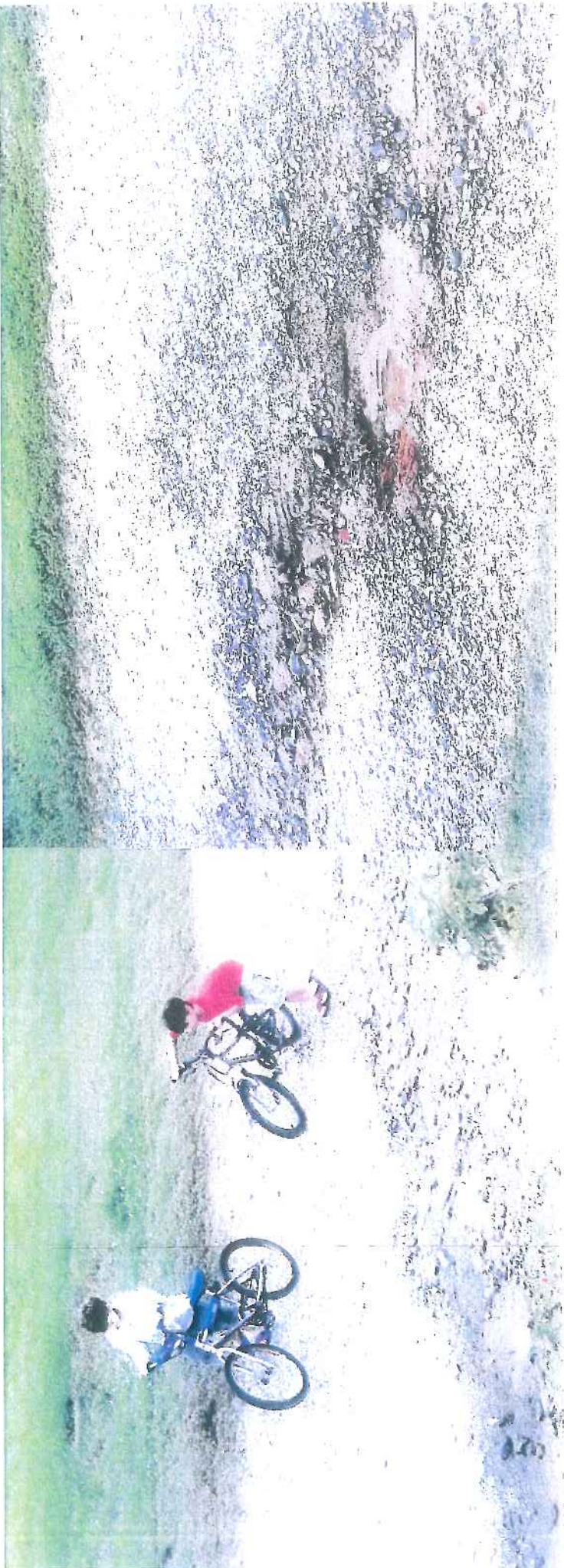
Cove will be greatly diminished. Island living isn't all that easy, but for those of us who willingly chose to be here, for whatever reasons, are greatly saddened by the issue now confronting us. You and other Boards have the authority and duty to uphold what was provided to us by past members---our 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.

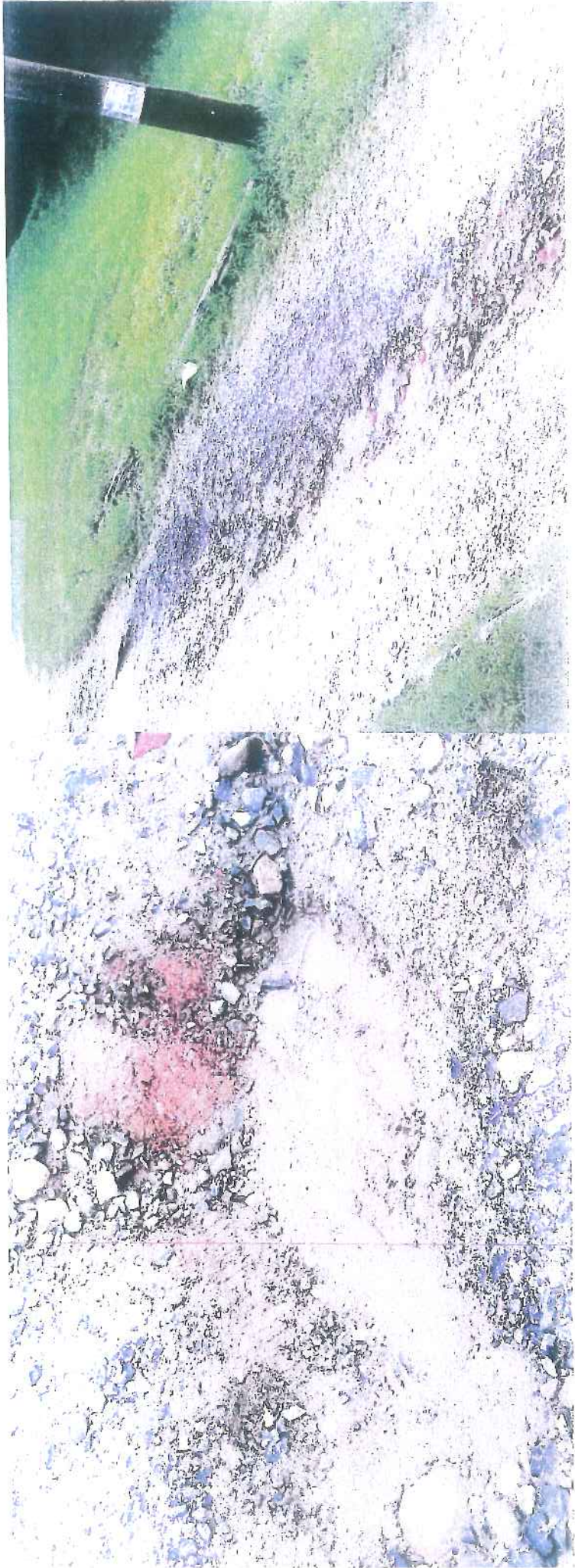
We understand that the City would like to rid itself of these two buildings, but this project is not the answer. Please evaluate these, and other, issues carefully before making your decisions. There really is a lot riding on how you vote this. Just what DOES "in perpetuity" mean??

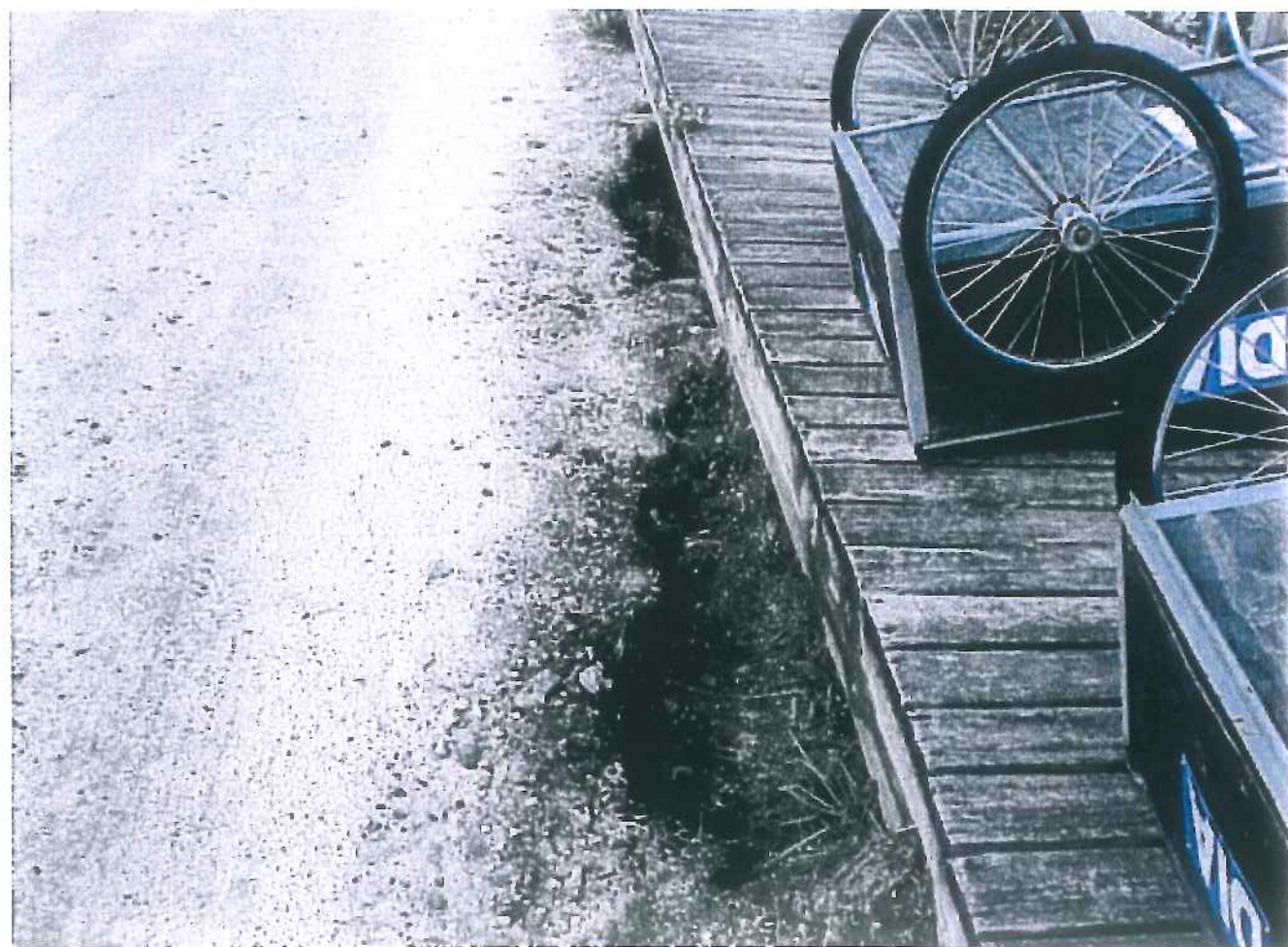
Thank you for your consideration,

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

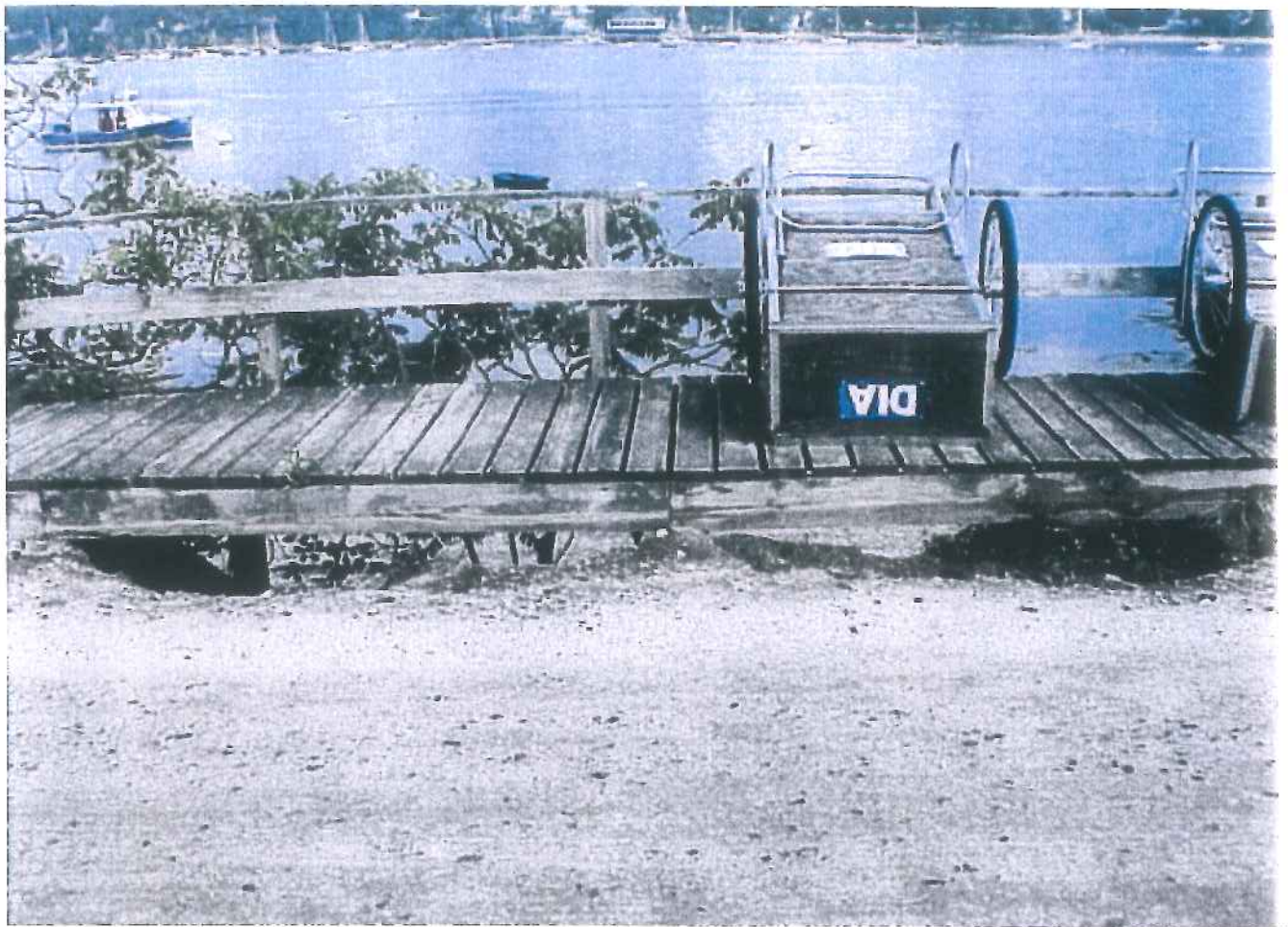












DIAMOND COVE HOMEOWNERS ASSOCIATION

Equipment list - 3/19/2008

EQUIPMENT

APPROXIMATE VALUE

2008 Chevy pick up with Plow	\$28,000.00
2004 Ford Dump Truck-F450 with V-Plow	\$30,000.00
2 1/2 yard Stainless Steel Sander	\$2,500.00
1999 Chevy Pick Up with plow	\$5,000.00
1999 BMC Bus	\$8,000.00
2002 Chevy Bus	\$10,000.00
Kubota Tractor-with snowthrower & wood chipper	\$28,000.00
2003 Walker riding mower with 48" deck (with 62" deck for large area mowing)	\$7,000.00
2007 Ferris mower with 62" deck	\$8,500.00
1999 Chevy cargo van	\$3,000.00
New 300 gal. gas tank with 2004 Onyx trailer	\$2,700.00
3 Honda 5000 wats generators	\$3,000.00
10 KW Generator	\$15,000.00
John Deer 40 KW Portable Generator	\$20,000.00
EasyGo-Gas Golf Cart	\$1,500.00
EasyGo-Electric Golf Cart	\$1,000.00
EasyGo-Electric Stretch Golf Cart	\$5,000.00
16' Landscape Trailer	\$1,200.00

Blue Jeep
White Jeep

Mr. Richard Knowland, Senior Planner, Planning Division
City Hall – Portland, Maine

12 May 2008

Dear Mr. Knowland,

I am a resident of Diamond Cove living at building 16 on the parade ground and very much opposed to the construction of an Inn or Hotel to replace the double barracks. It would be more sensible and acceptable to reconstruct the double barracks as it was originally planned.

The planned Inn would change the character of this unique island from a friendly family way of life to just another commercial overnight gathering place that certainly is not needed twenty-five water minutes from Portland. The pleasant summer months often now over crowded with restaurant goers and down bay visitors would certainly be in complete chaos in the cove area and destroy the safe peacefulness that the current residence have brought into the unique place.

It seems that the vote for an Inn to be considered was not done in a forthright manner and if it were to be taken again I'm sure would fail especially if the twenty-two votes given to Portland were eliminated. Most of the families that spend a significant portion of their summer here and the year round people of Diamond Cove are very much opposed to the Inn as planned. There also is much discord among many residents with the fact that so many rules and regulations of the original covenant are being disregarded and or in the process of change.

The residence of the south end of Great Diamond Island also have much concern and most are against the over use of the Island and the additions of more and more traffic to the state pier. The volunteer fire fighters and EMTs are made up of islanders from both sides of the island, which also has become a real issue, as a transient population would increase the risk of not being able to handle emergencies.

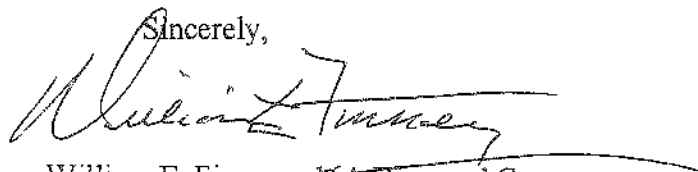
Since there are a number of issues that seem not to be in compliance with the covenant, and there are so many, "we haven't worked out that end of things yet" that the project should be thrown out or at least set into a final form and the homeowners of Diamond Cove Association be given the opportunity for a new vote.

Please be aware of some of the problems that could arise should the Inn construction go forward: Portland parking – wastewater treatment at Diamond Cove – open space that should not be taken – numbers of units left to be build which seems to be near maximum so the hospital building (in much better condition) could not be saved –commercial properties are already at limit and can only be at the cove (quartermaster section) – fire and EMT now at a low volunteer staffing with several working off island –

Please enter this letter into your records; I am not able to attend this meeting, as I will be on duty as a ward clerk for voting on the island on The 13th of May 2008.

Thank you for your attention to my thoughts and concerns about this very special island.

Sincerely,



William E. Finney – 16A Diamond Cove
Great Diamond Island – Maine

Lisa K. Moore and Timothy A. Burris
13H Diamond Cove
Great Diamond Island, Maine
04109

Planning & Development Department
389 Congress Street
Room 308
Portland, Maine
04101

20 May 2008

Dear Planning Board,

Although we will be unable to attend the meeting of the Planning Board on 27 May 2008, we wanted to go on record as having serious concerns about the proposed development at Diamond Cove, where we have been full-time residents since early June of the year 2000.

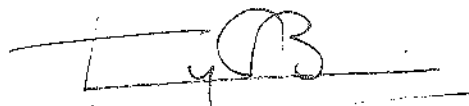
Please incorporate this letter into the minutes of the meeting.

Sincerely yours,



Lisa K. Moore

and



Timothy A. Burris

Rick Knowland - Re: Inn at Diamond Cove

From: Judy Sedgewick <wireworks100@hotmail.com>
To: Rick Knowland <rwk@portlandmaine.gov>
Date: 4/21/2008 5:51 PM
Subject: Re: Inn at Diamond Cove
CC: "nmgleaseon@aol.com" <nmgleaseon@aol.com>

Dear Rick,

I apologize that I am unable to attend the Planning Meeting concerning the Inn at Diamond Cove. I have reviewed the documents from Ron Ward and your summary prepared for the Planning Board on April 18. As President of the Diamond Island Association, I would ask you to forward this email to the Planning Board as it restates the position of the Diamond Island Association regarding this issue.

When the Inn at Diamond Cove was first proposed, the DIA decided not to adopt a position on this new development. However, it has always been our stated expectation that the original conditions of development be honored. Of specific concern is the impact of increased traffic that further development will bring. [This is defined in condition #9 of the Amendment to Portland City Code Section 14-49 Re: Conditional Rezoning of Ft. McKinley.]

The "Conditions of Development" for Fort McKinley were intended specifically to mitigate the impact of Cove development on the southern side of the island. At a recent meeting of our Directors, we again raised concerns that this development will in fact increase, not decrease, the traffic burden on the southern side of the island.

We ask that the development and operations of the Inn adhere to the "Conditions for Development" and make plans for a self-contained, self-operating facility on the DCHA property. All construction materials, laborers, Inn staff, supplies, and guests should arrive and depart within the DCHA property. There should be no vehicular impact to the southern side of the island due to the development and future operation of The Inn at Diamond Cove.

Sincerely,
Judy Sedgewick
DIA President

Pack up or back up—use SkyDrive to transfer files or keep extra copies. [Learn how.](#)

Rick Knowland - Diamond Cove

From: "Ann Ryan Small" <ARyanSmall@ferriterscobbo.com>
To: <rwk@portlandmaine.gov>
Date: 5/27/2008 3:33 PM
Subject: Diamond Cove

Dear Mr. Knowland:

I am writing to you as the owner of a residence in Diamond Cove to inform you of my opposition to the proposed development plans relating to the abandoned building located at Diamond Cove.

I fully realize that agreeing to the development benefits the city in that it relieves the city of the problem of dealing with the building, which is in a state of very bad repair. However, the short-term financial benefit should not be allowed to outweigh the long-term detriment to the city of allowing commercial development in the midst of a private residential neighborhood. Citizens of the city make home-buying decisions on the basis of existing zoning and permitted uses, and it benefits all when changes to the existing restrictions are made only with the most careful consideration of what will benefit the greater good. It is difficult to believe that it will benefit the greater good if Portland's citizens cannot trust that the city will work to protect its residential areas from large commercial projects such as that proposed for Diamond Cove.

I urge you and the members of the Planning Board to give most careful consideration to the detriment to the term "planning" that will accompany a decision to allow the hotel and restaurant development to proceed on Diamond Cove. It is a special community of historic significance which should be one that the city can point to with pride, unsullied by commercial development undertaken by the city only because such development is financially beneficial to the city. Please consider alternatives that would not destroy what makes Diamond Cove and Portland special.

Thank you for your consideration.

Ann Ryan-Small
25A Diamond Cove
Great Diamond Island
Portland, ME

This e-mail message and any attached files are confidential and are intended solely for the use of the addressee (s) named above. This communication may contain material protected by attorney-client, work product, or other privileges. If you are not the intended recipient or person responsible for delivering this confidential communication to the intended recipient, you have received this communication in error, and any review, use, dissemination, forwarding, printing, copying, or other distribution of this e-mail message and any attached files is strictly prohibited. If you have received this confidential communication in error, please notify the sender immediately by reply e-mail message and permanently delete the original message. Thank you.

From: Chris Small <small@sinauer.com>
To: <rwk@portlandmaine.gov>
Date: Tue, May 27, 2008 2:56 PM
Subject: Inn at Diamond Cove

Dear Mr. Knowland,

I am unable to attend the planning board meeting tonight but did want to register my opposition to the proposed inn at Diamond Cove.

Of particular concern is the Diamond Cove septic system which cannot adequately serve the planned inn, in addition to the present residences at Diamond Cove. Increasing the size of it is not an option, as it is, presently, at maximum size for the site.

One other note. You should know that, regardless of the spin that was put on the "yes" vote at Diamond Cove, this project is opposed by many of the people living there and would have been defeated had the City of Portland not been able to cast 22 votes in favor of it.

I hope you will give a great deal of consideration to the concerns that are expressed by the residents of Diamond Cove at the planning board meeting tonight.

Thank you for your time.

Best regards,

Christopher Small
25A Diamond Cove

Tom Lucke
150 McKinley Court
Great Diamond Island, Maine 04109

May 27, 2008

Mr. Rick Knowland
Senior Planner
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

Dear Rick,

I'm writing to you with regard to the matter of the planned development of the Double Barracks at Diamond Cove, which is currently before the Planning Board.

Based on the analysis the applicant has presented to the Board, I have grave concerns about the current development plan. *In particular, it is clear that the current plan fails to adequately address the wastewater disposal needs of the project.*¹

While the applicant has presented an assessment by an engineering firm (DeLuca Hoffman Associates, in a letter dated April 29, 2008), the analysis contains a number of serious errors of fact, arithmetic and interpretation. Correcting these errors leads to the conclusion that the total estimated sanitary flow after the development of the Double Barracks would be on the order of 40,500 gpd. *This corrected design flow cannot be accommodated within either the design capacity of the current system (34,500 gpd), or within the limits of our current Overboard Discharge Permit* (as an aside, it is important to note that this is before taking into account any plans to reduce infiltration and inflow ("I&I") into the system – even if I&I were reduced to zero, the design flow figures indicate that the existing three beds would not provide adequate capacity).

There are three basic adjustments and corrections that need to be made to the DeLuca estimates to arrive at a true picture of the design flows:

- The DeLuca Hoffman estimate of total Phase I bedrooms low by about 40 bedrooms (267 bedrooms vs 227). The correct figure takes into account the actual current buildout as well as a modest allowance for three other structures still to be restored

¹ You may recall that I was formerly President of the Diamond Cove Homeowners Association for several years during our transition from developer control. In that capacity, I spent a great deal of time studying our wastewater infrastructure, working with our engineers, negotiating with the developer over the need for an additional wastewater bed, reviewing the specifications for the renovation of the existing beds, and working with DEP on a variety of wastewater matters, including the re-licensing of the system. Thus while I am not a wastewater engineer, I'm speaking with some depth of knowledge on these matters.

(Mine assembly building, Mine arming building, Mule Barn). *DeLuca therefore underestimates the current Phase I residential design flows by about 3,600 gpd.*

- 2. DeLuca underestimates the number of bedrooms, and hence the flow that needs to be accounted for in considering the hotel. *Correcting for this produces an additional design flow from the hotel of about 3,000 gpd.*
 - First, there is a fundamental error in arithmetic that has DeLuca counting 38 bedrooms rather than 42.
 - The more significant error is that DeLuca fails to consider the "lockout units". As shown on the plans submitted by the applicant, the "living area" of each of the lockout rooms that includes a kitchen includes either a foldout couch/bed or a Murphy bed. In other words, the "one-bedroom" units actually divide into 2 units, one of which is a studio hotel room, and the other is a "one bedroom" hotel unit. The "two bedroom" units divide into one unit with one bedroom, and another with two bedrooms, etc. So the total "bedroom" count, if you count hotel sleeping rooms, is actually 62.
- 3. Finally, DeLuca has not accounted for any flow associated with the meals to be served in the food service area of the hotel. These can be easily calculated using the flows from the Maine Subsurface Waste Disposal Standards (table 501.2) applied to a 56 seat food service area as shown on the plans. *Correcting for this yields an additional flow, not accounted for by DeLuca, of about 1,800 gpd.*

Taking these underestimates into account (as well as a couple of other minor ones) results in a system design flow of 40,495 gpd (versus DeLuca's 32,715 gpd) which is well outside the design capacity of the existing system.²

I therefore urge the Planning Board to take a closer look at the wastewater needs of the development. Clearly the current plan is inadequate, and it would not serve any of the parties for the project to go forward without a clear plan that takes into account the full impact of the hotel. The last thing any of us want is to be put in legal jeopardy of violating of our OBD permit.

Rick, I'd be happy to talk with you about any of these matters, or about the separate "I&P" issue.

Sincerely,



Tom Lucke

² The details and calculations are attached as a separate document.

Wastewater Issues Associated with the Development of the
Double Barracks at Diamond Cove
May 27, 2008

The design flows contained in the submission to the Planning Board and DEP dated April 29, 2008 significantly under-estimate the capacity requirements of the sand-filter system at Diamond Cove. With the appropriate design flows taken in to account, the development of the Double Barracks as a hotel/condominium cannot work within either the design capacity of the current system, or within the limits of the current Overboard Discharge Permit.

DEP has also expressed concern about the current level of infiltration and inflow (I&I) into the system. Given actual sanitary flow rates over the last few years, as well as our experience with rainwater and snow melt entering the system, it is also difficult to see how DCHA (the licensee) could remain in compliance with its overboard discharge limits without significant upgrades to the system. Note that this is a separate (but also important) issue from the one above.

Details on the design flow issue follow.

- In the submission to the Planning Board, DeLuca Hoffman Associates estimates total design flow for the system, as follows:
 - Current residential design flows
 - Total of 79 units with a total of 227 bedrooms
 - Based on 90gpd per BR, design flow of 20,430 gpd
 - Current commercial and administrative design flow 9,025 gpd, as follows:
 - 200 seat restaurant, 25 employees, 6,375 gpd
 - Marina, 90 gpd
 - Two (2) administrative offices, 480 gpd
 - Tent site, 1,750 gpd
 - Gift shop, 2 employees, 30 gpd
 - The Inn design flows
 - Total of 20 units, with a total of 36 bedrooms
 - Based on 90 gpd per BR, design flow of 3,260 gpd
- Their conclusion that the Inn can fit within current design capacity of the system, however, is based on and under-estimate of both the current design flows and the appropriate design flows for the Inn.
- DeLuca estimated the total design flow, including "The Inn", at 32,715 gpd, which they note is within the design capacity of the system at 34,500 gpd
 - 20,430 gpd current residential

- o 9,025 gpd current commercial and administrative
 - o 3,260 gpd for the Inn
 - A more accurate view would be a total design flow (including the Inn) of 40,495 gpd, well over the capacity of the system
 - o 24,030 residential
 - o 10,230 gpd current commercial and administrative
 - o 8,045 gpd for the Inn, including the "Food Service Area"
- o Here are the details of the difference:
 - The DeLuca Hoffman Phase I bedroom estimate is low by about 40 bedrooms (flow impact is 3,600 gpd)
 - o We have roughly 254 bedrooms in the 77 developed units
 - o Add 4 bedrooms each for Lots 69 and 70 (probably conservative); under the DEP site order these need to be connected to the wastewater system
 - o Add another 4 bedrooms for a build-out of the Mule Barn (note that if you assume it will eventually have a commercial purpose like a conference center or banquet hall you would need to allow for much greater than the 360 gpd you get with this approach)
 - o As a practical matter, add one bedroom for the RA/Fire Fighter apartment
 - o So the total is 267 bedrooms versus 227 counted by DeLuca
 - One could argue that they are also light on current commercial and administrative flows, but at least they are in the ballpark
 - o DeLuca Hoffman estimate 9,025 gpd design flow
 - o Previous work by Oliver and Harding ESE estimated 10,050 and 9,690, respectively (with slightly different assumptions)
 - o Applying the design flows in the Maine Subsurface Waste Disposal Standards, I get something like 10,230 gpd based on:
 - ▶ Using the DeLuca Hoffman estimate of a 200 seat restaurant with 25 employees
 - ▶ Basing the tent site estimate on 160 seats (versus 80)
 - ▶ Moving the marina to 165 gpd (based on the shower, washing machine and 1 employee)
 - ▶ Counting Diamond Cove employees (4 @ 15gpd) rather than using DeLuca's method of counting administrative offices
 - ▶ Counting the General Store as a Deli (100 gpd plus 15 gpd x 3 employees)

- The flows from the Inn are almost certainly significantly under-estimated – the true design flow should be about 8,045 gpd, or more than double what DeLuca estimates

DeLuca under-estimates the number rooms that need to be taken in to account, and uses a design flow that is too low

- ▶ They count 36 bedrooms in 20 units, at 90 gpd per bedroom, for a total of 3,240 gpd; let's start with a basic mistake in their arithmetic – if you do the math (6 units @ 1BR, 6 units @ 2BR, 8 units @ 3BR) you get 42 bedrooms, not 36
- ▶ In addition, if you look carefully at the plans, each of the 20 rooms includes a “lock-out”, which effectively makes the Inn a 40 room hotel. Now, the “living area” of each of the lockout rooms that includes a kitchen is shown with either a foldout couch/bed or a Murphy bed . . . In other words, the “one-bedroom” units actually divide into 2 units, each with what you would call a hotel bedroom. The “two bedroom” units divide into one unit with one bedroom, and another with two bedrooms, etc. So the total “bedroom” count, if you count hotel sleeping rooms, is actually 62.
- ▶ The Maine Subsurface Waste Disposal Standards (table 501.2) indicate a design flow of 100 gpd per bedroom for “Hotels and Motels with private baths” plus 15 gpd per employee (versus the 90 gpd used by DeLuca)
- ▶ This gives us 6,260 gpd, based on 62 bedrooms and 4 employees (on site over the course of 24 hours)
- o DeLuca also makes no allowance for the “Food Service Area” in the plans.
 - ▶ Counting tables and chairs, this looks like 56 seats
 - ▶ Based on 3 meals per day and 7 employees, this gives another 1,785 gpd

June 19, 2008
Hand-Delivery

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

Re: The Inn at Diamond Cove, LLC, Double Barracks and Hospital Buildings
Application, Great Diamond Island

Dear Chair Tevanian and Board Members:

This Firm represents the Diamond Island Association (DIA), a Maine corporation whose members are residents of the cottage community on the south side of Great Diamond Island. The DIA and its members are concerned about the increased traffic burden which the proposed Inn at Diamond Cove, LLC development could place on their road system, environment and culture. For this reason, DIA has requested that the Planning Board include transportation-related restrictions on the proposed development in its rezoning recommendation to the City Council.

Introduction.

DIA understands that zoning district provisions of general applicability are not the place to impose restrictions on specific developments. However, the IR-3 Zone is **not** a zoning district of general applicability, but is intended to be development-specific. Therefore, the City Council has used conditional zoning under Sections 14-60 through 14-63 of the City of Portland Code of Ordinances to rezone the Diamond Cove property on Great Diamond Island to permit the original Diamond Cove development, and the Applicant is seeking to have that conditional rezoning amended to permit the currently proposed additional development. Section 14-62 of the Portland City Code specifically authorizes the imposition of conditions and restrictions that "relate to the physical development and operation of the property" as part of the conditional zoning process. Thus, it is both lawful and appropriate for the Planning Board to recommend conditions and restrictions relating to the physical development and operation of the proposed Double Barracks and Hospital building development as part of this proposed amendment to the Diamond Cove IR-3 conditional zoning.

Need for Traffic Conditions and Restrictions on Proposed Development.

It is particularly appropriate and necessary in light of the history of this development that conditions and restrictions regarding the transportation issues raised by the

DOUGLAS S. CARR
PHILIP C. HUNT
JOHN S. LITTON
REGGY L. McGRATH
MEISSA HANLEY MURPHY
JOHN A. CRALDO
JOHN A. HORSION
JAMES N. KATSIARAKAS
TIMOTHY P. BENOIT
GORDON SCANNELL JR.
FRED W. BOFFA
MARK P. SNOW
WILLIAM J. SHELS
DAVID B. McCONNELL
PAUL D. PETROPACU
HOPE CREAL JACOBSEN
RANDY J. CRESWELL
JENNIFER H. PINCUS
DAWN M. HARMON
CHRISTOPHER M. DARGIE
ANTHONY J. MANHART
STEPHANIE A. WILLIAMS
PETER J. McDONNELL
LAUREN H. EPSTEIN
KEITH J. DUNLAP
CHARLES W. OLCOTT

OF COUNSEL
THOMAS SCHULTEN
OWEN W. WELLS
ANDREW A. CALDOT
JULIANNE C. RAY
CATHERINE O'CONNOR

proposed development on Diamond Cove be addressed in this IR-3 conditional zoning amendment. As City of Portland Senior Planner Richard Knowland, who has worked on this project for more than two decades, notes at pages 7 – 8 of his May 23, 2008 report:

Transportation is a sensitive issue on Great Diamond Island particularly on the southerly (or public side) of the Island. Private automobiles are not permitted within the IR-3 conditional zone. As the Board may recall in 2004, the Diamond Cove Homeowners Assoc. requested an amendment to the conditional zone to allow golf carts/electric vehicles. A zoning amendment was passed but with enforcement provisions to ensure that non-service vehicles don't cross the property line into the southerly end of the Island.

Indeed, the City Council did amend the IR-3 Conditional Zoning Agreement for Diamond Cove in 2004. Part of that amendment required the Diamond Cove Homeowners Association to file a Transportation Management Plan with the City's Planning Authority within 60 days of approval of the amendment by the City Council. The City Council passed the amendment on August 16, 2004, while the Diamond Cove Homeowners Association submitted a Diamond Cove Traffic Management Plan, as yet the City's Planning Authority has not received a plan that it finds acceptable to satisfy this requirement. Therefore, the previous amendment to the IR-3 conditional zoning still has yet to be fully implemented, and now the Applicant is before this Board (and will be before the City Council) for further amendment.

Given the long history of transportation issues with regard to the existing Diamond Cove development, DIA members were heartened to see City Planning Staff recommend to the Planning Board a revision to the Applicant's proposed amendment (attachment 2-B to the Planning Board Report) which: in paragraph 8, would require the owner of the Double Barracks and Hospital and its successors, heirs and assigns to provide water transportation to and from the Diamond Cove pier to all persons, including owners, guests, staff, suppliers and others to and from the Double Barracks hotelminium, and in paragraph 9, would provide that no occupant of the Double Barracks or Hospital building shall be permitted to utilize water transportation from the southern side of the Island unless the occupant walks to and from the southern pier. While DIA believes that these particular additions do not go far enough to protect those who live on the southerly side of Great Diamond Island, we believe it was a step in the right direction that with relatively minor changes could adequately protect all Island residents.

However, we understand that the Planning Staff-proposed amendments caused the Applicant to request tabling of the public hearing that had been scheduled for May 27, 2008. We understand that a reason for that request was that the Applicant does not wish to be bound to any written transportation conditions related to the proposed Double Barracks and Hospital hotelminiums.

Therefore, we are submitting these written comments that we otherwise would have made at that public hearing so that the Planning Board can understand the basis for DIA's concerns and can review our suggested language regarding this transportation matter.

Comments on Planning Staff Proposed Language.

What Planning Staff proposed on May 23, 2008 is consistent with written approvals and agreements to which the existing Diamond Cove development already is subject. The Maine Department of Environment Protection's (DEP's) Site Location Order regarding access to Diamond Cove, Phase I states that:

The central pier in Diamond Cove will be reconstructed and a movable float will be attached to facilitate access to the site by the Casco Bay Island Transit District's ferries and by private boats. . . . construction traffic associated with the development will be confined to the project site. Construction vehicles, equipment and materials will be transported to the project site by barge and off-loaded either in Diamond Cove utilizing the existing piers or along the western shoreland of the property near the former coal pier. Construction debris and other materials to be removed from the site will be unloaded at these points.

An agreement among Diamond Cove Associates (DCA), Maine Audubon Society, Conservation Law Foundation and Island Institute of March 2, 1989 contains DCA's agreement that

No motor vehicles of any kind (automobiles, golf carts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the Island. The only exception shall be fire equipment, ambulances 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 seek an amendment to reflect this limitation. [A March 10, 1989 amendment to that agreement changed the designated "taxis" from "shuttle vans" to "vans."]

The City's 1985 Conditional Rezoning of Fort McKinley to accommodate the Diamond Cove development in paragraph 8 required DCA to "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 Diamond Cove via a suitable docking facility on the Premises and on a schedule to be established by the carrier based upon passenger demand;" or else to provide at its own expense an equivalent alternative to such service. Paragraph 9 of the City's 1985 Conditional Rezoning prohibited the operation or storage, temporarily or otherwise, on the Premises of any motor vehicles except for vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles.

As noted above, in 2004, the City Council amended this provision to allow each Diamond Cove unit owner to own one vehicle such as a golf cart or other low-speed vehicle, not to exceed a total of 82, which are to be restricted to Diamond Cove Homeowners Association property use. It also provided that breaches of the agreement may be prosecuted by the City of Portland as land use violation enforcement actions.

Thus, there is a history of more than 20 years of regulation of the existing development to prevent vehicular traffic, except for emergency vehicles and approved vans, from using the south pier. This limitation is explicit and is written. The Applicant has orally expressed at Planning Board workshops on this proposed development that it will not use the south pier for residents, guests, invitees, construction workers and other workers for the proposed Double Barracks and Hospital hotelminium units. All that DIA is asking is that these oral representations be reduced to writing as DEP, the City of Portland, Diamond Cove Associates and environmental organizations had done with regard to the existing development. DIA does not want the southerly pier on Great Diamond Island and the road through the southerly end of the Island to be the service entrance to Diamond Cove and to the proposed new development there, to the detriment of those who reside on the southerly part of the Island.

To this end, we propose the following revisions to paragraphs 8 and 9 (City Planning Staff proposed language is underlined; DIA proposed language which would replace and/or add to City Planning Staff language is in **boldface**) in the May 23, 2008 Planning Report No. 28-08:

8. Water transportation services. The Owner 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 Diamond Cove via a suitable docking facility on the Premises and on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service is or at any time becomes unavailable, the Owner shall, at its own expense, 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 foregoing notwithstanding the owner of the Double Barracks and Hospital, its successors, heirs and assigns, shall provide water transportation at the Diamond Cove pier (and on occasion when the freight or cargo warrants, at the barge landing at the north end of the Island) etc. to the Double Barracks and Hospital. **The foregoing notwithstanding, the owner of the Double Barracks and Hospital, its successors, heirs and assigns, shall provide water transportation to, from and between the Portland waterfront and Diamond Cove at the Diamond Cove pier for itself, for all Double Barracks and Hospital hotelminium unit owners, occupants, invitees and guests, and for its and their staff, employees, contractors, suppliers and others, and these persons and entities shall use the Diamond Cove pier only for such water transportation except in event of fire or medical emergency.**

9. Restrictions on motor vehicles. Except for vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles, no motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles, shall be operated or stored, temporarily or otherwise, on the Premises; provided that nothing contained herein shall be deemed to restrict electrically powered golf carts, neighborhood electrical vehicles, electric personal assistive mobility devices (a/k/a human transporters), low-speed as currently defined in 29-A M.R.S.A. §101 or any similar vehicles.

The latter vehicles are permitted not to exceed 82 in number to be allocated by the Diamond Cove Homeowner's Association to homeowners on a first in time ownership basis.

Within sixty (60) days of approval of this amendment by the Portland City Council, Diamond Cove Homeowners Association shall file a transportation management plan with the City's Planning Authority that includes but is not limited to a description of the process for allocating vehicle permits; a description of the means and methods of providing transportation for the disabled on the island; a restriction that confines permitted vehicles to established roadways that are presently within the Association property; a description of available common transportation service vehicles and how they will be managed for the needs of residents and visitors; and a description of how construction, supply-delivery and service vehicles from outside the island including barge ingress and egress routes to the island are managed.

This paragraph is otherwise governed by the terms and conditions contained within the Attachment ___ entitled "Conditions Restricting Use of Diamond Cove Motor Vehicles Outside of Diamond Cove" which document is incorporated by reference. Moreover, and by way of further restriction, no owner or occupant of the Double Barracks or Hospital building shall be permitted to utilize water transportation from the southern side of the Island unless such occupant(s) walks to or from the southern pier. Moreover, the foregoing notwithstanding, no person or entity required by condition and restriction 8. above (to use water transportation to, from and between the Portland waterfront and Diamond Cove at the Diamond Cove pier only) shall be permitted to utilize water transportation from the southern side of the Island unless such person(s) walks to or from the southerly pier.

16. **The Owner shall provide a copy of these Conditions and Restrictions and the attached "Conditions Restricting Use of Diamond Cove Motor Vehicles Outside of Diamond Cove" to all owners, renters and occupants of the Premises and of the Double Barracks and Hospital hotelminium units.**

(The City Planning Staff and the Planning Board might also consider other changes to the draft Amendment to ensure that all necessary parties are bound by the Amendment – the only "Owner"

specifically mentioned in the Amendment is the Diamond Cove Homeowner's Association (DCHA), but the party who owns the Double Barracks and the Hospital buildings may be another entity. That party may become a member of DCHA, but nevertheless may be a separate legal entity that the City may wish to hold accountable for compliance with development conditions and restrictions and for purposes of enforcement.)

Comments on Applicant's New Proposed Supplemental Conditions and Restrictions.

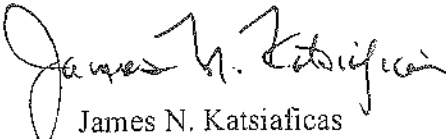
On Tuesday, we received a copy of the Applicant's "Supplemental Conditions and Restrictions" for the proposed development. We are reviewing it, and while the concept of a "Supplemental Conditions and Restrictions" document may be a reasonable way to approach this matter to avoid confusion over which developer and which development is regulated by an amended conditional zoning ordinance, we do have specific problems with the language of the Supplemental Conditions and Restrictions. For example, they do not address motorized ground transportation provided by persons other than the Owner/Manager, do not define what are "rules and regulations," and require rules and regulations to be provided only to unit owners -- not to their renters, who actually will occupy these hotel/condominium units. DIA instead prefers the language we have suggested to amend the City Planning Staff's draft of May 23, 2008 (discussed above), and certainly prefers nothing less restrictive than what City Planning Staff proposed in that draft. We will be prepared to offer comments on the Supplemental Conditions and Restrictions and on the City's revised draft, which is not yet available for review, at the Tuesday June 24, 2008 public hearing.

Conclusion.

The DIA urges the Planning Board to incorporate language into the IR-3 conditional zoning ordinance it recommends to the City Council that protects the southerly part of the Island from adverse transportation impacts of the proposed development. The DIA also urges the Planning Board to recommend that the City Council require the DCHA to meet with stakeholders and file an acceptable Diamond Cove Traffic Management Plan with the City so that the intent of the 2004 City Council amendments to the IR-3 rezoning plan for the existing development can be realized. The DIA seeks nothing more than transportation restrictions that preserve a way of life that has been enjoyed on the southerly part of Great Diamond Island since the 1880s, communication of these restrictions to owners and users of the new development and strict City enforcement of these restrictions in order to achieve the goal of preserving the Island way of life.

Thank you for your consideration of these concerns.

Sincerely,


James N. Katsiaficas

Portland Planning Board
City of Portland
June 19, 2008
Page 7

JNK:pal

cc: Diamond Island Association
Richard Knowland, Senior Planner, City of Portland
Ronald N. Ward, Esq.

K:\D\Diamond Island Association (10437)\2008-06-18 JNK to Planning Board.doc

May 19, 2008

Planning and Development Department
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Double Barracks and Hospital buildings—Great Diamond Island

Dear Chairwoman Tevanian and Members of the Portland Planning Board:

It has come to our attention that you have before you a proposal to develop a 34-unit residential hotel condominium, each with its own kitchen unit and bathroom facilities, on Great Diamond Island. Friends of Casco Bay/Casco BAYKEEPER®, as an advocate for the environmental health of Casco Bay, is concerned that any proposed system for sewage and gray water treatment and disposal does not negatively impact the water quality of Casco Bay.

Our concern is with the safe and clean disposal of solid and septic wastes. We are quite concerned that the developers expect to use the existing overboard discharge system for the proposed project. After the City recently voted to expend nearly \$61 million to upgrade its sewage transport infrastructure to protect the bay, it does not seem reasonable to allow this development by the Inn at Great Diamond Island to occur until and unless the City and the Maine Department of Environmental Protection (DEP) have been assured that there will be adequate safeguards to ensure that additional wastes do not overload the island's minimally adequate Overboard Discharge System. We believe this system is already close to capacity with just the existing development, given its age and unknown maintenance history.

Currently, Great Diamond Island has a MEPDES permit to discharge 35,000 GPD, of secondary treated sanitary wastewater from its overboard discharge system. This was reduced from 40,000 GPD in 2005 by the DEP because of the age of the system and some outstanding maintenance issues. By some estimations, even adding just the first 22 units of the proposed 34 will exceed the current capacity of the sand filter beds. This is complicated by the fact that there is significant infiltration of groundwater, which increases the amount of water that the sand filter system must treat.

We have several questions that we would appreciate your considering as you evaluate the proposed development:

1. How do the developers propose to incorporate advances in sewage treatment that have been made in the two decades since the first phase of development on Great Diamond Island was approved?

Board of Directors

President
Malcolm F. Poole, Scarborough

Vice President
Judith Fletcher Woodbury, Cumberland

Clerk
Bradford Bowman, Yarmouth

Treasurer
Peter Dufout, Portland

Stanley T. Bennett, Falmouth
John W. Fridlington, Yarmouth
Paul Gregory, Portland
Martin S. Griannes, Brunswick
Anne Henshaw, Brunswick
Patricia Ianni, Falmouth
Peter C. LeBourdais, Harpswell
Mike LePage, Cumberland
Kathryn Reid, Portland
Joan Benoit Samuelson, Freeport
Barry S. Shell, Cumberland
Janet M. Sorton, Portland
Adam Taylor, Falmouth
Anna Marie Thron, Portland
Nicholas H. Walsh, Yarmouth

Honorary Directors

Kenneth M. Curtis, Cape Elizabeth
Kevin P. Gildart, Cape Elizabeth
Sherry F. Huber, Falmouth
Anthony R. Jessen, Freeport
P. Andrews Nixon, Brunswick

Executive Director

Cathy L. Ratusdell CPA, Portland

Casco BAYKEEPER

Joseph E. Payne, Westbrook

2. Will the developers, should they integrate their wastewater treatment with the existing facilities, dig up and clean out the sand filters that have serviced the island community for over 20 years? The original system must have been installed around the time that Phase I was approved in 1986. We have been told by the DEP that a typical sand filter has a life expectancy of about 20-25 years. If the tank is not pumped on a regular basis, and grease is allowed to get out into the bed, then it may need to be rebuilt much sooner.
3. What other maintenance will the developers undertake before adding more units to the existing infrastructure? In 2005, the DEP ordered maintenance on all three sand filter beds. They noted the need to stop water pooling and to re-establish the geotextile fabric and loam cover over the beds. Has this been done? Although Overboard Discharges purportedly provide secondary treatment, they need frequent maintenance and inspection in order to operate efficiently.
4. In 2005, the DEP wrote in the MAINE WASTE DISCHARGE LICENSE FACT SHEET for the Great Diamond Island discharge, "Because the reserve life for the sand filters was originally established at seven years and two of the sand filters have operated over 15 years to date without any replacement, the sand filters (and other equipment) may need replacement in the near future. Special Condition M of this permit requires the permittees to submit a report and list of work items with a specific schedule to perform the necessary repairs to the treatment system."

Has the developer prepared a comprehensive assessment of the proposed plan for the disposal of solid and septic wastes?

Since 1987, the installation of Overboard Discharges is no longer permitted, as regulators recognized how inadequate these treatment systems are. We would prefer that the entire Great Diamond Island community find a more effective method of sewage treatment, and we would oppose any more stress on a system that we view as already antiquated.

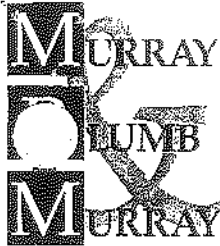
We could not attend the May 13th workshop, but we look forward to commenting and participating in upcoming workshops and hearings on the issue, both before the Planning Board and the City Council.

Thank you for your consideration of our concerns.

Sincerely yours,



Joseph E. Payne
Casco BAYKEEPER®



Attorneys At Law

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

Of Counsel:
 Peter L. Murray
 Brent T. Schneider
 E. Stephen Murray
 (1941-2001)

75 Pearl Street
 Post Office Box 9785
 Portland, Maine
 04104-5085

Telephone:
 207.773.5651

Facsimile:
 207.773.8023

E-Mail:
 info@mpmlaw.com

WWW:
 mpmlaw.com

June 19, 2008

The Portland Planning Board
 City of Portland
 389 Congress Street
 Portland, Maine 04101

RE: *Application by the Inn at Diamond Cove, LLC for Second Amendment to Conditional Rezoning Agreement for Fort McKinley*

Dear Chair Tevanian and Board Members:

This office represents Anthony and Judy Savastano, who own property abutting Nancy Lane and the State Pier parcel on Great Diamond Island. As a general matter, the Savastanos do not oppose the historic preservation of the Double Barracks and the Hospital for a more productive use such as the proposed Inn at Diamond Cove (hereafter the "Inn"). However, the Savastanos are vitally concerned with preventing any increase in the adverse traffic impacts from the Fort McKinley development.

For that reason, the Savastanos request that if the Planning Board recommends approval of the proposed rezoning for the Inn, such approval be conditioned on a strict prohibition against the occupants¹ of the Inn using motor vehicles – including vehicles for the "common transportation of goods and passengers" -- outside the Fort McKinley development.

To request such a condition should be unnecessary, because the developer has effectively assented to such a prohibition already. In a memorandum to the Planning Department dated April 29, 2008, the Inn at Diamond Cove LLC made the following representation:

Following construction, all of our owners, guests and employees will be...specifically advised not to utilize any off-site facilities, including the public pier at the south end of the Island. Over time it is possible that the Project and DCHA will collaborate on certain transportation *but*

¹ In this letter, I use the term "occupants" as a short-hand expression for Diamond Cove Associates, the Inn at Diamond Cove LLC, their employees, individual owners of the hotel/mini-unit, anyone occupying the hotel units by permission or lease from the owners of those units, guests and invitees of the foregoing persons, and anyone succeeding to the interests of those persons.

the Project will not be collaborating on any transportation which exits the Ft. McKinley site.

(emphasis added). However, in Paragraph 5 of its most recent draft of "Supplemental Conditions and Restrictions" for the Inn rezoning, the developer suggests the following language to govern vehicular transportation to and from the Inn:

The Owner/Manager shall not provide motorized ground transportation off the Fort McKinley Project site and all such transportation shall strictly conform to all *existing* ordinances, rules, and regulations² concerning travel outside of the Project site to the public pier at the southerly end of Great Diamond Island.

Because that proposed language could be interpreted as a retreat from the developer's April 29th memorandum, the Savastanos respectfully request that the Planning Board reject that language and instead adopt wording that unambiguously precludes the Inn's occupants from using vehicles of any kind outside the Fort McKinley Project site, even if those vehicles are "provided" by the DCHA or other sources besides the Owner/Manager.³

The Savastanos request such language, not only to protect their peaceful enjoyment of their home on Nancy Lane, but to protect the structural integrity of Nancy Lane itself. During the proceedings that led to the 2004 Amendment, the DCHA indicated that the type of "common transportation vehicles" it might use were on the order of large SUV's capable of carrying a small number of passengers at a time. After the 2004 Amendment, DCHA purchased

² Although a relatively minor point, the expression "ordinances, rules, and regulations" is inappropriate because it does not include other sources of the vehicle restrictions such as regulatory approvals and related agreements.

³ It is my understanding that the Diamond Island Association, ably represented by Attorney Jim Katsiaticas, will be offering alternative wording that would accomplish that result. The Savastanos prefer the DIA's proposed language, but would recommend the Planning Staff's suggested wording as a superior alternative to that contained in the developer's draft conditions. The most recent Planning Staff proposal with which I am familiar adds the following language to Condition 9 of the 1985 Rezoning Agreement, as modified by the 2004 Amendment: "Moreover, and by way of further restriction, no owner or occupant of the Double Barracks or Hospital building shall be permitted to utilize water transportation from the southern side of the Island unless such occupant(s) walks to or from the southern pier."

first one and then a second 20-seat bus of the size commonly used as airport shuttles. Those busses begin arriving at the State Pier at 5:30 a.m. and continue throughout the day until the last ferry leaves. They do so regardless of whether the ferry is also providing service to the Diamond Cove Pier on that day. Usually those buses are accompanied by one or more pick-up trucks or panel vans used to haul luggage and supplies brought by Diamond Cove residents.

Overuse of Nancy Lane by the DCHA busses and accompanying trucks has already left that dirt road pitted with large potholes and deep ruts, such that the narrow isthmus connecting the State Pier with the Island proper is suffering from severe erosion. That damage increases the risk of accidents on Nancy Lane, impedes passage by emergency vehicles, and substantially undermines the structural integrity of the road. It has become difficult for some pedestrians to walk on the road. It is my understanding that the Public Works Department is currently seeking a remedy for repairing that damage, but has yet to arrive at a workable solution.

It should not have come to this. When the City approved use of the Island roads by "common transportation" vehicles from the Cove, it did not intend that the use of such vehicles would increase to the point where it would cause traffic congestion and excessive road wear, and would undermine the City's design that the Fort McKinley developments respect the pedestrian-oriented character of the Island.

It must not be forgotten that Section 145 of the Land Use Code establishes the following criteria for rezoning to IR-3 and for any development within the IR-3 Zone:

- "IR-3 zones should not be established unless issues of municipal services, including infrastructure...and police and fire services and other municipal services can be appropriately and adequately addressed." Section 14-145(13)(c).
- "The project shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles." Section 14-145.16(a).

The same emphasis on preventing significant vehicular traffic is found in the 1985 Conditional Rezoning Agreement, several regulatory approvals and

permits issued for the Fort McKinley project, and the settlement agreement between Diamond Cove Associates, Maine Audubon Society, the Conservation Law Foundation, and the Island Institute dated March 2, 1989.

The August, 2004 Conditional Rezoning Amendment was conditioned on DCHA submitting to the Planning Authority, within 60 days, a transportation plan for managing, among other things, the Association's use of "common transportation" vehicles on roads passing through the southerly part of the Island. DCHA did not submit even a draft transportation plan for several months, and four years later, the Planning Authority has yet to approve the transportation plan. If, as is required under Section 14-145(13)(c), IR-3 zones should not be established unless "issues of municipal services, including infrastructure...and police and fire services and other municipal services can be appropriately and adequately addressed," the Planning Board should not recommend yet another amendment to the 1985 Conditional Rezoning Agreement before the conditions of the 2004 Amendment have been satisfied.

Just as importantly, the City has yet to develop any effective means of *enforcing* the traffic restrictions contained in either the 1985 Condition Rezoning Agreement or the 2004 Amendment. The prohibition against the use of individually-owned vehicles to travel from the Fort McKinley property loses most of its force if persons residing within that property are allowed to access the State Pier by unlimited use of large "common transportation vehicles" that are substantially heavier, more obstructive, and more damaging of the road than the golf carts they were meant to replace. The City's prolonged failure to enforce the vehicle restrictions has only accelerated the growth of motorized traffic on Nancy Lane.

As of today, the allowance for common transportation vehicles in Condition 9 of the 1985 Conditional Rezoning Agreement and the 2004 Amendment is a failed experiment. The allowance for common transportation vehicles, which in theory could have preserved the pedestrian character of the southerly side of the Island, has been abused to the point where that character has been lost and the Island's road infrastructure compromised.

The Planning Board and the City Council must rethink the issue of motor vehicle transportation on the Island in general. Logically, the Planning Board should conduct that general re-evaluation before making any recommendation on whether the City Council should adopt the Inn-related rezoning. If the Planning Board nevertheless wishes to complete its review of

June 19, 2008

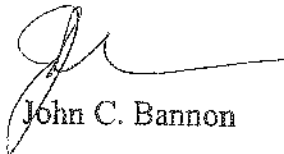
Page 5

the rezoning request at this time, it cannot responsibly do so without first ensuring that the proposed Inn project will not make the existing problems worse. The only way of preventing additional damage to the road surface and further interference with the pedestrian-oriented character of the Island is by preventing the occupants of the Inn from travelling over Nancy Lane in *any* motor vehicle, whether it is provided by the developer, the DCHA, or anyone else.

The developer has already represented that the Inn project does not need to make use of motor vehicles outside the Fort McKinley project or to "collaborate" with the DCHA on "any transportation which exits the Ft. McKinley site." The Planning Board must require the developer to honor that representation by imposing a condition that, if occupants of the Inn project wish to access the State Pier, they shall do so on foot only.

Thank you for your consideration of this letter.

Sincerely,



John C. Bannon

JCB/dmw

cc: Anthony and Judy Savastano
Richard Knowland, Senior Planner
James N. Katsiaficas, Esq.
Ronald N. Ward, Esq.



CONSERVATION LAW FOUNDATION

June 23, 2008

Planning and Development Department
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Great Diamond Island

Dear Chairwoman Tevanian and Members of the Portland Planning Board:

In 1989, the Conservation Law Foundation, along with the Island Institute and the Maine Audubon Society were parties to an agreement with Diamond Island Associates that limited the scope and nature of proposed development on Great Diamond Island. CLF's primary interest was in protecting the water quality of Casco Bay from the wastewater discharges associated with the proposed development. By and large, those concerns have been addressed over the years by the respective state and federal permits governing wastewater discharges from the eventual development.

We understand that the original developer is now proposing a new development scheme for GDI and we are concerned that the water quality of Casco Bay may yet again be at risk because of potential increases in wastewater discharges. We share in the concerns raised by the Friends of Casco Bay in their letter to you of May 19, 2008, as well as in the non-wastewater concerns raised by the Island Institute in its letter to you of June 23, 2008. We would note specifically that the Maine Department of Environmental Protection has been engaged in a decades-long effort to remove overboard discharges from Casco Bay and the City's commitment to spend more than \$60 million to address the issue of combined sewer overflow discharges, efforts CLF believes are both laudable and required by the law. In the face of these efforts and their associated costs, to allow new development such as is proposed for GDI to increase the volume of overboard discharges is neither consistent with the efforts of the City and the State to remove overboard discharges nor equitable for those who have had to replace their overboard discharges.

It is important that the new development proposed for GDI meet the spirit as well as the letter of the 1989 agreement. I appreciate the opportunity to submit these comments and regret not being able to make the meeting this evening.

14 Maine Street, Brunswick, Maine 04011-2026 • 207-729-7733 • Fax: 207-729-7373 • www.clf.org

MASSACHUSETTS: 62 Summer Street, Boston, Massachusetts 02110-1016 • Phone: 617-350-0990 • Fax: 617-350-4030
NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059
RHODE ISLAND: 55 Dorrance Street, Providence, Rhode Island 02903 • 401-351-1102 • Fax: 401-351-1130
VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

Thank you for your consideration of our concerns.

Sincerely,

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

Sean Mahoney
Vice President and Director
Conservation Law Foundation
Maine Advocacy Center



20 Gilsland Farm Road
Falmouth, Maine 04105
207-781-2330
www.maineaudubon.org

June 24, 2008

Members of the Portland Planning Board

RE: The Inn at Diamond Cove, LLC Amendment Proposal

Dear Portland Planning Board:

This letter is to convey Maine Audubon's position in regard to the Inn at Diamond Cove, LLC's proposed amendment to the existing IR-3 conditional zone. Maine Audubon is opposed to the proposed amendment because it undermines the meaning and value of the open space that contributes to the sustainability of the island's delicate ecology and to the preservation of the island's rural character.

In addition, the amendment is contrary to the 1989 agreement (signed by Diamond Cove Associates, Conservation Law Foundation, and the Island Institute) addressing development on the northern portion of Great Diamond Island. The 1989 agreement was, in part, crafted to resolve issues of concern to Maine Audubon with Phase 1 and 2 of Diamond Cove's development plans. The agreement reflects the comprehensive negotiations designed to protect the natural and cultural environment of Great Diamond Island.

Maine Audubon has significant concerns with the zoning change to allow development within an area currently designated as open space. Our concerns regarding the appropriate use of open space on the island are not new. In 2001, Maine Audubon sent a letter to the Maine Department of Environmental Protection that referenced our concerns about the Stowaways Snack Shack and Bar that was operating within the beachfront portion of the open space (our understanding is that Stowaways is no longer operating in the open space). We are troubled that despite the designation of portions of the Diamond Cove area as open space as part of a regulatory permitting process, there continues to be an effort to utilize open space areas for development.

Open space by its very nature is undeveloped land. Its value is in providing opportunities for, among other things, recreation, wildlife habitat, storm water drainage, and enhancing and preserving natural and scenic qualities of the landscape. Typically, open space areas are determined as part of a planning process and identified at the same time as areas appropriate for development are determined. Such was the case with Diamond Cove.

An alternative to locating a swimming pool in open space does exist. Diamond Cove already has a swimming pool which should be made available to patrons at The Inn

We urge the Planning Board to deny the proposed amendment. Thank you for your consideration. Unfortunately, I am unable to attend tonight's public hearing.

Sincerely,

Jennifer Burns Gray
Staff Attorney



ISLAND INSTITUTE

386 MAIN STREET
POST OFFICE BOX 648
ROCKLAND, MAINE 04841 - 0648
TEL (207) 594-9209 - FAX (207) 594-9314
E-MAIL inquiry@islandinstitute.org
www.islandinstitute.org

June 23, 2008

Dear Members of the Portland Planning Board;

The Island Institute is an organization dedicated to partnering with Maine's island and remote coastal communities so that they remain vibrant places to live and work. In the early years of the organization, the mid-1980s and early 1990s, some of our first work on islands was spent working with Great Diamond Island residents to ensure that any redevelopment of the Fort McKinley property was done in ways that would recognize the unique environmental and social attributes of the island. We responded to community concerns about the scale of development proposed for the island and one outcome of those early engagements was the codification of the island's land use ordinances by the Island Institute, Maine Audubon, and Conservation Law Foundation. We are here today because once again the community has asked for our assistance, in particular to help insure that the open space and density provisions of the 1991 agreement and zoning provisions are respected.

At the behest of islanders, the Island Institute convened a representative group from the various island organizations to discuss the current development proposal for Buildings 46 ("Double Barracks") and 19 ("Hospital").

Great Diamond Island residents share a number of concerns about the proposed development of these properties. First and foremost, all involved are concerned about the quality and sense of place that will be threatened by this development. Great Diamond Island is unique on the coast of Maine, not only because a great portion of the island has been redeveloped from military use to accommodate year round and seasonal housing, but also because of the long history of cohabitation by year round and summer residents. Great Diamond Island, perhaps more than any other island, has been the focus of intense redevelopment. Islanders have been remarkably flexible when considering the scope of what they have faced to date.

The preservation of sense of place and quality of life becomes very real when one considers some aspects of island life that residents would like to preserve. They enjoy the peace and quiet that island life can afford residents. They enjoy the security that comes with knowing the people who live around them. They enjoy the environmental beauty that only island residents and those who regularly visit islands can comprehend.