

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



... ..

Notification Detail

Project Address: 512 Island Ave., Peaks

Project ID #: n/A

1. 94 notices were sent to property owners within 500 ft. of subject property as well as the Interested Citizens List on 2/17/12 for the PB /HP /CC Workshop / Public Hearing Meeting to be held on 2/28/12
2. The Legal Ad for the meeting referenced above, appeared in the 2/20 and 2/21/12 editions of the Portland Press Herald.
3. The Legal Notice for the meeting referenced above, appeared in the _____ and _____ editions of the Portland Press Herald.



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. 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. 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

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

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 HARKAL 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

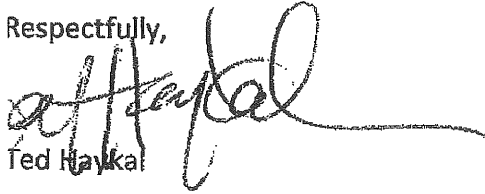
RECEIVED

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 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

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



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

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

Sec 6

Sec. 14-6. Reserved.

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

ARTICLE II. PLANNING BOARD*

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

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

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.

(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)

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)

***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.

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 aarea 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, §1, 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*

***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.

Attachment 2

- 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;

- 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.

Attachment 2

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.

City of Portland
Code of Ordinances
Sec. 14-527

Land Use
Chapter 14
Rev.9-15-11

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

44 41



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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

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AH 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 HAENAL *766-4454*

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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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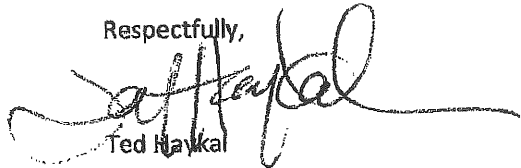
NOV 28 2011

City of Portland
Planning Division

AA 4

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 Hayka

Attachment:

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

Att 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



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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- Chuhfa, 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



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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:

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

Sincerely,


Alexander Jaegerman
Planning Division Director

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Marge Schmuckal, Zoning Administrator
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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

AKS

Attachment 2

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Please call me if you have any questions.

SINCERELY YOURS,
TED HARNAL TEL 756-4454

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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

Attn: Mr. Alex Jaegerman:

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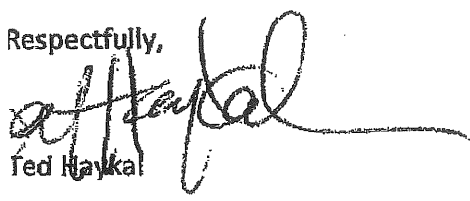
NOV 28 2011

City of Portland
Planning Division

AHS

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Respectfully,



Ted Haykal

Attachment:

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

AH5

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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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

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DEC 30 2011

City of Portland
Planning Division

AA 6

December 30, 2011

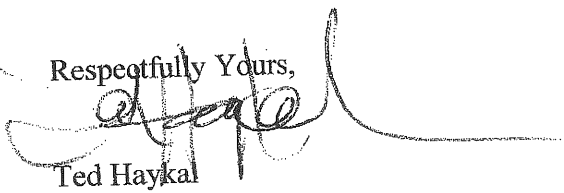
Mr. Alex Jaegerman,

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.

Respectfully Yours,



Ted Haykal

Ted Haykal
522 Island Avenue
Peaks Island, ME 04108

207-766-4454

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~~JAN 30 2012~~

City of Portland
Planning Division

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JAN 3 2012

City of Portland
Planning Division

ATTN: MR. ALEX VAEGERMAN:

AH6

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).

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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.

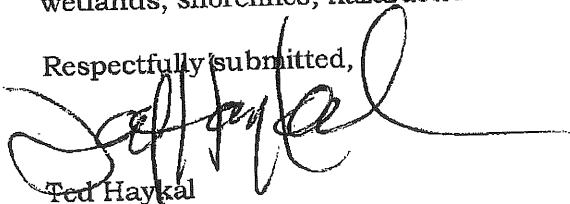
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Part Two

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.
2. Ivers' current plan is to locate the driveway into his "parking lot" adjacent to my southwesterly property line. Surely that driveway could be located so as to go past his house's southwesterly side, as far away as possible from my house? True, that would require a longer driveway, but the result would be far less damaging to my property. I understand that our neighbors, the Browns, would much prefer this alternative driveway location.
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.

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Peaks Island, Maine 04108
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City of Portland
Planning Division

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

February 27, 2012

Dear Members of the Planning Board:

I am a resident of Peaks Island and am writing in regards to the controversy between Ted Haykal and Keith Ivers over the parking of commercial oil vehicles near Ted Haykal's property on Island Avenue. I am writing to you in the hope that a win-win solution can be found to resolve a controversy that threatens to erode relationships between neighbors and friends on the island.

I was a resident of Portland for over twenty years, from 1982 until 2006. Both of my children, now grown, attended Portland public schools. In the fall of 2006, I moved to Peaks Island, and have now been a full-time island resident for five and a half years.

I care deeply about both Mr. Ivers and Mr. Haykal. I have known Keith Ivers since moving to Peaks Island and have bought my resident fuel oil from his fuel business since coming here. He is a hard-working and respected member of the community.

Ted Haykal has become a friend since I moved to the island. He loves Peaks Island with his whole heart. He has fixed up an old house that once served as one of the island's grocery stores and has made it the center of his life. Ted is a visual artist and lives where he does because of a view that inspires his art and fills his life with the kind of serenity he needs for his work. As a working writer, I understand and respect the need for this kind of quiet. The work of Mr. Haykal and Mr. Ivers is very different, but each of them are engaged in work that matters deeply to them.

The problem has arisen because Mr. Ivers plans to park his oil trucks close to Mr. Haykal's dwelling, and this will make it impossible for Mr. Haykal to do the work he cares about. There will be noise from trucks day and night, diesel fumes, and obstruction of his view. I care about Mr. Ivers thriving on the island. And I admit that if I imagine diesel trucks moving in and out in front of my house day and night, I understand why Mr. Haykal feels heartsick over this matter. Life and work as he knows it will be changed forever, and severely compromised. If he were to sell the house he's labored over, it would be worth half what he has put into it. No one wants to buy a house next to a fuel storage area. The reality is that the trucks will not be empty. They will contain fuel, some of them gallons of fuel.


When one person wins and another person loses, the bitterness from that conflict radiates outward like waves from a stone thrown into a pond. Living on an island is different than living in a neighborhood in Portland. I didn't understand this before coming here, but I understand it now. Our lives are enmeshed in ways that lives on the mainland are not. Conflicts matter more here, because it is impossible to escape each other. This makes it all the more critical to resolve issues in ways that are amicable to everyone involved. The costs of doing business otherwise is too dear.

In this case, a win-win solution is possible. I urge the planning board not to rule on this matter in haste, but to allow a solution to emerge which will satisfy all parties.

Various suitable sites on the island, far from residential areas, are available, where Mr. Ivers could operate his trucks without impinging on the lives of people trying to live their lives without the presence of diesel trucks. If it were necessary for Mr. Ivers to purchase or lease a site, I would be willing to make a donation (along with others, I imagine) that might be paid back over time.

Again, I urge you to slow down this decision long enough to allow the community to find a workable solution that meets everyone's needs.

Yours sincerely,



Eleanor Lincoln Morse

Eleanor Lincoln Morse

Oil Spill Prevention Control & Countermeasure (SPCC) Plan:

For:

Peaks Island Fuel Company Company Truck Parking Facility Peaks Island, ME

Prepared for:

Peaks Island Fuel Company
P.O. Box 6
Peaks Island, ME 04108

Date Prepared:

August 2011

Prepared By:



TERRADYN
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Civil Engineering - Land Planning - Stormwater Design - Environmental Permitting

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Note: Bracketed notes in Table of Contents indicate cross-reference to 40 CFR 112

MANAGEMENT APPROVAL & REVIEW – [112.5 & 112.7(d)(2)]

MANAGEMENT APPROVAL

Peaks Island Fuel Company is committed to the prevention of discharges of oil to navigable waters or the environment, and maintains the highest standards for spill prevention control and countermeasures through periodic review, updating, and implementation of this Spill Prevention Control and Countermeasure (SPCC) Plan. Peaks Island Fuel Company will provide the manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

Authorized Facility Representative: _____

Signature: _____

Title: _____

MANAGEMENT REVIEW

A review and evaluation of this SPCC Plan is conducted at least once every five years. As a result of this review and evaluation, Peaks Island Fuel Company will amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) such technology will significantly reduce the likelihood of a spill event from the facility, and (2) if such technology has been field-proven at the time of review.

This SPCC Plan will also be amended within six months after a change in the facility design, construction, operation, or maintenance occurs which materially affects the facility's potential for the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines.

Any technical amendment to the SPCC Plan shall be certified by a Professional Engineer.

<u>Review Dates</u>	<u>Signature</u>	<u>Amendment Required? (Y/N)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
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PROFESSIONAL ENGINEER'S REVIEW – [112.3(d)(1)]

The undersigned Registered Professional Engineer is familiar with the requirements of Chapter 40 of the Code of Federal Regulations Part 112 (40 CFR 112) and has supervised examination of the facility. The undersigned Registered Professional Engineer attests that this Oil Spill Prevention Control and Countermeasure Plan has been prepared in accordance with good engineering practices including applicable industry standards, and in accordance with the requirements of Chapter 40 of the Code of Federal Regulations Part 112 (40 CFR 112); that procedures have been established for required inspections and testing; and that the Plan is adequate for the facility.

Signature
Jeffrey D. Amos, P.E.

Name
President

Title
Terradyn Consultants, LLC

Company
8/2/11

Date
10167

P.E. Registration Number

1.0 INTRODUCTION

1.1 Purpose

The purpose of this Oil Spill Prevention Control and Countermeasure (SPCC) plan is to prevent oil spills from occurring, and to perform safe, efficient and timely response in the event of a spill or leak (both referred to as “spills” herein). In accordance with United States Environmental Protection Agency (EPA) oil pollution prevention regulations (40 CFR 112), the Peaks Island Fuel Company must prepare and implement an SPCC plan for facilities that could reasonably be expected to discharge oil into or upon navigable waters or adjoining shorelines; and, meet one of the following conditions:

- ◆ Above-ground oil storage capacity exceeds 1,320 gallons; or
- ◆ Underground oil storage capacity exceeds 42,000 gallons, unless the underground tanks are subject to all of the technical requirements of 40 CFR 280 or a state program approved under 40 CFR 281. (Maine’s approved program is Department of Environmental Protection, Chapter 691 – Rules for Underground Storage Facilities.)

As defined by 40 CFR Part 112, oil includes all grades of motor oil, hydraulic oil, lube oil, fuel oil, gasoline and diesel, automatic transmission fluid (ATF), waste oil, and transformer mineral oil. The definition of oil also includes non-petroleum oils such as animal or vegetable oils and synthetic oils.

1.1.1 Using the Plan

In addition to satisfying a regulatory requirement, this SPCC plan should be working document at the facility. The plan should be used frequently in the following ways:

- ◆ As a reference for oil storage and containment system information.
- ◆ As a tool for informing new employees and refreshing existing employees on practices for preventing and responding to spills.
- ◆ As a guide to periodic training programs for employees.
- ◆ As a guide to facility inspections.
- ◆ As a resource during an emergency response.

1.1.2 SPCC Plan Revisions

Peaks Island Fuel Company must revise this SPCC plan for any change in the facility design, construction, operation or maintenance that affects the facility’s potential for discharging oil. Revisions must occur as soon as possible, but no later than six months after the change occurs. The Environmental Compliance Officer is responsible for initiating and coordinating such revisions.

Additionally, this SPCC plan must be reviewed at least once every five years. Revisions to the plan, if any, must be made within six months of the review. Facility information related to the SPCC plan must be submitted to the United States Environmental Protection Agency (EPA)

Regional Administrator whenever the facility discharges more than 1,000 gallons in a single event, or discharges more than 42 gallons of oil in each of two spill events within a 12-month period.

1.2 Facility Description [112.7(a)(3)]

1.2.1 Location & Use

The facility is located in within the Island Business District at 512 Island Avenue in Peaks Island, Maine. The lot is approximately 0.78 AC and has frontage on the north side of Island Avenue, the west side of Trefethen Avenue and the east side of the unimproved Brimmer Street right-of-way. A site location map is shown on Figure 1.

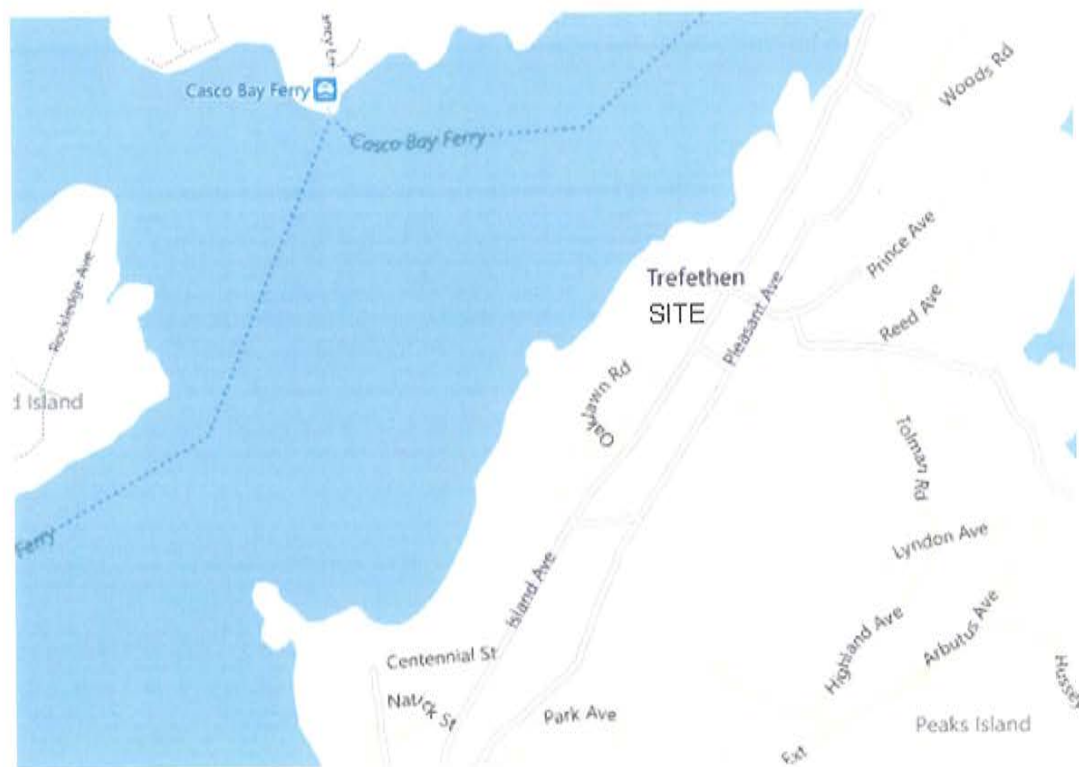


Figure 1: Location Map

The property currently contains a single family home, a lawn and is wooded in the rear of the property. The proposed improvements consist of an access drive, parking area and potential future 180 SF storage building. The 12' wide access drive will provide a single point of access from Island Ave. to the parking area. The parking area has space to park 4 - 2,800 gallon fuel trucks and three passenger-vehicle-sized service vehicles. The access drive and service vehicle parking will be gravel. The fuel trucks will be parked on a concrete pad.

Facility site plans are attached in Appendix C.

When completed, the site will be used as the primary parking lot for the Peaks Island Fuel Company fleet of service and delivery vehicles. There will be no transfer of petroleum product

at this site. There will be no on-site storage of hazardous materials other than what the fuel trucks are carrying at any given time.

1.2.2 Waterways and Abutters

The lower end of the site is between 150'-200' away from Casco Bay. Once the proposed improvements have been completed, stormwater runoff from the parking area will drain to a level spreader located on the lower end of the parking area (closest to Trefethen Avenue). The level spreader drains to a wooded buffer.

1.2.3 Site Drainage

The property generally drains from a high point at the Island Avenue/Trefethen Avenue intersection to the lowpoint in the northwest corner of the lot. The parking area drains to a wooded buffer that flows across the rear of the property. The runoff from the neighboring residence as well as portions of Island Avenue will be intercepted by a 12" pipe located just above the parking area and routed toward Brimmer Street right of way. The entire area drains to a ditch that runs down the Brimmer Street right-of-way and flows into Casco Bay. The fuel trucks will be parked on a curb-dike lined concrete pad. The dike will be drained via a threaded and capped PVC pipe. The dike and impounded water are to be inspected and maintained as outlined in this document.

2.0 POTENTIAL SPILL SOURCES AND SPCC FEATURES

2.1 SPCC Compliance [112.7(a)(1) & 112.7(a)(2) & 112.8]

Onsite oil storage will be limited to what is being carried –at any given time- by the 2,800 gallon capacity oil delivery trucks. There will be no storage tanks or transfer of hazardous materials allowed onsite.

The fuel trucks will be parked on a curb-dike lined concrete pad. The dike will be drained via a threaded and capped PVC pipe. The dike and impounded water are to be inspected and maintained as outlined in this document.

2.2 Tables [112.7(a)(3)(i & iii) & 112.7(b) & 112.7(c)]

TANK TRUCK PARKING & PORTABLE TANK STORAGE

LOCATION	MAX. COMPARTMENT SIZE (gallons)	ESTIMATED SPILL DIRECTION AND RATE (locate nearest drain)	CONTAINMENT & SPILL CONTROL FEATURES
Truck Parking Area	2,800/truck	Northern corner of dike. Spill rate limited to leaky valve – slow drip	Curb Dike

3.0 SPILL PREVENTION AND RESPONSE

3.1 Discharge Prevention

3.1.1 SPCC Features and Operating Procedures [112.7(a)(3) & 112.8]

Peaks Island Fuel Company employees are trained to implement spill prevention practices for work with and around oil sources. Peaks Island Fuel Company personnel shall use common sense and rely on spill prevention practices at all times to minimize the potential for a release of oil.

For example, the following “common sense” practices are recommended:

- ◆ keep container lids securely fastened at all times;
- ◆ do not leave portable sources unattended (outside);
- ◆ return portable sources to their storage location after use;
- ◆ use pads, drip pans, and funnels when transferring petroleum products from a portable container;
- ◆ protect oil sources from damage by moving equipment;
- ◆ keep dike valves closed at all times except when discharging clean stormwater from the diked area;
- ◆ contaminated water within the diked area and piping and dispenser sumps shall be removed and disposed of by a licensed hazardous waste contractor;
- ◆ do not store oil sources near catch basins or floor drains; and
- ◆ loading and unloading of petroleum products shall be attended at all times.

Draining Stormwater from Containment Areas and Sumps

The curb-dike shall be drained only under the direct supervision of facility personnel.

- ◆ Dike drain valves are normally kept locked in a closed position except when draining the dike.
- ◆ Accumulated stormwater is inspected for sheen, and only water without a visible sheen is released.
- ◆ Contaminated stormwater is removed for transport off site by a licensed hazardous waste or waste oil contractor.

3.1.2 Tests and Inspections [112.7(e) & 112.8(c)(6)]

The personnel at the facility shall perform testing, inspection, and maintenance of all petroleum equipment to keep it performing in an efficient and environmentally sound manner. The tests and inspections shall be performed as discussed in the following subsections.

3.1.2.1 Inspecting Delivery Trucks

Facility personnel periodically observe the delivery trucks during operating hours. The storage tanks and associated piping and dispensing systems shall be inspected monthly, and the results shall be recorded on the *Monthly AST Inspection Report*, as included in Appendix E. Spill response kits kept on site shall also be checked during the monthly AST inspection, and restocked as necessary. The monthly inspection reports shall be kept for at least three years in a file maintained by the Facility Manager. Inspections of the tanks include observations of the exterior of the tank for signs of deterioration or spills (leaks), observations of the tank foundation and supports for signs of instability, and observations of the vent, fill and discharge pipes for signs of poor connection, that could cause a spill. In addition to these monthly inspections, the facility will periodically verify the integrity of each tank in accordance with an industry standard inspection procedure such as STI – SP001-03 or API 653. The frequency of such testing will be as specified by the selected industry standard procedure.

3.1.2.2 Tank and Equipment Maintenance

All petroleum tank and piping problems shall be immediately reported to the Facility Manager. Visible oil spills (leaks) that cause a loss of oil from tank walls, piping or other components shall be repaired or replaced as soon as possible to prevent the potential for a major spill from the source. This is especially important for sources located outside containment or near drains or catch basins that discharge to the environment.

3.1.3 Training [112.7(f)]

Peaks Island Fuel Company shall provide SPCC spill training for personnel involved with handling petroleum products. The Environmental Compliance Officer shall arrange for annual training, which shall include the following training topics:

- ◆ an introduction to pollution control laws;
- ◆ rules and regulations pertaining to the use and storage of petroleum products;
- ◆ inspection, operation and maintenance of spill equipment, and petroleum storage and dispensing equipment;
- ◆ spill response and cleanup;
- ◆ spill notification and record keeping; and
- ◆ spill prevention practices.

Records of attendance at training and topics covered shall be maintained by the Facility Manager.

3.1.3.1 Documentation for Training

The annual SPCC training shall be documented to include the instructor's name, course outline, date and duration of training, attendant's names and signatures, and corrective action list for areas in need of improvement, if any. This information shall be filed and maintained for at least 3 years at the office of the Environmental Compliance Officer. A Certificate of Training shall be

presented to each Peaks Island Fuel Company employee that has completed the training. The Environmental Compliance Officer shall forward a copy of this certificate to the Human Resource Department for inclusion in the employee's file.

3.1.4 Security [112.7(g)]

The owner of Peaks Island Fuel Company lives directly adjacent to the parking area and will keep watch for any suspicious activity. A 6' high wooden fence will border the truck parking area, but will not fully enclose the site. The following safety measures are in place or are to be implemented:

1. When the facility is closed for business, the trucks shall be locked and the starter controls on all pumps shall be locked in the OFF position.
2. The parking area will not have dedicated lighting, however the area can be lit by the exterior spot lights mounted on the owner's private residence. The future storage building will also have an exterior light.

3.1.5 Conformance with State of Maine and Local Requirements [112.7(j)]

The parking area shall conform with all applicable state and federal laws.

3.2 Emergency Response [112.7(a)(3)(iv), 112.7(a)(4) and 112.7(c)]

This section describes the cleanup response and protocols to follow in the event of an oil spill. The uncontrolled discharge of oil to groundwater, surface water or soil is prohibited by State or Federal laws. It is imperative that action be taken to respond to a spill once it has occurred. Depending on the volume and characteristics of the material released, Peaks Island Fuel Company has defined spill response as either a "Minor Spill Response" or "Major Spill Response" ("Spill Emergency"). A list of Emergency Contacts is included in Appendix A. A list of spill response materials kept at the facility is included in Appendix F.

3.2.1 Minor Spill Response [112.7(a)(3)(iv)]

A "Minor Spill Response" is defined as one that poses no significant harm to human health or the environment. These spills involve generally less than 5 gallons and can usually be cleaned up by Peaks Island Fuel Company personnel. Other characteristics of a minor spill include the following:

- ◆ the spilled material is easily stopped or controlled at the time of the spill;
- ◆ the spill is localized;
- ◆ the spilled material is not likely to reach surface water or groundwater;
- ◆ there is little danger to human health; and
- ◆ there is little danger of fire or explosion.

In the event of a minor spill the following guidelines shall apply:

- ◆ Stop the source if the spill is ongoing.

- ◆ Immediately notify the senior on-site person (i.e., Facility Manager).
- ◆ Call the Maine Department of Environmental Protection (1-800-482-0777) within two hours.
- ◆ Under the direction of a senior on-site person, contain the spill with spill response materials and equipment.
- ◆ Place spill debris in properly labeled waste containers.
- ◆ Complete the *Spill Notification Form* (Appendix B) and send to the Environmental Compliance Officer.

3.2.2 Major Spill Response (Spill Emergency) [112.7(a)(3)(iv)]

A “Spill Emergency” is defined as one involving a spill that cannot be safely controlled or cleaned up. Characteristics include the following:

- ◆ the spill is large enough to spread beyond the immediate spill area;
- ◆ the spilled material enters surface water or groundwater (regardless of spill size);
- ◆ the spill requires special training and equipment to cleanup;
- ◆ the spilled material is dangerous to human health; and/or
- ◆ there is a danger of fire or explosion.

In the event of a spill emergency, the following guidelines shall apply:

- ◆ Stop the source if the spill is ongoing only if safe to do so.
- ◆ All workers shall immediately evacuate the spill site and move to a safe distance away from the spill.
- ◆ A senior on-site person shall call for medical assistance if workers are injured (no worker shall engage in rescue operations unless they have been properly trained and equipped).
- ◆ A senior on-site person shall immediately contact the Maine Department of Environmental Protection (1-800-482-0777) and the National Response Center (1-800-424-8802). Document the telephone calls on the *Spill Notification Form* in Appendix B.
- ◆ Notify the local Fire Department or Police Department.
- ◆ A senior on-site person shall contact the Facility Manager and provide details regarding the spill.
- ◆ The Facility Manager or Environmental Compliance Officer will coordinate cleanup and seek assistance from a cleanup contractor as necessary.

If a senior on-site person is not available at the time of the spill, then the next highest Peaks Island Fuel Company employee in command shall assume responsibility.

3.2.3 Waste Disposal [112.7(a)(3)(v)]

Non-hazardous wastes resulting from a minor spill response will be containerized in impervious bags, drums or buckets. Unsaturated oil spill clean up debris will be disposed of as special waste by a licensed waste hauler within two weeks. Any saturated oil spill clean up debris or recovered free product will be stored in drums and either re-used as fuel or disposed of properly.

Wastes resulting from a major spill response will be removed and disposed by a cleanup contractor.

3.2.4 Notification and Reporting [112.4 and 112.7(a)(4)]

3.2.4.1 Spill Notification Forms [112.7(a)(4)]

After making the appropriate phone calls and the spill is contained, a *Spill Notification Form*, included in Appendix B, shall be completed and submitted to the Environmental Compliance Officer. The *Spill Notification Form* includes a checklist to document the proper notification of state and federal agencies. The form shall be filed by facility name and maintained as long as Peaks Island Fuel Company owns and/or operates this facility.

3.2.4.2 Submittal of Additional Information to the EPA and Maine DEP [112.4]

If a single spill greater than 1,000 gallons occurs, or two spills each greater than 42 gallons occur within any 12 month period, at this Peaks Island Fuel Company facility, the Environmental Compliance Officer shall, in addition to the notification procedures above, provide written information to the EPA Regional Administrator as required by the federal SPCC rules. A copy of this information must be provided to the Maine Department of Environmental Protection.

3.2.5 Area Plans

The Environmental Protection Agency (EPA) and Coast Guard (USCG) administer Area Plans for spill contingency response by Region throughout the United States. The USCG covers coastal areas, and EPA covers inland areas. In a major spill event, contacting the National Response Center hotline will trigger assistance from the appropriate agency, if needed.

4.0 REQUIRED FACILITY IMPROVEMENTS

The Professional Engineer's certification of this plan is contingent on the following facility improvements being implemented for compliance with SPCC regulations 40 CFR 112:

1. Concrete pad to be constructed for delivery truck parking area.
2. Curb-dike to be constructed around concrete parking surface. Dike to be made water-tight. Threaded capped dike drain-line to be installed per construction plan.

APPENDIX A

**Emergency Contacts
[112.7(a)(3)(vi)]**

Emergency Contacts

Spill Reporting Hotlines

Agency	Telephone #
Maine Department of Environmental Protection Oil Spill Response	1-800-482-0777
National Response Center USCG/USEPA	1-800-424-8802

Local Emergency Agencies

Agency	Telephone #
City of Portland Fire Department	911
City of Portland Police Department	911

Spill Response Contractors

Company/Location	Telephone #
	207-
	207-
	207-

Owner Operator (Peaks Island Fuel Company)

Name/Title	Telephone #
Keith Ivers / Owner & President	207-749-5700

See Appendix B for Emergency Response – Spill Notification Form

APPENDIX B

Spill Notification Form

&

Spill Records

Spill Notification Form

Part A: Basic Spill Data		
Type of Spilled Substance:	Notification Person:	
Quantity Released:	Spill Date and Time:	
Location of Spill:	Discovery Date and Time:	
	SPILL DURATION:	
Facility Name & Location: Peaks Island Fuel Company ____ Street ____, ME	Release to: <input type="checkbox"/> air <input type="checkbox"/> water <input type="checkbox"/> ocean <input type="checkbox"/> well <input type="checkbox"/> soil <input type="checkbox"/> sewer <input type="checkbox"/> containment <input type="checkbox"/> other _____	
Owner / Company Name: Peaks Island Fuel Company ____ Street ____, ME	Telephone: Facility: _____ 24 hr.: _____	
Nature of spill and any environmental or health effects: _____ [] Injuries []		
Fatalities _____		
Part B: Notification Checklist		
Spill Type	Notification Date and Time	Name of Person that Received Call
Spill is any amount of petroleum product:		
Maine Department of Environmental Protection 1-800-482-0777		
Spill reaches groundwater or surface water:		
Maine Department of Environmental Protection 1-800-482-0777		
National Response Center 1-800-424-8802		

Send a copy of this form to the Peaks Island Fuel Company Environmental Compliance Officer.
This form shall be filed by facility name and maintained as long as Peaks Island Fuel Company owns and/or operates the facility.

APPENDIX C

**Facility Site Plans
[112.7(a)(3)]**

APPENDIX D

Substantial Harm Criteria Checklist

[112.20(e)]

**SUBSTANTIAL HARM CRITERIA CHECKLIST (40 CFR 112.20 (e))
CERTIFICATION OF THE APPLICABILITY**

FACILITY NAME: _____
FACILITY ADDRESS: _____

1. Does the facility transfer oil over water to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?
Yes _____ No _____
2. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and does the facility lack secondary containment that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation within any aboveground oil storage tank area?
Yes _____ No _____
3. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments?
Yes _____ No _____
4. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance such that a discharge from the facility would shut down a public drinking water intake?
Yes _____ No _____
5. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years?
Yes _____ No _____

CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

Name (please type or print)

Signature

Title

Date

APPENDIX E
Facility Inspection Checklist
&
Inspection Records

AST Facility Monthly Inspection Report

Peaks Island Fuel Company

Tank/Product Capacity	TK.1/ _____gals.	TK.2/ _____gals.	TK.3/ _____gals.	TK.4/ _____gals.	TK.5/ _____gals.
General Condition of Tank (Note any deformations, corrosion, staining, etc. Check for liquid in the interstitial space of double-walled tanks.)					
Tank Level Gauge and High Level Alarm Functional?					
General Condition of Secondary Containment (Note any cracks, drain valve closed/locked, accumulated stormwater.)					
Emergency Response Spill Kits	Location # Kit complete? _____ Kit restocked: _____	Location # Kit complete? _____ Kit restocked: _____	Location # Kit complete? _____ Kit restocked: _____	Location # Kit complete? _____ Kit restocked: _____	Location # Kit complete? _____ Kit restocked: _____

Name: _____
 Title: _____
 Signature _____ Date: _____

This report shall be kept on file for at least three years.

APPENDIX F

Spill Response Kit List

Spill Response Kits

A spill response kit is located in an exterior box on each delivery truck. Additionally, a minimum of one spill response kit will be kept in the onsite storage building.

The following are some suggested items for on-site oil spill response kits. Spill kits should be well marked and kept in readily accessible locations. Facility personnel should be familiar with the location and contents of the spill kits.

Drum or other container to hold contents of spill kit

Drum or other container to hold contaminated materials

Loose absorbent for oil

Sorbent pads/wipes/pillows/booms/socks

Nitrile gloves

Neoprene gloves for cold weather use

Brooms

APPENDIX G

Employee Training Log

APPENDIX H

Dike Water Drainage Log

APPENDIX I

Capacity Calculations and Permeability Determinations for Secondary Containment Structures

The fuel delivery trucks fall under the general secondary containment requirement. As such, the fuel trucks shall be parked on a curb-dike lined concrete pad. The dike and impounded water are to be inspected and maintained as outlined in this document.

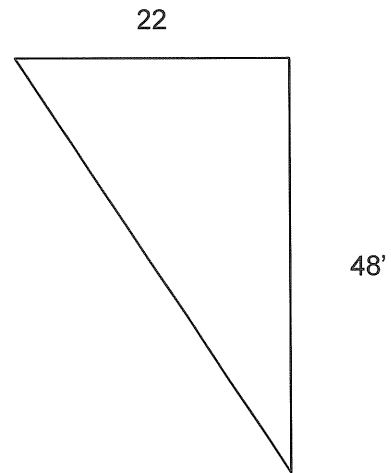
The curb-dike area has a containment volume of approximately 658 gallons as calculated below:

Containment Elevations: 19.60' – 20.10'
Containment Height (h): 0.5'

Since containment area is a pyramid, the volume can be found via the following equation: $V=(1/3)Bh$, where B is the base area of the pyramid and h is the height.

Area of Base (B) triangle formed at elevation 20.10:

$$B=(22 \times 48)/2$$
$$B=528 \text{ SF}$$



$$\text{Volume (CF)} = (1/3)Bh = 1/3 (528)(0.5) = 88 \text{ CF}$$

$$\text{Volume (GAL)} = 88 \text{ CF} * 7.48 \text{ Gallons/CF} = 658.24 \text{ Gallons}$$

APPENDIX J

**Results of Tank Integrity
and
Pressure Testing**



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 3rd. 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

AH 1

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 HARKAL 766-4454

RECEIVED

NOV 28 2011

City of Portland
Planning Division

DA 1

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

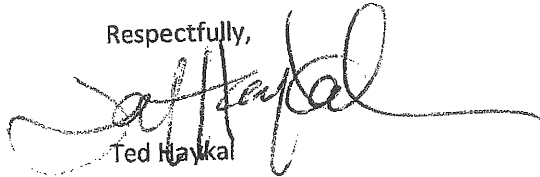
NOV 28 2011

City of Portland
Planning Division

AA 1

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.

Att 1

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."

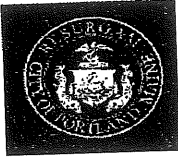
My question to you is what does the DEP consider to be fuel storage. I was under the impression that fuel oil in excess of 1,320 gallons in storage tanks or in his delivery trucks if they are to be parked at the site overnight or longer with product in them does constitute the parking of these vehicles 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 2



PORTLAND MAINE

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

Planning Division
Alexander Jaegerman, Director

November 30, 2011

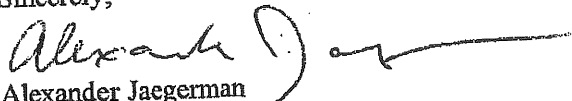
Ted Haytkal
522 Island Avenue
Peaks Island, ME 04108

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

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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

44 3



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

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

Attachment 1

Att 4

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

RECEIVED

DEC 30 2011

City of Portland
Planning Division

ATTN: MR. ALEX VAEGERMAN:

AH 4

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).

AH 4

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:

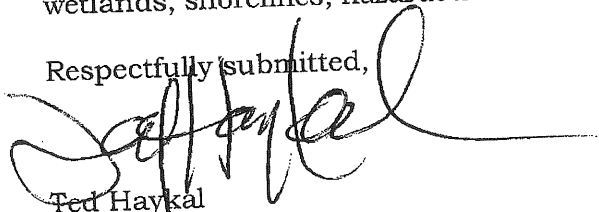
1. Ivers' current plan is to have his large fuel trucks parked closer to my property than they need to be. This eyesore would be a major imposition upon my property while contributing little to his business convenience, etc. I propose, instead, that his large fuel trucks be parked adjacent to his own 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.

2. Ivers' current plan is to locate the driveway into his "parking lot" adjacent to my southwesterly property line. Surely that driveway could be located so as to go past his house's southwesterly side, as far away as possible from my house? True, that would require a longer driveway, but the result would be far less damaging to my property. I understand that our neighbors, the Browns, would much prefer this alternative driveway location.

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.

MEMO

To: City of Portland Planning Board
From: Danielle P. West-Chuhta, Associate Corporation Counsel
Date: February 23, 2012
Re: Haykal Appeal

I wanted to provide the Planning Board with some research regarding a couple of issues that may arise during the discussion of Mr. Haykal's appeal.

I. Appeals of Zoning Board of Appeals Decisions

First, as the Planning report makes clear, under the City Code the Planning Board only has jurisdiction over appeals of decisions of the Planning Authority not of the Zoning Board of Appeals ("ZBA"). See 14-30. Instead, the City Code specifies that appeals of ZBA decisions must go directly to the Superior Court pursuant to M.R. Civ. P. 80B. See section 14-553; see also Wister v. Town of Mount Desert, 2009 Me 66, ¶ 15, 974 A.2d 903, 908 (citing 30-A M.R.S.A. § 4353(1) (which specifies that municipal ordinances may provide that only direct appeal to the Superior Court is permitted).

II. Good Cause

Next, it is important to discuss the appeal period. Under the City Code, an aggrieved party has thirty (30) days to appeal the Planning Authority's decision. See sections 14-30 (o) and 14-529. In this case, Mr. Haykal submitted his appeal to the Planning Board of the October 20, 2011 ZBA decision on November 28, 2011. Once he discovered that he could not appeal the ZBA's decision to the Planning Board, he then sought after November 28, 2011 to appeal the Planning Authority's October 27, 2011 site plan approval. This appeal was untimely since it was more than thirty (30) days after the Planning Authority's approval was issued.

The City Code does not contain a good cause exception for late appeals. The Maine Law Court has indicated that an ordinance's appeal period (like the City's 30 day appeal period) will ordinarily be strictly construed unless there are circumstances so extenuating and unjust that a judicial exception to the rule is warranted. See Brackett v. Town of Rangeley, 2003 ME 109 (holding that a narrow judicial good cause exception to a fixed appeal period where a timely appeal is frustrated by lack of required notice or knowledge and the aggrieved party acts promptly once knowledge is acquired). This exception cannot be applied by the Planning Board, and instead Mr. Haykal would need to seek relief and application of this exception from the Maine Superior Court.



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Planning & Urban Development Department
Penny 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:

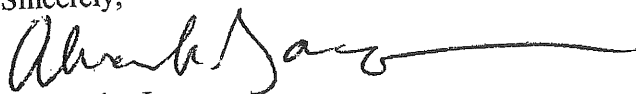
1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require 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

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

512 Island
AVE

All my comments

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.

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,

A handwritten signature in black ink that reads "Marge Schmuckal". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

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

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

#2011-277

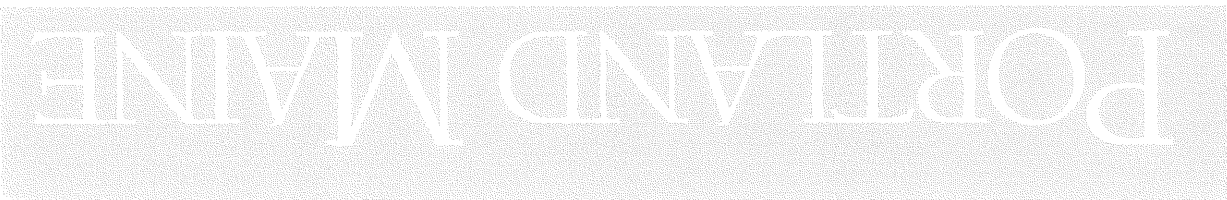
10/25/2011 This project has been approved by Zoning for all the underlying I-B zone requirements and Shoreland Zoning requirements.

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



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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 14-31 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:
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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-Chuhita, Corporation Counsel
Mike Murray, Island/Neighborhood Liaison



**COMMENT & INTEGRITY
DRIVE RESULTS**

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MEMORANDUM

TO: Erick Giles, Planner
FROM: Lauren Swett, P.E. & David Senus, P.E.
DATE: August 25, 2011
RE: 512 Island Ave, Driveway/Parking Area Material of Construction & Snow Storage

As follow up to the Woodard & Curran review memo dated 8/19/2011, we offer the following comments specific to the driveway and parking lot area materials of construction, along with snow storage on the site.

Documents Provided

- Site Alteration Application and attachments for Peaks Island Fuel, dated August 8, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.
- Engineering Plans for Peaks Island Fuel, Sheets 1-4, dated July 20, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.

Comments

Gravel Driveway & Parking Area:

The applicant proposes a compacted gravel driveway and parking lot area, the only exception being a curbed concrete pad for spill containment for four parking spaces on the east side of the lot. The detail of the gravel section includes 15" of MDOT Type D gravel subbase and 6" of MDOT Type A gravel surface. The use of a gravel parking lot surface is allowable under Division 20 - Off Street Parking of Chapter 14 - Land Use of the City Code of Ordinances (Sec. 14-340 Construction requirements when more than six vehicles parked. (b)). The section meets the City's requirements for base and subbase gravel depths for Collector and Arterial roadways, and exceeds the City's requirements for base and subbase gravel depths for Local roadways and driveways.

Under the Site Plan Standards (14-526) of the City's Land Use Code, parking lots "shall be constructed of a permanent and durable hard surface that is not subject to ponding or erosion" (14-526.(a).4.a.(v)). The parking lot areas and some of the driveway, as proposed, meet the requirements of this standard, the exception being the steeper driveway area (8% slope). Channelized flow and erosion of surface gravels may occur in this steeper driveway area. We recommend the applicant propose an alternate surface material in driveway areas that exceed a 5% slope.

Given the use and location of the site, and considering the depth and type of gravel noted on the applicant's plans, we have no concern with the use of a gravel parking lot or gravel driveway surface for areas with 5% or less slope.

Snow Storage:

The plans should note a location for snow storage. The snow storage location should be sited outside of existing and proposed drainage courses.



COMMITMENT & INTEGRITY
DRIVE RESULTS

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MEMORANDUM

TO: Erick Giles, Planner
FROM: Lauren Swett, P.E. & David Senus, P.E.
DATE: August 19, 2011
RE: 512 Island Avenue

Woodard & Curran has reviewed the Level I Site Alteration submission for 512 Island Avenue.

Documents Provided

- Site Alteration Application and attachments for Peaks Island Fuel, dated August 8, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.
- Engineering Plans for Peaks Island Fuel, Sheets 1-4, dated July 20, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.

Comments

- The Applicant has submitted a Spill Prevention, Control and Countermeasures Plan to the Maine DEP Bureau of Remediation and Waste Management. The proposed system will require continuous maintenance to ensure that the containment area on the slab is drained following every rain event. The site grading should be further detailed to restrict stormwater from running onto the concrete parking spaces from adjacent areas.
- The Applicant has requested a waiver from the flooding standard. The Applicant should provide calculations for the pre-development and post-development peak flows at the project site. We would likely support a waiver from meeting the flow requirements of the flooding standard if the post-development flow is found to be higher than the pre-development flow, given the proximity to ocean waters; however we need to see the changes in flow to evaluate the impact to the offsite conveyance ditch.
- Additional spot grades should be provided at the northeast corner of the parking lot to ensure that stormwater will be directed to the ditch turnout buffer.
- The Grading and Erosion Control Plan shows a culvert crossing the proposed gravel driveway. Based on the pipe's invert elevations and the proposed surface grade, there appears to be 1.25 feet of cover over this pipe. The Applicant should specify the type of pipe that will be used and verify that the amount of cover is acceptable. A typical pipe installation detail should be provided.
- Inlet and outlet erosion control protection should be provided for the proposed 12" diameter culvert pipe.

From: "David Senus" <dsenus@woodardcurran.com>
To: "Barbara Barthyd" <BAB@portlandmaine.gov>
CC: "Lauren Sweet" <lsweet@woodardcurran.com>; "David Margolis-Pineo" <DMF@portlandmaine.gov>; "Jeff Tarling" <JST@portlandmaine.gov>
Date: Wednesday, October 05, 2011 4:17 PM
Subject: Peer Review Memo for 512 Island Ave
2011.10.05 512 Island Avenue Memo.doc; 2011.10.05 512 Island Avenue Memo.pdf

Hi Barbara.

The applicant has adequately addressed our comments related to stormwater. Attached is a memo to that regard.

Although I haven't flagged it in our memo, we did observe that the snow storage areas may be in conflict with some of the proposed vegetation on the landscaping plan. This may not be a big deal, and I'm sure that they can make snow storage work on this site. I've cc'ed Jeff Tarling to see if he has any concerns.

Thanks
Dave

David Senus, PE (Maine), Project Manager
Woodard & Curran, Inc.
41 Hutchins Drive
Portland, ME 04102
Phone: (800) 426-4262 x3241
Fax: (207) 774-6635
Woodard & Curran
www.woodardcurran.com
Commitment & Integrity Drive Results

Jeff Tarling
City Arborist

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.

Hi Barbara -

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

Barbara Barhydt - 512 Island Avenue Revisions

From: Tom Errico <thomas.errico@tylin.com>
To: Eric Giles <EGILLES@portlandmaine.gov>
CC: David Margolis-Pineo <DMPP@portlandmaine.gov>, Katherine Farley <KAS@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>
Date: 8/25/2011 12:31 PM
Subject: 512 Island Avenue

Eric - I have reviewed the site plan prepared by Terradyn Consultants, LLC and I have the following comments.

- * 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.
- * 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.
- * 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').
- * The applicant should provide information on the adequacy of sight distance exiting the proposed driveway.
- * In my professional opinion the proposed project will not significantly impact safety or traffic mobility in the area of the project.

If you have any questions or comments, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
12 Northbrook Drive
Falmouth, ME 04105
207.347.4354 direct
207.400.0719 mobile
207.781.4753 fax

Barbara Barhydt - Re: Appeal - Haykal

From: Danielle West-Chuhtha (Danielle West-Chuhtha)
To: Barbara Barhydt
Date: Wednesday, February 22, 2012 1:20 PM
Subject: Re: Appeal - Haykal
CC: Alex Jaegerman

then notify him that the appeal just includes him - since it was from only him originally.

>>> Barbara Barhydt 2/22/2012 12:53 PM >>>

No, it is the other way around. I sent you his original appeal and this appeal is just from him.

>>> Danielle West-Chuhtha (Danielle West-Chuhtha) Wednesday, February 22, 2012 12:48 PM >>>

His current appeal to the Board then includes all of those people he lists - he does need to have authorization to act on their behalf though. This is true even though his original appeal does not include them, because this appeal is different - it is with regard to Alex's decision on that original appeal. Confusing, but basically they can all appeal but we need authorization from them to act on their behalf. I would contact him and indicate this to him. If we do not have this authorization we need to make the record clear that it is just an appeal by him.

>>> Barbara Barhydt 2/22/2012 12:39 PM >>>

This is what we received. All of our correspondence has been with Ted.

>>> Danielle West-Chuhtha (Danielle West-Chuhtha) Wednesday, February 22, 2012 12:31 PM >>>

if they were not included on the original appeal then do not include them now

>>> Barbara Barhydt 2/22/2012 12:22 PM >>>

I have questions. We did not ask this of him before and I have not advertised them on the appeal. Can we find 15 minutes to review what I have and what needs to be done?

Thanks.

Barbara

>>> Danielle West-Chuhtha (Danielle West-Chuhtha) Wednesday, February 22, 2012 9:32 AM >>>

I would ask him if he is acting on their behalf and if so he will need written authorization from each to do so. If he is not then they should be removed from the appeal.

>>> Barbara Barhydt 2/21/2012 5:04 PM >>>

The attachment to Ted's letter lists other appellants, but I have not focused on them nor have they participated in any of the discussions with Ted. I have not contacted them individually. Please advise.

>>> Danielle West-Chuhtha (Danielle West-Chuhtha) Tuesday, February 21, 2012 3:49 PM >>>

no - I do not think it is necessary. Just his initial appeal, Alex's letter and any materials he references/submits.

>>> Barbara Barhydt 2/21/2012 3:34 PM >>>

Thanks. Do you want all the attachments, such as the Mr. Haykal's appeal of the zoning interpretation (David Lourie's work)? I have it in the list of attachments, but wondered if that is appropriate in this appeal.

Baabara

>>> Danielle West-Chuhtha (Danielle West-Chuhtha) Tuesday, February 21, 2012 1:42 PM >>>

Vacation was good - too short - I wish it could have been for a week, but it is hard leaving two kids. Anyway, I think that you are on the right track. I would make the bullet point descriptions shorter and add the exact language from Ted's appeal letter to the bullet point regarding his appeal.

Thanks,

Danielle

>>> Barbara Barhydt 2/21/2012 12:31 PM >>>
Hi!

Welcome back from vacation! How was San Diego? I am looking forward to hearing how beautiful it is out there.

I have started a chronology of the review with a lot of attachments. I am not sure you want all the attachments included in this and I need to know if I am on the right track. This is very preliminary. Please give me your feedback and let me know if we need to meet to discuss.

Thanks.

Barbara

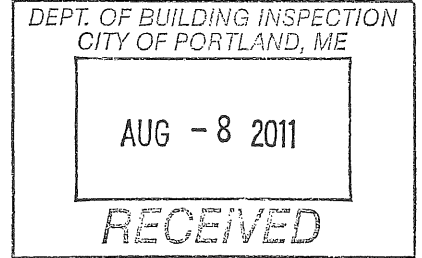
truck

LAW OFFICES OF DAVID A. LOURIE
189 Spurwink Avenue
Cape Elizabeth ME 04107
and
97 India Street, Portland ME 04101
(207) 799-4922 * fax 221-1688
david@lourielaw.com

Advance copy via e-mail
August 7, 2011

David A. Lourie

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



Re: Prohibited Use - Keith Ivers - Peaks Island Fuel CBL:112-H-1

Dear Marge:

I am following up on our brief discussion last week concerning the Ivers proposal to store seven (7) trucks carrying fuel on property in the Island Business (I-B) district. I have since been retained by abutters and neighbors who oppose this use at this location. I am limiting this letter to the threshold issue of consistency of the proposed use with the zoning restrictions applicable to the location.

Since discussing the project with you, I reviewed the site plan file at the planning office. In reviewing your memo (identifying various zoning sections applicable to the site planning issues) I noted the absence of any discussion as to whether the fuel truck storage use (a fuel truck terminal) was permitted in the I-B zone. Perhaps this was intentional, as you indicated that you had not made any zoning determinations when we spoke, and it is not yet clear exactly what kinds of fuel are involved, and what activities "accessory to" the storage of the trucks are contemplated. Hopefully, Mr. Ivers will make these uses clear in subsequent submissions if that is necessary for you to make a decision as to whether the fuel truck storage activity qualifies as "off-street parking" or not. I am writing to briefly raise the zoning "use" issue at this time, as my clients feel strongly that a fuel truck terminal was not intended as a permitted use in the I-B Zone. Looking at the ordinance as a whole,¹ I believe them to be correct, and that an early decision on

¹ If this change of use is approved, the City must condition its approval upon storage only, and should expressly prohibit related activities presently occurring at Mr. Ivers' various locations. (I

Marge Schmuckal, Zoning Administrator

Re: Prohibited Use - Keith Ivers - Peaks Island Fuel CBL:112-H-1

August 7, 2011

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this critical issue would be beneficial to all concerned.

The first point to be considered is that the proposed truck storage activity is almost certainly comprehended within the defined term "truck terminal" in §14-47 of the Ordinance. If the proposal were to establish this use in an industrial zone, I am certain that it would be allowed as a truck terminal. The same treatment must apply where the use is proposed in an I-B zone. Since that activity is within a defined use category, and that category is not listed as a permitted or conditional use in the I-B district, it is prohibited in that district. This result would be consistent with the Ordinance as a whole, which clearly relegates truck terminals to the city's industrial zones, which this is not, and with other provisions and case law discussed below.

There is no definition of "parking," or of "off-street parking," in the definition section of the Portland Zoning Ordinance. The only definition of "off-street parking" appearing in the Ordinance is in Division 20. This definition is NOT supportive of a fuel truck terminal being "off-street parking." "Off-street parking" is described as consisting of "open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual.² The only standards that I could find in the Manual were standards for the parking of passenger vehicles. I did not find any standards for parking spaces that were designed for the types of vehicles proposed to be stored on the property by Mr. Ivers.

Moreover, there is a definition of "truck terminal" in §14-47. The Zoning Administrator, the ZBA, and any reviewing court must interpret each of these words, in the context of the Ordinance as a whole, and in a manner which furthers the stated purposes of the ordinance - the protection of the public welfare, health, and safety. The use described by Mr. Ivers must be found to be within the definition of "truck terminal" under the rules of statutory construction.

understand that this has included the dispensing of propane, the washing of vehicles, and other activities relating to the maintenance of the trucks and a fuel business.)

² "DIVISION 20. OFF-STREET PARKING. **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."

Marge Schmuckal, Zoning Administrator

Re: Prohibited Use - Keith Ivers - Peaks Island Fuel CBL:112-H-1

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Perhaps the most telling point *against* the proposed use (the storage of commercial vehicles for delivery of fuel off premises) being permitted as “off-street parking” is the fact that all other parking required or permitted under the ordinance is for the service, benefit, or convenience to the property where the parking occurs. Here the fuel trucks are *stored* rather than *parked*, since there is no use nexus between the placement of the trucks and the property upon which they will be placed. Your attention is directed to St. Louis County v. Taggert, 866 S.W.2d 181, 184 (Mo.App. E.D. 1993), which distinguishes between the storage of defendants' dump trucks (used in their gravel hauling business for delivery of goods and services to other locations), and the parking of vehicles for the purpose of serving the lot upon which the vehicles are parked. (This fundamental difference caused the Court to conclude *as a matter of law*, that the parking of such trucks could not be a use which served to further the successful utilization of the primary residential use. As a result, the storage of the vehicles was not an accessory use within the county's zoning ordinance.³) Although the issue here may not be whether the use is an accessory use, the distinction between *parking* to serve the premises upon which the parking occurs, and the storage of fuel trucks to serve *other* premises on Peaks Island is a crucial distinction in determining whether the placement of fuel trucks is *parking* or *storage*. If the placement is *storage* of vehicles for use elsewhere, rather than for use on the premises, the placement of the trucks cannot qualify as the “off-street parking” listed as a permitted use in the I-B zoning district. A copy of the Decision in St. Louis County v. Taggert is submitted herewith.

It is evident that the drafters of the Portland Zoning Ordinance intended the provisions concerning “off-street parking” to apply to the parking of passenger and other vehicles of persons frequenting the premises. It is unlikely that the Council intended “off-street parking” to authorize the use of property for the storage of trucks serving *other* properties. Nearly all of the provisions of the zoning ordinance referring to off-street parking are written as *requirements* that owners provide off-street parking for personal vehicles resulting from the use of the property

³ Accord, 83 Am. Jur. 2d Zoning and Planning §170, also citing City of Cuyahoga Falls v. Kobulnicky, 2002 Ohio 3742 (Ohio.App.9.Dist.Summit.Co,2002) (involving a box truck); and Wolfe v. Board of Zoning Appeals of Fairfax County, 260 Va. 7, 532 S.E.2d 621 (2000) (involving a dump truck, roll-off vehicle, stake body truck, and flatbed trailer).

Marge Schmuckal, Zoning Administrator

Re: Prohibited Use - Keith Ivers - Peaks Island Fuel CBL:112-H-1

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where the parking is to appear. The absence of any conditional use requirement regulating “off-street parking” of truck parking as a principal use outside of the industrial zones reinforces the conclusion that the parking or storage of such trucks serving other properties (under the rubric of “off-street parking”) was neither contemplated nor intended. This conclusion is reinforced by recent regulations requiring bicycle parking on the same basis as passenger vehicles. See, Section 14-332.3 (“In all zones where off-street motor vehicle parking is required, minimum off-street bicycle parking requirements shall be provided and maintained . . .”) This provision, and the Ordinance as a whole, consistently shows that the Council thought it was dealing with the parking off-street of vehicles customarily used by the general population to visit the property where the parking occurs. (Trucks delivering goods to a property are dealt with under the “Vehicle Loading” provisions of Division 21.) There is no support in the Ordinance for the conclusion that the Council intended to allow the storage of trucks delivering goods to *other* premises where it allowed or required off-street parking. The very idea that all motor vehicles licensed by the State of Maine, regardless of type, size, weight, number can be placed on any property where “off-street parking” is permitted, including I-B zones is absurd. The Council could not reasonably have intended to make the storage of trucks to *always* be an appropriate activity in the I-B district, especially in light of the fragile environment of Portland’s islands documented in the Gerber Report on groundwater resources that formed the basis for the rezoning of the Portland Islands.

Maine zoning decisions concerning comparable land uses, such as gasoline stations, provide guidance in dealing with the claim of that a fuel truck terminal is permitted in the I-B zone as “off-street parking.” These cases hold that uses specifically defined, regulated, or prohibited in other districts in a zoning ordinance cannot be allowed as an unregulated use in a different zone.

“When a term of a zoning ordinance is ambiguous or uncertain, the court should construe that term reasonably “with regard both to the objects sought to be obtained and to the general structure of the ordinance as a whole . . . It is through consideration of the whole ordinance that the legislative intent can be ascertained . . . Our examination of the Bangor zoning ordinance convinces us that the sale of gasoline was not intended as a permitted use in a C-1 zone. The ordinance is

Marge Schmuckal, Zoning Administrator

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highly restrictive in its treatment of gasoline service stations, permitting them only as special exceptions in the heavier C-2, C-3 and C-4 commercial zones, when the applicant can demonstrate, among other things, that the health, safety, welfare and property values of the neighborhood will not be affected. Since many of the same dangers necessitating restrictions on gasoline service stations are inherent in the self-service sale of gasoline, it would be unreasonable to conclude that the sale of gasoline was intended either as the primary business of, or as a use accessory to, a grocery/superette. Otherwise, a use considered undesirable for many reasons even in heavy commercial zones would be permitted without restriction in a neighborhood commercial zone.” See, Singal v. City of Bangor, 440 A.2d 1048 (Me. 1982)⁴

The activity proposed necessarily involves the storage of fuel as well as the trucks it which it is stored and carried. The storage and dispensing of fuel is a heavily regulated business. Under the Portland Zoning Ordinance it usually occurs within the definition of “[major or minor] auto service stations” in §14-47, or at marine terminals, and is a permitted use only where expressly listed as a permitted or conditional use. Thus, both the discussion in *Singal* of the volatile nature of such storage, as well as of the overall scheme of the ordinance are precisely on point.

Moreover, the activity proposed by Mr. Ivers fits within the definition of “truck terminal” in §14-47⁵, as it includes the storage of trucks. Since this activity is clearly within the “truck terminal” use defined by the Ordinance, it is permitted only where that use is listed as a permitted use. It is not listed as “permitted” in the I-B zone. A use specifically defined by a zoning ordinance, and not listed as a permitted use in a certain zoning district cannot be found to be permitted under a *different* use listed in that district, whether as an accessory use, or as “off-street parking.” See, Cumberland Farms, Inc. v. Town of Scarborough, 1997 ME 11, 688 A.2d 914, 915. (Affirming the denial of gasoline sales as “accessory” to sales of other retail goods at Cumberland Farm’s convenience store where the zoning ordinance expressly permitted gasoline

⁴ *Singal* was overruled only on grounds of standing in Norris Family Associates, LLC v. Town of Phippsburg, 2005 ME 102, 879 A.2d 1007. The holdings quoted above are still valid.

⁵ “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.” (Emphasis added.)

Marge Schmuckal, Zoning Administrator

Re: Prohibited Use - Keith Ivers - Peaks Island Fuel CBL:112-H-1

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filling stations in *other* districts as a conditional use, and provided that “Any use not specifically allowed . . . shall be considered prohibited . . .,” in language nearly identical to that found in nearly every Portland zoning district regulation. The combination of the two provisions was held fatal, even though most convenience stores now sell gas as an accessory activity.) As in *Singal*, the *Cumberland Farms* Court cited the familiar rule that individual provisions must be interpreted in harmony with the overall scheme of a zoning ordinance, and to aid in the purpose of zoning to protect the public health, safety, and welfare.

The use characteristics and dangers inherent in storing fuel trucks are not comparable to the characteristics and dangers in the parking of passenger vehicles. Even if no fuel is ever dispensed, ignited, or discharged on the premises, the various risks inherent in fuel truck storage far exceed the risk to the public in parking the kind of motor vehicles usually associated with “off-street parking” of vehicles frequenting a property, whether to service a permitted or conditionally permitted residential or commercial use. It is therefore unlikely that the City Council intended to permit storage of fuel trucks in the I-B zone as an *unconditional* right. The risk to the fragile environment of Peaks Island, particularly for an area located on the edge of the shoreland zone, is too great to assume that the Council intended to allow a use relegated to industrial zones on the mainland as a “permitted use” in the I-B zoning district merely because fuel trucks are motor vehicles capable of being parked off of the city-owned street.

Any interpretation of the undefined term “off-street parking” allowing a fuel truck terminal (serving other properties on Peaks Island) would literally have Mr. Ivers driving his seven (7) trucks through an unintended loophole in the Zoning Ordinance to the detriment of public health, safety and welfare, which are among its stated purposes.

In closing, I urge you to promptly rule that the proposed use for fuel truck storage is not “off-street parking,” and that it is not a permitted use in the I-B zoning district. An early determination on the threshold zoning issue will avoid further unnecessary staff time on a proposal that cannot be approved. It will also avoid further expense to Mr. Ivers, and to the neighborhood opponents that I represent. Mr. Ivers can then concentrate his efforts on finding a conforming location for his project, or to engage in the political process (of petitioning for a zone

Marge Schmuckal, Zoning Administrator

Re: Prohibited Use - Keith Ivers - Peaks Island Fuel CBL:112-H-1

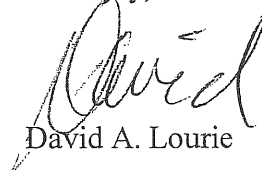
August 7, 2011

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change to conform the Ordinance to his proposed use), if he intends to pursue the project at this location.

Please advise if you have any questions concerning the above.

Sincerely,

A handwritten signature in black ink, appearing to read "David", written over a printed name.

David A. Lourie

attachment

cc: clients

ST. LOUIS COUNTY, Missouri,
Plaintiff/Appellant,

v.

Alma Johnson TAGGERT and Michael
Taggert, Defendants/Respondents.

No. 63894.

Missouri Court of Appeals,
Eastern District,
Division One.

Dec. 7, 1993.

County sued to enjoin property owners from conduct allegedly prohibited by zoning ordinance. The Circuit Court, St. Louis County, Melvyn W. Wiesman, J., directed verdict in favor of defendants, and county appealed. The Court of Appeals, Reinhard, J., held that parking of dump trucks used in property owners' gravel hauling business on property which was zoned residential was not impliedly permitted, as use accessory to the primarily residential use of property.

Reversed and remanded.

1. Zoning and Planning ⇄231

Determination of what uses are permitted under zoning ordinance must be made based on wording of particular ordinance and context in which it occurs.

2. Statutes ⇄181(1)

Basic rule of statutory construction is to seek intention of legislators and, if possible, to effectuate that intention.

3. Statutes ⇄181(2), 188, 206

Legislative intent must be ascertained by giving words of statute an ordinary, plain and natural meaning, by considering entire act and its purposes, and by seeking to avoid unjust, absurd, unreasonable or oppressive result.

4. Zoning and Planning ⇄232

Zoning ordinances, being in derogation of common-law property rights, are to be strictly construed in favor of property owner and against zoning authority.

5. Zoning and Planning ⇄233

When term in zoning ordinance is susceptible of more than one interpretation, court is to give weight to that interpretation which, while still within confines of term, is the least restrictive upon rights of property owner to use land as he or she wishes.

6. Zoning and Planning ⇄605

Interpretation placed on zoning ordinance by body in charge of its enactment and application is entitled to great weight.

7. Zoning and Planning ⇄271

Permissive zoning ordinance is drawn to specify those uses which are permitted for particular district, and any use which is not expressly permitted in given zone or district is thereby excluded from it.

8. Zoning and Planning ⇄271

Permitted uses may be explicitly expressed in zoning ordinance, or may belong to a group of uses in generically expressed categories.

9. Zoning and Planning ⇄301

In determining whether proposed use is permissible as accessory or incidental to primary use, court must make its decision based on particular zoning ordinance at issue and context in which it occurs.

10. Zoning and Planning ⇄304.1

Parking of dump trucks used in property owners' gravel hauling business on property which was zoned residential was not impliedly permitted, as use accessory to the primary residential use of property; accordingly, where such use was not expressly permitted under permissive zoning ordinance, it had to be deemed prohibited.

Donald Jay Cohen, Asst. County Counselor, St. Louis County, Clayton, for plaintiff/appellant.

Aaron Stuart Dubin, Vines, Ross, Kraner & Rubin, P.C., Clayton, for defendants/respondents.

REINHARD, Judge.

This is an action to enforce St. Louis County's zoning ordinance. Plaintiff sought to

enjoin defendants from conduct alleged to be prohibited in a district zoned "Residential R-4". Plaintiff filed a four count petition alleging defendants had violated the county zoning ordinance by: (I) parking and/or storing commercial vehicles on the residential property; (II) storing commercial equipment and supplies on their property; (III) failing to keep their property free of litter; and (IV) using unpaved areas of their land for parking. The trial court directed verdicts in defendants' favor on counts I, III and IV, and entered judgment for plaintiff on count II. Plaintiff appeals the court's ruling on count I only. We reverse, and remand with instructions.

Defendants own and reside on property in St. Louis County zoned "Residential R-4". Don Dickey, a "Zoning and Minimum Housing Inspector" with the County, testified that he conducted three inspections of defendants' residence. Each time, Dickey saw, *inter alia*, one or two diesel tandem dump trucks parked on defendants' residential land. One truck was maroon and the other blue, and each bore the logo "Taggart Hauling". Dickey testified that on one occasion, Michael Taggart told him the trucks were used for hauling gravel.

This case involves a separate county enforcement action from our previous holding involving these parties. See *St. Louis County v. Taggart*, 809 S.W.2d 476 (Mo.App.1991). There, plaintiff sought to enjoin the defendants from storing commercial vehicles on their residential property. The trial court found no evidence that the commercial vehicles were being stored, and refused to allow plaintiff, at the close of the its case, to amend its petition to allege improper "parking" instead of improper "storing".¹ We affirmed, holding, *inter alia*, that plaintiff was not entitled to amend its petition in order to conform to evidence that the vehicles had been parked, rather than stored, in violation of the zoning ordinance. The instant case, as noted, involves a separate enforcement action and evidence gathered postdates the previous action.

1. There is a legal distinction between storage and parking: parking connotes transience, while storage denotes a certain degree of permanency.

The issue in this case is whether defendants' parking of their dump trucks is an accessory use within the County's zoning ordinance. The trial court concluded that there was no evidence that the trucks were being used other than for transportation, and that such parking was permissible because the zoning ordinance did not "bar[] the parking of commercial vehicles on the premises." Plaintiff asserts the trial court misconstrued the zoning ordinance. We agree.

[1-6] The principles of construction we use in interpreting a zoning regulation are as follows:

- (1) The determination of what uses are permitted under a zoning ordinance must be made on the basis of the wording of a particular ordinance and the context in which it occurs;
- (2) The basic rule of statutory construction is to seek the intention of the legislators and, if possible, to effectuate that intention;
- (3) Legislative intent must be ascertained by giving the word an ordinary, plain and natural meaning, by considering the entire act and its purposes and by seeking to avoid an unjust, absurd, unreasonable or oppressive result;
- (4) Zoning ordinances, being in derogation of common law property rights, are to be strictly construed in favor of the property owner against the zoning authority;
- (5) Where a term in a zoning ordinance is susceptible of more than one interpretation, the courts are to give weight to the interpretation that, while still within the confines of the term, is least restrictive upon the rights of the property owner to use his land as he wishes;
- (6) The interpretation placed upon a zoning ordinance by the body in charge of its enactment and application is entitled to great weight.

Cunningham v. Bd. of Alderman of Overland, 691 S.W.2d 464, 467-68 (Mo.App.1985).

St. Louis County v. Taggart, 809 S.W.2d 476, 478 (Mo.App.1991).

The zoning ordinance in the instant case is an example of permissive zoning. *See, e.g., St. Charles County v. McPeak*, 730 S.W.2d 611, 612 (Mo.App.1987). It provides: "[t]he use and development of land and structures within any zoning district are limited to those developments set forth in those sections of this Chapter applicable to such district." § 1003.050.²

[7, 8] A permissive zoning ordinance is drawn to show those uses which are permitted for a particular district, and any use which is not expressly permitted in a given zone or district is thereby excluded from it. *State ex rel. Barnett v. Sappington*, 266 S.W.2d 774, 777 (Mo.App.1954). Permitted uses may be explicitly expressed or may belong to a group of uses in generically expressed categories. *State ex rel. St. Charles County v. Samuelson*, 730 S.W.2d 607, 609 (Mo.App.1987). Section 1003.117.2 identifies ten permitted land uses in a "Residential R-4" district: (1) Churches; (2) Day care homes; (3) Single family dwellings; (4) Home occupations; (5) Libraries; (6) Local public facilities; (7) Parks, parkways and playgrounds; (8) Police and fire stations; (9) Schools; and (10) Schools on tracts of land of at least five acres. Defendants concede that commercial vehicle parking is not expressly permitted in the ordinance but contend that such use is accessory to the residential use.

[9] In determining whether use is accessory or incidental to a primary use, the decision must be made on the basis of the particular zoning ordinance and the context in which it occurs. *Schaefer v. Neumann*, 561 S.W.2d 416, 424 (Mo.App.1978). Section 1003.117.4 governs accessory uses in districts zoned "Residential R-4". It provides, in relevant part:

Subject to compliance with the procedures of this section, accessory buildings, structures and uses are permitted in conjunction with a permitted land use or development or (unless restricted by applicable condition) a conditional land use or development when such accessory building, structure or use is customarily found in conjunction with the primary use, is a rea-

sonably necessary incident to the primary use, is clearly subordinate to the primary use, and serves only to further the successful utilization of the primary use.... (Emphasis added).

[10] Plaintiff states that "[n]owhere in [St. Louis County's zoning ordinance] is parking and/or storing commercial vehicles [in R-4 residential districts] approved." Thus, plaintiff argues, as St. Louis County is a permissive zoning jurisdiction, such an activity must be deemed prohibited. Defendants rely on the absence of an express provision relating to parking as a permitted use in § 1003.117.2, reasoning that all parking is an accessory land use. Thus, they assert, given the vagueness of the regulation, accessory use of the property in regard to parking must be broadly construed in favor of the land owner.

We note that though parking is not specifically listed among the permissible uses in an R-4 district, its permissibility can be easily implied in the R-4 zoning scheme from § 1003.117.8, which states: "Off-street parking and loading requirements and setbacks for parking areas, loading spaces and internal drives are set forth in Section 1003.165 Off-Street Parking and Loading Requirements."

We have found no Missouri case on this point. However, there is substantial authority from non-Missouri sources that the parking of vehicles such as those owned by defendants here is not accessory to the primary residential use of property. "The parking of a commercial vehicle on residential property, including the driveway of a home, is not a permissible accessory use,..." 101A C.J.S. Zoning and Land Planning § 150, p. 469 (1979). In *Potts v. City of Hugo*, 416 N.W.2d 465 (Minn.App.1987), Arthur Potts brought a declaratory judgment action seeking a determination, *inter alia*, of whether the parking and zoning ordinances of the City of Hugo prohibited Gene and Lisa Sampson from parking their semi-truck and trailer at their home. The Sampsons owned a home in a subdivision in an agriculturally zoned district of the City of Hugo. Subdivision restrictive

less otherwise noted.

2. All ordinance citations are SLCRO (1991) un-

covenants limited the Sampsons' use of the property to single family residential use. One of the "permitted principal uses" in the agriculturally zoned district was "single family dwelling." *Id.* at 468.³ The issue was whether the parking of the truck and trailer, used in the Sampsons' business was a permissible accessory use to the principal residential use. *Id.* at 467.

The regulations for the agricultural district in *Hugo* listed a number of specific accessory uses, none of which applied to the Sampsons. The trial court found that such parking was a "compatible, non-listed" accessory use. *Id.* at 468. The ordinance defined an accessory use as a "use subordinate to the main use of land or of a building on a lot and customarily incidental thereto." *Id.*

In reversing, the appellate court found that such parking was not accessory to the residential use, stating:

Because the restrictive covenants permit the Sampsons to use their land only for single-family residential purposes and they actually use their land for that purpose, any permitted accessory use must necessarily be "customarily incidental" to that use. *We hold, as a matter of law, that parking a semi-truck and trailer is not customarily incidental to a residential use.* (Emphasis added). *See Galliford v. Commonwealth*, 60 Pa.Comm. 175, 179, 430 A.2d 1222, 1224 (1981) (14,500 pound, commercially registered truck is not accessory to a residential use; it is commercial in nature).

Id. at 468. *See also Northvale v. Blundo*, 85 N.J.Super. 56, 203 A.2d 721 (1964) (parking of commercial panel truck not an accessory use).

We are persuaded by the above cited authority. Moreover, as previously noted, the determination of whether a use is accessory depends primarily upon the language of the ordinance. The ordinance here is quite restrictive in defining accessory use. It sets out, in conjunctive, several prerequisites for an accessory use, including a requirement that the use "serve[] only to further the successful utilization of the primary use."

3. All citations to the City of Hugo's zoning ordi-

§ 1003.117.4. (Emphasis added). The parking of defendants' dump trucks used in their gravel hauling business can hardly be said to meet this criteria. We hold, as a matter of law, that the parking of such trucks is not a use which "serves only" to further the successful utilization of the primary residential use, and therefore is not an accessory use within the County's zoning ordinance.

We reverse and remand this cause and direct the trial court to enter an order enjoining defendants' from parking the dump trucks in question on their residential property.

CRANDALL, P.J., and CRIST, J., concur.



STATE of Missouri, ex inf., Kerry ROWDEN, Prosecuting Attorney ex rel. CITY OF OSAGE BEACH, Missouri, Relators-Respondents,

v.

PURPORTED VILLAGE OF KAISER, Missouri, et al., Respondents-Appellants.

No. WD 47683.

Missouri Court of Appeals,
Western District.

Dec. 7, 1993.

Prosecuting attorney of county filed petition in quo warranto seeking to have declared void an order of county commission which purported to incorporate village. The Circuit Court of Miller County, Mary A. Dickerson, J., declared purported incorporation void, and purported village appealed. The Court of Appeals, Turnage, C.J., held that those desiring to incorporate village had to follow procedure applicable when area to

nance will be omitted.

Eric Giles - Re: Fwd: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island

From: Barbara Barhydt
To: Giles, Eric
Date: 6/30/2011 12:41 PM
Subject: Re: Fwd: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island

>>> Barbara Barhydt Thursday, June 30, 2011 12:41 PM >>>
Good afternoon:

Thank you for your comments and I will forward your e-mail to the staff members who are reviewing this project.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Stevenson Monica <monicas@maine.rr.com> Thursday, June 30, 2011 11:11 AM
>>>

We concur with the comments sent to you below by Elizabeth Stout. Please keep us informed.
Monica Stevenson and John Freeman
548 Island Avenue

Begin forwarded message:

From: elizabeth stout <betsybb1@earthlink.net>
Date: June 29, 2011 2:11:11 PM EDT
To: Stevenson Monica <monicas@maine.rr.com>
Subject: Re: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island
Reply-To: elizabeth stout <betsybb1@earthlink.net>

I am writing to express my concern about the application to create a 4200sq.ft. gravel parking lot for the purpose of parking oil trucks. I believe that it is inappropriate for several reasons but two raise the most concern for me. To begin, while the zoning may allow for commercial activities, it has been many years since there were any commercial enterprises conducted in that neighborhood. In other words, what is on the books does not accurately reflect what is on the ground and how it is used. My biggest concern is environmental. Being so close to the water it seems to me the chance of run-off or worse, a spill of some sort could damage the area and affect its use. I believe that the proposed lot is also quite low and often wet increasing the opportunity

for the oil to contaminate. In addition, there is a beach between the proposed lot and the ocean that many use as well as a large number of people accessing the water through TEIA down a very narrow and unimproved road. That road is often clogged with bikers and walkers. It is difficult at best to imagine an oil truck maneuvering in and out of a parking lot with all of the activity that takes place on that little road. I hope that the application will be denied.

Elizabeth Stout
549 Island Ave.
Peaks Island, ME 04108.

Eric Giles - FW: City out tomorrow

From: "Fred O'Keefe" <fokeefe@fsog-llc.com>
To: "Eric Giles" <EGILES@portlandmaine.gov>
Date: 6/30/2011 3:55 PM
Subject: FW: City out tomorrow

Eric,

I was asked to forward this email to you regarding the Type 1 adjustment before the planning committee. 512 Island Avenue.

Fred O'Keefe

From: ron delucia [mailto:rondelucia@gmail.com]
Sent: Thursday, June 30, 2011 3:31 PM
To: fokeefe@fsog-llc.com
Subject: Re: City out tomorrow

Fred, Please give this to the City Rep.

You can represent me if you wish

I intend to immediately apply for a reduction in real estate tax if they allow the driveway and trucks. Everyone should do so. It is obvious that all our houses will decrease in value and the City should be aware that fuel trucks in a residential neighborhood are unacceptable and costly to the City. Also, how can a City that is so in tune to the environment allow fuel trucks anywhere near the ocean? What will the EPA have to say?
This can't stand

Ronald F De Lucia
499 Island Ave

Eric Giles - Site Alteration 512 Island Ave Peaks Is

From: Jean Gulliver <jeangulliver1@gmail.com>
To: <bab@portlandmaine.gov>, <egiles@portlandmaine.gov>, <nmm@portlandmaine...>
Date: 6/30/2011 8:49 AM
Subject: Site Alteration 512 Island Ave Peaks Is
CC: Dominick Scipio <domscipio@hotmail.com>, Mary O'Hagan <maryohagan110@gm...>

Important Notice from City of PortlandRE: 512 Island Avenue, Peaks Island

To residents and property owners:

A Level I: Site Alteration application was submitted to the Portland Planning Division by Keith Ivers for a 4200 sq .ft. gravel parking area to serve as the parking area for his fuel oil trucks (7 vehicles) at 512 Island Avenue, Peaks Island.

In Accordance with the Portland Land Use Ordinance, notices of receipt of a Level I Application must be sent to neighbors. This application will be reviewed administratively by City Staff.

Plans are available in the Portland Planning Division, 4th Floor, City Hall. If you have any questions or wish to submit comments, contact Barbara Barhydt, Development Review Services Manager, at 874-8699 or bab@portlandmaine.gov

Another contact, in the planning office, is Eric Giles: egiles@portlandme.gov

To the City of Portland,

I am writing in reference to the above notice on behalf of the Board and members of Trefethen Evergreen Improvement Association. We would like to express our deep concern about the proposed Site Alteration Proposal.

We are concerned about three specific issues and hazards.

1. Traffic. Trefethen Avenue is a small, quiet lane with very little vehicle traffic but a great deal of bike, walking and golf cart activity. We have children passing and repassing all day, all summer, this is not a place to introduce trucks.
2. Environment. The lot in questions is low and wet and very near the ocean into which it drains. We are very concerned about commercial gas and oil trucks being parked and washed in this location and sending pollution into Casco Bay.
3. Residential Area. Despite the artifact of the old commercial zone this is a residential area and has been for decades. Introducing a commercial use would damage the use and value of all area owners.

We would like the opportunity to speak directly with the city about these issues and our concerns. We would also like to know what legal recourse we have for an open hearing on this proposed change of use. Please contact us with the requested information. Also we have heard that city officials are

planning a site visit tomorrow June 30 could you please confirm the time of this visit.

I look forward to hearing from you today. Jean Gulliver, Chair TEIA 756 5905

Eric Giles - Re: Level I Site Alteration application for 512 Island Avenue, Peaks Island

From: Barbara Barhydt
To: jamacleod@comcast.net
Date: 6/29/2011 8:46 AM
Subject: Re: Level I Site Alteration application for 512 Island Avenue, Peaks Island
CC: Giles, Eric

Hello Mr. MacLeod:

Thank you for your comments and I will forward your comments to Erick Giles, the planner assigned to the project. We have just begun our review of this proposal and will take your comments into consideration.

Thank you again,

Barbara

*Oil Truck 2-3
2100
Proposed 1
2100*

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov >>> "John MacLeod" <jamacleod@comcast.net> Tuesday, June 28, 2011 5:29 PM >>>
Ms. Barbara Barhydt
Development Review Services Manager
City of Portland

Dear Ms. Barhydt:

I am writing to express my deep concern over the proposed 4,200 SF gravel parking area referenced in the Site Alteration Application for 512 Island Avenue. While zoned for dual use, the area for half a mile in every direction is entirely residential in nature. Not since Webber's store closed down in my childhood had there been any commercial activity nearby.

Far more appropriate and normal for this type of project (a parking lot for fuel storage and trucking) would be in the area of Upper A St, in the center of the island near the transfer station, near the old utility substation or "down front" in the commercial zone roughly bounded by the library, through Welch Street and up and around to Greenwood Gardens.

While I'm sure the property owner (not Mr. Ivers) would love to generate more revenue from her property at 512 Island Avenue, this seems like a highly inappropriate way to do so.

A home retail business, small store, studios, etc. would be disruptive enough, but the noise, smell and increased truck traffic, risk of environmental pollution or fire/explosion from fuel storage trucks in a neighborhood filled with homes and biking children is beyond the pale. And the damage to the property values and proportionate decrease in the property tax base of neighboring homes should be of some concern to property owners and city officials alike.

I thank you and your colleagues in City Government for your consideration, and urge you strongly you deny this application.

Very sincerely,
John A. MacLeod
539 Island Avenue
Peaks Island, ME. 04108
207-766-0099
207-766-2010
John MacLeod, Trumpet Performance & Instruction
Principal Trumpet, Portsmouth Symphony Orchestra

Sent on the Now Network™ from my Sprint® BlackBerry

Eric Giles - Fwd: 512 Island Ave., Peaks Island Level 1 Alteration

From: Barbara Barhydt
To: Giles, Eric
Date: 6/29/2011 8:47 AM
Subject: Fwd: 512 Island Ave., Peaks Island Level 1 Alteration

>>> <fokeefe@fsog-llc.com> Tuesday, June 28, 2011 2:16 PM >>>

Dear Ms. Barhydt,

In today's mail I received a notice for a Level 1 adjustment for 512 Island Ave. to create a 4200 sq.ft parking area to serve as a parking lot for oil and propane fuel trucks.

If you would be so kind as to give me proper guidance to formally object to this adjustment to a primarily resident neighborhood composed mostly of year round residents I would greatly appreciate it. Our concern is chiefly the amount of highly explosive material that will be stored on this property. Where it will be stored and what fire and safety precautions are required by the owners should this application be approved. This is extremely important since the fire department is located minimally a miles distance from the proposed property adjustment. God forbid there ever be an explosion or fire it could be a disaster.

There are quite a few year round families with children as well as the TEIA tennis, boating and club facility that are extremely close to this property which should also raise concerns.

Would you also let me know what the City time-line is for making your decision.

My number is 766-2300. I reside a 268 Pleasant Ave.

Thank you for your assistance relating to this matter.

Fred O'Keefe
Sent via BlackBerry by AT&T

Eric Giles - Re: Fwd: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island

From: Barbara Barhydt
To: Giles, Eric
Date: 6/30/2011 12:41 PM
Subject: Re: Fwd: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island

>>> Barbara Barhydt Thursday, June 30, 2011 12:41 PM >>>
Good afternoon:

Thank you for your comments and I will forward your e-mail to the staff members who are reviewing this project.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Stevenson Monica <monicas@maine.rr.com> Thursday, June 30, 2011 11:11 AM
>>>

We concur with the comments sent to you below by Elizabeth Stout. Please keep us informed.
Monica Stevenson and John Freeman
548 Island Avenue

Begin forwarded message:

From: elizabeth stout <betsybb1@earthlink.net>
Date: June 29, 2011 2:11:11 PM EDT
To: Stevenson Monica <monicas@maine.rr.com>
Subject: Re: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island
Reply-To: elizabeth stout <betsybb1@earthlink.net>

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Elizabeth Stout
549 Island Ave.
Peaks Island, ME 04108.

PAUL ERICO
PLUMBING HEATING
ELECTRICAL
58 ELIZABETH ST.
PEAKS ISLAND, MAINE 04108
207-766-2482

Cell - 207-653-5396

CONTRACTORS INVOICE

WORK PERFORMED AT:

TO:

DATE	YOUR WORK ORDER NO.	OUR BID NO.
------	---------------------	-------------

DESCRIPTION OF WORK PERFORMED

Dear Ms. Barhyde,

This letter is written to express my support for
Kieth Ivers and Peaks Island Fuel Co. regarding
the plans for PIF to operate in the IB zone
located at 512 Island Ave.

Use of the IB zones on Peaks were established
to encourage island business and the success of
those who serve them. Limiting the use of any
IB zone unnecessarily restricts business on the
island, threatens the sustainability of island life
and discourages healthy commerce and competition

Sincerely, Paul Erico

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work and was completed in a substantial workmanlike manner for the agreed sum of _____ Dollars (\$ _____).

This is a Partial Full invoice due and payable by: _____
Month _____ Day _____ Year _____
in accordance with our Agreement Proposal No. _____ Dated _____
Month _____ Day _____ Year _____

NC3822

CONTRACTORS INVOICE

Ted Haykal
522 Island Avenue
Peaks Island, ME 04108
(207) 766-4454
July 5, 2011

To: Barbara Barhydt, Development Review Services Manager, Eric Giles, Portland Planning Division
Re: Site alteration application for 512 Island Avenue, Peaks Island, submitted by Keith Ivers

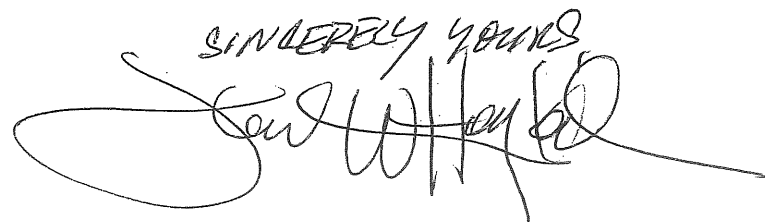
I write to register serious concerns about the proposed development at 512 Island Ave. I own and reside in the home immediately adjacent to the property in question and I urge the Portland Planning Division to deny the application for several crucial reasons.

The proposed use of the property, storage of fuel trucks, is inappropriate to locate right next to a residence. The dangers such a use entails are multiple. There is significant and obvious risk of environmental damage and physical harm to humans from evaporation and potential leakage of petroleum products into the air, land and water (both underground water table and the nearby bay). Air quality will be harmed by the continual emission of petroleum vapors and by the diesel exhaust of the truck fleet to be housed on the premises. There is significant risk of catastrophic harm from a possible explosion or fire involving large quantities of petroleum fuels or their vapors. The proposed use necessarily involves significant and very serious environmental hazards that should justify the denial of the application. The application mentions fuel oil trucks, but I know that Peaks Island Fuel services propane as well, which is a very hazardous and explosive fuel, and would add extra danger to the community and the environment.

The proposed use of this property, apart from its environmental impact, will blight the landscape on the island, whose scenic charm and quaintness are the major reason that tourists and part-time residents are drawn to Peaks Island—and spend their money here to support the local economy. A large and inevitably ugly parking lot for fuel trucks, right next to a tennis club and so close to Casco Bay, is simply not a compatible use of this parcel and should be denied by the planning board in light of the long range consequences of this proposed development. Perhaps it might be more favorable to have the City of Portland rent space by the transfer station, where the dangers to the residents will be less, and the City could benefit from the revenue.

As the owner of a home abutting the proposed development, I am obviously concerned for the negative impact that this project will have on the value of my property. But it seems to me that there are much larger questions at stake here about public safety, environmental protection and sensible long-range planning. I respectfully ask the commission to find against the application in its administrative review, or, if appropriate, to hold a community hearing on the matter so that others affected may be heard.

Thank you for your attention to this matter, and I will appreciate notified of any hearings or action regarding this matter.

SINCERELY YOURS


Ted Haykal
522 Island Avenue
Peaks Island, ME 04108
(207) 766-4454
July 5, 2011

To: Barbara Barhydt, Development Review Services Manager, Eric Giles, Portland Planning Division
Re: Site alteration application for 512 Island Avenue, Peaks Island, submitted by Keith Ivers

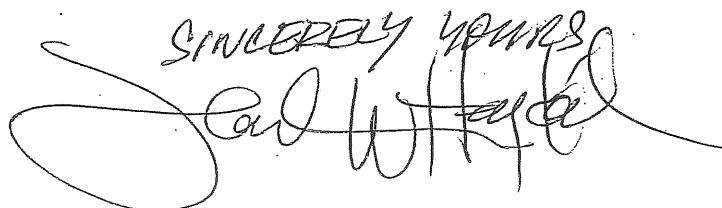
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Peaks Island, ME 04108
(207) 766-4454
July 5, 2011

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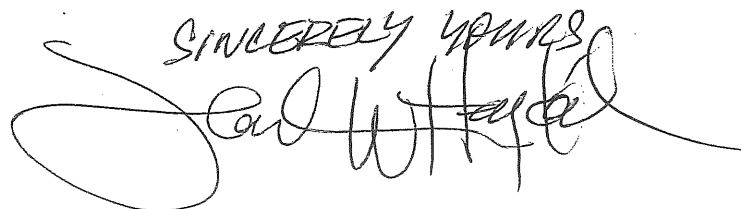
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Thank you for your attention to this matter, and I will appreciate notified of any hearings or action regarding this matter.

SINCERELY YOURS


Eric & Melissa Conrad

152 Brackett Ave • Peaks Island, ME 04108 • Phone: 207-766-9736
E-Mail: mconrad@backshore.net

July 5, 2011

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov

Dear Ms. Barhydt:

We are writing in support of Peaks Island Fuel. Keith Ivers is an integral part of our community. Our heating system has failed a number of times over the past 10 years: Keith has always been there, in the dead of winter (and once in the middle of the night), to make sure our family had heat.

Peaks Island Fuel supports many organizations on the island: they provide scholarships for camps and always give generously to the fundraising efforts of the Peaks Parent Teacher Organizations. They proudly sponsor the Peaks Island Fuel AA baseball team, which has won the city championship for two years running.

Please allow Peaks Island Fuel to build the parking lot on their commercial property and reduce the cost of fuel to year round islanders. The neighbors who feel the trucks will affect their view and deter from their property are not residents or registered voters: most utilize the island for two months of the year: the two months that the trucks generally do not run.

These part-time visitors are not here in the winter, and may not appreciate the service Peaks Island Fuel provides. They should not be allowed to negatively impact year-round islanders, or the operation of this crucial family owned year-round island business.

Sincerely,



Eric and Melissa Conrad



From: Mike Murray
To: Barbara Barhydt; Eric Giles
CC: Penny St. Louis
Date: 8/8/2011 1:23 PM
Subject: Peaks Island Fuel Letter

Here is a copy of Keith Ivers' letter to the Peaks Island Community:

Dear Customers and Friends,

Peaks Island Fuel has always been dedicated to providing Islanders with choices regarding fuel options; fuel costs continue to spike causing us all concern. This past Winter and in response to consideration as to how we could continue to provide our Customers with the best service possible, I began planning a parking lot for our trucks behind my home. This decision was based upon attempting to ensure we would be able to provide consistent service, while improving safety and containing costs. Currently I pay between \$800 to \$850 monthly for truck site rental. Barge costs and fuel costs are variable. Insurance costs are approximately \$25,000 without including maintenance.

I began this process knowing that this site is Island Business Zoned, would be safe and properly constructed. My family lives here, my roots are here and I have believed in attempting to provide for us all. The engineering and landscaping plans are available for review.

A few weeks ago I began receiving emails and letters objecting to what I am hoping to do. Many were nasty while some were written anonymously. I have been threatened with the potential of multiple lawsuits in order to destroy Peaks Island Fuel financially. Due to misinformation on July 1, 2011 members of TEIA as well as others amassed at my home causing my family to feel threatened and resulted in them leaving our home. I am aware that others have had questions/concerns and felt compelled to let them be known through a variety of channels; unfortunately many of them have chosen not to speak with me directly for clarification or dialogue. I have wished to cause no harm; I am attempting to ensure our success and sustainability as an Island.

Those of you who have lived here for a number of years are aware of the necessity of competition to keep fuel costs as reasonable as possible; Peaks Island Fuel began as a cooperative once Jackson's Service Center closed and only one fuel company existed. It is within that spirit I am asking you for your support. If you have any questions, please call. We are attempting to ensure the viability of Peaks Island Fuel and need to ensure we are able to have as much control as possible to lead us in the years ahead.

Again, this had been thoughtful process ensuring compliance with all necessary regulatory mandates. We understand that change is hard for some; it is necessary to ensure that all are served. We believe and have always believed in Safety, Integrity and Service. Again, if you have questions, call.

To register support please contact: Barbara Barhydt - Development Review Services Manager; Planning Division at bab@portlandmaine.gov or (207) 874-8699.

Thank You,

/s/ Keith D. Ivers, President

From: Barbara Barhydt
To: Giles, Eric
Date: 7/1/2011 7:59 AM
Subject: Fwd: Re: 512 Island Ave. Peaks Island

>>> Barbara Barhydt Friday, July 01, 2011 7:58 AM >>>

Dear Ms. Maclsaac:

Thank you for your comments. This application was received recently and we have just begun the City's review of the project. I will forward your comments to the team of staff members who are reviewing the proposal pursuant to the Portland's site plan ordinance and other regulations.

Erick Giles, Planner, is the person assigned to review this proposal in the Planning Division. He may be contacted at EGILES@portlandmaine.gov.

Thank you for your sharing your concerns and comments.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "S & K Maclsaac" <ramseyroost@maine.rr.com> Thursday, June 30, 2011 10:22 PM >>>

Dear Ms. Barhydt,

I have just learned about Keith Ivers' application for a permit to create a parking lot for Peaks Island Fuel vehicles at 512 Island Avenue and wish to convey my deep concerns about his proposal. I am not a near neighbor to that address but I am very much involved in island-wide efforts to preserve the character of our unique island community. I do understand that that address is still zoned for business; however, no business or commercial entity has operated in that area since the 1970s when the seasonal grocery store closed permanently. The building that housed the store is now a private home. With the exception of the Trefethen-Evergreen Improvement Association (a summer recreational facility) the neighborhood surrounding 512 Island Avenue is entirely residential.

I feel that creation of a parking area for fuel trucks in this location is very inappropriate for these reasons: That end of Trefethen Avenue is narrow, poorly maintained, and usually not plowed in the winter. In the warmer months it is crowded with bicycles, walkers, golf carts, and children coming and going to the beach and TEIA. Adding fuel trucks to the mix would compromise the safety of everyone who traverses the road.

The land where the proposed parking lot would be is low and wet. Gray water from washing the trucks and potential fuel leaks could contaminate the ground and seep down to the beach thus creating a health hazard for neighbors and beachgoers.

The presence of parked fuel trucks would certainly decrease the value of homes in the neighborhood with homeowners seeking abatements and the city realizing decreased tax revenues. It would also impact future sales in the neighborhood.

The quiet, peaceful character of the neighborhood is what attracts people to live there. A commercial

parking area would be quite disruptive and negatively impact neighbors' lives and change the cherished character of the area.

Surely there are more appropriate locations where the fuel trucks could be parked. Perhaps Upper A Street or a spot on land owned by Island Bay Services would be more appropriate. Both of those locations are far enough away from residences so as not to disrupt people's lives.

Thank you for listening to my concerns.

Kimberly A. MacIsaac
140 Reed Avenue
Peaks Island

From: Barbara Barhydt
To: b, charles
CC: Giles, Eric
Date: 7/11/2011 9:22 AM
Subject: Re: Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> charles b <chale04101@yahoo.com> Thursday, July 07, 2011 10:11 AM
>>>

Barbara Barhydt,

This is a short note to express my opinion on what has become the "Peaks Island Fuel Issue". I feel very strongly that it is vitally important for the year round residents to have a choice on where and from whom to buy their heating fuel. The Island market currently supports fuel vendors, and that is a good thing! Choice is essential in the market place. The "summer only residents" don't buy enough heating fuel to matter. If all the legal requirements, (zoning, EPA, etc.) have been met, I feel Peaks Island Fuel should be allowed to go ahead with their plans. Peaks Island Fuel must not be put in a position that could result in their going out of business, as that would create a monopoly for the Lionel Plante business. The last time they had a monopoly (propane gas), they DOUBLED the price of their propane the very next day that their only competitor went out of business. That is how and why Peaks Island Fuel came into being. A monopoly on heating fuel on Peaks Island would be financially devastating to the year round residents. I have been told that if Peaks Island Fuel is stopped from going forward with it's plans regarding the relocation of their trucks, there is a very good possibility that they might go out of business. This MUST NOT happen!!

Thank you for attention and consideration on this matter.

Charles M. Burr

15 Epps Street
Peaks Island, ME.
04108

chale04101@yahoo.com

Eric Giles - Re: Peaks Island Fuels_I support the plan

From: Barbara Barhydt
To: Penalver, Lisa
Date: 8/11/2011 10:03 AM
Subject: Re: Peaks Island Fuels_I support the plan
CC: Giles, Eric

Dear Lisa:

Thank you for your comments regarding the Peaks Island Fuel Project. Mr. Iver's submitted revised plans this week and we have distributed the new information to the various departments for review. We are reviewing the Level I: site alteration application under the standards of Portland's site plan ordinance, which is an administrative review. Under the provisions of the site plan ordinance, an administrative decision may be appealed to the Planning Board for a de nova review (reviewed as if it was a new application).

Thank you again for your comments.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Lisa Penalver <penart1@alaska.com> Thursday, August 11, 2011 8:40 AM >>>

From:
Lisa Penalver
14 Upper A Street
Peaks Island, Maine 04108
207.766.5077/ cell 207.239.1604

to: Barbara Barhydt
Development Review Services, Manager
Planning Division
City of Portland

Dear Ms. Barhydt,

I want to add my voice to the SUPPORT of Keith Ivers and his plans to use commercial property for his business. He has gone to great lengths to make sure that the parking lot he seeks to build will be done in an environmentally-sound way and landscaped to have a very low impact on the views that the neighbors hold dear.

Beyond the objections of the immediate neighbors, you need to understand that his business fulfills a vital role on our island in offering a competitor to the one other fuel company on the island. I have nothing against the other company, but I believe that competition is essential in offering people a choice and a "check" on ever-rising fuel prices. Furthermore, PI Fuel serves over 800 customers through out the year, and Keith goes out of his way to make sure that seniors and the disabled have fuel regardless of their ability to pay, often at his own expense

The current parking situation for Peaks Island Fuel has been extremely challenging, if not dangerous. His drivers must regularly navigate through crowds of people coming off and rushing TO the ferry (so far without incident- but it must be harrowing). Parking in the current lot, located beside to the venue for "Regae Sunday" - exposes his vehicles to regular vandalism and damage.

I don't know if there is anything you can do to override the predictable nuisance lawsuits/challenges that have already been threatened. Keith, a hard-working person with a young family, has made it clear that he does not have the resources to defend himself from wealthy neighbors who are offended by having a his business located so close to their luxury homes and country club.

But the land IS zoned for commercial use, and there are precious few such lots... it is ideal for his purposes, as it would be located behind his home and he would be able to make sure his vehicles are safe and operate safely.

This is a good thing for the whole of Peaks Islanders, it is the sort of sustainable business that will keep the year-round community viable and vibrant. I hope you can see past the overstated esthetic objections of a few, mostly summer visitors, and not allow those to scuttle a very thoughtful and logical plan.

With thanks for your work in Planning, both now and over the years,

Sincerely,

Lisa Penalver

--

Lisa Penalver
14 Upper A Street
Peaks Island, Maine 04108
207.766.5077/ cell 207.239.1604

From: Barbara Barhydt
To: Williams, Dotty
CC: Giles, Eric
Date: 8/8/2011 8:17 AM
Subject: Re: Peaks Island fuel

Dear Ms. Williams:

Thank you for your comments regarding Peaks Island Fuel. I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Dotty Williams <john.dotty@williamsequity.com> Saturday, August 06, 2011 3:04 PM >>>

Dear Ms Barhydt,

I support Keith Ivers and Peaks Island Fuel in it's desire to serve Peaks Island residents in a timely and economical way. Peaks Island Fuel services our camp/cottage, and has made that part of caring for it easy for us. According to the information I have received, Peaks Island Fuel has proposed a parking site to house its trucks in a zoned business area. The information stated that this was in compliance with all regulatory requirements. This business has been threatened with lawsuits and islanders who oppose the parking site actually gathered at the Ivers home in protest. If Peaks Island Fuel is legally compliant, is Portland enforcing the existing zoning to allow this business to survive? Please allow Peaks Island Fuel and Keith Ivers to proceed and continue the excellent and timely service we have been receiving. Please encourage this business. We need Peaks Island Fuel on Peaks Island.

Thank you.

Sincerely Yours,

Dorothy Williams
Echo Lodge
Peaks Island, Maine.

--

Dotty Williams

From: Barbara Barhydt
To: jed364pi@aol.com
CC: Giles, Eric
Date: 8/4/2011 9:53 AM
Subject: Re: Joyce & Dan- Peaks Island

Dear Joyce and Dan:

Thank you for your comments regarding Peaks Island Fuel. I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> <jed364pi@aol.com> Thursday, August 04, 2011 9:49 AM >>>

Dear Barbara, I am writing in support of Peaks Island Fuel. We need the competition to help keep the fuel costs down. We helped to start Peaks Fuel along with many others so we know how important the Peaks Fuel is to everyone on the Island. Thank you, Joyce & Dan Doane

From: Barbara Barhydt
To: Giles, Eric
Date: 8/3/2011 2:05 PM
Subject: Fwd: Re: Keith Ivers

>>> Barbara Barhydt Wednesday, August 03, 2011 2:05 PM >>>
Dear Ginny:

Thank you for your comments regarding Peaks Island Fuel. I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> [ginny.rynning](mailto:ginny.rynning@gmail.com) <ginny.rynning@gmail.com> Wednesday, August 03, 2011 12:42 PM >>>

I would like to inform you that I support Keith Ivers and his plan for parking his trucks by his home

Virginia Rynning
812 Seashore Ave.
Peaks Island, ME
04108

--

GINNY

From: Barbara Barhydt
To: discala, carla
CC: Giles, Eric
Date: 8/3/2011 2:04 PM
Subject: Re: Keith Ivers Project

Dear Carla:

Thank you for your comments regarding Peaks Island Fuel. I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

>>> carla discala <cdiscala_tra@hotmail.com> Wednesday, August 03, 2011 12:31 PM >>>
I am a year-round resident of Peaks Island and I like to register my support for the relocation of the Peaks Fuel trucks.
Carla Di Scala
75 central ave
peaks island, me 04108

From: Barbara Barhydt
To: Kelly, Valerie
CC: Giles, Eric
Date: 8/1/2011 8:15 AM
Subject: Re: Support for Peaks Island Fuel

Good morning Valerie:

Thank you for your comments regarding Peaks Island Fuel. I am adding Erick Giles to this e-mail, as he is the assigned planner for this project.

We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. Once we received the revised plan, it will be distributed to all of the city departments for review under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Valerie Kelly <kelly@msu.edu> Sunday, July 31, 2011 8:37 PM >>>

Your email address was given to me as someone who is keeping track of input from Peaks Islanders concerning the Peaks Island Fuel plan to purchase property that will enable it to park their trucks in an appropriate manner. I fully support their plan and am sure that they will do everything necessary to minimize the negative impact on the neighborhood...where they also happen to live!

This reminds me of all the commotion raised by homeowners living in the vicinity of the proposed Senior Housing site several years ago...fear mongering about too much noise and traffic, lower property values, etc. The Sr. Center has been there for years and is a welcome addition to the community, with none of the negative impacts ever having come about.

I look forward to hearing that the city supports this request.

Best regards,
Valerie

Valerie A. Kelly
41 Onway Avenue
Peaks Island, ME 04108-1427

207 766 5782

From: Barbara Barhydt
To: drawingdrawings@aol.com
CC: Giles, Eric
Date: 8/1/2011 8:08 AM
Subject: Re: PIF dispute.

Dear Maichael Moore:

Thank you for your comments regarding Peaks Island Fuel. I am adding Erick Giles to this e-mail, as he is the assigned planner for this project.

We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, such as a landscaping plan. h Mr. Ivers and his engineer are working on a revised plan and we expect a revised plan soon. Once the revised plan is received, all of the city departments will continue their review under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov>>> <drawingdrawings@aol.com> Saturday, July 30, 2011 1:24 PM >>>

Dear Barbara Barhydt,

I am writing in response to the letters that both **Keith Ivers** and **Fred O'Keefe** wrote regarding the site that **Peaks Island Fuel** wants to use for parking its trucks.

My wife and I have been summer residents of Peaks for 20 years. We are members of TEIA. We get our fuel oil from PIF. It is in everyone's interest to find a civilized compromise to this problem. On an island this small, businesses have to coexist with residences, and they have to do so in ways that blend in. We like Peaks Island because it is neither too neat nor too messy. It is mostly a nice mix of the middle.

This particular impasse may require the expertise of a landscape

architect who can maintain neutrality, in conjunction with a professional mediator. I believe that the city of Portland should provide both, or, at the very least, provide recommendations for both. We need your help and guidance with this.

My thanks,
Michael G. Moore
428 Island Avenue
207-766-5903

From: Barbara Barhydt
To: Conley, Ann
CC: Giles, Eric
Date: 8/1/2011 8:04 AM
Subject: Re: Peaks Island Fuel--support

Dear Mr. and Mrs. Conley:

Thank you for your comments regarding Peaks Island Fuel. I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Ann Conley <conleyann405@gmail.com> Saturday, July 30, 2011 7:58 AM
>>>

Dear Ms. Barhydt,

We are writing to express our support, and enthusiasm, for the efforts of Peaks Island Fuel, an important local business and resource for islanders. Keith Ivers, the President of Peaks Island Fuel, is trying--as you know--to find a safe and cost-effective place to park his fuel trucks on the island. He has identified an area on his own property, which is zoned for Island Business, and is being opposed by some islanders who do not appreciate, perhaps, the value of the presence of his business on the island.

We have watched the evolution of the fuel co-op over many years, as they work to provide competition to help keep fuel prices low on the island. Keith is a member of the island community, and as such has continued the provision of free fuel to seniors on the island, through a program called Widows Wood. Without Peaks Island Fuel and Widows Wood, my mother-in-law would not be able to heat her home all winter; my husband's family has lived on the island for four generations. We value the kind of community service and caring provided by Peaks Island Fuel and we have no reservations in supporting Keith's effort to find a reasonable place to park his trucks.

Please consider the above points as you weigh all of the facts in this situation. Many thanks.

Sincerely,
Ann Lovegren Conley and
Harold Martin Conley III

From: Barbara Barhydt
To: Roberts, Chris
CC: Giles, Eric
Date: 7/29/2011 3:41 PM
Subject: Re: parking for trucks

Dear Chris:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Chris Roberts <croberts2222@yahoo.com> Friday, July 29, 2011 7:12 AM
>>>

Barbara Barhydt

I am writing to express my support for the plans of Peaks Island Fuel to construct a parking lot for the fuel trucks on Island Ave. I have lived on Island Ave for 7 years, and have developed an understanding of traffic flows and road usage on the island.

From any point of view, the worst place for fuel trucks is where they are now, next to the ferry landing, were everyone, and every vehicle seems to transit at least twice a day. However from my point of view, the issue that this proposal raises is not that at all. The issue for me is zoning. If this proposal conforms to zoning ordinances, it should be approved regardless of our individual opinion about it's merits. The real issue is what to do about the zoning ordinance itself.

The zoning ordinance on Peaks Island is in need of a complete overhaul. Many of us on the island believe that in order to maintain a viable year round community, we must revisit this ordinance, and do it soon. Unfortunately Peaks Island is a contentious community, and any such discussion will be painful, and difficult, but it is time to begin.

I hope your office will be helpful to Mr Ivers, and the community as a whole by approving his proposed plan, and help this community work to make realistic changes to the zoning ordinance.

Sincerely,
Chris Roberts
379 Island Ave
Peaks Island me

From: Michael Richards <mosbypeaks@yahoo.com>
To: Barbara Barhydt <BAB@portlandmaine.gov>
CC: Eric Giles <EGILES@portlandmaine.gov>
Date: 7/28/2011 9:25 PM
Subject: Peaks Island Fuel

Thanks Barbara-

Actually the PIC held a well-attended meeting tonight at the community center and Keith explained his site plan and gave everyone a copy. The overwhelming sentiment among attendees was to let Keith go ahead with his plans, and the PIC voted to support it as well.

Ted Hykel said he had wanted for decades to buy that land to preserve his view, and he was upset it was now to house oil trucks. Someone asked Ted if that old broken down bus was still in his yard, and he said no.

I asked Keith if he could do it so as not to spoil Ted's view, and he said he didn't have to, but he could.

I asked Keith if he was as concerned as TEIA is about oil leaks in his own backyard, and he said more so, and the trucks and oil would be safer, as they are more open to vandalism now than they'd be down behind his house. I asked if his truck would end up closer to the water, and he said no, further away.

I asked how many people use the road where he wants to locate his trucks. He didn't know, but I said TEIA says 150 kids and adults daily (during the summer). I asked how many kids and adults go by his current location, and he said a lot, and I said maybe 1000 (and Judy Piawlock said including flocks of kids).

I said I'm surprised those who are concerned about pollution and safety don't insist that he move his trucks to his own lot at his earliest convenience.

Best regards,

Mike Richards

--- On Thu, 7/28/11, Barbara Barhydt <BAB@portlandmaine.gov> wrote:

From: Barbara Barhydt <BAB@portlandmaine.gov>
Subject: Re: Peaks Island Fuel
To: "Michael Richards" <mosbypeaks@yahoo.com>
Cc: "Eric Giles" <EGILES@portlandmaine.gov>
Date: Thursday, July 28, 2011, 9:21 AM

Dear Mr. Richards"

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments. We are maintaining a list of all comments.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Michael Richards <mosbypeaks@yahoo.com> Wednesday, July 27, 2011
7:52 PM >>>

Hi, Bab -

Keith Ivers' plan to park fuel trucks in his yard on Peaks is an important matter, and a well-moderated public discussion on Peaks would likely help provide facts, allow questions, and educate islanders and city planners alike. The PIC may be willing to host. If not, perhaps I can help. If so, please let me know.

Best Regards,
Mike Richards
19 Daniel St.
Peaks Island, ME 04108
653-4567

From: Barbara Barhydt
To: Stankowicz, A.D.
CC: Giles, Eric
Date: 7/28/2011 11:15 AM
Subject: Re: Support for Peaks Island Fuel

Dear Mr. Stankowicz:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "A.D. Stankowicz" <blackdogdavey@maine.rr.com> Thursday, July 28, 2011 11:09 AM >>>
Ms. Barhydt,

As a long time Peaks Island resident and a customer of Peaks Island Fuel, I want to register my support of Keith Ivers and Peaks Island Fuel to construct a parking area on Mr. Keith Ivers' property for the Peaks Island Fuel trucks. The space that he is building on is zoned for Island Business and he has a legal right to build a parking area on that property. I think that it would be unjust if that right was denied to him. I believe that all lawsuits to the contrary should be ignored. Further, I think that it is essential that there be competition regarding fuel options, and by honoring Mr. Ivers' legal rights, it allows Peaks Island Fuel to be competitive with the other island fuel provider.

Please register my support and honor the legal rights of Peaks Island Fuel.

Thank you,

Alexander David Stankowicz
33 Lyndon Avenue
Peaks Island, ME 04108

From: Barbara Barhydt
To: huston, ellen
CC: Giles, Eric
Date: 7/28/2011 11:12 AM
Subject: Re: peaks island fuel

Dear Ellen:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> ellen huston <lnhuston@yahoo.com> Wednesday, July 27, 2011 4:57 PM
>>>

Dear Ms. Barhydt,

My husband and I would like to voice our support for Keith Ivers (dba Peaks Island Fuel) and the plan for a new parking lot behind his home on Island Avenue. We have done business with Peaks Island Fuel for 12 years and have been 100% satisfied with his service and dependability. It is vital to this community that this business remain in service for many years to come, and his thoughtful long term plan shows a dedication to move towards this goal. Whether certain people like it or not, this property remains commercially zoned. Many on this island feel that their little slice of heaven should not be altered in any shape or form (except when it directly benefits them) but many feel, like I do, that our whole island is a huge slice of heaven and needs to work for the best of the community.

Keith, Danielle and their daughter Lydia are year round residents with deep family ties to this island. They want to raise their family here and run a small business which provides us with an essential service as well as tax revenue to the city of Portland. If the proposal complies with all of the city ordinances then we believe that the permits should be granted. His landscaping plans provide that his trucks will remain disguised lest they destroy the essence of costal Maine for our summer visitors. We abhor any sort of bullying tactics, which is what he and his family are facing from a select group, and hope that the facts and his plans stand alone.

We thank you for your time and consideration.

Sincerely,

Ellen Huston
Dave Dawson
12 Sterling Street
Peaks Island, ME 04108

From: Barbara Barhydt
To: Childs, Melissa
CC: Giles, Eric
Date: 7/28/2011 9:57 AM
Subject: Re: Peaks Island Fuel

Dear Melissa:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "Childs, Melissa" <Melissa.Childs@peoples.com> Thursday, July 28, 2011 9:36 AM >>>

Dear Barbara – I am writing as a citizen of Peaks Island and understand that Keith Ivers, for Peaks Island Fuel, has an application underway for a parking lot for his trucks. He has received some negative response but I fully support Keith, his hard work for this Island, and anything that supports that end – including a parking lot. I think it will be wonderful for him to NOT have to pay rent anymore. In this economic climate, people need to cut costs where they can. I fully support him and you can contact me should you have any questions or concerns. Thanks for your time,

Melissa Childs
Senior Financial Services Associate
People's United Bank
33 Island Avenue
Peaks Island, ME 04108

207-766-2960-ph
207-766-2964-f
melissa.childs@peoples.com

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From: Barbara Barhydt
To: Richards, Michael
CC: Giles, Eric
Date: 7/28/2011 9:21 AM
Subject: Re: Peaks Island Fuel

Dear Mr. Richards"

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments. We are maintaining a list of all comments.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Michael Richards <mosbypeaks@yahoo.com> Wednesday, July 27, 2011 7:52 PM >>>

Hi, Bab -

Keith Ivers' plan to park fuel trucks in his yard on Peaks is an important matter, and a well-moderated public discussion on Peaks would likely help provide facts, allow questions, and educate islanders and city planners alike. The PIC may be willing to host. If not, perhaps I can help. If so, please let me know.

Best Regards,
Mike Richards
19 Daniel St.
Peaks Island, ME 04108
653-4567

From: Barbara Barhydt
To: Giles, Eric
Date: 7/28/2011 9:10 AM
Subject: Fwd: Re: Peaks Island Fuel

>>> Barbara Barhydt Thursday, July 28, 2011 9:10 AM >>>
Dear Bruce:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov>>> "Bruce B. Hochman" <bhochman@lambertcoffin.com> Thursday, July 28, 2011 8:52 AM >>>

Barbara:

I am writing to support the efforts of Keith Ivers of Peaks Island Fuel in his efforts to create a parking lot for his vehicles on the island. Keith offers diagnostic work that the other supplier does not provide. Plus, having competition provides for better service and efficiency all around. What he is proposing appears reasonable and necessary for his business.

My wife and I live year round on the island at 61 Island Avenue.

Please do not hesitate to call me if you have any other questions.

Bruce B. Hochman
Bar No. 3017
Lambert Coffin
477 Congress Street 14th Floor
P.O. Box 15215
Portland, ME 04112-5215
(207) 874-4000
(207) 874-4040 (fax)
www.lambertcoffin.com

bhochman@lambertcoffin.com

Bio (<http://www.lambertcoffin.com/?sid=3&pid=40>) | Map (http://maps.google.com/maps?hl=en&q=477+Congress+Street+Portland+Maine&um=1&ie=UTF-8&sa=X&oi=geocode_result&resnum=1&ct=title)

This e-mail message together with any attachment is confidential and is subject to the attorney-client privilege and every other privilege. The intended recipient should print a copy of this message and then delete it. If you are not the intended recipient, you must not review, retransmit, convert to hard copy, copy, use or disseminate this e-mail or any attachments to it. If you have received this e-mail in error, please immediately notify us by return e-mail or by telephone at (207) 874-4000 and delete this message. Please note that if this e-mail message contains a forwarded message or is a reply to a prior message, some or all of the contents of this message or any attachments may not have been produced by Lambert Coffin. This notice is automatically appended to each e-mail message leaving Lambert Coffin.
Thank you.

From: Alex Jaegerman
To: Fred O'Keefe
CC: Barbara Barhydt; Eric Giles
Date: 7/28/2011 8:42 AM
Subject: Re: FW: The Issue of Peaks Island Fuel

Thank you Fred. We appreciate being kept informed of these matters.

Alex.

Alexander Jaegerman, AICP
Planning Division Director
389 Congress Street, Suite 400
Portland, ME 04101

Phone: (207)874-8724

>>> "Fred O'Keefe" <fokeefe@fsog-llc.com> 7/28/2011 8:09 AM >>>

Alex,

I am forwarding you a copy of my letter I have sent out to islanders via island email lists. I feel it is as important that you are aware of the political overtones as well. It will be an issue at this evenings Peaks Island Council meeting.

Fred O'Keefe

From: Fred O'Keefe [mailto:fokeefe@fsog-llc.com]
Sent: Thursday, July 28, 2011 8:04 AM
To: 'CHOPPIN@aol.com'; 'CEisenberg@rwl.com'
Subject: The Issue of Peaks Island Fuel

Chris and Carol, would you please send this out to your list.
Thanks,
Fred O'Keefe

July 28, 2011

Much is being said about the plan of Keith Ivers to establish a fuel truck terminal for Peaks Island Fuel on Island Avenue in the midst of a residential neighborhood. I was just given a copy of a letter that Mr. Ivers sent to his customers and to his friends. Being one of the close-by neighbors, I feel a responsibility to set the record straight on some of the issues being raised:

1. On June 27th, 2011 the City of Portland, in accordance with the Portland Land Use Ordinance, sent all concerned neighbors, a notice of a Level 1: Site Alteration application submitted by Mr. Ivers for a "4,200 sf gavel parking area to serve for his fuel oil trucks at 512 Island Avenue". The notice also stated, "If you have any concerns or wish to submit comments, contact Barbara Barhaydt" the Development Review Services Manager.

Many of the abutting residents and neighbors that would be affected by this site alteration did just that, they contacted Ms. Barhaydt. This was done in writing and by telephone.

Several of us were advised by City Officials that they would be coming to the island to inspect the site on

July 1, 2011. We asked if we could meet with them to find out the process they would be following and gather information about what the plan would be. They agreed and said that they would be in contact with their arrival time.

On July 1st the City Officials advised us what boat they would be on. When they City arrived, a group of approximately 50 concerned neighbors and some islanders from outside the neighborhood met with them on Island Ave. Here are some facts about that meeting:

- At no time did any of those gathered enter onto the property in question.
- At no time did the group go any further than the property boundary of Ted Haykal's property and Mr. Ivers property while on Island Avenue.
- At no time did the group become loud or offensive. There was no "mob scene" or "chain of protestors"
- Questions were asked of the representatives by both neighbors and other islanders present.
- When the City Officials asked the group if they could continue to inspect the property, the group immediately disbanded and went about their business.
- There was no reason why Mr. Ivers family should have felt threatened since there was no overt action taken by the group to create any atmosphere of fear, violence, or even disturbing the peace.

It was not, as Mr. Ivers stated in his letter to his customers and friends, "due to misinformation". TEIA members who live in the neighborhood, neighborhood homeowners and other concerned islanders who live outside the affected neighborhood were present. If we had the information because of our contact with the City, then it was Mr. Ivers responsibility, as the applicant, to know the schedule the City set to evaluate his application.

2. This is also not a year round versus summer resident issue nor is it a question of economic resources. This is a concern of "Property Owners" and the protection of their property values. It is also a question of maintaining a lifestyle to which much has been invested.

What also might be of interest to some is that this neighborhood has many more year round residents than one might have once thought. The one block from Island Avenue to Trefethen to Pleasant to Belvedere has eight year round residents with nine children. This end of the island is rapidly changing and growing numbers of year round residents are now deciding to live at this end of the island. Much reconstruction has been done to improve older homes and a new home is currently under construction.

3. Regarding the alleged threats and harassment that Mr. Ivers stated in his letter that he has received via email and letters. This is a despicable action on the part of anyone who would go to that length to make their point of objection. There is no justification for this now or at any time. I certainly hope that, if this truly is the case, that Mr. Ivers has taken the emails (hopefully with an identifiable URL), the letters and if telephone calls were made, the caller ID number, and made a report to the Police.

Regarding the potential for a lawsuit. Mr. Ivers is making a business decision and as such if there is someone who feels that his decisions warrant a lawsuit, and he or she is willing to pursue it, then Mr. Ivers needs to be prepared, as a businessman, to defend his position.

This is not, and should not, be a personal vendetta against Mr. Ivers or his family. Mr. Ivers elected to make a business decision which, in the minds of many of his neighbors, is going to affect their quality of life and negatively affect property values. Property owners have every right to disagree and challenge his decision when they believe that his decision will adversely and directly affect them.

4. Mr. Ivers stated that he has been considering his business decision to move and store his trucks on this property since last winter. FACT: The first time anyone in the neighborhood heard about his plans was when we received the notification from the City. Neighbors were stunned that he was so insensitive to the neighbor, especially on a small island like Peaks. It would have been prudent for Mr. Ivers when he was in the planning phase to advise the neighborhood what he intended to do. He would have found out then who was adverse to this decision and who supported him. It is not the neighborhood's responsibility

to call him to find out what his plans, it is his.

To this date Mr. Ivers has made no effort to call the neighborhood together and lay out exactly what he has in mind. Does he expect people, who have been surprised by his actions, to sit back and say or do nothing? They are reacting to a business decision and as such Mr. Ivers should be prepared to respond, as a businessman, to this reaction.

It is important to remember that it is only because Mr. Ivers application has been made public that any of us know what he is intending to do.

5. Immediately after the meeting with the City Officials several neighbors got together to see what was the quickest and most appropriate course of action. No one wants to see Peaks Island Fuel go out of business. We concurred that his business is an integral part of the business community and as such, would be a great loss to future business activity on the island. The zoning laws for Peaks Island are antiquated to say the least. They need to be reviewed and changed to support growth, not only those who currently run small island businesses on the island but for future business as well.

It was decided to take the initiative and arrange a meeting with Mr. Ivers and several business people who have had experience with running successful businesses and have dealt with neighborhood and environmental issues. That meeting took place a few weeks ago with Bill Zimmerman, Paul Castle, Jerry Garman, and the Chair of TEIA, Jean Gulliver and Mr. Ivers.

The main focus of the meeting was to:

- Hear directly from Mr. Ivers what his plan for Peaks Island Fuel is.
- Consider other alternatives that might also satisfy his requirements.
- Determine whether Mr. Ivers understands the impact of the Maine DEP and Federal EPA rules (financial and compliance) on the proposal.
- Discuss whether Mr. Ivers understands the potential adverse impact of this business decision on his business.

One of the main recommendations and advice was for Mr. Ivers to call a meeting of the neighborhood and relate his plans directly to the neighborhood. If Mr. Ivers had called such a meeting, we already had plans underway for the Mayor of the City of Portland to attend, to mediate and to search for other possible solutions. This has not been done.

6. In regards to the question of business zoning. Yes, the property is located in the Island Business Zone. **BUT**, and this is key, this property has not been used in any capacity as a business zone for the past thirty (30) some years ever since the Weber store closed. Ted Haykal, who now owns the property directly abutting the property in question, has turned his property into a personal residence. Above everyone, he is the most affected should this be approved. His backyard will literally be a truck terminal parking area.

The questions that the City now has to review are many not the least being, is a fuel truck terminal the proper use of the property according to the current zoning restrictions. Has the neighborhood so changed over a period of many years that allowing this type of business will be detrimental to its property owners?

7. Mr. Ivers must also comply with the EPA and DEP rules, which change constantly. Mr. Ivers is required to complete what is known as a "Spill Prevention Control and Countermeasure (SPCC) Plan" for the State. The property in question directly abuts the Shoreland Zone. Although it is not within the zone by a matter of feet, there is considerable concern about the environmental and safety impact it would have. There is also a runoff stream located approximately 75 feet downhill from the property that could be adversely affected. If there is normal spillage or if there is a serious spill that it will reach the shoreline the consequences could be financially dramatic for his business.

Because Mr. Ivers has applied for a SBA loan to purchase the property, scrutiny by the SBA relative to the federal and state DEP and EPA compliance will be ongoing. Should any environmental law change

Peaks Island Fuel would be mandated to comply.

8. Contact was also made with the Island Institute. Its major concern is the cultural aspects that affect the islands of Casco Bay. Its officials agree that the zoning ordinances of Peaks Island (specifically) are antiquated and are willing to work with the island and the City to see what can be done to make it more reasonable and effective for island businesses to conduct their business without adverse effects on their neighbors and neighborhoods. This would require re-zoning areas of the island that would properly allow for businesses to operate.

At present Peaks Island is only zoned Island Residential and Island Business. There are no "commercial" or "industrial" zones on the island.

9. There is also a question of urgency. As we understand it, Mr. Ivers has applied for a SBA loan to purchase the property and has until the end of August to secure a favorable reply from the City. It is unfortunate that any urgency is being applied to this because it forces decisions, on both sides of the fence, to be made and does not allow for a more normal discussion to resolve this issue. This urgency has been created solely by Mr. Ivers. Had he involved neighbors at any earlier point, everyone would have been more informed.

Understandably, Mr. Ivers wants to get this behind him and focus on his business. He wants to purchase the land and, admirably, raise his family in the neighborhood. Unfortunately, this is not a dilemma that can be solved quickly. The question asked by many people is what we will do if the City approves the use of this property as a truck terminal according to the application. Unfortunately the answer is that it will be immediately contested and a full Planning Board Review requested.

Finally, Mr. Ivers' letter is a personal plea for understanding and support. Unfortunately, this is not a personal matter; it is strictly a business decision on his part and the neighborhood is reacting to this. I know of no one who holds any personal grudge or animosity against Mr. Ivers; on the contrary, we are willing to sit down and work with him. But, Mr. Ives has to want this as well. Apparently, he has not.

It is also unfortunate that unsubstantiated gossip and rumors persist by some persons who have other agendas and wish to obscure the truth and create a situation that only furthers discord.

Hopefully, this can be worked out to the satisfaction of all concerned, but at this moment there is no evidence that Mr. Ivers is willing to do so.

Fred O'Keefe
268 Pleasant Avenue

From: Barbara Barhydt
To: nobody@earthlink.net
CC: Giles, Eric
Date: 7/28/2011 8:31 AM
Subject: Re: Re: Peaks Island Fuel expansion plans

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> <vinnie100@earthlink.net> Thursday, July 28, 2011 8:13 AM >>>
I apologize for this automatic reply to your email.

To control spam, I now allow incoming messages only from senders I have approved beforehand.

If you would like to be added to my list of approved senders, please fill out the short request form (see link below). Once I approve you, I will receive your original message in my inbox. You do not need to resend your message. I apologize for this one-time inconvenience.

Click the link below to fill out the request:

<https://webmail.pas.earthlink.net/wam/addme?a=vinnie100@earthlink.net&id=11e0-b913-0a32520e-a400-002128142564>

From: Barbara Barhydt
To: Proulx, Norm
CC: Giles, Eric
Date: 7/28/2011 8:22 AM
Subject: Re: Peaks Island Fuel

Dear Mr. Proulx:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

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Development Review Services Manager
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Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "Norm Proulx" <norm_proulx@myfairpoint.net> Thursday, July 28, 2011 7:55 AM >>>

Ms. Barhydt: Please add me to your list of supporters of the initiative by Peaks Island Fuel. I have been a customer of theirs for the 22 years I have lived on Peaks Island. They provide valuable competitive oil and propane service to year-round Peaks' residences.

Thanks

TTFN

Norm

norm_proulx@myfairpoint.net

From: Barbara Barhydt
To: Blum, Joann
CC: Giles, Eric
Date: 7/28/2011 8:21 AM
Subject: Re: Peaks Island Fuel

Dear Joann:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

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(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Joann Blum <jcblum@verizon.net> Thursday, July 28, 2011 7:29 AM >>>
Dear Barbara, Please accept this email in strong support of Keith Ivers and his attempt to keep a competitive propane company on Peaks Island. Years ago there was an attempt by the other company to railroad Peaks island fuel off the island so there would be no competition. That company held on and has provided excellent service to many customers over the years. The clout and power of the other company was obviously growing and it appears that they will only be satisfied if Peaks Island Fuel is driven off the island. Competition is healthy, especially on a small island. I am hoping that you see the need for people like me to have an alternative company that provides a very personal, caring service for many of us.
Joann Blum
105 Seashore Ave

From: Barbara Barhydt
To: webster, priscilla
CC: Giles, Eric
Date: 7/28/2011 8:18 AM
Subject: Re: Peaks Island Fuel

Dear Ms. Webster:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

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Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> priscilla webster <pwebster@gwi.net> Wednesday, July 27, 2011 10:09 PM
>>>

Dear Ms. Barhydt,

I am writing to you at the the suggestion of Keith Ivers, owner of Peaks Island Fuel.

I have not seen his plan but I am in favor of following whatever the zoning is. Fuel oil is a basic necessity for those of us who live here; tennis courts are not.

I am not knowledgeable about City and State ordinances and such, so I leave that to you, but I hope that Keith has a fair chance to use his property how he wants within the law.

Sincerely,

Priscilla Webster
29 Centennial Street
Peaks Island, ME 04108
766-2166

From: Barbara Barhydt
To: Foster, Christina
CC: Giles, Eric
Date: 7/28/2011 8:17 AM
Subject: Re: Peaks Island Fuel Support

Dear Christina:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Christina Foster <cmfisc@hotmail.com> Wednesday, July 27, 2011 8:03 PM
>>>

Barbara,

I wanted to add my voice to support Peaks Island Fuel in building a parking lot behind Keith Iver's business zone home. I hope the minority of people voicing complaints about his legal and thoughtful decisions will not effect your granting permission for this building project.

Thank you,

Christina Foster
109 Sargent Road
Peaks Island, ME 04108
207-221-3445

From: Barbara Barhydt
To: Murray, Mike
CC: Giles, Eric
Date: 7/28/2011 8:16 AM
Subject: Fwd: Peaks Island Fuel

Hi Mike:

I have not responded to Mike Richards yet. I do not know him and was not sure how to respond to his offer for assistance. I thought the Peaks Island Council did not want to have a meeting. I think we want to follow our general procedures and not add in other steps, but please give me some background information.

Thank you.

Barbara

>>> Michael Richards <mosbypeaks@yahoo.com> Wednesday, July 27, 2011 7:52 PM >>>

Hi, Bab -

Keith Ivers' plan to park fuel trucks in his yard on Peaks is an important matter, and a well-moderated public discussion on Peaks would likely help provide facts, allow questions, and educate islanders and city planners alike. The PIC may be willing to host. If not, perhaps I can help. If so, please let me know.

Best Regards,
Mike Richards
19 Daniel St.
Peaks Island, ME 04108
653-4567

From: Barbara Barhydt
To: Miner, Cheryl
CC: Giles, Eric
Date: 7/28/2011 8:14 AM
Subject: Re: Support Peaks Island Fuel

Good morning Cheryl:

:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

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Fax: (207) 756-8256

bab@portlandmaine.gov>>> Cheryl Miner <c.nunes.miner@gmail.com> Wednesday, July 27, 2011 7:35 PM >>>

I support Keith Ivers and wish him well in his business. Cheryl Miner

From: Barbara Barhydt
To: Demos, Lavinia
CC: Giles, Eric
Date: 7/28/2011 8:13 AM
Subject: Re: Peaks Island Fuel expansion plans

Dear Lavinia and Stephen:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.
Barbara

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Development Review Services Manager
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Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov>>> Lavinia Demos <vinnie100@earthlink.net> Wednesday, July 27, 2011 6:26 PM >>>
Dear Barbara Barhydt,

We are writing to express our unqualified support for Peaks Island Fuel, and Keith Ivers in particular, as they attempt to build adequate facilities on what is already commercially zoned property on Peaks Island. They are the kind of business and his, the kind of young family that we want to keep here long term.

We have the utmost admiration for the sound business plan they have devised in order to provide a competitive fuel service for the community. We regard the over-gentrification of our island as a disaster that has already led to an unfortunate increase in taxes and forced many long-time residents to move elsewhere. This recent attempt to prevent the completion of a parking lot for a business that benefits us all is more of the same. We see no good reason that the complainants, many of them only summer residents, cannot coexist safely with this local business.

Lavinia & Stephen Demos
25 Crescent Avenue
Peaks Island

From: Barbara Barhydt
To: Giles, Eric
Date: 7/28/2011 8:13 AM
Subject: Fwd: Re: I support Keith Ivers!

>>> Barbara Barhydt Thursday, July 28, 2011 8:11 AM >>>
Good morning Kelin:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

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Barbara

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bab@portlandmaine.gov>>> Kelin Rapp <kelinrapp@gmail.com> Wednesday, July 27, 2011 5:49 PM
>>>

Please add me to the "petition" in support of him!
Thanks
Kelin

Sent from my iPhone

From: Barbara Barhydt
To: palmerjd@aol.com
CC: Giles, Eric
Date: 7/28/2011 8:10 AM
Subject: Re: Support

Good morning Justin:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

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Barbara

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Fax: (207) 756-8256

bab@portlandmaine.gov>>> <palmerjd@aol.com> Wednesday, July 27, 2011 5:43 PM >>>

No words can describe how heartfelt and earnest and appreciated is this effort. Maintaining a vibrant, healthy and sustainable community is essential to our livelihood. Please consider this note an emphatic nod of support.

Best,
Justin Palmer
30 R Central.
Sent via BlackBerry by AT&T

From: "Fred O'Keefe" <fokeefe@fsog-llc.com>
To: "Alex Jaegerman" <AQJ@portlandmaine.gov>
CC: "Barbara Barhydt" <BAB@portlandmaine.gov>, "Eric Giles" <EGILES@port...>
Date: 7/28/2011 8:09 AM
Subject: FW: The Issue of Peaks Island Fuel

Alex,

I am forwarding you a copy of my letter I have sent out to islanders via island email lists. I feel it is as important that you are aware of the political overtones as well. It will be an issue at this evenings Peaks Island Council meeting.

Fred O'Keefe

From: Fred O'Keefe [mailto:fokeefe@fsog-llc.com]
Sent: Thursday, July 28, 2011 8:04 AM
To: 'CHOPPIN@aol.com'; 'CEisenberg@rwl.com'
Subject: The Issue of Peaks Island Fuel

Chris and Carol, would you please send this out to your list.

Thanks,

Fred O'Keefe

July 28, 2011

Much is being said about the plan of Keith Ivers to establish a fuel truck terminal for Peaks Island Fuel on Island Avenue in the midst of a residential neighborhood. I was just given a copy of a letter that Mr. Ivers sent to his customers and to his friends. Being one of the close-by neighbors, I feel a responsibility to set the record straight on some of the issues being raised:

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- . At no time did any of those gathered enter onto the property in question.
- . At no time did the group go any further than the property boundary of Ted Haykal's property and Mr. Ivers property while on Island Avenue.
- . At no time did the group become loud or offensive. There was no "mob scene" or "chain of protestors"
- . Questions were asked of the representatives by both neighbors and other islanders present.
- . When the City Officials asked the group if they could continue to inspect the property, the group immediately disbanded and went about their business.
- . There was no reason why Mr. Ivers family should have felt threatened since there was no overt action taken by the group to create any atmosphere of fear, violence, or even disturbing the peace.

It was not, as Mr. Ivers stated in his letter to his customers and friends, "due to misinformation". TEIA members who live in the neighborhood, neighborhood homeowners and other concerned islanders who live outside the affected neighborhood were present. If we had the information because of our contact with the City, then it was Mr. Ivers responsibility, as the applicant, to know the schedule the City set to evaluate his application.

2. This is also not a year round versus summer resident issue nor is it a question of economic resources. This is a concern of "Property Owners" and the protection of their property values. It is also a question of maintaining a lifestyle to which much has been invested.

What also might be of interest to some is that this neighborhood has many more year round residents than one might have once thought. The one block from Island Avenue to Trefethen to Pleasant to Belvedere has eight year round residents with nine children. This end of the island is rapidly changing and growing numbers of year round residents are now deciding to live at this end of the island. Much reconstruction has been done to improve older homes and a new home is currently under construction.

3. Regarding the alleged threats and harassment that Mr. Ivers stated in his letter that he has received via email and letters. This is a despicable action on the part of anyone who would go to that length to make their point of objection. There is no justification for this now or at any time. I certainly hope that, if this truly is the case, that Mr. Ivers has taken the emails (hopefully with an identifiable URL), the letters and if telephone calls were made, the caller ID number, and made a report to the Police.

Regarding the potential for a lawsuit. Mr. Ivers is making a business decision and as such if there is someone who feels that his decisions warrant a lawsuit, and he or she is willing to pursue it, then Mr. Ivers needs to be prepared, as a businessman, to defend his position.

This is not, and should not, be a personal vendetta against Mr. Ivers or his family. Mr. Ivers elected to make a business decision which, in the minds of many of his neighbors, is going to affect their quality of life and negatively affect property values. Property owners have every right to disagree and challenge his decision when they believe that his decision will adversely and directly affect them.

4. Mr. Ivers stated that he has been considering his business decision to move and store his trucks on this property since last winter. FACT: The first time anyone in the neighborhood heard about his plans was when we received the notification from the City. Neighbors were stunned that he was so insensitive to the neighbor, especially on a small island like Peaks. It would have been prudent for Mr. Ivers when he was in the planning phase to advise the neighborhood what he intended to do. He would have found out then who was adverse to this decision and who supported him. It is not the neighborhood's responsibility to call him to find out what his plans, it is his.

To this date Mr. Ivers has made no effort to call the neighborhood together and lay out exactly what he has in mind. Does he expect people, who have been surprised by his actions, to sit back and say or do nothing? They are reacting to a business decision and as such Mr. Ivers should be prepared to respond, as a businessman, to this reaction.

It is important to remember that it is only because Mr. Ivers application has been made public that any of us know what he is intending to do.

5. Immediately after the meeting with the City Officials several neighbors got together to see what was the quickest and most appropriate course of action. No one wants to see Peaks Island Fuel go out of business. We concurred that his business is an integral part of the business community and as such, would be a great loss to future business activity on the island. The zoning laws for Peaks Island are antiquated to say the least. They need to be reviewed and changed to support growth, not only those who currently run small island businesses on the island but for future business as well.

It was decided to take the initiative and arrange a meeting with Mr. Ivers and several business people who have had experience with running successful businesses and have dealt with neighborhood and environmental issues. That meeting took place a few weeks ago with Bill Zimmerman, Paul Castle, Jerry Garman, and the Chair of TEIA, Jean Gulliver and Mr. Ivers.

The main focus of the meeting was to:

- . Hear directly from Mr. Ivers what his plan for Peaks Island Fuel is.
- . Consider other alternatives that might also satisfy his requirements.
- . Determine whether Mr. Ivers understands the impact of the Maine DEP and Federal EPA rules (financial and compliance) on the proposal.
- . Discuss whether Mr. Ivers understands the potential adverse impact of this business decision on his business.

One of the main recommendations and advice was for Mr. Ivers to call a meeting of the neighborhood and relate his plans directly to the neighborhood. If Mr. Ivers had called such a meeting, we already had plans underway for the Mayor of the City of Portland to attend, to mediate and to search for other possible solutions. This has not been done.

6. In regards to the question of business zoning. Yes, the property is located in the Island Business Zone. BUT, and this is key, this property has not been used in any capacity as a business zone for the past thirty (30) some years ever since the Weber store closed. Ted Haykal, who now owns the property directly abutting the property in question, has turned his property into a personal residence. Above everyone, he is the most affected should this be approved. His backyard will literally be a truck terminal parking area.

The questions that the City now has to review are many not the least being, is a fuel truck terminal the proper use of the property according to the current zoning restrictions. Has the neighborhood so changed over a period of many years that allowing this type of business will be detrimental to its property owners?

7. Mr. Ivers must also comply with the EPA and DEP rules, which change constantly. Mr. Ivers is required to complete what is known as a "Spill Prevention Control and Countermeasure (SPCC) Plan" for the State. The property in question directly abuts the Shoreland Zone. Although it is not within the zone by a matter of feet, there is considerable concern about the environmental and safety impact it would have. There is also a runoff stream located approximately 75 feet downhill from the property that could be adversely affected. If there is normal spillage or if there is a serious spill that it will reach the shoreline the consequences could be financially dramatic for his business.

Because Mr. Ivers has applied for a SBA loan to purchase the property, scrutiny by the SBA relative to the federal and state DEP and EPA compliance will be ongoing. Should any environmental law change Peaks Island Fuel would be mandated to comply.

8. Contact was also made with the Island Institute. Its major concern is the cultural aspects that affect the islands of Casco Bay. Its officials agree that the zoning ordinances of Peaks Island (specifically) are antiquated and are willing to work with the island and the City to see what can be done to make it more reasonable and effective for island businesses to conduct their business without adverse effects on their neighbors and neighborhoods. This would require re-zoning areas of the island that would properly allow for businesses to operate.

At present Peaks Island is only zoned Island Residential and Island Business. There are no "commercial" or "industrial" zones on the island.

9. There is also a question of urgency. As we understand it, Mr. Ivers has applied for a SBA loan to purchase the property and has until the end of August to secure a favorable reply from the City. It is unfortunate that any urgency is being applied to this because it forces decisions, on both sides of the fence, to be made and does not allow for a more normal discussion to resolve this issue. This urgency has been created solely by Mr. Ivers. Had he involved neighbors at any earlier point, everyone would have been more informed.

Understandably, Mr. Ivers wants to get this behind him and focus on his business. He wants to purchase the land and, admirably, raise his family in the neighborhood. Unfortunately, this is not a dilemma that can be solved quickly. The question asked by many people is what we will do if the City approves the use of this property as a truck terminal according to the application. Unfortunately the answer is that it will be immediately contested and a full Planning Board Review requested.

Finally, Mr. Ivers' letter is a personal plea for understanding and support. Unfortunately, this is not a personal matter; it is strictly a business decision on his part and the neighborhood is reacting to this. I know of no one who holds any personal grudge or animosity against Mr. Ivers; on the contrary, we are willing to sit down and work with him. But, Mr. Ives has to want this as well. Apparently, he has not.

It is also unfortunate that unsubstantiated gossip and rumors persist by some persons who have other agendas and wish to obscure the truth and create a situation that only furthers discord.

Hopefully, this can be worked out to the satisfaction of all concerned, but at this moment there is no evidence that Mr. Ivers is willing to do so.

Fred O'Keefe

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