

Inspection Services
Michael J. Nugent
Manager



Housing and Neighborhood Services
Mark Adelson
Director

CITY OF PORTLAND
NOTICE OF INTENT TO PROSECUTE

October 16, 2002

Ed Benjamin
4 Diamond Ridge Road
Falmouth, ME 04015

RE: 326 Presumpscot St.
CBL: 422-B-009

Certified Mail # 7001 1940 0004 2778 1050 & Regular Mail

Dear Mr. Benjamin:

An evaluation of your property at 326 Presumpscot St. on July 11 & September 25, 2002 revealed that the structure and premises fails to comply with previous violation notices sent on June 6, 2002. Attached are copies of the notices.

The property continues to be in violation of Section 14-52 of the Municipal Zoning Ordinance, and Section 6-107.1 of the Building Code. This office has not received an application for a change of use for this property, therefore, no Certificate of Occupancy has been issued.

This is a notice of intent to prosecute. The matter is being referred to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code, and in Title 30-A M.R.S.A. ss 4452.

Please feel free to contact me if you wish to discuss the matter or have any questions.

Sincerely,

Jeanie Bourke @ 874-8715
Code Enforcement Officer

11/15/02 10:00 AM
10/15/02 10:00 AM
10/15/02 10:00 AM
10/15/02 10:00 AM
10/15/02 10:00 AM

Inspection Services
Michael J. Nugent
Manager



Dept. of Planning & Development
Lee Urban
Director

CITY OF PORTLAND

June 6, 2002

Ed Benjamin
4 Diamond Ridge Road
Falmouth ME 04015

RE: 326 Presumpscot St. (422-B-009) Zone IL

Certified Mail Receipt# 7001 1940 0004 2777 4816 & Regular Mail

Dear Mr. Benjamin:

An evaluation of the above property on May 21, 2002 revealed that this vacant lot is being used without benefit of approvals from this office. The City of Portland Municipal Zoning Ordinance states in Section 14-463 (d) that a Certificate of Occupancy is required for occupancy and use, or change of use, of vacant land, except for the raising of crops. Enclosed is a copy of the ordinance for the IL Zone.

It has been noted that there are 5 storage trailers, 3 dumpsters, and 3-4 piles of earth that have been placed on the property.

The above, described, condition is in violation of Section 14-52 of the Municipal Zoning Ordinance and Section 6-107.1 of the Building Code. This is a notice of violation pursuant to Section 14-56 of the Municipal Zoning Ordinance and Section 6-116.2 of the Building Code. The property must be returned to the original vacant use within 30 days. A re-inspection of the premises will occur on July 9, 2002, at which time compliance is required. An application can be submitted to our office for occupancy change, including a site evaluation and change of use.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code and in Title 30-A M.R.S.A. Ss 4452. This constitutes an appealable decision pursuant to Section 14-472 of the Municipal Zoning Ordinance and Section 121.5 of the Building Code. You have 30 days from the date of this letter in which to appeal. Please feel free to contact this office, if you wish to discuss the matter or have any questions.

Sincerely,

Jeanie Bourke
Jeanie Bourke

Code Enforcement Officer @ 874-8715

Marge Schmuckal

Marge Schmuckal
Zoning Administrator @ 874-8695

Inspection Services
Michael J. Nugent
Manager



Dept. of Planning & Development
Lee Urban
Director

CITY OF PORTLAND

June 6, 2002

Ed Benjamin
4 Diamond Ridge Road
Falmouth ME 04015

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Sincerely,

Jeanie Bourke
Code Enforcement Officer @ 874-8715

Marge Schmuckal
Zoning Administrator @ 874-8695

Inspection Services
Michael J. Nugent
Manager

Department of Urban Development
Joseph E. Gray, Jr.
Director



CITY OF PORTLAND

February 6, 2001
Scott Butterfield
PO Box 3905
Portland, ME 04101

RE: 326 Presumpscot St. (422-B-009)

Certified Mail Receipt# 7099 3400 0019 5716 5354

Dear Mr. Butterfield:

An evaluation of the above property revealed that a towing business and storage yard have been placed on the property without benefit of approvals. The property is located in the IL Zone where this use is not permitted.

The above, described, condition is in violation of Section 14-52 of the Municipal Zoning Ordinance and Section 6—107.1 of the Building Code. This is a notice of violation pursuant to Section 14-56 of the Municipal Zoning Ordinance and Section 6 – 116.2 of the Building Code. The property must be returned to the original permitted use within 30 days. A reinspection of the premises will occur on 3/06/01 at which time compliance is required.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code and in Title 30-A M.R.S.A. Ss 4452. This constitutes an appealable decision pursuant to Section 14-473 of the Municipal Zoning Ordinance and Section 121.5 of the Building Code. Please feel free to contact me at 874-8697, if you wish to discuss the matter or have any questions.

Sincerely,

Arthur Rowe @ 874-8697

/egg



CITY OF PORTLAND

Department of Planning and Urban Development
Division of Housing and Neighborhood Services
Mark B. Adelson, Director

copy

Ed Benjamin
4 Diamond Ridge Road
Falmouth, ME 04015

Scott Butterfield
P.O. Box 3905
Portland, ME 04101

Re: 326 Presumpscot Street

March 9, 2001

Dear Mr. Benjamin and Mr. Butterfield,

In response to your request to continue to use 326 Presumpscot Street as an impound tow lot while a new location is being reviewed for use, the City is willing to grant you a 30 day extension until April 6, under the following conditions.

1. A complete permit application for the proposed use on Bishop Street, shall be submitted to the City on or before March 16, 2001. Failure to comply with this condition will result in immediate termination of this extension. The Site Review Pre-Application forms and instructions are attached.
2. All operations at the Presumpscot Street site will cease on or before April 6, 2001.
3. All vehicles, regardless of ownership and working condition, will be removed from the Presumpscot Street lot, and the site cleared of all debris, on or before April 6, 2001.

This extension of time for the Presumpscot Street lot does not guarantee approval of the proposed use on Bishop Street. No further extensions for the Presumpscot Street lot will be considered.

The City is making this offer in the spirit of cooperation and in an effort to limit the interruption to the existing business. It is our hope that you will meet your responsibilities for moving to a new site expeditiously. Failure to comply with the conditions of this letter, as well as the zoning code violation already on record, will result in turning this case over to the City's Corporation Counsel for prosecution.

Sincerely,



Mark B. Adelson

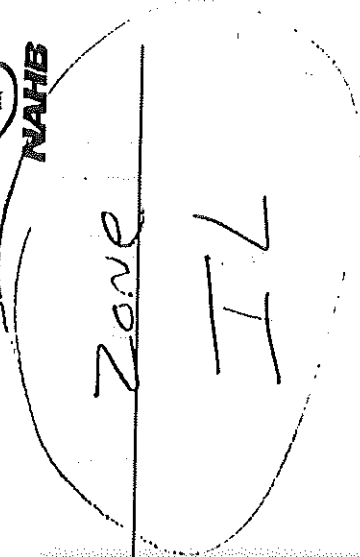
Director of Housing and Neighborhood Services

Cc: David Chamberland, Esq.
Marge Schmuckal, Zoning Administrator
Officer Jeanine Roberts, Portland Police Dept.
Jim Seymour, Sebago Technics



ASSOCIATES INC.
PROPERTY MANAGEMENT

207-985-9740
Fax 207-985-0390



December 14, 2000

Michael Nugent, Building Inspector
Building Department
389 Congress Street
Portland, Maine 04101

Dear Mike: re Presumpscot Street Junk Yard

You and I spoke a while back about the junk yard that abuts Ocean Woods Condominiums, which is located on Ashley Lane which is off Ocean Avenue. This abuts a junkyard located at 326 Presumpscot Street. 422-B-9

We are told by a couple owners that this yard was no where near as active when they were looking to buy a condo as it is now. My field representative tells me that the operation has expanded considerably.

I am enclosing some photos taken from Ocean Woods back yards toward the junkyard. You will note a red vehicle on the left side of the left middle photo. This has been there for some time - even to the extent that wheels are gone! And the number of vehicles stored has greatly expanded. Also, there are three towing companies operating out of this yard. They are:

- S & R Towing
- Coastal Maine Towing
- Intown Towing

We realize the yard has been there, but we would expect that there should be more screening of the business than is presently in place, especially since the zoning shifts from residential to commercial. Anything you can do to make the new owners more content would be most appreciated.

Thanks for your help.

Sincerely,
R & E ASSOCIATES, INC.

Estelle W. Wellman

Estelle W. Wellman

By Bill Keefor
1-800-660-2471

enclosure

to be restricted to the clerk or mark the mail is desired to be with postage if Postmark is desired to be with postage

to receive your Certified mail and to receive your Certified mail

Inspection Services
Michael J. Nugent
Manager

Department of Urban Development
Joseph E. Gray, Jr.
Director



CITY OF PORTLAND

February 6, 2001
Scott Butterfield
PO Box 3905
Portland, ME 04101

RE: 326 Presumpscot St. (422-B-009)

Owned by ED Benjamin per Assessors


Certified Mail Receipt# 7099 3400 0019 5716 5354

Dear Mr. Butterfield:

An evaluation of the above property revealed that a towing business and storage yard have been placed on the property without benefit of approvals. The property is located in the IL Zone where this use is not permitted.

The above, described, condition is in violation of Section 14-52 of the Municipal Zoning Ordinance and Section 6-107.1 of the Building Code. This is a notice of violation pursuant to Section 14-56 of the Municipal Zoning Ordinance and Section 6 - 116.2 of the Building Code. The property must be returned to the original permitted use within 30 days. A reinspection of the premises will occur on 3/06/01 at which time compliance is required.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code and in Title 30-A M.R.S.A. Ss 4452. This constitutes an appealable decision pursuant to Section 14-473 of the Municipal Zoning Ordinance and Section 121.5 of the Building Code. Please feel free to contact me at 874-8697, if you wish to discuss the matter or have any questions.

Sincerely,

Arthur Rowe @ 874-8697

/gg

Zoning Division
Marge Schmuckal
Zoning Administrator



Department of Urban Development
Joseph E. Gray, Jr.
Director

CITY OF PORTLAND

July 23, 2001

Ed Benjamin
4 Diamond Ridge Road
Falmouth, ME 04105

Scott Butterfield
P.O. Box 3905
Portland, ME 04101

RE: 326 Presumpscot Street - 422-B-009 - IL zone

Dear Mr. Benjamin and Mr. Butterfield,


This office completed an inspection of your property at 326 Presumpscot Street on July 12, 2001, and found it is still being used as an impoundment lot for your towing company. As an illegal, nonconforming use, it is still in violation of the land use code section 14-232, as indicated in the City's previous letter of March 5, 2001.

The City has generously extended the time limit for this nonconforming use, pending the approvals of you new site on Bishop Street as referenced in our letter of March 9, 2001. Now that the Bishop Street site has received its approvals, you are hereby notified that you have 30 days from the date of this letter, or by **August 23, 2001**, to cease the use of the Presumpscot Street lot. All vehicles must be removed and the lot cleared of debris. No additional extensions will be given for this use. I suggest you apply for the building permit as soon as possible for the Bishop Street site and pay the performance guarantees as required.

Failure to comply with the above order will result in legal action with our City's Corporation Counsel.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,


Marge Schmuckal
Zoning Administrator

Cc: Mark Adelson, Dir. Housing and Neighborhood Services
David Chamberland, Esq.
Jim Seymour, Sebago Technics
Officer Jeanine Roberts, Portland Police Dept.

STATE OF MAINE
CUMBERLAND, ss.

MAINE DISTRICT COURT
DISTRICT NINE
DIVISION OF SO. CUMBERLAND
DOCKET NO.

CITY OF PORTLAND, a body politic
and corporate, located in the
County of Cumberland and State of
Maine,

4700-B-009

Plaintiff

v.

LAND USE CITATION
AND COMPLAINT

INTOWN ROAD SERVICE, INC.,

Visc attached
prior summary
10/9/01

Defendant

To Alleged Violator:

Name Intown Road Service, Inc.
(Last) (First) (Middle)

Mailing Address:

Street P.O. Box 3905
City/Town Portland Zip Code 04104

COMPLAINT

You are charged with the following:

VIOLATION

Date of Violation, or When First Observed by Complaining Official

Month February Day 6 Year 2001 Time _____

Location of Violation 326-334 Presumpscott Street, Portland
Street City/Town

Description of Violation : Maintaining a storage lot for towed vehicles which is not permitted in the I-L Zone

Legal Basis of Complaint:*

- Violation of State Law, Title 30-A Section §4452
or State Agency Rule No. _____ Adopted by Department of _____
- Violation of Municipal Ordinance or Regulation

- A. Title Portland Land Use Code
Section(s) 14-231 to 14-236
Page(s) 14-281 – 14-293

Summary of law, ordinance or regulation allegedly violated
Maintenance of a storage area for towed motor vehicles which is not a permitted use in the I-L Zone

Penalty Provision Section 30-A M.R.S.A. §4452(3) Page(s) 90

Penalty Amount \$100 -- \$2,500 per day

*If violation is of State agency rule, or municipal ordinance or regulation, attach certified copy to original of this form for service and filing.
The complete text of the ordinance is available at the Office of the Building Inspector, Portland City Hall, during regular business hours.

Relief Sought from Court

- _____ Temporary Restraining Order (complete Affidavit and Certificate below)
- _____ Preliminary Injunction
- Permanent Injunction
- Civil Penalty
- Removal of Violation
- Other Attorney's fees and costs (30-A M.R.S.A. §4452(3)(D))

CERTIFICATE

I certify that I have made the following efforts to give notice to the alleged violator and that notice is not required for the following reasons:

CITATION


You are hereby summoned to appear in District Court at the location and date indicated below to answer to the above Complaint. In the event of your failure to appear and state your defense on the court date specified, a judgment by default may be rendered against you. You are advised to call the District Court to verify the date and time of your appearance.

Ninth District Court, Cumberland County Courthouse, 205 Newbury Street, Portland, Maine on:

Date October 5th, 2001 Time: 9:00 a.m. Tel. 874-4200

I have reasonable grounds to believe that the above-complained of violation was committed because I observed them.

Signature of Complainant

*Signature 
Name Marge Schmuckal, Zoning Administrator
Name Arthur Rowe, CEO

Name of complainant if signed by clerk: _____

State Agency: _____ Title: _____

City/Town: _____ Date: _____

*If applicable, attach copy of certification from Department of Human Services.

NOTICE TO PROPERTY OWNER
(if not alleged violator)

To Property Owner:

Name : The property owner has been served separately.
(Last) (First) (Middle)

Mailing Address: _____ Street _____ City/Town _____ State _____ Zip _____

You are hereby notified that the original of this Citation and Complaint has been or will be served on the (above-named) (clerk of the corporation) and that if you wish to defend your own interest you should appear in District Court at the above indicated time and place. You are advised to call the District Court to verify date and time of the appearance. If you should fail to appear, judgment by default may be entered against you.

Signature of person making service on alleged violator:

Date: _____, 2001

Code Enforcement Officer

ACKNOWLEDGEMENT OF RECEIPT

I acknowledge receipt of this Citation and Complaint.

David P. Chamberlain, Clerk
7 Ocean Street, South Portland

Signing this Complaint does not constitute an admission of guilt.

RETURN

On the _____ day of September, 2001, I served this Citation and Complaint upon David P. Chamberlain, clerk of Intown Road Service, Inc. (alleged violator) (property owner) by:

delivering it to (him) (her) personally at _____ within this state;

delivering it to _____ personally within _____ (name and title) this state; and or

(other method) _____
The alleged violator, if served personally has been advised of this violation and (has signed above to acknowledge receipt of this Citation and Complaint) (has refused to sign) (was unable to sign).

Date: September _____, 2001

Signature of person serving process
Code Enforcement Officer

Charles A. Lane, Esq.
Portland City Hall
389 Congress Street
Portland, Maine 04101
(207) 874-8480
benjamin c&c

City of Portland, Maine
Code of Ordinances
Sec. 14-230

Land Use
Chapter 14
Rev. 8-20-01

*Editor's note--Ord. No. 164-97, § 6, passed Jan. 6, 1997, repealed div. 13, §§ 14-231--14-236 of this article and enacted new provisions as herein set out. Formerly, such division pertained to the I-1 industrial zone and derived from §§ 602.11.A--602.11.F of the 1968 Code as amended by the following legislation:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
570-71	--	11-16-71	330-90	1	5-7-90
327-71	--	7- 7-71	17-90	--	6-18-90
499-74	5	8-19-74	112-90	--	10- 1-90
334-76	6	7- 7-76	15-92	17	6-15-92
430-85	--	3- 4-85	193A-93	1	2-17-93
633-86	1	6- 2-86	89A-94	--	9-19-94
578-87	1	6-15-87	154-96	14	12-16-96

Sec. 14-231. Purpose.

The low impact industrial zone is intended to provide areas in which low impact industrial uses will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and the I-M or I-H industrial zones, or will stand alone as a smaller scale industrial district.

The I-L zone is located adjacent to residential neighborhoods, business uses and other industrial uses where the low intensity nature of the uses, as well as their strict performance standards, will ensure the compatibility of the uses with other adjacent industrial and nonindustrial uses.

Performance standards for uses in the I-L zone are designed to maintain compatibility between low impact industrial uses and neighboring nonindustrial and industrial uses. Performance

2. Off-street parking shall be provided, with one (1) parking space per employee, plus one (1), based upon the number of employees required through state licensing for potential maximum capacity of such facility;
 3. Off-street loading shall be located in a safe location;
 4. There shall be an on-site outdoor play area with seventy-five (75) feet of land area per child; and
 5. The outdoor play area shall be fenced and screened with a landscaped buffer.
- (j) Dairies.
 - (k) Reserved.
 - (l) Intermodal transportation facilities.
 - (m) Utility substations.
 - (n) Marinas.
 - (o) Distribution centers, warehouses and wholesale businesses under ten thousand (10,000) square feet in total building area, with no outside storage permitted.
 - (p) Back office uses.
 - (q) Incidental accessory uses.
- (Ord. No. 164-97, § 6, 1-6-97; Ord. No. 22-97, § 1, 7-7-97; Ord. No. 137-97, § 1, 11-3-97)

Sec. 14-233. Prohibited uses.

Uses that are not expressly enumerated herein as permitted uses are prohibited. Those uses that are prohibited shall include, but are not limited to, the following:

- (a) Residential uses.
- (b) Retail trade and restaurants that are not ancillary to a

- (u) Creosote treatment.
- (v) Drop forging.
- (w) Steel mills or furnaces.
- (x) Coal- or coke-fired kilns.
- (y) Used tire storage.
- (z) Outdoor sales or outdoor display.
- (aa) Extraction of raw materials.
- (bb) Concert halls or dance halls.
- (cc) Banquet facilities.
- (dd) Office uses other than back offices or offices that are accessory to a permitted use.

(Ord. No. 164-97, § 6, 1-6-97; Ord. No. 137-97, § 2, 11-3-97)

Sec. 14-234. Dimensional requirements.

- (a) Minimum lot size: None.
- (b) Maximum impervious surface ratio: I-L zone: Sixty-five percent. I-Lb zone: One hundred (100) percent.
- (c) Maximum building height: Forty-five (45) feet.
- (d) Minimum side yards: Principal and accessory structures in the I-L zone: Twenty-five (25) feet, except that the minimum side yard shall be forty (40) feet when the side property line abuts a residential zone. Principal and accessory structures in the I-Lb zone: None, except that the minimum side yard shall be twenty-five (25) feet when the side property line abuts a residential zone.
- (e) Minimum rear yards: Principal and accessory structures in the I-L zone: Twenty-five (25) feet, except that the minimum rear yard shall be forty (40) feet when the rear property line abuts a residential zone. Principal and accessory structures in the I-Lb zone: None, except that the minimum rear yard shall be twenty-five (25) feet when the rear property line abuts a residential zone.

processing waste storage areas shall be cleaned and sanitized on a regular basis.

(i) Outdoor storage of refuse, debris, or material awaiting reuse shall be in an appropriate container or located within a designated, screened area.

(j) Any permitted outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by one (1) or more of the following methods: raising materials above ground, separating materials, preventing stagnant water, or by some other means. No outdoor storage shall be permitted in the required yard between the front of any building on the site and the street, except for storage for plant and tree nurseries.
(Ord. No. 164-97, § 6, 1-6-97)

Sec. 14-236. Performance standards.

Uses in the I-L and I-Lb zones shall comply with the following standards:

(a) Noise:

1. Definitions:

a. Tonal sounds are defined as sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.

b. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with a duration of less than one (1) second.

2. Measurement: Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards