

Order 52-13/14
Given first reading on 9/16/13
Postponed to 10/21/13 Council Meeting
Passage: 9-0 10/21/13

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR DINOSAUR ENTERPRISES LTD

ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below:

CONDITIONAL ZONE AGREEMENT
RE:
DINOSAUR ENTERPRISES LTD

AGREEMENT made this ___ day of _____, 2013, by DINOSAUR ENTERPRISES LTD, a Maine corporation with a place of business in Portland, Maine ("Applicant"), and its successors and assigns and Elizabeth A. Weber ("Owner"), the owner of the property where the Applicant operates its fuel business.

W I T N E S S E T H

WHEREAS, the Applicant operates its business on land owned by ("Owner") containing approximately 21,643 square feet and shown on the Portland Tax Map as 83A, Block K, Lots 5 and 10, and more particularly described in that warranty deed recorded in Book 10389, Page 179 (the "Property"); and

WHEREAS, the Applicant and its president, Ted Weber, have been continuously delivering and dispensing fuel products from the Property since 1988; and

WHEREAS, there are no structures on the Property dedicated to the fuel delivery business, and the only equipment relating thereto are two fuel delivery trucks and a DOT-approved mobile gasoline tank and pump mounted on Applicant's truck, which move on and off the Property; and

WHEREAS, the current zoning of the Dinosaur site is IR-2; and

WHEREAS, the current zoning does not textually permit the parking of two fuel delivery trucks or the sale or dispensing of fuel products from the Property; and

WHEREAS, Dinosaur provides an essential utility service and serves a verifiable need for the neighbors, City, residents and guests on Great Diamond Island; and

WHEREAS, Dinosaur has operated from the Property since 1988; and

WHEREAS, Dinosaur's business is fully insured;

WHEREAS, the Applicant has requested a rezoning of the Property in order to permit the long-standing and limited business use of the Property; and

WHEREAS, the Portland Planning Board has determined this rezoning meets an essential need for the Great Diamond Island and the customers of the Applicant, and is consistent with the Comprehensive Plan; and

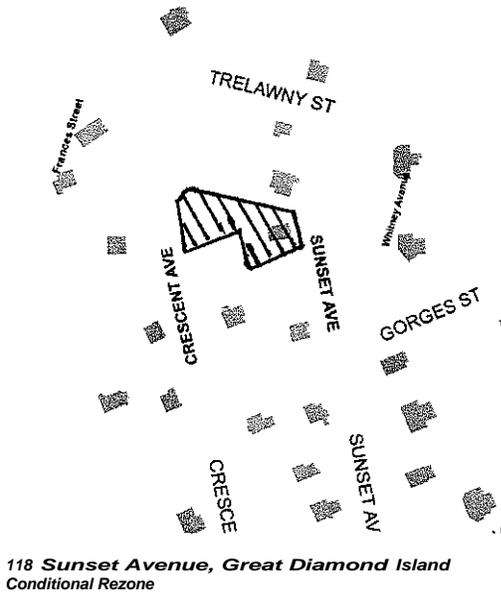
WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however to certain conditions contained in this Agreement; and

WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62, after notice, hearing and due deliberation thereon, has determined that because of the existing and unique location of the proposal, its consistency with the Comprehensive Plan and its minimal impact on and compatibility with the surrounding community, it is necessary and appropriate to recommend the rezoning of the Property as aforesaid, with the following conditions and restrictions set forth in this Agreement; and

WHEREAS, the Portland City Council has on _____, 2013 approved this Agreement in its entirety, by City Council Order No.____, a true copy of which is attached hereto as Attachment 1 (the "Order");

NOW, THEREFORE, in consideration of the rezoning, the Applicant and Owner covenant and agree as follows:

1. Pursuant to the Order, the City shall amend the Zoning Map of the City of Portland, dated September, 2000 (as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Code) by adopting the map change amendment shown below to zone the Property conditional I-R2, subject to the conditions contained below.



If this Agreement is not recorded within sixty (60) days after the effective date of the City Council's approval of the Order, then the conditional rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing IR-1 and IR-2 zones.

2. Permitted uses:

- a. All of the permitted uses allowed in the IR-2 zone; and
- b. Parking on the Property of two (2) fuel trucks and one (1) truck fitted with a DOT-approved mobile gasoline tank and pump or such fixed tank as may be permitted by the State Fire Marshal in the Applicant's fuel business; and
- c. Dispensing and sale of fuel from the Property.

3. The conditions of this Rezoning shall be:

- a. This rezoning shall terminate if the Applicant or its successor discontinue the fuel business operation for at least twelve (12) consecutive months.
- b. The rezoning shall terminate at any time the Applicant's business is permanently moved off the Property.
- c. The business of the Applicant on the Property shall be limited to the current use of the Property (i.e. the parking of two(2) fuel trucks and a truck fitted with a DOT-approved mobile gasoline tank and pump or such fixed tank as may be permitted by the State Fire Marshal for the Applicant's fuel business), both in type and scope, such that impacts upon surrounding properties, if any, shall not be expanded.

4. All equipment including, but not limited to the two (2) fuel trucks and a vehicle equipped with approved mobile gasoline tank and pump shall be located/stored on the Property not within the abutting street or other property. In addition, all dispensing of fuel shall be performed on the Property except for fuel truck deliveries to customer properties.

5. The Applicant shall obtain and submit documentation to the City of all necessary City (including, if necessary, site plan approval), State (including, but not limited to, State Fire Marshal's approval) and Federal approvals, licenses and/or permits necessary to address the operation of its fuel business on the Property including, but not limited to, fuel storage and dispensing operations on the Property. Such documentation shall also include all submitted applications to these agencies. In addition, an Oil Spill Prevention, Control and Countermeasure (SPCC) Plan, including all revisions and/or amendments, shall be submitted to the City for review and approval by the Planning Authority. A copy of all SPCC Plan inspection and testing records shall also be made available to the Planning Authority upon request.

6. In the event of a breach by the Applicant, Owner or their successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after notice and hearing, may recommend to the City Council that the conditional zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Property to the IR-2 zone requirements in place before the execution of this Agreement.

7. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Applicant and Owner, any entity affiliated with the Applicant and Owner, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives. The Applicant or Owner shall record a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

8. This Conditional Rezoning Agreement may be enforced by the City pursuant to the land use enforcement provisions of state law including, but not limited to, 30-A M.R.S.A. §4452 and the Portland City Code.

9. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

10. Except as expressly modified herein, the development shall be governed by and comply with the provisions of the Portland City Code and any applicable amendments thereto or replacement thereof.

WITNESS:

DINOSAUR ENTERPRISES, LTD.

By: _____
William E. Weber, President

WITNESS:

By: _____
Elizabeth A. Weber, Owner

STATE OF MAINE
CUMBERLAND, ss.

_____, 2013

Personally appeared before me the above-named William E. Weber, in his capacity as President of DINOSAUR ENTERPRISES LTD, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

Notary Public/Attorney-at-Law

STATE OF MAINE
CUMBERLAND, ss.

_____, 2013

Personally appeared before me the above-named Elizabeth A. Weber, in her capacity as Owner of the Property, and acknowledged the foregoing instrument to be her free act and deed in her said capacity.

Before me,

Notary Public/Attorney-at-Law