

## Marge Schmuckal - Re: Board of Appeals meeting

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**From:** Marge Schmuckal  
**To:** rory@thesellersplace.com  
**Date:** 6/23/2014 9:59 AM  
**Subject:** Re: Board of Appeals meeting  
**CC:** Trish McAllister; timmi@thesellersplace.com

37 Ballfield Rd et al Peaks  
 88-I-006 et al

Rory,

I am not sure you understand the weight of the Farmland Protection Act. It specifically states: "... agricultural activities may not be considered a violation of a municipal ordinance...". Mr. Johnson is considered protected under the Farmland Protection Act. The City will not appeal the Zoning Board's decision. Any complaints in the operation of his activities will need to be addressed to the State Commissioner. The City will take no further actions against Mr. Johnson or his property.

Marge

>>> <rory@thesellersplace.com> 6/20/2014 9:26 AM >>>

Dear Marge,

We are writing to express our disappointment at the outcome of the zoning appeal yesterday (6/19/2014) which granted Thomas Johnson's appeal of three zoning violations the city had cited him on.

We were even more disappointed by the inability of the city to defend its case. We are very concerned that this ruling will be interpreted as a carte blanche for the appellant and others to disregard basic environmental protections in light of the city's failure to articulate the most basic principles of environmental stewardship at the hearing. Thus, we would appreciate additional dialog with the city. To facilitate this dialog, could you please address the following issues?

1. Is it the policy of the city that you alone present its case, in the presence of appellant lawyers, without the benefit of counsel?
2. When Mr. Johnson's attorney stated and/or implied that you had issued the citations solely to please us, why did you not defend your actions?
3. When Mr. Johnson's attorney impugned the evidence we had presented, why did you not explain that this evidence was photographic in nature and easily verifiable?
4. Why did you ask us, over a period of months, to provide you with photographic evidence of Mr. Johnson's violations without presenting any of this?
5. If your intention was to only present evidence that you had personally collected, why did you not collect a time-base series of photographs, since the appeals board reasonably stated that in the absence of such comparisons they had no basis for finding Mr. Johnson in violation of clearing and cutting rules?
6. Have you had prior experience with zoning board appeals?
7. Did you think that we had prior experience with zoning board appeals?

8. Since you knew you were not going to present evidence that we had collected, and you knew that our presenting this evidence would strengthen the city's case, why did you not inform us that we should provide this evidence at the hearing?

9. Are you aware of prohibitions to activities in wetlands, not just in the shoreland overlay zone?

10. Since the zoning appeals board stated the farm status was irrelevant in its decision concerning clear-cutting, and since non-presented ample photographic and video evidence exists of Mr. Johnson's non-conforming activities of clear-cutting, will the city appeal the decision regarding cutting and clearing?

11. Since the zoning appeals board stated it ruled against the city on the issue of the recreational vehicle because of the way the city stated the violation, will you now recite Mr. Johnson properly, on the grounds of prohibiting residing in an R.V. instead of making reference to dwelling units?

12. Since the zoning appeals board made it clear they were under considerable confusion regarding farming and best practices, will the city consult the Commissioner referenced at the hearing to ascertain a "best practices" finding and on the basis of that finding consider appealing the ruling regarding composting?

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MAY - 6 2014

Dept. of Building Inspections  
City of Portland Maine

May 5, 2014

Marge Schmuckal, Zoning Administrator  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: Appeal of Thomas Covington Johnson 37 Ballfield Road & Mariner Court & Vermont Avenue, Peaks Island - 88-1-(106 to 011 & 013 to 16 & 22 & 88+1-2-3 (the "Property") - IR-1 with Shoreland Overlay and Related FOAA Request

Dear Marge:

I regret that we have not had the opportunity to discuss the above matter, as they might have obviated the need for filing the enclosed Appeal of your ORDER dated April 7, 2014 to cease various activities on his Peaks Island property.

I am enclosing the attached Appeal of Covey Johnson who has authorized me to file it on his behalf. With the exception of his agricultural use, Mr. Johnson been doing nothing differently than he and his predecessor have been doing continuously since before the City changed its island zoning rules.

To the extent that Mr. Johnson has cut vegetation within the shoreland zone, he has merely maintained open areas previously used for agricultural purposes. The property is zoned for agricultural use. Mr. Johnson's composting and other agricultural activities are clearly protected from any municipal enforcement by the Farm Protection Act.<sup>1</sup> I have discussed this matter with Michael Morse of Maine Department of Environmental Protection, and he has authorized me to quote him as opining that: the Farmland Protection Act supercedes the Shoreland Zone Act in protecting existing farming activities, and incursions into the shoreland zone for the continuation of prior farming activities (as broadly defined by the Act), are not subject to the City's shoreland zoning regulations.

7 M.R.S.A. § 154 specifically provides: "A method of operation used by a farm or farm operation located in an area where agricultural activities are permitted may not be considered a violation of a municipal ordinance if the method of operation constitutes best management practices as determined by the commissioner in accordance with section 153, subsection 1." Other sections of the Act provide that absent a complaint to the Commissioner, and a finding by the Commissioner that Mr. Johnson is not using best management practices municipal ordinances have no applicability to farming operations, which are broadly defined in the Act.