



Planning & Urban Development Department

Jeff Levine, AICP, Director

Marge Schmuckal, Zoning Administrator

TO: CHAIR AND ZONING BOARD MEMBERS

FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR

SUBJECT: INTERPRETATION APPEAL CONCERNING 37 BALLFIELD ROAD ET AL

DATE: JUNE 19, 2014

This memo is in response to the interpretation appeal before the Board. The current Land Use Zoning Ordinance has a basis date of June, 1957. The islands were using the same zones as the main land until July 15, 1985. I have attached a Peaks Island zoning map showing the zones prior to the zone changes to the islands in 1985. The property involved in tonight's hearing was located in an R-3 zone prior to changes made to all the island zoning in 1985. It is also relevant to note that on December 9, 1991 the City Council adopted changes to the Shoreland Zone mapping that included freshwater wetlands delineation which encompasses the appellant's property.

I was not aware of the broad reaching effect of State Law 7 M.R.S.A. § 154 Farmland Protection Act. Mr. Johnson was granted a conditional use appeal in June, 1988 for the raising of domestic animals as allowed in the IR-1 zone. Apparently the Farmland Protection Act also applies to and supersedes the Shoreland Zone regulations. However, I am not convinced that bringing in landscaping materials and brush from off-premise locations onto this property is protected under the umbrella of the Farmland Protection Act. This is not an activity that is based upon using the applicant's land for agricultural purposes. If the applicant was cutting and mulching his own land, then I would agree that that activity would be covered by the Farmland Protection Act. Instead the applicant is accepting materials that are from off-premise properties. I have determined that type of activity is really a business use and not a property based agricultural use. Such business uses are not permitted in the IR-1 zone. The commercial trucks used in the operation of the acceptance and mulching of the off-property materials would not be protected under the Farmland Protection Act. Only commercial vehicles used for the applicant's on premise farmland agricultural uses could be covered by State Law.

I am not convinced that the trailer which is used for occupancy falls under an accessory use as define under 14-145.2(f). It is true that temporary private tenting for one (1) tent is permissible under certain defined circumstances within the IR-1 zone. However, a trailer is not a tent by any definition. Trailers or recreational vehicles are considered vehicles and must be registered by the State. The trailer being used for habitation is not permitted in this zone.

The applicant has submitted "Exhibit B" which is an Affidavit of Edward L. Casey in order to show the continuance of legal nonconforming uses ("grandfathered uses") of the land. While it is true that **14-381 Continuation** allows any lawful use of buildings, structures, premises or parts thereof, existing on June 5, 1957, and made nonconforming by the provision of the Ordinance as outlined, the applicant has not shown any uses that were in existence prior to June 5, 1957. First of all, this sections allows the



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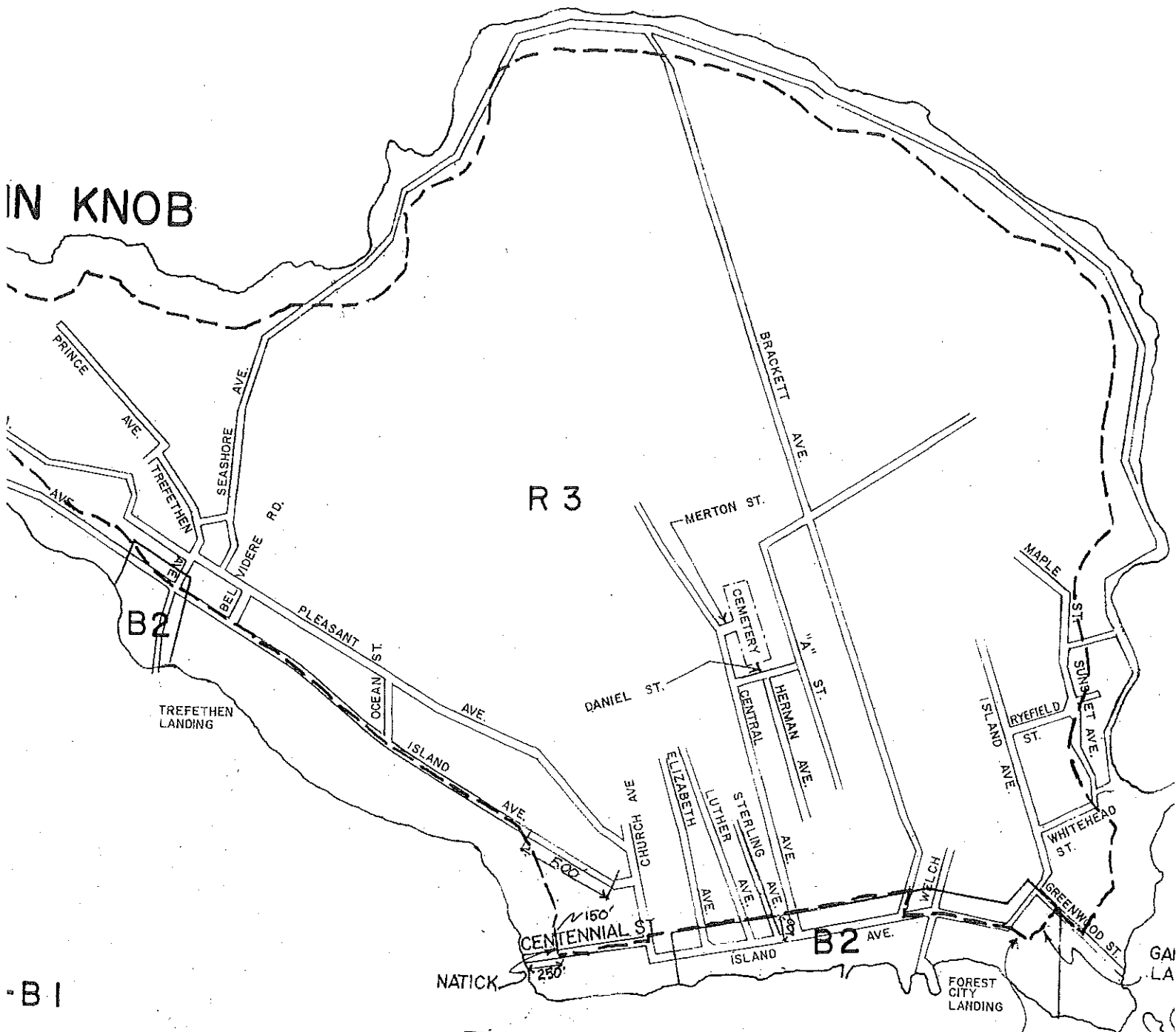
Marge Schmuckal, Zoning Administrator

PG 2

continuance of *lawful use of buildings, structures, premises or parts thereof*. There is no evidence in City records and no evidence submitted by the applicant that the uses outlined by Mr. Edward L. Casey were ever granted permits to show that they were lawful, legal uses. The applicant also has not shown that the uses listed in the affidavit were in uses prior to June 5, 1957. The affidavit states that the uses were in use in the 1970's and 1980's. The applicant has not reached back far enough to be considered lawfully nonconforming. Under the Land Use Zoning Ordinances, these listed uses are not protected under 14-381, and cannot be established as continued lawful uses.

I have no comments regarding the ongoing disputes between the abutters. The focus of this hearing is the letter of violation concerning the appellant and violations on his property.

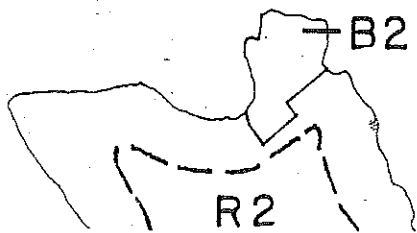
IN KNOB



-B1

PEAKS ISLAND

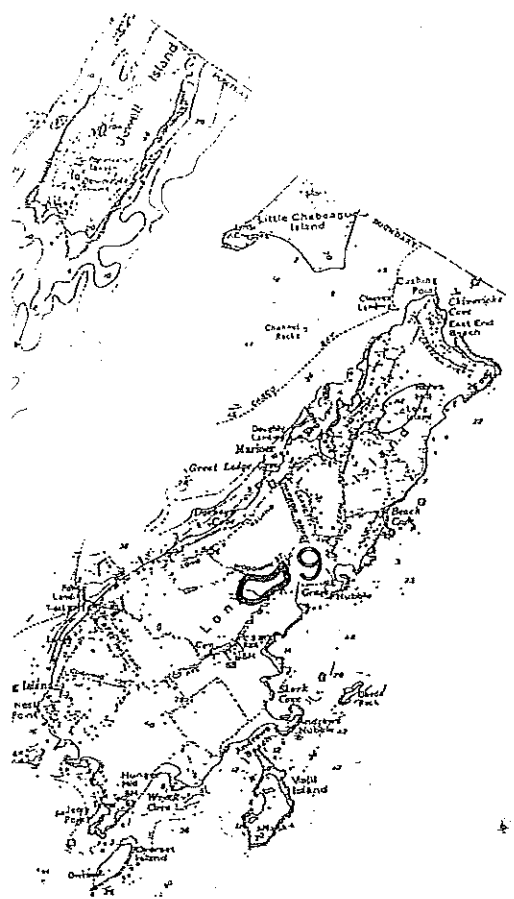
GARDEN PLACE
CATS



DIAMOND

ORDER ADOPTING SHORELAND ZONING REPORT

ORDERED, that the attached Shoreland Zoning Report, dated December 9, 1991, be and hereby is adopted as part of the City's Comprehensive Plan.



CITY OF PORTLAND

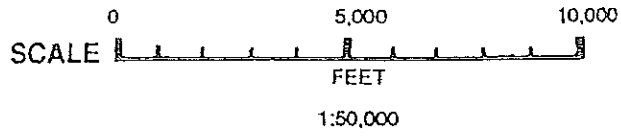
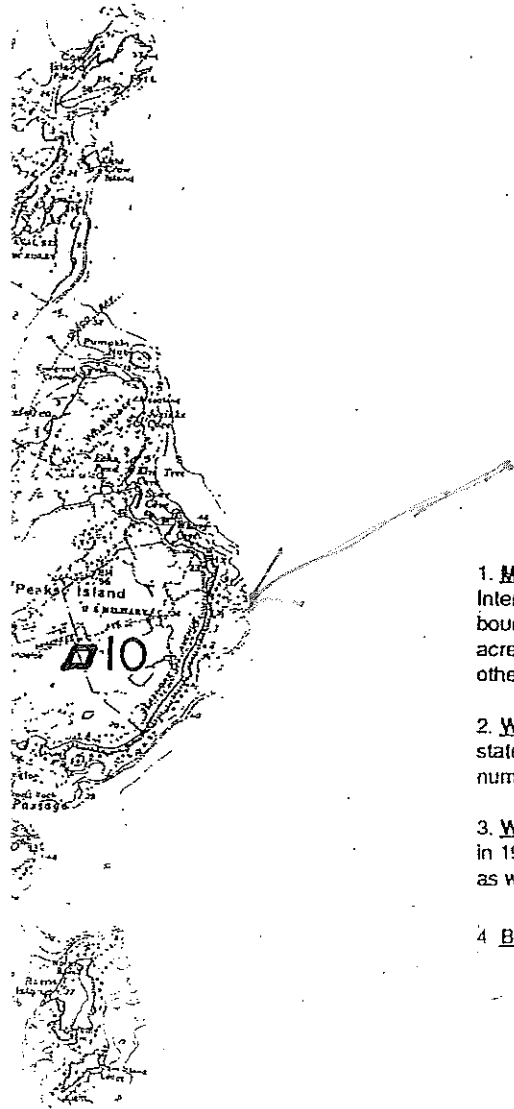
FRESH-WATER WETLANDS MAP

LEGEND

WETLAND BOUNDARY -
 WETLAND IDENTIFICATION NUMBER (ID#) - 123
 WILDLIFE VALUE RATING (WVR) - HIGH(H), MEDIUM (M), LOW(L), NOT RATED (N)

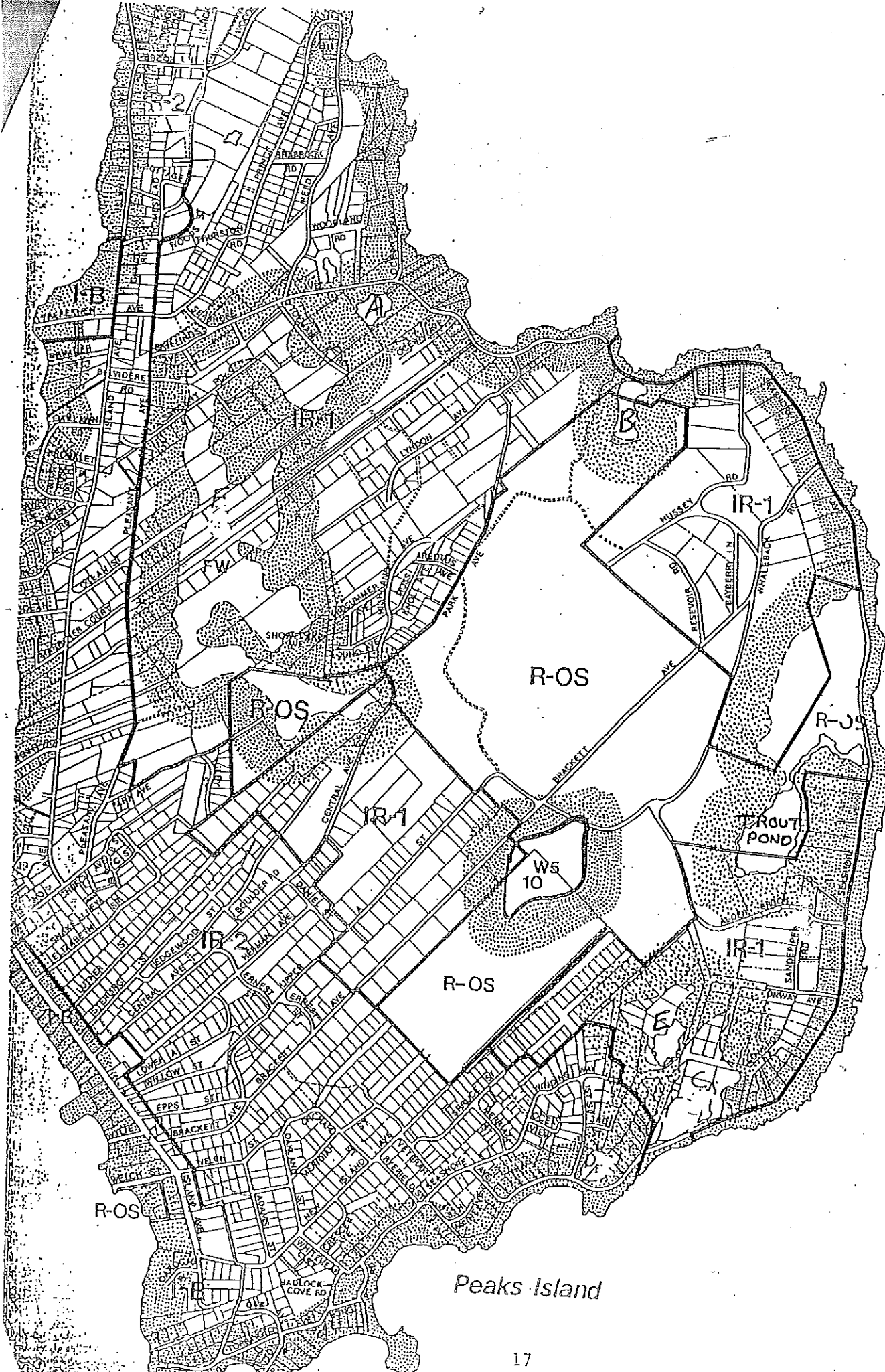
TABLE

ID #	WVR	ID #	WVR	ID #	WVR	ID #	WVR	ID #	WVR	ID #	WVR
7	N										
9	N										
10	N										



NOTES:

1. Mapped Wetlands This map shows non-forested areas identified as wetlands by air photo interpretation. Interpretations were confirmed by soils mapping and other wetlands inventories. Field verification of the location and boundaries of the wetlands should be undertaken prior to development. Forested wetlands, and other wetlands less than acres in size are not shown on this map. Municipalities wishing to identify and protect these other wetlands should consult other wetland data sources.
2. Wetland Identification Number (ID#) The wetland identification numbers on this township map are associated with state-wide, freshwater wetland maps prepared in 1983 by the Maine Geological Survey. Therefore, the wetland ID numbers are not in sequence.
3. Wildlife Value Rating The wetland ratings on this map are based on a wetlands inventory and assessment completed in 1972 by the Maine Department of Inland Fisheries and Wildlife. The rating is primarily associated with a wetland's value as waterfowl habitat. Other important wetland values are not included in this rating.
4. Base Map U S Geological Survey 15' and 7.5' quadrangle maps



Peaks Island