

90-A-A-1, 2+5  
Peaks Island  
512 Island Ave.  
Peaks Isl. Fuel  
~~Keith Ivers~~

Att. 1

July 26, 2012

Mr. Alexander Q. Jaegerman, AICP  
Director  
Planning & Urban Development Department  
Planning Division  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

Dear Alex,

It has been some time since I have corresponded with you regarding the decisions and outcomes relating to the off-street parking plans of Keith Ivers and Peaks Island Fuel, 512 Island Avenue, Peaks Island. There are several unresolved questions that I hope you can clarify.

According to the recorded disc of the Planning Board of Appeals meeting held on February 28, 2012 the question was put to the Board relating to the question, "Does 1,320 gallons of fuel stored in either tank and/or truck constitute fuel storage within IB-2 zoned property", according to the definition of the State of Maine DEP? The City Attorney who did not answer the question, but suggested that the Planning Board ask its Attorney.

I have attached a copy of the email sent to me by Mr. David McCaskill of the DEP dated November 16, 2011 where he reconfirms the definition of this rule that 1,320 gallons of fuel stored in a tank and/or truck "overnight" indeed constitutes fuel storage.

1. Has the Planning Board reached a decision regarding this definition?
2. If so, how does it apply to the City Codes defining off street parking within IB-2 zoned property?

If the City of Portland Planning Board allows for fuel storage in this particular case, does this change the code of what is allowed within the definition of IB-2 zoned property versus those codes that govern "Commercial" property? Would re-zoning from a business zone to a commercial zone be required?

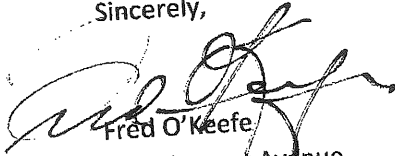
Obviously, because of safety concerns, we are very concerned as to how this issue will be resolved. Since this is a 100% residential use area, regardless of the current zoning with many year round residents, we simply want to be certain that there is the utmost compliance on the part of Peaks Island Fuel to obey all the laws, codes and rules of the City, the State and Federal agencies.

1.2

We hope you understand our sincere desire to want to protect our long established residential neighborhood lifestyles to the best of our abilities and further protect our homes from being threatened by any potential danger/disaster, big or small, as could be inflicted on us by volatile materials such as fuel oil and propane.

Thank you for your attention to this matter. I look forward to your answers which I will forward to all neighbors.

Sincerely,



Fred O'Keefe  
268 Pleasant Avenue  
Peaks Island, ME 04108

Cc: Mr. David McCaskill  
Maine Department of Environmental Protection  
17 State House Station  
28 Tyson Drive  
Augusta, ME 04333-0017

Fred O'Keefe

**From:** McCaskill, David [David.McCaskill@Maine.gov]  
**Sent:** Wednesday, November 16, 2011 2:44 PM  
**To:** Fred O'Keefe  
**Cc:** Bowie, Butch C  
**Subject:** RE: Question

Yes-It is still fuel storage as long as the truck are parked overnight. I have not heard from the town of late but we will check in with them.

Take care,

**From:** Fred O'Keefe [mailto:fokeefe@fsog-llc.com]  
**Sent:** Monday, November 07, 2011 4:03 PM  
**To:** McCaskill, David  
**Cc:** Bowie, Butch C  
**Subject:** Question

David,

As you may recall I corresponded with you back in July of this year regarding the plan submitted by Keith Ivers, Peaks Island Fuel. Recently the City of Portland upheld his request to park fuel trucks on property he is attempting to purchase. The Zoning Board of Appeal also upheld the ruling which would permit the parking of seven (7) vehicles. I have two questions that you hopefully may be able to answer.

1. The resubmitted drawing of the property in question show substantially more of the property within the shoreland zone. What effect will this have in fulfilling State and Federal DEP requirements?
2. Has Mr. Ivers filled the SPCC Plan as required and if so what is the State's recommendations?
3. In the November issue of "The Island Times" and I quote:

"His (Attorney for the Appeal, David Lourey) second argument was that keeping the vehicles at Mr. Ivers's home constituted fuel storage, not parking. This actually caused some consternation among the board members who asked for clarification from the City's Assistant Corporate Council, Danielle West-Chuhta. She and Zoning Administrator Marge Schmuckal both responded, saying that it would constitute storage only if the vehicles were parked for more than 30 days, for instance, if one was inoperable and had not been repaired."

My question to you is what does the DEP consider to be fuel storage. I was under the impression that fuel oil in excess of 1,320 gallons in storage tanks or in his delivery trucks if they are to be parked at the site overnight or longer with product in them does constitute the parking of these vehicles to be in a fuel storage/terminal area.

Is this factual?

Thank you so much for any assistance and/or advice you can provide.

Fred O'Keefe



# CITY OF PORTLAND, MAINE ZONING BOARD OF APPEALS

Interpretation Appeal to the Portland Zoning Board of Appeals ("Board") from the Zoning Administrator's August 18, 2011 determination that proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B Zone

### DECISION

Date of public hearing: October 13, 2011

Name and address of appellants: Ted Haykal, et al. (named in appeal narrative)  
c/o David A. Lourie, Esq.  
189 Spurwink Ave.  
Cape Elizabeth, ME 04107

Location of property under appeal: 512 Island Avenue, Peaks Island  
Tax Map 090, Block AA, Lots 001, 002 & 005

### For the Record:

Names and addresses of witnesses (proponents, opponents and others):

David A. Lourie, Esq. for Appellants

Danielle West-Chuta, Assoc. Corp. Counsel for City of Portland Zoning Administrator Marge Schmuckal; City of Portland Zoning Administrator Marge Schmuckal; City Traffic Consultant Tom Errico;

Ted Small, Esq. for Keith Ivers/Peaks Island Fuel.

### Proponents:

1. Ted Haykal, 522 Island Avenue
2. Mr. Steven Riccuchi
3. Arthur Fink
4. Jeanne Meuse, 11 Trefethen Ave.
5. Joanne MacIsaac, 499 Island Ave.
6. Jean Gulliver, Trefethen Evergreen Improvement Association

- 7. Liz Williams
- 8. Ron DeLucia, 499 Island Ave.
- 9. Nancy Hoffman, Brackett Ave.

Opponents:

- 1. Stephen Mohr, 18 Pleasant Street
- 2. Nancy Cuthbertson, 341 Island Avenue
- 3. Ed Ranney, Island Ave.
- 4. Eric Conrad, 152 Brackett Ave.
- 5. Eric Eaton, Peaks Island Council
- 6. Mike Grady, Island Ave.
- 7. Dan Doane, 364 Island Ave.
- 8. Kyle Green, 188 Central Ave.
- 9. Paul Rico, 58 Elizabeth St.
- 10. Keith Ivers, Peaks Island Fuel Owner
- 11. Lisa Lynch
- 12. Sidney Gerard, Island Ave.
- 13. Rob Tiffany, 38 Centennial St.
- 14. Paul 341 Island Ave.
- 15. Rand Gee
- 16. Hutch Brown, Island Ave.
- 17. Chris Vail, Island Ave.
- 18. Robert Haines, Holm Ave.

Exhibits admitted (e.g. renderings, reports, etc.):

- 1. Interpretation Appeal Application, dated Sept. 16, 2011 by David A. Lourie, Esq., incl.:

**Exhibit A**, Aug. 18, 2011 determination by Zoning Administrator Marge Schmuckal;  
**Exhibit B-1**, Aug. 8, 2011 letter from Terradyn Consultants LLC to Portland Planning Dept., Keith Ivers' letters to Planner Erick Giles, notice of the July 28, 2011 Peaks Island Council meeting, Grading and Erosion Control, Site and Landscaping Plans, Stormwater Management Plan;  
**Exhibit B-2**, Site Plan, Landscaping Plan and Details & Notes;  
**Exhibit C**, photographs of vehicles;  
**Exhibit D**, City of Portland Technical Manual, Section 1 (Transportation Systems and Street Design);  
**Exhibit E**, March 20, 1989 City Council Order amending City Code §§ 14-331 and 341.

- 2. Letters.

- a. Letters from Frederick W. O'Keefe and Phyllis A. MacIsaac to Board of Appeals on Sept. 29, 2011;

- b. Email from Susan Hanley to Marge Schmuckal, Oct. 4, 2011;
  - c. Letter from Jonathan and Beth Brown to Board of Appeals, Oct. 1, 2011;
  - d. Letter from Michael Beebe to Board of Appeals, Sept. 29, 2011;
  - e. Letter from Alison and Shergul Arshad to Board of Appeals, Sept. 29, 2011.
  - f. Email from John S. and Anne E. Whitman dated Oct. 13, 2011.
  - g. Email from Tom Morse dated Oct. 13, 2011.
  - h. Letter from Bruce and Lori Hochman dated Oct. 13, 2011.
3. Cover Memo from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 5, 2011, transmitting prior comments from public regarding 512 Island Ave., Peaks Island (139 pages of correspondence).
4. Memorandum from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 13, 2011.

### Findings of Fact and Conclusions of Law:

#### Findings of Fact:

The Board's authority to review an interpretation of the building authority (Zoning Administrator) is pursuant to Section 14-472 of the City of Portland Code of Ordinances, Chapter 14 ("Land Use Code").

Keith Ivers is the owner of Peaks Island Fuel. He proposes to park seven vehicles -- four 2,800 gallon fuel trucks used in Mr. Ivers' propane and oil delivery business and three passenger vehicle-sized service vehicles used in Mr. Ivers' heating repair business -- on a "parcel" located at 512 Island Avenue, Peaks Island consisting of several lots, which is improved by a single-family dwelling. Mr. Ivers stated that Peaks Island Fuel's offices are at 66 Island Avenue, and that the Peaks Island fuel trucks and other vehicles currently are parked on rented space on Welch Street, above the ferry landing. He and other members of the public observed that the present parking location is in the midst of much pedestrian traffic and is subject to vandalism and litter. Mr. Ivers also stated that there would be no filling or fueling, major maintenance or washing of the vehicles in the proposed off-street parking area; that the vehicles may contain some amounts of fuel when parked overnight after deliveries in case evening emergency fuel deliveries are needed, but the trucks would not be filled with fuel; and that fueling of the vehicles occurs at the barge site for oil and kerosene and on the mainland for propane filling. In addition, Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation.

This parcel is located in the Island-Business (I-B) District, in which "Off-Street Parking" is a permitted use as stated in Section 14-233 (f) of the Land Use Code. Section 14-331 of the Land Use Code defines "Off Street Parking" as follows:

### Sec. 14-331. Defined.

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

By letter dated Aug. 18, 2011, the City's Zoning Administrator determined that Mr. Ivers' proposed use is a permitted "off-street parking" use in the I-B Zone. In that letter, the Zoning Administrator determined that Sec. 14-223(f) and 14-331 of the Land Use Code "do not limit the allowable 'off-street parking' to any particular type of use or only allow parking as an accessory use," that the spaces can be either open air or garage spaces, that "The proposed parking area is meeting the standards in the City's Technical Manual," and that the "proposed parking lot is not a truck terminal" because the trucks are not warehoused or stored on the site, the trucks are not filled or fueled and no product is dispensed on site. As a permitted use, the proposed fuel truck/other vehicle parking use would be reviewed by the City's Planning Department under the site plan provisions of the Land Use Code.

The appellants, represented by David A. Lourie, Esq., filed an appeal on Sept. 19, 2011. Appellants assert that the definition of "off-street parking" in Sec. 14-331 means parking for automobiles and compact cars as defined by the City of Portland Technical Manual, Section 1. Appellants argue that the Technical Manual provides for parking spaces 19' in length and 8½' to 9' in width, while the proposed parking lot plans depict parking spaces as long as 22' and as wide as 12', and that the Land Use Code's reference to the Technical Manual limits the off-street parking use to passenger cars and motorcycles. Appellants also argue that the City Council's intent in amending § 14-331 in 1989 to incorporate the Technical Manual by reference was to allow off-street compact car parking. In addition, they argue that the proposed use actually is a "Truck Terminal" use which is prohibited in the I-B -- the storage of trucks, "for use in delivering fuel and services elsewhere on the island." Finally, Appellants argue that the determination was made without adequate consideration for the purposes of the Land Use Code as expressed in Sec. 14-46.

Section 14-47 of the Land Use Code defines "Truck Terminal" as follows:

*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

The defined use "Truck Terminal" is not listed as a permitted or conditional use in the I-B Zone. Under Sec. 14-225 of the Land Use Code, "Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

**Conclusions of Law:**

For reasons that follow, the Board concludes that Appellants have not met their burden of demonstrating that the Zoning Administrator's interpretation of the Land Use Code was incorrect or improper.

First, the Board concludes that the proposed use does constitute "off-street parking," which is a permitted use in the I-B Zone (Sec. 14-223(f)). The Board looks to the plain meaning of Secs. 14.223 (f) and 14-331, which establish "off-street parking" as a permitted use without limitation in the I-B zone in which the parcel is located.

The Board is aware that Sec. 14-331 of the Land Use Code provides that "Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, ... ." However, the Board does not interpret Sec. 14-331 and the Technical Manual incorporated thereby by reference as limiting the "off-street parking" use to passenger vehicles only, or as limiting the dimensions of parking spaces allowed in off-street parking spaces in the City of Portland to 9' by 19' passenger vehicle spaces or to 8½' by 19' compact car spaces. This is because construing the Land Use Code as a whole, other sections of the Land Use Code that refer to off-street parking imply that the off-street parking use also includes commercial motor vehicles. For example, Sec. 14-335 sets forth what off-street parking does **not** include, such as: more than one commercial motor vehicle in any residence, R-P or B-1 Zone (Sec. 14-335(a)); more than six commercial motor vehicles in any B-2 Zone (Sec. 14-335 (b)); and "any truck body, commercial trailer or similar commercial vehicles in residence zone or the R-P Zone" (Sec. 14-335(e)). In addition, Sec. 14-344 permits the Board or the Planning Board to permit off-street parking accessory to business uses but located in residential zones, with the limitation that the off-street parking be "for passenger cars only." These provisions demonstrate that the "off-street parking" use is available for **both** passenger vehicles and commercial vehicles, and that the passenger car and compact car stall dimensions in the Technical Manual must be minimum dimensions -- not fixed standards. Further, construing the Land Use Code as Appellants suggest would mean that larger commercial vehicles and trucks cannot be parked in off-street parking sites in Portland, a result that is not consistent with the Land Use Code as interpreted by the Board above or with observed practice in the City of Portland.

Second, the Board concludes that the proposed parking of seven Peaks Island Fuel vehicles is not a prohibited "Truck Terminal" use. In so concluding, the Board

notes that the definition of "truck terminal" in Section 14-47 of the Land Use Code begins: "A building and premises devoted to handling and temporary warehousing of goods, ..." The plans for the proposed parking area do not include a building, and the definition does not state "A building or premises"; therefore, the proposed use fails to meet this definition. Also, while Appellants argues that there is a distinction between "parking" and "storage" and argue that under the definition of "truck terminal," storage of trucks constitutes a truck terminal, a closer reading of the definition does not support that argument. The full definition reads:

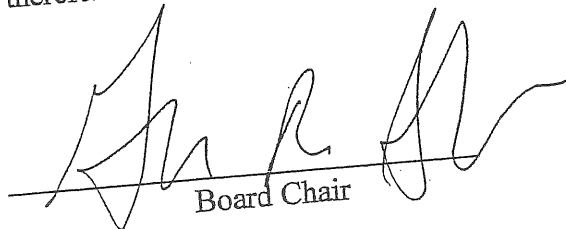
*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

Thus, while the "storage of trucks" "may be included" in the definition of "truck terminal," the storage of trucks does not by itself constitute a "truck terminal" use. Moreover, Mr. Ivers stated that his proposed off-street parking use for the Peaks Island Fuel vehicles does not include major maintenance, which would be conducted off site and does not include fueling, which he said occurs at the barge site for oil and kerosene and on the mainland for propane filling. Moreover, to the extent any distinction between "storage" and "parking" is relevant to this appeal, the Land Use Code prohibits "storage" outside of more than one unregistered motor vehicle "for a period in excess of thirty (30) days in any residence zone, the R-P Zone or any business zone." Sec. 14-335(d). Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation, so that this section does not apply.

**Decision:**

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

Dated: Oct. 20, 2011

  
Board Chair

Att. 4



# PORTLAND MAINE

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Planning & Urban Development Department  
Amy St. Louis Littell, Director

Planning Division  
Alexander Jaegerman, Director

October 27, 2011

Keith Ivers  
Peaks Island Fuel  
P.O. Box 6  
Peaks Island, ME 04108

Jeff Amos, P.E.  
Terradyn Constultants, LLC  
P.O. Box 339  
New Gloucester, ME 04260

Project Name:	Peaks Island Fuel	Project ID:	2011-277
Address:	512 Island Avenue	CBL:	090-AA-1, 2 and 5
Applicant:	Keith Ivers		
Planner:	Barbara Barhydt, Development Review Services Manager		

Dear Mr. Ivers and Mr. Amos

On October 27, 2011, the Planning Authority approved with conditions a Level I: Site Alteration site plan for a seven (7) vehicle parking lot, four (4) truck spaces and three (3) vehicle spaces, for Peaks Island Fuel at 512 Island Avenue, Peaks Island. The decision is based upon the application documents and plans as submitted by Keith Ivers and prepared by Jeff Amos, P.E with a revision date on the site plans of 9/16/11. In addition, the applicant submitted a copy of the Spill Prevention, Control and Countermeasures Plan that was reviewed by the MDEP, Bureau of Remediation and Waste Management, and approved by Butch Bowie, DEP Environmental Specialist, on August 23, 2011 (Attachment 3). The proposal was reviewed for conformance with the standards of Portland's site plan ordinance and shoreland zoning. The review comments from City Staff are included as Attachments 1a-1g) The Zoning Board of Appeals confirmed that the parking lot is permitted in the Island Business I-B zone with their October 20, 2011 decision (Attachment 3).

### SITE PLAN STANDARD WAIVERS

The applicant requested two waivers from the technical standards. The Planning Authority waives the Technical Standards as follows:

1. **Bicycle Parking:** The applicant states that the parking lot is not for public use and there will be no vehicular or pedestrian traffic into the parking area except for employees of

Peak's Island Fuel. The site plan standard (Section 14-526 b. (i) (c) requires two bicycle spaces.

The Planning Authority waives the requirement for bicycle parking under the waiver criteria of 14-526 b. (ii) due to the facts that the parking area is for the Peaks Island Fuel vehicles, which is not open to the public, is active time of use will be during the winter months, and is located in an outlying area on the island.

- 2. Driveway width: The applicant is proposing a 12 foot wide driveway rather than the 20 foot minimum to the parking area. From a traffic engineering perspective, the reduced width is not expected to be problematic and low traffic volumes on Island Avenue. The narrower drive is proposed to better screen the parking by increasing the available buffer between the gravel surface and the abutting property. As stated in the request, Peak's Island Fuel has only one full time driver and one part-time driver, so there will not be opposing vehicles at any time. Also, the parking area is not open to the public. Finally, the Fire Department has concluded that the proposed driveway width is acceptable due to the fact the driveway into the parking lot is not to a building requiring fire apparatus access.

The Planning Authority waives the standard in the Technical Manual, Section 1, 1.7 Driveway Design to reduce the minimum two-way driveway width from 20 feet to 12 feet per the authority of Section 14-524 (a) 3.v (v)(h) and finds that the public interest is secured with a more prominent buffer, while maintaining a safe driveway, as described/approved by the Traffic Engineer and the Fire Department, and that the variation does not nullify the intent and purpose of the land development plan and regulations.

- 3. Parking lot dimensions: The applicant is proposing four larger parking stalls of 12 by 22 feet for the trucks with a travel aisle width of 28 feet. The rest of the parking spaces are proposed to be 9 x18 feet.

The Planning Authority supports the four larger parking spaces and the wider aisle width to accommodate the truck parking and circulation, which exceed the minimum dimensional standard of 9x18 feet for a parking space and twenty-four (24) feet for an aisle width as established in the Technical Manual, Section 1.14 and standard figure 1-27. The proposed parking dimensions and lay out allow the parking lot to function in a safe manner. The larger spaces and aisle width will not have the effect of nullifying the intent and purpose of the land development plan and the city regulations.



**SITE PLAN REVIEW**

The Planning Authority found the plan is in conformance with the Site Plan Ordinance (Article V) of the Land Use Code, subject to the following condition(s) of approval:

1. The future storage area shown on the site plan is not approved as part of this decision. Any proposed structure must be submitted for the applicable reviews and permits.
2. The applicant and all assigns, must comply with stormwater inspection and maintenance plan and housekeeping plan as included in the applicant's site plan documents and the post-construction stormwater management plan compliance requirements and annual reporting as specified in Chapter 32 of the City Code.
3. The Fire Department approves the driveway into the storage lot as it is not to a building requiring fire apparatus access. However, if a structure is built in this storage lot, a minimum of a 16' wide driveway may be required; and at the entryway it may need to be modified to meet the turning radius of fire apparatus. If a structure is built in the future, code may require a sprinkler system.

The approval is based on the submitted site plan and associated documentation. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

**STANDARD CONDITIONS OF APPROVAL**

Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.

4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager at (207) 874- 8699.

Sincerely,

  
Alexander Jaegerman  
Planning Division Director

Attachments:

1. Staff Memorandums
  - a. Memorandum from Lauren Swett, P.E., Woodard and Curran, October 5, 2011
  - b. Thomas Errico, P.E, T.Y. Lin, October 19, 2011
  - c. Jeff Tarling, City Arborist, August 25, 2011
  - d. Jeff Tarling, City Arborist, October XXX
  - e. Captain Chris Pirone, Fire Department, October 18, 2011
  - f. Marge Schmuckal, review comments, July 15, 2011
  - g. Marge Schmuckal, Zoning Determination, August 18, 2011
  - h. Marge Schmuckal, Review Comments, October 25, 2011
2. Zoning Board of Appeals Decision, October 20, 2011
3. Butch Bowie, DEP, approval of spill prevention plan, August 23, 2011,
4. Chapter 32 – Storm Water
5. Performance Guarantee Packet

**Electronic Distribution:**

- Penny St. Louis, Director of Planning and Urban Development Department
- Alexander Jaegerman, Planning Division Director
- Philip DiPierro, Development Review Coordinator, Planning
- Marge Schmuckal, Zoning Administrator, Inspections Division
- Tammy Munson, Inspection Division Director,
- Lannie Dobson, Administration, Inspections Division
- Michael Bobinsky, Director, Public Services
- Katherine Earley, Engineering Services Mgr., Public Services
- Bill Clark, Project Engineer, Public Services
- David Margolis-Pineo, Deputy City Engineer, Public Services
- Jane Ward, Administration, Public Services
- Capt. Chris Pirone, Fire Department
- Jeff Tarling, City Arborist, Public Services
- Thomas Errico, P.E., T.Y. Lin Associates
- David Senus, P.E., Woodard & Curran
- Assessor's Office
- Approval Letter File

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AH. 1a

## MEMORANDUM

TO: Barbara Barhydt, Planner  
FROM: Lauren Swett, P.E.  
DATE: October 5, 2011  
RE: 512 Island Ave

As follow up to the response to comments and revised plans received from the applicant for 512 Island Ave, Peaks Island, we offer the following comments.

### Documents Provided

- Response to Comments and attachments for Peaks Island Fuel, dated September 22, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.
- Engineering Plans for Peaks Island Fuel, Sheets 1-4, revised September 16, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.

### Comments

The Applicant has responded to the comments noted in Woodard & Curran's memorandums dated August 19, 2011 and August 25, 2011. The applicant's letter and plan revisions adequately address our comments.



**Barbara Barhydt - 512 Island Avenue**

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Barbara Barhydt <BAB@portlandmaine.gov>  
**Date:** Wednesday, October 19, 2011 5:28 PM  
**Subject:** 512 Island Avenue  
**CC:** Katherine Earley <KAS@portlandmaine.gov>, David Margolis-Pineo <DMP@port...

Barbara – The following summarizes my final comments noted as a status report from my August 25<sup>th</sup> email.

- The proposed commercial driveway does not meet City standards for width. Based upon low traffic usage, repeat driver use, and the fact that customers will not be accessing the site, I support a waiver for the construction of a 12-foot wide driveway.

**Status: No response needed.**

- The applicant should define the location of the driveway as it relates to abutting driveways and whether it meets the City's driveway separation standard. I'm not concerned about this issue, based upon traffic volumes on Island Avenue and traffic entering and exiting relevant driveways, but want to note whether a standard waiver is required.

**Status: According to the applicant, the area is informally used in respect to vehicle access and parking. Based upon the issues noted above, I find conditions to be acceptable.**

- I support a waiver from the City's technical standards regarding the truck parking stall dimensions (12' x 22') and the parking aisle width (28') to assist with on-site circulation movements. I do not support the provision of the 10' x 20' parking stalls and would suggest that they be reduced to meet city standards (9' x 18').

**Status: The plans have been revised and I have no further comment.**

- The applicant should provide information on the adequacy of sight distance exiting the proposed driveway.

**Status: The applicant has indicated that adequate sight distance will be provided and I have no further comment.**

- In my professional opinion the proposed project will not significantly impact safety or traffic mobility in the area of the project.

**Status: No response needed.**

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate

4.8

l d c

**From:** Jeff Tarling  
**To:** Eric Giles  
**Date:** 8/25/2011 3:12 PM  
**Subject:** 512 Island Avenue / Peaks Island

Hi Eric -

I have reviewed the proposed project at 512 Island Avenue and offer the following comments / conditions:

- 1) Plant sizes - Shade and ornamental trees proposed did not meet the city standard sizes, shade trees such as Red Maple should be 2.5" caliper, ornamental trees 2" caliper, and evergreens 5-6' in height minimum. The shrub sizes proposed did meet standards.
- 2) Additional screening recommendation - I would recommend an additional 5 lilac shrubs to screen the adjacent residential property, this screening can follow the note on the plan to be coordinated between the project team and neighbor.
- 3) Fencing - In addition to the proposed fencing to screen the parking lot, I would recommend a simple wooden split-rail fence that would run from about the timber retaining wall along the entrance drive following the property line. This fencing would be to demarcate the property line and serve as a safety for children or other residential visitors from venturing into the proposed parking area. This could be an option with agreement from the neighbor.

Overall, the landscape plan saves existing trees, plants additional mix of shade and evergreen trees along with shrubs to help buffer the project.

Thanks,

Jeff Tarling  
City Arborist

4.8

1 d.

**From:** Jeff Tarling  
**To:** Barbara Barhydt  
**Date:** Tuesday, October 25, 2011 3:39 PM  
**Subject:** 512 Island Avenue Revisions

Hi Barbara -

I have reviewed the revised plans for 512 Island Avenue and find the plan acceptable as shown.

The additional lilac shrubs along with the fencing and earlier landscape planting meet the earlier review comments. We would be able to meet with the applicant or other concerns on-site to review the placement 'Post Construction' to go over plant placements in regards to screening, snow storage and sight distances.

Jeff Tarling  
City Arborist

4.10

le

**From:** Chris Pirone  
**To:** Barhydt, Barbara  
**Date:** Tuesday, October 18, 2011 11:01 PM  
**Subject:** Re: 512 Island Avenue

Fire comments:

I am all set with this project as the driveway into the the storage lot is not to a building requiring fire apparatus access. However, if a structure is built in this storage lot, a minimum of a 16' wide driveway may be required; and at the entryway it may need to be modified to meet the turning radius of fire apparatus.

If a structure is built in the future, code may require a sprinkler system.

Captain Chris Pirone  
Portland Fire Department  
Fire Prevention Bureau  
380 Congress Street  
Portland, ME 04101  
(t) 207.874.8405  
(f) 207.874.8410

>>> Barbara Barhydt 10/12/11 8:14 AM >>>

Hello:

I would like to wrap up this review, which had been Erick's project. I have memos from Tom, Jeff and David date August 25, 2011, but I don't see anything since then. I know we have discussed this project and I believe you are satisfied with the most recent version. I need to have your sign off in writing.

Chris, I cannot find any comments from you on this project. Could you direct me to your comments and approval. The oil spill prevention control and countermeasure plan that was approved by DEP is one of the documents listed in One Solution.

Thank you.

Barbara



4.11

1 f.

512 Island Avenue – Peaks Island – 90-AA-1, 2, 5

#2011-277

7/15/2011 This is a proposal to create a small, gravel parking lot for up to 7 vehicles . Currently there is a single family dwelling located along Island Avenue. The lot is consists of three separate parcels. The lot is divided by two separate zones: the IR-2 zone and the I-B zone. A portion of the outer edge of the 250' Shoreland Zone also extends into the property. The dwelling is located in the IR-2 zone and the proposed parking lot is located within the I-B zone.

Currently up to seven (7) vehicles are proposed to be parked upon the lot within the I-B zone. The applicant should review sections 14-339 and 14-340 and 14-341 to supply further information before I can make a final determination on zoning compliance. It is my understanding that there will be some refinements to the application.

Marge Schmuckal

Zoning Administrator

4.12

19



# PORTLAND MAINE

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St. Louis - Director of Planning and Urban Development  
Schmuckal, Zoning Administrator

512 Island Avenue, Peaks Island  
90-AA-1, 2, 5 - IR-2/I-B Zone

August 18, 2011

The applicant, Mr. Ivers, is showing a vehicle parking lot for seven (7) vehicles located at 512 Island Avenue, Peaks Island. Currently a single family house is located on one portion of the lot. The proposed parking area will be located on another portion of the lot and has sufficient space to park four 2,800 gallon fuel trucks and three passenger-vehicle sized service vehicles. The vehicles are all to be actively used by Mr. Ivers in his heating and fuel oil business. The proposed parking area is shown entirely within the I-B zone.

Section 14-223(f) indicates that "off-street parking" is a permitted use in the I-B island business zone.

Section 14-331 defines "off-street parking" as parking "either by use of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended...."

The above sections do not limit the allowable "off-street parking" to any particular type of vehicle or only allow parking as an accessory use. Instead, the I-B zone allows off-street parking as a specific permitted use and the definition makes clear that the parking spaces can either be open-air or garage spaces that meet the standards in the City's Technical Manual. The proposed parking area is meeting the standards in the City's Technical Manual. As a result, I have determined that the parking lot described in Mr. Iver's application is permitted under the City Code.

It is important to note that I have reviewed the definition for a truck terminal. A "truck terminal" is defined in the City's Land Use Zoning Ordinance as:  
"a building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations".

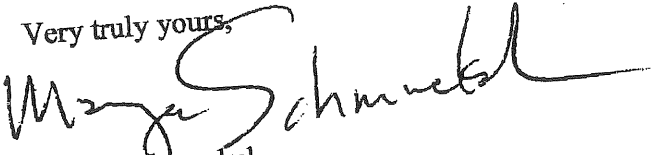
Mr. Iver's proposed parking lot is not a truck terminal. This is because his trucks are not warehoused or stored on the site. The trucks are also not filled, fueled and no product will be dispensed on the site. Instead, the trucks are just parked on this site for active use as needed in Mr. Ivers' propane and oil delivery business. The other vehicles that will be parked on the site are also for active use with Mr. Ivers' heating repair business. Mr. Ivers' business has been active through four generations and has garnered many clients on Peaks Island.

4.13

lg

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have thirty days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,



Marge Schmuckal  
Zoning Administrator

- Cc: Penny St. Louis, Director of Planning and Urban Development  
Alex Jaegerman, Division Director of Planning  
Barbara Barhydt, Development Review Service Manager  
Erick Giles, Planning  
Danielle West-Chuhta, Corporation Counsel  
Mike Murray, Island/Neighborhood Liaison

4.14

lh

512 Island Avenue – Peaks Island – 90-AA-1, 2, 5

#2011-277

**10/25/2011** This project has been approved by Zoning for all the underlying I-B zone requirements and Shoreland Zoning requirements.

Separate permits are required by Inspection Services for the use and the parking lot.

It is also noted that the Zoning Board of Appeals approved the parking lot use at its hearing on 10/13/2011 and made a final vote and accepted the findings of fact on 10/20/2011.

Marge Schmuckal

Zoning Administrator

# CITY OF PORTLAND, MAINE ZONING BOARD OF APPEALS

**Interpretation Appeal** to the Portland Zoning Board of Appeals ("Board") from the Zoning Administrator's August 18, 2011 determination that proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B Zone.

### DECISION

Date of public hearing: October 13, 2011

Name and address of appellants: Ted Haykal, et al. (named in appeal narrative)  
c/o David A. Lourie, Esq.  
189 Spurwink Ave.  
Cape Elizabeth, ME 04107

Location of property under appeal: 512 Island Avenue, Peaks Island  
Tax Map 090, Block AA, Lots 001, 002 & 005

### For the Record:

**Names and addresses of witnesses (proponents, opponents and others):**

David A. Lourie, Esq. for Appellants

Danielle West-Chuta, Assoc. Corp. Counsel for City of Portland Zoning Administrator Marge Schmuckal; City of Portland Zoning Administrator Marge Schmuckal; City Traffic Consultant Tom Errico;

Ted Small, Esq. for Keith Ivers/Peaks Island Fuel.

### Proponents:

1. Ted Haykal, 522 Island Avenue
2. Mr. Steven Riccuchi
3. Arthur Fink
4. Jeanne Meuse, 11 Trefethen Ave.
5. Joanne MacIsaac, 499 Island Ave.
6. Jean Gulliver, Trefethen Evergreen Improvement Association

- 7. Liz Williams
- 8. Ron DeLucia, 499 Island Ave.
- 9. Nancy Hoffman, Brackett Ave.

Opponents:

- 1. Stephen Mohr, 18 Pleasant Street
- 2. Nancy Cuthbertson, 341 Island Avenue
- 3. Ed Ranney, Island Ave.
- 4. Eric Conrad, 152 Brackett Ave.
- 5. Eric Eaton, Peaks Island Council
- 6. Mike Grady, Island Ave.
- 7. Dan Doane, 364 Island Ave.
- 8. Kyle Green, 188 Central Ave.
- 9. Paul Rico, 58 Elizabeth St.
- 10. Keith Ivers, Peaks Island Fuel Owner
- 11. Lisa Lynch
- 12. Sidney Gerard, Island Ave.
- 13. Rob Tiffany, 38 Centennial St.
- 14. Paul 341 Island Ave.
- 15. Rand Gee
- 16. Hutch Brown, Island Ave.
- 17. Chris Vail, Island Ave.
- 18. Robert Haines, Holm Ave.

Exhibits admitted (e.g. renderings, reports, etc.):

- 1. Interpretation Appeal Application, dated Sept. 16, 2011 by David A. Lourie, Esq., incl.:

Exhibit A, Aug. 18, 2011 determination by Zoning Administrator Marge Schmuckal;  
 Exhibit B-1, Aug. 8, 2011 letter from Terradyn Consultants LLC to Portland Planning Dept., Keith Ivers' letters to Planner Erick Giles, notice of the July 28, 2011 Peaks Island Council meeting, Grading and Erosion Control, Site and Landscaping Plans, Stormwater Management Plan;  
 Exhibit B-2, Site Plan, Landscaping Plan and Details & Notes;  
 Exhibit C, photographs of vehicles;  
 Exhibit D, City of Portland Technical Manual, Section 1 (Transportation Systems and Street Design);  
 Exhibit E, March 20, 1989 City Council Order amending City Code §§ 14-331 and 341.

- 2. Letters.
  - a. Letters from Frederick W. O'Keefe and Phyllis A. MacIsaac to Board of Appeals on Sept. 29, 2011;

- b. Email from Susan Hanley to Marge Schmuckal, Oct. 4, 2011;
- c. Letter from Jonathan and Beth Brown to Board of Appeals, Oct. 1, 2011;
- d. Letter from Michael Beebe to Board of Appeals, Sept. 29, 2011;
- e. Letter from Alison and Shergul Arshad to Board of Appeals, Sept. 29, 2011.
- f. Email from John S. and Anne E. Whitman dated Oct. 13, 2011.
- g. Email from Tom Morse dated Oct. 13, 2011.
- h. Letter from Bruce and Lori Hochman dated Oct. 13, 2011.

3. Cover Memo from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 5, 2011, transmitting prior comments from public regarding 512 Island Ave., Peaks Island (139 pages of correspondence).

4. Memorandum from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 13, 2011.

**Findings of Fact and Conclusions of Law:**

**Findings of Fact:**

The Board's authority to review an interpretation of the building authority (Zoning Administrator) is pursuant to Section 14-472 of the City of Portland Code of Ordinances, Chapter 14 ("Land Use Code").

Keith Ivers is the owner of Peaks Island Fuel. He proposes to park seven vehicles -- four 2,800 gallon fuel trucks used in Mr. Ivers' propane and oil delivery business and three passenger vehicle-sized service vehicles used in Mr. Ivers' heating repair business -- on a "parcel" located at 512 Island Avenue, Peaks Island consisting of several lots, which is improved by a single-family dwelling. Mr. Ivers stated that Peaks Island Fuel's offices are at 66 Island Avenue, and that the Peaks Island fuel trucks and other vehicles currently are parked on rented space on Welch Street, above the ferry landing. He and other members of the public observed that the present parking location is in the midst of much pedestrian traffic and is subject to vandalism and litter. Mr. Ivers also stated that there would be no filling or fueling, major maintenance or washing of the vehicles in the proposed off-street parking area; that the vehicles may contain some amounts of fuel when parked overnight after deliveries in case evening emergency fuel deliveries are needed, but the trucks would not be filled with fuel; and that fueling of the vehicles occurs at the barge site for oil and kerosene and on the mainland for propane filling. In addition, Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation.

This parcel is located in the Island-Business (I-B) District, in which "Off-Street Parking" is a permitted use as stated in Section 14-233 (f) of the Land Use Code. Section 14-331 of the Land Use Code defines "Off Street Parking" as follows:

**Sec. 14-331. Defined.**

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

By letter dated Aug. 18, 2011, the City's Zoning Administrator determined that Mr. Ivers' proposed use is a permitted "off-street parking" use in the I-B Zone. In that letter, the Zoning Administrator determined that Sec. 14-223(f) and 14-331 of the Land Use Code "do not limit the allowable 'off-street parking' to any particular type of use or only allow parking as an accessory use," that the spaces can be either open air or garage spaces, that "The proposed parking area is meeting the standards in the City's Technical Manual," and that the "proposed parking lot is not a truck terminal" because the trucks are not warehoused or stored on the site, the trucks are not filled or fueled and no product is dispensed on site. As a permitted use, the proposed fuel truck/other vehicle parking use would be reviewed by the City's Planning Department under the site plan provisions of the Land Use Code.

The appellants, represented by David A. Lourie, Esq., filed an appeal on Sept. 19, 2011. Appellants assert that the definition of "off-street parking" in Sec. 14-331 means parking for automobiles and compact cars as defined by the City of Portland Technical Manual, Section 1. Appellants argue that the Technical Manual provides for parking spaces 19' in length and 8½' to 9' in width, while the proposed parking lot plans depict parking spaces as long as 22' and as wide as 12', and that the Land Use Code's reference to the Technical Manual limits the off-street parking use to passenger cars and motorcycles. Appellants also argue that the City Council's intent in amending § 14-331 in 1989 to incorporate the Technical Manual by reference was to allow off-street compact car parking. In addition, they argue that the proposed use actually is a "Truck Terminal" use which is prohibited in the I-B -- the storage of trucks, "for use in delivering fuel and services elsewhere on the island." Finally, Appellants argue that the determination was made without adequate consideration for the purposes of the Land Use Code as expressed in Sec. 14-46.

Section 14-47 of the Land Use Code defines "Truck Terminal" as follows:

*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.



The defined use "Truck Terminal" is not listed as a permitted or conditional use in the I-B Zone. Under Sec. 14-225 of the Land Use Code, "Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

**Conclusions of Law:**

For reasons that follow, the Board concludes that Appellants have not met their burden of demonstrating that the Zoning Administrator's interpretation of the Land Use Code was incorrect or improper.

First, the Board concludes that the proposed use does constitute "off-street parking," which is a permitted use in the I-B Zone (Sec. 14-223(f)). The Board looks to the plain meaning of Secs. 14.223 (f) and 14-331, which establish "off-street parking" as a permitted use without limitation in the I-B zone in which the parcel is located.

The Board is aware that Sec. 14-331 of the Land Use Code provides that "Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, ... ." However, the Board does not interpret Sec. 14-331 and the Technical Manual incorporated thereby by reference as limiting the "off-street parking" use to passenger vehicles only, or as limiting the dimensions of parking spaces allowed in off-street parking spaces in the City of Portland to 9' by 19' passenger vehicle spaces or to 8½' by 19' compact car spaces. This is because construing the Land Use Code as a whole, other sections of the Land Use Code that refer to off-street parking imply that the off-street parking use also includes commercial motor vehicles. For example, Sec. 14-335 sets forth what off-street parking does not include, such as: more than one commercial motor vehicle in any residence, R-P or B-1 Zone (Sec. 14-335(a)); more than six commercial motor vehicles in any B-2 Zone (Sec. 14-335 (b)); and "any truck body, commercial trailer or similar commercial vehicles in residence zone or the R-P Zone" (Sec. 14-335(e)). In addition, Sec. 14-344 permits the Board or the Planning Board to permit off-street parking accessory to business uses but located in residential zones, with the limitation that the off-street parking be "for passenger cars only." These provisions demonstrate that the "off-street parking" use is available for both passenger vehicles and commercial vehicles, and that the passenger car and compact car stall dimensions in the Technical Manual must be minimum dimensions -- not fixed standards. Further, construing the Land Use Code as Appellants suggest would mean that larger commercial vehicles and trucks cannot be parked in off-street parking sites in Portland, a result that is not consistent with the Land Use Code as interpreted by the Board above or with observed practice in the City of Portland.

Second, the Board concludes that the proposed parking of seven Peaks Island Fuel vehicles is not a prohibited "Truck Terminal" use. In so concluding, the Board

notes that the definition of "truck terminal" in Section 14-47 of the Land Use Code begins: "A building and premises devoted to handling and temporary warehousing of goods, ... ." The plans for the proposed parking area do not include a building, and the definition does not state "A building or premises"; therefore, the proposed use fails to meet this definition. Also, while Appellants argues that there is a distinction between "parking" and "storage" and argue that under the definition of "truck terminal," storage of trucks constitutes a truck terminal, a closer reading of the definition does not support that argument. The full definition reads:

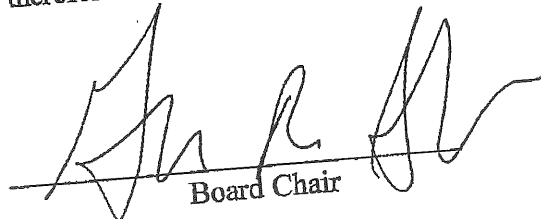
*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

Thus, while the "storage of trucks" "may be included" in the definition of "truck terminal," the storage of trucks does not by itself constitute a "truck terminal" use. Moreover, Mr. Ivers stated that his proposed off-street parking use for the Peaks Island Fuel vehicles does not include major maintenance, which would be conducted off site and does not include fueling, which he said occurs at the barge site for oil and kerosene and on the mainland for propane filling. Moreover, to the extent any distinction between "storage" and "parking" is relevant to this appeal, the Land Use Code prohibits "storage" outside of more than one unregistered motor vehicle "for a period in excess of thirty (30) days in any residence zone, the R-P Zone or any business zone." Sec. 14-335(d). Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation, so that this section does not apply.

**Decision:**

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

Dated: Oct. 20, 2011

  
Board Chair

4.21

AH 3

**From:** "Bowie, Butch C" <Butch.C.Bowie@maine.gov>  
**To:** "Eric Giles" <EGILES@portlandmaine.gov>  
**CC:** "Jeff Amos" <jeff@terradyconsultants.com>  
**Date:** 8/23/2011 12:58 PM  
**Subject:** Peaks Island Fuel SPCC Plan

Dear Mr. Giles,  
In 2002, the Maine Legislature enacted 38 MRSA § 570-K(5), giving the Maine DEP authority to oversee compliance with the federal SPCC requirements for aboveground oil storage facilities that exceed the federal 1,320 gallon aggregate storage capacity threshold and are used to market and distribute oil.

An SPCC plan lists the containment equipment and structures used to prevent spills from reaching ground water or surface water, and it identifies the inspection, monitoring and oil transfer procedures that will be followed to prevent a spill. If a spill occurs, a well-developed Oil SPCC plan will identify whom to call, and will specify steps, or "countermeasures," to contain the spill and minimize environmental impacts. The specific SPCC requirements for oil storage facilities are found in federal regulation, 40 CFR Part 112. A qualified professional engineer must examine the plan and attest that it has been prepared in accordance with good engineering practices.

Based on a review of the draft SPCC plan prepared by Jeffrey D. Amos, P.E. and submitted for review on August 15, 2011 for Peaks Island Fuel Company, the plan appears to adequately address the requirements of 40 CFR Part 112.

At some point, I would like to schedule a follow up site visit to ensure that all aspects of the plan have been fully implemented at the facility.

Sincerely,

Butch Bowie  
Environmental Specialist  
Bureau of Remediation and Waste Management  
Division of Technical Services  
(207) 287-4804

**CHAPTER 32 STORM WATER**

- Art. I. Prohibited Discharges, §§ 32-1--32-15
- Art. II. Prohibited Discharges, §§ 32-16--32-35
- Art. III. Post-Construction Stormwater Management, §§32-36-32-40

**ARTICLE I. IN GENERAL**

**Sec. 32-1. Definitions.**

For the purposes of this article, the terms listed below are defined as follows:

*Applicant.* "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

*Best management practices ("BMP").* "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*Clean Water Act.* "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

*Discharge.* "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

*Enforcement authority.* "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

*Exempt person or discharge.* "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

City of Portland  
Code of Ordinances  
Sec. 32-1

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP"). City of Portland

*Municipality.* "Municipality" means the city of Portland.

*Municipal separate storm sewer system, or MS4.* "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

*National pollutant discharge elimination system (NPDES) storm water discharge permit.* "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Non-storm water discharge.* "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

*Person.* "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

*Pollutant.* "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

*Post-construction stormwater management plan.* "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

City of Portland  
Code of Ordinances  
Sec. 32-1

Storm Water  
Chapter 32  
Rev. 9-17-09

*Premises.* "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

*Qualified post-construction stormwater inspector.* "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

*Regulated small MS4.* "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

*Small municipal separate storm sewer system, or small MS4.* "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

*Storm drainage system.* "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

*Storm water.* "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

*Urbanized area ("UA").* "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census. (Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-2.       Reserved.
- Sec. 32-3.       Reserved.
- Sec. 32-4.       Reserved.

City of Portland  
Code of Ordinances  
Sec. 32-5

- Sec. 32-5. Reserved.
- Sec. 32-6. Reserved.
- Sec. 32-7. Reserved.
- Sec. 32-8. Reserved.
- Sec. 32-9. Reserved.
- Sec. 32-10. Reserved.
- Sec. 32-11. Reserved.
- Sec. 32-12. Reserved.
- Sec. 32-13. Reserved.
- Sec. 32-14. Reserved.
- Sec. 32-15. Reserved.

**ARTICLE II. PROHIBITED DISCHARGES**

**Sec. 32-16. Applicability.**

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-17. Responsibility for administration.**

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

**Sec. 32-18. Prohibition of non-storm water discharges.**

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-19. Suspension of access to the city's small MS4.**

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-20. Monitoring of discharges.**

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)



**Sec. 32-21. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

(a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
- (2) The cessation of discharges, practices, or operations in violation of this article.
- (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
- (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

(b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

City of Portland  
Code of Ordinances  
Sec. 32-21

Storm Water  
Chapter 32  
Rev. 9-17-09

result from any person's reliance on this article or any administrative decision lawfully made hereunder.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-22. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.
- Sec. 32-24. Reserved.
- Sec. 32-25. Reserved.
- Sec. 32-26. Reserved.
- Sec. 32-27. Reserved.
- Sec. 32-28. Reserved.
- Sec. 32-29. Reserved.
- Sec. 32-30. Reserved.
- Sec. 32-31. Reserved.
- Sec. 32-32. Reserved.
- Sec. 32-33. Reserved.
- Sec. 32-34. Reserved.
- Sec. 32-35. Reserved.

**ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.**

**Sec. 32-36. Applicability.**

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.  
(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-37. Post-construction stormwater management plan approval.**

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.  
(Ord. No. 35-09/10, 9-17-09)

**Post-construction stormwater management plan**

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the year adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file and annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

City of Portland  
Code of Ordinances  
Sec. 32-38  
(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-39. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

(a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
- (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
- (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
- (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

(b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

(c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

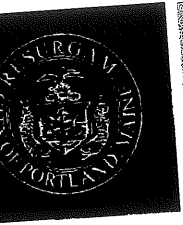
(e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-40. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life* • [www.portlandmaine.gov](http://www.portlandmaine.gov)

Planning and Urban Development Department  
Penny St. Louis, Director

Planning Division  
Alexander Jaegerman, Director

## **Performance Guarantee and Infrastructure Financial Contribution Packet**

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

### Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

4.34

**SUBDIVISION/SITE DEVELOPMENT**  
**Cost Estimate of Improvements to be covered by Performance Guarantee**

Date: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address/Location: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Developer: \_\_\_\_\_

Form of Performance Guarantee: \_\_\_\_\_

Type of Development: Subdivision \_\_\_\_\_ Site Plan (Level I, II or III) \_\_\_\_\_

**TO BE FILLED OUT BY THE APPLICANT:**

Item	PUBLIC			PRIVATE		
	Quantity	Unit Cost	Subtotal	Quantity	Unit Cost	Subtotal
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS						
_____	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____



SAMPLE FORM

SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
LETTER OF CREDIT  
[ACCOUNT NUMBER]

[Date]

Penny St. Louis  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: [Insert: Name of Developer]  
[Insert: Address of Project, Portland, Maine]

\_\_\_\_\_ (“Bank”) hereby issues its Irrevocable Letter of Credit for the account of [Insert: Name of Developer], (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of [Insert: amount of original performance guarantee]. These funds represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/ or site plan], approved on [Insert: Date] and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

- 1. the Developer has failed to complete any unfinished improvements; or
- 2. the Developer has failed to correct any defects in workmanship; or
- 3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements ]**.

Date: \_\_\_\_\_

By: \_\_\_\_\_

**[Name]**  
**[Title]**  
Its Duly Authorized Agent

**SAMPLE FORM**

**SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
ESCROW ACCOUNT  
[ACCOUNT NUMBER]**

**[Date]**

Penny St. Louis  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: **[Insert: Name of Developer]**  
**[Insert: Address of Project, Portland, Maine]**  
**[Insert: Application ID #]**

**[Insert: Name of Bank]** hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

**[Bank]** will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

- 1. the Developer has failed to complete any unfinished improvements; or
- 2. the Developer has failed to correct any defects in workmanship; or
- 3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [Insert: subdivision and/ or site improvements ].

Date: \_\_\_\_\_ By: \_\_\_\_\_

[Name]  
[Title]  
Its Duly Authorized Agent

Seen and Agreed to: [Applicant]

By: \_\_\_\_\_

**PERFORMANCE GUARANTEE  
with the City of Portland**

Developer's Tax Identification Number: \_\_\_\_\_

Developer's Name and Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City Account Number: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Application of \_\_\_\_\_ [Applicant] for \_\_\_\_\_ [Insert street/Project Name] at \_\_\_\_\_ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$ \_\_\_\_\_ [amount of performance guarantee] on behalf of \_\_\_\_\_ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on \_\_\_\_\_ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] approval, dated \_\_\_\_\_ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

4.40

By: \_\_\_\_\_  
Development Review Coordinator

Date: \_\_\_\_\_

**Attach Letter of Approval and Estimated Cost of Improvements to this form.**

---

**Distribution**

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Batch form.
5. \*\*\*\*Signature required if over \$50,000.00.

Att 5

**CITY OF PORTLAND, MAINE**  
**PLANNING BOARD**

Carol Morrisette, Chair  
Stuart O'Brien, Vice Chair  
Timothy Dean  
Bill Hall  
Joe Lewis  
David Silk

March 8, 2012

Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

Keith Ivers  
512 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haykal and Mr. Ivers:

On February 28, 2012, the Planning Board considered Mr. Haykal's appeal of the administrative determination made by Alexander Jaegerman, Planning Division Director, on November 30<sup>th</sup>, 2011, which determined that the appeal submitted by Mr. Ted Haykal on November 28, 2011 specifically appealing the decision of the Zoning Board of Appeals was not within the authority of the Planning Board to consider. The Planning Board voted unanimously (4-0, Hall and Lewis absent) on the following motion:

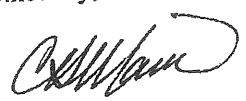
On the basis of the plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 9-12 relevant to the Portland's Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board found:

The Planning Authority determination made on November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not timely, **is correct and Mr. Haykal's appeal is denied.**

This is a final determination by the Planning Board and may only be appealed to superior court as provided in Portland's Land Use Code, Section 14-29.

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager at (207) 874-8699.

Sincerely,



Carol Morrisette, Chair  
Portland Planning Board

**Attachments:**

1. Planning Board Report #9-12

**Electronic Distribution:**

Greg Mitchell, Acting Director of Planning and Urban Development Department  
Alexander Jaegerman, Division Director, Planning Division  
Barbara Barhydt, Development Review Services Manager, Planning Division  
Philip DiPierro, Development Review Coordinator, Planning Division  
Marge Schmuckal, Zoning Administrator, Inspections Division  
Tammy Munson, Plan Reviewer, Inspections Division  
Lannie Dobson, Administration, Inspections Division  
Michael Bobinsky, Director, Public Services  
Katherine Earley, Engineering Services Manager, Public Services  
Bill Clark, Project Engineer, Public Services  
David Margolis-Pineo, Deputy City Engineer, Public Services  
Jane Ward, Administration, Public Services  
Capt. Keith Gautreau, Fire Department  
Jeff Tarling, City Arborist, Public Services  
Tom Errico, P.E., T.Y. Lin Associates  
Dan Goyette, P.E., Woodard & Curran  
Assessor's Office  
Approval Letter File





# PLANNING BOARD REPORT PORTLAND, MAINE

## APPEAL OF PLANNING AUTHORITY DETERMINATION MR. TED HAYKAL, APPELLANT

Submitted to: Portland Planning Board Public Hearing Date: February 28, 2012 Planning Board Report Number:# 9-12	Prepared by: Barbara Barhydt, Development Review Services Manager Prepared Date: February 24, 2012
--	--

### I. Introduction

The Planning Board will hold a public hearing on Ted Haykal's appeal of the Planning Authority's November 30, 2011 determination that stated Mr. Haykal's appeal of a Zoning Board of Appeals decision, filed on November 28, 2011 is not within the authority of the Planning Board to consider and that an appeal of the Planning Authority site plan approval was not filed within the required time frame. Mr. Haykal submitted an appeal regarding 512 Island Avenue.

Notices were sent to 94 property owners and the interested citizen list. The legal ad appeared on February 20 and 21 in the Portland Press Herald.

### II. Chronology Of The Review And Appeals For Peaks Island Fuel At 512 Island Avenue

1. Keith Ivers, Owner/President of Peaks Island Fuel, submitted an application for a Level I: Site Alteration site plan review on June 6, 2011 for Peaks Island Fuel. The project description stated:  
  
Utilize commercial property for parking of delivery and service trucks, fill in site and add two driveways.

As part of the application Mr. Ivers included a cover letter, which describes a 4,200 square parking area for seven service vehicles at 512 Island Avenue. The site lies within the Island Residential I-R2 zone and the Island Business I-B zone. A single family home is located within the IR-2 zone, which is Mr. Ivers' residence. The proposed parking area is located within the IB zone.

The application was distributed for review on June 10, 2011.

2. A site visit was conducted by City staff on Friday, July 1, 2011. The staff participants included Erick Giles, Planner, David Margolis-Pineo, Deputy City Engineer, Barbara Barhydt, Development

Review Services Manager, and Alexander Jaegerman, Planning Division Director. Approximately 40 residents met the City staff members at the site.

3. Erick Giles, Planner, prepared a review of the application dated July 15, 2011, which included the review comments from other departments and third party reviews.
4. A revised plan was submitted to the Planning Division for review on August 8, 2011.
5. Marge Schmuckal Zoning Administrator, prepared a written determination regarding whether the use is permitted in the Island Business zone on August 18, 2011. Ms. Schmuckal concluded the following:

Mr. Iver's proposed parking lot is not a truck terminal. This is because his trucks are not warehoused or stored on the site. The trucks are also not filled, fueled and no product will [be] dispensed on the site. Instead, the trucks are just parked on this site for active use as needed in Mr. Ivers' propane and oil delivery business. The other vehicles that will be parked on the site are also for active use with Mr. Ivers' heating repair business. Mr. Ivers' business has been active through four generations and has garnered many clients on Peaks Island.

6. An Interpretation Appeal of Marge Schmuckal's determination was submitted on September 16, 2011. The appeal was submitted by twenty (27) entities, including Mr. Haykal.
7. The Zoning Board of Appeals held a public hearing on the Interpretation Appeal on October 13, 2011. The Zoning Board of Appeals approved the findings on October 20, 2011. The decision is as follows:

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

8. On October 27, 2011, the Level I: Site Alteration Application for 512 Island Avenue was approved by the Planning Authority with three conditions of approval (Attachment 6). Three waivers were granted as part of the approval that waived the requirement for 2 bicycle spaces, waived the 20 foot driveway width to 12 feet and waived parking lot dimensions to allow a 28 foot aisle and four parking spaces of 12 x22.
9. Ted Haykal submitted his appeal to Alexander Jaegerman, Planning Division Director, on November 28, 2011 (Attachment 1), which stated the following:

I am writing to notify you that I wish to appeal the decision of the Board of Zoning Appeals on October 13, 2011 in the matter of 512 Island Avenue, Peaks Island, Keith Ivers, prospective

buyer, Tax Map 090, Block AA, Lots 001, 002 & 005, I-B Island Business Zone, in which the applicants challenged the Zoning Administrator's determination that the proposed parking of fuel trucks and other trucks is permitted in the I-B zone as "off-street parking."

The basis of the appeal is that the Board committed errors of law in interpreting City of Portland ordinances, that the decisions was not adequately supported in the facts, and was arbitrary and capricious.

- 10. Alexander Jaegerman responded to Mr. Haykal's appeal on November 30, 2011 (Attachment 2), stating the following:

The Planning Board cannot accept the appeal you submitted on Monday, November 28, 2011 requesting an appeal of the 2011 Determination by the Zoning Board of Appeal (letter included as Attachment 1) dated October 13, 2011. The Planning Board is not authorized to consider an appeal of a Zoning Board of Appeals decision. An appeal of a Zoning Board of Appeals decision must be submitted to the Maine Superior Court under Rule 80B, Sec 30-A M.R.S.A., section 2691 (3)(G). The Planning Board is, however, authorized to consider an appeal within 30 calendar days of an administrative decision for a site plan (Land Use Code, Sec. 14-30 (o) and 14-529). In this case, the Planning Authority approved the Level I: Site Alteration site plan for 512 Island Avenue on October 27, 2011. Consequently, the time to appeal the aforementioned site plan approval was Monday, November 28, 2011.

- 11. Mr. Haykal questioned this response. A letter was sent to Ted Haykal from Alexander Jaegerman on December 7, 2011, advising him of his rights to appeal the Planning Authority's administrative determination (Attachment 3).

The Planning Board is authorized to consider an appeal of an administrative determination within 30 calendar days of an administrative determination (Land Use Code, Sec. 14-30 (o). Specifically, you have the right to submit a letter requesting to appeal the November 30, 2011 determination by the Planning Authority that stated the appeal you submitted was not within the authority of the Planning Board to consider and thus, the request for an appeal is not timely (Attachment 1). You must submit a letter within the appeal period that outlines the points of the Planning Authority November 30th determination that you are appealing.

- 12. On December 30, 2011, Mr. Haykal submitted an appeal of Alex Jaegerman's determination along with attachments (Attachment 4). Mr. Haykal submitted a handwritten appeal and additional documents on December 30, 2011. He submitted a typed version of his appeal on January 3<sup>rd</sup>. In these letters he states:

This letter is written as an appeal to your decision of November 30, 2011. The appeal I submitted on November 28, 2011 was incorrectly stated. The appeal I submitted was not within the authority of the Planning Board to consider. I hope you will reconsider my appeal to the Planning Board.

The attachments to Mr. Haykal's appeal seek an appeal of the Level I: Site Alteration Site Plan for 512 Island Avenue.

**III. Planning Board Authority To Consider An Appeal Of A Determination**

The Planning Board is being asked to determine if there is an error in Alexander Jaegerman's November 30, 2011 letter (Attachment 2) determining that the appeal submitted by Mr. Ted Haykal on November 28, 2011 specifically appealing the decision of the Zoning Board of Appeals was not within the authority of the Planning Board to consider. Mr. Haykal is seeking to correct the statement of the November 28, 2011 appeal from an appeal of the Zoning Board of Appeals decision to an appeal of the site plan approval to the Planning Board, and to rely on the timeliness of the November 28, 2011 appeal letter as meeting the appeal filing requirement for such an appeal.

The City Code specifies that the Planning Board has the authority to:

- (o) To hear, review and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the planning authority.

City Code, Chapter 14, section 14-30. This section does not grant the Planning Board the authority to hear, review or decide appeals of decisions of the Zoning Board of Appeals.

The City Code makes it clear that Zoning Board of Appeals decisions must be appealed according to Section 14-553:

An appeal from any final decision of the board of appeals may be taken by any aggrieved party to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

It is also important to note that administrative decisions for a site plan may be appealed to the Planning Board as follows:

- (a) When the planning authority has approved with conditions or denied a site plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of the written decision of the planning authority. Upon the taking of such an appeal, the application shall be reviewed as a new application.
- (b) When the planning board has finally approved, approved with conditions, or disapproved a site plan, any person aggrieved or the City may appeal the decision to the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the vote on the original decision by the planning board.

In this case, Mr. Haykal did not submit a timely appeal of the Planning Authority's October 27, 2011 decision. Danielle West-Chuhta, Associate Corporation Counsel, has provided a memorandum concerning the appeal, which is included as Attachment 5.

Overall, as a result of the above, Mr. Haykal's appeal should be denied.

**IV. Proposed Motion**

On the basis of the plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 9-12 relevant to the Portland's Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds:

A. The Planning Authority determination made on November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not timely, is correct and Mr. Haykal's appeal is denied.

Or

B. The Planning Authority determination November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not a timely appeal of the site plan approval, is incorrect and Mr. Haykal's appeal is granted. Mr. Haykal's appeal of the Planning Authority's approval of the Level I: Site Alteration site plan for 512 Island Avenue shall be scheduled for a public hearing on April 10, 2012.

**Attachments:**

- 1. Ted Haykal Appeal – November 28,2011
- 2. Planning Authority Determination to Ted Haykal– November 30, 2011
- 3. Planning Authority Letter to Ted Haykal – December 7, 2011
- 4. Ted Haykal Appeal – December 30,2011
- 5. Danielle P. West-Chuhta, Associate Corporation Counsel, February 23, 2012
- 6. Approval Letter, 512 Island Avenue, dated October 27, 2011



**Memorandum  
Planning and Urban Development Department  
Planning Division**

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**To:** Keith Ivers, 512 Island Avenue  
Ted Haykal, 522 Island Avenue

**From:** Barbara Barhydt, Development Review Services Manager

**Date:** February 16, 2012

**Re:** Appeal of Staff Determination dated November 30, 2011

**Project #:** 2011-277                      **CBL:** 090-AA-1,2 and5

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This is to confirm that the Planning Board will consider Mr. Haykal's appeal of Mr. Alexander Jaegerman's November 30, 2011 determination on Tuesday, February 28, 2012 at 3:30 p.m. in the Council Chambers.

Per Ted Haykal's request, I am enclosing the Article II, Planning Board of the Land Use Code, the rules of the Planning Board and Section 14-529 from the Site Plan Ordinance on Appeals.

Enclosed is the correspondence and attachments from Mr. Jaegerman, Planning Division Director, dated November 30 and December 7, 2011 and Mr. Haykal's appeal dated December 30, 2011. Mr. Haykal followed up that appeal with a typed copy of the handwritten letter submitted on December 30, so that is included in this packet.

Thank you.

**Attachments:**

1. Article II. Planning Board, Portland Land Use Code
2. Planning Board Rules
3. Section 14-529 from Article V. Site Plan Ordinance, Land Use Code
4. Alexander Jaegerman, Planning Division Director, November 30, 2011 letter
5. Alexander Jaegerman, Planning Division Director, December 7, 2011 letter
6. Ted Haykal, December 30, 2011 correspondence

**Cc:** Alexander Jaegerman, Planning Division Director  
Danielle West-Chuhta, Associate Corporation Counsel

Att 1

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Sec 6

Sec. 14-6. Reserved.

Sec. 14-7. - 14-15 Reserved.

ARTICLE II. PLANNING BOARD\*

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\*Cross reference(s)--Administration, Ch. 2; boards generally, § 2-31 et seq.; limitation on term of service on boards, commissions, § 2-32 et seq.  
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Sec. 14-16. Created.

There is hereby created a planning board.  
(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

Sec. 14-17. Composition.

There shall be a planning board of seven (7) members. Members of the planning board shall be residents of the city and shall not be officers or employees of the city or any other agencies or department.  
(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

Sec. 14-18. Appointment; terms.

The members of the planning board shall be appointed by the city council for terms of three (3) years. Such members shall serve until their successors are duly elected and qualified. Such terms shall be staggered so that the terms of not more than three (3) members shall expire in any calendar year; providing, however, such service shall not extend to over one hundred twenty (120) days after expiration of their term.  
(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79; Ord. No. 277-83, 11-7-83)

Sec. 14-19. Vacancies.

Permanent vacancies on the planning board shall be filled by the city council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

**Sec. 14-20. Removal of members.**

Any member of the planning board may be removed for cause by the city council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

**Sec. 14-21. Compensation.**

Members of the planning board shall serve without compensation.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

**Sec. 14-22. Chair and vice-chair.**

(a) The members of the planning board shall annually elect one (1) of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office, and another of their number as vice-chair. The chair may administer oaths. The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross-examination at hearings.

(b) In the absence of the chair, the vice-chair shall act as chair and shall have all the powers of the chair. The vice-chair shall have such other powers and duties as may from time to time be provided by the rules of the planning board.

(Code 1968, § 601.2; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

**Sec. 14-23. Staff secretary; minutes, public records.**

The planning director shall designate a member of his or her staff who shall serve as staff secretary of the planning board and attend all of its proceedings. The staff secretary shall provide for the keeping of minutes of the proceedings of the board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all board meetings, hearings and proceedings and all



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correspondence of the board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.  
(Code 1968, § 601.3; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

**Sec. 14-24. Quorum and necessary vote.**

As to any matter requiring a hearing, no business shall be transacted by the planning board without a quorum, consisting of four (4) members, being present. The concurring vote of at least four (4) members shall be necessary to authorize any action by the board. If less than a quorum is present, the hearing may be adjourned from time to time for a period not exceeding three (3) weeks at any one time. The staff secretary shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

(Code 1968, § 601.4; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76)

**Sec. 14-25. Meetings, hearings and procedures.**

(a) Regular meetings of the planning board shall be held at the call of the chair or as provided by rule of the board. Special meetings may be called by the chair or any four (4) members of the board or at the request of the city council. Except as otherwise provided in section 14-26, all meetings, hearings and deliberations of the planning board and its committees shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq. Testimony at any hearing may be required by the planning board to be given under oath.

(b) The planning board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the staff secretary of the board and with the city clerk. Any and all rule changes shall be placed on a city council public agenda as a communication requiring a public hearing. Any rule may be vetoed, in whole or in part, by order of the council within forty-five (45) days of the date of filing with the city clerk. No rules change shall take effect until that time period has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown.

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(Code 1968, § 601.5; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75,  
12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 78-89, 8-7-89)

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**Sec. 14-26. Workshop or informational meetings.**

Informal meetings or workshops of the planning board or any of its committees may be held at the call of the board or committee chairperson, as the case may be, for the presentation of information by the planning director, his or her staff, the applicant or others. These meetings will be open for public comment according to the Rules of the Portland planning board. Such meetings, unless open to the public as provided in Title 1, M.R.S.A., Section 401 et seq. (Freedom of Access Act), shall be informational only and shall not be deliberative in nature; shall not be used by the board or committee for the weighing of positions or reasons for or against a proposition; and shall not be used by the board or committee for the formulation of tentative or final decisions on any matter.

(Code 1968, § 601.6; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 227-01, 4-2-01)

**Sec. 14-27. Record and decisions.**

(a) The minutes of the staff secretary, and the transcript if one (1) is made, and all exhibits, papers, applications and requests filed in any proceeding before the planning board and the decision of the board shall constitute the record.

(b) Every final decision of the planning board and every recommendation of the planning board to the city council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation.

(c) The staff secretary shall mail notice of any decision of the planning board to the applicant and any designated interested parties within five (5) business days of such decision.

(Code 1968, § 601.7; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

**Sec. 14-28. Conflicts.**

No member of the planning board shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify the member shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined; where such vote results in a

tie, the subject member shall be disqualified.  
(Code 1968, § 601.8; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

**Sec. 14-29. Appeals.**

An appeal from any final decision of the planning board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the board is limited to the making of a recommendation.  
(Code 1968, § 601.9; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

**Sec. 14-30. Jurisdiction and authority.**

In addition to the jurisdiction conferred on it by other provisions of state law and the ordinances of the city and in accordance therewith, the planning board shall have the following jurisdiction and authority:

- (a) To prepare and recommend a comprehensive plan to the city council, which plan, upon its adoption by the city council, shall be known as the "Land Development Plan of the City of Portland";
- (b) To prepare and recommend to the city council changes in and amendments to the land development plan;
- (c) To aid and assist the city council and departments and agencies of the city in implementing general plans and in planning, developing and completing specific projects;
- (d) To hear, review and approve, conditionally approve or disapprove level III site plans, subdivisions and conditional use applications;
- (e) To hear, review and approve or deny applications for subdivision approval;
- (f) To hear, review and offer its recommendations to the city council on applications for zoning changes and amendments to, or revisions of, the zoning ordinance, and to initiate recommendations for zoning changes and amendments to, or revisions of, the zoning ordinance;

- (g) To review and offer its recommendations to the city council on public projects;
- (h) To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;
- (i) To prepare and offer its recommendations to the city council with regard to the city's annual capital improvements program;
- (j) To review and approve, conditionally approve, or disapprove urban renewal plans;
- (k) Upon reasonable request, to make its special knowledge and expertise available to any official, department, board or agency of the city, county, state or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;
- (l) To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable;
- (m) To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other expenses as may be necessary and proper; provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes from time to time by the city council;
- (n) To hear, review and offer its recommendations to the city council on petitions for street vacations and discontinuances.
- (o) To hear, review and decide appeals where it is alleged there is an error in any decision, requirement, or

determination made by the planning authority.  
(Code 1968, § 601.10; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75;  
Ord. No. 86-88, 7-19-88; Ord. No. 137-03/04, 1-21-04; Ord. No. 278-09/10,  
7/19/10)

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**\*Editor's Note--**Ord. No. 86-88, adopted July 19, 1988, amended this section  
by adding subsection (14) to read as herein set out. See also the editor's note  
to Art. III of this chapter for additional provisions relative to Ord. No. 86-88.  
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### **Sec. 14-31. Committees.**

The chair of the planning board shall from time to time assign the members of the board to such regular and special committees as may be established by the board. Such committees shall have no final authority but shall assist the board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee meetings deliberative in nature shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq.  
(Code 1968, § 601.11; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

### **Sec. 14-32. Notice.**

(a) Applications:

- (1) *Level I, level II and level III site plans.* All public notices will be sent according to the section 14-525 of article V (site plan) of this chapter.
- (2) *Subdivision, Zoning Map Amendments.* When an application for subdivision or a request for a zoning map amendment is received or generated by the planning authority, it shall give a dated receipt to the applicant and shall notify, by mail, the following, where applicable.
  - a. all property owners within five hundred (500) feet of the proposed subdivision and the clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision. In addition, the planning authority shall notify a public drinking water supplier if the subdivision is within its source water protection area;

- b. all property owners within five hundred (500) feet of the proposed subdivision or proposed zone change site, except that for subdivisions within industrial zones or proposed map amendments for a site within an industrial zone the notice range shall be one thousand (1000) feet;
- c. all property owners within the limits of the proposed zoning map amendment and all property owners five hundred (500) feet beyond said area, except that for map amendments to a site located within industrial zone designations the notice range shall be one thousand (1000) feet.

The notice hereunder shall include a brief description of the application, the address or location of the property involved and a telephone number at the City where additional information may be obtained. The cost of said notice shall be charged to the applicant.

(b) Workshops and hearings:

Except for notice of public hearings concerning conditional or contract zoning (which notice is governed by section 14-61), the planning authority shall give notice of public workshops and hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such workshop or hearing, a brief description of the application and the address or location of the property involved. Where notice by mail is required, such notice shall be mailed at least ten (10) calendar days in advance of the workshop or hearing date by regular United States mail. The cost of said noticing shall be charged to the applicant.

(1) Subdivision:

- a. *To the general public.* In the case of workshops and public hearings, notice as described above shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two (2) times, the date of the first publication to be at least ten (10) calendar days prior to the hearing.

- b. *To the applicant and the owners of the subject property, and other property owners;* In the case of workshops and public hearings, notice shall be sent by regular United States mail to the applicant, to the owner(s) of the subject property and to all owners of property located within five hundred (500) feet of the subject property, except that for subdivisions within industrial zones the notice range shall be one thousand (1000) feet.

(2) Zoning Map Amendment:

- (a) *To the general public:* Except for notice of public hearings concerning conditional or contract zoning (which notice is governed by section 14-61), the notice of public hearing for zoning map amendments must be posted in the municipal office at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least twelve days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing.

- (b) *To property owners within the proposed area proposed for rezoning:* Except for notice of public hearings concerning conditional or contract zoning (which notice is governed by section 14-61), in the case of workshops and public hearings on zoning map amendments, notice shall be sent by regular United States mail to all property owners within the area proposed for rezoning and all property owners five hundred (500) feet beyond said area, except that rezoning to industrial zone designations the notice range shall be one thousand (1000) feet.

(3) Zoning Text Amendment.

- (a) *To the general public:* Notice of any zoning text amendment shall be published in a newspaper of general circulation in the City of Portland at least seven days prior to the public hearing on the proposed amendment.

(c) Required Neighborhood Meeting

An applicant for (a) the subdivision of five or more units or lots or (b) for level III site plan review or (c) a private applicant for rezoning that would permit a Level III development as defined in Section 14-523 (required approvals and applicability), shall conduct a neighborhood meeting according to section 14-524 of article V (site plan) of this chapter.  
(Code 1968, § 601.12; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75;  
Ord. No. 79-89, 8-7-89; Ord. No. 00-51, S1, 8-7-00; Ord. No. 227-01, 4-2-01; Ord.  
No. 278-09/10, 7-19-10; Ord. No.25 11/12, 8-15-11)

**Sec. 14-33. Public hearings.**

Public hearings shall be held as required by the various statutes, codes and ordinances pursuant to which matters are brought before the planning board and shall be conducted in accordance with relevant state law, this code and the rules of the board.  
Code 1968, § 601.13; Ord. No. 671-75, 12-15-75)

**Sec. 14-34. - 14-45. Reserved.**

**ARTICLE III. ZONING\***

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**\*Editor's note**--Ord. No. 109-88, adopted July 19, 1988, provided that Ord. No. 79-88 through Ord. No. 99-88, all adopted July 19, 1988, which amended various sections within this chapter, "shall take effect immediately as an emergency, pursuant to Article II, § 8 of the Portland City Charter, to avoid a gap between the expiration of the moratorium ordinance previously controlling residential development and the implementation of the new development standards and map as adopted" and further provided that "notwithstanding the provisions of 1 M.R.S.A. § 302, this amendment and items 79 through 99 shall be applicable to applications for permits filed on or after July 19, 1988." Ord. No. 99-88 has not been set out herein but is on file in appropriate city offices. The specific amendments effected by Ord. No. 79-88 through Ord. No. 98-88 are too extensive to enumerate herein; for the specific disposition of such ordinances, see the Comparative Table following this Code.

It should be noted that the zoning ordinance, as set out in this article, does not include the text of conditional rezonings enacted as amendments to the zoning map adopted in § 14-49 herein.

**Cross reference(s)**--Ordinances pertaining to rezoning saved from repeal, § 1-4(13).

**State law reference(s)**--Zoning ordinances, 30 M.R.S.A. § 4962.



## **RULES OF THE PORTLAND PLANNING BOARD**

### **ARTICLE I. GENERAL PROVISION**

- Section 1. These rules are supplementary to the provisions of Chapter 14 of the Municipal Code as it relates to the procedures of the Planning Board and are adopted pursuant to the authority granted in Section 14-25(b) of said Code.
- Section 2. Roberts Rules of Order shall supplement these rules and shall control procedures not covered by these rules.

### **ARTICLE II. OFFICERS AND DUTIES**

- Section 1. The officers of the Board shall be the Chair and Vice Chair.
- Section 2. The Chair and Vice Chair shall be elected annually by the regular members at the last regular meeting in December.
- Section 3. The Chair shall appoint chairs and members for those committees as may be appropriate.

### **ARTICLE III. MEETINGS**

- Section 1. Regular meetings shall be held on the second and fourth Tuesdays of each month at 7:00 p.m. or as otherwise noticed, in City Hall or at such other location of which notice is given. Where a regular meeting day falls on a recognized holiday, the regular meeting shall be held on the following Tuesday.
- Section 2. Special meetings may be called by the Chair at its discretion or upon the request of the City Council or four or more members, provided that twenty-four hours notice is given each member.
- Section 3. Meetings of any committee of the Board shall be held at the call of the Board or the committee Chair or by agreement of at least two committee members.
- Section 4. The Chair, in consultation with the Director of Planning and Urban Development or the Chief Planner, shall set the agenda for workshops, public hearings, and other meetings.
- Section 5. The Board may, by a majority vote, specify a date for an agenda item.

## ARTICLE IV. ORDER OF BUSINESS

Section 1. All regular meetings of the Board shall proceed as follows:

- a. Roll call and declaration of quorum
- b. Reading and approval of minutes of the previous meeting
- c. Communications
- d. Unfinished business
- e. New business
- f. Adjournment.

## ARTICLE V. NOTICE

Notice shall be given in accordance with Section 14-32 of the Municipal Code; provided, however, that each city councilor and all those individuals or entities included on the most current neighborhood and citizen list maintained by the planning authority, shall also be given the notice afforded under Section 14-32 of the Municipal Code.

Notice of a pending application for subdivision or major site plan review or for a proposed rezoning, including any contract or conditional rezoning, shall be posted in a timely fashion on the City of Portland web page.

Notice of the planning board agenda shall be posted in a timely fashion on the City of Portland web page.

## ARTICLE VI. CONDUCT OF PUBLIC WORKSHOPS AND HEARINGS

### A. PUBLIC WORKSHOPS

A workshop meeting provides the opportunity for the Planning Board to determine whether an application is complete and ready for public hearing. It is not deliberative in nature but rather is a vehicle by which the Planning Board undertakes a preliminary review of an application, provides comment to the applicant on any items needed to complete an application, and schedules the matter for a public hearing.

Section 1. Order of Proceedings. The following order of proceedings shall govern all public workshops conducted by the Board:

- A. The Planning Director of his/her designee may summarize the application and proposal and may comment on any items to be submitted prior to sending the application to a public hearing.
- B. The applicant may present information to the Board explaining the nature of its application and to inquire of the Board as to any issues to be addressed in advance of or at the public hearing.

- C. **Public Comment:** Members of the public, or a duly authorized agent or attorney, may offer verbal comments or statements relevant to matters under discussion by the Planning Board. The duration of each speaker's remarks shall be limited at the discretion of the Chair. The Chair's decision to limit the comment time per project may be based on managing the agenda in order to address all items scheduled.

Members of the public also may submit written comment relative to the application either before or at a public workshop or public hearing and such written comment shall become part of the official Planning Board record.

- D. After the close of the public comment session, the Planning Board shall come to a consensus as to whether the application is/not complete and may/not be scheduled for public hearing. No public comment shall be allowed at this time.
- E.. After the close of the public comment session, the Planning Board may identify issues of concern regarding the application and shall come to a consensus on whether the application is sufficiently complete and ready to schedule for public hearing.

The Planning Board may comment or ask questions at any time.

B. PUBLIC HEARINGS

A public hearing shall be held by the Planning Board pursuant to the City Ordinance and upon the submission of a complete application.

Section 1. Order of Proceedings The following order of proceedings shall govern all public hearings conducted by the Board:

- A. The Planning Director or his/her designee may summarize the application and proposal.
- B. The Planning Department staff shall give its report, commentary and recommendation, if any.
- C. The applicant shall present its opening statement and any testimony or other evidence.
- D. Other City departments, staffs, and officials may present reports, commentary, and recommendations.

- E. **Public Comment.** Members of the public may offer evidence or statements relevant to the project under consideration. Each speaker shall be limited to three (3) minutes. The Chair may, at its discretion, extend this period for an additional three (3) minutes. The Board may grant an initial or any further extensions upon a majority vote of those present and voting.
- F. After the close of the public comment period, answers shall be provided by the applicant or by staff as needed to questions raised during the public comment. The applicant shall be allowed to respond to public comment at this time.
- G. **Response.** Members of the public may respond to new issues raised by answers or information provided by the applicant or by staff. It shall be within the discretion of the Chair to determine whether a response is appropriate. In making this determination, the Chair shall decide whether the response constitutes facts or information that could not have been presented during the public comment period. The Board may override such a determination by the Chair by a majority vote.
- H. After the close of a public hearing and after responses to new issues have been completed, the Board shall commence its deliberations. No public comment shall be allowed during these deliberations, except as requested by the Board.

Cross-examination by the applicant and members of the public shall be conducted as directed by the Chair. The Planning Board may ask questions at any time.

Section 2. Rights of all persons. Any person may appear and testify at a public hearing, either in person or by duly authorized agent or attorney, as provided thereof and may submit documentary evidence; provided, however, that the Chair may exclude irrelevant material or unduly repetitious evidence, unless a majority of the Board votes to allow such material or evidence. Members of the public shall also have the right to examine evidence at the public hearing and reproduce any documents produced at the hearing at a later time to be arranged with staff at the expense of the person requesting the information.

Section 3. Rights of applicant. The applicant shall, in addition, have the following rights:

- a. to present witnesses and offer rebuttal evidence;

Attachment 2

- b. to cross-examine all witnesses testifying in opposition to the applicant's position through the Chair, or, with permission of the Chair, directly; and
- c. to examine and reproduce any documents produced at the hearing.

Section 4. The rules of evidence shall not be strictly applied.

Section 5. Submission of Exhibits. Exhibits presented by an applicant or by a member of the public shall be numbered and become part of the record. The applicant or member of the public may provide a photograph or photocopy instead of an original model or document. Said photograph or photocopy shall be numbered and shall become part of the record.

Section 6. No new agenda items will be begun after 10:00 p.m. unless at least four members of the Board vote to suspend this rule. Any agenda items that have not begun before 10:00 p.m. shall be automatically tabled to the next regularly scheduled meeting or to a date determined by the Board. Before 9:30 p.m. the Planning Board may, at the discretion of the Chair, temporarily suspend consideration of the agenda item currently under review in order to determine whether remaining agenda items will be reached before 10:00 p.m. The Board will at that time notify the proponents of those agenda items which will not be reached, that the items will be tabled until the next regularly scheduled meeting or a date determined by the Board. Any item tabled under the provisions of this rule shall be considered as unfinished business at the next regularly scheduled meeting or at the meeting date specified by the Board.

## ARTICLE VII. DELIBERATIONS, VOTING, DECISIONS.

Section 1. As to any matters not requiring a hearing, the Board may meet and deliberate at any properly called meeting, regardless of the presence of a quorum, or may continue consideration of such matter to any later meeting. However, no final action shall be taken on such a matter without a quorum being present.

Section 2. No member absent from a significant portion of a public hearing shall be qualified to vote upon the matter heard unless that member shall first certify for the record that she/he has reviewed the entire record of any such portion of the hearing during which she/he was absent and has fully informed her/himself of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.

- Section 3. Recommendations to the City Council shall include findings of fact and the reason or reasons for such recommendation and shall contain a separate statement setting forth the recommendation of the Board.
- Section 4. The Board will take no final or binding vote on any matter that is a final decision rather than merely a recommendation unless it shall first have stated its findings, reasons, and conclusions at a meeting open to the public. Where a vote on a matter results in a failure to approve, the Board shall immediately vote upon a motion to either table or deny the project. A motion to deny shall include the findings, reasons and conclusions of the Board supporting a denial.
- Section 5. Any one or more members of the Board may file minority or dissenting reports in support of any position concerning any matter brought before the Board.
- Section 6. When a vote is completed it shall be in order for any member who voted in the majority, in the negative in a tie vote, or otherwise on the prevailing side, to move for reconsideration thereof at the same or at the next regular meeting but not afterwards; and when the motion for reconsideration is decided, that vote shall not be reconsidered. No motion to reconsider a vote completed at a previous meeting shall be in order for consideration at the next regular meeting unless an item to that effect is contained on the agenda for such regular meeting or unless four (4) members consent to such reconsideration.
- Section 7. Any item finally acted upon and not thereafter reconsidered shall not again be considered for a period of one year succeeding the Board's final action on the original item if the Board determines it to be in the same or substantially the same form.
- Section 8. In the event of a tie vote, the matter shall be tabled to the next meeting, where it shall be considered as unfinished business.

### ARTICLE VIII. TIME LIMITS.

- Section 1. In any case where these rules or any other statute, code or ordinance provides that the failure of the Board to act within a fixed period shall be deemed a grant or denial of an application, such failure shall, notwithstanding the absence of required findings and conclusions, be considered to be a decision of the Board rendered on the day following the expiration of such fixed period.

Such a decision shall be appealable in the same manner as any other decision but, on such appeal, shall be entitled to no presumption of correctness. Time limits for hearings and decisions shall be those set forth in State statutes and City ordinances.

**ARTICLE IX. AMENDMENT OF RULES.**

- Section 1. These rules may be amended by an affirmative majority vote of the members of the Board.
- Section 2. The proposed amendment must be presented in writing at a regular or special Board meeting preceding the meeting at which the vote is taken.

the methods that will be used to protect such areas or sites during and post construction;

- (4) A narrative describing site layout, on and off-site watershed hydrology, new and existing buildings and facilities, total impervious area, disturbed area and developed area created by the project;
- (5) Stormwater runoff calculations as described in Section 5 of the Technical Manual;
- (6) A narrative describing the development's consistency with applicable City Master Plans;
- (7) Evidence of Utility Capacity to Serve;
- (8) Estimated types and quantities of solid waste to be generated by the development. For new commercial and industrial development, a description of the estimated amount and type of recyclable material to be generated;
- (9) A code summary referencing NFPA 1 and all Fire Department technical standards;
- (10) Where applicable, an assessment of the development's consistency with any applicable design standards contained in Section 14-526(a) and/or in the City of Portland Design Manual;
- (11) Manufacturer's verification that all proposed HVAC and manufacturing equipment meets applicable state and federal emissions requirements.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11)

**Sec. 14-528. Reserved.**

**Sec. 14-529. Appeals.**

(a) When the planning authority has approved with conditions or denied a site plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of the written decision of the planning authority. Upon the taking of such an appeal, the application shall be reviewed as a new application.



City of Portland  
Code of Ordinances  
Sec. 14-528

Land Use  
Chapter 14  
Rev.9-15-11

(b) When the planning board has finally approved, approved with conditions, or disapproved a site plan, any person aggrieved or the City may appeal the decision to the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the vote on the original decision by the planning board.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11)

**Sec. 14-530. Development review fees and post approval requirements.**

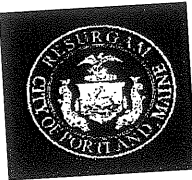
(a) *Development Review Fees.*

(1) Payment of fees and costs: Prior to the issuance of permits of any kind or the release of a signed subdivision plat for recording for any project whose permit fee is governed by this ordinance, all current charges due under this ordinance shall be paid and the developer must otherwise be in compliance with the provisions of the City Code.

(2) Development Review and administrative fees:

a. Review Fees. The developer shall pay the development review fees to cover the third-party review costs for engineers or other professional reviews and administrative costs for all Levels of review unless otherwise noted below, including but not limited to staff review, legal ads, plan duplication, and mailed public notices, incurred by the City. The fee shall be based upon the hours of review time and prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the developer for the development review and administrative costs incurred by the City, which invoice shall be paid promptly by the developer. Prior to the issuance of permits of any kind or the release of a signed subdivision plat for recording for any project whose permit fee is governed by this ordinance, all current charges due under this ordinance shall be paid. The balance of any remaining engineering and administrative costs invoiced or incurred after a permit has been issued shall be paid promptly in full by the developer prior to the issuance of any

444



# PORTLAND MAINE

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**Planning & Urban Development Department**  
Gregory A. Mitchell, Acting Director

**Planning Division**  
Alexander Jaegerman, Director

November 30, 2011

Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haykal:

The Planning Board cannot accept the appeal you submitted on Monday, November 28, 2011 requesting an appeal of the 2011 Determination by the Zoning Board of Appeal (letter included as Attachment 1) dated October 13, 2011. The Planning Board is not authorized to consider an appeal of a Zoning Board of Appeals decision. An appeal of a Zoning Board of Appeals decision must be submitted to the Maine Superior Court under Rule 80B, Sec 30-A M.R.S.A., section 2691 (3)(G). The Planning Board is, however, authorized to consider an appeal within 30 calendar days of an administrative decision for a site plan (Land Use Code, Sec. 14-30 (o) and 14-529). In this case, the Planning Authority approved the Level I: Site Alteration site plan for 512 Island Avenue on October 27, 2011. Consequently, the time to appeal the aforementioned site plan approval was Monday, November 28, 2011.

If you have further questions, please contact our office at 874-8719.

Sincerely,

  
Alexander Jaegerman  
Planning Division Director

- cc: Greg Mitchell, Acting Director, Department of Planning and Urban Development
- Gary Wood, Corporation Counsel
- Barbara Barhydt, Development Review Services Manager
- Marge Schmuckal, Zoning Administrator
- Danielle West- Chuhta, Associate Corporation Counsel

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AA 41

Dear Mr. Jaegerman:

I am writing to notify you that I wish to appeal the decision of the Board of Zoning Appeals on October 13, 2011 in the matter of 512 Island Avenue, Peaks Island, Keith Ivers, prospective buyer, Tax Map 090, Block AA, Lots 001, 002 & 005, I-B Island Business Zone, in which the applicants challenged the Zoning Administrator's determination that the proposed parking of fuel trucks and other trucks is permitted in the I-B Zone as "off-street parking."

The basis for the appeal is that the Board committed errors of law in interpreting City of Portland ordinances, that the decisions was not adequately supported in the facts, and was arbitrary and capricious.

Please call me if you have any questions.

SINCERELY YOURS,  
TED HAERTEL 766-4454

RECEIVED

NOV 28 2011

City of Portland  
Planning Division

AN 4

November 28, 2011

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

Attn: Mr. Alex Jaegerman:

Re: Appeal of Ted Haykal, and Neighbors of October 13, 2011 Determination of the Zoning Board of Appeal that 2,800 Gallon Fuel Trucks and other commercial Vehicles is permitted as "off street parking" re: 512 Island Avenue, Peaks Island. Tax Map 090, Block AA, Lots 001, 002 & 005.

To the Chair and members of the Board:

The persons making this appeal are as follows:

Mr. Ted Haykal, 522 Island Avenue  
Chuck Muse, 11 Trefethern Avenue  
Jeanne Muse, 11 Trefethern Avenue  
Beth Brown, 517 Trefethern Avenue  
Jonathan Brown, 517 Trefethern Avenue  
Joanne MacIsaac, 499 Island Avenue  
Ron DeLucia, 499 Island Avenue  
Wesley Gustafson, 525 Island Avenue  
Sheila Gustafson, 525 Island Avenue  
Michael Beebe, 582 Island Avenue  
Nancy Beebe, 582 Island Avenue  
Elizabeth Stout, 439 Island Avenue  
Monica Stevenson, 548 Island Avenue  
John Freeman, 548 Island Avenue  
Christie McLeod, 531 Island Avenue  
Frederick W. O'Keefe, 238 Pleasant Avenue  
Phyllis A. MacIsaac, 238 Pleasant Avenue  
John MacLeod, 539 Island Avenue  
Sarah MacLeod, 539 Island Avenue  
Mildred MacIsaac, 49 Trefethern Avenue  
Linda Pryblo, 49 Trefethern Avenue

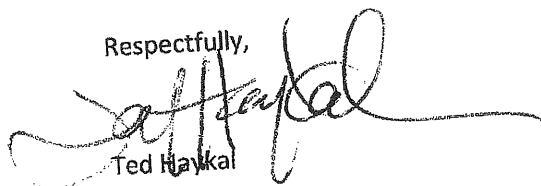
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NOV 28 2011

City of Portland  
Planning Division

The basis for this appeal is to determine the Planning Boards interpretation whether the parking of fuel trucks, with 1,320 gallons or more of fuel/product, in the contested I-B2 Zone constitutes simple "off street parking" as determined by the Zoning Administrator or is it, in fact, fuel storage as defined by the State of Maine Department of Environmental Control, (Mr. David McCaskill).

Respectfully,



Ted Haykal

Attachment:

1. November 16, 2011 email from Mr. David McCaskill, State of Maine DEP.

AH 4

**Fred O'Keefe**

**From:** McCaskill, David [David.McCaskill@Maine.gov]  
**Sent:** Wednesday, November 16, 2011 2:44 PM  
**To:** Fred O'Keefe  
**Cc:** Bowie, Butch C  
**Subject:** RE: Question

Yes-It is still fuel storage as long as the truck are parked overnight. I have not heard from the town of late but we will check in with them.

Take care,

**From:** Fred O'Keefe [mailto:fokeefe@fsog-llc.com]  
**Sent:** Monday, November 07, 2011 4:03 PM  
**To:** McCaskill, David  
**Cc:** Bowie, Butch C  
**Subject:** Question

David,

As you may recall I corresponded with you back in July of this year regarding the plan submitted by Keith Ivers, Peaks Island Fuel. Recently the City of Portland upheld his request to park fuel trucks on property he is attempting to purchase. The Zoning Board of Appeal also upheld the ruling which would permit the parking of seven (7) vehicles. I have two questions that you hopefully may be able to answer.

1. The resubmitted drawing of the property in question show substantially more of the property within the shoreland zone. What effect will this have in fulfilling State and Federal DEP requirements?
2. Has Mr. Ivers filled the SPCC Plan as required and if so what is the State's recommendations?
3. In the November issue of "The Island Times" and I quote:

"His (Attorney for the Appeal, David Lourey) second argument was that keeping the vehicles at Mr. Ivers's home constituted fuel storage, not parking. This actually caused some consternation among the board members who asked for clarification from the City's Assistant Corporate Council, Danielle West-Chuhta. She and Zoning Administrator Marge Schmuckal both responded, saying that it would constitute storage only if the vehicles were parked for more than 30 days, for instance, if one was inoperable and had not been repaired."

My question to you is what does the DEP consider to be fuel storage. I was under the impression that fuel oil in excess of 1,320 gallons in storage tanks or in his delivery trucks if they are to be parked at the site overnight or longer with product in them does constitute the parking of these vehicles to be in a fuel storage/terminal area.

Is this factual?

Thank you so much for any assistance and/or advice you can provide.

Fred O'Keefe

AH 5



# PORTLAND MAINE

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**Planning & Urban Development Department**  
Gregory A. Mitchell, Acting Director

**Planning Division**  
Alexander Jaegerman, Director

December 7, 2011


Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haytkal:

The Planning Board is authorized to consider an appeal of an administrative determination within 30 calendar days of an administrative determination (Land Use Code, Sec. 14-30 (o)). Specifically, you have the right to submit a letter requesting to appeal the November 30, 2011 determination by the Planning Authority that stated the appeal you submitted was not **within** the authority of the Planning Board to consider and thus, the request for an appeal is not timely (Attachment 1). You must submit a letter within the appeal period that outlines the points of the Planning Authority November 30th determination that you are appealing.

If you have further questions, please contact our office at 874-8719.

Sincerely,

  
Alexander Jaegerman  
Planning Division Director

Attachments:

1. November 30, 2011 letter from Alexander Jaegerman, Planning Division Director, to Ted Haytkal
2. November 28, 2011 letter and attachments from Ted Haytkal to Alexander Jaegerman

Cc:

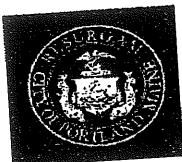
Greg Mitchell, Acting Director, Department of Planning and Urban Development  
Gary Wood, Corporation Counsel  
Barbara Barhydt, Development Review Services Manager  
Marge Schmuckal, Zoning Administrator  
Danielle West- Chuhta, Associate Corporation Counsel  
Keith Ivers, Peaks Island Fuel

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Attachment 1

City Hall, 389 Congress Street . Portland, ME 04101-3509 . Ph (207) 874-8719 . Fx 756-8258 . TTY 874-8936

AH 5



# PORTLAND MAINE

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**Planning & Urban Development Department**  
Gregory A. Mitchell, Acting Director

**Planning Division**  
Alexander Jaegerman, Director

November 30, 2011

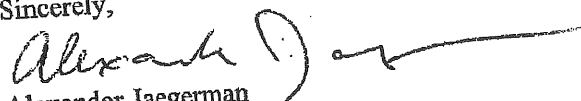
Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

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City Hall, 389 Congress Street . Portland, ME 04101-3509 . Ph (207) 874-8719 . Fx 756-8258 . TTY 874-8936



145

Attachment 2

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SINCERELY YOURS,  
TED HAENAL *76-4454*

RECEIVED

NOV 28 2011

City of Portland  
Planning Division

AHS

November 28, 2011

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

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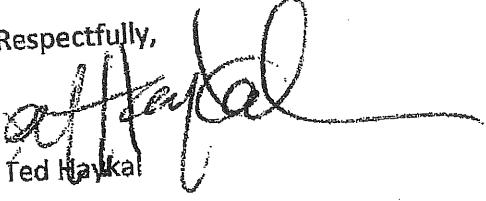
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NOV 28 2011

City of Portland  
Planning Division

AH5

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Ted Hawka

Attachment:

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A45

**Fred O'Keefe**

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**Sent:** Wednesday, November 16, 2011 2:44 PM  
**To:** Fred O'Keefe  
**Cc:** Bowie, Butch C  
**Subject:** RE: Question

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**Cc:** Bowie, Butch C  
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Is this factual?

Thank you so much for any assistance and/or advice you can provide.

Fred O'Keefe

AHL  
DECEMBER 30,  
2011

DEAR ALEX JAECERMAN,  
THIS LETTER IS WRITTEN AS AN APPEAL  
TO YOUR DECISION OF NOVEMBER 30, 2011.  
THE APPEAL I SUBMITTED ON NOVEM-  
BER 28, 2011 WAS INCORRECTLY STATED.  
THE APPEAL I SUBMITTED WAS NOT WITHIN  
THE AUTHORITY OF THE PLANNING BOARD  
TO CONSIDER.

I HOPE YOU WILL RECONSIDER MY  
APPEAL TO THE PLANNING BOARD.

RESPECTFULLY YOURS,  
TED HAYKAL

TED HAYKAL  
522 ISLAND AVE  
PEAKS ISLAND, ME  
04108

207-766-4454

RECEIVED

DEC 30 2011

City of Portland  
Planning Division

AA 6

December 30, 2011

Mr. Alex Jaegerman,

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The appeal I submitted on November 28, 2011 was incorrectly stated. The appeal I submitted was not within the authority of the Planning Board to consider.

I hope you will reconsider my appeal to the Planning Board.

Respectfully Yours,

  
Ted Haykal

Ted Haykal  
522 Island Avenue  
Peaks Island, ME 04108

207-766-4454

~~RECEIVED~~

~~JAN 30 2012~~

~~City of Portland  
Planning Division~~

RECEIVED

JAN - 3 2012

City of Portland  
Planning Division

ATTN: MR. ALEX VAEGERMAN:

AHG

**Ted Haykal  
522 Island Avenue  
Peaks Island, ME 04108**

December 30, 2011

Planning Division  
Planning & Urban Development Department  
City of Portland, ME 04101

Appeal by Ted Haykal against decision of the Planning Division relating to 512 Island Avenue, Peaks Island (Keith Ivers' and Peaks Island Fuel's site plan)

I hereby appeal the decision of the Planning Division regarding the site plan submitted by Keith Ivers and Peaks Island Fuel relating to 512 Island Avenue, Peaks Island.

Part One

For the Planning Division to approve this plan would require it to accept as true and dispositive an untrue and indeed absurd contention, as detailed below, namely, that this site is intended "to create a small, gravel parking lot for up to 7 vehicles" - whereas, in fact, three or four of those vehicles will hold, on average, far more fuel than the paltry 300 gallons which Ivers misled zoning authorities into considering. *If the truth had been known, the subject of this site plan would not be an off-street parking lot but, rather, a fuel storage facility.*

The Planning Division should not close its eyes to the manifest error undergirding any consideration of this proposed site as a mere parking lot rather than *a fuel storage facility intended to house, on average, thousands of gallons of fuel oil, kerosene, and propane gas.* Ivers' business could not possibly succeed if those trucks held "overnight" only the very minimal loads he testified they would hold (as I recall, he said "less than 300 gallons"; Ivers' testimony thereon is further summarized below).

The likely facts are that (a) Ivers purchases full truckloads at wholesale from a fuel barge that periodically visits Peaks Island; (b) the barge does not visit daily, but in winter it might visit as often as weekly, possibly oftener; (c) a truckload contains 2,800 gallons; (d) after obtaining a truckload of fuel, and over the next days or weeks, Ivers sells the contents to his many retail customers (I believe that a typical sale would be about 100-150 gallons).

Now, while the frequency of wholesale deliveries to Peaks Island varies, it is beyond doubt that during the first days following a barge delivery the Peaks Island Fuel trucks will typically be parked overnight containing substantially more than the 1,320 gallons which (as I understand the law) are permissible for overnight parking without triggering "fuel storage facility" designation (and all the complex state and federal permitting requirements thereby implicated).

Ivers apparently misled the zoning authorities, but surely the Planning Division is not required to "buy into" those untrue and absurd claims. On the contrary, the Planning Division should at its own initiative stop this absurdity in its tracks and request the zoning authorities to review the truth of Ivers' claim. **Beyond doubt that claim was incorporated into the Zoning Board of Appeals' Findings of Fact, including "that the vehicles may contain some amounts of fuel when parked overnight after deliveries in case evening emergency fuel deliveries are needed, but the trucks would not be filled with fuel."**

This dubious assertion seemingly requires the inference that Ivers fills his trucks each morning, and serves enough customers each day so as to essentially empty each truck before nightfall. That dubious assertion further requires the inference that the fuel barge visits Peaks Island daily, or at least visits on those presumably-*numerous* winter days when Peaks Island Fuel first engorges and then disgorges its trucks' full loads so as to park those trucks each evening with less than 300 gallons "in case evening emergency fuel deliveries are needed." This is simply preposterous! The Planning Division is not required to buy into this laughable claim and its attendant necessary (and necessarily-absurd) inferences.

On the contrary, the Planning Division ought to see that the only reasonable and likely "finding of fact" is that Peaks Island Fuel's trucks are sometimes very full, sometimes fairly full, sometimes half full, and on average half the time less than half full. In short, these trucks are likely to spend many a night (or part of many a day) sitting in that "small, gravel parking lot" holding at least 1,320 gallons of highly flammable and otherwise hazardous liquids. Whether the fuel barge visits every third day, or seventh, or tenth, or twentieth, it is a matter of simple arithmetic that each truck's *average load* between fillings will be about 1,400 gallons (half of 2,800 gallons, a full load).

The proper designation describing the subject of this proposal is not an off-street parking lot but, rather, a fuel storage facility. The zoning authorities accepted as true a highly improbable claim – a claim which, if true, would have implied a rather odd and woefully-unsuccessful business – but the Planning Division is not required to adopt and perpetuate the improbable premises undergirding the zoning authorities' clear error. Government officials are not required to perpetuate absurdities. Every step in the governmental process requires the cultivation and harvesting of reliable information leading to reasonable explanations, good reasons, wise choices. Surely the life of accountable governance is reasoned choice. That is what now confronts the Planning Division.

If Ivers builds and operates a fuel storage facility, then I will lodge an appropriate complaint to have it shut down. It would be far preferable, however, for the Planning Division to seek, on its own initiative, a review by the zoning authorities. Whether or not it does so, it can of its own volition accurately designate the proper subject of this site proposal. As I have shown, that proper subject is not a parking lot but a fuel storage facility.

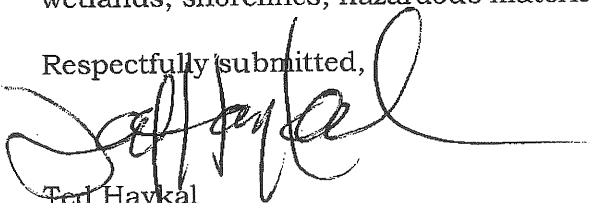


## Part Two

If the Planning Division declines to review this "parking lot" on the basis of what it is actually intended to be, as discussed above, I appeal its approval to date of the site plan, on the following bases:

1. Ivers' current plan is to have his large fuel trucks parked closer to my property than they need to be. This eyesore would be a major imposition upon my property while contributing little to his business convenience, etc. I propose, instead, that his large fuel trucks be parked adjacent to his own residential property's northeasterly line, as far as possible from my property. My property's view of Casco Bay is impaired the closer his trucks are to my property. I appeal and request that those trucks be placed as far from my property as reasonably possible.
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3. Whether or not the trucks and/or driveway are moved, as above proposed, I would appreciate it if Ivers were required to plant fast-growing evergreen trees along the periphery of his property where it adjoins mine, so as to reduce the eyesores his fuel trucks will cause.
4. No matter whether this site is referred to as a fuel storage facility or an off-street parking lot, the fact is that this enterprise, if allowed, will involve fuel trucks persistently located near the seashore upon wetlands – that is, (a) the ocean is very near and (b) the water table seems very high, seldom more than a foot below the land in question, which (in a word) is soggy. Accordingly, I propose that before this site plan is approved Ivers should be instructed to have a professional study conducted, to report back to the Planning Division whether this facility, if built, would infringe state or federal use restrictions applicable to wetlands, shorelines, hazardous materials, toxic substances, etc.

Respectfully submitted,



Ted Haykal

cc: Keith Ivers

P.S. I am not a lawyer. I cannot afford a lawyer. I request that this appeal be interpreted generously, as my best effort to apprise appropriate authorities of matters which, I believe, in good faith, require serious consideration.

**Barbara Barhydt - Re: Appeal submittedfor 512**

**From:** Danielle West-Chuhta (Danielle West-Chuhta)  
**To:** Alex Jaegerman; Barbara Barhydt; Greg Mitchell  
**Date:** Tuesday, November 29, 2011 9:50 AM  
**Subject:** Re: Appeal submittedfor 512  
**CC:** Gary Wood

I would say that the time limit has lapsed for both. There may still be time for an appeal to court - but I am not sure. We should probably just advise him that the court avenue is there.

>>> Barbara Barhydt 11/29/2011 9:26 AM >>>  
Monday was the end of the appeal period for the Planning Board. So do I just say the time has now lapsed? I will draft something for review.

Barbara

>>> Danielle West-Chuhta (Danielle West-Chuhta) Tuesday, November 29, 2011 9:23 AM >>>  
Barbara:

I think that we need to notify Mr. Haykal in writing that the planning board cannot accept his appeal of the ZBA decision since it is not the body that reviews those decisions. The letter may want to re-indicate that he can appeal the site plan approval to the Planning Board (if it is within the required time frame) and/or he can appeal the ZBA decision to the Maine Superior Court under Rule 80B. It is important to note that under Maine law he has "45 days of the date of the vote on the original decision . . ." to appeal to the Superior Court. 30-A M.R.S.A. section 2691(3)(G) (emphasis added).

Thanks,

Danielle

>>> Barbara Barhydt 11/28/2011 5:34 PM >>>  
Hi:

Ted Haykal submitted an appeal letter to Alex at the end of the day today. As I read the letter he is appealing the ZBA decision and does not mention the site plan. I told him that the Planning Board cannot review the ZBA decision and that only an appeal of the administrative site plan approval can go to the PB. I also advised John Bannon similarly, but this letter is not from John Bannon. It is attached for your review.

I had let Keith Ivers know that his site plan approval might be appealed today. Please advise.

Thank you  
Barbara

Dear Mr. Jaegerman:

I am writing to notify you that I wish to appeal the decision of the Board of Zoning Appeals on October 13, 2011 in the matter of 512 Island Avenue, Peaks Island, Keith Ivers, prospective buyer, Tax Map 090, Block AA, Lots 001, 002 & 005, I-B Island Business Zone, in which the applicants challenged the Zoning Administrator's determination that the proposed parking of fuel trucks and other trucks is permitted in the I-B Zone as "off-street parking."

The basis for the appeal is that the Board committed errors of law in interpreting City of Portland ordinances, that the decisions was not adequately supported in the facts, and was arbitrary and capricious.

Please call me if you have any questions.

SINCERELY YOURS,  
TED HAEGER 766-4454

RECEIVED

NOV 28 2011

City of Portland  
Planning Division

November 28, 2011

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

Attn: Mr. Alex Jaegerman:

Re: Appeal of Ted Haykal, and Neighbors of October 13, 2011 Determination of the Zoning Board of Appeal that 2,800 Gallon Fuel Trucks and other commercial Vehicles is permitted as "off street parking" re: 512 Island Avenue, Peaks Island. Tax Map 090, Block AA, Lots 001, 002 & 005.

To the Chair and members of the Board:

The persons making this appeal are as follows:

Mr. Ted Haykal, 522 Island Avenue  
Chuck Muse, 11 Trefethern Avenue  
Jeanne Muse, 11 Trefethern Avenue  
Beth Brown, 517 Trefethern Avenue  
Jonathan Brown, 517 Trefethern Avenue  
Joanne MacIsaac, 499 Island Avenue  
Ron DeLucia, 499 Island Avenue  
Wesley Gustafson, 525 Island Avenue  
Sheila Gustafson, 525 Island Avenue  
Michael Beebe, 582 Island Avenue  
Nancy Beebe, 582 Island Avenue  
Elizabeth Stout, 439 Island Avenue  
Monica Stevenson, 548 Island Avenue  
John Freeman, 548 Island Avenue  
Christie McLeod, 531 Island Avenue  
Frederick W. O'Keefe, 238 Pleasant Avenue  
Phyllis A. MacIsaac, 238 Pleasant Avenue  
John MacLeod, 539 Island Avenue  
Sarah MacLeod, 539 Island Avenue  
Mildred MacIsaac, 49 Trefethern Avenue  
Linda Pryblo, 49 Trefethern Avenue

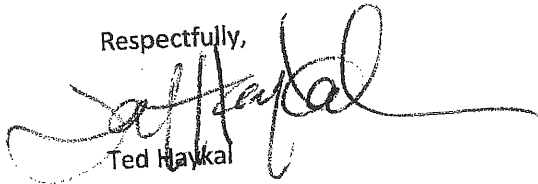
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City of Portland  
Planning Division

The basis for this appeal is to determine the Planning Boards interpretation whether the parking of fuel trucks, with 1,320 gallons or more of fuel/product, in the contested I-B2 Zone constitutes simple "off street parking" as determined by the Zoning Administrator or is it, in fact, fuel storage as defined by the State of Maine Department of Environmental Control, (Mr. David McCaskill).

Respectfully,



Ted Haykal

Attachment:

1. November 16, 2011 email from Mr. David McCaskill, State of Maine DEP.

## Fred O'Keefe

---

**From:** McCaskill, David [David.McCaskill@Maine.gov]  
**Sent:** Wednesday, November 16, 2011 2:44 PM  
**To:** Fred O'Keefe  
**Cc:** Bowie, Butch C  
**Subject:** RE: Question

Yes-It is still fuel storage as long as the truck are parked overnight. I have not heard from the town of late but we will check in with them.

Take care,

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**From:** Fred O'Keefe [mailto:fokeefe@fsog-llc.com]  
**Sent:** Monday, November 07, 2011 4:03 PM  
**To:** McCaskill, David  
**Cc:** Bowie, Butch C  
**Subject:** Question

David,

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1. The resubmitted drawing of the property in question show substantially more of the property within the shoreland zone. What effect will this have in fulfilling State and Federal DEP requirements?
2. Has Mr. Ivers filled the SPCC Plan as required and if so what is the State's recommendations?
3. In the November issue of "The Island Times" and I quote:

"His (Attorney for the Appeal, David Lourey) second argument was that keeping the vehicles at Mr. Ivers's home constituted fuel storage, not parking. This actually caused some consternation among the board members who asked for clarification from the City's Assistant Corporate Council, Danielle West-Chuhta. She and Zoning Administrator Marge Schmuckal both responded, saying that it would constitute storage only if the vehicles were parked for more than 30 days, for instance, if one was inoperable and had not been repaired."

My question to you is what does the DEP consider to be fuel storage. I was under the impression that fuel oil in excess of 1,320 gallons in storage tanks or in his delivery trucks if they are to be parked at the site overnight or longer with product in them does constitute the parking of these vehicles to be in a fuel storage/terminal area.

Is this factual?

Thank you so much for any assistance and/or advice you can provide.

Fred O'Keefe

DECEMBER 30,  
2011

DEAR ALEX JAEGERMAN,

THIS LETTER IS WRITTEN AS AN APPEAL  
TO YOUR DECISION OF NOVEMBER 30, 2011.

THE APPEAL I SUBMITTED ON NOVEM-  
BER 28, 2011 WAS INCORRECTLY STATED.  
THE APPEAL I SUBMITTED WAS NOT WITHIN  
THE AUTHORITY OF THE PLANNING BOARD  
TO CONSIDER.

I HOPE YOU WILL RECONSIDER MY  
APPEAL TO THE PLANNING BOARD.

RESPECTFULLY YOURS,  
TED HAYKAL

TED HAYKAL  
522 ISLAND AVE  
PEAKS ISLAND, ME  
04108

207-766-4454

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DEC 30 2011

City of Portland  
Planning Division

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# PORTLAND MAINE

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**Planning & Urban Development Department**  
Gregory A. Mitchell, Acting Director

**Planning Division**  
Alexander Jaegerman, Director

November 30, 2011

Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haytkal:

The Planning Board cannot accept the appeal you submitted on Monday, November 28, 2011 requesting an appeal of the 2011 Determination by the Zoning Board of Appeal (letter included as Attachment 1) dated October 13, 2011. The Planning Board is not authorized to consider an appeal of a Zoning Board of Appeals decision. An appeal of a Zoning Board of Appeals decision must be submitted to the Maine Superior Court under Rule 80B, Sec 30-A M.R.S.A., section 2691 (3)(G). The Planning Board is, however, authorized to consider an appeal within 30 calendar days of an administrative decision for a site plan (Land Use Code, Sec. 14-30 (o) and 14-529). In this case, the Planning Authority approved the Level I: Site Alteration site plan for 512 Island Avenue on October 27, 2011. Consequently, the time to appeal the aforementioned site plan approval was Monday, November 28, 2011.

If you have further questions, please contact our office at 874-8719.

Sincerely,

  
Alexander Jaegerman  
Planning Division Director

cc:  
Greg Mitchell, Acting Director, Department of Planning and Urban Development  
Gary Wood, Corporation Counsel  
Barbara Barhydt, Development Review Services Manager  
Marge Schmuckal, Zoning Administrator  
Danielle West- Chuhta, Associate Corporation Counsel

O:\PLAN\Dev Rev\Island Ave (PI) 512\Response to appeal letter - Haytkal- 11-30-11.doc

City Hall, 389 Congress Street . Portland, ME 04101-3509 . Ph (207) 874-8719 . Fx 756-8258 . TTY 874-8936

Dear Mr. Jaegerman:

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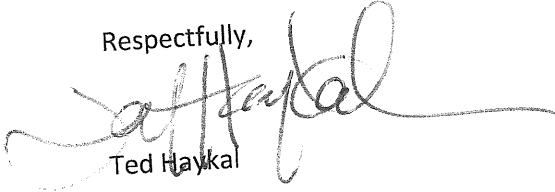
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Respectfully,

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Ted Haykal

Attachment:

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## Fred O'Keefe

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Gregory A. Mitchell, Acting Director

Planning Division  
Alexander Jaegerman, Director

December 7, 2011

Ted Haykal  
522 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haykal:

The Planning Board is authorized to consider an appeal of an administrative determination within 30 calendar days of an administrative determination (Land Use Code, Sec. 14-30 (o)). Specifically, you have the right to submit a letter requesting to appeal the November 30, 2011 determination by the Planning Authority that stated the appeal you submitted was not within the authority of the Planning Board to consider and thus, the request for an appeal is not timely (Attachment 1). You must submit a letter within the appeal period that outlines the points of the Planning Authority November 30th determination that you are appealing.

If you have further questions, please contact our office at 874-8719.

Sincerely,

Alexander Jaegerman  
Planning Division Director

Attachments:

1. November 30, 2011 letter from Alexander Jaegerman, Planning Division Director, to Ted Haykal
2. November 28, 2011 letter and attachments from Ted Haykal to Alexander Jaegerman

Cc:  
Greg Mitchell, Acting Director, Department of Planning and Urban Development  
Gary Wood, Corporation Counsel  
Barbara Barhydt, Development Review Services Manager  
Marge Schmuckal, Zoning Administrator  
Danielle West- Chuhta, Associate Corporation Counsel  
Keith Ivers, Peaks Island Fuel

O:\PLAN\Dev Rev\Island Ave (PI) 512\Response to appeal letter - Haykal.doc

Attachment 1

City Hall, 389 Congress Street . Portland, ME 04101-3509 . Ph (207) 874-8719 . Fx 756-8258 . TTY 874-8936





# PORTLAND MAINE

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**Planning & Urban Development Department**  
Gregory A. Mitchell, Acting Director

**Planning Division**  
Alexander Jaegerman, Director

November 30, 2011

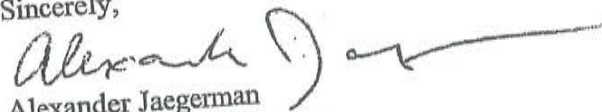
Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haykal:

The Planning Board cannot accept the appeal you submitted on Monday, November 28, 2011 requesting an appeal of the 2011 Determination by the Zoning Board of Appeal (letter included as Attachment 1) dated October 13, 2011. The Planning Board is not authorized to consider an appeal of a Zoning Board of Appeals decision. An appeal of a Zoning Board of Appeals decision must be submitted to the Maine Superior Court under Rule 80B, Sec 30-A M.R.S.A., section 2691 (3)(G). The Planning Board is, however, authorized to consider an appeal within 30 calendar days of an administrative decision for a site plan (Land Use Code, Sec. 14-30 (o) and 14-529). In this case, the Planning Authority approved the Level I: Site Alteration site plan for 512 Island Avenue on October 27, 2011. Consequently, the time to appeal the aforementioned site plan approval was Monday, November 28, 2011.

If you have further questions, please contact our office at 874-8719.

Sincerely,

  
Alexander Jaegerman  
Planning Division Director

- cc:
- Greg Mitchell, Acting Director, Department of Planning and Urban Development
  - Gary Wood, Corporation Counsel
  - Barbara Barhydt, Development Review Services Manager
  - Marge Schmuckal, Zoning Administrator
  - Danielle West-Chuhta, Associate Corporation Counsel

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City Hall, 389 Congress Street . Portland, ME 04101-3509 . Ph (207) 874-8719 . Fx 756-8258 . TTY 874-8936

City Hall, 389 Congress Street . Portland, ME 04101-3509 . Ph (207) 874-8719 . Fx 756-8258 . TTY 874-8936

Attachment 2

Dear Mr. Jaegerman:

I am writing to notify you that I wish to appeal the decision of the Board of Zoning Appeals on October 13, 2011 in the matter of 512 Island Avenue, Peaks Island, Keith Ivers, prospective buyer, Tax Map 090, Block AA, Lots 001, 002 & 005, I-B Island Business Zone, in which the applicants challenged the Zoning Administrator's determination that the proposed parking of fuel trucks and other trucks is permitted in the I-B Zone as "off-street parking."

The basis for the appeal is that the Board committed errors of law in interpreting City of Portland ordinances, that the decisions was not adequately supported in the facts, and was arbitrary and capricious.

Please call me if you have any questions.

Sincerely yours,  
TED HAEKAL 766-4454

RECEIVED

NOV 28 2011

City of Portland  
Planning Division

November 28, 2011

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

Attn: Mr. Alex Jaegerman:

Re: Appeal of Ted Haykal, and Neighbors of October 13, 2011 Determination of the Zoning Board of Appeal that 2,800 Gallon Fuel Trucks and other commercial Vehicles is permitted as "off street parking" re: 512 Island Avenue, Peaks Island. Tax Map 090, Block AA, Lots 001, 002 & 005.

To the Chair and members of the Board:

The persons making this appeal are as follows:

Mr. Ted Haykal, 522 Island Avenue  
Chuck Muse, 11 Trefethern Avenue  
Jeanne Muse, 11 Trefethern Avenue  
Beth Brown, 517 Trefethern Avenue  
Jonathan Brown, 517 Trefethern Avenue  
Joanne MacIsaac, 499 Island Avenue  
Ron DeLucia, 499 Island Avenue  
Wesley Gustafson, 525 Island Avenue  
Sheila Gustafson, 525 Island Avenue  
Michael Beebe, 582 Island Avenue  
Nancy Beebe, 582 Island Avenue  
Elizabeth Stout, 439 Island Avenue  
Monica Stevenson, 548 Island Avenue  
John Freeman, 548 Island Avenue  
Christie McLeod, 531 Island Avenue  
Frederick W. O'Keefe, 238 Pleasant Avenue  
Phyllis A. MacIsaac, 238 Pleasant Avenue  
John MacLeod, 539 Island Avenue  
Sarah MacLeod, 539 Island Avenue  
Mildred MacIsaac, 49 Trefethern Avenue  
Linda Pryblo, 49 Trefethern Avenue

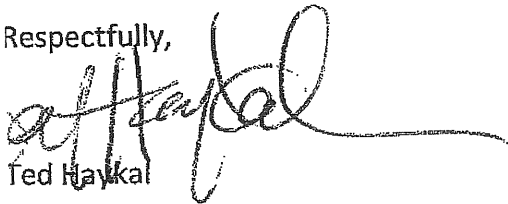
**RECEIVED**

NOV 28 2011

City of Portland  
Planning Division

The basis for this appeal is to determine the Planning Boards interpretation whether the parking of fuel trucks, with 1,320 gallons or more of fuel/product, in the contested I-B2 Zone constitutes simple "off street parking" as determined by the Zoning Administrator or is it, in fact, fuel storage as defined by the State of Maine Department of Environmental Control, (Mr. David McCaskill).

Respectfully,



Ted Haykal

Attachment:

1. November 16, 2011 email from Mr. David McCaskill, State of Maine DEP.

## Fred O'Keefe

---

**From:** McCaskill, David [David.McCaskill@Maine.gov]  
**Sent:** Wednesday, November 16, 2011 2:44 PM  
**To:** Fred O'Keefe  
**Cc:** Bowie, Butch C  
**Subject:** RE: Question

Yes-It is still fuel storage as long as the trucks are parked overnight. I have not heard from the town of late but we will check in with them.

Take care,

---

**From:** Fred O'Keefe [mailto:fokeefe@fsog-llc.com]  
**Sent:** Monday, November 07, 2011 4:03 PM  
**To:** McCaskill, David  
**Cc:** Bowie, Butch C  
**Subject:** Question

David,

As you may recall I corresponded with you back in July of this year regarding the plan submitted by Keith Ivers, Peaks Island Fuel. Recently the City of Portland upheld his request to park fuel trucks on property he is attempting to purchase. The Zoning Board of Appeal also upheld the ruling which would permit the parking of seven (7) vehicles. I have two questions that you hopefully may be able to answer.

1. The resubmitted drawing of the property in question show substantially more of the property within the shoreland zone. What effect will this have in fulfilling State and Federal DEP requirements?
2. Has Mr. Ivers filled the SPCC Plan as required and if so what is the State's recommendations?
3. In the November issue of "The Island Times" and I quote:

"His (Attorney for the Appeal, David Lourey) second argument was that keeping the vehicles at Mr. Ivers's home constituted fuel storage, not parking. This actually caused some consternation among the board members who asked for clarification from the City's Assistant Corporate Council, Danielle West-Chuhta. She and Zoning Administrator Marge Schmuckal both responded, saying that it would constitute storage only if the vehicles were parked for more than 30 days, for instance, if one was inoperable and had not been repaired."

My question to you is what does the DEP consider to be fuel storage. I was under the impression that fuel oil in excess of 1,320 gallons in storage tanks or in his delivery trucks if they are to be parked at the site overnight or longer with product in them does constitute the parking of these vehicles to be in a fuel storage/terminal area.

Is this factual?

Thank you so much for any assistance and/or advice you can provide.

Fred O'Keefe





# PORTLAND MAINE

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**Planning & Urban Development Department**  
Jeff A. Levine, AICP, Director

**Planning Division**  
Alexander Jaegerman, Director

August 3, 2012

Mr. Fred O'Keefe  
268 Pleasant Avenue  
Peaks Island, ME 04108

Dear Mr. O'Keefe:

Thank you for your July 26, 2012 letter regarding 512 Island Avenue (a copy of which is included as an attachment) in which you are asked the following questions:

1. Does 1,320 gallons of fuel stored in either tank and/or truck constitute fuel storage within IB-2 zoned property? You ask if the Planning Board reached a decision on this definition.
2. If so, how does it apply to the City Codes defining off-street parking with IB-2 zone property?

In response to both of your questions, the Planning Board did not address or reach a decision regarding the definition of fuel storage. This is because any and all questions regarding the use of property were decided by the Zoning Board of Appeals ("ZBA") at its October 13, 2012 public hearing (a copy of the ZBA's decision is included as an attachment). The ZBA ultimately decided to uphold the Zoning Administrator's interpretation that the proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B zone. The ZBA decision was not appealed, thus it is the final and binding decision on this matter. I would note that the ZBA did discuss the issue of fuel storage at its hearing, but did not find this issue to be determinative.

After the ZBA decision was rendered, a Level I: Site Alteration plan for Peaks Island Fuel at 512 Island Avenue was reviewed and approved by the Planning Authority on October 27, 2011 (a copy of which is included as an attachment). As part of the review process, a Spill Prevention, Control and Counter Measures Plan (that was reviewed and approved MaineDEP) was reviewed by the Planning Authority and is included as an attachment to the approval letter.

Finally, Mr. Ted Haykal submitted an appeal of the Planning Authority's decision to the Planning Board (a copy of the report and attachments that was presented to the Planning Board is attached). After a hearing on the appeal, the Planning Board denied Mr. Haykal's appeal. Thus, the Planning Authority's approval of the 512 Island Avenue Level I: Site Alteration site plan remains in effect.

Thank you for your inquiry and I hope this material answers your questions.

Sincerely,



Alexander Jaegerman  
Planning Division Director

cc:

Jeff Levine, Director, Department of Planning and Urban Development  
Danielle West-Chuhta, Associate Corporation Counsel  
Marge Schmuckal, Zoning Administrator  
Barbara Barhydt, Development Review Services Manager

Attachments:

1. Fred O'Keefe correspondence, dated July 26, 2012
2. Zoning Board of Appeals Decision, public hearing on October 13, 2012 and decision signed on October 20, 2012.
3. Alexander Jaegerman, Planning Division Director, Site Plan Approval Letter for 512 Island Avenue, dated October 27, 2011.
4. Planning Board Report #9-12, prepared on February 24, 2012 for the February 28, 2012 public hearing.
5. Carol Morrissette, Planning Board Chair, Planning Board Decision made on February 28, 2012 and decision letter dated Marcy 8, 2012.

Att. 1

July 26, 2012

Mr. Alexander Q. Jaegerman, AICP  
Director  
Planning & Urban Development Department  
Planning Division  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

Dear Alex,

It has been some time since I have corresponded with you regarding the decisions and outcomes relating to the off-street parking plans of Keith Ivers and Peaks Island Fuel, 512 Island Avenue, Peaks Island. There are several unresolved questions that I hope you can clarify.

According to the recorded disc of the Planning Board of Appeals meeting held on February 28, 2012 the question was put to the Board relating to the question, "Does 1,320 gallons of fuel stored in either tank and/or truck constitute fuel storage within IB-2 zoned property", according to the definition of the State of Maine DEP? The City Attorney who did not answer the question, but suggested that the Planning Board ask its Attorney.

I have attached a copy of the email sent to me by Mr. David McCaskill of the DEP dated November 16, 2011 where he reconfirms the definition of this rule that 1,320 gallons of fuel stored in a tank and/or truck "overnight" indeed constitutes fuel storage.

1. Has the Planning Board reached a decision regarding this definition?
2. If so, how does it apply to the City Codes defining off street parking within IB-2 zoned property?

If the City of Portland Planning Board allows for fuel storage in this particular case, does this change the code of what is allowed within the definition of IB-2 zoned property versus those codes that govern "Commercial" property? Would re-zoning from a business zone to a commercial zone be required?

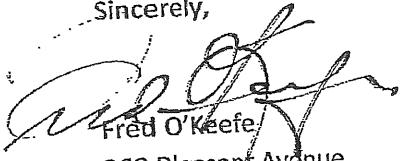
Obviously, because of safety concerns, we are very concerned as to how this issue will be resolved. Since this is a 100% residential use area, regardless of the current zoning with many year round residents, we simply want to be certain that there is the utmost compliance on the part of Peaks Island Fuel to obey all the laws, codes and rules of the City, the State and Federal agencies.



We hope you understand our sincere desire to want to protect our long established residential neighborhood lifestyles to the best of our abilities and further protect our homes from being threatened by any potential danger/disaster, big or small, as could be inflicted on us by volatile materials such as fuel oil and propane.

Thank you for your attention to this matter. I look forward to your answers which I will forward to all neighbors.

Sincerely,



Fred O'Keefe  
268 Pleasant Avenue  
Peaks Island, ME 04108

Cc: Mr. David McCaskill  
Maine Department of Environmental Protection  
17 State House Station  
28 Tyson Drive  
Augusta, ME 04333-0017

**Fred O'Keefe**

---

**From:** McCaskill, David [David.McCaskill@Maine.gov]  
**Sent:** Wednesday, November 16, 2011 2:44 PM  
**To:** Fred O'Keefe  
**Cc:** Bowie, Butch C  
**Subject:** RE: Question

Yes-it is still fuel storage as long as the truck are parked overnight. I have not heard from the town of late but we will check in with them.

Take care,

---

**From:** Fred O'Keefe [mailto:fokeefe@fsog-lc.com]  
**Sent:** Monday, November 07, 2011 4:03 PM  
**To:** McCaskill, David  
**Cc:** Bowie, Butch C  
**Subject:** Question

David,

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1. The resubmitted drawing of the property in question show substantially more of the property within the shoreland zone. What effect will this have in fulfilling State and Federal DEP requirements?
2. Has Mr. Ivers filled the SPCC Plan as required and if so what is the State's recommendations?
3. In the November issue of "The Island Times" and I quote:

"His (Attorney for the Appeal, David Lourey) second argument was that keeping the vehicles at Mr. Ivers's home constituted fuel storage, not parking. This actually caused some consternation among the board members who asked for clarification from the City's Assistant Corporate Council, Danielle West-Chuhta. She and Zoning Administrator Marge Schmuckal both responded, saying that it would constitute storage only if the vehicles were parked for more than 30 days, for instance, if one was inoperable and had not been repaired."

My question to you is what does the DEP consider to be fuel storage. I was under the impression that fuel oil in excess of 1,320 gallons in storage tanks or in his delivery trucks if they are to be parked at the site overnight or longer with product in them does constitute the parking of these vehicles to be in a fuel storage/terminal area.

Is this factual?

Thank you so much for any assistance and/or advice you can provide.

Fred O'Keefe

CITY OF PORTLAND, MAINE  
ZONING BOARD OF APPEALS

Interpretation Appeal to the Portland Zoning Board of Appeals ("Board") from the Zoning Administrator's August 18, 2011 determination that proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B Zone

DECISION

Date of public hearing: October 13, 2011  
Name and address of appellants: Ted Haykal, et al. (named in appeal narrative)  
c/o David A. Lourie, Esq.  
189 Spurwink Ave.  
Cape Elizabeth, ME 04107  
Location of property under appeal: 512 Island Avenue, Peaks Island  
Tax Map 090, Block AA, Lots 001, 002 & 005

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

- David A. Lourie, Esq. for Appellants
- Danielle West-Chuta, Assoc. Corp. Counsel for City of Portland Zoning Administrator Marge Schmuckal; City of Portland Zoning Administrator Marge Schmuckal; City Traffic Consultant Tom Errico;
- Ted Small, Esq. for Keith Ivers/Peaks Island Fuel.

Proponents:

1. Ted Haykal, 522 Island Avenue
2. Mr. Steven Riccuchi
3. Arthur Fink
4. Jeanne Meuse, 11 Trefethen Ave.
5. Joanne MacIsaac, 499 Island Ave.
6. Jean Gulliver, Trefethen Evergreen Improvement Association

7. Liz Williams
8. Ron DeLucia, 499 Island Ave.
9. Nancy Hoffman, Brackett Ave.

Opponents:

1. Stephen Mohr, 18 Pleasant Street
2. Nancy Cuthbertson, 341 Island Avenue
3. Ed Ranney, Island Ave.
4. Eric Conrad, 152 Brackett Ave.
5. Eric Eaton, Peaks Island Council
6. Mike Grady, Island Ave.
7. Dan Doane, 364 Island Ave.
8. Kyle Green, 188 Central Ave.
9. Paul Rico, 58 Elizabeth St.
10. Keith Ivers, Peaks Island Fuel Owner
11. Lisa Lynch
12. Sidney Gerard, Island Ave.
13. Rob Tiffany, 38 Centennial St.
14. Paul 341 Island Ave.
15. Rand Gee
16. Hutch Brown, Island Ave.
17. Chris Vail, Island Ave.
18. Robert Haines, Holm Ave.

Exhibits admitted (e.g. renderings, reports, etc.):

1. Interpretation Appeal Application, dated Sept. 16, 2011 by David A. Lourie, Esq., incl.:

Exhibit A, Aug. 18, 2011 determination by Zoning Administrator Marge Schmuckal;  
 Exhibit B-1, Aug. 8, 2011 letter from Terradyn Consultants LLC to Portland Planning Dept., Keith Ivers' letters to Planner Erick Giles, notice of the July 28, 2011 Peaks Island Council meeting, Grading and Erosion Control, Site and Landscaping Plans, Stormwater Management Plan;  
 Exhibit B-2, Site Plan, Landscaping Plan and Details & Notes;  
 Exhibit C, photographs of vehicles;  
 Exhibit D, City of Portland Technical Manual, Section 1 (Transportation Systems and Street Design);  
 Exhibit E, March 20, 1989 City Council Order amending City Code §§ 14-331 and 341.

2. Letters.
  - a. Letters from Frederick W. O'Keefe and Phyllis A. MacIsaac to Board of Appeals on Sept. 29, 2011;

- b. Email from Susan Hanley to Marge Schmuckal, Oct. 4, 2011;
- c. Letter from Jonathan and Beth Brown to Board of Appeals, Oct. 1, 2011;
- d. Letter from Michael Beebe to Board of Appeals, Sept. 29, 2011;
- e. Letter from Alison and Shergul Arshad to Board of Appeals, Sept. 29, 2011.
- f. Email from John S. and Anne E. Whitman dated Oct. 13, 2011.
- g. Email from Tom Morse dated Oct. 13, 2011.
- h. Letter from Bruce and Lori Hochman dated Oct. 13, 2011.

3. Cover Memo from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 5, 2011, transmitting prior comments from public regarding 512 Island Ave., Peaks Island (139 pages of correspondence).

4. Memorandum from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 13, 2011.

#### Findings of Fact and Conclusions of Law:

##### **Findings of Fact:**

The Board's authority to review an interpretation of the building authority (Zoning Administrator) is pursuant to Section 14-472 of the City of Portland Code of Ordinances, Chapter 14 ("Land Use Code").

Keith Ivers is the owner of Peaks Island Fuel. He proposes to park seven vehicles -- four 2,800 gallon fuel trucks used in Mr. Ivers' propane and oil delivery business and three passenger vehicle-sized service vehicles used in Mr. Ivers' heating repair business -- on a "parcel" located at 512 Island Avenue, Peaks Island consisting of several lots, which is improved by a single-family dwelling. Mr. Ivers stated that Peaks Island Fuel's offices are at 66 Island Avenue, and that the Peaks Island fuel trucks and other vehicles currently are parked on rented space on Welch Street, above the ferry landing. He and other members of the public observed that the present parking location is in the midst of much pedestrian traffic and is subject to vandalism and litter. Mr. Ivers also stated that there would be no filling or fueling, major maintenance or washing of the vehicles in the proposed off-street parking area; that the vehicles may contain some amounts of fuel when parked overnight after deliveries in case evening emergency fuel deliveries are needed, but the trucks would not be filled with fuel; and that fueling of the vehicles occurs at the barge site for oil and kerosene and on the mainland for propane filling. In addition, Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation.

This parcel is located in the Island-Business (I-B) District, in which "Off-Street Parking" is a permitted use as stated in Section 14-233 (f) of the Land Use Code. Section 14-331 of the Land Use Code defines "Off Street Parking" as follows:

Sec. 14-331. Defined.

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

By letter dated Aug. 18, 2011, the City's Zoning Administrator determined that Mr. Ivers' proposed use is a permitted "off-street parking" use in the I-B Zone. In that letter, the Zoning Administrator determined that Sec. 14-223(f) and 14-331 of the Land Use Code "do not limit the allowable 'off-street parking' to any particular type of use or only allow parking as an accessory use," that the spaces can be either open air or garage spaces, that "The proposed parking area is meeting the standards in the City's Technical Manual," and that the "proposed parking lot is not a truck terminal" because the trucks are not warehoused or stored on the site, the trucks are not filled or fueled and no product is dispensed on site. As a permitted use, the proposed fuel truck/other vehicle parking use would be reviewed by the City's Planning Department under the site plan provisions of the Land Use Code.

The appellants, represented by David A. Lourie, Esq., filed an appeal on Sept. 19, 2011. Appellants assert that the definition of "off-street parking" in Sec. 14-331 means parking for automobiles and compact cars as defined by the City of Portland Technical Manual, Section 1. Appellants argue that the Technical Manual provides for parking spaces 19' in length and 8½' to 9' in width, while the proposed parking lot plans depict parking spaces as long as 22' and as wide as 12', and that the Land Use Code's reference to the Technical Manual limits the off-street parking use to passenger cars and motorcycles. Appellants also argue that the City Council's intent in amending § 14-331 in 1989 to incorporate the Technical Manual by reference was to allow off-street compact car parking. In addition, they argue that the proposed use actually is a "Truck Terminal" use which is prohibited in the I-B -- the storage of trucks, "for use in delivering fuel and services elsewhere on the island." Finally, Appellants argue that the determination was made without adequate consideration for the purposes of the Land Use Code as expressed in Sec. 14-46.

Section 14-47 of the Land Use Code defines "Truck Terminal" as follows:

*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

The defined use "Truck Terminal" is not listed as a permitted or conditional use in the I-B Zone. Under Sec. 14-225 of the Land Use Code, "Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

#### Conclusions of Law:

For reasons that follow, the Board concludes that Appellants have not met their burden of demonstrating that the Zoning Administrator's interpretation of the Land Use Code was incorrect or improper.

First, the Board concludes that the proposed use does constitute "off-street parking," which is a permitted use in the I-B Zone (Sec. 14-223(f)). The Board looks to the plain meaning of Secs. 14.223 (f) and 14-331, which establish "off-street parking" as a permitted use without limitation in the I-B zone in which the parcel is located.

The Board is aware that Sec. 14-331 of the Land Use Code provides that "Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, ... ." However, the Board does not interpret Sec. 14-331 and the Technical Manual incorporated thereby by reference as limiting the "off-street parking" use to passenger vehicles only, or as limiting the dimensions of parking spaces allowed in off-street parking spaces in the City of Portland to 9' by 19' passenger vehicle spaces or to 8½' by 19' compact car spaces. This is because construing the Land Use Code as a whole, other sections of the Land Use Code that refer to off-street parking imply that the off-street parking use also includes commercial motor vehicles. For example, Sec. 14-335 sets forth what off-street parking does **not** include, such as: more than one commercial motor vehicle in any residence, R-P or B-1 Zone (Sec. 14-335(a)); more than six commercial motor vehicles in any B-2 Zone (Sec. 14-335 (b)); and "any truck body, commercial trailer or similar commercial vehicles in residence zone or the R-P Zone" (Sec. 14-335(e)). In addition, Sec. 14-344 permits the Board or the Planning Board to permit off-street parking accessory to business uses but located in residential zones, with the limitation that the off-street parking be "for passenger cars only." These provisions demonstrate that the "off-street parking" use is available for **both** passenger vehicles and commercial vehicles, and that the passenger car and compact car stall dimensions in the Technical Manual must be minimum dimensions -- not fixed standards. Further, construing the Land Use Code as Appellants suggest would mean that larger commercial vehicles and trucks cannot be parked in off-street parking sites in Portland, a result that is not consistent with the Land Use Code as interpreted by the Board above or with observed practice in the City of Portland.

Second, the Board concludes that the proposed parking of seven Peaks Island Fuel vehicles is not a prohibited "Truck Terminal" use. In so concluding, the Board

notes that the definition of "truck terminal" in Section 14-47 of the Land Use Code begins: "A building and premises devoted to handling and temporary warehousing of goods, ..." The plans for the proposed parking area do not include a building, and the definition does not state "A building or premises"; therefore, the proposed use fails to meet this definition. Also, while Appellants argues that there is a distinction between "parking" and "storage" and argue that under the definition of "truck terminal," storage of trucks constitutes a truck terminal, a closer reading of the definition does not support that argument. The full definition reads:

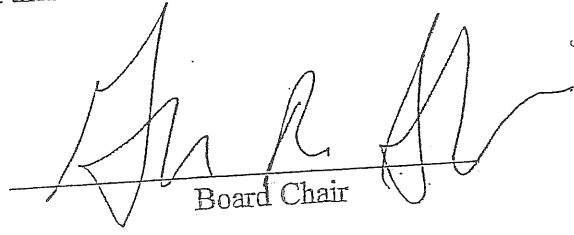
*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

Thus, while the "storage of trucks" "may be included" in the definition of "truck terminal," the storage of trucks does not by itself constitute a "truck terminal" use. Moreover, Mr. Ivers stated that his proposed off-street parking use for the Peaks Island Fuel vehicles does not include major maintenance, which would be conducted off site and does not include fueling, which he said occurs at the site for oil and kerosene and on the mainland for propane filling. Moreover, to the extent any distinction between "storage" and "parking" is relevant to this appeal, the Land Use Code prohibits "storage" outside of more than one unregistered motor vehicle "for a period in excess of thirty (30) days in any residence zone, the R-P Zone or any business zone." Sec. 14-335(d). Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation, so that this section does not apply.

Decision:

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

Dated: Oct. 20, 2011

  
Board Chair





# PORTLAND MAINE

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

Planning & Urban Development Department  
Cecily St. Louis Littell, Director  
  
Planning Division  
Alexander Jaegerman, Director

October 27, 2011

Keith Ivers  
Peaks Island Fuel  
P.O. Box 6  
Peaks Island, ME 04108

Jeff Amos, P.E.  
Terradyn Constultants, LLC  
P.O. Box 339  
New Gloucester, ME 04260

Project Name: Peaks Island Fuel  
Address: 512 Island Avenue  
Applicant: Keith Ivers  
Planner: Barbara Barhydt, Development Review Services Manager  
  
Project ID: 2011-277  
CBL: 090-AA-1, 2 and 5

Dear Mr. Ivers and Mr. Amos

On October 27, 2011, the Planning Authority approved with conditions a Level I: Site Alteration site plan for a seven (7) vehicle parking lot, four (4) truck spaces and three (3) vehicle spaces, for Peaks Island Fuel at 512 Island Avenue, Peaks Island. The decision is based upon the application documents and plans as submitted by Keith Ivers and prepared by Jeff Amos, P.E with a revision date on the site plans of 9/16/11. In addition, the applicant submitted a copy of the Spill Prevention, Control and Countermeasures Plan that was reviewed by the MDEP, Bureau of Remediation and Waste Management, and approved by Butch Bowie, DEP Environmental Specialist, on August 23, 2011 (Attachment 3). The proposal was reviewed for conformance with the standards of Portland's site plan ordinance and shoreland zoning. The review comments from City Staff are included as Attachments 1a-1g) The Zoning Board of Appeals confirmed that the parking lot is permitted in the Island Business I-B zone with their October 20, 2011 decision (Attachment 3).

### SITE PLAN STANDARD WAIVERS

The applicant requested two waivers from the technical standards. The Planning Authority waives the Technical Standards as follows:

1. Bicycle Parking: The applicant states that the parking lot is not for public use and there will be no vehicular or pedestrian traffic into the parking area except for employees of

Peak's Island Fuel. The site plan standard (Section 14-526 b. (i) (c) requires two bicycle spaces.

The Planning Authority waives the requirement for bicycle parking under the waiver criteria of 14-526 b. (ii) due to the facts that the parking area is for the Peaks Island Fuel vehicles, which is not open to the public, is active time of use will be during the winter months, and is located in an outlying area on the island.

- 2. Driveway width: The applicant is proposing a 12 foot wide driveway rather than the 20 foot minimum to the parking area. From a traffic engineering perspective, the reduced width is not expected to be problematic and low traffic volumes on Island Avenue. The narrower drive is proposed to better screen the parking by increasing the available buffer between the gravel surface and the abutting property. As stated in the request, Peak's Island Fuel has only one full time driver and one part-time driver, so there will not be opposing vehicles at any time. Also, the parking area is not open to the public. Finally, the Fire Department has concluded that the proposed driveway width is acceptable due to the fact the driveway into the parking lot is not to a building requiring fire apparatus access.

The Planning Authority waives the standard in the Technical Manual, Section 1, 1.7 Driveway Design to reduce the minimum two-way driveway width from 20 feet to 12 feet per the authority of Section 14-524 (a) 3.v (v)(h) and finds that the public interest is secured with a more prominent buffer, while maintaining a safe driveway, as described/approved by the Traffic Engineer and the Fire Department, and that the variation does not nullify the intent and purpose of the land development plan and regulations.

- 3. Parking lot dimensions: The applicant is proposing four larger parking stalls of 12 by 22 feet for the trucks with a travel aisle width of 28 feet. The rest of the parking spaces are proposed to be 9 x18 feet.

The Planning Authority supports the four larger parking spaces and the wider aisle width to accommodate the truck parking and circulation, which exceed the minimum dimensional standard of 9x18 feet for a parking space and twenty-four (24) feet for an aisle width as established in the Technical Manual, Section 1.14 and standard figure 1-27. The proposed parking dimensions and lay out allow the parking lot to function in a safe manner. The larger spaces and aisle width will not have the effect of nullifying the intent and purpose of the land development plan and the city regulations.

## SITE PLAN REVIEW

The Planning Authority found the plan is in conformance with the Site Plan Ordinance (Article V) of the Land Use Code, subject to the following condition(s) of approval:

1. The future storage area shown on the site plan is not approved as part of this decision. Any proposed structure must be submitted for the applicable reviews and permits.
2. The applicant and all assigns, must comply with stormwater inspection and maintenance plan and housekeeping plan as included in the applicant's site plan documents and the post-construction stormwater management plan compliance requirements and annual reporting as specified in Chapter 32 of the City Code.
3. The Fire Department approves the driveway into the storage lot as it is not to a building requiring fire apparatus access. However, if a structure is built in this storage lot, a minimum of a 16' wide driveway may be required; and at the entryway it may need to be modified to meet the turning radius of fire apparatus. If a structure is built in the future, code may require a sprinkler system.

The approval is based on the submitted site plan and associated documentation. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

### STANDARD CONDITIONS OF APPROVAL

Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.

4. Performance Guarantee and Inspection Fees A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. Defect Guarantee A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. Preconstruction Meeting Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. Department of Public Services Permits If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
8. As-Built Final Plans Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager at (207) 874- 8699.

Sincerely,



Alexander Jaegerman  
 Planning Division Director

Attachments:

- 1. Staff Memorandums
  - a. Memorandum from Lauren Swett, P.E., Woodard and Curran, October 5, 2011
  - b. Thomas Errico, P.E, T.Y. Lin, October 19, 2011
  - c. Jeff Tarling, City Arborist, August 25, 2011
  - d. Jeff Tarling, City Arborist, October XXX
  - e. Captain Chris Pirone, Fire Department, October 18, 2011
  - f. Marge Schmuckal, review comments, July 15, 2011
  - g. Marge Schmuckal, Zoning Determination, August 18, 2011
  - h. Marge Schmuckal, Review Comments, October 25, 2011
- 2. Zoning Board of Appeals Decision, October 20, 2011
- 3. Butch Bowie, DEP, approval of spill prevention plan, August 23, 2011,
- 4. Chapter 32 – Storm Water
- 5. Performance Guarantee Packet

Electronic Distribution:

- Penny St. Louis, Director of Planning and Urban Development Department
- Alexander Jaegerman, Planning Division Director
- Philip DiPierro, Development Review Coordinator, Planning
- Marge Schmuckal, Zoning Administrator, Inspections Division
- Tammy Munson, Inspection Division Director,
- Lannie Dobson, Administration, Inspections Division
- Michael Bobinsky, Director, Public Services
- Katherine Earley, Engineering Services Mgr., Public Services
- Bill Clark, Project Engineer, Public Services
- David Margolis-Pineo, Deputy City Engineer, Public Services
- Jane Ward, Administration, Public Services
- Capt. Chris Pirone, Fire Department
- Jeff Tarling, City Arborist, Public Services
- Thomas Errico, P.E., T.Y. Lin Associates
- David Senus, P.E., Woodard & Curran
- Assessor's Office
- Approval Letter File

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Portland, Maine 04102  
www.woodardcurran.com

T 800.426.4262  
T 207.774.2112  
F 207.774.6635

H.6  
Att. 1a

## MEMORANDUM

TO: Barbara Barhydt, Planner  
FROM: Lauren Swett, P.E.  
DATE: October 5, 2011  
RE: 512 Island Ave



As follow up to the response to comments and revised plans received from the applicant for 512 Island Ave, Peaks Island, we offer the following comments.

### Documents Provided

- Response to Comments and attachments for Peaks Island Fuel, dated September 22, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.
- Engineering Plans for Peaks Island Fuel, Sheets 1-4, revised September 16, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.

### Comments

The Applicant has responded to the comments noted in Woodard & Curran's memorandums dated August 19, 2011 and August 25, 2011. The applicant's letter and plan revisions adequately address our comments.





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l d c

From: Jeff Tarling  
To: Eric Giles  
Date: 8/25/2011 3:12 PM  
Subject: 512 Island Avenue / Peaks Island

Hi Eric -

I have reviewed the proposed project at 512 Island Avenue and offer the following comments / conditions:

- 1) Plant sizes - Shade and ornamental trees proposed did not meet the city standard sizes, shade trees such as Red Maple should be 2.5" caliper, ornamental trees 2" caliper, and evergreens 5-6' in height minimum. The shrub sizes proposed did meet standards.
- 2) Additional screening recommendation - I would recommend an additional 5 lilac shrubs to screen the adjacent residential property, this screening can follow the note on the plan to be coordinated between the project team and neighbor.
- 3) Fencing - In addition to the proposed fencing to screen the parking lot, I would recommend a simple wooden split-rail fence that would run from about the timber retaining wall along the entrance drive following the property line. This fencing would be to demarcate the property line and serve as a safety for children or other residential visitors from venturing into the proposed parking area. This could be an option with agreement from the neighbor.

Overall, the landscape plan saves existing trees, plants additional mix of shade and evergreen trees along with shrubs to help buffer the project.

Thanks,

Jeff Tarling  
City Arborist



1 d.

**From:** Jeff Tarling  
**To:** Barbara Barhydt  
**Date:** Tuesday, October 25, 2011 3:39 PM  
**Subject:** 512 Island Avenue Revisions

Hi Barbara -

I have reviewed the revised plans for 512 Island Avenue and find the plan acceptable as shown.

The additional lilac shrubs along with the fencing and earlier landscape planting meet the earlier review comments. We would be able to meet with the applicant or other concerns on-site to review the placement 'Post Construction' to go over plant placements in regards to screening, snow storage and sight distances.

Jeff Tarling  
City Arborist

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le

From: Chris Pirone  
To: Barhydt, Barbara  
Date: Tuesday, October 18, 2011 11:01 PM  
Subject: Re: 512 Island Avenue

Fire comments:

I am all set with this project as the driveway into the the storage lot is not to a building requiring fire apparatus access. However, if a structure is built in this storage lot, a minimum of a 16' wide driveway may be required; and at the entryway it may need to be modified to meet the turning radius of fire apparatus.

If a structure is built in the future, code may require a sprinkler system.

Captain Chris Pirone  
Portland Fire Department  
Fire Prevention Bureau  
380 Congress Street  
Portland, ME 04101  
(t) 207.874.8405  
(f) 207.874.8410

>>> Barbara Barhydt 10/12/11 8:14 AM >>>  
Hello:

I would like to wrap up this review, which had been Erick's project. I have memos from Tom, Jeff and David date August 25, 2011, but I don't see anything since then. I know we have discussed this project and I believe you are satisfied with the most recent version. I need to have your sign off in writing.

Chris, I cannot find any comments from you on this project. Could you direct me to your comments and approval. The oil spill prevention control and countermeasure plan that was approved by DEP is one of the documents listed in One Solution.

Thank you.

Barbara

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1 f.

512 Island Avenue – Peaks Island – 90-AA-1, 2, 5

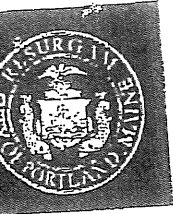
#2011-277

7/15/2011 This is a proposal to create a small, gravel parking lot for up to 7 vehicles . Currently there is a single family dwelling located along Island Avenue. The lot is consists of three separate parcels. The lot is divided by two separate zones: the IR-2 zone and the I-B zone. A portion of the outer edge of the 250' Shoreland Zone also extends into the property. The dwelling is located in the IR-2 zone and the proposed parking lot is located within the I-B zone.

Currently up to seven (7) vehicles are proposed to be parked upon the lot within the I-B zone. The applicant should review sections 14-339 and 14-340 and 14-341 to supply further information before I can make a final determination on zoning compliance. It is my understanding that there will be some refinements to the application.

Marge Schmuckal

Zoning Administrator



# PORTLAND, MAINE

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Penny St. Louis - Director of Planning and Urban Development  
Marge Schmuckal, Zoning Administrator

512 Island Avenue, Peaks Island  
90-AA-1, 2, 5 - IR-2/I-B Zone

August 18, 2011

The applicant, Mr. Ivers, is showing a vehicle parking lot for seven (7) vehicles located at 512 Island Avenue, Peaks Island. Currently a single family house is located on one portion of the lot. The proposed parking area will be located on another portion of the lot and has sufficient space to park four 2,800 gallon fuel trucks and three passenger-vehicle sized service vehicles. The vehicles are all to be actively used by Mr. Ivers in his heating and fuel oil business. The proposed parking area is shown entirely within the I-B zone.

Section 14-223(f) indicates that "off-street parking" is a permitted use in the I-B island business zone.

Section 14-331 defines "off-street parking" as parking "either by use of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended...."

The above sections do not limit the allowable "off-street parking" to any particular type of vehicle or only allow parking as an accessory use. Instead, the I-B zone allows off-street parking as a specific permitted use and the definition makes clear that the parking spaces can either be open-air or garage spaces that meet the standards in the City's Technical Manual. The proposed parking area is meeting the standards in the City's Technical Manual. As a result, I have determined that the parking lot described in Mr. Iver's application is permitted under the City Code.

It is important to note that I have reviewed the definition for a truck terminal. A "truck terminal" is defined in the City's Land Use Zoning Ordinance as:

"a building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations".

Mr. Iver's proposed parking lot is not a truck terminal. This is because his trucks are not warehoused or stored on the site. The trucks are also not filled, fueled and no product will be dispensed on the site. Instead, the trucks are just parked on this site for active use as needed in Mr. Ivers' propane and oil delivery business. The other vehicles that will be parked on the site are also for active use with Mr. Ivers' heating repair business. Mr. Ivers' business has been active through four generations and has garnered many clients on Peaks Island.

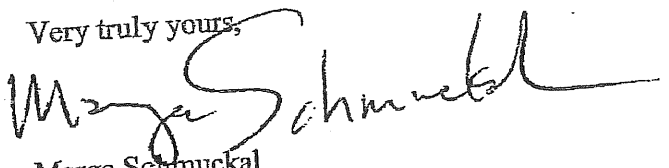
REPORT - MR. IVERS' PROPOSED OFF-STREET PARKING AT 512 ISLAND AVENUE, PEAKS ISLAND, PORTLAND, MAINE

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lg

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have thirty days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,



Marge Schmuckal  
Zoning Administrator

- Cc: Penny St. Louis, Director of Planning and Urban Development
- Alex Jaegerman, Division Director of Planning
- Barbara Barhydt, Development Review Service Manager
- Erick Giles, Planning
- Danielle West-Chuhta, Corporation Counsel
- Mike Murray, Island/Neighborhood Liaison

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lh

512 Island Avenue - Peaks Island - 90-AA-1, 2, 5

#2011-277

10/25/2011 This project has been approved by Zoning for all the underlying I-B zone requirements and Shoreland Zoning requirements.

Separate permits are required by Inspection Services for the use and the parking lot.

It is also noted that the Zoning Board of Appeals approved the parking lot use at its hearing on 10/13/2011 and made a final vote and accepted the findings of fact on 10/20/2011.

Marge Schmuckal

Zoning Administrator

# CITY OF PORTLAND, MAINE ZONING BOARD OF APPEALS

Interpretation Appeal to the Portland Zoning Board of Appeals ("Board") from the Zoning Administrator's August 18, 2011 determination that proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B Zone.

### DECISION

Date of public hearing: October 13, 2011

Name and address of appellants: Ted Haykal, et al. (named in appeal narrative)  
c/o David A. Lourie, Esq.  
189 Spurwink Ave.  
Cape Elizabeth, ME 04107

Location of property under appeal: 512 Island Avenue, Peaks Island  
Tax Map 090, Block AA, Lots 001, 002 & 005

### For the Record:

Names and addresses of witnesses (proponents, opponents and others):

David A. Lourie, Esq. for Appellants

Danielle West-Chuta, Assoc. Corp. Counsel for City of Portland Zoning Administrator Marge Schmuckal; City of Portland Zoning Administrator Marge Schmuckal; City Traffic Consultant Tom Errico;

Ted Small, Esq. for Keith Ivers/Peaks Island Fuel.

### Proponents:

1. Ted Haykal, 522 Island Avenue
2. Mr. Steven Riccuchi
3. Arthur Fink
4. Jeanne Meuse, 11 Trefethen Ave.
5. Joanne MacIsaac, 499 Island Ave.
6. Jean Gulliver, Trefethen Evergreen Improvement Association

- 7. Liz Williams
- 8. Ron DeLucia, 499 Island Ave.
- 9. Nancy Hoffman, Brackett Ave.

Opponents:

- 1. Stephen Mohr, 18 Pleasant Street
- 2. Nancy Cuthbertson, 341 Island Avenue
- 3. Ed Ramey, Island Ave.
- 4. Eric Conrad, 152 Brackett Ave.
- 5. Eric Eaton, Peaks Island Council
- 6. Mike Grady, Island Ave.
- 7. Dan Doane, 364 Island Ave.
- 8. Kyle Green, 188 Central Ave.
- 9. Paul Rico, 58 Elizabeth St.
- 10. Keith Ivers, Peaks Island Fuel Owner
- 11. Lisa Lynch
- 12. Sidney Gerard, Island Ave.
- 13. Rob Tiffany, 38 Centennial St.
- 14. Paul 341 Island Ave.
- 15. Rand Gee
- 16. Hutch Brown, Island Ave.
- 17. Chris Vail, Island Ave.
- 18. Robert Haines, Holm Ave.

Exhibits admitted (e.g. renderings, reports, etc.):

- 1. Interpretation Appeal Application, dated Sept. 16, 2011 by David A. Lourie, Esq., incl.:

Exhibit A, Aug. 18, 2011 determination by Zoning Administrator Marge Schmuckal;  
 Exhibit B-1, Aug. 8, 2011 letter from Terradyn Consultants LLC to Portland Planning Dept., Keith Ivers' letters to Planner Erick Giles, notice of the July 28, 2011 Peaks Island Council meeting, Grading and Erosion Control, Site and Landscaping Plans, Stormwater Management Plan;  
 Exhibit B-2, Site Plan, Landscaping Plan and Details & Notes;  
 Exhibit C, photographs of vehicles;  
 Exhibit D, City of Portland Technical Manual, Section 1 (Transportation Systems and Street Design);  
 Exhibit E, March 20, 1989 City Council Order amending City Code §§ 14-331 and 341.

- 2. Letters.

- a. Letters from Frederick W. O'Keefe and Phyllis A. MacIsaac to Board of Appeals on Sept. 29, 2011;



- b. Email from Susan Hanley to Marge Schmuckal, Oct. 4, 2011;
- c. Letter from Jonathan and Beth Brown to Board of Appeals, Oct. 1, 2011;
- d. Letter from Michael Beebe to Board of Appeals, Sept. 29, 2011;
- e. Letter from Alison and Shergul Arshad to Board of Appeals, Sept. 29, 2011.
- f. Email from John S. and Anne E. Whitman dated Oct. 13, 2011.
- g. Email from Tom Morse dated Oct. 13, 2011.
- h. Letter from Bruce and Lori Hochman dated Oct. 13, 2011.

3. Cover Memo from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 5, 2011, transmitting prior comments from public regarding 512 Island Ave., Peaks Island (139 pages of correspondence).

4. Memorandum from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 13, 2011.

**Findings of Fact and Conclusions of Law:**

**Findings of Fact:**

The Board's authority to review an interpretation of the building authority (Zoning Administrator) is pursuant to Section 14-472 of the City of Portland Code of Ordinances, Chapter 14 ("Land Use Code").

Keith Ivers is the owner of Peaks Island Fuel. He proposes to park seven vehicles -- four 2,800 gallon fuel trucks used in Mr. Ivers' propane and oil delivery business and three passenger vehicle-sized service vehicles used in Mr. Ivers' heating repair business -- on a "parcel" located at 512 Island Avenue, Peaks Island consisting of several lots, which is improved by a single-family dwelling. Mr. Ivers stated that Peaks Island Fuel's offices are at 66 Island Avenue, and that the Peaks Island fuel trucks and other vehicles currently are parked on rented space on Welch Street, above the ferry landing. He and other members of the public observed that the present parking location is in the midst of much pedestrian traffic and is subject to vandalism and litter. Mr. Ivers also stated that there would be no filling or fueling, major maintenance or washing of the vehicles in the proposed off-street parking area; that the vehicles may contain some amounts of fuel when parked overnight after deliveries in case evening emergency fuel deliveries are needed, but the trucks would not be filled with fuel; and that fueling of the vehicles occurs at the barge site for oil and kerosene and on the mainland for propane filling. In addition, Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation.

This parcel is located in the Island-Business (I-B) District, in which "Off-Street Parking" is a permitted use as stated in Section 14-233 (f) of the Land Use Code. Section 14-331 of the Land Use Code defines "Off Street Parking" as follows:

Sec. 14-331. Defined.

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

By letter dated Aug. 18, 2011, the City's Zoning Administrator determined that Mr. Ivers' proposed use is a permitted "off-street parking" use in the I-B Zone. In that letter, the Zoning Administrator determined that Sec. 14-223(f) and 14-331 of the Land Use Code "do not limit the allowable 'off-street parking' to any particular type of use or only allow parking as an accessory use," that the spaces can be either open air or garage spaces, that "The proposed parking area is meeting the standards in the City's Technical Manual," and that the "proposed parking lot is not a truck terminal" because the trucks are not warehoused or stored on the site, the trucks are not filled or fueled and no product is dispensed on site. As a permitted use, the proposed fuel truck/other vehicle parking use would be reviewed by the City's Planning Department under the site plan provisions of the Land Use Code.

The appellants, represented by David A. Lourie, Esq., filed an appeal on Sept. 19, 2011. Appellants assert that the definition of "off-street parking" in Sec. 14-331 means parking for automobiles and compact cars as defined by the City of Portland Technical Manual, Section 1. Appellants argue that the Technical Manual provides for parking spaces 19' in length and 8½' to 9' in width, while the proposed parking lot plans depict parking spaces as long as 22' and as wide as 12', and that the Land Use Code's reference to the Technical Manual limits the off-street parking use to passenger cars and motorcycles. Appellants also argue that the City Council's intent in amending § 14-331 in 1989 to incorporate the Technical Manual by reference was to allow off-street compact car parking. In addition, they argue that the proposed use actually is a "Truck Terminal" use which is prohibited in the I-B -- the storage of trucks, "for use in delivering fuel and services elsewhere on the island." Finally, Appellants argue that the determination was made without adequate consideration for the purposes of the Land Use Code as expressed in Sec. 14-46.

Section 14-47 of the Land Use Code defines "Truck Terminal" as follows:

*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

The defined use "Truck Terminal" is not listed as a permitted or conditional use in the I-B Zone. Under Sec. 14-225 of the Land Use Code, "Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

**Conclusions of Law:**

For reasons that follow, the Board concludes that Appellants have not met their burden of demonstrating that the Zoning Administrator's interpretation of the Land Use Code was incorrect or improper.

First, the Board concludes that the proposed use does constitute "off-street parking," which is a permitted use in the I-B Zone (Sec. 14-223(f)). The Board looks to the plain meaning of Secs. 14-223 (f) and 14-331, which establish "off-street parking" as a permitted use without limitation in the I-B zone in which the parcel is located.

The Board is aware that Sec. 14-331 of the Land Use Code provides that "Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, ... ." However, the Board does not interpret Sec. 14-331 and the Technical Manual incorporated thereby by reference as limiting the "off-street parking" use to passenger vehicles only, or as limiting the dimensions of parking spaces allowed in off-street parking spaces in the City of Portland to 9' by 19' passenger vehicle spaces or to 8½' by 19' compact car spaces. This is because construing the Land Use Code as a whole, other sections of the Land Use Code that refer to off-street parking imply that the off-street parking use also includes commercial motor vehicles. For example, Sec. 14-335 sets forth what off-street parking does not include, such as: more than one commercial motor vehicle in any residence, R-P or B-1 Zone (Sec. 14-335(a)); more than six commercial motor vehicles in any B-2 Zone (Sec. 14-335 (b)); and "any truck body, commercial trailer or similar commercial vehicles in residence zone or the R-P Zone" (Sec. 14-335(e)). In addition, Sec. 14-344 permits the Board or the Planning Board to permit off-street parking accessory to business uses but located in residential zones, with the limitation that the off-street parking be "for passenger cars only." These provisions demonstrate that the "off-street parking" use is available for both passenger vehicles and commercial vehicles, and that the passenger car and compact car stall dimensions in the Technical Manual must be minimum dimensions -- not fixed standards. Further, construing the Land Use Code as Appellants suggest would mean that larger commercial vehicles and trucks cannot be parked in off-street parking sites in Portland, a result that is not consistent with the Land Use Code as interpreted by the Board above or with observed practice in the City of Portland.

Second, the Board concludes that the proposed parking of seven Peaks Island Fuel vehicles is not a prohibited "Truck Terminal" use. In so concluding, the Board

notes that the definition of "truck terminal" in Section 14-47 of the Land Use Code begins: "A building and premises devoted to handling and temporary warehousing of goods, ..." The plans for the proposed parking area do not include a building, and the definition does not state "A building or premises"; therefore, the proposed use fails to meet this definition. Also, while Appellants argues that there is a distinction between "parking" and "storage" and argue that under the definition of "truck terminal," storage of trucks constitutes a truck terminal, a closer reading of the definition does not support that argument. The full definition reads:

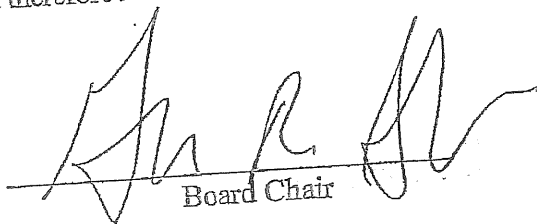
*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

Thus, while the "storage of trucks" "may be included" in the definition of "truck terminal," the storage of trucks does not by itself constitute a "truck terminal" use. Moreover, Mr. Ivers stated that his proposed off-street parking use for the Peaks Island Fuel vehicles does not include major maintenance, which would be conducted off site and does not include fueling, which he said occurs at the barge site for oil and kerosene and on the mainland for propane filling. Moreover, to the extent any distinction between "storage" and "parking" is relevant to this appeal, the Land Use Code prohibits "storage" outside of more than one unregistered motor vehicle "for a period in excess of thirty (30) days in any residence zone, the R-P Zone or any business zone." Sec. 14-335(d). Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation, so that this section does not apply.

Decision:

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

Dated: Oct. 20, 2011

  
Board Chair

4.21

AH 3

**From:** "Bowie, Butch C" <Butch.C.Bowie@maine.gov>  
**To:** "Eric Giles" <EGILES@portlandmaine.gov>  
**CC:** "Jeff Amos" <jeff@terradynconsultants.com>  
**Date:** 8/23/2011 12:58 PM  
**Subject:** Peaks Island Fuel SPCC Plan

Dear Mr. Giles,

In 2002, the Maine Legislature enacted 38 MRSA § 570-K(5), giving the Maine DEP authority to oversee compliance with the federal SPCC requirements for aboveground oil storage facilities that exceed the federal 1,320 gallon aggregate storage capacity threshold and are used to market and distribute oil.

An SPCC plan lists the containment equipment and structures used to prevent spills from reaching ground water or surface water, and it identifies the inspection, monitoring and oil transfer procedures that will be followed to prevent a spill. If a spill occurs, a well-developed Oil SPCC plan will identify whom to call, and will specify steps, or "countermeasures," to contain the spill and minimize environmental impacts. The specific SPCC requirements for oil storage facilities are found in federal regulation, 40 CFR Part 112. A qualified professional engineer must examine the plan and attest that it has been prepared in accordance with good engineering practices.

Based on a review of the draft SPCC plan prepared by Jeffrey D. Amos, P.E. and submitted for review on August 15, 2011 for Peaks Island Fuel Company, the plan appears to adequately address the requirements of 40 CFR Part 112.

At some point, I would like to schedule a follow up site visit to ensure that all aspects of the plan have been fully implemented at the facility.

Sincerely,

Butch Bowie  
Environmental Specialist  
Bureau of Remediation and Waste Management  
Division of Technical Services  
(207) 287-4804

CHAPTER 32 STORM WATER

- Art. I. Prohibited Discharges, §§ 32-1--32-15
- Art. II. Prohibited Discharges, §§ 32-16--32-35
- Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

*Applicant.* "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

*Best management practices ("BMP").* "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*Clean Water Act.* "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

*Discharge.* "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

*Enforcement authority.* "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

*Exempt person or discharge.* "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

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municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP"). City of Portland

*Municipality.* "Municipality" means the city of Portland.

*Municipal separate storm sewer system, or MS4.* "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

*National pollutant discharge elimination system. (NPDES) storm water discharge permit.* "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Non-storm water discharge.* "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

*Person.* "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

*Pollutant.* "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

*Post-construction stormwater management plan.* "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

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*Premises.* "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

*Qualified post-construction stormwater inspector.* "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

*Regulated small MS4.* "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

*Small municipal separate storm sewer system, or small MS4.* "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

*Storm drainage system.* "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

*Storm water.* "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

*Urbanized area ("UA").* "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.



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- Sec. 32-5. Reserved.
- Sec. 32-6. Reserved.
- Sec. 32-7. Reserved.
- Sec. 32-8. Reserved.
- Sec. 32-9. Reserved.
- Sec. 32-10. Reserved.
- Sec. 32-11. Reserved.
- Sec. 32-12. Reserved.
- Sec. 32-13. Reserved.
- Sec. 32-14. Reserved.
- Sec. 32-15. Reserved.

**ARTICLE II. PROHIBITED DISCHARGES**

**Sec. 32-16. Applicability.**

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-17. Responsibility for administration.**

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

**Sec. 32-18. Prohibition of non-storm water discharges.**

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-19. Suspension of access to the city's small MS4.**

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-20. Monitoring of discharges.**

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

(a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
- (2) The cessation of discharges, practices, or operations in violation of this article.
- (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
- (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

(b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

- regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.
- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
  - (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
  - (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
  - (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

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result from any person's reliance on this article or any administrative decision lawfully made hereunder.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-22. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.
- Sec. 32-24. Reserved.
- Sec. 32-25. Reserved.
- Sec. 32-26. Reserved.
- Sec. 32-27. Reserved.
- Sec. 32-28. Reserved.
- Sec. 32-29. Reserved.
- Sec. 32-30. Reserved.
- Sec. 32-31. Reserved.
- Sec. 32-32. Reserved.
- Sec. 32-33. Reserved.
- Sec. 32-34. Reserved.
- Sec. 32-35. Reserved.

**ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.**

**Sec. 32-36. Applicability.**

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.  
(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-37. Post-construction stormwater management plan approval.**

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.  
(Ord. No. 35-09/10, 9-17-09)

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Sec. 32-38. Post-construction stormwater management plan compliance.

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the year adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file an annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

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(Ord. No. 35-09/10, 8-17-09)

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**Sec. 32-39. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

(a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
- (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
- (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
- (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

(b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

(c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-40. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)





# PORTLAND MAINE

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Planning and Urban Development Department  
Penny St. Louis, Director

Planning Division  
Alexander Jaegerman, Director

## Performance Guarantee and Infrastructure Financial Contribution Packet

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

### Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

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**SUBDIVISION/SITE DEVELOPMENT**  
Cost Estimate of Improvements to be covered by Performance Guarantee

Date: \_\_\_\_\_

Name of Project: \_\_\_\_\_  
Address/Location: \_\_\_\_\_  
Application ID #: \_\_\_\_\_  
Developer: \_\_\_\_\_  
Form of Performance Guarantee: \_\_\_\_\_  
Type of Development: Subdivision \_\_\_\_\_ Site Plan (Level I, II or III) \_\_\_\_\_

**TO BE FILLED OUT BY THE APPLICANT:**

Item	PUBLIC			PRIVATE		
	Quantity	Unit Cost	Subtotal	Quantity	Unit Cost	Subtotal
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

SAMPLE FORM

SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
LETTER OF CREDIT  
[ACCOUNT NUMBER]

[Date]

Penny St. Louis  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: [Insert: Name of Developer]  
[Insert: Address of Project, Portland, Maine]

\_\_\_\_\_ (“Bank”) hereby issues its Irrevocable Letter of Credit for the account of [Insert: Name of Developer], (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of [Insert: amount of original performance guarantee]. These funds represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/ or site plan], approved on [Insert: Date] and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [Insert: subdivision and/ or site improvements ].

Date: \_\_\_\_\_

By: \_\_\_\_\_

[Name]  
[Title]  
Its Duly Authorized Agent

SAMPLE FORM

SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
ESCROW ACCOUNT  
[ACCOUNT NUMBER]

[Date]

Penny St. Louis  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: [Insert: Name of Developer]  
[Insert: Address of Project, Portland, Maine]  
[Insert: Application ID #]

[Insert: Name of Bank] hereby certifies to the City of Portland that [Bank] will hold the sum of [Insert: amount of original performance guarantee] in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/or site plan], approved on [Insert: date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by [Insert: Developer].

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

- 1. the Developer has failed to complete any unfinished improvements; or
- 2. the Developer has failed to correct any defects in workmanship; or
- 3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [Insert: subdivision and/ or site improvements ].

Date: \_\_\_\_\_

By: \_\_\_\_\_

[Name]  
[Title]  
Its Duly Authorized Agent

Seen and Agreed to: [Applicant]

By: \_\_\_\_\_

**PERFORMANCE GUARANTEE  
with the City of Portland**

Developer's Tax Identification Number: \_\_\_\_\_

Developer's Name and Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City Account Number: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Application of \_\_\_\_\_ [Applicant] for \_\_\_\_\_ [Insert  
street/Project Name] at \_\_\_\_\_ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$ \_\_\_\_\_ [amount of  
performance guarantee] on behalf of \_\_\_\_\_ [Applicant] in a non-  
interest bearing account established with the City. This account shall represent the estimated cost  
of installing \_\_\_\_\_ [insert: subdivision and/ or site improvements (as  
applicable)] as depicted on the subdivision/site plan, approved on \_\_\_\_\_ [date] as  
required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46  
through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of  
Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above  
referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion,  
may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements  
contained within the \_\_\_\_\_ [insert: subdivision and/ or site  
improvements (as applicable)] approval, dated \_\_\_\_\_ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds  
description of any streets, easements or other improvements required to be deeded to the  
City; or
3. the Developer has failed to notify the City for inspections in conjunction with the  
installation of improvements noted in paragraph one.

4.40

By: \_\_\_\_\_  
Development Review Coordinator

Date: \_\_\_\_\_

Attach Letter of Approval and Estimated Cost of Improvements to this form.

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Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Batch form.
5. \*\*\*\*Signature required if over \$50,000.00.





CITY OF PORTLAND, MAINE  
PLANNING BOARD

Carol Morrissette, Chair  
Stuart O'Brien, Vice Chair  
Timothy Dean  
Bill Hall  
Joe Lewis  
David Silk

March 8, 2012

Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

Keith Ivers  
512 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haytkal and Mr. Ivers:

On February 28, 2012, the Planning Board considered Mr. Haytkal's appeal of the administrative determination made by Alexander Jaegerman, Planning Division Director, on November 30<sup>th</sup>, 2011, which determined that the appeal submitted by Mr. Ted Haytkal on November 28, 2011 specifically appealing the decision of the Zoning Board of Appeals was not within the authority of the Planning Board to consider. The Planning Board voted unanimously (4-0, Hall and Lewis absent) on the following motion:

On the basis of the plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 9-12 relevant to the Portland's Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board found:

The Planning Authority determination made on November 30, 2011 that Mr. Haytkal's appeal was not within the authority of the Planning Board to consider and thus, was not timely, is correct and Mr. Haytkal's appeal is denied.

This is a final determination by the Planning Board and may only be appealed to superior court as provided in Portland's Land Use Code, Section 14-29.

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager at (207) 874-8699.

Sincerely,



Carol Morrissette, Chair  
Portland Planning Board

Attachments:

- 1. Planning Board Report #9-12

**Electronic Distribution:**

- Greg Mitchell, Acting Director of Planning and Urban Development Department
- Alexander Jaegerman, Division Director, Planning Division
- Barbara Barhydt, Development Review Services Manager, Planning Division
- Philip DiPierro, Development Review Coordinator, Planning Division
- Marge Schmuckal, Zoning Administrator, Inspections Division
- Tammy Munson, Plan Reviewer, Inspections Division
- Lannie Dobson, Administration, Inspections Division
- Michael Bobinsky, Director, Public Services
- Katherine Earley, Engineering Services Manager, Public Services
- Bill Clark, Project Engineer, Public Services
- David Margolis-Pineo, Deputy City Engineer, Public Services
- Jane Ward, Administration, Public Services
- Capt. Keith Gautreau, Fire Department
- Jeff Tarling, City Arborist, Public Services
- Tom Errico, P.E., T.Y. Lin Associates
- Dan Goyette, P.E., Woodard & Curran
- Assessor's Office
- Approval Letter File



# PLANNING BOARD REPORT PORTLAND, MAINE

## APPEAL OF PLANNING AUTHORITY DETERMINATION MR. TED HAYKAL, APPELLANT

Submitted to: Portland Planning Board Public Hearing Date: February 28, 2012 Planning Board Report Number:# 9-12	Prepared by: Barbara Barhydt, Development Review Services Manager Prepared Date: February 24, 2012
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### I. Introduction

The Planning Board will hold a public hearing on Ted Haykal's appeal of the Planning Authority's November 30, 2011 determination that stated Mr. Haykal's appeal of a Zoning Board of Appeals decision, filed on November 28, 2011 is not within the authority of the Planning Board to consider and that an appeal of the Planning Authority site plan approval was not filed within the required time frame. Mr. Haykal submitted an appeal regarding 512 Island Avenue.

Notices were sent to 94 property owners and the interested citizen list. The legal ad appeared on February 20 and 21 in the Portland Press Herald.

### II. Chronology Of The Review And Appeals For Peaks Island Fuel At 512 Island Avenue

1. Keith Ivers, Owner/President of Peaks Island Fuel, submitted an application for a Level I: Site Alteration site plan review on June 6, 2011 for Peaks Island Fuel. The project description stated:

Utilize commercial property for parking of delivery and service trucks, fill in site and add two driveways.

As part of the application Mr. Ivers included a cover letter, which describes a 4,200 square parking area for seven service vehicles at 512 Island Avenue. The site lies within the Island Residential I-R2 zone and the Island Business I-B zone. A single family home is located within the IR-2 zone, which is Mr. Ivers' residence. The proposed parking area is located within the IB zone.

The application was distributed for review on June 10, 2011.

2. A site visit was conducted by City staff on Friday, July 1, 2011. The staff participants included Erick Giles, Planner, David Margolis-Pineo, Deputy City Engineer, Barbara Barhydt, Development

Review Services Manager, and Alexander Jaegerman, Planning Division Director. Approximately 40 residents met the City staff members at the site.

3. Erick Giles, Planner, prepared a review of the application dated July 15, 2011, which included the review comments from other departments and third party reviews.
4. A revised plan was submitted to the Planning Division for review on August 8, 2011.
5. Marge Schmuckal Zoning Administrator, prepared a written determination regarding whether the use is permitted in the Island Business zone on August 18, 2011. Ms. Schmuckal concluded the following:

Mr. Iver's proposed parking lot is not a truck terminal. This is because his trucks are not warehoused or stored on the site. The trucks are also not filled, fueled and no product will [be] dispensed on the site. Instead, the trucks are just parked on this site for active use as needed in Mr. Ivers' propane and oil delivery business. The other vehicles that will be parked on the site are also for active use with Mr. Ivers' heating repair business. Mr. Ivers' business has been active through four generations and has garnered many clients on Peaks Island.

6. An Interpretation Appeal of Marge Schmuckal's determination was submitted on September 16, 2011. The appeal was submitted by twenty (27) entities, including Mr. Haykal.
7. The Zoning Board of Appeals held a public hearing on the Interpretation Appeal on October 13, 2011. The Zoning Board of Appeals approved the findings on October 20, 2011. The decision is as follows:

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

8. On October 27, 2011, the Level I: Site Alteration Application for 512 Island Avenue was approved by the Planning Authority with three conditions of approval (Attachment 6). Three waivers were granted as part of the approval that waived the requirement for 2 bicycle spaces, waived the 20 foot driveway width to 12 feet and waived parking lot dimensions to allow a 28 foot aisle and four parking spaces of 12 x22.
9. Ted Haykal submitted his appeal to Alexander Jaegerman, Planning Division Director, on November 28, 2011 (Attachment 1), which stated the following:

I am writing to notify you that I wish to appeal the decision of the Board of Zoning Appeals on October 13, 2011 in the matter of 512 Island Avenue, Peaks Island, Keith Ivers, prospective

5.5

buyer, Tax Map 090, Block AA, Lots 001, 002 & 005, I-B Island Business Zone, in which the applicants challenged the Zoning Administrator's determination that the proposed parking of fuel trucks and other trucks is permitted in the I-B zone as "off-street parking."

The basis of the appeal is that the Board committed errors of law in interpreting City of Portland ordinances, that the decisions was not adequately supported in the facts, and was arbitrary and capricious.

10. Alexander Jaegerman responded to Mr. Haykal's appeal on November 30, 2011 (Attachment 2), stating the following:

The Planning Board cannot accept the appeal you submitted on Monday, November 28, 2011 requesting an appeal of the 2011 Determination by the Zoning Board of Appeal (letter included as Attachment 1) dated October 13, 2011. The Planning Board is not authorized to consider an appeal of a Zoning Board of Appeals decision. An appeal of a Zoning Board of Appeals decision must be submitted to the Maine Superior Court under Rule 80B, Sec 30-A M.R.S.A., section 2691 (3)(G). The Planning Board is, however, authorized to consider an appeal within 30 calendar days of an administrative decision for a site plan (Land Use Code, Sec. 14-30 (o) and 14-529). In this case, the Planning Authority approved the Level I: Site Alteration site plan for 512 Island Avenue on October 27, 2011. Consequently, the time to appeal the aforementioned site plan approval was Monday, November 28, 2011.

11. Mr. Haykal questioned this response. A letter was sent to Ted Haykal from Alexander Jaegerman on December 7, 2011, advising him of his rights to appeal the Planning Authority's administrative determination (Attachment 3).

The Planning Board is authorized to consider an appeal of an administrative determination within 30 calendar days of an administrative determination (Land Use Code, Sec. 14-30 (o)). Specifically, you have the right to submit a letter requesting to appeal the November 30, 2011 determination by the Planning Authority that stated the appeal you submitted was not within the authority of the Planning Board to consider and thus, the request for an appeal is not timely (Attachment 1). You must submit a letter within the appeal period that outlines the points of the Planning Authority November 30th determination that you are appealing.

12. On December 30, 2011, Mr. Haykal submitted an appeal of Alex Jaegerman's determination along with attachments (Attachment 4). Mr. Haykal submitted a handwritten appeal and additional documents on December 30, 2011. He submitted a typed version of his appeal on January 3<sup>rd</sup>. In these letters he states:

This letter is written as an appeal to your decision of November 30, 2011. The appeal I submitted on November 28, 2011 was incorrectly stated. The appeal I submitted was not within the authority of the Planning Board to consider. I hope you will reconsider my appeal to the Planning Board.

The attachments to Mr. Haykal's appeal seek an appeal of the Level I: Site Alteration Site Plan for 512 Island Avenue.

**III. Planning Board Authority To Consider An Appeal Of A Determination**

The Planning Board is being asked to determine if there is an error in Alexander Jaegerman's November 30, 2011 letter (Attachment 2) determining that the appeal submitted by Mr. Ted Haykal on November 28, 2011 specifically appealing the decision of the Zoning Board of Appeals was not within the authority of the Planning Board to consider. Mr. Haykal is seeking to correct the statement of the November 28, 2011 appeal from an appeal of the Zoning Board of Appeals decision to an appeal of the site plan approval to the Planning Board, and to rely on the timeliness of the November 28, 2011 appeal letter as meeting the appeal filing requirement for such an appeal.

The City Code specifies that the Planning Board has the authority to:

- (o) To hear, review and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the planning authority.

City Code, Chapter 14, section 14-30. This section does not grant the Planning Board the authority to hear, review or decide appeals of decisions of the Zoning Board of Appeals.

The City Code makes it clear that Zoning Board of Appeals decisions must be appealed according to Section 14-553:

An appeal from any final decision of the board of appeals may be taken by any aggrieved party to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

It is also important to note that administrative decisions for a site plan may be appealed to the Planning Board as follows:

- (a) When the planning authority has approved with conditions or denied a site plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of the written decision of the planning authority. Upon the taking of such an appeal, the application shall be reviewed as a new application.
- (b) When the planning board has finally approved, approved with conditions, or disapproved a site plan, any person aggrieved or the City may appeal the decision to the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the vote on the original decision by the planning board.

In this case, Mr. Haykal did not submit a timely appeal of the Planning Authority's October 27, 2011 decision. Danielle West-Chuhta, Associate Corporation Counsel, has provided a memorandum concerning the appeal, which is included as Attachment 5.

Overall, as a result of the above, Mr. Haykal's appeal should be denied.

**IV. Proposed Motion**

On the basis of the plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 9-12 relevant to the Portland's Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds:

- A. The Planning Authority determination made on November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not timely, is correct and Mr. Haykal's appeal is denied.

**Or**

- B. The Planning Authority determination November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not a timely appeal of the site plan approval, is incorrect and Mr. Haykal's appeal is granted. Mr. Haykal's appeal of the Planning Authority's approval of the Level I: Site Alteration site plan for 512 Island Avenue shall be scheduled for a public hearing on April 10, 2012.

**Attachments:**

1. Ted Haykal Appeal – November 28, 2011
2. Planning Authority Determination to Ted Haykal– November 30, 2011
3. Planning Authority Letter to Ted Haykal – December 7, 2011
4. Ted Haykal Appeal – December 30, 2011
5. Danielle P. West-Chuhta, Associate Corporation Counsel, February 23, 2012
6. Approval Letter, 512 Island Avenue, dated October 27, 2011



**Public Comment – Mr. Ted Haykal Appeal**  
**February 28, 2012**

1. Peggie Peretti, e-mail, February 26, 2012
2. Monica Stevensons, e-mail, February 27, 2012. The letter is from Monica Stevenson, John MacLeod, and Kristen MacLeod.
3. Nancy Hoffman, letter, dated February 25 and received Feb. 27, 2012
4. Albert M. Presgraves, P.E., letter dated February 25 and received February 27, 2012
5. Michael Beebe, e-mail, February 27, 2012
6. Kristen MacLeod, e-mail, February 27, 2012
7. Jonathan Brown e-mail with letter attachment from Jonathan and Beth Brown, February 27, 2012
8. Chirstine Cassidy, e-mail, February 28, 2012 and 2 photos.

**Barbara Barhydt**

**From:** Peggie Peretti <peggieperetti@hotmail.com>  
**To:** <bab@portlandmaine.gov>  
**Date:** Sunday, February 26, 2012 9:00 PM

<http://sn121w.snt121.mail.live.com/default.aspx?n=549716444#!/mail/InboxLight.aspx?n=1143233811!n=398410403&fid=3&mid=51fb2af0-8b1b-4b22-8a82-8bd807e6b111&fv=1>

Dear Ms. Barkydi,  
 On 2-28-12 there will be a hearing in city hall for Mr.. Ted Haykal. I would urge you to click on to the link above and read about the bed and breakfast style business, Mr.. Haykal, is running from his home on Peaks Island.

Picture #4 shows no steps at one entrance.  
 Picture #5 a zebra painted school bus that he has had parked in various locations around his house. Clearly he does not maintain the property that he has the gall to rent out for only \$2600/month.  
 Picture #6 and #11 you can see this exterior structure that goes up above the third story of his house.  
 Picture# 17 shows an outer structure somehow connected.

I have a few questions regarding this property.

1. how many building permits has Mr. Haykal pulled over the past 25 years for all the additions he has put up?
2. does he have a city permit to run a B&B out of his home?
3. if he does have a permit, how is it possible that in his description he states \*please note 2nd Floor bedroom with shared full bathroom is on the 1st FLOOR, you will have to walk through an area under renovation or down deck stairs to get to the 1stFloor.

HOW IS THAT LEGAL??? To say nothing about SAFE?

4. Has he paid taxes on the money he has earned from this business he is running?
5. How does a man charge \$2600/month rent then turns around and takes state aide for fuel???

These questions should all be researched and asked of Mr.. Haykal during the meeting on Tuesday. The City of Portland should see to it that Mr.. Haykal is paying his fair share of taxes and demand that Mr.Haykal abide by the same rules and regulations the rest of us are made to abide by. Please indulge me one more question? Why is this still an issue when Mr., Haykal neglected to comply by the rules set out in October's meeting?

In this economy do you really need more citizens taking time off work to appear in Mr.. Haykel's circus act [oops that's 2 questions].

Thank you for the opportunity to raise my concerns.  
 Sincerely,  
 Peggie Peretti

16 Oak Lawn Rd.  
 Peaks Island

766-2997

**Barbara Barhydt - Appeal of Planning Authority Determination-Mr. Ted Haykal**

**From:** Stevenson Monica <monicas@maine.rr.com>  
**To:** <bab@portlandmaine.gov>  
**Date:** Monday, February 27, 2012 9:53 AM  
**Subject:** Appeal of Planning Authority Determination-Mr. Ted Haykal  
**CC:** Haykal Ted <tedhaykall@gmail.com>, MacLeod John <jamacleod@comcast.net>,...

**To Barbara Barhydt and the members of the Portland Planning Board:**

I am writing on behalf of my family to ask you to reconsider the application Mr. Keith Ivers submitted for permission to set up a parking facility for his oil/gas delivery trucks in the Trefethen/Island Avenue area of Peaks Island.

While the property in question is zoned for business, the location is in the middle of a quiet, residential neighborhood which has seen no industrial/commercial activity for 30 years. I am a year-round resident and have owned property in this neighborhood since 1979. Both of my children purchased in this area when they started their families, bringing their children here each summer since they were born, and enjoying the quiet and safety of the neighborhood. We would all love to see Mr. Ivers and his family buy the Wright house and stay in the neighborhood. It is a lovely place to raise a family, and we'd like his to be part of it. We do object to the addition of an oil depot/truck parking facility in this location. The lot which is being considered is a "wet-land" which I would think would automatically make it a bad place for such a facility. In addition, it will completely change the immediate area, adversely impacting the residential values upon which our properties are appraised. Not only will we lose real estate value, the city will as well.

I do not have the expertise to suggest an alternate location for a truck depot on the Island. It would appear from Mr. Haykal's appeal that there are several others which might fit Mr. Ivers' needs and which would be more suited to an industrial/commercial operation.

I apologize for not attending the meeting in person. I have a scheduled family trip which takes me away from the Island. Should you have any questions for me, please feel free to email or call me on my cell: 207-332-8012.

Sincerely  
Monica Stevenson  
548 Island Ave  
John MacLeod  
539 Island Ave  
Kristen MacLeod  
531 Island Ave

RECEIVED

3

FEB 27 2012

City of Portland  
Planning Division

Nancy Hoffman  
53 Brackett Ave.  
Peaks Island, ME 04108  
(207) 939-0301  
email: 3nancy3@gmail.com

February 25, 2012

To Whom it May Concern:

I am writing in support of the appeal of Theodore Haykal to reconsider the question of allowing Peaks Island Fuel to build a parking lot for its fuel trucks at the location between Island Avenue and Trefethen Avenue on Peaks Island.

I ask the Board to consider that there has been no adequate environmental impact review. It is my understanding that this is in a very swampy area and it is very close to Casco Bay. Paving this area, even with new drainage systems, will impact the drainage of the area surrounding the proposed lot. And more importantly, storing fuel oil and propane in this area is dangerous. These are hazardous materials, and should they leak into the groundwater and drainage system this close to the bay, they would certainly cause pollution and danger to islanders.

There are other sites on Peaks Island which could support a parking lot for fuel and propane trucks with much more stability and less negative impact than the proposed site.

The State Department of Environmental Protection or the National Environmental Protection Agency should be made aware of this impending construction, and I believe it is the City of Portland's responsibility to assure that these reports, reviews and precautions should be taken.

Mr. Ivers has a viable and vital business on Peaks Island. I am confident that he can find a location that will support his business without significant negative impact to the natural environment, and one which will be much less of a threat to island residents and visitors.

Sincerely,

Nancy Hoffman



179 Central Avenue  
Peaks Island, ME 04108

February 25, 2012

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

Re: Peaks Island Fuel proposed parking lot,  
512 Island Avenue, Peaks Island

4  
RECEIVED

FEB 27 2012

City of Portland  
Planning Division

As a long-time island resident, I am very familiar with this location, and the proposed project is completely inappropriate for the existing character of the neighborhood. This is a year-round recreational area, with traffic on Island Avenue going to the Trefethen clubhouse, beach, and tennis courts, as well as to other recreational locations. The safety of the public would be compromised by this project, and the aesthetic character of the neighborhood would be damaged. A location near the business district and/or ferry landing would be much more appropriate.

If the project is approved, it is critical that it be designed to fit into the existing environmental and social conditions that exist at the site. Environmentally, the site currently provides a filtering function for stormwater runoff from Trefethen Avenue and Island Avenue as it flows towards and onto the beach south of the clubhouse. Any release of oil or other contaminants will follow this same route and damage the beach. An adequate oil trapping device would be an appropriate feature of the site design.

From a social standpoint, this project will have a significant impact on the neighborhood, and this impact should be reduced as much as possible. The only way of reducing the impact will be to include a significant buffer of space and landscaping between the proposed parking lot and the lot boundaries. This is particularly important along Trefethen Avenue and along the boundary with Ted Haykal's property. The landscaping buffer should include a generous planting of the largest trees and bushes that can be expected to survive the transplanting, including evergreen cultivars that will reach a height that will screen the parked trucks in a reasonably short time.

Thank you for helping to reduce the environmental and neighborhood impacts from this proposed project by denying an approval at this location.

Sincerely



Albert M. Presgraves, P.E.

**Barbara Barhydt - Appeal of Planning Authority Determination-Mr. Ted Haykal**

**From:** <mbeebe@aol.com>  
**To:** <bab@portlandmaine.gov>  
**Date:** Monday, February 27, 2012 11:41 AM  
**Subject:** Appeal of Planning Authority Determination-Mr. Ted Haykal  
**CC:** <tedhaykal1@gmail.com>, <monicas@maine.rr.com>

To Barbara Barhydt and The Portland Planning Board:

Reference Application: 512 Island Avenue, Peaks Island. Level 1: Site Alteration application submitted by Keith Ivers for a 4,200 sq. ft. gravel parking area to serve as the parking area for his fuel trucks.

My wife and I have owned property on Peaks Island in the Trefethen area for over 33 years. My wife was raised on Peaks Island and attended the Peaks Island elementary school. She used to buy candy and ice cream at Webber's Store which has been converted by Ted Haykal to a private residence which is adjacent to 512 Island Avenue property. While visiting the island years ago, I also remember frequenting Webber's Store. During summers, we have raised our 2 daughters on Peaks Island and now we are walking our grandsons down to the Trefethen Evergreen Improvement Association Club (TEIA) for their tennis and day camp.

We strongly object to the above referenced application for the following reasons:

1. After the Hotels, boarding houses and Trefethen Ferry Landing ceased to exist decades ago on this part of Peaks Island, there has been no commercial traffic originating in this area, only service vehicles coming from the commercial district at the other end of the island near the current Ferry Landing, store, restaurant, gas and marina businesses. Most customers walked to and from Webber's Store. There was no parking area for the store for cars or other vehicles.
2. For generations the Trefethen area has been a well established residential use section of Peaks Island. In our collective memory, this part of Peaks Island has never been used as a base for commercial vehicles, only for residential.
3. During the summer months when the TEIA Club is operating, the roads in this area are full of children and adults walking and bicycling and introducing parking for heavy truck and equipment traffic to these roads defies logic and safety.
4. Zoning regulations are open to change over time and should be altered when an area for generations has evolved into an opposing usage. For several generations now this part of Peaks Island has been residential with no commercial establishment requiring parking of trucks or other heavy equipment.
5. Please let common sense, not antiquated zoning, guide your decision.

Respectfully submitted,

Michael Beebe

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**Barbara Barhydt - Appeal for Application 512 Island Ave Keith Ivers**

**From:** Kristen MacLeod <kj\_macleod@sbcglobal.net>  
**To:** <bab@portlandmaine.gov>  
**Date:** Monday, February 27, 2012 3:51 PM  
**Subject:** Appeal for Application 512 Island Ave Keith Ivers

Dear Ms. Barhydt:

Below, please find a letter for submission to the Portland Planning Board regarding the application sited. Please do contact me if there are any questions about my letter, or if I have not submitted it correctly. Thank you very much for your assistance in this matter.

Sincerely,  
 Kristen MacLeod  
 775-303-7731

**Reference Application:** 512 Island Avenue, Peaks Island. Level 1: Site Alteration application submitted by Keith Ivers for a 4,200 sq. ft. gravel parking area to serve as the parking area for his fuel trucks.

February 27, 2012

Dear Board Members:

I am writing this letter to request that the board reconsider the application that Mr. Keith Ivers submitted for permission to set up a parking facility for his trucks in the Trefethen/Island Avenue area of Peaks Island. I am a lifelong summer resident. My family has owned my property on the corner of Island Avenue and Trefethen Avenue since 1979. I have spent the majority of every summer on the island since 1969. This is a quiet residential neighborhood that has not seen any commercial activity in 30 years. This very fact is what makes this neighborhood so appealing.

Perhaps the most alarming consequences of Mr. Ivers' proposal would be the impact on the wetlands and coastline which the depot would occupy, not to mention the destruction of the residential nature of the neighborhood leading to plummeting property values. My family and neighbors have all mentioned these facts in their appeals to you. Two further issues come to my mind when I consider the presence of a fuel truck parking facility in our neighborhood.

- 1) On any summer's day, over one hundred children pass by that corner on bikes, rollerblades, scooters, and on foot on their way back and forth to the tennis courts and the summer camps. It is a dangerous and busy corner with the purely recreational traffic that it sees now. The addition of a commercial establishment with trucks and traffic is extremely concerning from a safety standpoint.
- 2) This island neighborhood is a mixture of year-round and vacation homes. Many of the homes, mine included, are rented for a few weeks during vacation periods. I depend on this rental income in order to keep the home, which has been owned by my family since 1979. The noise and smell generated by the fuel truck depot will make it a very unappealing location for a week's vacation. In effect, the fuel truck depot not only ruins the value of my home, if I were to try to sell it, but sharply detracts from its appeal as a vacation rental. I fear this will leave me in a position of being forced to sell a home whose value has just plummeted. This is a real shame after struggling to keep the home in the family for so many years.

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I would like nothing better than to have Mr. Ivers and his young family in our neighborhood. I am happy to assist in any way that I can to help them both purchase a home in a lovely residential neighborhood and find a suitable place for the fuel truck parking depot.

Please accept my apologies for not attending the meeting. My immediate family and I work and live in Nevada in the winter and cannot make the trip. I am available by phone or email for any questions or concerns you may have. Your time and consideration in this matter are greatly appreciated. I may have to find my work in Nevada but my heart is still on Peaks Island. This decision is vitally important to my family and our Peaks Island neighbors.

Sincerely,  
Kristen MacLeod  
531 Island Avenue  
Peaks Island, ME  
775-303-7731



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**Barbara Barhydt - Appeal of Planning Authority Determination-Mr. Ted Haykal**

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**From:** "Jay Brown" <jbrown@rsu24.org>  
**To:** <bab@portlandmaine.gov>  
**Date:** Monday, February 27, 2012 7:04 PM  
**Subject:** Appeal of Planning Authority Determination-Mr. Ted Haykal  
**CC:** <tedhaykal1@gmail.com>, <betsybb1@earthlink.net>  
**Attachments:** letter.doc

Please accept the attached letter in opposition to the proposed oil storage facility on Peaks Island.

Thank you,  
Jonathan Brown

To: Portland Planning Board  
From: Jonathan J. Brown, 517 Island Ave., Peaks Island, ME

February 26, 2012

Planning Board Members/ Barbara Barhydt,

Please accept this letter on behalf of my family who summer on Peaks at 517 Island Avenue, directly across from the proposed parking/storage oil facility. Having lived on Peaks for parts of 58 years, I feel compelled to write in opposition to the proposed facility. While in definition the land proposed for development is considered commercial, it has been many years since the land was used for that purpose. In fact the commercial usage was a small community grocery store that fit in with the quiet lifestyle on that part of the island.

I purchased the above property 17 years ago with the intent of getting away from the busy island "down-front" section. It has been a wonderfully quiet area, where my wife and I raised two children. The proposed facility virtually ruins this area for which it was intended, a quiet, safe neighborhood away from the business district at the front of the island. The proposed site is also heavily populated with children, walking and riding their bikes to the beach and recreational facilities at the TEIA clubhouse, making it a safety risk for them.

I know Ted Haykal has offered alternative venues for the proposed oil storage facility that I would hope you would consider. Leaving the area as it has been for many years is the best and right decision.

Please feel free to call or write with any questions, as my employment prevents me from attending the hearing and thank you for your consideration.

Sincerely,

Jonathan and Beth Brown  
88 Windsor Way  
Ellsworth, ME 04605  
207-667-4752  
[jbrown@rsu24.org](mailto:jbrown@rsu24.org)

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## Barbara Barhydt - 512 Island Avenue Appeal

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**From:** Christine Cassidy <chrisonpeaks@aol.com>  
**To:** <bab@portlandmaine.gov>  
**Date:** Tuesday, February 28, 2012 12:18 PM  
**Subject:** 512 Island Avenue Appeal  
**Attachments:** IMG\_5093.JPG; IMG\_5096.JPG

Dear Ms. Barhydt:

I am writing to you today because I oppose the plan that Mr. Ivers has to 512 Island Avenue for the following reasons:

My family has owned the house across the street from this property for over 35 years. It is my belief that the view will be ruined permanently and the property value will decrease substantially. (I have attached pictures of the view from our property. Our house sits up high across the street. The second picture is our house on the left.)

The neighborhood will be compromised as a result of environmental issues associated with fuel storage, not to mention the odor, fumes and unsightly mess of the trucks.

Safety issues with children in the area.

I believe that if Mr. Ivers were to try and work with other Islanders, another location would be more suitable. Unfortunately, he is not willing to compromise. I have to ask myself, why would a dad want to raise his family (2 small children) in this environment and live with neighbors that look at this situation unfavorably?

Please consider and weigh the damage this could do to our small neighborhood.

Thank you.  
The Cassidy Family

